LOVELY PROFESSIONAL UNIVERSITY

MERCANTILE LAWS – II

Edited By

Pooja

Printed by
EXCEL BOOKS PRIVATE LIMITED
A-45, Naraina, Phase-I,
New Delhi-110028
for
Lovely Professional University
Phagwara

SYLLABUS

Mercantile Laws – II

Objectives:

- To create awareness among students about the legal provisions relating to social security and employee remuneration in the industry.
- To make students aware of the industrial laws and their application for the welfare of workmen.
- To familiarize students with the consumer related issues and remedial procedures.

Sr. No.	Description
1.	***The Factories Act, 1948:*** Definition of Factory, Adult, Adolescent, Young person, Competent person, Object and Scope of Act, Approval, Licensing and registration of Factories, Provisions regarding Health, Welfare, Safety, Working hours for Adults, Employment of young persons, Annual Leave with Wages, Penalties under the Act.
2.	***The Workmen Compensation Act, 1923:*** Definition of Commissioner, Workman, Disablement, Rules regarding Workmen's compensation, Defences available to employers, Amount and Distribution of Compensation, Enforcement of Act.
3.	***Employees Insurance Act, 1948:*** Definition of Appropriate government, Benefit Period, Corporation, Contribution, Insurable Workman, Scope and Object of Act, Administration of Act, Benefits conferred by Act, Adjudication of Disputes, Penalties under the Act.
4.	***Employees Provident Fund Act, 1952:*** Definitions of Pension fund, Pension Scheme, Superannuation, Employees Pension Fund Scheme and Fund, Employees Provident Fund Scheme, Employees Deposit Linked Insurance Scheme. Determination and Recovery of money due from employer, Penalties under the Act.
5.	***Payment of Gratuity Act, 1972:*** Definition of gratuity, Completed year of service, Continuous service, Scope and Object of Act, Provisions regarding Payment and forfeiture of Gratuity, Determination and Recovery of Gratuity, Penalties under act
6.	***Payment of Wages Act, 1936:*** Definition of Wages, Scope and Object of Act, Rules regarding Payment of Wages, Deductions of Wages, Penalties under the Act, Minimum Wages Act, 1948 – Object and Scope of Act, Provisions regarding Fixation and Revision of Wages, Safeguards available in Payment of Minimum Wages.
7.	***Industrial Dispute Act, 1947:*** Definition of Industrial Dispute, Object and Extent of Act, Modes of Settlement of industrial Dispute, Causes of Industrial Dispute, Strikes vs. Lock-outs, Lay -off vs. Retrenchment, Unfair Labour Practices under Fifth Schedule
8.	***Trade Union Act, 1926:*** Definition of Trade Dispute, Trade Union, Scope and Object of Act, Registration of Trade Union, Rights and Liabilities of Registered Trade Union, Amalgamation of Trade Union, Dissolution of Trade Union, Penalties under the Act.
9.	***Payment of Bonus Act, 1965:*** Definition of Accounting Year, Allocable Surplus, Available Surplus, Eligibility and Disqualification of Bonus, Computation of Bonus, Powers of Inspectors Offences and Penalties under the Act.
10.	**Consumer Protection Act, I.T Act.**

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Unit 1: The Factories Act, 1948

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Objectives

After studying this unit, you will be able to:

- Explain the historical development of factory legislation
- Discuss the definitions included in Factories Act
- Get an overview of approval, licensing and registration of factories
- Describe the health, safety and welfare measures of employees
- Discuss provisions regarding employment of adults, women and children in factories
- Get an overview of provisions relating to hazardous processes

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Introduction

The Factories Act is the principal legislation, which governs the health, safety, and welfare of workers in factories. The Act extends to the whole of India. Mines and Railways workers are not included as they are covered by separate Acts. The new Act addressed the issues of safety, health, and welfare. Many amendments were aimed to keep the Act in tune with the developments in the field of health and safety. However, it was not until 1987 that the elements of occupational health and safety, and prevention and protection of workers employed in hazardous process, got truly incorporated in the Act. The purpose of this unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding the basic concept of Factories Act.

The Factories Act has been enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. For that purpose, it seeks to impose upon the owner or the occupier certain obligations to protect the workers and to secure for them employment in conditions conductive to their health and safety.

The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc.

The Act extends to whole of India including Jammu & Kashmir and covers all manufacturing processes and establishments falling within the definition of factory as defined under Section 2(m) of the Act. Unless otherwise provided it is also applicable to factories belonging to Central/ State Governments (Section 116).

1.1 Historical Development of Factory Legislation

With the establishment of a Cotton Mills in 1851, and a Jute Mill in Bengal in 1855, modern factory system was founded in India. Women and children were employed. There were excessive and long hours of work with little recreation. The employers used to have their way. In 1881, Indian Factories Act was passed which gave protection to the employees, especially to the children. The Factory Commission was appointed in 1890 by the Government of India. On the basis of the recommendations of the Commission an Act was passed in 1891, whereby the definition of Factory was amended to include premises in which fifty persons or more were employed. The Local Governments were empowered to extend it to premises in which twenty persons or more were employed. There were provisions about women employees and hours of work for them were limited with a provision for thirty minute's interval for rest. The Act was amended from time to time. It was amended twice in 1923 and 1926. The Act was thoroughly revised and redrafted in 1934 on the lines of recommendations made by the Royal Commission on Labour, which was appointed in 1929.

The Factories Act, 1934, was several times, amended and then the new Act of 1948 was passed. Under the 1934 Act, Provincial Government had power to apply the Act to the establishments where power was used and where more than ten people were employed. It reduced the hours of work and aimed to improve the working condition in factories; provisions were also made for adequate inspection and enforcement of the Act.

In the year 1948, the Factories Act, 1934 was revised and its scope extended to include welfare, health, cleanliness, overtime payments and similar measures. The Factories Act was to ensure proper, safe and healthy working conditions in the factories, so that the workers may feel interest and while in factories, devote their time and labour in the working process of the factory without being afraid of bodily strain and without fear and danger of accidents. The Act was amended periodically up to 1976.

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By this time a very large number of chemical factories had been set up 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 shocked Bhopal wiping out in hours thousands of innocent, ignorant, lives and rendering many more incapacitated. In 1987, Factories (Amendment) Act, 1987 was passed, a memorial to the victims of Bhopal.

It provides better safeguards in the use and handling of hazardous substance in factories. It calls upon the management to provide for greater safety measures (including precautions regarding the use of portable electric light in the factories), appointment of safety officers in factories where 1000 or more workers are employed, or where in any manufacturing process or operation is carried on, which involves any risk of bodily injury, poisoning or disease, or any other hazard to health to the persons employed in the factory. The amended Act also provided for investigations of all fatal accidents within a month of their occurrence. It also empowered the Chief Inspector or the Director General of Factory Advice Service and Labour Institutes or the Director General of Health Services to the Government of India or such other officer as may be authorised by them, to undertake safety and occupational health surveys. The Act also brought under its protective clause the contract labour, as also any other category of labour employed directly or through any agency with or without the knowledge of the principal employer, whether for remuneration or not. The amended Act further prescribed the provision of crèche facility in every factory wherein more than 30 women workers (instead of 50, as provided in the Principal Act) are ordinarily employed. According to the Act, if a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave due. The amended Act also provided for modified rates of general penalty for offences and enhanced penalty after previous conviction.

Caution Besides amendments to Sections 2, 4, 9, 13, 16, 18, 19, 23, 25, 28-32, 36-A, 64, 70, 80, 87, 89, 90, 91-A, 92, 94-99, 114, 119 and schedule to the Principal Act, the amended Act of 1987 also provides for omission of Section 100 of the Principal Act and insertion of new Section 7-A, 7-13, 87-A, 96-A, 104-A, 106-A, 111-A and 118-A, substitution of new sections for Sections 36.and 38, insertion of a new Chapter IV-A, after Chapter IV and the insertion of two new schedules before the schedule to the Principal Act. The newly inserted Sections 7-A, 7-B, 87-A, 96-A, 104-A, 106-A, 111-A and 118-A relate to general duties of the occupier, general duties of manufacturers, etc., regarding articles and substances for use in factories; power to prohibit employment on account of serious hazard; penalty for contravention of the provisions of Sections 41-B, 41-C and 41-H, onus of providing limits of what is practicable, etc.; jurisdiction of a court for entertaining proceedings, and so on, for offence, right of workers, etc.; and restriction on disclosure of information; respectively.

The new Sections 36 and 38 relate to precautions against dangerous fumes, gases, etc., and precautions in case of fire, respectively. The new Chapter IV-A inserted after Chapter IV of the principal Act, includes the following provisions relating to hazardous processes:

- Constitution of Site Appraisal
- Compulsory disclosure of information by the occupier
- Specific responsibility of the occupier in relation to hazardous processes
- Power of Central Government to appoint Inquiry Committees
- Emergency standards
- Permissible limits of exposure of chemical and toxic substances

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- Workers' participation in safety management
- Right of workers to warn about imminent danger.

The new schedules, inserted before the Schedule to the Principal Act, include the list of industries involving hazardous processes and permissible levels of certain chemical substances in the working environment.

All the provisions of the Factories (Amendment) Act, 1987 came into force with effect from 1st December, 1987 except the Schedule containing list of notifiable diseases and Sections 7-13 and 41-F which came into force with effect from 1st June, 1983.

1.1.1 Object of the Act

The object of the Act is 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.

1.1.2 Scope and Applicability of the Act

The Act extends to whole of India. It 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. It would, therefore, be desirable to discuss the meaning and definition of the term "factory" and "worker". Since the term "factory" refers to manufacturing process, it would be helpful to know the meaning of the term "manufacturing process" as defined by the Act.

Caselet

Indian Oil Corporation vs. Chief Inspector of Factories

In *Indian Oil Corporation vs. Chief Inspector of Factories* [1998(4) Scale 116], it was observed that it is the Government which looks after the successful implementation of the Factories Act and, therefore, it is not likely to evade its implementation. That appears to be the reason why the legislature thought it fit to make a separate provision for the Government and local authorities, and so on. The legislature has provided that in the case of a factory owned or controlled by any of these authorities the person or persons appointed to manage the affairs of the factory shall be deemed to be the occupier. Therefore, if it is a case of a factory, in fact and in reality, owned or controlled by the Central Government or other authority, the person or persons appointed to manage the affairs of the factory shall have to be deemed to be the occupier even though for better management of such a factory, a corporate form is adopted by the Government.

It was held in the case that the relevant provisions regarding the establishment of the appellant corporation and its working leave no doubt that the "ultimate control" over all the affairs of the corporation, including opening and running of the factories, is with the Central Government. Acting through the corporation is only a method employed by the Central Government for running its petroleum industry. In the context of Sec. 2(n), it will have to be held that all the Activities of the corporation a re really carried on by the Central Government with a corporate mask.

Source: http://www.thehindubusinessline.in/2000/01/10/stories/211001ak.htm

Notes

Self Assessment

State whether the following statements are true or false:

1. In 1981, Indian Factories Act was passed which gave protection to the employees, especially to the children.
2. The Factories Act, 1934, was several times, amended and then the new Act of 1948 was passed.
3. The amended Act also provided for investigations of all fatal accidents within a month of their occurrence.

1.2 Definitions

Following are the definitions included in the Factories Act:

1. Factory

Section 2(n) of the Factories Act, 1948 defines "factory" to mean:

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.
- 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.

Caution It specifically excludes: A mine subject to the operation of the Mines Act, 1952, or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Meaning of the words Premises and Precinct

The word 'premises' means open land or land with building or building alone. Therefore salt works where process of converting seawater into salt is carried on in the open comes within 'premises' as defined in the Act. [*Ardeshir H. Bhiwandiwala v. State of Bombay*, A.I.R. 1962 SC 29] Precincts mean a space enclosed by wall. [(in re *K.V.V. Sharma v. Manager, Gemini Studio, Madras*, A.I.R 1953 Mad. 29.)] Any 'premises' to be categorised as factory two conditions must be fulfilled.

- Ten or more persons are employed in the premises using power or be employed not using power.
- Twenty or more workers must be employed not using power.

2. Manufacturing Process

The expression "manufacturing process" has been defined in Section 2(k) to mean any process.

- 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

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- pumping oil, water, sewage, or any other substance; or
- generating, transforming or transmitting power; or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- constructing, reconstructing, refitting, finishing or breaking up ships or vessels; or
- preserving or storing any article in cold storage.

It was held in *State of Bombay v Ali Saheb Kashim Tamboli*, [(1995) 2 LLJ 182] that *bidi* making is a manufacturing process.

In *Ardeshir v Bombay State* [AIR 1962 SC 29)] the process carried out in the salt works comes within the definition of 'manufacturing process' in Section 2 (k) inasmuch as salt can be said to have been manufactured from sea water by the process of treatment and adaptation of sea water into salt.

In re K. V. V. Sharma [(1950) 1 LLJ 29] conversion of raw films into a finished product was held to be a manufacturing process. Similarly in *New Taj Mahal Cafe Ltd., Managalore v. Inspector of Factories, Managalore*, 1956 1 LLJ 273 the preparation of foodstuffs and other eatable in the kitchen of a restaurant and use of a refrigerator for treating or adapting any article with a view to its sale were also held to be manufacturing process.

3. Worker

Section 2 (1) of the Factories Act, 1948 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.

Broadly speaking, therefore, worker is a person:

- who is employed;
- who is employed either directly or through any agency;
- who is employed in any manufacturing process, or in clearing 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.

If the aforesaid conditions are satisfied, then it is immaterial whether a person was employed for remuneration or not.

In *Chintaman Rao v. State of Madhya Pradesh*,[AIR 1958 All 41] the factory entered into contracts with independent contractors known as sattedars. The sattedars were supplied tobacco by the factories and, in some cases, *bidi* leaves also. The sattedars were neither bound to work in the factory nor were they bound to prepare the *bidis* themselves but could get them prepared by others. In fact they engaged coolies for rolling bidis and made payments to them. They used to collect *bidis* from these coolies and take them to the factory where the bidis were sorted and checked by the workers of the factory. The factory made payments to the sattedars for work of rolling bidis. The Supreme Court gave the restricted meaning to words "directly or through any agency" in Section 2(l) and held that (i) worker was a person employed by the management and (ii) there must be a contract of service and a relationship of master and servant between them.

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On the facts of the case the Supreme Court held that the sattedars were independent contractors and they and the coolies engaged by them for rolling bidis were not workers.

Example: In *State of Kerala v V M Patel* [1961(1) LLJ 549 (SC)] the Supreme Court held that the work of garbling pepper by winnowing, cleaning, washing and drying in lime and laid out to dry in a warehouse are manufacturing processes and therefore the persons employed in these processes were workers within the meaning of Section 2(I) of the Act.

In *Shankar Balaji Waje v. State of Maharashtra* [AIR 1957 SC 517] Pandurang was engaged for rolling *bidis*. Although the hours of work were fixed but there was no obligation to attend during those hours. There was freedom to come and go. There was neither fixed salary nor Actual supervision on the work. Payment was made on the quantum of work. The Supreme Court held that such person were not workers because there was no control and the supervision over pandurang.

Example: In *Birdh Chand Sharma v. First Civil Judge, Nagpur* [AIR 1961 SC 644] where the respondents prepared bidis at the factory and they were not at liberty to work at their homes. They worked within certain hours which were the factory hours. They were, however, not bound to work for the entire period and they could go whenever they like. Their attendance was noted in the factory. They could come and go away at any time they liked. However no worker was allowed to work after midday even though the factory was closed at 7 p.m. and no worker was allowed to continue work after 7 p.m. There were standing orders in the factory and, according to these orders a worker who remained absent for eight days presumably without leave could and removed. The payment was made on piece rate according to the quantum of work done, but the management had the right to reject such bidis as dad not come up to the proper standard. On these facts the Supreme Court held that respondents were workers under section 2 (1) of the Act.

4. Occupier

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 -

(i) 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;

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

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

(i) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under -

- Section 6, Section 7, Section 7-A, Section 7-B, Section 11 or Section 12;
- Section 17, insofar as it relates to the providing and maintenance of sufficient suitable lighting in or around the dock;
- Section 18, Section 19, Section 42, Section 46, Section 47 or Section 49, in relation to the workers employed on such repair or maintenance;

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(ii) 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 (save as otherwise provided in this provided) 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

- the workers employed directly by him, or by or through any agency; and
- the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other Officer-in-charge or person;

Notes General Duties of the Occupier are:

Section 7A has been inserted by the Factories (Amendment) Act and the new section lays down the general duties of an occupier as follows:

1. Plant maintenance that is safe and without risk to health of workers.
2. Safeguard health and safety with the use, handling, storage and transport of articles and substance.
3. Provide information, instruction, training and supervision to ensure health and safety of all workers.
4. Monitoring of work environment.

It also lays down a duty on the occupier to prepare 9 written statements of policy with respect to the health and safety of workers and to give notice to the workers as per rules.

General duties of manufacturers etc. as regards articles and substances for use in factories (for the purpose of this section 7B, article includes plant and machinery). It lays down general duties of designers, manufacturers; importers, suppliers. As regard the articles and substances used in the factory, it would be the duty of the designers to ensure that the articles designed would be safe and without risk to the health of the workers. It would also be this duty to carry out necessary tests and provide adequate information regarding of safety and risk to health.

Importers of articles also will have to ensure that articles imported conform to the standard set out in the country or of the standard adopted outside the country.

5. Other Definitions

- Adult means a person who has completed his 18th year of age. [Section 2 (a)]
- Adolescent means a person who has completed his 15th year of age but has not completed his 18th year. [Section 2 (b)]
- Calendar year means the period of twelve months beginning with the first day of January in any year. [Section 2 (bb)]
- Child means a person, who has not completed his 15th year of age. [Section (c)]
- Young person means a person, who is either a child or an adolescent. [Section 2 (d)]
- Day means period of twenty-four hours beginning at midnight [Section 2 (e)]

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- Week means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories. [Section 2 (f)]
- Power means electrical energy, or any other form of energy, which is mechanically transmitted and is not generated by human or animal agency. [Section 2 (g)]
- Prime Mover means any engine, motor or other appliance, which generates or otherwise provides power. [Section 2 (h)]
- Transmission Machinery means any shaft, drum, pulley, system of pulleys, coupling clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance [Section 2 (i)]
- Machinery includes prime movers, transmission machinery and all other appliances, whereby power is generated, transformed, transmitted or applied. [Section 2 (j)]
- Managing Agent has the meaning assigned to it in the Indian Companies Act, 1913 (VII of 1913). [Section 2 (o)]
- Prescribed means prescribed by rules made by the State Government under this Act. [Section 2 (p)]
- Relay and Shift means where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a 'relay' and each of such period is called 'shift'. [Section 2 (r)].

Self Assessment

State whether the following statements are true or false:

4. The word 'premises' means close land or land with building or building alone.
5. The expression "manufacturing process" has been defined in Section 3(k) to mean any process.
6. Child means a person, who has not completed his 15th year of age.

1.3 Approval, Licensing and Registration of Factories

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. Section 4 empowers the State Government to declare different departments' or branches of a factory as separate factories, in case a request is made in writing in this regard by the occupier. But there is no provision to enable two or more factories of the same occupier being declared as a single 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.

1.3.1 Procedure for Approval, Licensing and Registration of Factories

The factory is to be got approved and registered after obtaining a license by the occupier in accordance with the rules framed by the State Government in this behalf. The, State Governments are empowered to frame rules requiring the occupier of a factory for the purposes of this Act for

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the submission of plans of any class or description of factories to the Chief Inspector or State Government and to obtain previous permission of the Chief Inspector of Factories with regard to site where factory is proposed to be constructed, or extension, in case the factory already exists. A factory shall not be deemed to be extended by reason only of the replacement of any plant or machinery if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affects the environmental conditions from the evolution or emission of steam, heat or dust or fames injurious to health. The occupier is required to submit full building plans along with necessary particulars of specifications according to which the building is to be got approved in accordance with the rules. The registration, obtaining of license or renewal of license, as the case may be, is to be done by the occupier in accordance with the rule 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 in accordance with the plan is to be given within 3 months by the 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, in that case, the applicant may appeal to the State Government if permission is refused by the Chief Inspector or to the Central Government if the permission is refused by the State Government, within 30 days.

Did u know? 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:

- the name and situation of the factory;
- the name and address of the occupier;
- the name and address of the owner of the premises or building;
- the nature of manufacturing process;
- the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate standby plant;
- the name of manager of the factory for the purpose of this Act;
- the number of workers likely to be employed in the factory ;
- the average number of workers per day employed during the last twelve months, in case of a factory, is in existence on the date of the commencement of this Act;
- such other particulars as may be prescribed under the rules. [Section 7 (1)]

The occupier is required to give notice to the Chief Inspector of Factories containing the above particulars with regard to those factories which were already functioning before this Act, within 30 days from the commencement of the Act [Section 7 (2)]. Before a factory engaged in a manufacturing process which is ordinarily carried on for less than 180 working days in a year resumes working, the occupier is required to send full particulars of the factory to the Chief Inspector within 30 days of such resumption of work [Section 7 (3)]. 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 Sections 6 and 7 is an offence for which the occupier can be punished.

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Self Assessment

Fill in the blanks:

7. The responsibility for getting the premises approved, when the factory is to be established, lies on the .....
8. ..... empowers the State Government to declare different departments' or branches of a factory as separate factories, in case a request is made in writing in this regard by the occupier.
9. No license or renewal of license shall be granted unless the occupier gives at least ..... days' notice in writing to the Chief Inspector of factories before he proposes to occupy or use any premises as factory.

1.4 Health, Safety and Welfare Measures of Employees

The Factories Act, 1948 provides the following provisions for maintaining health, security and safety of employees:

1.4.1 For Health

Following are the factors that should be taken into consideration for maintaining health measures of employees:

(i) Cleanliness

Section 11 of the Factories Act, 1948 provides for general cleanliness of the factory. It lays down that dust, fumes and refuse should be removed daily; floors, staircases and passages should be cleaned regularly by sweeping and other effective means while washing of interior walls and roofs should take place at least once in 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. Further, all doors and window frames and other wooden or metallic framework and shutters should be kept painted or varnished and the painting or varnishing shall be carried out at least once in five years.

(ii) Disposal of Wastes and Effluents

Section 12 of the Factories 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, so as to render them innocuous and for their disposal.

(iii) Ventilation and Temperature

The occupier is required to make effective and suitable provisions for securing and maintaining in every workroom adequate ventilation for the circulation of fresh air and to maintain such temperature as will secure to workers reasonable conditions of comfort and prevent injury to health.

(iv) Dust and Fume

Section 14 (1) deals with the measures, which should be adopted to keep the workrooms free from dust and fume. Every factory in which by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is

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likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom. If any exhaust appliance is necessary for the above purposes, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity and such point shall be enclosed as far as possible.

(v) Artificial Humidification

Section 15 (1) lays down that in respect off all factories in which the humidity of the air is artificially increased the State Government may make rules:

- prescribing standard of humidification;
- regulating the methods used for artificially increasing the humidity of the air;
- directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
- prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workroom.

(vi) Overcrowding

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. The Act further prescribes that in every workroom, each worker should be provided with a minimum space of 9.9 cubic meters which was there on the commencement of this Act, 1948 or 1.2 cubic meters after such commencement (Section 16). No account shall however be taken of any space which is more than 1.2 meters above the level of the floor of the room for the aforesaid purpose. If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the Provisions of this section, be employed in the room. The Chief Inspector may, by order in writing exempt, subject to such conditions, if any, as he may thing fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

(vii) Lighting

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

(viii) Drinking Water

Section 18 deals with the provisions relating to arrangements for drinking water in factories. Sub-section (1) provides that in every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.

(ix) Conservancy Arrangements

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

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(x) Spittoons

Section 20 (1) lays down that in every factory there shall be provided a sufficient number of spittoons in convenient places. They shall be maintained in a clean and hygienic condition.

1.4.2 For Safety

Following are the factors that should be taken into consideration for maintaining safety measures of employees:

(i) Fencing of Machinery

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

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

(b) the headrace and tailrace of every water-wheel and water turbine;

(c) any part of stock-bar which projects beyond the head stock of a lathe; and

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

- every part of electric generator, a motor or rotary converter;
- every part of transmission machinery; and
- every dangerous part of any other machinery;

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

(ii) Work on or Near Machinery in Motion

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

- lubrication or other adjusting operation; or
- any mounting or shipping of belts or lubrication or other adjusting operation.

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

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

- the belt is not more than fifteen centimeters in width;
- the pulley is normally for the purpose of drive and not merely a flywheel or balance wheel (in which case a belt is not permissible);
- the belt joint is either laced or flush with the belt;

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- the belt, including the joint and the pulley rim, are in good repair;
- then is reasonable clearance between the pulley and any fixed plant or structure;
- secure foothold and, where necessary, secure handhold, are provided for the operator; and
- any ladder in use for carrying out any examination to operation aforesaid is securely fixed or lashed or is firmly held by a second person.

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

(iii) Employment of Young Person on Dangerous Machine

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

(iv) Striking Gear and Devices for Cutting off Power

In order to move the driving belt to and from fast and loose pulleys in transmission machine and prevent the belt from creeping back onto the fast pulley, suitable striking gear or other efficient mechanical appliance shall be provided, maintained and used. No driving belt when mused shall be allowed to rut or ride upon shafting in motion. Suitable devices are also maintained in every workroom for cutting off power emergencies.

(v) Self-acting Machines

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

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

(vi) Casing of New Machinery

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

Notes

(vii) Prohibition of Employment of Women and Children near Cotton Openers

The Factories Act, 1948 prohibits the employment of women and children in any part of the factory for pressing cotton where the cotton opener is at work. But if the feed-end of the cotton-opener is in a room separated from the delivery and by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where feed-end is situated. (Section 27)

(viii) Roust and Lifts

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

(ix) Revolving Machinery

Section 30 (1) provides that a notice indicating the maximum safe working peripheral speed of the grindstone or abrasive wheel the speed of the shaft, or spindle, must be permanently affixed on all rooms in a factory where grinding is carried on the speeds indicated in notices under sub-section (1) shall not be exceeded [Sub-section (2) of Section 30]. Similarly, care shall be taken not to exceed the safe working peripheral speed of every revolving machine like revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliances run by power. [Sub-section (3) of Section 30]

(x) Pressure Plant

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

(xi) Pits, Sump and Opening in Floors

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

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

(xii) Precautions against Dangerous Fumes, and Gases

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

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(xiii) Precaution against using Portable Electric Light

The Act prohibits any factory to use portable electric light or any other electric appliance of voltage exceeding 24 volts in any chamber, tank, vat, pipe, flue or other confined space unless adequate safety devices are provided [Section 36-A (a)]. The Act further prohibits the factory to use any lamp or light (other than that of flame-proof construction if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pet, pipe, flue or other confined space. [Section 36-A (b)]

(xiv) Explosive or Inflammable Materials

These measures include: (i) effective enclosures of the plant or machinery used in the process; (ii) removal or prevention of the accumulation of such dust, gas or vapour; (iii) exclusion or effective enclosure of all possible sources of ignition. [Section 37 (i)]

(xv) Precaution in Case of Fire

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. Further effective measures should be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been trained in the routine to be followed in such cases. (Section 38)

(xvi) Safety of Building and Machinery

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

(xvii) Maintenance of Buildings

In order to ensure safety, the inspector is empowered to serve on the occupier or Manager (or both) of the factory an order specifying the measures to be taken and requiring the same to be carried out if it appears to him that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers. (Section 40-A)

(xviii) Safety Officers

In order to prevent accidents, the Act provides for 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. (Section 40-B)

1.4.3 For Welfare

Following are the factors that should be taken into consideration for maintaining welfare measures of employees:

Notes

(i) Washing Facilities

In every factory

- adequate and suitable facilities for washing shall be provided and maintained for use of the workers therein;
- separate and adequately screened facilities shall be provided for the use of male and female workers;
- such facilities shall be conveniently accessible and shall be kept clean.

The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing. (Section 42)

(ii) Facilities for Storing and Drying Clothing

The State Government may, in respect of any factory or class or description of factories make rules requiring the provision therein of suitable place for keeping clothing not worn during working hours and for the drying of wet clothing. (Section 43)

(iii) Facilities for Sitting

In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work. If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room, are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working. The State Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process. (Section 44)

(iv) First-aid-appliances

There shall, in every factory, be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory. Nothing except the prescribed contents shall be kept in a first-aid box or cupboard. Each first-aid box or cupboard shall be kept in the charge of a separate responsible person, who holds a certificate in first-aid treatment recognized by the State Government and who shall always be readily available during the working hours of the factory. In every factory wherein more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory. (Section 45)

(v) Canteens

The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be

Notes

provided and maintained by the occupier for the use of the workers (Section 46). Without prejudice in the generality of the foregoing power, such rules may provide for-

- the date by which such canteen shall be provided;
- the standard in respect of construction, accommodation, furniture and other equipment of the canteen;
- the foodstuffs to be served therein and the charges which may be made therefore;
- the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
- the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;
- the delegation to Chief Inspector subject to such conditions as may be prescribed, of the power to make rules under clause (c).

(vi) Shelters, Rest-rooms and Lunch-rooms (Section 47)

In every factory wherein more than one hundred and fifty workers are ordinarily employed adequate and suitable shelters or rest-rooms and a suitable lunch-room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers:

Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section:

Provided further that where a lunch-room exists no worker shall eat any food in the work-room.

The shelters or rest-room or lunch-room to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition. The State Government may-

- prescribe the standards, in respect of construction accommodation, furniture and other equipment of shelters, rest-rooms and lunch-rooms to be provided under this section;
- by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

(vii) Crèches (Section 48)

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

- prescribing the location and the standards in respect of construction, accommodation; furniture and other equipment of rooms to be provided, under this section;
- requiring the provision in factories to which the section applies, of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;
- requiring the provision in any factory of free milk or refreshment or both for such children;
- requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

Notes

(viii) Welfare Officers (Section 49)

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

Power to make rules to supplement this Chapter (Section 50).

The State Government may make rules-

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

Task As a Manager, how will you bring health, safety and welfare measures to your employees?

Self Assessment

Fill in the blanks:

10. .....of the Factories Act, 1948 provides for general cleanliness of the factory.
11. To eliminate ....., 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.
12. ..... provides that in every factory there shall be provided and maintained, separate arrangement for toilets for male and female workers at convenient places.

1.5 Provisions regarding Employment of Adults, Women and Children in Factories

Following are the provisions regarding employment of adults, women and children in factories are as follows:

1.5.1 Working Hours of Adult Workers

Let us start our discussion with the working hours of adult workers:

(i) Weekly and Daily Working Hours

Sections 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 under Section 54, no adult worker shall be required or allowed to work in a factory for more than 9 hours in a day. But with the previous approval of the Chief Inspector the daily maximum hours may be exceeded in order to facilitate and adjust the change of shifts. The above restriction is applicable to 'workers' only as defined in the Act.

Notes

(ii) Weekly and Substituted Holidays

Section 52 speaks of 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.

(iii) Compensatory Holidays

Such worker who has been deprived of weekly holiday should be allowed compensatory holidays of equal number to the holidays so lost within the month in which the holidays were due to him or within a months immediately following that month.

(iv) Intervals for Rest, Spread Over, Night Shifts and Double Employment

Every adult worker working in a factory is to be allowed rest during working hours of at least half an hour. This interval is to be so placed as to break the working hours for a maximum of 5 hours at a stretch. This period of 5 hours work can be extended to six hours by the permission of the State Government or subject to the control of State Government by the Chief Inspector on sufficient grounds to be recorded in the permission order. (Section 55, 56, 57, 58)

(v) Extra Wages for Overtime

A worker of a factory required to work in excess of the maximum hours of work prescribed under Section 51 and Section 54 is to be paid extra wages for overtime work done by him. Therefore a worker required working for more than 9 hours in any day or 48 hours in any week shall be paid at twice the ordinary rate of wages for the extra hours of work done by him. Ordinary rate of wages for this purpose shall be the basic wages plus such allowances including the cash equivalent or the advantage accruing through the concessional sale of food grains and other articles made available to workers excluding bonus. Further, where any worker in a factory is employed on a piece rate basis the time rate wages admissible to worker in such jobs shall be deemed to be equivalent to daily average wages for the piece rated worker.

(vi) Notice of Periods of Work for Adult Workers

A notice in the prescribed form containing an abstract of Act and rules framed there under, the name and address of Inspector and name and address of Certifying Surgeon is required to be displayed in the factory. The notice so displayed should indicate the periods of work for which an adult worker is required to work everyday in a factory. The notice shall be in English language and a language understood by the majority of workers.

Notes The intention behind the displaying of notice is that no worker is employed to work in contravention of Section 51, 52, 54, 55, 56 and 58 of the Act.

(vii) Section 66

Act provides for further restrictions on employment of women. Thus no exemption from the provisions of sec. 54 relative to daily hours of work may be granted in respect of any woman. 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. varies the limits laid down. So however there is absolute prohibition on employment of woman between the hours of 10 p.m and 5 a.m.

Notes

(viii) Power to Make Exempting Rules and Orders

The State Government has been empowered to make rules for granting exemption from the restrictions imposed with regard to working hours of adults as enumerated above on such conditions as it may deem necessary.

1.5.2 Employment of Women

Following are the provisions regarding employment of women:

(i) Prohibition of Employment of Women and Children Near Cotton Openers

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work;

Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

(ii) Restrictions on Employment of Women

The provisions of this shall, in their application to women in factories, be supplemented by the following further restrictions, namely:-

- no exemption from the provisions of section 54 may be granted in respect of any women;
- no woman shall be [required or allowed to work in any factory] except between the hours of 6 a.m. and 7 p.m.

Provided that the State Government may, by notification in the Official Gazette, in respect of [any factory or group or class or description of factories,] vary the limits laid down in clause (b), but so that no such variation shall authorize the employment of any woman between the hours of 10 p.m. and 5 a.m.

The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to or deterioration in, any raw material. The rules made under sub-section (2) shall remain in force for not more than three years at a time.

1.5.3 Employment of Children

Following are the provisions regarding employment of children:

(i) Prohibition of Employment of Children and Adolescents

No factory can employ any person unless he has completed fourteen years of age (Section 67). Thus there is total prohibition in employing children below 14 years of age. With regard to adolescent, i.e., above the age of 15 years but below 18 years, he too cannot be employed in a factory unless (i) he as well as the manager of a factory are in possession of certificates of fitness granted by the Certifying Surgeon and (ii) the adolescent carries with him while at work a token giving a reference to such certificate issued to him. (Section 68)

Notes

(ii) Effect of Certificate of Fitness Granted to Adolescent

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. But in case, such certificate has not been granted to him then irrespective of his age he is to be treated as child for the purpose of this Act. But an adolescent who has not attained the age of seventeen years but has obtained a certificate of fitness to work in a factory as an adult shall be required or allowed to work between 6 a.m. and 7 p.m. only. However, the State Government may by notification in the Official Gazette, in respect of any factory or group or class or description of factories

- vary the limit laid down in this sub-section. So, however, that no such sub-section authorises the employment of any female adolescent between 10 p.m. and 5 a.m.;
- grant exemption from the provision of this sub-section in case of serious emergency where national interest is involved.

(iii) Working Hours for Children

The Act regulates the working hours for children above age of 14 years eligible for employment in the factory. They can be employed for maximum hours of work lasting 4-1/2 hours in a day. The other prohibitions relating to their employment are

- the period of work is to be limited to shifts only;
- the shifts are not to overlap;
- the spread-over is not to exceed 5 hours;
- the child is to be employed only in one relay;
- the spread-over is not to change except once in 30 days; there should be no double employment;
- no exemption from the provisions of Section 52 dealing with weekly holidays; and
- employment during night, i.e., between 10 p.m, and 6 a.m. is prohibited.

(iv) Register of Child Workers

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

- the name of each child worker in the factory,
- the nature of his work,
- the group, if any, in which he is included,
- where his group works in shifts, the relay to which he is allotted, and
- the number of his certificate of fitness granted under section 69.

[(1A) No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.] The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Notes

Self Assessment

State whether the following statements are true or false:

13. Section 52 speaks of weekly holiday to the workers of a factory.
14. No factory can employ any person unless he has completed 15 years of age.
15. The Act regulates the working hours for children above age of 14 years eligible for employment in the factory.

1.6 Provisions Relating to Hazardous Processes

Section 2 (cb) of the Factories (Amendment) Act, 1987 defines the term "hazardous process" as any process or Activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would:

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

Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule.

(i) Constitution of Site Appraisal Committee

(a) The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving hazardous process or for the expansion of any such factory, appoint a Site Appraisal committee consisting of:

- the Chief Inspector of the State who shall be its Chairman;
- a representative of the Central Board for the Prevention and Control of Water Pollution appointed by the Central Government under Section 3 of the Water (Prevention and Control of Pollution) Act, 1974;
- a representative of the Central Board for the Prevention and Control of Air Pollution referred to in Section 3 of the Air (Prevention and Control of Pollution) Act, 1981;
- a representative of the State Board appointed under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974;
- a representative of the Central Board for the Prevention and control of Air Pollution referred to in Section 5 of the Air (Prevention and Control of Pollution) Act, 1981;
- a representative of the Department of Environment in the State;
- a representative of the Meteorological Department of the Government of India;
- an expert in the field of occupational health; and
- a representative of the Town Planning Department of the State Government, and not more than five other members who may be co-opted by the State Government who shall be-
    - a scientist having specialized knowledge of the hazardous process which will be involved in the factory,

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- a representative of the local authority within whose jurisdiction the factory is to be established, and
- not more than three other persons as deemed fit by the, State Government.

(b) The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt of such application in the prescribed form.

(c) Where any process relates to a factory owned or controlled by the Central Government or to a corporation or a company owned or controlled by the Central Government, the State Government shall co-opt in the Site Appraisal Committee a representative nominated by the Central Government as a member of that Committee.

(d) The State Appraisal committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

(e) Where the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Pollution) Act, 1981.

(ii) Compulsory Disclosure of Information by the Occupier

(1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, health hazards and the measures to overcome them arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to:

- workers employed in the factory;
- the Chief Inspector;
- the local authority within whose jurisdiction the factory is situated; and
- general public in the vicinity.

(2) Section 41-B provided that at the time of registering the factory involving a hazardous process, the occupier shall lay down a detailed policy with respect to the health and safety of the workers-and intimate such policy to the Chief Inspector and the local authority.

(3) Such information shall include accurate information as to the quantity, specifications and other characteristics of wastes and manner of their disposal (Sub-section 3).

(4) 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 known to the workers employed therein and to the general, 4 public living in the vicinity of the factory the safety measures required to be taken the event of an accident taking place [Sub-section 4].

(5) Every occupier of the factory is under an obligation to inform the Chief Inspector of the nature and details of the process in such form and in such manner as may by prescribe [Sub-section 5].

(6) On contravention of the provisions of sub-section (5), the license issued under 23 Section 6 to such factory shall, be cancelled and the occupier shall he liable to penalty (Sub-section 6).

(7) The occupier of the factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation and storage of

Notes

hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them in the prescribed manner among the workers and the general public living in the vicinity (Sub-section 7).

(iii) Specific Responsibility of the Occupier in Relation to Hazardous Process

Under section 41-C every occupier of a factory involving any hazardous process is required (A) maintain accurate and up-to-date health records or, the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to prescribed conditions; and (b) appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the prescribed manner (c) provide for medical examination of every worker- (i) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and (ii) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months, in prescribed manner.

(iv) Powers of Central Government to appoint Inquiry Committee

(1) The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure of neglect in the adoption of any measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to such failure or neglect and for the prevention and recurrence of such extraordinary situations in further in such factory or elsewhere.

(2) The Committee appointed under sub-section (1) shall consist of a Chairman and two other members and the terms reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation.

(3) The recommendation of the Committee shall be advisory in nature.

(v) Emergency Standards

(1) Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any institution specialised in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.

(2) The emergency standards laid down under sub-section (1) shall, until they are incorporated in the rules made under this Act, be enforceable and have the same effect as if they had been incorporated in the rules made under this Act.

(vi) Permissible Limits of Exposure of Chemical and Toxic Substances

The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in Second Schedule.

Notes

(vii) Worker's Participation is Safety Management

(1) The occupier shall, in every factory, where a hazardous process takes place, or where hazardous substance are used or handled, set up a Safety Committee consisting of equal number or representative of workers and management to promote cooperation between the workers and management in maintaining proper safety and health at work and to review periodically the measure taken in that behalf:

Provided that the State Government may, by order in writing and for reasons to be recorded, exempt the occupier of any factory or class of factories from setting up such Committee.

(2) The composition of the Safety Committee, the tenure or office of its members and their rights and duties shall be such as may be prescribed.

(viii) Right of Workers to Warn about Imminent Danger

Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to; their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is incharge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.

It shall be the duty of such occupier agent, manager or the person incharge or the factory or process to take immediate remedial Action if is satisfied about the existence of such imminent danger and send a report forthwith of the Action taken to the nearest Inspector.

If the occupier, agent, manager or the person incharge referred to in sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the worker, he shall, nevertheless, refer the matter forthwith to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

Self Assessment

Fill in the blanks:

16. Section 2 (cb) of the Factories (Amendment) Act, 1987 defines the term ..... as any process or Activity in relation to an industry specified in the First Schedule.
17. The ..... Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt.
18. The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes in any factory shall be of the value indicated in ..... Schedule.

Case Study

J. K. Industries Ltd vs. Chief Inspector of Fisheries and Boilers

In the landmark case of *J. K. Industries Ltd vs. Chief Inspector of Fisheries and Boilers* [1996 (7) Scale 247], the Supreme Court observed that by the Amending Act, 1987, the legislature wanted to bring in a sense of responsibility in the minds of those who have the ultimate control over the affairs of the factory so that they take proper care for

Contd....

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maintenance of the factories and the safety measures therein. The fear of penalty and punishment is bound to make the board of directors of the company more vigilant and responsive to the need to carry out various obligations and duties under the Act, particularly in regard to the safety and welfare of the workers.

Proviso (ii) was introduced by the Amending Act couched in a mandatory form - "any one of the directors shall be deemed to be the occupier" - keeping in view the experience gained over the years as to how the directors of a company managed to escape their liability for various breaches and defaults committed in the factory by putting up another employee as a shield and nominating him as the 'occupier' who would willingly suffer penalty and punishment.

It was held that where the company owns or runs a factory, it is the company which is in the ultimate control of the affairs of the factory through its directors. Even where the resolution of the board says that an officer or employee other than one of the directors shall have ultimate control over the affairs of the factory, it would only be a camouflage or an artful circumvention because the ultimate control cannot be transferred from that of the company to one of its employees or officers, except where there is a complete transfer of the control of the affairs of the factory.

An occupier of the factory in the case of a company must necessarily be any of its directors who shall be so notified for the purposes of the Factories Act. Such an occupier cannot be any other employee of the company or the factory. This interpretation of an 'occupier' would apply to all provisions of the Act wherever the expression 'occupier' is used, and not merely for the purposes of Sec. 7 or Sec. 7A of the Act.

The Supreme Court further held that proviso (ii) is not ultravires the main provision of Sec. 2(n) and, as a matter of fact, there is no conflict at all between the main provision of Sec. 2(n) and proviso (ii) thereto. Both can be read harmoniously and when so read in the case of a company, the occupier of a factory owned by a company would mean any one of the directors of the company who has been notified/identified by the company to have ultimate control over the affairs of the factory. And where no such director has been identified, then, for the purposes of prosecution and punishment under the Act, the Inspector of Factories may initiate proceedings against anyone of the directors as the deemed occupier.

The Supreme Court further held that there is nothing unreasonable in fixing the liability on a director of a company and making him responsible for compliance with the provisions of the Act and the rules made thereunder and laying down that if there is contravention under of the provisions of the Act or an offence is committed under the Act the notified director and, in the absence of the notification, anyone of the directors of the company shall be prosecuted and shall be liable to be punished as the deemed occupier.

The restriction imposed by proviso (ii), if at all it may be called a restriction, has a direct nexus with the object sought to be achieved and is, therefore, a reasonable restriction within the meaning of clause (6) of Article 19. Proviso (ii) to Sec. 2 (n) is thus not ultravires Article 19(1)(g) of the Constitution.

Questions

1. Study and analyze the case.
2. Write down the case facts.
3. What do you infer from it?

Source: http://www.thehindubusinessline.in/2000/01/10/stories/211001ak.htm

Notes

1.7 Summary

- The Factories Act, is a social legislation which has been enacted for occupational safety, health and welfare of workers at work places.
- This legislation is being enforced by technical officers i.e. Inspectors of Factories, Dy. Chief Inspectors of Factories who work under the control of the Chief Inspector of Factories and overall control of the Labour Commissioner, Government of National Capital Territory of Delhi.
- It applies to factories covered under the Factories Act, 1943.
- The industries in which ten (10) or more than ten workers are employed on any day of the preceding twelve months and are engaged in manufacturing process being carried out with the aid of power or twenty or more than twenty workers are employed in manufacturing process being carried out without the aid of power, are covered under the provisions of this Act.
- The enforcement of this legislation is being carried out on district basis by the district Inspectors of Factories.
- After inspection, Improvement Notices are issued to the defaulting managements and ultimately legal Action is taken against the defaulting managements.
- The Inspectors of Factories file Challans against the defaulters, in the Courts of Metropolitan Magistrates.
- The work of Inspectors of Factories is supervised by the Dy. Chief Inspector of Factories on district basis.
- This Act provides for a maximum punishment up to two years and or a fine up to ₹ one lakh or both.
- Section 2 (cb) of the Factories (Amendment) Act, 1987 defines the term "hazardous process" as any process or Activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents.

1.8 Keywords

Adolescent: A person who has competed his fifteenth year of age has not completed his eighteenth year.

Adult: Adult means a person who has completed his 18th year of age.

Approval: The Action of officially agreeing to something or accepting something as satisfactory.

Constitution: A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed.

Creches: Crèches are short sessional care or temporary childcare arrangements to cover things such as shopping trips, conferences, or training events.

Factory: Whereon ten or more workers are working on any day of the preceding twelve months and in any part of which manufacturing process is being carried on.

Licensing: Licensing is the process of leasing a legally protected (that is, trademarked or copyrighted) entity - a name, likeness, logo, trademark, graphic design, slogan, signature, character, or a combination of several of these elements. The entity, known as the property or intellectual property, is then used in conjunction with a product.

Notes

Machinery: Prime movers transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied.

Manufacturing Process: Manufacturing process management (MPM) is a collection of technologies and methods used to define how products are to be manufactured.

Occupier: Person performing the duties of a position, and enjoying the benefits and salary that go with it.

Overtime: Time in addition to what is normal; esp. time worked beyond one's scheduled working hours.

Safety: Safety is a term that refers to the state or condition of being protected from some kind of risk, injury or danger.

Welfare: Availability of resources and presence of conditions required for reasonably comfortable, healthy, and secure living.

1.9 Review Questions

1. Give a brief history of factory legislation.
2. What amendments have been made by Act No. 20 of 1982.
3. What is the object of the Factories Act?
4. Discuss the scope and applicability of the Act.
5. Explain the essentials of the term "Factory".
6. What do you mean by premises and precinct?
7. Discuss the responsibilities of an occupier in factory.
8. Discuss the provisions with respect to its occupiers who fail to discharge their responsibilities.
9. Critical by examine the provisions for women and children working in a factory.
10. Explain the essentials of the definition of worker under the Act.

Answers: Self Assessment

1.	False	2.	True
3.	True	4.	False
5.	False	6.	True
7.	Occupier	8.	Section 4
9.	15	10.	Section 11
11.	Overcrowding	12.	Section 19
13.	True	14.	False
15.	True	16.	Hazardous Process
17.	Site Appraisal	18.	Second

Notes

1.10 Further Readings

Books

Davidov, Guy & Langille, Brian (2011) *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Online links

http://www.vakilno1.com/bareActs/factoriesAct/s22.htm

http://www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm

http://www.vakilno1.com/bareActs/factoriesAct/s66.htm

http://industrialrelations.naukrihub.com/factory-Act.html

http://www.vakilno1.com/bareActs/factoriesAct/s62.htm

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Unit 2: Definitions under Workmen's Compensation Act, 1923

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Objectives

After studying this unit, you will be able to:

- Explain the genesis of the Act
- Discuss the various definitions in Workmen Compensation Act, 1923
- Elucidate major provisions of this Act
- Explain the distribution of compensation

Introduction

This unit will help you to understand the definitions under Workmen Compensation Act, 1923. The various sections and sub section of this unit will also summarise the major provisions of this Act and distribution of compensation. A beginning of social security in India was made with the passing of the Workmen's Compensation Act in 1923. Prior to 1923, it was almost impossible for an injured workman to recover damages 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 under the common law for his own personal negligence. The dependents of a deceased workman could, in rare cases, claim damages under the Fatal Accidents Act, 1855; if the accident was due to a wrongful Act, neglect or fault of the person who caused the death. In 1921, the

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government formulated some proposals for the grant of compensation and circulated them for opinion. The proposals received general support. 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 to the Act. The Act contains 36 sections and four Schedules. The purpose of this unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding the Workmen's Compensation Act.

2.1 Genesis of the Act

The Workmen's Compensation Act, 1923 provides for payment of compensation to workmen and their dependents in case of injury and accident (including certain occupational disease) arising out of and in the course of employment and resulting in disablement or death. The Act applies to railway servants and persons employed in any such capacity as is specified in Schedule II of the Act. The Schedule II includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations. The amount of compensation to be paid depends on the nature of the injury and the average monthly wages and age of workmen. The minimum and maximum rates of compensation payable for death (in such cases it is paid to the dependents of workmen) and for disability have been fixed and is subject to revision from time to time. A Social Security Division has been set up under the Ministry of Labour and Employment, which deals with framing of social security policy for the workers and implementation of the various social security schemes. It is also responsible for enforcing this Act.

Notes The Act is administered by the State Governments through Commissioners for Workmen's Compensation.

2.1.1 Object of the Act

The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The scheme of the Act is not to compensate the workman in lieu of wages, but to pay compensation for the injury sustained to him. The Workmen's Compensation Act, aims to:

- Provide workmen and/or their dependents some relief or to consider compensation payable by an employer to his workmen in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen as a measure of relief and social security.
- Provide for payment by certain classes of employers to their workmen compensation for injury by accident.
- To enable a workmen to get compensation irrespective of his negligence.
- It lays down the various amounts payable in case of an accident, depending upon the type and extent of injury. The employer now knows the amount of compensation he has to pay and is saved of many uncertainties to which he was subject before the Act came into force.

2.1.2 Scope and Coverage

The Act extends to the whole of India and applies to any person who is employed, otherwise than in a clerical capacity, in the railways, factories, mines, plantations, mechanically propelled

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vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads, bridges, etc., electricity generation, cinemas, catching or training of wild elephants, circus, and other hazardous occupations and employments specified in Schedule II to the Act.

The Act, however, does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employees' State Insurance Act, 1948 as disablement and dependents' benefit are available under this Act.

Did u know? 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.

2.1.3 Calculation of Compensation

The amount of compensation payable by the employer shall be calculated as follows:

(a) In case of death. - 50% of the monthly wages X Relevant Factor or ₹ 50,000, whichever is more and ₹ 1000 for funeral expenses.

(b) In case of total permanent disablement Specified under Schedule I - 60% of the monthly wages X Relevant Factor or ₹ 60,000, whichever is more.

(c) In case of partial permanent disablement specified under Schedule I. Such percentage of the compensation payable in case (b) above as is the percentage of the loss in earning capacity (specified in Schedule I)

(d) In case of partial permanent disablement not specified under Schedule I. Such percentage of the compensation payable in case (b) above, as is proportionate to the loss of earning Capacity (as assessed by a qualified medical practitioner).

(e) In case of temporary disablement (whether total or partial). A half-monthly installment equal to 25% of the monthly wages, for the period of disablement or 5 years, whichever is shorter.

Caselet

Registration of Agreements and Consequences of not doing so (Section 29)

The Law requires that the employer registers such agreements with the Commissioner. Failing which, the employer will be responsible to pay the full amount and not the reduced amount if any under the settlement/agreement. If the employer fails to register such a memorandum, the Commissioner may order the employer to pay the entire amount of compensation that the provisions of the Act provide for. In the agreement entered into the employer cannot pay less than the principle sum due as per the provisions of the Act. If s/he does the agreement will not be registered. A compromise can only be made in terms of the interest and penalty due from the employer.

In practice, in Karnataka several times the principle amount itself is not paid and as such agreements are not submitted for registration to the Commissioner, they do not also come up for scrutiny. The practice is common in the construction industry. In cases where the agreement is placed before the Commissioner in Bangalore, no compromise is allowed

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in the principal amount of compensation payable in fatal cases. However in non-fatal cases, compromise is often permitted to the extent of ₹ 23,000/-. The Commissioners may themselves 'appraise' the worker of the consequences of not compromising i.e. the ensuing litigation, and the time and money that s/he will have to incur, which often influences the worker to accept the lesser amount. In cases of compensation payable to a women or person under a legal disability the Act requires that the sum be deposited with the Commissioner. Any direct payment made to such persons is considered to be no payment of compensation under law.

This provision for registration and depositing payment with the Commissioner is to safeguard the interests of the women and dependents from fraud or force. An unscrupulous employer may pay a lesser amount to the deceased's dependents. Similarly an unscrupulous dependent may collude with the employer to deny other dependents of their share. Therefore, in the case of payments to women and dependents of deceased, an employer can enter into agreement with them, however:

- Such agreement should be registered, and;
- The money should not be given directly, but deposited with the commissioner.

Source: http://www.ngosindia.com/resources/wcAct.pdf

Self Assessment

Fill in the blanks:

1. The Workmen's Compensation Act was passed in March 1923 and was put into force on .....
2. The ..... includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations.
3. The Act is administered by the ..... through Commissioners for Workmen's Compensation.
4. The object of the Act is to impose an obligation upon ..... to pay compensation to workers for accidents arising out of and in the course of employment.

2.2 Definitions

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

2.2.1 Commissioner [Section 2(1)(b)]

Commissioner means a Commissioner for Workmen's Compensation appointed under Section 20. The Act provides for appointment of Officers to be known as Commissioners of Workmen's Compensation. The Commissioners are to determine the liability of any person to pay compensation (including the question whether a person is or is not a workman) and the amount or duration of compensation (including any question as to the nature or extent of disablement). No civil court bans jurisdiction to deal with matters which are required to be dealt with by a Commissioner. Certain powers have been given to the Commissioners, e.g., the power to call for further deposits. The Commissioner has the powers of a Civil Court.

Notes

When Compensation to be Deposited with Commissioner?

The amount of compensation is not payable to the workman directly. It is generally deposited along with the prescribed statement, with the Commissioner who will then pay it to the workman. Any payment made to the workman or his dependents, directly, in the following cases will not be deemed to be a payment of compensation:

(i) in case of death of the employee;

(ii) in case of lump sum compensation payable to a woman or a minor or a person of unsound mind or whose entitlement to the compensation is in dispute or a person under a legal disability.

Besides, compensation of ₹ 10 or more may be deposited with the Commissioner on behalf of the person entitled thereto. The receipt of deposit with the Commissioner shall be a sufficient proof of discharge of the employer's liability.

2.2.2 Workman

The definition of the term workman is important because only a person coming within the definition is entitled to the relieves provided by the Workmen's Compensation Act. "Workman" is defined in Section 2(n) read with Schedule II to the Act.

In Schedule IT, a list (consisting of 32 items) is given of persons who come within the category of workmen.

Example: Persons employed otherwise than in a clerical capacity or in a railway to operate or maintain a lift or a vehicle propelled by steam, electricity or any mechanical power; person employed otherwise than in a clerical capacity in premises where a manufacturing process is carried on; seamen in ships of a certain tonnage; persons employed in constructing or repairing building or electric fittings; persons employed in a circus or as a diver; etc.

Subject to the exceptions noted below, the term workman means:

(a) a railway servant as defined in Section 3 of the Indian Railways Act of 1890 who is not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any capacity as is specified in schedule II; or

- A master seaman or other member of the crew of a ship.
- A captain or other member of the crew of an aircraft.
- A person recruited as driver, helper, mechanic, cleaner, or in any other capacity in connection with a motor vehicle.
- A person recruited for work abroad by a company and who is employed outside India in any such capacity as is specified in Schedule II and the ship aircraft or motor vehicle or company as the case may be is registered in India; or

(b) employed on monthly wages not exceeding ₹ 1000 in any such capacity as is mentioned in Schedule II.

whether the contract of employment was made before or after the passing of this Act and whether the 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 a workman who has been injured shall where the workman is dead includes a reference to his dependents or any of them.

Notes

From 1st April 1976, the limit of monthly wages for purposes of this Act was raised from ₹ 500 to ₹ 1000. The words used in clause (b) mean that the wages must not exceed on average (now ₹ 1000) a month. The contract of employment may be expressed or implied, oral or in writing.

The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of the Act, unless a contrary intention appears be deemed to be the trade or business of such authority or department. The State Government has been given power to add to the list in Schedule II any hazardous occupation or specified injuries in such an occupation. The addition may be made by notification in the official Gazette, with not less than 3 months' notice.

There is legal decision regarding the question who is a workman. The general rule is that there must be the relationship of master and servant between the employer and the workman. Workman is a person whom the employer can command and control in the manner of performing the work Yewen v. Noakes. According to Wills, the following points are to be taken into consideration in determining the question whether a person is a workman:

(a) The term of engagement

(b) The payment of wages

(c) The power of control over the work the power of dismiss

2.2.3 Disablement

Disablement means loss of capacity to work or to move. Disablement of a workman may result in loss or reduction of his earning capacity. In the latter case, he is not able to earn as much as he used to earn before his disablement. Disablement may be partial, or total. Further Partial disablement may be permanent, or temporary. Disablement, in ordinary language, means loss of capacity to work or move. Such incapacity may be partial or total and accordingly there are two types of disablement, partial and total. In the Act both types of disablement are further subdivided into two classes, temporary and permanent. By Section 2 (g) Temporary Partial Disablement means such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident, and Permanent Partial Disablement means such disablement as reduces his earning capacity in every employment he was capable of undertaking at that time. The Act is not limited only to physical.

1. Partial Disablement [Section 2(1)(g)]

This means any disablement as reduces the earning capacity of a workman as a result of some accident. Partial disablement may be temporary or permanent.

- Temporary partial disablement means any disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of accident which resulted in such disablement.
- Permanent partial disablement is one which reduces the earning capacity of a workman in every employment which he was capable of undertaking at the time of injury.

Caution In a case of Partial Disablement it is necessary that (a) there should be an accident, (b) as a result of the accident the workman should suffer injury, (c) which should result in permanent disablement and (d) as a result whereof his earning capacity must have decreased permanently.

Notes

In the proportion in which his earning capacity has been decreased permanently he is entitled to compensation.

The medical evidence showing loss of physical capacity is a relevant factor but it is certainly not the decisive factor as to the loss of earning capacity. It is the loss of earning capacity that has to be determined. *Commrs for Port of Cal. v. A. K. Ghosh.*

The type of disablement suffered is to be determined from the facts of the case. But it is provided that every injury specified in Schedule I to the Act shall be deemed to result in permanent partial disablement. The schedule also mentions the percentage loss of earning capacity which is to be presumed in each such case.

Example:

(From Schedule 1)	**Percentage loss**
Description of Injury of earning capacity	
Loss of both hands	100
Severe facial disfigurement	100
Absolute deafness	100
Loss of thumb	30
Loss of one eye	40
Middle finger of left hand (whole)	14

(There are 54 items listed in the Schedule with percentage loss of earning capacity for each item mentioned.)

2. Total Disablement [Section 2 (1) (l)]

It means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. It refers to that condition where a workman becomes unfit for every type of work and is not able to get job anywhere due to that disablement.

Total disablement is deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in Part II against those injuries, amounts to 100 per cent or more. Where an employee becomes unfit for a particular class of job but is fit for another class which is offered to him by the employer, the workman is entitled to claim compensation only on the basis of partial disablement and not total disablement.

Task Find out the compensation to be paid when due and penalty for default.

Self Assessment

Fill in the blanks:

5. ..... means a Commissioner for Workmen's Compensation appointed under Section 20.

6. From 1st April 1976, the limit of monthly wages for purposes of this Act was raised from ₹ 500 to .....

Notes

7. The general rule is that there must be the relationship of ..... between the employer and the workman.
8. ..... of a workman may result in loss or reduction of his earning capacity.
9. ..... means any disablement as reduces the earning capacity of a workman as a result of some accident.

2.3 Major Provisions of this Act

The main provisions of the Act are:

1. An employer is liable to pay compensation: - (i) if personal injury is caused to a workman by accident arising out of and in the course of his employment; (ii) if a workman employed in any employment contracts any disease, specified in the Act as an occupational disease peculiar to that employment.
2. However, the employer is not liable to pay compensation in the following cases:-
   a If the injury does not result in the total or partial disablement of the workman for a period exceeding three days.
   b If the injury, not resulting in death or permanent total disablement, is caused by an accident which is directly attributable to:- (i) the workman having been at the time of the accident under the influence of drink or drugs; or (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen; or (iii) the willful removal or disregard by the workman of any safety guard or other device which has been provided for the purpose of securing safety of workmen.
3. The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification. Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.
4. Compensation shall be paid as soon as it falls due. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be.
5. If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

   Caution No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.
6. The State Government may, by notification in the Official Gazette, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid

Notes

by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the State Government may direct.

7. Whoever, fails to maintain a notice-book which he is required to maintain; or fails to send to the Commissioner a statement which he is required to send; or fails to send a report which he is required to send; or fails to make a return which he is required to make, shall be punishable with fine.

Self Assessment

State whether the following statements are true or false:

10. The employer is not liable to pay compensation if the injury does not result in the total or partial disablement of the workman for a period exceeding three days.

11. An employer is liable to pay compensation if the injury, not resulting in death or permanent total disablement.

12. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability.

2.4 Distribution of Compensation

The compensation shall be paid by the employer to a workman for any personal injury sustained by him in an accident arising out of and in the course of his employment. In Schedule I to the Act, the percentage loss of earning capacity or disablement caused by different types of injuries has been listed. However, the employer will not be liable to pay compensation for any kind of disablement (except death) which does not continue for more than three days, if the injury is caused when the workman was under the influence of drink or drugs or wilfully disobeyed a clear order or violated a rule expressly framed for the purpose of securing his safety or wilfully removed or disregarded a safety device. A workman is also not entitled to compensation if he does not present himself for medical examination when required, or if he fails to take proper medical treatment which aggravates the injury or disease. In case it is not fatal, an employment injury may cause any injury resulting in permanent total disablement, permanent partial disablement, or temporary disablement (Section 3).

The rate of compensation in case of death is an amount equal to 50 per cent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of ₹ 50,000, whichever is higher. Where permanent total disablement results from the injury, the compensation will be an amount equal to 60 per cent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of ₹ 60,000 whichever is higher.

Notes Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the above purposes will be deemed to be two thousand rupees only.

Where permanent partial disablement results from the injury, if specified in Part II of Schedule; I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury. The percentage loss of earning capacity depends on the loss of limbs and varies from 1 per cent to 90 per cent. In the case of an injury not specified in Schedule I, such percentage of the compensation is payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner)

Notes

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

In case of temporary disablement, a half-monthly payment of the sum equivalent to 25 per cent of monthly wages of the workman has to be paid. Half-monthly payment as compensation will be payable on the 16th day from the date of disablement. In cases where the disablement is for 28 days or more, compensation is payable from the date of disablement. In other cases, it is payable after the expiry of a waiting period of 3 days. Thereafter, the compensation will be payable half-monthly during the period of disablement or during a period of 5 years, whichever is shorter. There is also a provision for commutation of half-monthly payments to a lump sum amount by agreement between the parties or by an application by either party to the Commissioner for Workmen's Compensation if the payments continue for not less than six months (Section 4 and 7).

If the workman contracts any occupational disease peculiar to that employment, that would be deemed to be an injury by accident arising out of and in the course of his employment for purposes of this Act.

Did u know? In the case of occupational diseases, the compensation will be payable only if the workman has been in the service of the employer for more than six months.

Some of the occupational diseases listed in Schedule III to the Act are anthrax, poisoning by lead, phosphorous or mercury, telegraphist's cramp, silicosis, asbestosis, and bagassosis (Section 3).

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 on 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 depend-ants that it is open to them to prefer a claim and may give such other information as he thinks fit. Advances by the employers against compensation are permitted only to the extent of an amount equal to 3 months' wages. He is also empowered to deduct an amount not exceeding ₹ 50 from the amount of compensation iii order to indemnify the person who incurred funeral expenses. The employer is required to file annual, returns giving details of the compensation in order to indemnify tie person who incurred funeral expenses. The employer is required to file annual returns giving details of the compensation paid, the number of injuries and other particulars.

The amount deposited with the Commissioner for Workmen's Compensation is payable to the dependents of the workman. The amount of compensation is to be apportioned among the dependents 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).

Notes

Task Find out the power to require from employers statements regarding fatal accidents.

Contracting Out

A contract or agreement, whereby the workman relinquishes his right to compensation from the employer for the personal injury arising out of and in the course of employment, is null and void to the extent to which such contract or agreement purports to remove or reduces, the liability for, the payment of compensation. The compensation payable to the workman or to his dependents cannot be assigned, attached or charged (Section 9 and 17).

Claims and Appeals

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

Section 10 of the Act provides that no claim or compensation shall be entertained by the Commissioner unless notice of the accident has been given in the manner provided as soon as practicable. (This is subject to certain exceptions noted below.)

The required notice must be served upon the employer or upon any of several employers or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed. .

The notice shall give the name and address of the person injured the cause of the injury and the date of the accident. The notice may be given by the injured workman or by anybody on his behalf. It may be served by delivering it or sending it by registered post.

The State Government may require that any prescribed class of employers shall keep at the place of employment a notice book (accessible to all workers or persons acting bonafide on their behalf) where the occurrence of accidents may be recorded. An entry in the notice-book is sufficient notice.

The want of notice or any defect or irregularity in it shall not be a bar to a claim in the following cases:

(1) Where a workman dies or an accident occurring in the premises of the employer or while working under the control of the employer or of any person employed by him and the workman died on the premises or without leaving the vicinity of the premises.

(2) If the employer or anyone of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed, had knowledge of the accident from any other source at or about the time when it occurred.

Notes

(3) If the Commissioner is satisfied that the failure to give notice was due to sufficient cause.

A workman is bound to give notice of any accident which is not merely trivial, and it is not for him to decide whether it is likely to give rise to a claim for compensation.

Section 10 also provides s that a claim for compensation must be preferred before the Commissioner within two years of the occurrence of the accident or the date of death as the case may be. In case the accident is the contracting of a disease the date of its occurrence is the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease.

The Commissioner may entertain a claim filed after the prescribed time, if he is of opinion that the failure to file it within time, was due to.

Fatal Accident

Section 10 A provides that where a Commissioner receives information that a workman has died as a result of an accident arising out of and in course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

If the employer is of opinion that he is liable, he shall make the deposit within thirty days of the service of the notice. If he is of opinion that he is not liable, he must state his grounds. In the latter case, the Commissioner, after such enquiry as he may think fit inform any of the dependents of the deceased workman that it is open to them to prefer a claim and may give them such further information as he may think fit.

Section 10 B provides that where by any law for the time being in force, notice is required to be given to any authority by or on behalf of an employer, *at* any accident resulting in death or serious bodily injury, the person required to give the notice shall also send a report to the Commissioner. The report may be sent alternatively to any other authority prescribed by the State Government.

The State government may extend the scope of the provision requiring reports of fatal accidents to any class of premises. But Sec. 10 B does not apply to factories to which the Employees' State Insurance Act applies.

Medical Examination [Sec. 11]

1. After a workman gives notice of an accident, the employer may, within three days of the service of the notice, offer to have him examined free of charge by a qualified medical practitioner.

2. Any workman in receipt of half-monthly payments may also be required to submit for examination from time to time.

3. The Examination must be in accordance with the rules framed for the purpose.

4. If the workman refuses, without sufficient cause, to submit to the examination or if he leaves the vicinity of the place in which he was employed, his right to receive compensation shall be suspended during the continuance of the refusal or until his return to the vicinity and examination.

5. In case the workman, who refused medical examination, subsequently dies, the Commissioner has discretionary powers of direct payment of compensation to the dependents of the deceased workman.

Notes

6. The condition of an injured workman may be aggravated by refusal to submit to medical examination or refusal to follow the instructions of the medical examiner or failure to be attended by or follow the instructions of a qualified medical practitioner.

7. In such a case he would get compensation, not for the aggravated injury, but for what the injury would have been had he been properly treated.

Employment by Contractors [Sec. 12]

When an employer engages contractors who engage workmen, any workman injured may recover compensation from the employer if the following conditions are satisfied:

(a) the contractor is engaged to do a work, which is part of the trade or business of the principal;

(b) the engagement is in the course of or for the purposes of his trade or business; and

(c) the accident occurred in or about the vicinity of the employer's premises.

The workman may also proceed against the contractor. So he has alternative remedies. When the employer pays compensation, he is entitled to be indemnified by the contractor.

Remedies of Employer against Stranger [Sec. 13]

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

Insolvency of Employer [Sec. 14]

The liability to pay workmen's compensation can be insured against. If an employer who has entered into a contract of insurance for this purpose, becomes insolvent or enters into a scheme of composition or arrangement or (being a company) is wound up, the rights or the employer as against the insurer shall be transferred to and vest in the workman. The liability to pay compensation to a workman is to be treated as a preferred debt under insolvency and winding up. For this purpose, the liability to pay half-monthly payments is to be taken as equivalent to the lump sum payment into which it can be commuted. This section does not apply where a company is wound up voluntarily merely for the purpose of reconstruction or amalgamation with another company.

Transfer of Assets by Employer [Sec. 14A]

Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefore accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything 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.

Master and Seamen

So far as masters and seamen are concerned, the provisions of the Act apply with certain modifications laid down in Section 15.

Notes

Returns

The State Government may, by notification in the official Gazette, direct employers to submit returns regarding compensation paid by them and particulars relating to the compensation (Sec. 16).

Contracting Out

Section 17 provides that any contract by which a worker relinquishes his right to receive compensation for injury is null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Penalties

Section 18A provides for penalties for failure to perform the duties prescribed under the Act, *e.g.*, failure to send returns or maintain notice books etc.

Bar to Civil Suits

A Civil Court has no jurisdiction to settle, decide or deal with any question which, because of the provisions of the Act, is required to be decided or dealt with by the Commissioner or to enforce any liability under this Act (Sec. 19(2)).

Recovery of the Amount Awarded

Any amount payable under the Act, whether under an agreement or otherwise, shall be recovered as an arrear of land revenue (Sec. 31).

An appeal lies to the High Court from the following orders of a Commissioner-

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or an order awarding interest or penalty under section 4A;

(b) an order refusing to allow redemption of a half-monthly payment ;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of person alleging himself to be such dependent;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of section 12(2) ;

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions.

Other Provisions Regarding Appeal

1. No appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than ₹ 300.

2. No appeal lies in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

3. No appeal by employer lies unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the applicant has deposited with him the amount payable under the order appealed against.

Notes

4. The period of limitation for an appeal under this section shall be 60 days and the provisions of Section 5 of the Indian Limitation Act, 1908, shall be applicable to appeals under this section.

Notes The period of limitation for an appeal under Section 30 is sixty days (Sections 10 and 30).

Administration

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

(i) Settlement of disputed claims;

(ii) Disposal of cases of injuries involving death; and

(iii) Revision of periodical payments (Section 20).

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

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

Self Assessment

State whether the following statements are true or false:

13. The compensation payable to the workman or to his dependents cannot be assigned, attached or charged.
14. In case the compensation is not paid by the employer, the workman concerned or his dependents may claim the same by filing an application before the Commissioner for Workmen's Compensation.
15. The percentage loss of earning capacity depends on the loss of limbs and varies from 1 per cent to 50 per cent.

Case Study

Supreme Court of India Judgment in Eshwarappa @ Maheshwarappa and Anr. Vs. C. S. Gurushanthappa and Anr.

A certain Basavaraj was the driver of a privately owned car. In the night of October 28, 1992 he took out the car for a joyride and along with five persons, who were his neighbours, proceeded for the nearby Anjaneya temple for offering pooja. On way to the temple the car met with a fatal accident in which Basavaraj and four other occupants of the car died; the fifth passenger sustained injuries but escaped death. One of the persons dying in that motor accident was Nagaraj, whose parents are the appellants before this Court.

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The heirs and legal representatives of the deceased driver, Basavaraj filed a claim for compensation under the Workmen's Compensation Act, 1923. They got nothing. The Commissioner under the Workmen's Compensation Act found and held that the accident did not take place in course of employment and rejected the claim for compensation.

The heirs of the four occupants of the car, dying in the accident (including the present appellants) and the fifth passenger suffering injuries in the accident sought compensation before the Motor Accidents Claims Tribunal. Their claims proved to be equally barren. The appellants took the matter in appeal before the High Court where they were equally unsuccessful. They are now in appeal before this Court by special leave.

The counsel appearing on behalf of the appellants raised a very limited issue. He submitted that in any event the appellants were entitled to the 'no fault compensation' as provided under section 140 of the Motor Vehicles Act, 1988 but they were denied even that by the Tribunal for reasons that are totally unsustainable in law.

We are, therefore, required to see how and why the appellants were denied compensation under section 140 of the Act and how far the denial was justified. The appellants filed a claim petition (MVC 1404/92) before the District Judge and MACT, Chitrandurga under section 166 of the Motor Vehicles Act seeking compensation for the death of Nagaraj. The appellants' petition, along with four other claim petitions (filed by the heirs of the other three occupants dying in that car accident and the fifth occupant who suffered injuries in that accident), was disposed of by the Tribunal by a common order dated May 9, 1996. From the order of the Tribunal, it appears that in four of the five cases before it, including MVC 1404/92, IAs were filed seeking interim compensation of rupees twenty five thousand (₹ 25,000.00) only (as the law stood at that time) in terms of section 140 of the Act. For some reason, however, no order was passed on the IAs and the Tribunal proceeded to examine the claimants' claim on merits under section 166 of the Act.

The Tribunal, in its order summarized the cases of each of the five claimants separately, noting the facts peculiar to the four deceased and the fifth injured occupant of the ill fated car. It also framed the issues arising in each case separately. In regard to Nagaraj, the son of the appellants, it noted that at the time of his death he was eighteen years old. According to the appellants, he worked at a sweetmeat stall and earned rupees eight hundred (₹ 800.00) only per month. He was going to Anjaneya temple in the car being driven by Basavaraj and in the accident he died on the spot. The appellants claimed compensation of rupees one lakh (₹ 1,00,000.00) only.

The first two issues in the case of Nagaraj, as in all the other cases, were answered by the Tribunal in the affirmative. On issue no.3 appellant no.1, the father of the deceased Nagaraj stated on oath that his son was aged eighteen years and used to work in the hotel of one Siddappa who paid him rupees thirty (₹ 30.00) only per day, but the Tribunal disbelieved him and rejected his testimony. On the basis of the post mortem report, the Tribunal held that Nagaraj, at the time of his death, was aged about fifteen years. It further held that there was no evidence to show that at the time of his death Nagaraj earned anything, pointing out that in paragraph 22 of the claim petition nothing material was mentioned about the loss of earning due to his death. Then, rather gratuitously it fixed the amount of compensation at rupees thirty thousand plus two thousand (₹ 30,000.00 + ₹ 2,000.00) observing as follows:

"Hence the maximum compensation that can be granted to the petitioner herein would be only about ₹ 30,000 as being just and reasonable and a sum of ₹ 2,000 toward funeral and obsequious expenses etc. and therefore the petitioners are granted sum total compensation amount of ₹ 32,000."

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Having, thus, put the worth of the life of Nagaraj at rupees thirty thousand (₹ 30,000.00) only the Tribunal proceeded to consider whether the appellants were entitled to receive even this amount from the owner of the car or the insurance company (second part of issue no.3 and issue no.4). It held that neither the owner of the car nor the insurance company was liable to pay anything to any of the claimants, including the appellants, because Basavaraj had taken out the car of his employer unauthorisedly and against his express instructions and had caused the accident by driving the car very rashly after consuming liquor. At the time of accident the car had been taken completely away from the control of its owner. In a sense it was stolen by the driver, even though temporarily. The accident was, thus, completely outside the insurance policy. No compensation was, therefore, payable to any of the claimants under section 166 of the Motor Vehicles Act.

Up to this stage no exception can be taken to the view taken by the Tribunal. But surprisingly the Tribunal also rejected the express prayer made on behalf of the appellants and other claimants to at least grant the 'no fault compensation' as provided under section 140 of the Act. The Tribunal discussed the issue over six pages in its judgment before turning down the claim. It seems to have taken the view, that had the claim for 'no fault compensation' been made at the beginning of the proceeding, it might have considered it favourably. But the claim was pressed at a belated stage when it was considering the claim for compensation under section 166 of the Act and more importantly had found that the owner of the car had no responsibility for the accident. In this connection, the Tribunal observed as follows:

"However, in these cases as already referred to above, if at the initial stage itself if the learned counsel Sri. M. Gnana Swamy had pressed the Tribunal to pass interim award on I.A.I in all the four cases, then the I.A.I filed in all four cases would have been definitely allowed and this Tribunal would have directed both the respondents 1 & 2 and more particularly respondent No.2 to deposit the interim compensation amount leaving open the liability aspect at the fag end of these cases i.e., at the arguments stage. Now that stage is already over and as such now this Tribunal has to consider equally as to whether at this stage as per the principle of no fault liability under s.140 of the Motor Vehicles Act, 1988, these petitioners are entitled for the interim in compensation amount."

"Now as regards the no fault liability as already referred to above, perhaps the petitioners would have been granted the interim compensation amount at the initial stage, but now it cannot be done, since the merits of the cases are being dealt with after hearing the arguments at the final stage and the main cases are being disposed of on merits as such."

"Hence in view of my finding that the car was being used totally outside the course of the employment of the driver of the car and totally without the knowledge and consent of the 1st respondent, I hold that even as regards this no fault liability claim also, the 1st respondent or for the matter 2nd respondent amount to any of the petitioner's hearing. Hence this being the position, I am constrained to observe and hold that although as per the available evidence on record the petitioners are entitled for compensation amount as granted to them, in view of my earlier finding on issue No.3 in all the petitions, but all the same these petitions have got to be dismissed on account of the fact that neither the first respondent nor the second respondent is liable to pay compensation amount to any other petitioners herein."

The appellants took the matter in appeal but the High Court in its brief order did not at all advert to this aspect of the matter.

Coming back to the order passed by the Tribunal, we are completely unable to appreciate the reasons assigned for denying the appellants the 'no fault compensation' as provided under section 140 of the Act. The Tribunal was gravely in error in taking the view that a

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claim for compensation under section 140 of the Act can succeed only in case it is raised at the initial stage of the proceedings and further that the claim must fail if the accident had taken place by using the car without the consent or knowledge of its owner. Section 140 is the first section of chapter X of the Act. It is a small chapter consisting of only five sections (from 140 to 144) and has the marginal heading "Liability without Fault in Certain Cases". Section 140 reads as under:

In light of the discussions made above, we are unhesitatingly of the view, that the Tribunal was completely wrong in denying to the appellant, the compensation in terms of section 140 of the Act. We find and hold that the appellant (as well as the other 3 claimants) were fully entitled to no fault compensation under section 140 of the Act. We, accordingly, direct the insurance company to pay to the appellant ₹ 25,000/- along with simple interest @ 6% p.a. from the date of the order of the Tribunal till the date of payment. The other 3 claimants are not before this Court, but that is presumably because they are too poor to come to this Court. Since, we have allowed the claim of the appellants, there is no reason why this order should not be extended to the other 3 claimants as well. We, accordingly, do so. The insurance company is directed to make the payment as directed in this judgment within 3 months.

In the result, the appeal is allowed but with no order as to costs.

Question

Critically analyse the above case.

Source: http://www.lawyersclubindia.com/judiciary/Workmen-s-Compensation-Act-1923-1977.asp#.UVVaIjflRMg

2.5 Summary

- The Workmen's Compensation Act, 1923 is one of the earliest labor welfare and social security legislation enacted in India.
- It recognizes the fact that if a workman is a victim of accident or an occupational disease in course of his employment, he needs to be compensated.
- The Act does not apply to those workers who are insured under the Employees' State Insurance Act, 1943.
- The Act does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employees' State Insurance Act, 1948 as disablement and dependants' benefit are available under this Act.
- Section 53 of the Employees' State Insurance Act provides: An insured person or his dependents shall not be entitled to receive or recover whether from the employer of the insured person or from any other person any compensation or damages under the Workmen's Compensation Act 1923 or any other law for the time being in force or otherwise in respect of an employment injury sustained by the insured person as an employee under this Act.
- The Workmen's Compensation Act, aims to provide workmen and/or their dependents some relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen.
- It provides for payment by certain classes of employers to their workmen compensation for injury by accident.

Notes

The compensation shall be paid by the employer to a workman for any personal injury sustained by him in an accident arising out of and in the course of his employment.

- In case the compensation is not paid by the employer, the workman concerned or his dependants may claim the same by filing an application before the Commissioner for Workmen's Compensation.

2.6 Keywords

Commissioner: Commissioner means a Commissioner for Workmen's Compensation appointed under Section 20.

Compensation: Compensation is the total cash and non-cash payment offered by an employer to an employee in return for the services rendered to the company.

Contracting Out: A contract or agreement, whereby the workman relinquishes his right to compensation from the employer for the personal injury arising out of and in the course of employment, is null and void to the extent to which such contract or agreement purports to remove or reduces, the liability for, the payment of compensation.

Disablement: Disablement means loss of capacity to work or to move.

Total Disablement: It means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

Workman compensation: Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment in exchange for mandatory relinquishment of the employee's right to sue his or her employer for the tort of negligence.

2.7 Review Questions

1. What is the object of the Workmen's Compensation Act, 1923?
2. Write short note on workman.
3. "There is legal decision regarding the question who is a workman." Enumerate.
4. What is Disablement?
5. What are the various benefits payable under the Act?
6. What exactly is the meaning of the expression "arising out of and in the course of employment"?
7. What are the circumstances under which the employer is not liable to pay compensation for injury to a workman?
8. What are the powers of the Commissioner for Workmen's Compensation?
9. Write short note on claims and appeals.
10. What are the functions of the Commissioner?

Answers: Self Assessment

1. July 1, 1924
2. Schedule II
3. State Governments
4. Employers

Notes

5.	Commissioner	6.	₹ 1000.
7.	Master and servant	8.	Disablement
9.	Partial Disablement	10.	True
11.	False	12.	True
13.	True	14.	True
15.	False		

2.8 Further Readings

Books

Davidov, Guy & Langille, Brian (2011), *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Online links

http://business.gov.in/legal_aspects/compensation_1923.php

http://lawcommissionofindia.nic.in/51-100/Report62.pdf

http://www.citehr.com/9447-workers-compensation-Act-1923-wanna-read.html

http://tppl.co.in/admin_panel_tppl_moon/files/Chapter%2015.pdf

http://www.advocatekhoj.com/library/bareActs/workmenscompensation/index.php?Title=Workmens%20Compensation%20Act,%201923

http://yehseeyes.blogspot.com/2010/05/workmen-compensation-Act-1923-becomes.html

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Unit 3: Rules regarding the Workmen's Compensation Act

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Objectives

After studying this unit, you will be able to:

- Explain the concept of workmen's compensation
- Discuss the rules in workmen's compensation
- Get an overview of the defenses of the employer
- Describe the amount of compensation (Section 4)
- Discuss the distribution of compensation (Section 4)
- Get an overview of the enforcement of Act

Introduction

In the previous unit, we dealt with the main aspects regarding Workmen's Compensation Act. The Workmen's Compensation Act (Act VIII of 1923) came into force from 1st July, 1924. It applies to the whole of India, including the State of Jammu and Kashmir. The Act provides for the payment of compensation by certain classes of employers to their workmen, for injury by accidents. The Workmen's Compensation Act does not apply to factories covered by the Employees State Insurance Act; the Amendment of 1976. The Workmen's Compensation (Amendment) Act, 1976, was passed with the object of providing suitable scales of compensation for the higher wage levels beyond ₹ 500. The reason is that all wages have been increased. Before the amendment, the Act covered workmen whose wages did not exceed ₹ 500 per month. The purpose of this unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand the rules relating to the Workmen's Compensation Act.

3.1 Workmen's Compensation

Following aspects are included in the Workmen's Compensation:

3.1.1 Employer's Liability for Compensation [Section 3]

An employer is liable to pay compensation to a workman:

- For personal injury caused to him by accident, and
- For any occupational disease contracted by him.

Personal Injury

Personal injury includes:

(i) Must have been caused during the course of his employment; and

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

An accident alone does not give a workman a right to compensation. To entitle him to compensation at the hands of the employers the accident must arise out of and in the course of his employment. The language in Section 3 shows that injury is caused by accident and not 'by an accident'. So the injury should be caused by accident by some mishap, unexpected or unforeseen. The personal injury caused to the worker must have resulted in total or partial disablement of the workman for a period exceeding three days or it must have resulted in the death of the worker. The injury should not have been caused by accident which is directly attributable to:

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

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(ii) Willful disregard of instruction relating to safety precautions given by the employer; and/or

(iii) The willful disregard of the usage of the safety device or safety guard provided for the purpose of securing safety of the workman by the employer.

Occupational Disease

Section 3(2) of the Act also recognizes that the workman employed in certain types of industries of occupation risk exposure to certain occupational disease peculiar to that employment. This section states that the contracting of any of these occupational diseases shall be deemed to be:

(i) An injury by accident within the meaning of the Act and compensation is payable to the workman who contracts such disease;

(ii) The types of employment which exposes the workman to occupational disease as well as the list of occupational diseases are contained in Schedule III of the Act.

Schedule III is divided into three parts, viz., A, B and C. No specific period of employment is necessary for a claim for compensation with respect to occupational diseases mentioned in Part A. For diseases specified in Part B the workman must be in continuous service of the same employer for a period of six months in the employment specified in that part. For diseases in Part C the period of employment would be such as is specified by the Central Government for each of such employment whether in the service of one or more employers.

Example: If a workman employed in any employment mentioned in Part C of the Schedule II contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of Section 3 and such employment was under more than one employer then all the employers shall be liable for the payment of compensation in such proportion as the commissioner in the circumstances may deem just.

3.1.2 Notice and Claim for Compensation [Section 10]

Section 10 of the Act prescribes that a claim for compensation shall be entertained by the commissioner only after a notice of the accident has been given to him. Such notice should be given as soon as practicable after the date of the accident.

Notes The claim of compensation however be preferred within 2 years form the date of accident or death. In case of deemed accident arising out of occupational disease the date of accident will be recorded as the first day on which the workman starts absenting himself continuously as a consequence of the disease.

Failure to give notice shall not bar the entertainment of the claim by the commissioner under the following circumstances, namely:

(i) If the death of a workman resulting from the accident occurred on the premises of the employer or at any place where the workman at the time of accident was working under the control of the employer and the workman died at such place or at such premises belonging to the employer and died without having left the vicinity of the premises or the place where the accident occurred; or

(ii) If the employer or any of the several employers or his manager has knowledge of the accident from any other source at or about the time when it occurred.

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Caution Every notice shall be served upon the employer. It may be served by delivering it at or sending it by registered post and addressed to the residence or any of office or place of business of the person on whom it is to be served. Where a workman has given a notice of accident he should submit himself for medical examination if required by the employer. And such medical examination shall take place within 3 days from the date of service of the notice of accident to the employer refusal to submit himself for medical examination will result in the suspension of the right of the workman for compensation during the period of refusal. During the period of suspension of the right no compensation shall be paid to the workman.

Caselet

Sarda Gum & Chemicals vs. Union of India & Ors. (2012) LLR 416

The petitioner industrial unit was aggrieved by the order passed by the regional Provident Fund Commissioner-II, Jodhpur and Appellate order passed by Employees Provident Fund Appellate Tribunal New Delhi, holding that the petitioner Unit is covered by the EPF Act, 1952 since number of employees found at the time in the industrial unit were more than 20. The commissioner and the Tribunal had held that the petitioner was covered by the provisions of the said Act and was liable to pay provident fund contribution in respect of such 20 workmen. It was found that out of 21 who were said to be employed in the factory of the petitioner, 8 persons were temporarily labourers employed for the purpose of carrying on the repairs of the factory building and the Court observed that it cannot be held that they were employed for the normal business of the establishment. The Court further observed that it naturally depends upon the facts of each case as to whether the so called temporary workmen are regularly employed in connection with the normal and usual course of the business or they are engaged in the performance of some work which had no relation with the normal and regular course of business of the establishment. Even if casual or temporary workers are engaged occasionally or intermittently to meet some temporary or casual work, such workmen cannot be considered to be employees for the purpose of section 1 (3)(a) of the Act. The high Court held that unless temporary or casual workers are found to be regular employees of an industrial unit, the same cannot be included to make 20 workmen of an industrial unit for the purpose of determining whether the establishment is covered under the definition in section 1 (3)(a) of the Act. The full bench decision of the court found the impugned order of the Appellate Tribunal and the Regional Provident Fund Commissioner were found to be non speaking orders and deserve to be quashed. The court set aside the orders.

Source: http://www.chadha-co.com/pdfs/C&Co-Labour-Law-Update-April-May-2012.pdf

Self Assessment

State whether the following statements are true or false:

1. An accident alone gives a workman a right to compensation.
2. Section 3(2) of the Act also recognizes that the workman employed in certain types of industries of occupation risk exposure to certain occupational disease peculiar to that employment.

Notes

3. The claim of compensation however be preferred within 3 years form the date of accident or death.

3.2 Rules in Workmen's Compensation

Following are the rules relating to the Workmen's Compensation Act:

3.2.1 Power of the State Government to make Rules

(1) The State Government may make rules to carry out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters namely:-

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;

(b) for prescribing the intervals at which and the conditions subjects to which a workman may be required to submit himself for medical examination under sub-section (1) of section 11;

(c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases;

(d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases;

(e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependents of a deceased workman and for the transfer of money so invested from one Commissioner to another;

(f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance;

(g) for prescribing the form and manner in which memorandum of agreements shall be presented and registered;

(h) for the withholding by Commissioners whether in whole or in part of half-monthly payments pending decision on application for review of the same;

(i) for regulating the scales of costs which may be allowed in proceedings under this Act;

(j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act;

(k) for the maintenance by Commissioners of registers and records of proceedings before them;

(l) for prescribing the classes of employers who shall maintain notice-books under sub-section (3) of section 10 and the form of such notice-books;

(m) for prescribing the form of statement to be submitted by employers under section 10A;

(n) for prescribing the cases in which the report referred to in section 10B may be sent to an authority other than the Commissioner;

(o) for prescribing abstracts of this Act and requiring the employers to display notices containing such abstracts;

(p) for prescribing the manner in which diseases specified as occupation diseases may be diagnosed;

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(q) for prescribing the manner in which diseases may be certified for any of the purposes of this Act;

(r) for prescribing the manner in which and the standards by which incapacity may be assessed.

(3) Every rule made under this section shall be laid as soon as may be after it is made before the State Legislature.

3.2.2 Publication of Rules

The power to make rules conferred by section 32 shall be subject to the condition of the rules being made after previous publication.

The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act 1897 (10 of 1897) as that after which a draft of rules proposed to be made under section 32 will be taken into consideration shall not be less than three months from the date on which the draft of proposed rules was published for general information.

Rules so made shall be published in the Official Gazette and on such publication shall have effect as if enacted in this Act.

3.2.3 Rules to give Effect to Arrangements with other Countries for the Transfer of Money paid as Compensation

(1) The Central Government may by notification in the Official Gazette make rules for the transfer to any foreign country of money deposited with a Commissioner under this Act which has been awarded to or may be due to any person residing or about to reside in such foreign country and for the receipt distribution and administration in any State of any money deposited under the law relating to workmen's compensation in any foreign country which has been awarded to or may be due to any person residing or about to reside in any State :

Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned until the Commissioner receiving the sum has passed orders determining its distribution and apportionment under the provisions of sub-sections (4) and (5) of section 3.

(2) Where money deposited with a Commissioner has been so transferred in accordance with the rules made under this section the provisions elsewhere contained in this Act regarding distribution by the Commissioner of compensation deposited with him shall cease to apply in respect of any such money.

3.2.4 Rules made by Central Government to be laid before Parliament

Every rule made under this Act by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session immediately following the session of 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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Self Assessment

Fill in the blanks:

4. The ..... Government may make rules to carry out the purpose of this Act.
5. The power to make rules conferred by section ..... shall be subject to the condition of the rules being made after previous publication.
6. Every rule made under this Act by the Central Government shall be laid as soon as may be after it is made before each .....

3.3 Defenses of the Employer

Prior to the passing of this Act, the employer was liable to pay compensation only if he was guilty of negligence. Even in case of proved negligence, the employer could get rid of his liability by using any of the following defenses:

1. ***The Doctrine of Assumed Risks:*** If the employee knew the nature of the risks he was undertaking when working in a factory, the employer had no liability for injuries. The court assumed in such case that the workman had voluntarily accepted the risks incidental to his work. The doctrine followed from the rule Volenti Non Fit Injuria, which means that one, who has volunteered to take a risk of injury, is not entitled to damages if injury actually occurs.
2. ***The Doctrine of Common Employment:*** Under this rule, when several Persons work together for a common purpose and one of them is injured by some Act or omission of another, the employer is not liable to pay compensation for the injury.
3. ***The Doctrine of Contributory Negligence:*** Under this rule a person is not entitled to damages for injury if he was himself guilty of negligence and such negligence contributed to the injury.

Did u know? The three aforesaid defenses and the rule "no negligence no liability made." It is almost impossible for an employee to obtain relief in cases of accident. The Workmen's Compensation Act of 1923 radically changed the law.

According to this Act, the employer is liable to pay compensation irrespective of negligence. The Act looks upon compensation as relief to the workman and not as damages payable by the employer for a wrongful Act or tort. Hence contributory negligence by the employee does not disentitle him from relief. For the same reason, it is not possible for the employer to plead to the defense of common employment or assumed risks for the purpose of avoiding liability. Thus the Act makes it possible for the workman to get compensation for injuries, unimpeded by the legal obstacles set up by the law of Torts.

Two Ways of Claiming Compensation

An injured workman may, if he wishes, file a civil suit for damages against the employer. Section 3(5) of the Workmen's Compensation Act, however, provides that if such a suit is filed, compensation cannot be claimed under the Act and if compensation has been claimed under the Act, or if an agreement has been entered into between the employer and the workman for the

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payment of compensation, no suit can be filed in the civil court. Thus the workman has to choose between two reliefs

(i) civil suit for damages and

(ii) claim for compensation under the Act. He cannot have both.

In a civil suit for damages, it is open to the employer to plead all the defenses provided by the law of Torts. Therefore, a civil suit is a risky procedure for a workman and is rarely adopted. The legal position of workmen has, however, been improved by two Acts, viz., the Indian Fatal Accidents Act of 1855 and the Employers' Liability Act of 1933.

Self Assessment

State whether the following statements are true or false:

7. The employer was liable to pay compensation only if he was guilty of negligence.
8. According to this Act, the employer is not liable to pay compensation irrespective of negligence.
9. In a civil suit for damages, it is open to the employer to plead all the defenses provided by the law of Torts.

3.4 Amount of Compensation (Section 4)

Section 4 of the Act prescribes the amount of compensation payable under the provisions of the Act. The amount of compensation payable to a workman depends on:

(1) The nature of the injury caused by accident.

(2) The monthly wages of the workman concerned, and

(3) The relevant factor for working out lump-sum equivalent of compensation amount as specified in Schedule IV (as substituted by Amendment Act of 1984).

There is no distinction between an adult and a minor worker with respect to the amount of compensation. New Section 4 (as substituted by the Amendment Act of 1984) provides for compensation for:

(1) Death;

(2) Permanent total disablement;

(3) Permanent partial disablement; and

(4) Temporary disablement – total or partial.

3.4.1 Compensation for Death

Where death results from an injury, the amount of compensation shall be equal to 50 percent of the monthly wages of the deceased workman multiplied by the relevant factor, or ₹ 85,000 whichever is more. The formula for calculating the amount of compensation in case of death resulting from an injury will be as follows:

$$\frac{50 \times \text{Monthly wages} \times \text{Relevant factor}}{100} \text{ or ₹ 80,000 whichever is more.}$$

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3.4.2 Compensation for Permanent Total Disablement

Where permanent total disablement results form an injury, the amount of compensation payable shall be equal to 60 percent of the monthly wages of the injured workman multiplied by the relevant factor, or ₹ 90,000, whichever is more. The formula for calculating the amount of compensation in case of permanent total disablement resulting from an injury will be as follows:

$$\frac{60 \times \text{Monthly wages} \times \text{Relevant factor}}{100} \text{ or ₹ 90,000 whichever is more.}$$

3.4.3 Compensation for Permanent Partial Disablement

In the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by the injury; and in other words, the percentage of compensation payable is proportionate to the loss of earning capacity permanently caused by the scheduled injury. Thus, if the loss of earning capacity caused by an injury specified in Part II of Schedule I is 30 percent, the amount of compensation shall be 30 percent of compensation payable in case of permanent total disablement. In the case of an injury not specified in Schedule I such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

3.4.4 Compensation for Temporary Disablement

A half monthly payment of the sum whether total or partial results equivalent to 25% of monthly wages of the from the injury workman to be paid in the manner prescribed.

3.4.5 Compensation to be Paid when due and Penalty for Default

Section 4A provides for the payment of compensation and the penalty for default. It provides that compensation shall be paid as soon as it falls due. Section 4 mandates employer to pay compensation amount as soon as it falls due to victim or his or her legal heirs.

However, where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of workman to make any further claim.

Self Assessment

Fill in the blanks:

10. Section ..... of the Act prescribes the amount of compensation payable under the provisions of the Act.

11. There is no distinction between an adult and a minor worker with respect to the amount of .....

12. A half monthly payment of the sum whether total or partial results equivalent to ..... of monthly wages of the from the injury workman to be paid in the manner prescribed.

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3.5 Distribution of Compensation (Section 4)

Section 8 of the Act provides for the deposit of the compensation before the Commissioner, as also to the distribution of compensation by the Commissioner. Section 8 lays down following rules with regard to distribution of compensation:

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

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1), as compensation in respect of a deceased workman the

Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependents to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied, after any inquiry which he may deem necessary, that no dependent exists, he shall repay the balance of the money to the employer by whom it was paid.

(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under subsection (4), be apportioned among the dependents of the deceased workman or any of them in such proportion as the Commissioner thinks fit or may, in the discretion of the Commissioner, be allotted to any one dependent.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a workman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct.

(8) Where a half-monthly payment is payable to a person under legal disability, the Commissioner may pay it to any dependent of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

(9) Notice must be given to the parties affected.

(10) Where under the previous para, the Commissioner varies an order on the ground .that the payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid may be recovered by the procedure laid down for the recovery of arrears of land revenue.

(11) The Commissioner may, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent, or for any other sufficient cause, vary his earlier orders regarding distribution or investment of compensation. But no such order

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prejudicial to any person shall be made unless such person has been given an opportunity of showing because why the order should not be made.

(12) The orders of the Commissioner regarding the distribution of compensation may be varied later if necessary.

(13) Money payable to a woman or a person under a legal disability may be invested or otherwise dealt with as the Commissioner thinks fit.

(14) Half-monthly payments payable to a person under a legal disability may be paid to a dependent of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

Self Assessment

State whether the following statements are true or false:

13. Section 10 of the Act provides for the deposit of the compensation before the Commissioner, as also to the distribution of compensation by the Commissioner.
14. The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.
15. Notice must be given to the parties affected.

3.6 Enforcement of Act

The act is enforceable in a manner which is mentioned below:

3.6.1 Commissioners [Section 19]

If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount of duration of compensation (including any question as to the nature or extent of disablement) the question shall in default of agreement be settled by a Commissioner. No Civil Court shall have jurisdiction to settle decided or deal with any question which is by or under this Act required to be settled decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

3.6.2 Appointment of Commissioner [Section 20]

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

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

Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death and in the opinion of the Commissioner such sum

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is insufficient the Commissioner may by notice in writing stating his reasons call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

Notes If the employer fails to show cause to the satisfaction of the Commissioner the Commissioner may make an award determining the total amount payable and requiring the employer to deposit the deficiency.

3.6.4 Powers and Procedure of Commissioners [Section 23]

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

3.6.5 Appeals [Section 30]

An appeal shall lie to the High Court from the following orders of a Commissioner namely:

- An order as 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;
- 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 dependents of a deceased workman or disallowing any claim of a person alleging himself to be such dependent;
- An order allowing or disallowing any claim for the amount of an indemnity under the provisions of subsection (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; provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and in the case of an order other than an order such as is referred to in clause (b) unless the amount in dispute in the appeal is not less than three hundred rupees; provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner or in which the order of the Commissioner gives effect to an agreement come to by the parties; provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

Caution The period of limitation for an appeal under this section shall be sixty days. The provisions of section 5 of the Limitation Act, 1963 (36 of 1963) shall be applicable to appeals under this section.

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3.6.6 Withholding of Certain Payments Pending Decision of Appeal [Section 30A]

Where an employer makes an appeal under clause (a) of sub-section (1) of section 30 the Commissioner may and if so directed by the High Court shall pending the decision of the appeal withhold payment of any sum in deposit with him.

Task Critically analyse the task and procedures of the Commissioners of your area.

Self Assessment

Fill in the blanks:

16. No Civil Court shall have jurisdiction to settle decided or deal with any question which is by or under this Act required to be settled decided or dealt with by a ..... or to enforce any liability incurred under this Act.
17. Every Commissioner shall be deemed to be a public servant within the meaning of the .....
18. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure ..... for the purpose of taking evidence on oath.

Case Study

A Madras High Court Judgment Calls for an Amendment of the Workmen's Compensation Act, 1923, to Benefit the Worker

A Judgment of the Madras High Court has raised the hopes of lakhs of workers, particularly those in the unorganised sector, of getting a fair deal in case of an accident at the workplace or a fair compensation to their dependents in case of death. The judgment calls for the amendment of the Workmen's Compensation Act, 1923, which fixes a ceiling of ₹ 4,000 a month as the maximum wage of a labourer while calculating the "employment injury compensation" to an injured workman or while arriving at the compensation to dependents in case of death. Against the backdrop of criticism in trade union circles that the "judiciary has turned its back on the working people and the poor, particularly since the era of economic liberalisation", Justice N. Kirubakaran, in his February 8 judgment, observes thus: "Minimum monthly wages can be fixed and there cannot be any ceiling on the monthly wages. Fixing maximum monthly wages is detrimental to the interests of the working class and would certainly affect the fundamental rights of the workers guaranteed under Articles 19 (1) (g) [Right to carry on occupation] and 21 [Right to life]." He said fixing ₹ 4,000 as the maximum wage, under Section 4 (1) Explanation II of the Act, went against the very object of the Act and it was high time the Act was amended.

The judgment comes in the wake of an appeal by the Oriental Insurance Company against the award of ₹ 4,34,650 to a mason who suffered 80 per cent disability in an accident during the course of employment on August 20, 2003, and claimed ₹ 3,00,000 as compensation. Going into two "substantial questions of law at the time of admission" of the appeal, the

Contd....

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court upheld the decision of the Deputy Commissioner of Labour that the claimant was a "workman" who suffered injuries during the course of employment and confirmed his award fixing the compensation at ₹ 4,34,650. The Centre of Indian Trade Unions (CITU) and the All India Trade Union Congress (AITUC) have welcomed the judgment. Recalling that the Workmen's Compensation Act, 1923, has its origins in the colonial period like many other primary and major Acts, the court pointed out that but for "cosmetic amendments", the main statement of object and reasons for the enactment of the law remained the same. The object of the piece of legislation was to compensate for injuries arising out of accidents during the course of employment and resulting in disablement or death, the judge pointed out. He said that as the object was very laudable and the legislation had been enacted for the benefit of workmen, there should not have been a ceiling on the monthly wage of workers at ₹ 4,000.

"Considering the rise in the earning capacity and spending power, inflation and cost of living, the monthly wage of workmen is bound to rise and change. Therefore, the maximum monthly wage of ₹ 4,000 fixed in the Act is very meager and requires reconsideration by way of enhancement or deletion of ceiling fixed under Section 4 (1) Explanation II of the Act," the judge observed. He also wondered why labour forums and associations had missed the implications of the section and had not challenged the provision.

While passing the order, Justice Kirubakaran referred to the January 5 judgment of a two-judge Bench of the Supreme Court of India comprising Justice G.S. Singhvi and Justice Ashok Kumar Ganguly in *Harjinder Singh vs Punjab State Warehousing Corporation*. The judges, in separate but concurring judgments, stressed the need to protect the rights of workers in the liberalised and globalised scenario.

The Madras High Court judgment quotes Justice Singhvi's observation as follows:

"Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislation. The attractive mantras of globalisation and liberalisation are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by lanes and side lanes in the jurisprudence developed by this court in three decades.

"The stock plea raised by the public employer in such cases is that the initial employment/ engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrongdoer and indirectly punished the tiny beneficiary of the wrong, ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. It needs no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights….

"Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part, and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer – public or private."

Justice Kirubakaran also referred to the observation of Justice Ashok Kumar Ganguly, that the court "has a duty to interpret statutes with social welfare benefits in such a way as

Contd....

Notes

to further the statutory goal and not to frustrate it. In doing so, this court should make an effort to protect the rights of the weaker sections of society in view of the clear constitutional mandate discussed above." He further said that while awarding compensation under the Motor Vehicles Act, 1988, factors such as disability, loss of income, pain and suffering, loss of love and affection, loss of consortium, loss of damage to clothes and property and loss of estate are considered whereas under the Workmen's Compensation Act, disability alone is considered for the purpose of calculating the loss of income.

Stressing the need to revamp the Workmen's Compensation Act on a par with the Motor Vehicles Act, he said "… an 'injury' sustained is always an 'injury' and the 'pain' suffered is 'pain' with all elements and there cannot be any difference whether the victim gets relief under either of the Acts". Praising the judgment, A.K. Padmanabhan, president of the Tamil Nadu unit of the CITU, said very rarely had a judgment of this type been awarded by the Supreme Court or the High Courts. He described the High Court order and the judgment of the two-judge Bench of the Supreme Court as "exceptional" and said he hoped they would not continue to be exceptions for too long.

He said three years ago, in Chennai, the State unit of the CITU had submitted a memorandum to the Chief Justice of India expressing concern over the Apex Court's decisions that had "consistently gone against the working class". On the High Court order calling for the removal of the ceiling on wages for calculating compensation, he said: "This is one area where the government has been consistently taking a negative attitude towards the demands of workers and trade unions." He alleged that the government had made changes in the various enactments on wages wherever it wanted to favour the employers, but nothing of much use to the workers had been done in this regard. With regard to pieces of legislations such as the Workmen's Compensation Act and the Bonus Act, the wage ceiling had not been amended for years, he said. Though it had been continuously pointed out by trade unions in various tripartite meetings including the Indian Labour Conference, the highest tripartite body in the country, that certain sections of the Bonus Act had become obsolete, the wage limits prescribed for the application of the bonus law remained, he added.

Pointing out that only recently the Union Cabinet decided to amend the Gratuity Act, which put a ceiling on the maximum amount payable to workers, he said, these were only a few examples to show how wage ceilings in the present inflationary situations took away the meager amounts that workers were to get as a benefit or as compensation. At least in the wake of the High Court's judgment, he said, the government should come forward to amend the Workmen's Compensation Act on the lines of the Motor Vehicles Act. Expressing similar sentiments, S.S. Thyagarajan, general secretary of the State unit of the AITUC, said trade unions had always demanded that the government lift the ceiling on the wages for all welfare schemes, including Provident Fund, Employees' State Insurance, and bonus. According to him, the judgment of the High Court "has a tinge of humanitarian consideration". He pointed out that the governments had always been reluctant to effect an upward revision of wages that would benefit workers. Whenever amendments effected an enhancement of wages, the increases became virtually redundant owing to belated implementation, he said. "We hope the essence of the judgment will be taken into account and wages will be enhanced appropriately to benefit workers and their families," he said.

Question

Critically analyse the above case.

Source: //www.frontlineonnet.com/fl2707/stories/20100409270709800.htm

Notes

3.7 Summary

- The language in Section 3 shows that injury is caused by accident and not 'by an accident'.
- The willful disregard of the usage of the safety device or safety guard provided for the purpose of securing safety of the workman by the employer.
- Schedule III is divided into three parts, viz., A, B and C. No specific period of employment is necessary for a claim for compensation with respect to occupational diseases mentioned in Part A.
- Section 10 of the Act prescribes that a claim for compensation shall be entertained by the commissioner only after a notice of the accident has been given to him.
- Every notice shall be served upon the employer. It may be served by delivering it at or sending it by registered post and addressed to the residence or any of office or place of business of the person on whom it is to be served.
- The power to make rules conferred by section 32 shall be subject to the condition of the rules being made after previous publication.
- Prior to the passing of this Act, the employer was liable to pay compensation only if he was guilty of negligence.
- An injured workman may, if he wishes, file a civil suit for damages against the employer.
- In a civil suit for damages, it is open to the employer to plead all the defenses provided by the law of Torts.
- Section 8 of the Act provides for the deposit of the compensation before the Commissioner, as also to the distribution of compensation by the Commissioner.

3.8 Keywords

Compensation: Compensation of employees (CE) is a statistical term used in national accounts, balance of payments statistics and sometimes in corporate accounts as well.

Defenses: The Action of defending from or resisting attack.

Employer: A legal entity that controls and directs a servant or worker under an express or implied contract of employment and pays (or is obligated to pay) him or her salary or wages in compensation.

Employment: Employment is a contract between two parties, one being the employer and the other being the employee.

Enforcement: Application of a law or regulation, or carrying out of an executive or judicial order.

Liability: A company's legal debts or obligations that arise during the course of business operations.

Occupational Disease: An occupational disease is any chronic ailment that occurs as a result of work or occupational Activity.

Personal Injury: Personal injury is a legal term for an injury to the body, mind or emotions, as opposed to an injury to property.

Workmen Compensation: Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment in exchange

for mandatory relinquishment of the employee's right to sue his or her employer for the tort of negligence.

Workmen: A man employed to do manual labour.

3.9 Review Questions

1. Discuss employer's liability for compensation.
2. Highlight the notice and claim for compensation.
3. Describe the power of the State Government to make rules.
4. Explain the publication of rules.
5. What are the rules made by Central Government to be laid before Parliament?
6. Elucidate the two ways of claiming compensation.
7. Explain the defenses of the employer.
8. Describe the compensation for permanent total disablement.
9. Discuss the compensation for permanent partial disablement.
10. Write brief note on distribution of compensation.

Answers: Self Assessment

1.	False	2.	True
3.	False	4.	State
5.	32	6.	House of Parliament
7.	True	8.	False
9.	True	10.	4
11.	Compensation	12.	25%
13.	False	14.	True
15.	True	16.	Commissioner
17.	Indian Penal Code	18.	1908

3.10 Further Readings

Books

Davidov, Guy & Langille, Brian (2011), *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Notes

Online links

http://www.hrinfo.in/2011/10/workmens-compensation-Act-1923-faq.html

http://tppl.co.in/admin_panel_tppl_moon/files/Chapter%2015.pdf

http://www.advocatekhoj.com/library/bareActs/workmenscompensation/index.php?Title=Workmens%20Compensation%20Act,%201923

http://wiki.answers.com/Q/What_is_Workmen's_Compensation_Act_1923

Notes

Unit 4: The Employees' State Insurance Act, 1948: Definitions, Scope and Objective

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Objectives

After studying this unit, you will be able to:

- Explain various definitions under this Act
- Discuss the scope and objective of the Act
- Get an overview of the applicability and coverage of this Act

Introduction

The Employees' State Insurance Act was promulgated by the Parliament of India in the year 1948. It was the first major legislation on Social Security in independent India to provide certain benefits to the employees in the organized sector in case of sickness, maternity and employment injury. It is important for the students to be thoroughly acclimatized with this branch of law to know its practical significance. The Employees' State Insurance Act, 1948 has been enacted with the objective of welfare of the employees and benefits in case of sickness, maternity and employment injury and certain other related matters. Articles 41, 42 and 43 of the Indian Constitution enjoin the state to make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. The Act attempts to achieve such goal of socio-economic justice enshrined in the Directive principles of state policy under part 4 of the Constitution. The benefits extended under this Act are applicable to all employees whether working inside the factory or establishment or else where they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with the factory or establishment. The Act applies to non-seasonal, power using factories or manufacturing units employing ten or more persons and non-power using establishments employing twenty or more persons. The purpose of this unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding ESIC.

Notes

4.1 Definitions

Employee

The term "employee" as defined under Section 2(9) of the Act, refers to any person employed on wages in, or in connection with, the work of a factory or establishment to which this Act applies. It has a wide connotation and includes within its scope clerical, manual, technical and supervisory functions. Persons whose remuneration (excluding the remuneration for over-time work) does not exceed ₹ 6,500 a month are covered under the Act. The Act does not make any distinction between casual and temporary employees or between technical and non-technical employees. There is also no distinction between those employed on time-rate and piece-rate basis.

Appropriate Government

"Appropriate Government" means in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oil-field; the Central Government, and in all other cases, the State Government. [Section 2(1)]

Benefit Period

A benefit period is a length of time during which a benefit is paid. This may be a government benefit such as the British Housing Benefit, or a healthcare benefit system such as the American Medicare, or payment from an insurance policy such as a Payment protection insurance which covers mortgage or other commitments after accident, illness or redundancy. It may also be known as the Payment period.

Corporation

"Corporation" means the Employees' State Insurance Corporation set up under this Act;

Contribution

"Contribution" means the sum of money payable to the Corporation by the principal employer in respect of employees and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act. [Section 2(4)]

Insurable Workman

"Insurable workman" means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act.

Notes Employees employed directly by the principal employer and those employed by or through a contractor on the premises of the factory and those employed outside the factory premises under the supervision of the principal employer are all included under the Act. It also covers administrative staff and persons engaged in the purchase of raw materials or the distribution or sale of products and similar or related functions. However, the definition of "employee" does not include any member of the Indian naval, military or air force.

Wages

Notes

"Wages" means all remuneration paid in cash if the terms of the contract are fulfilled, and includes any payment in any period of authorised leave, lockout or strike which is not illegal or lay-off, and includes other remuneration paid at intervals not exceeding two months but does not include

(i) Contribution paid to the provident fund or pension fund;

(ii) Travelling allowance or value of travelling concession;

(iii) Sum paid to defray special expenses; and

(iv) Gratuity payable on discharge.

Caselet

Endless Wait at Noida ESI Hospital

Patients at the Model Hospital in Noida of the Employees' State Insurance Corporation face queues that sometimes don't end.

Every day many in the lines at the Outpatient Department (OPD) go back home because their turn didn't come – and are compelled to visit again another day. Pregnant women have a particularly bad time.

They are seen standing in the queue for long hours to get their registration done for a check-up as the hospital doesn't allow male family members to stand in line for them.

"Husband or family members accompanying the patients are treated as cattle class. No matter how ill a woman is, the hospital has made it compulsory for them to stand in the registration queue," said Vimal Kumar, who came for his wife's treatment.

"I came to the hospital at around 6.30 am from Dadri in Uttar Pradesh and my wife had to stand in the queue for almost two hours to get the registration done," he added.

Ill-treatment

When Mohammad Arif, who was accompanying his sick wife, questioned this rule, a security guard abused and asked him to go away basic information, like locating a doctor's cabin.

Such is the rush at the OPD that many patients who come from faraway places return without consulting doctors after waiting for six to seven hours.

"I came in the morning at 9 am. Then I had to stand in the queue for almost two and half hours for the registration. When my turn came around 5 p.m., the security guard asked me whether I had got my weight and blood pressure checked," said a seven-month-old pregnant Roji Kumari.

"I forcibly entered the room but doctor asked me to come back after getting these check-ups done. So I left the hospital without treatment," she said.

She was not alone, and around 20 to 30 patients shared her plight. Some of them had been trying to meet the doctor for a week.

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"There are no attendants to guide and help. We have to deal with security guards who are rude," said Shalini Sharma.

ESIC claims to be one of the largest social security organisations in the world and has state-of-art facilities at its various hospitals.

Source: http://www.deccanherald.com/content/290769/endless-wait-noida-esi-hospital.html

Self Assessment

State whether the following statements are true or false:

1. The Act makes any distinction between casual and temporary employees or between technical and non-technical employees.
2. The definition of "employee" includes any member of the Indian naval, military or air force.
3. "Wages" means all remuneration paid in cash if the terms of the contract are fulfilled, and includes any payment in any period of authorised leave.

4.2 Scope and Objective of the Act

The Employees' State Insurance Act, 1948, is a pioneering measure in the field of social insurance in our country. The subject of health insurance for industrial workers was first discussed in 1927 by the Indian Legislature, when the applicability of the Conventions adopted by the International Labour Conference was considered by the Government of India. The Royal Commission on Labour, in its report (1931), stressed the need for health insurance for workers in India. One of the earlier decisions of the Labour Ministers' Conferences between 1940 and 1942 was to invite an expert to frame a scheme of health insurance for workers. In pursuance thereof, the responsibility for preparing a detailed scheme of health insurance for industrial workers was entrusted in March 1943 to Prof. B.P. Adarkar who submitted his report in December 1944. This was considered by the Government of India and State governments as well as other interested parties. The Adarkar Plan and various other suggestions emerged finally in the form of Workmen's State Insurance Bill 1946, which was then referred to a Select Committee in November 12, 1947. The Select Committee. Extended the coverage to all the employees in factories, and changed its name from Workmen's State Insurance Bill to Employees' State Insurance Bill.

Did u know? The Employees' State Insurance Act came into force from 19th April 1948. The scheme framed under the Act aims at providing for certain cash benefits to employees in the event of sickness, maternity, employment injury, and medical facilities in kind, and 18 contains provisions for certain other matters having bearing thereon.

The Employees' State Insurance Act, [ESIC] 1948, is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provision for certain others matters incidental thereto. The Act in fact tries to attain the goal of socio-economic justice enshrined in the Directive principles of state policy under part 4 of our constitution, in particular articles 41, 42 and 43 which enjoin the state to make effective provision for securing, the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. The Act strives to materialise these avowed objects though only to a limited extent. This Act becomes a wider spectrum then factory Act. In the sense that while the factory Act concerns with the health, safety, welfare, leave, etc. of the workers employed in the factory premises only. But the benefits

of this Act extend to employees whether working inside the factory or establishment or elsewhere or they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with the factory or establishment.

Objectives of this Act

The object of the Act is to secure sickness, maternity, disablement and medical benefits to employees of factories and establishments and dependents' benefits to the dependents of such employees.

The major objective of the Act was to provide certain benefits to employees in case of sickness, maternity and injury (during employment) and for providing other benefits in relation to the main objectives.

Self Assessment

Fill in the blanks:

4. The ..... Act, 1948, is a pioneering measure in the field of social insurance in our country.
5. The Employees' State Insurance Act came into force from .....
6. The Act in fact tries to attain the goal of socio-economic justice enshrined in the ..... principles of state policy under part 4 of our constitution.

4.3 Applicability and Coverage of this Act

Under Section 1(4) of the Act, the implementation of the scheme is territorial. The Act applies in the first instance to all factories using power and employing 20 or more persons on wages. The provisions of the Act have also been extended, or are being gradually extended, under Section 1(5) of the Act to cover

- Smaller power-using factories employing 10 to 19 persons;
- Non-power using factories employing 20 or more persons;
- Shops;
- Hotels and restaurants;
- Cinemas, including preview theatres;
- Newspaper establishments; and
- Road motor transport undertakings employing 20 or more persons.

The Act, however, does not apply to a mine or railway running shed, and specified seasonal factories. The State Government may extend the provisions of the Act to cover other establishments or class of establishments, industrial, commercial, agricultural or otherwise, in consultation with the Corporation and with the approval of the Central Government, after giving six months notice of its intention to do so in the Official Gazette.

Example: The ESIC Act applies to non-seasonal, power using factories or manufacturing units employing ten or more persons and non-power using establishments employing twenty or more persons.

Notes

Under the enabling provisions of the Act, a factory or establishment, located in a geographical area, notified for implementation of the scheme, falls in the purview of the Act. Employees of the aforesaid categories of factories or establishments, but drawing wages only up to ₹ 6,500 a month are entitled to health insurance cover under the ESI Act. The wage ceiling for purpose of coverage is revised from time to time; to keep pace with rising cost of living and subsequent wage hikes.

Caution The present ceiling of ₹ 6,500 has been effective from 1st January 1997 the appropriate government state or central is empowered to extend the provision of the ESI Act to various classes of establishment, industrial, commercial, agricultural or otherwise in nature.

Notes As soon as the above conditions are fulfilled the employer should furnish the details in Form-01 to ESI office for registration under the ESI Act, 1948 & obtaining of the employer's Code No.

4.3.1 Wage Ceiling for Coverage

The monthly wage limit for coverage under the ESI Act would be such as prescribed by the central government in the ESI [central] rules, 1950. The existing wage ceiling for coverage [excluding remuneration for over-time work] is ₹ 6500 per month [rule 50 of ESI central rules, 1950]. An employee who is covered at the beginning of a contribution period shall continue to remain covered till the end of that contribution period notwithstanding the fact that his wages may exceed the prescribed wage ceiling at any time after the commencement of that contribution period. Wage ceiling for purpose of coverage is revised from time to time by the central government on the specific recommendation of the corporation, at present the corporation has recommended for the increase of the wage limit to ₹ 10,000 and its implementation is awaited.

4.3.2 Coverage

With the implementation of ESI scheme, at just two industrial centers in 1952, namely kanpur and Delhi, there was no looking back since then in terms of its geographic reach and demographic coverage. Keeping pace with the process of industrialization, the scheme today stands implemented at over 679 centers in 25 states and union territories. The Act now applies to 230 thousand factories and establishments across the country, benefiting about 8.30 million family units of workers in the wage brackets. As of now, the total beneficiary population stands at about 32 million.

The Act applies, in the first instance, to, non-seasonal factories employing 10 or more persons. The provisions of the Act are being extended area-wise by stages. The Act contains an enabling provision under which the "appropriate government" is empowered to extend the provisions of the Act to other classes of establishments - industrial, commercial, agricultural or otherwise. Under these provisions most of the State Governments have extended the provisions of the Act to new classes of establishments namely: shops, hotels, restaurants, cinemas including preview theatres, road-motor transport undertakings and newspaper establishments employing 20 or more coverable employees. The Scheme has also been extended to Educational Institutions employing 20 or more persons in Rajasthan, Bihar, Pondicherry, Jammu & Kashmir, Uttarakhand, Chattisgarh, West Bengal, Jharkhand, Kerala, Uttar Pradesh, Andhra Pradesh, Assam, Punjab,

Tamil nadu and to Private Medical Institutions in the State of West Bengal, Rajasthan, Bihar, Kerala, Himachal Pradesh, Uttarakhand, Andhra Pradesh, Punjab, Assam, UT Chandigarh, Jharkhand and Orissa. As of now, employees of factories/establishments mentioned above in the implemented areas and drawing wages (excluding overtime) not exceeding ₹ 15, 000/- per month are covered under the Act.

Self Assessment

State whether the following statements are true or false:

7. The Act applies in the first instance to all factories using power and employing 20 or more persons on wages.
8. The monthly wage limit for coverage under the ESI Act would be such as prescribed by the Central Government in the ESI [central] rules, 1960.
9. The Act applies, in the first instance, to, non-seasonal factories employing 10 or more persons.

4.4 The Role of ESI Corporation

Section 3 of this Act provides for the establishment of Employees' State Insurance Corporation by the Central Government for administration of the Employees' State Insurance Scheme in accordance with the provisions of Act. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

Constitution

The Central Government appoints a chairman, a vice-chairman and other members representing interests of employers, employees, State Governments/union territories and medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members. [Section 4]

Powers and Duties of the Corporation

Section 19 empowers the corporation, to promote (in addition to the scheme of benefits specified in the Act), measures for the improvement of the health and welfare of insured persons and for the rehabilitation and reemployment of insured persons who have been disabled or injured and incur in respect of such measures expenditure from the funds of the corporation within such limits as may be prescribed by the Central Government.

Notes Section 29 empowers the corporation (a) to acquire and hold property both movable and immovable, sell or otherwise transfer the said property; (b) it can invest and reinvest any moneys which are not immediately required for expenses and or realise such investments; (c) it can raise loans and discharge such loans with the previous sanction of Central Government; (d) it may constitute for the benefit of its staff or any class of them such provident or other benefit fund as it may think fit.

However, the powers under Section 29 can be exercised subject to such conditions as may be prescribed by the Central Government.

Notes

Appointment of Regional Boards etc.

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations. (Section 25)

Role of ESIC

The roles of ESIC are as follows:

1. To develop a responsive, purposive and productive relationship with employers.
2. Seek their Active involvement in the improvement of the scheme as a confidence building measure.
3. Provide them necessary guidance in fulfilling their lawful obligations under the ESI Act.
4. Make available to them requisite Forms and proformae as may be required by them from time to time.
5. To ensure that any lax medical certification on part of ESIC does not bring down the productivity of a factory or establishment.
6. To ensure that in case of any difficulty, doubt or misunderstanding, employer is given a chance to be heard at an appropriate level.
7. To ensure that all correspondence emanating from the employer is responded to, timely and objectively.
8. To ensure that an employer is not being harassed by any official of the Corporation authorised to inspect the premises or the records.
9. To ensure that any grievances received from employers are looked into promptly and pointedly for speedy redressal.

Self Assessment

Fill in the blanks:

10. ..... of this Act provides for the establishment of Employees' State Insurance Corporation by the Central Government for administration of the Employees' State Insurance Scheme in accordance with the provisions of Act.
11. The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the .....
12. The ..... appoints a chairman, a vice-chairman and other members representing interests employers, employees, state governments/union territories and medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members.
13. A medical benefit council is constituted by .....
14. ..... may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils.
15. The monthly wage limit for coverage under the ESI Act would be prescribed by the central government in .....

Notes

Case Study

The Role of ESIC in Universal Health Care

Medical care is widely regarded as the foremost concern of a social security system since health is important to all age groups and all categories of people. All comprehensive social security programmes therefore make provision for medical care. It is one of the benefits to be provided on a universal basis under the Social Protection Floor programme envisaged by the ILO.

Improvement in the health status of the population by providing access to healthcare and facilitating utilisation of health, family welfare, and nutrition services with special focus on the underserved has been the main thrust of social development programs in the country. The responsibility of building infrastructure and manpower rests with the State Governments, supported by funds from the Central Government. Major disease control programmes and family welfare programmes are funded by the Centre (some with assistance from external agencies) and are implemented through the infrastructure provided by the States.

There are a variety of arrangements available for providing healthcare to people in India. They consist, from the point of view of financing, of social assistance programmes, social insurance schemes including the Employees' State Insurance Scheme (ESIS) and Rashtriya Swasthya Bima Yojana, health insurance schemes introduced by State governments, and health insurance schemes run by insurance companies in the public as well as private sector. As far as the Actual provision of healthcare services is concerned, there are hospitals and dispensaries being run by Central and State Governments, including the Central Government Health Service Scheme, the Railways Health Service Scheme, Defence Services Health Service Scheme, the Employees' State Insurance Corporation (ESIC), as well as hospitals and dispensaries being run by private and voluntary agencies.

Yet coverage of all these arrangements is limited and there is a wide gap between demand and supply for these services. In order to bridge this gap, the Approach to the Twelfth Plan approved by the Government envisages the introduction of a Universal Health Care Scheme. The Planning Commission High level Expert Group on Universal Health Coverage, under the chairmanship of Prof K.Srinath Reddy, has recommended interalia that the National Health Package be financed by the State with services being provided by public as well as private institutions. The Committee has further recommended that insurance companies (for-profit ones) not be used for the purchase of healthcare on behalf of the Government.

There is however lack of clarity about the role of various agencies in providing healthcare. In particular, the policy papers are silent about the role of the Employees' State Insurance Corporation.

The ESIC is a statutory corporation responsible for administration of the Employees' State Insurance Scheme framed under the Employees' State Insurance Act. This scheme was, until recently, the only social insurance scheme in the country. The main objective of the Scheme is to provide certain benefits to workers and their families in the event of sickness, maternity, employment injury or death of workers.

Of all the services offered by the ESIC, the Corporation attaches the greatest importance to medical benefit; bulk of its funding is used for providing this benefit. Medical benefit is

Contd....

Notes

available to an insured person and his family in kind from the date of his entry into insurable employment. Medical benefit has also been extended to permanently disabled persons who cease to be in employment due to employment injury. The benefit is also extended to insured persons after their retirement on the same conditions.

The Scheme provides for comprehensive medical care in the form of medical attendance and specialist consultations, supply of drugs and injections, free hospitalization care, outpatient service, specialist and hospital services.

Within the ambit of the program is a drive towards immunisation of young children, of insured persons against diseases like diphtheria, polio, tetanus, measles and tuberculosis. It provides family welfare services to the beneficiaries of the Scheme. Insured persons and members of their families are provided with artificial limbs, hearing aids, cervical collars, walking calipers, crutches, wheelchairs and pacemakers as part of their medical treatment.

Conceptually, from the point of view of the insured persons, the ESI Scheme can be said to be one of the best medical insurance schemes in India. But it suffers from several drawbacks:

The Act envisages that the medical benefits will be provided by the State Governments; the Corporation may enter into agreements with these State Governments to decide the nature and scale of medical treatment that should be provided and cost sharing thereof. The Act also provides for the Corporation itself, in consultation with the State government concerned, undertaking the responsibility of providing medical benefit to insured persons in a State. Accordingly, medical treatment and attending to insured persons and their families is being provided by the State Governments everywhere, except in Delhi where the Corporation has undertaken this responsibility.

The responsibility for creating the necessary infrastructure for providing medical benefits therefore rests with the State Governments though the cost is met by the Corporation. The inability or the unwillingness of the State governments to discharge this responsibility has come in the way of expansion of the ESI Scheme. This is one of the reasons for the slow growth of the scheme.

The arrangements under which the Corporation provides funds and the State Governments implement the scheme has come in for criticism on the ground that there is a dichotomy in the administration of medical benefit which is not conducive to efficiency and has resulted in dissatisfaction among the insured persons. The committees which reviewed the workings of the Scheme have recommended that the Corporation take over the administration of the medical benefit. There has been no decision on this recommendation but the process of taking over the administration of medical benefit by the Corporation is reported to have commenced with the Corporation taking charge of a few hospitals to be run as model ones.

If the Corporation is free from this constraint, it should be possible for it to expand medical facilities significantly. It can become a major instrument for providing Universal Health Care and assume responsibility for providing medical care to all workers in the organised as well as the unorganized sector.

Question

Critically analyse the above case.

Source: http://thealternative.in/content-type/views/rka-subramanya-the-role-of-esic-in-universal-health-care/

Notes

4.5 Summary

- The comprehensive and well-designed social security programme is administered by an apex corporate body called the Employee State Insurance Corporation.
- It comprises members representing vital interest groups that include, employee, employers, the Central and State Government, besides, representatives of parliament and medical profession.
- The corporation is headed by the Union Minister of Labour, as its chairman, whereas, the Director General, appointed by the Central Government functions as its Chief Executive Officer.
- A standing committee constituted from amongst the members of the corporation, Acts as an executive body.
- The medical benefit council, constituted by the central government, is yet another statuary body that advises the corporation on matters related to effective delivery of services to the beneficiary population.
- The corporation with its central headquarters at New Delhi operates through a network of 26 regional and sub-regional offices located in various States.
- The respective state governments take care of the administration of medical benefit except in case of Delhi and Noida, greater Noida areas of Uttar Pradesh, where, the corporation administers medical facilities directly.

4.6 Keywords

Applicability: Relevance by virtue of being applicable to the matter at hand.

Corporation: Corporations are business entities are separate from That their owners, corporations have shareholders, and the shares may be privately or closely held.

Coverage: The initiation of coverage leads to the subsequent publishing of reports, research and recommendations related to the issue.

Disablement: A disability may be physical, cognitive, mental, sensory, emotional, and developmental or some combination of these.

Employee: An individual who works part-time or full-time under a contract of employment, whether oral or written, express or implied, and has recognized rights and duties.

Insurance: Insurance is the equitable transfer of the risk of a loss, from one entity to another in exchange for payment.

Maternity: The quality of having or showing the tenderness and warmth and affection of or befitting a mother.

Penalty: A punishment imposed for violating a law or agreement; money one will pay for breaking a law or violating part or all of the terms of a contract.

Wage Ceiling: Highest pay possible within a particular wage bracket and is agreed upon as the upper range of a wage bracket.

Wages: Monetary remuneration computed on hourly, daily, weekly, or piece work basis.

Notes

4.7 Review Questions

1. Write short note on employee.
2. Discuss the objective of ESIC.
3. Explain the applicability of ESIC Act.
4. Highlight the coverage of ESIC Act.
5. What are the benefits of ESIC Act?
6. Discuss the powers and duties of the ESI corporation.
7. Highlight the role of ESIC.

Answers: Self Assessment

1.	False	2.	False
3.	True	4.	ESI
5.	19th April 1948	6.	Directive
7.	True	8.	False
9.	True	10.	Section 3
11.	Regulations	12.	Central Government
13.	The central government	14.	The Corporation
15.	The ESIC (Central) Rules, 1950.		

4.8 Further Readings

Books

Davidov, Guy & Langille, Brian (2011), *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Online links

http://www.caclubindia.com/articles/employees-state-insurance-Act-1948-synopsis-596.asp#.US7olKJHJc0

http://www.ccs.in/ccsindia/interns2003/chap6.pdf

http://www.lexuniverse.com/employment-laws/india/Acts/The-Employees-State-Insurance-Act-1948.html

http://on-lyne.info/legal1.htm

http://www.vvgnli.org/sites/default/files/publication_files/099-2012_Shashi_Bala.pdf

Notes

Unit 5: The Employees' State Insurance Act, 1948: Adjudication, Benefits, and Penalties under the Act

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Objectives

After studying this unit, you will be able to:

- Discuss the administration of the Act

Notes

- Examine the benefits conferred by the Act
- Explain provisions related to the adjudication of disputes
- Determine the penalties mentioned under the Act

Introduction

In ESI scheme, a worker in insurable employment is called insured person (IP). Insured persons and their family are entitles to different types of benefits. The benefits are broadly classified into two: (1) Medical benefit and (2) cash benefit.

The employees registered under the scheme are entitled to medical treatment for themselves and their dependents, unemployment cash benefit in certain contingencies and maternity benefit in case of women employees. In case of employment-related disablement or death there is provision for a disablement benefit and a family pension, respectively. Funeral Benefit to dependents of Insured Persons/Insured Women. Super Specialty Treatment through Private Tie Up Network as well as through its own Super Specialty Hospitals situated throughout India. Also ESI is constructing Medical and PG Medical, Dental Colleges in which it has set aside certain percentage of seats for children of person having ESI coverage. Recently ESI took a decision to make the dependent benefit to a ceiling of ₹ 1200 for all eligible dependents of a deceased person. Through approximately 86000 dependents got benefit. From time to time ESI is relaxing conditions for disbursement of Sickness Benefit and Super Specialty Treatment.

Outpatient medical facilities are available in 1398 ESI dispensaries, and through 1678 empanelled private medical practitioners. Inpatient care is available in 145 ESI Hospitals and 42 Hospital annexes; a total of 19387 beds. In addition, several state government hospitals also have beds for exclusive use of ESI Beneficiaries. Cash benefits can be availed in any of 783 ESI centers throughout India.

Recent years have seen increasing role of information technology in ESI, with the introduction of *Pehchan* smart cards in 'Project Panchdeep', India's largest e-governance project. In addition to insured workers, poor families eligible under the Rashtriya Swasthya Bima Yojana can also avail facilities in ESI hospitals and dispensaries. There are plans to open medical, nursing and paramedical schools in ESI hospitals.

5.1 Benefits of this Act

All the benefits under the scheme are paid in cash except medical benefit, which is given in kind. The benefits are:

5.1.1 Sickness and Extended Sickness Benefit

For sickness during any period, an insured person is entitled to receive sickness cash benefits at the standard benefit rate for a period of 91 days in any two consecutive benefit periods. The eligibility condition for sickness benefit is that the contribution of an insured person should have been paid/or payable for not less than half the number of days of the corresponding contribution period. An insured person suffering from, any special, long-term ailment, for example, tuberculosis, leprosy, mental disease - is eligible for extended sickness benefit at a rate which is 40 % higher than the standard, benefit rate, rounded to the next higher multiple of 5 paisa, for a period of 124/ 309 days.

Notes

Notes The Director General may enhance the duration of extended sickness benefit beyond the existing limit of 400 days to a maximum, period of 2 years in deserving cases duly certified by a medical board. The facility of extension would be available up to the date on which the insured person attains the age of 60 years. The rate of this benefit is 40 per cent more than the standard benefit rates for 7 days for vasectomy and 14 days for tubectomy. This is paid in addition to the usual sickness benefits.

5.1.2 Maternity Benefit

An insured woman is entitled to maternity benefit at double the standard benefit rate. This is practically equal to full wages for a period of 12 weeks, of which not more than 6 weeks shall precede the expected date of confinement. Additional maternity benefit is given in case of miscarriage. In case of sickness arising out of pregnancy, confinement, premature birth of a child or miscarriage, an additional benefit is given for a period not exceeding one month. The eligibility condition for maternity benefit is 80 days in one or two preceding contribution periods of one year.

5.1.3 Disablement Benefit

If a member suffers an injury in the course of his employment, he will receive free medical treatment and temporary disablement benefit in cash, which is about 70 per cent of the wages, as long as the temporary disablement lasts, provided that the temporary disablement has lasted for not less than 3 days, excluding the day of the accident. In case of permanent total disablement, the insured person will be given a life pension at full rate i.e., about 70 per cent of his wages, while in case of partial permanent disablement, a portion of it will be granted as life pension. The benefit is paid for-Sundays as well. At the option of the beneficiary, the permanent disablement pension may be commuted to a lump sum payment, if the rate of benefit is less than one rupee and fifty paise per day.

5.1.4 Dependents' Benefit

The dependents' benefit consists of timely help to the eligible dependents of an insured person who dies as a result of an accident, or an occupational disease arising out of the course of employment. Pension at the rate of 40 per cent more than the standard benefit rate (70 per cent of wages) will be paid periodically to the widow and children. It will be available to the widow as long as she lives or until she marries; to sons' and unmarried daughters up to the age of 18 without any proof of education; and to infirm or wholly dependent offsprings long as the infirmity lasts. Where neither a widow nor a child is left, the dependents' benefit is payable to a dependent parent or grandparent for life, but equivalent to 3/1Ms. of the full rate; and if there are two or more parents or grandparents, the amount payable to them shall 'be equally divided between them.

Did u know? ESI Corporation has decided to provide primary and secondary medical care services in the areas directly where the concentration is more than 5000 and there is no dispensary within 8 kms (5 kms in hilly areas) and where concentration is 25000 (15000 in hilly areas) and there is no hospital within 25 kms. This facility will be available till the ESI establishes its own hospital and dispensary.

Notes

5.1.5 Funeral Benefit

This benefit was introduced in 1968. Accordingly an amount not exceeding rupees one thousand five hundred is payable as funeral benefit to the eldest surviving member of the family of the deceased insured person. The time limit for claiming the benefit is three months from the death of the insured person.

5.1.6 Medical Benefit

The kingpin of the scheme is medical benefit, which consists of free medical attendance and treatment of insured persons and their families. This benefit has been divided into three parts:

(i) ***Restricted Medical Care:*** It consists of out-patient medical care at dispensaries or panel clinics.

(ii) ***Expanded Medical Care:*** This consists of consultation with specialists and supply of such medicines and drugs as may be prescribed by them.

(iii) ***Full Medical Care:*** It consists of hospitalization facilities, services of specialists and such drugs and diet as are required for in-patients.

An insured person and members of his family are entitled to medical care of all the above three varieties.

5.1.7 Other Benefits

(a) ***Vocational rehabilitation:*** In case of disabled insured persons less than 45 years of age with 40% or more disablement.

(b) ***Free supply of physical aids and appliances*** such as crutches, wheelchairs, spectacles and other such physical aids.

(c) ***Preventive health care services*** such as immunization, family welfare services, HIV/AIDS detection, treatment etc.

(d) ***Medical bonus*** ₹ 250 is paid to an insured woman or in respect of the wife of an insured person in case she does not avail hospital facilities of the scheme for child delivery.

Caution The ESI Scheme has the largest medical infrastructure under one umbrella, in India. Medical Care is provided through a huge network of 150 ESI Hospitals, 1372/91 ESI Dispensaries/ISM Units, 1380 Panel Clinics and 7340 IMOs. The ESI Scheme is also the largest employer of Medical and Para-Medical personnel of the country.

Example: All ESI Hospitals/Dispensaries provide services related to family welfare. The Corporation has also taken measures for control of AIDS among the working class of the country. A full fledged Directorate is working specially for family welfare services and AIDS Control at New Delhi. This Directorate works in coordination with NACO and also with Ministry of Health & Family Welfare, Govt. of India. Along with the Allopathic system of medicine, the ESI Corporation is also providing medical care through Indian System of Medicine (ISM) including Ayurveda, Yoga, Unani, Siddha and Homeopathy (AYUSH). About 95 ISM units are working in ESI Hospitals/Dispensaries throughout the country. For the purpose of providing of Disablement Benefit (in cash), references are made for measuring incapacity. There is a network of about 70 Medical Refrees throughout the country for finalizing such incapacity references.

Notes

Task As a Manager, what benefits will you provide to your female employees?

Caselet

Royal Talkies Hyderabad v. ESIC, AIR 1978 SC 1476

In the case of *Royal Talkies Hyderabad v. ESIC*, AIR 1978 SC 1476, there was a canteen and cycle stand run by private contractors in a theatre premises. On the question of whether the theatre owner will be liable as principal employer for the payment of ESI contributions, the Supreme Court held that the two operations namely keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre and the workers engaged therein are covered by the definition of employee as given in ESI Act. The Supreme Court observed that the reach and range of Section 2(9) is apparently wide and deliberately transcends pure contractual relationship.

Source: ELL_NoRestriction

Self Assessment

Fill in the blanks:

1. The rate of this benefit is ..... per cent more than the standard benefit rates for 7 days for vasectomy and 14 days for tubectomy.
2. ..... at the rate of 40 per cent more than the standard benefit rate (70 per cent of wages) will be paid periodically to the widow and children.
3. Medical bonus ..... is paid to an insured woman or in respect of the wife of an insured person in case she does not avail hospital facilities of the scheme for child delivery.

State whether the following statements are true or false:

4. The Act does not provide for penalties and damages for various offences.
5. The employer can raise any dispute for adjudication in the Employees' Insurance Court of the area, set up under Section 76 of the Act.
6. Under Regulation 31-A, the employer is liable to pay interest at the rate of 6 per cent per annum for each day of default or delay in the payment of his contribution.

5.2 Administration of Employees' State Insurance Scheme

For the administration of the scheme of Employees' State Insurance in accordance with the provisions of this Act, the Employees' State Insurance Corporation Standing Committee and Medical Benefit Council have been constituted. Further, ESI Fund has been created which is held and administered by ESI Corporation through its executive committee called Standing Committee with the assistance, advice and expertise of Medical Council, etc. and Regional and Local Boards and Committees.

Notes

5.2.1 Employees' State Insurance Corporation

Section 3 of this Act provides for the establishment of Employees' State Insurance Corporation by the Central Government for administration of the Employees' State Insurance Scheme in accordance with the provisions of Act. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

Constitution

The Central Government appoints a chairman, a vice-chairman and other members representing interests of employers, employees, state governments/union territories and medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members. [Section 4]

Powers and Duties of the Corporation

Section 19 empowers the Corporation, to promote (in addition to the scheme of benefits specified in the Act), measures for the improvement of the health and welfare of insured persons and for the rehabilitation and reemployment of insured persons who have been disabled or injured and incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

Section 29 empowers the Corporation (a) to acquire and hold property both movable and immovable, sell or otherwise transfer the said property; (b) it can invest and reinvest any moneys which are not immediately required for expenses and or realise such investments; (c) it can raise loans and discharge such loans with the previous sanction of Central Government; (d) it may constitute for the benefit of its staff or any class of them such provident or other benefit fund as it may think fit. However, the powers under Section 29 can be exercised subject to such conditions as may be prescribed by the Central Government.

Appointment of Regional Boards, etc.

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations. (Section 25)

5.2.2 Wings of the Corporation

The corporation to discharge its functions efficiently has been provided with two wings:

Standing Committee

The Act provides for the constitution of a Standing Committee under Section 8 from amongst its members.

Power of the Standing Committee

The Standing Committee has to administer affairs of the corporation and may exercise any of the powers and perform any of the functions of the corporation subject to the General Superintendence and control of the corporation. The standing Committee acts as an executive body for administration of Employees' State Insurance Corporation, Medical Benefit Council.

Notes

Section 10 empowers the Central Government to constitute a Medical Benefit Council. Section 22 determines the duties of the Medical Benefit Council stating that the Council shall:

(a) advise the Corporation and the Standing Committee on matters relating to administration of medical benefit, the certification for purposes of the grant of benefit and other connected matters;

(b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance; and

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

Self Assessment

Fill in the blanks:

7. ..... empowers the ESI, to promote measures for the improvement of the health and welfare of insured persons.
8. The ESI Act provides for the constitution of a ..... under Section 8 from amongst its members.
9. Section 10 of ESI Act empowers the Central Government to constitute a .....

5.3 Adjudication of Dispute and Claims

5.3.1 Constitution of Employees' Insurance Court

(1) The State Government shall, by notification in the Official Gazette, constitute an Employees' Insurance Court for such local area as may be specified in the notification.

(2) The Court shall consist of such number of Judges as the State Government may think fit.

(3) Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court.

(4) The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.

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

5.3.2 Matters to be decided by Employees' Insurance Court

(1) If any question or dispute arises as to-

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

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

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

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

(e) the right of any person to any benefit and as to the amount and duration thereof, or any direction issued by the Corporation under section 55A on a review of any payment of dependants benefits, or

Notes

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, [or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute [subject to the provision of sub-section (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

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

(a) claim for the recovery of contributions from the principal employer;

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

(d) claim against a principal employer under section 68;

(e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under this Act.

(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.

5.3.3 Institution of Proceedings, etc.

(1) Subject to the provisions of this Act and any rules made by the State Government, all proceedings before the Employees' Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose.

(2) If the Court is satisfied that any matter arising out of any proceeding, pending before it can be more conveniently dealt with by any other Employees Insurance Court in the same State, it may, subject to any rules made by the State Government in this behalf, order such matter to be transferred to such other Court for disposal and shall forthwith transmit to such other Court the records connected with that matter.

Notes

(3) The State Government may transfer any matter pending before any Employees' Insurance Court in the State to any such Court in another State with the consent of the State Government of that State.

(4) The Court to which any matter is transferred under sub-section (2) or sub-section (3) shall continue the proceedings as if they had been originally instituted in it.

5.3.4 Commencement of Proceedings

(1) The proceedings before an Employees' Insurance Court shall be commenced by application. Every such application shall be made within a period of three years from the date on which the cause of action arose.

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

(a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable; the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the corporation for the first time:

Provided that no claim shall be made by the corporation after five years of the period to which the claim relates;

(b) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the corporation under the regulations.

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the corporation.

5.3.5 Powers of Employees' Insurance Court

(1) The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall be deemed to be a Civil Court within the meaning of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973].

(2) The Employees' Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government.

(3) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of the Court.

(4) An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court.

5.3.6 Appearance by Legal Practitioners, etc.

Any application, appearance or act required to be made or done by any person to or before an Employees' Insurance Court (other than appearance of a person required for the purpose of his

Notes

examination as a witness) may be made or done by a legal practitioner or by an officer of a registered trade, union authorised in writing by such person or with the permission of the Court, by any other person so authorised.

5.3.7 Reference to High Court

An Employees' Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.

5.3.8 Appeal

(1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the [Limitation Act, 1963] shall apply to appeals under this section.

5.3.9 Stay of Payment Pending Appeal

Where the Corporation has presented an appeal against an order of the Employees' Insurance Court, that Court may, and if so directed by the High Court shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the order appealed against.

Self Assessment

State whether the statements give below are correct or not:

10. In case of employee's death in service, will his family receive pension benefit?
11. Will the pension once sanctioned remain constant?
12. Commutation is the option to receive a capital sum today instead of receiving a monthly pension for rest of your life.

5.4 Penalties and Damages

The Act provides for penalties and damages for various offences. It also provides that if any person commits any offence after having been convicted by the court, he will be punishable, for every such subsequent offence, with imprisonment for a term which may extend up to ₹ 2,000 or both. If the subsequent offence is for failure to pay any contribution, then for every such subsequent offence a person is liable to punishment for a term of imprisonment which may extend up to one year and which shall not be less than 3 months; and he will also be liable to pay a fine up to ₹ 4,000.

Any contribution due under the Act and not paid can be recovered through the District Collector under Section 45-B of the Act as arrears of land revenue. The employer can raise any dispute for adjudication in the Employees' Insurance Court of the area, set up under Section 74 of the Act.

Notes

Under Regulation 31-A, the employer is liable to pay interest at the rate of 6 per cent per annum for each day of default or delay in the payment of his contribution. In addition, under Section 85-B of the Act, the Corporation is empowered to recover damages from the employer who fails to pay the contribution or delays payment. The amount of damages, however, cannot exceed the amount of contribution. The damages can also be recovered as arrears of land revenue.

Different punishment have been prescribed for different types of offences in terms of Section 85: (i) (six months imprisonment and fine ₹ 5000), (ii) (one year imprisonment and fine), and 85-A: (five years imprisonment and not less to 2 years) and 85-C (2) of the ESI Act, which are self-explanatory. Besides these provisions, action also can be taken under section 406 of the IPC in cases where an employer deducts contributions from the wages of his employees but does not pay the same to the corporation which amounts to criminal breach of trust.

Caution The accident may occur within or outside the territorial limits of India. However, there should be a nexus or casual connection between the accident and employment. The place or time of accident should not be totally unrelated to the employment.

Self Assessment

Fill in the blanks:

13. There are ..... pension formulas.
14. ..... is an establishment belonging to the class of industries/other establishments, which have been listed in the schedule appended to the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and where 20 or more persons are employed.
15. Suppose member has not nominated anyone, the amount will be paid to ..... or ..... as the case may be.

Case Study

Paying Employee Health Claims Out-of-Pocket

John Schmitt opted to self-fund his employees' medical claims, and saw his company health insurance costs drop 20 percent.

John Charles Schmitt II, who heads up Plans for Professionals, a 300-person life insurance firm in Orange, Connecticut, used to work with Connecticut Blue Cross and Blue Shield to cover his employee health insurance costs.

But as premiums rose and new healthcare guidelines started to come into effect, even Schmitt—who played ten football seasons with the Jets, won the 1969 Super Bowl with quarterback Joe Namath and had 16 operations due to football injuries—became nervous. "Our experience was tough. I didn't like it. We were just a number," he says.

What's more, when Schmitt's young grandson, John Charles IV or "Charlie"—who was covered under Plans for Professional's medical policy because his father is a Vice President there—battled leukemia from 2004 to 2010, Schmitt saw millions of dollars in claims pile up. He realized his company's health insurance package had to change.

Contd....

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In April 2010, Schmitt switched Plans for Professionals, which he founded in 1971 because he needed a "real" job (his first football contract was for US $8,500 a year), to a self-funded plan. (Self-funding is when individual health claims are paid out-of-pocket instead of the monthly fixed premium to a health insurance carrier.)

Schmitt chose health plan administrator MagnaCare, which he had heard of through his trade union clients. Today, he lauds the way MagnaCare's self-funded plan has helped get the company's claims under control without any decrease in benefits to employees. "We've seen a decrease in costs and better management of what we're paying," says Schmitt. He attributes that to understanding claims; MagnaCare staffers come in on a monthly basis to explain payouts and opportunities to save money.

Despite having to pay out various fees (versus one insurance premium) for plan administration, stop-loss insurance, and monthly claims, Schmitt says that since switching to the self-funded plan the company has seen annual health insurance savings between 15 and 20 percent.

"I'm happy. My people are very happy," he says.

Best of all: Schmitt's grandson Charlie has been in remission for more than a year.

Question

Analyze and discuss the case.

Source: http://www.inc.com/articles/201106/case-study-paying-employee-health-claims-out-of-pocket.html

5.5 Summary

- The Government of India through notification in the Official Gazette has amended the Employees' State Insurance (Central) Rules, 1950. Accordingly, as per rule 50, the wage limit for coverage of an employee under Employees' State Insurance Act has been enhanced from ₹ 10,000 to ₹ 15,000 with effect from 1st May 2010.
- ESI Corporation has taken a decision to set up one hospital in each State as Model Hospital.
- The Central Government appoints a chairman, a vice-chairman and other members representing interests of employers, employees, state governments/union territories and medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members.
- Every factory or establishment to which this Act applies has to be registered within the specified time and the regulations made in this behalf.
- All the employees in factories or establishments to which this Act applies shall be insured in prescribed manner. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution.
- The ESI Act authorises Central Government to establish Employees' State Insurance Corporation for administration of the Employees' State Insurance Scheme. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.
- All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act

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- The insured persons, their dependants are entitled to various benefits on prescribed scale. Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.
- The Act empowers State Government to constitute an Employees' Insurance Court. The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.
- The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

5.6 Keywords

Act: "Act " means the Employees' State Insurance Act, 1948 (XXXIV of 1948).

Appointed Day: "Appointed Day " means with reference to any area, factory or establishment, the day from which the whole of Chapters IV and V of the Act apply to such area, factory or establishment, as the case may be.

Appropriate Office: " Appropriate Office ", " appropriate Branch Office " or " appropriate Regional Office ", shall mean with reference to any action taken under these regulations, such office of the Corporation as may be specified for that purpose under a general or special order of the Corporation.

Branch Manager: "Branch Manager" means a person appointed by the Corporation as such or the officer-in-charge of a Branch Office.

Branch Office: " Branch Office " and " Regional Office " shall mean, according to the context, such subordinate office of the Corporation, set up at such place and with such jurisdiction and functions as the Corporation may, from time to time, determine.

Central Rules: "Central Rules" means the rules made by the Central Government under section 95 of the Act.

Employer: "Employer" means the principal employer as defined in the Act.

Employer's Code Number: "Employer's Code Number" means the registration number allotted by the appropriate Regional Office to a factory or establishment for the purposes of the Act, the Rules and these Regulations.

Factory or Establishment: "Factory or Establishment" means a factory or establishment to which the Act applies.

Family Identity Card: "Family Identity Card" means a card issued by the appropriate office to an insured person for identification of his family for the purposes of the Act, the Rules and these Regulations.

Form: "Form" means a form appended to these regulations.

Identity Card: "Identity Card" means a permanent identity card issued by the appropriate office to an insured person for identification for the purposes of the Act, the Rules and these Regulations.

Instructions: "Instructions" means instructions or orders issued by the Corporation or by such officer or officers of the Corporation as may be authorised by the Corporation in this behalf.

Insurance Medical Officer: " Insurance Medical Officer " means a medical practitioner appointed as such to provide medical benefit and to perform such other functions as may be assigned to

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him and shall be deemed to be a duly appointed medical practitioner for the purposes of Chapter V of the Act.

Insurance Number: "Insurance Number " means a number allotted by the appropriate Office to an employee for the purposes of the Act, the Rules and these Regulations.

Regional Director: "Regional Director" means a person appointed by the Corporation as such for a specified region.

Registered Midwife: "Registered Midwife" means a person who is registered as a midwife under any law in force in any State providing for registration of nurses and midwives.

Rules: "Rules" means rules made by the Central or a State Government under the Act.

Social Security Officer: "Social Security Officer" means a person appointed as such by the Corporation under section 45 of the Act.

Specified: "Specified" means specified by instructions issued from time to time by the Corporation or any authorised officer.

State Rules: "State Rules" means the rules made by a State Government under section 96 of the Act.

Year: "Year" means a calendar year except when specifically stated otherwise.

5.7 Review Questions

1. Discuss the object and scope of the Employees' State Insurance Act, 1948.
2. What are the different kinds of benefits provided under the ESI Act?
3. How the Employees' Insurance Court constituted and what are the matters to be decided by such a Court?
4. What is ESI scheme?
5. How the scheme does help the employees?
6. How the scheme is funded?
7. What is meant by 'premises'?
8. What is manufacturing process?
9. Who is a principal employer?
10. What is meant by 'Breach of trust'?

Answers: Self Assessment

1.	40	2.	Pension
3.	₹ 250	4.	False
5.	True	6.	True
7.	Section 19	8.	Standing Committee
9.	Medical Benefit Council	10.	Yes
11.	No	12.	Yes

13. Two
14. Covered establishment
15. Dependent father; dependent mother

Notes

5.8 Further Readings

Books

Davidov, Guy & Langille, Brian (2011), *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Online links

http://www.citehr.com/20170-payment-gratuity-act.html

http://business.gov.in/legal_aspects/gratuity.php

http://on-lyne.info/legal8.htm

http://taxguru.in/income-tax/all-about-payment-of-payment-of-gratuity-act-1972-in-brief-including-the-recent-amendments.html

http://220.226.161.86/18723comp_suggans_pcc_lec_ch5.pdf

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Unit 6: Employees' Provident Fund Act, 1952

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Objectives

After studying this unit, you will be able to:

- Explain the genesis of the Act
- Discuss the definitions under this Act
- Get an overview of the Employees' Pension Scheme, 1995
- Describe the Employees' Provident Fund Scheme, 1952
- Discuss the Employees' Deposit-linked Insurance Scheme, 1976
- Get an overview of determination and recovery of money due to employer
- Explain the Penalties under this Act

Introduction

As per Preamble to the Act, the EPF Act is enacted to provide for the institution of provident funds, pension fund and deposit lined insurance fund for employees in factories and other establishments. The Employees' Provident Funds and Miscellaneous Provisions Act is a social security legislation to provide for provident fund, family pension and insurance to employees. Employee has to pay contribution towards the fund. Employer also pays equal contribution. The employee gets a lump sum amount when he retires, which will be useful to him after retirement. The Act covers three schemes, i.e. PF (Provident Fund scheme), FPF (Family Pension Fund scheme) and EDLI (Employees Deposit Linked Insurance scheme). The EPF Act contains basic provisions in respect of applicability, eligibility, damages, appeals, recovery etc. The three schemes formed by Central Government under the Act make provisions in respect of those schemes. The purpose of this unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding various schemes included in EPF Act.

The Central Government with the motive of providing additional Social Security in the form of Life Insurance to the family of the deceased member of the Provident Fund, introduced the Employees Deposit Linked Insurance Scheme with effect from 1-8-1976 as provided under Section 6(C) of the Employees' Provident Fund & MP Act, 1952. The benefit under the Scheme is so devised that it acts as an incentive to the members to save more in their Provident Fund Account. As the name of the Scheme says, the benefit is linked to the amount of accumulation in the Provident Fund Account of the member.

6.1 Genesis of the Act

In the previous unit, we dealt with the Trade Union Act. Legislation for compulsory institution of contributory provident fund in industrial undertakings was discussed several times at tripartite meetings in which representatives of the Central and State governments and of employers and workers took part. A large measure of agreement was reached on the need for such legislation. A non-official Bill on this subject was introduced in the Lok Sabha in 1948 to provide for the establishment and grant of provident fund to certain classes of workers by their employers. The Bill was withdrawn only on an assurance by the government that it would soon consider the introduction of a comprehensive bill. There was also a persistent demo that the Central Government extend the benefits of Coal Mines Provident Fund Scheme to workers employed in other industries. The view that the proposed legislation should be undertaken was largely

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endorsed by the Conference of Provincial Labour Ministers' held in January 1951. On 15th November 1951, the Government of India promulgated the Employees' Provident Funds Ordinance which came into force on that date. It was subsequently replaced by the Employees' Provident Funds Act passed on 4th March 1952.

6.1.1 Object of the Act

The Act was passed with a view to making some provision for the future of the industrial worker after his retirement or for his dependents in case of his early death and inculcating the habit of saving among the workers. The object of the Act is to provide substantial security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread-winner and in some other contingencies.

The Act provides for a scheme for the institution of provident fund for specified classes of employees. Accordingly, the Employees' Provident Fund Scheme was framed under Section 5 of the Act, which came into force on 1st November 1952.

Caution On a review of the working of the scheme over the years, it was found that provident fund was no doubt an effective old age and survivorship benefit; but in the event of the premature death of an employee, the accumulations in the fund were not adequate enough to render long-term financial protection to his family.

This lacuna led to the introduction of the Employees' Family Pension Scheme with effect from 1st March 1971.

Did u know? The Act was further amended in 1976 with a view to introducing Employees' Deposit Linked Insurance Scheme, a measure to provide an insurance cover to the members of the provident fund in covered establishments without the payment of any premium by these members. Thus, three schemes have been framed under the Employees' Provident Funds and Miscellaneous Provisions Act.

6.1.2 Applicability of the Act

The Employees' Provident Funds Act, 1952 is applicable from the date of functioning or date of set-up of establishments provided the factory/establishment employed twenty or more persons. The Act, however, does not apply to cooperative societies employing less than 50 persons and working without the aid of power. The Central Government is empowered to apply the provisions of this Act to any establishments employing less than 20 persons after giving not less than two months' notice of its intention to do so by a notification in the Official Gazette. Once the Act is applied, it does not cease to be applicable even if the number of employees falls below 20. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with the mutual consent of the Act.

6.1.3 Administration

The Employees' Provident Fund Organisation is in charge of all the three schemes. These schemes are administered by the Central Board of Trustees, a tripartite body consisting of the chairman, nominees of the Central and State Governments and employees' and employers' organizations The Central Provident Fund Commissioner is the chief executive officer of the organisation and

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secretary to the Central Board of Trustees. He is assisted by the Regional Provident Fund Commissioner, one in each state and in Delhi.

Example: The regional communities advise the Central Board on matters connected with the administration of the scheme in their respective States. Sub-regional provident fund offices have been opened in some region's to render better services to the subscribers of the fund.

Provident fund inspectors are appointed to carry out inspections and to-perform an advisory role vis-a-vis the employers and workers in. different covered establishments. They conduct surveys to ensure that all coverable establishment/factories are covered under the Act. They also recommend and file prosecutions in the courts against defaulting employers and pursue these cases till their final disposal.

Caselet

The Bharatkhand Textile Mfg. Co. vs. The Textile Labour on 17th March, 1960

Industrial Dispute—Claim of gratuity by workmen in textile industry—Framing of scheme in modification of Previous award Validity—Gratuity, if in the nature of profit bonus—Applicability of Full Bench formula—Duty of Industrial Court—Bombay Industrial Relations Act, 1946 (Bom. XI of 1947), s. 116A—Employees Provident Funds Act, 1952 (XIX of 1952).

This was an appeal by certain textile mills of Ahmedabad against a scheme for gratuity awarded by the Industrial Court. The Labour Association, the respondent, gave a notice of change under s. 42(2) of the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947), intimating the Mill Owners' Association that they wanted a scheme for gratuity and mentioned four categories of termination of service in the annexure. This demand was refused and so referred to the Industrial Court under s. 73A of the Act. Pending the reference the Employees' Provident Funds Act, 1952 (19 of 1952), came into operation and the Industrial Court, on an objection by the Mill Owners' Association, held that it was inadvisable to proceed with the reference and that a fresh application should be made, if necessary, after the scheme envisaged by the Act is introduced.

A scheme for gratuity is by its nature an integrated scheme and covers all classes of termination of service where gratuity benefit can be legitimately claimed and the refusal of the Industrial Court in the earlier award amounted to a refusal to frame any scheme at all. The statutory provident fund created by the Employees' Provident Funds Act, 1952, could be no bar to the respondent's claim for a gratuity scheme although there can be no doubt that in awarding such a scheme Industrial Courts must make due allowance for it. Provisions of s. 17 of the said Act clearly indicate that the statutory benefits under the Act are the minimum to which the employees are entitled and that they are no bar to additional benefits claimed by the employees. *Indian Hume Pipe Co. Ltd. v. Their Workmen*, [1960] 2 SCR 32, referred to. It was not correct to say that the claim for gratuity was essentially similar to a claim for profit bonus and must always be considered on unit wise basis.

The benefit of gratuity is in the nature of a retrial thus made was not accepted by the Association, and so it was referred to the Industrial Court. Pending the reference the Employees' Provident Funds Act, 1952 (19 of 1952), came into operation on March 4, 1952, and it was urged before the Industrial Court on behalf of the Association that since

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the statutory scheme of provident fund would soon become compulsory it would not be advisable to adjudicate upon the respondent's claim for the specified items of gratuity at that stage. This argument was accepted by the Industrial Court; it held that when the scheme envisaged by the new Act is introduced it would be possible to see from what date it would be operative, and that, if after the introduction of the said scheme it be found that a sufficient margin is left, it would then be open to the respondent and the Association to make a fresh application for the institution of a gratuity fund either for all the employees or for the benefit of such of them as will have to retire within the next few years. It was on this ground that the demand made by the respondent was rejected on April.

The Act has been passed by the Bombay Legislature because it thought that "it was expedient to provide for the regulation of the relations of employers and employees in certain matters, to consolidate and amend the law relating to the settlement of industrial disputes and to provide for certain other purposes". With this object the Act has made elaborate provisions for the regulation of industrial relationships and for the speedy disposal of industrial disputes. An "industrial dispute" under s. 3, sub-s. (17), means "any dispute or difference between an employer and employer, or between employers and employees, or between employees and which is connected with any industrial matter". The expression "industrial matter has been inclusively defined in a very wide sense approved Union" in s. 3(2) means "a union on the approved list" "primary union" under s. 3(28) means "a union for the time being registered as a primary union under the Act registered union" under s. 3(30) means "a union registered under the Act", while "representative union" under s. 3(33) means "a union for the time being registered as a representative union under the Act.".

Source: http://www.indiankanoon.org/docfragment/1936107/?formInput=employees%20provident%20fund%20act%201952%20doctypes%3A%20supremecourt

Self Assessment

State whether the following statements are true or false:

1. A non-official Bill on this subject was introduced in the Lok Sabha in 1950 to provide for the establishment and grant of provident fund to certain classes of workers by their employers.
2. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with the mutual consent of the Act.
3. The Employees' Provident Fund Organisation is in charge of all the four schemes.

6.2 Definitions

In this Scheme, unless the context otherwise requires:

(1) Employees' Pension Fund

"Pension Fund" means the Employees' Pension Fund established under sub-section (2) of section 6A

(2) Employee Pension Scheme

"Pension Scheme" means the Employees Pension Scheme framed under sub-section (1) of section 6A.

Notes

(3) Superannuation

"Superannuation", in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years.

(4) Industry

"Industry" means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4;

(ia) "Insurance Fund" means the Deposit-linked Insurance Scheme framed under sub-section (2) of section 6C;

(ib) "Insurance Scheme" means the Employees Deposit-linked Insurance Scheme framed under sub-section (1) of section 6C;

(5) Employee

"Employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person,-

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment;

- "exempted employee" means an employee to whom a Scheme or the Insurance Scheme, as the case may be, would, but for the exemption granted under section 17, have applied;
- "exempted establishment" means an establishment in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme, as the case may be, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein;

Self Assessment

Fill in the blanks:

4. ..... means the Deposit-linked Insurance Scheme framed under sub-section (2) of section 6C.
5. ..... in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years.
6. ..... means the Employees' Pension Fund established under sub-section (2) of section 6A.

6.3 The Employees' Pension Scheme, 1995

Employees' Pension Scheme 1995 has been made applicable on 16.6.1995 retrospectively with effect from 1.4.1993. This new Scheme replaces the erstwhile Family Pension Scheme, 1971.

6.3.1 Membership

1. Every member of the Employees' Provident Scheme 1952 and opted for Employees Family Pension Scheme 1971.

Notes

2. All new entrants to the Employees' Provident Fund Scheme 1952 will become member of the Employees' Pension Scheme 1995 on compulsory basis.
3. Every employee who has ceased to be a member of the Employees Family Pension Scheme 1971 during 1.4.1993 and 15.6.1995 was given option to become member of the Employees' Pension Scheme 1995 up to 31.3.1998.
4. Every existing member of the Employees' Provident Fund Scheme 1952 not being member of Family Pension Scheme 1971 has option to become member of Employees' Pension Scheme, 1995.

6.3.2 Option Requirement

1. Members who have died during 1.4.1993 and 15.6.1995 shall be deemed to have exercised option of joining Employees' Pension Scheme 1995 with effect from the date of death:
2. Members who are alive may exercise option to become member of the Employees' Pension Scheme 1995 on the date of exit from the employment by depositing amount along with interest at the rate of 8.5 per cent per annum from the date of such withdrawal.
3. Members will have option to join Employees' Pension Scheme 1995 by depositing the contribution along with up to date interest under ceased Employees' Family Pension Scheme 1971 with effect from 1.3.1971.

6.3.3 Contribution

Employee is not required to contribute separately under the Employees' Pension Scheme 1995. Employer share of provident fund contribution at the rate of 8.33 % is diverted to pension fund every month.

6.3.4 Service for Pension

Actual service rendered after 16.6.1995 together with the service for which the contribution has been made under the eased Family Pension Scheme 1971, if any will be treated as service for pension. A person is entitled for pension after, completing the age of 58 years with minimum service of 10 years. Six months or more shall be treated as one year and the service less than six months shall be ignored.

6.3.5 Determination of Pensionable Salary

Pensionable salary shall be the average monthly pay drawn in any manner including on piece rate basis during the contributory period of service in the span of 12 months preceding the date of exit from membership of the Employees' Provident Fund.

6.3.6 Benefits

1. ***Monthly Member Pension:*** Superannuation Pension/retirement on attaining the age of 58 years.
2. ***Pension Scheme Certificate:*** Document indicating pension able service and the amount of reduced pension on the date of exit from employment which shall be counted for determination of pension along with fresh service where the member has not attained the age of retirement.

Notes

3. ***Invalidity Pension:*** In case of permanent and total disablement during the course of employment.
4. ***Widow Pension:*** Pension from the date following the date of death of the, member whether in service or after exit of employment or after retirement/commencement of monthly member pension.
5. ***Children Pension:*** Pension to two children of deceased member up to the age of 25 years in addition to widow.
6. ***Orphan Pension:*** Two orphan children up to the age of 25 years entitled for monthly orphan pension equal to 75 % of the amount of widow pension.
7. ***Nominee Pension:*** In case of unmarried members, a person nominated by the member will get pension equal to widow pension.

6.3.7 Commutation of Pension

Pension shall be allowed for commutation with effect from November 1998. Member can opt for commutation up to a maximum of one third of pension.

6.3.8 Withdrawal Benefits

A member is allowed withdrawal benefit where a minimum of pension able service of 10 years has not been rendered on the date of exit/on attaining age of 58 years.

6.3.9 Administration

The pension scheme will be administered by the tripartite Central Board of Trustees set up under the Employees' Provident Fund and Miscellaneous Provisions Act. The Regional Committees set up under the provident fund scheme shall advise the Regional Boards on matters relating to administration and implementation of the scheme in their respective regions.

Self Assessment

State whether the following statements are true or false:

7. Every member of the Employees' Provident Scheme 1952 and opted for Employees Family Pension Scheme 1971 is a member.
8. Employee is not required to contribute separately under the Employees' Pension Scheme 1996.
9. A member is allowed withdrawal benefit where a minimum of pensionable service of 10 years has not been rendered on the date of exit/on attaining age of 58 years.

6.4 The Employees' Provident Fund Scheme, 1952

The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10% of the pay of the employees. The term "wages" includes basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any. The Act, however, provides that the Central Government may, after making such enquiries as it deems fit, enhance the statutory rate of contribution to 120k of wages in any industry or class of establishments.

Notes

The contributions received by the Provident Fund Organisation from unexempted establishments as well as by the Board of Trustees from exempted establishments shall be invested, after making payments on account of advances and final withdrawals, according to the pattern laid down by the Government of India from time to time. The exempted establishments are required to follow the same pattern of investments as is, prescribed for the unexempted establishments. The provident fund accumulations are invested in government securities, negotiable securities or bonds, 7-year national saving certificates or post office time deposits schemes, if any.

6.4.1 EPF Interest Rate

Under Para 60(1) of the Employees' Provident Fund Scheme, the Central Government, on the recommendation of the Central Board of Trustees, declares the rate of interest to be credited annually to the accounts of provident fund subscribers.

6.4.2 Withdrawals

Under the scheme, a member may withdraw the full amount standing to his credit in the fund in the event of

(i) Retirement from service after attaining the age of 55;

(ii) Retirement on account of permanent and total incapacity;

(iii) Migration from India for permanent settlement abroad; and

(iv) Termination of service in the course of mass retrenchment (involving 3 or more persons). The membership for this purpose is reckoned from the time of joining the covered establishment till the date of the settlement of the claim.

A member can withdraw up to 90 % of the amount of provident fund at credit after attaining the age of 54 years or within one year before actual retirement on superannuation whichever is later.

The Scheme provides for non-refundable partial withdrawals/ advances to meet certain contingencies

(1) Financing of life insurance policies;

(2) House-building;

(3) Purchasing shares of consumers' cooperative credit housing societies;

(4) During temporary closure of establishments;

(5) Illness of member, family members;

(6) Member's own marriage or for the marriage of his/her sister, brother or daughter/ son and post-matriculation education of children;

(7) Damages to movable and immovable property of members due to a calamity of exceptional nature;

(8) Unemployment relief to individual retrenched members;

(9) Cut in supply of electricity to the factory/establishment; and

(10) Grant of advance to members who are physically handicapped for the .purchase of equipment.

Notes

6.4.3 Nomination

If there is no nominee, the amount shall be paid to the members of the family in-equal shares except:

- Sons who have attained majority;
- Sons of a deceased son who have attained majority;
- Married daughters whose husbands are alive;
- Married daughters of a deceased son whose husbands are alive.

The nomination form shall be filled in duplicate and one copy duly accepted by the provident fund office will be kept by members. In case of change, a separate form for a fresh nomination should be filled in duplicate.

6.4.4 Transfer

When a member leaves service in one establishment and obtains reemployment in another establishment, whether exempted or unexempted, in the same region or in another region, he is required to apply for the transfer of his provident fund account to the Regional Provident Fund Commissioner in the prescribed form. The actual transfer of the provident fund accumulations with interest thereon takes place in cases of:

(i) Reemployment in an establishment, whether exempted or unexempted, in another region/ sub-region;

(ii) Reemployment in an exempted establishment in the same region/sub-region;

(iii) Leaving service in an exempted establishment and reemployment in an unexempted establishment;

(iv) Reemployment in an establishment not covered under the Act.

Notes A member of the fund is entitled to get full refund of both the shares of contributions made by him as well as by his employer with interest thereon immediately after leaving the service.

6.4.5 Account Slips

As soon as possible after the completion of each accounting year, every member of the fund shall be supplied with an account slip showing:

(a) The opening balance;

(b) The amount contributed during the year;

(c) The amount of interest credited or debited during the year; and

(d) Closing balance.

Errors, if any, should be brought to the notice of the Commissioner within six months.

Notes

6.4.6 Exemption

An establishment/factory may be granted exemption under Section 17 if, (i) in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contributions are not less favourable than those specified in Section 6 of the Act, and (ii) if the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable than the benefits provided under the Act or any scheme in relation to the employees in any other establishment of a similar character. While recommending to the appropriate government grant of exemption under this section, the Employees' Provident Fund Organisation usually takes into consideration the rate of contribution, the eligibility clause, the forfeiture clause and the rate of interest. Also, the totality of the benefits provided under the rules of the exempted funds is taken into consideration.

Example: The Central Government is empowered to grant exemption to any class of and soda security establishments from the operation of the Act for a specified period, on financial or other grounds under section 16(2).

The exemption is granted by issue of notification in the Official Gazette and subject to such terms and conditions as may be specified in the notification. The exemption does not amount to total exclusion from the provisions of the Act. The exempted establishments are required to constitute a Board of Trustees according to the rules governing the exemptions to administer the fund, subject to overall control of the Regional Provident Fund Commissioner. The exempted establishments are also required to maintain proper accounts, submit prescribed returns, invest provident fund accumulations in the manner prescribed by the Central Government from time to time, and to pay inspection charges. Exemption is liable to be cancelled for breach of any of these conditions.

Self Assessment

Fill in the blanks:

10. The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is ..... of the pay of the employees.
11. The nomination form shall be filled in duplicate and one copy duly accepted by the ..... office will be kept by members.
12. The ..... establishments are also required to maintain proper accounts, submit prescribed returns, invest provident fund accumulations in the manner prescribed by the Central Government from time to time, and to pay inspection charges.

6.5 The Employees' Deposit-linked Insurance Scheme, 1976

The Central Government may by notification in the Official Gazette frame a Scheme to be called the Employees' Deposit-linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Act applies. There shall be established as soon as may be after the framing of the Insurance Scheme Deposit-linked Insurance Fund into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer such amount not being more than one per cent of the aggregate of the basic wages dearness allowance and retaining allowance (if any) for the time being payable in relation to such employee as the Central Government may by notification in the Official Gazette specify.

Notes

The scheme came into force from August 1, 1976. It is applicable to all factories/establishments to which the Employees' Provident Funds Act, 1952 applies. All the provident fund member-employees, both in the exempted and unexempted establishments, are covered under this scheme. While the employees are not required to contribute to the Insurance Fund, the employers are required to pay contributions to it at the rate of 0.5% of the pay of the employers who are provident fund subscribers. The Central Government also contributes to the insurance fund at the rate of 0.25% of the pay in respect of the covered employee.

Notes The employers are also required to pay administrative charges to the insurance fund at the rate of 0.01% of the pay drawn by the employees, subject to a minimum of ₹ 2 per month. The Central Government also meets partly the expenses in connection with the administration of the insurance scheme by paying into the insurance fund an amount, at the rate of 0.005% of the pay drawn by the employee members subject to a minimum of ₹ 1 per month. The employers of exempted establishments are required to pay inspection charges at the rate of 0.02% of the pay of the employee-members.

Under the Scheme, the nominees/members of the family of employees of covered establishments will get, in the event of death while in service, an additional amount equal to the average balance in the provident fund account of the deceased during the preceding 12 months wherever the average provident fund balance is less than ₹ 25,000. In cases where the average provident fund balance of preceding twelve months exceeds ₹ 25,000 plus 25% of the amount in excess of ₹ 25,000 subject to a maximum of ₹ 35,000.

There is provision in the scheme for the exemption of factories/establishments which have an insurance scheme approved by government and conferring-more benefits than those provided under this statutory scheme, provided that a majority of the employees are in favour of such exemption. Subject to certain conditions, individual employees or class of employees may also be granted exemption. The Central Government is the appropriate authority to grant exemption from the Employees' Deposit-linked Insurance Scheme under Section 17(2A).

The employer shall pay into the Insurance Fund such further sums of money not exceeding one-fourth of the contribution which he is required to make under sub-section (2) as the Central Government may from time to time determine to meet all the expenses in connection with administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that Scheme.

Task If any establishment has departments or branches, are these departments or branches, to be treated as separate establishments or parts of the same establishments?

Self Assessment

State whether the following statements are true or false:

13. The scheme came into force from August 1, 1986.
14. In cases where the average provident fund balance of preceding twelve months exceeds ₹ 25,000 plus 25% of the amount in excess of ₹ 25,000 subject to a maximum of ₹ 35,000.
15. The employers of exempted establishments are required to pay inspection charges at the rate of 0.01% of the pay of the employee-members.

Notes

6.6 Determination and Recovery of Money due to Employer

Following aspects explain the determination and recovery of money due to employer:

6.6.1 Determination of Money due to Employer

The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath:

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses,

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code 45 of 1960.

No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case – Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

Where an order under sub-section (1) is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Notes

Notes Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

6.6.2 Recovery of Money due to Employer and Contractor

The amount of contribution that is to say, the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee's contribution under any Scheme by deduction from the basic wages, dearness allowance and retaining allowance if any payable to such employee.

Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance if any payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Mode of Recovery of Money due from Employers

Mode of recovery of moneys due from employers– any amount due -

(a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or under sub-section (5) of section 17 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or

(b) from the employer in relation to an exempted establishment in respect of any damages recoverable under section 14B or any charges payable by him the appropriate Government under any provision of this Act or under any of the conditions specified under section 17 or in respect of the contribution payable by him towards the Pension Scheme under the said section 17, may, if the amount is in arrear, be recovered in the manner specified in section 8B to 8G.

Notes In this section, the expressions "dearness allowance" and "retaining allowance" shall have the same meanings as in section 6.

Notes

Self Assessment

Fill in the blanks:

16. The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry have the same powers as are vested in a court under the code of ..... Procedure, 1908 (5 of 1908).

17. A ..... from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him.

18. The amount of contribution that is to say, the ..... contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme.

6.7 Penalties under this Act

When an employer fails to remit the dues under the Scheme within 15 (20 days with 5 days grace period) days of the close of each month the employer will be liable, to pay penal damages as maybe determined by the Regional Commissioner (RC) not exceeding 37% of the arrears.

Did u know? Any amount outstanding from the employer can be recovered by the Regional Commissioner as an arrear of land revenue. The powers for revenue recovery and issue of recovery certificates are vested with the Regional Commissioner (with effect from 1/7/90).

An employer who fails to remit the contributions and administrative charges and or submit the monthly and other periodical returns is liable to be prosecuted under Section 14 of the Act. For failure to remit employees share recovered from the wages, the employer shall also be liable for prosecution under Section 406/409 of the I.P.C.

The employers are liable for action under the penal provisions of the Act in case they default compliance with the provisions of the Scheme. This is apart from the provisions relating to levy of penal damages and recovery of the outstanding dues as revenue under the Revenue Recovery Act:

(1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act, the Scheme, the Pension Scheme or the Insurance Scheme or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine of five thousand rupees, or with both.

(1A) An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause a of sub-section (3) of section 17 insofar as it relates to the payment of inspection charges, or paragraph 38 of the Scheme insofar as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to three years but –

(a) which shall not be less than one year and a fine of ten thousand rupees in case of default in payment of the employees contribution which has been deducted by the employer from the employees wages;

Notes

(b) which shall not be less than six months and a fine of five thousand rupees, in any other case:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

(1B) An employer who contravenes, or makes default in complying with, the provisions of section 6C, or clause a of sub-section (3A) of section 17 insofar as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than six months and shall also be liable to fine which may extend to five thousand rupees:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

(2) Subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance Scheme may provide that any person who contravenes, or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to four thousand rupees, or with both.

(2A) Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees.

Self Assessment

State whether the following statements are true or false:

19 When an employer fails to remit the dues under the Scheme within 15 (20 days with 5 days grace period) days of the close of each month the employer will be liable, to pay penal damages as maybe determined by the Regional Commissioner (RC) not exceeding 37% of the arrears.

20. An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause a of sub-section (3) of section 17 insofar as it relates to the payment of inspection charges.

Case Study

Union of India & Anr vs Ogale Glass Works on 1st September, 1971

Employees' Provident Fund Act, 1952 – Scope of s. 19A of the Act – Whether decision under s. 19A of the Act by the Central Government is final in the facts and circumstances of the case. The respondent company was manufacturing various articles including Lantern and Safety Stoves etc. In November 1952, Employees Provident Fund Act, was passed and the company was making regular contributions to the Provident Fund for all employees. After sometime, another establishment which was carrying on similar business filed a writ petition in Bombay High Court contesting the claim of the Regional Provident Fund Commissioner that the Act applied to all sections of the glass works. The Bombay High Court held that the Act and the scheme applied only to such sections.

Contd....

Notes

Union of India and the Regional Provident Fund Commissioner, Maharashtra State, is directed against the judgment and order dated September 17, 1965 of the Bombay High Court allowing Special Civil Application No. 380 of 1964 filed by the respondent company under Art. 226 of the Constitution and quashing the notice of demand dated May 22, 1963 issued by the Regional Provident Fund Commissioner. The circumstances under which the writ petition was filed by the respondent may be stated: The respondent a limited company having its Head Office at Ogalawadi in Satara District was manufacturing at the relevant time Glassware, Stoves, Lanterns and Enamel wares. It had several sections in its factory, namely, (1) Glass Manufacturing Section, (2) Lantern and Safety Stoves Section, (3) Enamel Section, (4) General Section and (5) Canteen Section. n 1951 the Provident Fund Scheme was amended and the Company agreed to make contributions to the fund only if it made profits. There is no controversy that the Act was made applicable to the respondent on October 6, 1952 and the Company had been paying its contribution to the Employees Provident Fund from November 1, 1952. For the purpose of the Fund, a scheme had been framed under the Act. According to the Regional Provident Fund Commissioner, the Act and the Scheme framed thereunder applied to the entire body of employees working under the respondent. Though the Company then raised objections on the ground that only the employees in the Lantern and Stoves Section were covered by the Scheme and that it was bound to make contributions only in respect of those employees, nevertheless, the Company continued to make its share of contribution to the Provident Fund even in respect of other employees working in other sections.

In the meanwhile, another establishment in the area, the Nagpur Glass Works, which was carrying on a business similar to that of the respondent company, filed a writ petition before the Nagpur Bench of the Bombay High Court under Art. 226 of the Constitution.

Question

Critically analyse the above case.

Source: http://www.indiankanoon.org/docfragment/525458/?formInput=employees%20provident%20fund%20act%201952%20doctypes%3A%20supremecourt

6.8 Summary

- The EPF Act in India also known as the EPF Act, 1952 or the Employees' Provident Fund Scheme 1952 is a provision for securing the right to work, education, unemployment, old age, sickness & disablement needs to be made by every state in India.
- To secure the well-being of the employees in times of distress, the EPF Act in India was formulated.
- The Employee's Provident Funds and Miscellaneous Provisions Act, 1952 is enacted to provide a kind of social security to the industrial workers.
- The Act mainly provides retirement or old age benefits, such as Provident Fund, Superannuation Pension, Invalidation Pension, Family Pension and Deposit Linked Insurance.
- Provision for terminal benefit of restricted nature was made in the Industrial Disputes Act, 1947, in the form of payment of retrenchment compensation. But this benefit is not available to a worker on retirement, on reaching the age of superannuation or voluntary retirement.
- The Employees' Provident Funds Act is intended to provide wider terminal benefits to the industrial workers.

Notes

- The Employees' Provident Funds Act, 1952 extends to whole of India except the state of Jammu & Kashmir.
- It applies on every establishment employing 20 or more persons & engaged in industry specified in Schedule I of the Act or any other activity notified by the Central Government.
- Accordingly, the Employees' Provident Fund Scheme was framed under Section 5 of the Act, which came into force on 1st November 1952.
- The Act was further amended in 1976 with a view to introducing Employees' Deposit Linked Insurance Scheme, a measure to provide an insurance cover to the members of the provident fund in covered establishments without the payment of any premium by these members.

6.9 Keywords

Industry: Economic activity concerned with the processing of raw materials and manufacture of goods in factories.

Insurance: Insurance is the equitable transfer of the risk of a loss, from one entity to another in exchange for payment.

Interest Rate: An interest rate is the rate at which interest is paid by borrowers for the use of money that they borrow from a lender.

Legislation: Legislation (or "statutory law") is law which has been promulgated (or "enacted") by a legislature or other governing body, or the process of making it.

Membership: Belonging, either individually or collectively, to a group.

Pension: A pension is a contract for a fixed sum to be paid regularly to a person, typically following retirement from service.

Salary: A salary is a form of remuneration paid periodically by an employer to an employee, the amount and frequency of which may be specified in an employment contract.

Scheme: A large-scale systematic plan or arrangement for attaining some particular object or putting a particular idea into effect.

Superannuation: Superannuation is a union-initiated long-term savings plan designed to help people in their retirement.

Tripartite: A tripartite is a way of forming a government.

6.10 Review Questions

1. What is the object of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952?
2. Which are the establishments covered by the Act?
3. Are there any establishments to which the Act is not applicable at all?
4. What are the various modes in which the Central Provident Fund Commissioner can recover arrears of any amount due from any employer under section 8 of the Act?
5. Can the amount standing to the credit of any member in the fund be assigned, charged or attached?

Notes

6. What are the powers of the inspectors appointed under the Act?
7. What are the offences under the Act and what is the punishment for them?
8. Is any damage leviable on the employer delaying any payment due from him under the Act or the Schemes?
9. Could the employer be punished under section 14-B in case the remittance of contribution by him is delayed in a bank or post office?
10. Who is eligible to become a member of the fund?
11. Are the persons employed by or through a contractor covered under the Scheme?
12. What is the contribution payable by the employer and the employee under the Scheme?
13. Is it permissible for any member to contribute at a rate higher than the rate of 8 1/ 3 percent?
14. Is any interest payable on the provident fund accumulations of a member?
15. What are the benefits provided under the Scheme?

Answers: Self Assessment

1.	False	2.	True
3.	False	4.	Insurance Fund
5.	Superannuation	6.	Pension Fund
7.	True	8.	False
9.	True	10.	10%
11.	Provident Fund	12.	Exempted
13.	False	14.	True
15.	False	16.	Civil
17.	Contractor	18.	Employers
19.	True	20.	True

6.11 Further Readings

Books

B.D. Singh, *Industrial Relations & Labour Laws*, Excel Books, New Delhi, 2008

B.D. Singh, *Industrial Relations: Emerging Paradigms*, Excel Books, New Delhi, 2008

B.D. Singh, *Labour Laws*, Excel Books, New Delhi, 2007

D. Agarwal, *Industrial Relations and Collective Bargaining*, Deep & Deep Publications, New Delhi, 1982

PR.N.Sinha, Indu Bala Sinha, *Industrial Relations*: *Trade Union & Labour Legislation*, Pearson Education, 2009

VSP Rao, *Industrial Relations & Labour Laws*, Excel Books, New Delhi, 2008

Notes

Online links

http://labour.nic.in/upload/uploadfiles/files/ActsandRules/SocitySecurity/TheEmployeesAct1952.pdf

http://policy.mofcom.gov.cn/english/flaw!fetch.action?id=8b322573-7e76-4c1f-a2ff-a60156b02400&pager.pageNo=2

http://tnkpsc.com/Image/EPF-Seminar.pdf

http://www.epfindia.com/EPFScheme.pdf

http://www.epfup.org/pensionscheme.asp

Notes

Unit 7: The Payment of Gratuity Act, 1972

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Objectives

After studying this unit, you will be able to:

- Explain the genesis of the Act
- Get an overview of the definitions under this Act
- Describe the rights and obligations of the employer
- Discuss benefit of this Act
- Get an overview of payment of gratuity

Notes

Introduction

The umbrella legislation relating to gratuity is the Payment of Gratuity Act, 1972. The Act was enacted 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 employing ten or more persons and for matters connected therewith or incidental thereto. The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment to which this Act applies or any employee or class of employees employed therein, from the operation of the provisions of this Act, if in the opinion of the appropriate Government, the employees in such establishment are in receipt of gratuity or pensioner benefits not less favourable than the benefits conferred under this Act. Gratuity is a voluntary Payment made by the employer to the employee in recognition of continuous, meritorious services and sincere efforts by the employee towards the organization. It is governed under the Payment of Gratuity Act 1972. It is an Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, and shops or other establishments. The purpose of this unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts the Payment of Gratuity Act.

The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955) under section 5 provided for the payment of gratuity to the journalist. But there was no other Central Act which provided for the payment of gratuity to industrial workers. The Government of Kerala enacted legislation for payment of gratuity to workers employed in factories, plantations, shops and establishments. The Governor of West Bengal promulgated an Ordinance on 3rd June, 1971 wherein a scheme for payment of gratuity was enacted. The Ordinance was later replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971 enacted by the President on 28th August, 1971. Gratuity was also being paid by some employers to their workers under Awards and Agreements.

Since the enactment of the Kerala and West Bengal Acts, some other State Governments also wanted to enact similar measures. Taking into account the intention of the State Governments it was felt necessary to have a Central law on the subject so as to ensure a uniform pattern of payment of gratuity to the employees throughout the country. The proposal for Central legislation on gratuity was discussed in the Labour Ministers' Conference held at New Delhi on 24th and 25th August, 1971 and also in the Indian Labour Conference at its session held on 22nd and 23rd October, 1971. There was general agreement at the Labour Ministers' Conference and the Indian Labour Conference that Central legislation on payment of gratuity might be undertaken at the earliest. Accordingly the Payment of Gratuity Bill was introduced in the Parliament.

7.1 Genesis of the Act

Gratuity as an additional retirement benefit has been secured by labour in numerous instances, either by agreement or by awards. It was conceded as a provision for old age and a reward for good, efficient and faithful service for a considerable period. But in the early stages, gratuity was treated as a payment gratuitously made by an employer at his will and pleasure. In the course of time, gratuity came to be paid as a result of bilateral agreements or industrial adjudication. Even though the payment of gratuity was voluntary in character, it had led to several industrial disputes. The Supreme Court had laid down certain broad principles to serve as guidelines for the framing of the gratuity scheme. They were:

1. The general financial stability of the concern;
2. Its profit-earning capacity;

Notes

3. Profits earned in the past;
4. Reserves and the possibility of replenishing the reserves; and
5. Return on capital, regard being had to the risk involved.

The first central legislation to regulate the payment of gratuity was the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. The Government of Kerala enacted legislation in 1971, for payment of gratuity to workers employed in factories, plantations, shops and establishments. In 1971, the West Bengal Government promulgated an ordinance which was subsequently replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971. After the enactment of these two Acts, some other State Governments also voiced their intention of enacting similar measures in their respective states. It became necessary, therefore, to have a Central law on the subject so as -

- To ensure a uniform pattern of payment of gratuity to the employees throughout the country, and
- To avoid different treatment to the employees of establishment having branches in more than one state, when, under the conditions of their service, the employees were liable to transfer from one state to another.

Hence the Government of India enacted legislation on gratuity. The Act came into force from September 16, 1972. The Payment of Gratuity Central Rules also came into force from September 16. 1.972.

Did u know? The Act is administered by the Central Government in:- (i) establishments which are under its control; (ii) establishments having branches in more than one State; and (iii) major ports, mines, oil fields and the railways. While, in all other cases, it is administered by the State Governments and the Union Territory administrations, that the appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

Besides, here is Central Industrial Relation Machinery (CIRM) in the Ministry of Labour which is responsible for enforcing this Act. It is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. It is headed by the Chief Labour Commissioner (Central).

7.1.1 Main Provision

There are many legal provisions of the Payment of Gratuity Act 1972. We are below discussing some important provisions of the Act.

(i) ***Provisions relating to the payment of gratuity:*** Under sections 4 and 7 of the Act , different provisions relating to the payment of gratuity are given According to Section 4(1), the gratuity shall be payable to an employee on the termination of his employement after he has rendered continuous service for not less than 5 years.

The gratuity is payable to an employee on his termination in the following cases:

(a) On his superannuation, or

(b) On his retirement or resignation

(c) On his death or disablement due to accident or disease.

Notes

Under Section 7(1) a person who is eligible for payment of gratuity under this Act or any person authorised in writing, to act on his behalf shall send a written application to the employer withing such time and in such form as may be prescribed , for payment of such gratuity. Under section 7(2) as soon as gratuity becomes payable, the employer shall, whether an application referred to in the Sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity determined. Under section 7(3) the employer shall arrange to pay the amount of gratuity within thirty days from the date it became payable to the person to whom the gratuity is payable. Section 7(3-A) states, if the amount of gratuity payable under Sub- (3) is not paid by the employer within the period Specified in Sub- (3), the employer shall pay, from to the date on which the gratuity become payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may by notification Specify.

(ii) ***Provision regarding reduction and forfeiture of gratuity:*** Under Section 4(6) of the Act, following provisions regarding reduction and forfeiture of gratuity are laid down as follows:

(i) According to section 4(6) (a), the gratuity payable to an employee, whose services have been terminated for any act due to wilful omission, or negligence causing any damage or loss to or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(ii) According to Section 4(6) (b), the gratuity payable to an employee may be wholly or partially forfeited:

(a) If the Services of such an employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part

(b) If the services of such an employee have been terminated for any act which constitutes an involving moral turpitude provided that such offence is committed by him in the course of his employement.

(iii) ***Provision regarding recovery of gratuity:*** Regarding the recovery of the amount of gratuity procedure has been laid down under section 8 of the Act as follows:

(a) If the amount of gratuity is not paid by the employer within the prescribed time, the person has then right to apply to the controlling authority for the recovery the gratuity.

(b) The controlling authority will issue a certificate for the amount to the collector Then, the collector shall recover the amount to the person.

(iv) ***Provision of Compulsory Insurance:*** Under Section 4(A), following provision are laid down regarding the compulsory Insurance:

(a) The amendment Act of 1987 of Act Payment of Gratuity Act provides for compulsory insurance of employer's liability to pay gratuity under the Act.

(b) This new section also provides for compulsory registration of all the establishments covered under the Act with the controlling authority appointed by the Government.

(c) This Sections empowers the Central Government to make rules for prescribing the insurers other than the LIC and the manner in which the employer shall get the insurance cover.

(d) Where an employer fails to make any payment by way of premium to the insurer or by way of contribution to an approved gratuity fund referred to above, he shall be liable to the amount of gratuity due under this Act.

Notes

(e) Whoever contravenes the above provisions shall be punishable with a fine which may extend to ₹ 10,000 and if it continues, a further fine extending to ₹ 1,000 per day till the offence continues.

(v) ***Provisions regarding Nomination:*** According to Section 6,each employee who has completed one year of service shall make nomination for the purpose of payment of gratuity in case of his death. Different legal provisions regarding nomination are given below-

(1) ***Time of Nomination:*** Under Section 6(1) each employee who has completed one year of service, shall make within 80 days of completion of one year of service a nomination.

(2) ***No of Nominees:*** Under Section 6(2) an employee may in his nomination distribute the amount of gratuity payable to him under this Act amongst more than one nominee or may nominate one person only for whole amount of gratuity. According to Section 6(3) if an employee has a family at the time of making nomination, then the nomination shall be made in favour of one or more members of his family. According Section 6(4) if at the time of making a nomination the employee has no family member then the nomination may be made in favour of any persons or persons.

(3) ***Modification:*** Under Section 6(5), nomination may be modified by an employee at any time after giving to his employer a written notice in such form and in such a manner as may be prescribed.

(4) ***Death of Nominee:*** As per Section 6 (6) if the nominee dies before the employee, the interest of the nominee shall revert to the employee, who will have to make a fresh nomination.

(5) ***Safe Custody of Nomination:*** Under Section 6 (7), every nomination, a fresh nomination or alternation of nomination, as the case may be shall be sent by the employee to his employer who will Kept the Same in his custody.

(vi) ***Provisions of Inspectors:*** The Payment of Gratuity (Amendment) Act 1984 has added two new sections. such as, Section 7-A and Section 7-B to the original Act dealing with the appointment of Inspectors and their power.

Appointment of Inspectors: Under the Section 7-A, the government may, by notification, appoint as many inspectors as it deems fit.

Power of Inspectors: Under the Section 7-B inspectors have the power to ask an employer to furnish necessary information. Moreover, inspectors have the power to enter and inspect any place in any factory, mine etc. and to examine the employer and the employees. Inspectors can make copies or take extacts from register or record etc.

(vii) ***Provisions regarding penalties:*** According to Section 9 (1) any person who knowingly makes any false statement for avoiding any payment to be made by him under this act shall be punishable with imprisonment upto six months or with fine upto ₹ 10,000 or with both. Under section 9(2), an employer who contravenes or makes default in complying with, any of the provisions of the Act, or rule, order made thereunder shall be punishable with imprisonment for a period which may extend to one year or with fine which may extend to one thousand rupees or both.

(iii) ***Provisions regarding appropriate Government's powers to make rules:*** Under Section 15 the appropriate Government may make rules for carrying out the provisions of the Act. every rule made by the Central Government under this Act shall be laid before each house of parliament while it is in session for a total period of thirty days which may be comprised in one sessions or in two or more successive sessions.

Notes

Let Us Know

Appropriate Government under this Act means

(i) In relations to an establishment:

(a) belonging to, or under the control of the Central Governments,

(b) having branches in more then 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) any others case, the State Government [Section 2(a)]

Notes 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 of 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.

7.1.2 Objective of this Act

The main objective of this Act is to provide for a Scheme for the payment of Gratuity to employees engaged in factories, mines, oil fields plantations, ports, railway companies, shops or other establishments and for matter related thereof.

The objects of the Payment of Gratuity Act, 1972 are mentioned below:

(i) To provide for a Scheme for the payment of Gratuity to employees.

(ii) To provide for matters connected with or incidental to the Scheme for payment of Gratuity.

(iii) To provide retiring benefits to employees who have rendered continuous services to his employer and thereby contributed to his prosperity.

(iv) To define the principles of payment of gratuity according to the prescribed formula.

(v) To provide machinery for the employment of liability for payment of gratuity.

7.1.3 Applicability and Coverage of this Act

Application and Coverage of the Act to an employed person depends on two factors.

Firstly, he should be employed in an establishment to which the Act applies.

Secondly, he should be an "employee" as defined in Section 2(e).

The Act is applicable and covers the following aspects:

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.

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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.

Notes In exercise of the powers conferred by clause (c), the Central Government has specified Motor transport undertakings, Clubs, Chambers of Commerce and Industry, Inland Water Transport establishments, Solicitors offices, Local bodies, Educational Institutions, Societies, Trusts and Circus industry, in which 10 or more persons are employed or were employed on any day of the preceding 12 months, as classes of establishments to which the Act shall apply.

Caselet

Karnataka State Road Transport Corporation, Bangalore Rural Division, Bangalore vs. The Deputy Labour Commissioner and The Appellate Authority,

The 3rd Respondent an employee of the Petitioner- Road Transport Corporation on attaining the age of superannuation on 30.4.2005, was entitled to gratuity by computing the quantum either in terms of the KSRTC Servants Gratuity Regulations, for short Regulations or the Payment of Gratuity Act, 1972, for short Act, whichever is beneficial. Petitioner reckoned 27 years and 6 months as the period of continuous service, by excluding 7 years, 3 months and 22 days from out of 34 years, 9 months and 29 days, alleging absence, leave without salary, suspension and others and accordingly, computed ₹ 1,70,500/- as gratuity, in terms of the Regulations, from out of which was deducted ₹ 54,350/- on the premise that the 3rd Respondent was liable to pay towards discharge of a loan extended by the State Bank of Mysore, HSR Layout, while in service. The 3rd Respondent aggrieved by the exclusion of the period of service and the deduction towards discharge of loan, filed an application under Rule 10 of the Payment of Gratuity (Central) Rules, 1972, before the 2nd Respondent- Controlling Authority. In the appeal, the Petitioner contended that 7 years, 3 months and 22 days being the break in service and not 'continuous service' within the definition of the said term under Section 2(A) of the Act deserves exclusion for computation of gratuity, since the 3rd Respondent was absent, suffered orders of leave without salary, suspension and others while in service. It is next contended that the 3rd Respondent having not discharged the debt due to State Bank of Mysore, hence the deduction of ₹ 54,350/- The Court observed that the requirement of Section 2(A) of the Act in order to establish interrupted service so as to treat it as break in service is the orders passed in that regard treating the period of absence as break in service, in accordance with the standing orders, rules or regulations governing the employees of the establishment. In the instant case, there is not a title of evidence to establish orders passed by the Authorities treating as break-in-service the period of suspension, leave without salary, absence from service and others, since mere absence, per se, is not break-in service, breach falling within the definition of the term 'continuity of service' under the Act. In that view of the

Contd....

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matter, no exception can be taken to the reasons, findings and conclusions arrived by the Controlling Authority and Appellate Authority under the Act, declining to accept the plea to treat that period as break in service, and deny a computation of gratuity by including the said period as 'continuous service'. The Court further held that the last contention over justification to deduct and discharge the loan with the State Bank of Mysore, HSR Layout, is frivolous. Sub-sections (1) and (6) of Section 4 of the Act when read, in conjunction, the only irresistible conclusion is deduction by way of forfeiture to the extent of damage or loss caused by the employee during his service, from the gratuity of that employee, whose service is terminated for any act, willful omission or negligence causing any damage or loss or destruction of property belonging to the employer; and the gratuity payable to an employee may be wholly or partially forfeited; if the service of such employee is terminated for his riotous disorderly conduct or any other act of violence on his part; or if the service of such employee is 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. The Court held that in the instant case the service of the 3rd Respondent was not terminated for any of the aforesaid reasons, so as to withhold gratuity on the wholly or partially so as to fall within the sub-section (6) of Section 4 of the Act. That being the factual position, deduction of ₹ 54,350/- allegedly towards discharge of the loan extended to the 3rd Respondent by the State Bank of Mysore. HSR Layout cannot but be held to be an illegal. The Court held that the right to gratuity is a statutory right and cannot be withheld under any circumstances, but for the exception enumerated in sub-section (6) of Section 4 of the Act. It is elsewhere said that "Gratuity" as the term itself suggests is a gratuitous payment extended to an employee on retirement or discharge, in addition to other retiral benefits payable to the employee. The Court held that indisputably the Petitioner-Corporation illegally deducted the amount from out of the gratuity payable to the 3rd Respondent, which did not have the permission under the Act much less the Regulation, since no provision under the Regulation is shown to invest such a power in the Petitioner.

Source: http://www.chadha-co.com/pdfs/C&Co-Labour-Law-Update-April-May-2012.pdf

Self Assessment

State whether the following statements are true or false:

1. Gratuity as an additional retirement benefit has been secured by labour in numerous instances, either by agreement or by awards.
2. The Government of India enacted legislation on gratuity.
3. If the amount of gratuity payable under this Act is paid by the employer, within the prescribed time, to the person entitled thereto.

7.2 Definitions

In this Act, unless the context otherwise requires, -

1. Completed Year of Service

The term 'completed year of service' means continuous service for one year. 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 imposing a

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punishment or penalty or treating the absence as break in service has been passed in accordance with the standing orders, rules or regulation governing the employees of the establishment), lay-off, strike or a lockout or cessation of work not due to any fault of the employees, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

(i) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of the above clause for any period of one year or six months, he shall be deemed to be in continuous service under the employer if he has actually worked for 190 days during the preceding 12 months in an establishment which works less than 6 days a week and 240 days in any other case.

(ii) Further, for determining the continuous period of six months, an employee should have completed 95 days in an establishment which works for not less than 6 days in a week and 120 days in any other case.

2. Employee

An employee is a person (other than apprentice) employed on wages (no wage ceiling) in any establishment, factory, mine, oilfield, plantation, railway company or shop, to do any: skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, where the terms of such employment are express or implied, and includes any such person, who is employed in a managerial or administrative capacity, but does not include any person who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1956.

A female employee can exclude her husband from her family by a notice in writing to the controlling authority. In such event, her husband and his dependent parents will not be deemed to be included in her family unless the said notice is subsequently withdrawn.

Notes The fancily consists of:

(i) In the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependant-parents and the widow and children of his predeceased son, if any;

(ii) In the case of female employee, herself, her husband, her children, whether married or unmarried, her dependant parents, and the dependant parents of her husband, and the widow and children of her predeceased son, if any.

3. Wages

The term 'wages' under the Act 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, overtime wages and any other allowance.

4. Retirement

The term "retirement" has been defined under the Act as the termination of the service of an employee otherwise than on superannuation. Superannuation means the attainment of such age

Notes

by the employee is fixed in the contract or conditions of service as the age on the attainment of which he has to leave the employment where there is no such provision, then attainment of the age of 58 years by the employee.

5. Continuous Service

According to Section 2A, for the purposes of this Act:

(1) An employee shall be said to be in continuous service for a period if he has, for that period been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), layoff, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

(2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer:

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:

(i) one hundred and ninety days in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) two hundred and forty days in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than:

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

(ii) one hundred and twenty days in any other case;

Explanation: For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which:

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

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

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

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

(3) Where an employee, employed in a seasonal establishment, is not in continues service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent, of the number of days on which the establishment was in operation during such period.

Service is not continuous, in case of legal termination of service and subsequent reemployment.

Notes

6. Gratuity

"Gratuity" is an old age retiral social security benefit. It is a lump sum payment made by an employer to an employee in consideration of his past service when the employment is terminated. In the case of employment coming to an end due to retirement or superannuation, it enables the affected employee to meet the new situation which quite often means a reduction in earnings or even total stoppage of earnings. In the case of death of an employee, it provides much needed financial assistance to the surviving members of the family. Gratuity schemes, therefore, 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.

Self Assessment

Fill in the blanks:

4. The term 'completed year of service' means continuous service for ..... year.
5. A ..... employee can exclude her husband from her family by a notice in writing to the controlling authority.
6. The term ..... has been defined under the Act as the termination of the service of an employee otherwise than on superannuation.

7.3 Rights Obligations and Benefit of the Employer

Following are the rights and obligations of the employer:

1. Employers Duty to Determine and Pay Gratuity

Section 7(2) lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.

Section 7(3) of the Act says that the employer shall arrange to pay the amount of gratuity within thirty days from the date of its becoming payable to the person to whom it is payable.

Section 7(3A): If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10 per cent per annum:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

2. Dispute as to the Amount of Gratuity or Admissibility of the Claim

If the claim for gratuity is not found admissible, the employer shall issue a notice in the prescribed form to the applicant employee, nominee or legal heir, as the case may be, specifying reasons why the claim for gratuity is not considered admissible. A copy of the notice shall be endorsed to the Controlling Authority.

If the disputes relates as to the amount of gratuity payable, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him. According to

Notes

Section 7(4) (e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made:

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

Self Assessment

State whether the following statements are true or false:

7. As soon as gratuity becomes payable the employer shall, determine the amount of gratuity and give notice in writing, specifying the amount of gratuity so determined.
8. If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified, the employer shall pay simple interest at the rate of 12 per cent per annum.
9. A copy of the notice shall be endorsed to the Controlling Authority.

7.4 Considerations of the Act

Payment of Gratuity Act was enacted with an objective to provide a Scheme for payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and matters connected therewith or incidental thereto. It is welfare legislation and intended to recognise and reward those workmen who have rendered long and faithful service to the employer.

- 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:- (i) on his superannuation; or (ii) on his retirement or resignation; or (iii) 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.
- 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 for every completed year of service or part thereof in excess of six months.

  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. While, 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.
- The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees.
- 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 reduced wages.
- 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

Notes

to the employer, shall be forfeited to the extent of the damage or loss so caused. 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 of 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.

- If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.
- Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment or with fine or with both. Also, if an employer contravenes or makes default in complying with any of the provisions of this Act or any rule or order made thereunder, shall be punishable with imprisonment or with fine or with both.

Following are the benefit of this Act:

1. The quantum of gratuity is to be computed at the rate of 15 days wages (7 days wages in case of seasonal establishments) based on rate of wages last drawn by the employee concerned for every completed year of service or a part thereof exceeding 6 months.

2. The total amount of gratuity payable shall not exceed the prescribed limit.

3. In case where higher benefit of gratuity is available under any gratuity scheme of the Co., the employee will be entitled to higher benefit

Self Assessment

Fill in the blanks:

10. The quantum of gratuity is to be computed at the rate of .....day's wages.

11. The total amount of ..... payable shall not exceed the prescribed limit.

7.5 Payment of Gratuity

Section 3 authorises the appropriate government to appoint any officer as a controlling authority for the administration of the Act. In Maharashtra, the labour courts in different localities are notified as controlling authorities and the President, Industrial Court; is an appellate authority under the Act.

There are two conditions that must be satisfied in order to be eligible to get the gratuity benefit

(i) The organization has a minimum of 10 people on payroll, i.e., at least 10 employees receiving salaries from the organization. Note that people on contract are not considered.

(ii) You have completed at least 5 years with the organization. If an employee dies during the tenure of his employment, the 5 year rule is relaxed. So, even is such employee's period of service is as little as 1 year, he/she are eligible to receive gratuity if the first condition is met.

Notes

Caution For every completed year of service or apart, thereof its excess of six months, the employer has to pay gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the concerned employee. In the case of Piece-rated employee, daily wages are computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment. For this purpose, the wages paid for any overtime work will not be taken into account. In the case of an employee employed in a seasonal establishment, and who is not so employed throughout the year, the employer shall pay gratuity at the rate of 7 days wages for each season. The amount of gratuity payable to an employee is not to exceed rupees three lakhs and fifty thousand.

The right of employees to receive better terms of gratuity under any award or agreement or contract with the employer is not taken away by this Act.

7.5.1 Forfeiture

If the services of an employee have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, his gratuity can be forfeited to the extent of the damage or loss so caused to the employer. The gratuity payable to an employee can be wholly forfeited, if the services of such employee have been terminated for his riotous or disorderly conduct - or any other act of violence or an offence involving moral turpitude committed by him in the course of his employment.

7.5.2 Exemption

The Act provides for the grant of exemption from the operation of the Act to any person or class of persons if they are in receipt of gratuity or pensioner benefits not less favourable than the benefits conferred under the Act.

Did u know? Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or Criminal Court. This relief is aimed at providing payment of gratuity to the person or persons entitled there to without being affected by any order of attachment by a decree of any Court.

7.5.3 Nomination

An employee who has completed one year of service has to name his/her nominee in the prescribed form. An employee in his nomination can distribute the amount of gratuity amongst more than one nominee. If an employee has a family at the time of making the nomination, it has to be made in favour of one or more members of the family. If nomination is made in favour of a person who is not a member of his family, the same is void. However, if the employee has no family at the time of making a nomination, he can make the nomination in favour of any person. But is such employee acquires a family subsequently, then such nomination becomes invalid forthwith, and thereafter the employee has to make a fresh nomination in favour of one or more members of his family: Nomination once made can be modified after giving due notice to the employer, If a nominee predeceases the employee, a fresh nomination is required to be made:

Notes

Notes A person who is entitled to gratuity has to apply himself/herself or, through an authorised person to the employer for gratuity within the prescribed time. Even if the application is made after the prescribed time, the employer has to consider the same. Similarly, the employer has to give notice to the person entitled to gratuity and to the controlling authority immediately after it became payable, specifying the amount of gratuity, and thereafter make arrangements for its payment.

7.5.4 Settlement of Claims

The employee and the employer or any other person raising the dispute regarding the amount of gratuity may make an application to the controlling authority to decide the dispute. No appeal by and employer shall be admitted unless the employer produces a certificate of the controlling authority to the effect that he has deposited with the controlling authority an amount equal to the amount of gratuity required to be deposited or deposits with the appellate authority such amount.

Did u know? Section 8 stipulates that an aggrieved employee can file an application to the controlling authority for recovery of the amount of gratuity.

The controlling, authority will issue a certificate to the collector for recovery of that amount. The collector shall recover the amount, together with compound interest, at the rate of nine per cent per annum from the date of expiry of the prescribed time as arrears of land revenue, and pay the same to the person entitled to it.

7.5.5 Penalties

Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both.

An employer who contravenes, or makes default in complying with, any of the provisions of this Act or any rule or order made there under shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, or with both:

Provided that where the offence relates to non-payment of any gratuity payable under this Act, the employer shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years unless the court trying the offence, for reasons to be recorded by it in writing, is of opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice.

Self Assessment

Fill in the blanks:

12. In case where higher benefit of gratuity is available under any gratuity scheme of the Co., the employee will be entitled to ..... benefit.

Notes

13. ..... authorises the appropriate government to appoint any officer as a controlling authority for the administration of the Act.

7.6 Determination and Recovery of Gratuity

Procedure of determination of gratuity is laid down under section 7 of the Act, which are mentioned below:

(i) ***Filing of Application:*** According to Section 7(1) a person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to this employer within such time and in such form, as may be prescribed, for payment of such gratuity.

(ii) ***Determination of Gratuity:*** As soon as under 7(2) gratuity becomes payable the employer shall whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determines.

(iii) ***Payment within thirty Days:*** According to Section 7(3), the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(iv) ***Interest on gratuity:*** According to Section 7 (3-A), if the amount of gratuity payable under the sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity become payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the central government from time to time for repayment of long-term deposits, as that Govt. may by notification specify. The interest will not be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on the ground.

Payment of Gratuity

It is a statutory duty of all employers to pay gratuity to their employees. Regarding the Payment of Gratuity, legal payment of Gratuity, legal provisions are laid down under Section 4 and 7 of the Act as follows:

(i) According to Section 4(1), the gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service of not out less five years

(ii) According to Section 4(1), it is further mentioned that in the case of death of an 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 nominee or heir 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.

(iii) According to the section 7(1) any person who is eligible for payment of gratuity under this Act shall send a written application to the employer for the payment of such gratuity.

(iv) Under the Section 7(2) (3) (3A), it is laid down that it is the duty of employer to pay gratuity to an eligible employee.

Notes

Notes As gratuity is paid for meritorious service of the employee throughout the employment rendered by him with the employers, so if he is guilty of misconduct or wilful omission or negligence, causing damage to the property of the employer, under clause (a) of Section 4 he cannot be deprived altogether of the benefit of gratuity under the Act The proper remedy is such that he should be paid his dues of gratuity of gratuity after deducting the amount of loss caused to the employer by his conduct.

7.6.1 When is Gratuity Payable?

According to Section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease.

Notes The completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

Further, the period of continuous service is to be reckoned from the date of employment and not from the date of commencement of this Act (CLA-1996-III-13 Mad.). Mere absence from duty without leave can not be said to result in breach of continuity of service for the purpose of this Act. [*Kothari Industrial Corporation* v. *Appellate Authority,* 1998 Lab IC, 1149 (AP)]

7.6.2 To Whom is Gratuity Payable?

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

7.6.3 Recovery

Section 8 provides that if the gratuity payable under the Act is not paid by the employer within the prescribed time, the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same together with the compound interest thereon at such rate as the Central Government may be notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act.

Notes

Notes

The Gratuity limit has been raised from 3.5 lakhs to 10 lakhs

There has been amendment in the Payment of Gratuity Act, 1972, following proposal of Labor and Employment Ministry, demands from trade unions and others to remove the ceiling or increase the maximum payable amount, which was fixed in 1996. It shall come into force on 24th May 2010 as per the Notification in the Official Gazette.

Maximum Limit: The Gratuity limit as per Section 4(3) has been raised from 3.5 lakhs to 10 lakhs. This will give advantage to both private and public sector employees. According to this new amendment, the maximum gratuity exemption as per IT Act also increases to ₹ 10,00,000.

Determination of Gratuity Amount: 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.

The Gratuity calculation is done as per the last average remuneration drawn and time in years served by an employee.

The amount of gratuity payable to an employee shall not exceed ₹ 10,00,000 (increased from ₹ 3,50,000).

In order to compute the gratuity payable in case of employees employed in seasonal establishments, daily wages, or piece rated employees. Computation will be as per the provision of the Act.

It can be formulated as follows: Basic + DA (Wages Last drawn) × 15 days × 126 number of years of continuous service (six months or less to be ignored and more than six months to be counted as full year)

Task E was an employee of Tea Estate Ltd. The whole of the undertaking of Tea Estate Ltd. was taken over by a new company - Asia Tea Estate Ltd. The services of E remained continuous in new company. After serving for one year E met with an accident and became permanently disabled. E applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that E has served only for a year in the company. Examine the validity of the refusal of the directors in the light of the provisions of the Payment of Gratuity Act, 1972.

Self Assessment

State whether the following statements are true or false:

14. Section 9 stipulates that an aggrieved employee can file an application to the controlling authority for recovery of the amount of gratuity.

15. The employee and the employer or any other person raising the dispute regarding the amount of gratuity may make an application to the controlling authority to decide the dispute.

Notes

Case Study

Marc Amaranth

Today is 18th October 2008. Marc Amaranth, aged 38 years, life expectancy 70 years, is semi-literate. His father ran a grocery shop in which Amaranth helped him from his teen age. As Amaranth grew up, he explored various business opportunities with the help of his two young brothers Marc Sumer and Marc Shalem. Today, Amaranth is an established businessman in Mumbai. He is running two Guest Houses and two Restaurants in Mumbai; and operating a fleet of 20 taxies. Additionally, he has three shops which he has rented on profit sharing basis. The details of his family members are:

	Name	Relationship with Amaranth	Age
1.	Sylvester Kedhar	Father	60 Years
2.	Faria	Mother	56 Years
3.	Ameya	Sister	22 Years
4.	Marc Sumer	Brother	29 Years
5.	Marc Shalem	Brother	23 Years
6.	Benzeer	Wife	31 Years
7.	Joyce	Daughter	14 Years
8.	Kylie	Daughter	12 Years
9.	Zayed	Son	8 Years
10.	Nazer	Son	7 Years
11.	Freyas	Daughter	3 Years

His father Sylvester Kedhar takes care of his both the restaurants while his both brothers Sumer and Shalem look after his Guest Houses and Taxi Fleet. Legal ownership of all properties/investments is with Amaranth and his wife. His father and brothers do not have any legal rights in his business and properties. Amaranth's brother Sumer is engaged and his marriage is fixed after 6 months from now. Ameya's marriage is tentatively after one year from Sumer's marriage and Shalem's marriage is tentatively after one year from Ameya's marriage. Hearing from one of his tenants, he has contacted you, a practicing Certified Financial Planner for creating and implementing a Financial Plan for him. He has submitted the following information to you:

Sources of Income

1. Daily Rental Income from his Guest Houses
2. Daily collection from his taxies fleet
3. Daily collection from his restaurants
4. Monthly rent & profit share from his shops
5. Interest from the private money lending business

Expenditures per Month

1. ***Household expenses:*** ₹ 58,000
2. ***Personal expenses:*** ₹ 15,000

Contd....

Notes

3. ***Fuel & maintenance:*** Personal Cars & vehicles: ₹ 15,000
4. ***Fix payment to his father and both brothers:*** ₹ 30,000 **

   **Debited to Amaranth's capital account as his personal withdrawals

5. ***Children's education expenses:*** ₹ 28,000

	Current Assets	Current Market Value
1.	2 Guest Houses	₹ 350 lakh
2.	20 Taxies	₹ 35 lakh
3.	2 Restaurants	₹ 115 lakh
4.	3 Shops	₹ 75 lakh
5.	Residential House	₹ 200 lakh
6.	Private Cars/ Vehicles	₹ 15 lakh
7.	Cash money rotating in his private money lending business	₹ 50 lakh
8.	Misc Savings/Insurance Policies/Investments	₹ 50 lakh

Amaranth's Goals & Aspirations

1. To create an independent income source for his parents
2. To go for Holy Land pilgrimage with his entire family
3. To provide a guaranteed education fund for his children
4. To provide a separate marriage fund for his children
5. To plan for a guaranteed cash flow for his living without any physical work
6. To diversify his business interests
7. To buy a lavish Bungalow in Dubai
8. To get his siblings married in the next three years
9. To purchase 2 separate flats for his both brothers on or before their marriage

Current Economic Scenario

1. ***Risk free interest rate:*** 10%
2. ***Inflation:*** 11%

Historical Mutual Funds schemes' return (5-year period)	Scheme CAGR (% p.a.)
Income schemes	6%
Balanced schemes_1 (70:30 equity-debt)	12%
Balanced schemes_2 (40:60 equity-debt)	8%
Equity Diversified schemes	16%
Fixed Maturity Plans (Annual) #	9%

The track record for Fixed maturity Plans is only for three years.

Contd....

Notes

Questions:

1. As Amaranth is a semi-literate person, he doesn't comprehend a structured communications in written English or written Hindi. He can read only Konkani though he understands Hindi in verbal communication. According to you what would be the most suitable method of recording his consent at all required instances during construction/implementation of his Financial Plan in this situation?
2. Critically analyse the above case.

Source: http://www.fpsb.co.in/Upload/CFPSampleQPaper/Case%20Studies6.pdf

7.7 Summary

- Gratuity is a sort of retiring benefit to the workmen who have rendered long and unblemished service to the employer.
- The main object of this Act is to provide for a scheme for the payment of Gratuity to employees engaged in different prescribed establishments.
- The Act is applicable to every factory, shop or an establishment, in which ten or more persons are employed, or were employed on any day of the proceeding twelve months.
- Different provisions of the Act covers payment of gratuity, reduction and forfeiture of gratuity, recovery of gratuity, compulsory insurance, nomination, inspectors and his power, appropriate Government power.
- Moreover under Section 7(4) (a) dispute regarding gratuity, under section 7 of Procedure of Determination of Gratuity and under Section 4 and 7 of Payment of Gratuity are provided.
- The meaning of gratuity is a sort of retiring benefit to the workmen who have rendered long and unblemished service to the employer.
- The Payment of Gratuity Act, 1972 was passed as Act No: 30 of 1972 and received the assent of the President of India on August 21, 1972. It was enforced with effect from September 16, 1972.
- This Act extends to the whole of India. Of course so far as this act relates to plantation or port, it shall not extend to the State of Jammu and Kashmir.
- A shop or establishment to which the Act has become applicable shall continue to be governed by the Act even if the number of persons employed falls below 10 at any subsequent stage.
- Each employee is required to nominate one or more member of his family, as defined in the Act, who will receive the gratuity in the event of the death of the employee.

7.8 Keywords

Authority: Institutionalized and legal power inherent in a particular job, function, or position that is meant to enable its holder to successfully carry out his or her responsibilities.

Completed Year of Service: The term 'completed year of service' means continuous service for one year.

Employer: A legal entity that controls and directs a servant or worker under an express or implied contract of employment and pays (or is obligated to pay) him or her salary or wages in compensation.

Notes

Establishment: The Establishment is a term used to refer to a visible dominant group or elite holds power or authority that in the nation or organization.

Gratuity: Gratuity is a part of salary that is received by an employee from his/her employer in gratitude for the services offered by the employee in the company.

Profits: The surplus remaining after all costs are deducted from overall revenue, and the basis on Which tax is computed and dividend is paid.

Retirement: The period of a person's Life during which he/she is no longer working, or the commencement of that period.

Superannuation: Superannuation means the attainment of such age by the employee is fixed in the contract or conditions of service as the age on the attainment of which he has to leave the employment where there is no such provision, then attainment of the age of 58 years by the employee.

Wages: A wage is remuneration paid by an employer to an employee. It may be calculated as a fixed task based amount, or at an hourly rate, or based on an easily measured quantity of work done.

7.9 Review Questions

1. What is the object of the Payment of Gratuity Act, 1972?
2. Which are the establishments covered under the Act?
3. Who is an employee under the Act?
4. What is the benefits payable under the Act?
5. Discuss the various provisions relating of the Payment of Gratuity Act.
6. Mr. X was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. X applied to the appropriate authority for the recovery of the amount of gratuity. Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.
7. Write short note on Forfeiture.
8. What is settlement of claims?
9. Write brief note on penalties in Payment of Gratuity Act.
10. "An employee who has completed one year of service has to name his/her nominee in the prescribed form." Elucidate.

Answers: Self Assessment

1.	True	2.	True
3.	False	4.	One
5.	Female	6.	Retirement
7.	False	8.	False

Notes

9. True
10. 15
11. Gratuity
12. Higher
13. Section 3
14. False
15. True

7.10 Further Readings

Books

Davidov, Guy & Langille, Brian (2011), *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Online links

http://www.citehr.com/20170-payment-gratuity-act.html

http://business.gov.in/legal_aspects/gratuity.php

http://on-lyne.info/legal8.htm

http://taxguru.in/income-tax/all-about-payment-of-payment-of-gratuity-act-1972-in-brief-including-the-recent-amendments.html

http://220.226.161.86/18723comp_suggans_pcc_lec_ch5.pdf

Notes

Unit 8: Payment of Wages Act, 1936

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Objectives

After studying this unit, you should be able to:

- Discuss the definitions of industrial establishment, wages, etc.
- Get an overview of basic provisions and responsibility of the Act
- Identify the method for computation and fixing of wages
- Discuss the rules in payment of wages Act
- Explain the deduction from wages

Notes

Introduction

The Payment of Wages Act, 1936 is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them. It applies to the persons employed in a factory, industrial or other establishment or in a railway, whether directly or indirectly, through a sub-contractor. Further, the Act is applicable to employees drawing wages up to ₹ 1600/- a month. The Central Government is responsible for enforcement of the Act in railways, mines, oilfields and air transport services, while the State Governments are responsible for it in factories and other industrial establishments. The purpose of this unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding the payment of wages to workers.

The Payment of Wages Act, 1936 regulates the payment of wages to certain classes of persons employed in the industry. The scope of this act is limited to the persons drawing the earned wages for the month, which does not exceed Rupees one thousand six hundred. The department is enforcing this legislation to the persons employed at the registered factories.

The main object of the Act is to eliminate all malpractices by laying down the time and mode of payment of wages as well as securing that the workers are paid their wages at regular intervals, without any unauthorised deductions.

8.1 Definitions

Prior to 1936, there was no law regarding the regulation of payment to workmen. It was as early as 1925 that a Private Bill called the "Weekly Payment Bill" was for the first time introduced in the Legislative Assembly. The Bill was, however withdrawn on an assurance from the Government that the matter was under active consideration of the Government at that time. This was an attempt to remedy some of the evils like delay in payment of wages, non-payment of wages, deductions made from wages on account of fines imposed by the employer etc. For the purpose of this Act:

(a) industrial establishment means any tramway or motor omnibus service; air transport service; dock, wharf or jetty, inland vessel mechanically propelled; mine, quarry or oilfield; plantation; workshop or other establishment in which articles are produced, adapted or manufactured with a view to there use, transport or sale; establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;

(b) wages means all remuneration's (whether by way of salary, allowance or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and include:

(i) any remuneration payable under any award or settlement between the parties or order of a Court;

(ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(iii) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

Notes

(iv) any sum by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(v) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force; but does not include:

- any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
- the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- any traveling allowance or the value of any traveling concession;
- any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- any gratuity payable on the determination of employment in cases other than those specified in sub-clause (d).

Caselet

Bank of India v. T.S. Kelawala and Ors.

In the case of *Bank of India v. T.S. Kelawala and Ors.*, the question which came for consideration was that whether an employer has a right to deduct wages unilaterally and without holding an enquiry for the period the employees go on strike or resort to go-slow. The appellant in this case is a nationalized bank. The demands for wage-revision made by the employees of all the banks were pending at the relevant time, and in support of the said demands the All India Bank Employees' Association had given a call for a countrywide strike.

The appellant-Bank issued a circular to all its managers and agents to deduct wages of the employees who would participate in the strike for the days they go on strike. The Bank issued an Administrative Circular warning the employee that they would be committing a breach of their contract of service if they participated in the strike and that they would not be entitled to draw the salary for the full day if they did so, and consequently, they need not report for work for the rest of the working hours on that day. The court held that, Section 7 (2) read with Section 9 of the Payment of Wages Act provides the circumstances under which and the extent to which deduction can be made. It is only when the employer has right to make deduction, resort should be had to the act to ascertain the extent to which the deduction can be made. No deduction exceeding the limit provided by the act is permissible even if the contract so provides. There cannot be contract contrary to or in terms wider than the input of sections 7 and 9 of the act. Therefore wage deduction cannot be made under section 7(2) of the payment of wages act if there is no such power to the employer under the terms of contract.

Source: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1593043

Notes

Self Assessment

State whether the following statements are true or false:

1. The State Government is responsible for enforcement of the Act in railways and air transport services, while the Central Governments are responsible for it in factories.
2. Prior to 1936, there was no law regarding the regulation of payment to workmen.

8.2 Basic Provisions and Responsibility of this Act

The basic provisions of the Act are as follows:-

1. The person responsible for payment of wages shall fix the wage period upto which wage payment is to be made. No wage-period shall exceed one month.

2. All wages shall be paid in current legal tender, that is, in current coin or currency notes or both. However, the employer may, after obtaining written authorisation of workers, pay wages either by cheque or by crediting the wages in their bank accounts.

3. All payment of wages shall be made on a working day. In railways, factories or industrial establishments employing less than 1000 persons, wages must be paid before the expiry of the seventh day after the last date of the wage period. In all other cases, wages must be paid before the expiry of the tenth day after the last day of the wage period. However, the wages of a worker whose services have been terminated shall be paid on the next day after such termination.

4. Although the wages of an employed person shall be paid to him without deductions of any kind, the Act allows deductions from the wages of an employee on the account of the following:- (i) fines; (ii) absence from duty; (iii) damage to or loss of goods expressly entrusted to the employee; (iv) housing accommodation and amenities provided by the employer; (v) recovery of advances or adjustment of over-payments of wages; (vi) recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof; (vii) subscriptions to and for repayment of advances from any provident fund; (viii) income-tax; (ix) payments to cooperative societies approved by the State Government or to a scheme of insurance maintained by the Indian Post Office; (x) deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities.

Example: One of the most famous payments of wages acts is the Payment of Wages Act of 1936 in India. The law was passed by the Bombay High Court while India was still under British colonial control. The act notes that unfair treatment of workers is common and takes many forms. It specifically prohibits employers from making any unauthorized withholdings from workers' wages. The Payment of Wages Act of 1936 only applies to workers with incomes below a certain threshold. It also only applies to industrial and railroad workers, who were among the most imperiled groups in India in the 1930s.

8.2.1 Responsibility of this Act

Section 3 makes every employer responsible for the payment to persons employed by him of all wages required to be paid under the Act. Quite apart from this the following persons shall also be responsible for the payment of wages for persons employed otherwise by a contractor:

- In a factory, a person named as manager of a factory under the Factories Act, 1948.

Notes

- In industrial or other establishment a person responsible to the employer for the supervision and control of the industrial or other establishment and
- Upon railways (otherwise than in factories), if the employer is the railway administration and the person nominated in this behalf.

Notes This section lays down that when a manager is appointed in a factory, industrial establishment or railway, he is responsible for payment of wages and section 19 enacts when the authority under section 15 is unable to recover from such a manager or person responsible under section 3 any amount directed to be paid, then such amount shall be recovered from the employer. Bombay High Court held that under section 15 proceedings are to be instituted against only one person whether he is a manager or the employer but not against both. If the owner of the factory appoints a manager he alone should be made party to an application under section 15 (3) for a claim for delayed wages. The liability of the owner arises only when it is subsequently found that the whole or part of the amount cannot be recovered from the manager. (AIR 1940, Bom. 87). If the persons are employed by a contractor, the contractor is responsible for the payment of wages.

Self Assessment

Fill in the blanks:

3. All wages shall be paid in current legal tender, that is, in current ..... or both.
4. All payment of wages shall be made on a .....

8.3 Application of the Act

The Payment of Wages Act, 1936 extends to the whole of India. It came into operation of 28th March, 1937. It applies in the first instance to the payment of wages to:

- persons employed in any factory;
- persons employed (otherwise than in factory) upon any railway by a railway administration, either directly or, through a sub-contractor, by a person fulfilling a contract with railways administration; and
- persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (iii) of section.

The Act empowers the State Government to extend the application of the whole or a part of the Act to any class of persons employed in the establishment or class of establishments specified by the Central/State Government under Section 2(h)(ii).

The Act is applicable to the persons employed in any factory, railway administration, industrial or other establishments, i.e. tramway service, motor and air transport service, plantation, workshop of other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale, establishments in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with irrigation or supply of water or relating to generation, transmission and distribution of electricity.

Notes

It is applicable to any factory, any railway establishment and any industrial or other establishment like tramway service, motor transport service, air, oilfield, plantation, workshop, or other establishment producing, adapting or manufacturing any article, establishments engaged in construction, development and maintenance of buildings, roads, bridges or canals, navigation, irrigation or water supply, transmission, generation and distribution of electricity/power and any other establishment notified by the Central or a State Government. The Act is not applicable to persons whose wages are 1600 or more per month.

It applies in the first instance to the payment of wages to persons employed in any factory, to persons the employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub- contractor, by a person fulfilling a contract with a railway administration and to persons employed in an industrial or other establishment specified in sub- clauses (a) to (g) of clause (ii) of section 2.

The State Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of [this Act] or any of them to the payment of wages to any class of persons employed in [any establishment or class of establishments specified by the Central Government or a State Government under sub- clause (h) of clause (ii) of section 2] provided that in relation to any such establishment owned by the Central Government, no such notification shall be issued except with the concurrence of that Government.

Did u know? Before doing so the State Government is required to:

- Issue three months' notice of its intention to do so;
- Issue a notification of the extension in the official Gazette. But in relation to establishment owned by the Central Government, no such notification shall be issued with the concurrence of that Government.

Task Find out the salary static and procedure and competent authority which deal with employment matters in the Payment Wages Act, 1938.

Self Assessment

Fill in the blanks:

5. The Payment of Wages Act, 1936 came into operation of .....
6. For the purpose of calculating salary, a ..... refers to any one of the months in the calendar year.

8.4 Method for Computation and Fixing of Wages

There are two methods for computation and fixing of wages:

8.4.1 Monthly Wages

For the purpose of calculating salary, a 'month' or 'complete month' refers to any one of the months in the calendar year.

Notes

An incomplete month of work is one where an employee:

- starts work after the first day of the month;
- leaves employment before the last day of the month;
- takes no-pay leave of one day or more during the month; or
- is on reservist training during the month.

Salary payable to a monthly-rated employee for an incomplete month of work is calculated using the formula below:

$$\text{Salary payable for incomplete month of work} = \frac{\text{Monthly gross rate of pay 1}}{\text{Total number of working days in that month 2}} \times \text{Total number of days the employee actually worked in that month 3}$$

Refers to the total amount of money including allowances payable to an employee for working for one month, excluding:

a. Additional payments by way of:

   (i) overtime payments;

   (ii) bonus payments; or

   (iii) annual wage supplements;

b. Any sum paid to the employee for reimbursement of special expenses incurred by him/her in the course of employment;

c. Productivity incentive payments; and

d. Travelling, food or housing allowances.

Excludes rest days, non-working days but includes public holidays. For employees, with a fixed rest day on Sunday and/or non-working day on Saturday, the total number of working days per month.

If the number of working hours in any working day is five hours or less, it shall be regarded as a half-day. If it is more than five hours, it shall be regarded as one working day.

8.4.2 Daily Basis

Daily basis of wages can be further categorized into Basic Rate of Pay and Gross Rate of Pay.

Basic Rate of Pay

Did u know? There are two ways to calculate daily wages: the basic rate of pay, and the gross rate of pay.

Basic rate of pay is used to calculate pay for work on a rest day or public holiday.

For a monthly-rated employee, the basic rate of pay for one day is calculated as follows:

$$\frac{12 \times \text{monthly basic rate of pay}}{52 \times \text{average number of days an employee is required to work in a week}}$$

Notes

For a piece-rated employee, the basic rate of pay for one day is calculated as follows:

$$\frac{\text{Total pay earned (without allowance) during the 14 calendar days immediately before a rest day/public holiday/outpatient sick leave}}{\text{Number of days worked during the same period of 14 calendar days}}$$

The basic rate of pay includes wage adjustments and increments that an employee is entitled to under his/her contract of service, but it excludes the following:

a. Additional payments by way of:

   (i) overtime payments;

   (ii) bonus payments; or

   (iii) annual Wage Supplements;

b. Any sum paid to the employee for reimbursement of special expenses incurred by him/her in the course of employment;

c. Productivity incentive payments; and

d. Any allowance however described.

Gross Rate of Pay

The Gross rate of pay is used to calculate:

a. salary in lieu of notice of termination of service;

b. salary deduction for unauthorised absence from work;

c. paid public holidays; and

d. approved paid leave including:

   (i) annual leave;

   (ii) hospitalisation leave; and

   (iii) maternity leave.

The Gross rate of pay should include allowances that an employee is entitled to under his/her contract of service, but it excludes the following:

a. Additional payments by way of:

   (i) overtime payments;

   (ii) bonus payments; or

   (iii) annual Wage Supplements;

b. Any sum paid to the employee for reimbursement of special expenses incurred by him/her in the course of employment;

c. Productivity incentive payments; and

d. Traveling, food or housing allowances.

Notes

Self Assessment

Fill in the blanks:

7. If the number of working hours in any working day is ..... hours or less, it shall be regarded as a half-day.

8. Daily basis of wages can be further categorized into ..... and .....

8.5 Rules in Payment of Wages Act

Following are the rules applicable on Payment of Wages Act area as follows:

8.5.1 Wage-periods (Sec. 4)

Every person responsible for the payment of wages must fix wage-periods in respect of which wages shall be payable, and see that no wage-period exceeds one month in any case. The penalty for contravention of this provision is fine extending to ₹ 200.

8.5.2 Time of Payment of Wages (Secs. 5 and 6)

In regard to the time of payment of wages the following rules must be observed:

Section 5 of the Act lays down that the wages of every person employed upon or in:

(a) Any railway, factory or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.

(b) Any other railway, factory or industrial or other establishment, shall be paid before the expiry of the tenth day after the last day of the wage-period in respect of which the wages are payable.

(c) In the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on the completion of a final tonnage amount of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the seventh day from the day of such completion.

(d) Where the employment of any person is terminated by or on behalf of the employer the wages earned by him shall be paid before expiry of the second working day from the date on which his employment is terminated.

Notes This section relates to time of payment of wages which are to be paid within seven days after the last day of the wage period except in establishments employing 1000 or more persons which are permitted to pay within ten days. All payments of wages are to be made on a working day. The penalty for a breach of the provisions of this section is provided under section 20(1) of the Act namely, a fine upto five hundred rupees.

8.5.3 Exemption from Compliance with the Time Limit for Payment of Wages

The Act empowers the state Govt. to exempt , the person responsible for the payment of wages to persons employed upon in railways (otherwise than in factory), or to persons employed as

Notes

daily-rated workers in the control, public works Department or the state from the operation of this section. However, no such order shall be made without consultation of the central Government. in case of daily-rated workers.

Self Assessment

State whether the following statements are true or false:

9. The fine shall be imposed on any employed person only for acts and omissions which has received approval of the State Government.
10. No fine shall be imposed on any employed person who is under the age of eighteen years.

8.6 Deduction from Wages

The following shall be deemed to be deduction from wages:

1. Every payment made by the employed person to the employer or his agent.
2. Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed, of any of the following penalties:
   (a) The withholding of increment or promotion (including the shortage of increment at an efficiency bar);
   (b) The reduction to a lower post or time scale or to a lower stage in a time scale; or
   (c) Suspension;

8.6.1 Deduction which may be made from Wages

Deduction authorized under the Act is enumerated in section 7(2). Any other deduction is unauthorized. Further, the authorized deduction can be made only in accordance with the provisions of the Act.

(i) Fines

(ii) Deduction for absence from duty;

(iii) Deduction for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account where such damage or loss is directly attributable to his neglect or default;

(iv) Deduction for house accommodation supplied by the employer of by Govt. of any housing board set up under any law for the time being in force (whether the Govt. or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the State Govt. by notification in the Official Gazette.

(v) Deduction for such amenities and services supplied by the employer as the State Government or any officer specified by it in this behalf may, by general or special order, authorize.

8.6.2 Fines

The following rules apply to deductions by way of fines:

1. The fine shall be imposed on any employed person only for acts and omissions which has received approval of the State Government or of the prescribed authority, and has been specified by notice under Sub-section (2).

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2. A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

3. The fine shall not be imposed on any employed person unless he has been given an opportunity of showing cause against the fine.

4. The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three percent of the wages payable to him in respect of that wage-period.

5. No fine shall be imposed on any employed person who is under the age of fifteen years.

6. No fine shall be imposed on any employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.

7. Every fine shall be deemed to have been imposed on the day of the Act or omission in respect of which it was imposed.

8. All fines and all realization thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under Section 3 in such from as may be prescribed; and all such realizations shall be applied only to such purposes beneficial the persons employed in the factory or establishment as are approved by the prescribed authority.

Notes Fines can be imposed on an employed person in respect of acts and omissions which are specified with the previous approval of the appropriate Government by notice exhibited in the factory. No fine can be imposed for an act or omission which is not contained in the notice and any such fine would be an unauthorised deduction. Secondly, before a fine can be imposed, an opportunity of showing cause against the fine should be given to the employed person and the procedure prescribed for the imposition of fine must be followed. Thirdly, the total amount of fine in one wage period must not exceed an amount equal to half anna in the rupee of wages payable to him in respect of the wage period. The fine imposed must be recovered in one lump sum. It cannot be recovered in installments nor can it be recovered after sixty days from the day on which the act or omission in question was committed. All fines are to be applied only for such purposes beneficial to the staff as may be approved by the prescribed authority.

All the amounts realized in our organization are credited to a common fund maintained for the staff as a whole and are applied for common welfare of the employees as a whole increasing the Quality work life of the employees.

Example: When the persons employed upon of in any railway, factory or industrial establishment, are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are provided by the prescribed authority.

8.6.3 Deductions for Services Rendered

Deductions for house accommodation and for amenities and services rendered by the employer are permitted, but only when an employed person has accepted the house accommodation, amenity or service as a term of employment or otherwise, and shall not exceed an amount

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equivalent to their value. Furthermore, the deductions in respect of amenities and services can be made subject only to the following conditions:

- The approval of the Chief Inspector of Factories shall be obtained in writing to compulsory or general deductions from waves for any amenities or services provided by the employer.
- The kind and standard of services and amenities provided shall be subject to the approval of the Chief Inspector of Factories.
- The maximum deduction shall not exceed half the wages at my period. Penalty for the contravention of any provisions of this Section is up to ₹ 500.

The house accommodation, for which deductions are now allowed, may be supplied by the employer or by Government or by any housing board set up under law, e.g., under the Subsidised Industrial Housing Scheme (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation.

8.6.4 Deductions for Recovery of Advances (Sec. 12)

Deductions for recovery of advances or for adjustment of over-payments of wages can be made only on the following conditions:

1. An advance of money made before employment must be recovered from the first payment of wages, but advances given for traveling expenses can in no case be recovered.

2. Advances of wages not already earned are subject to rules made by State Governments, which are as follows:

- an advance of wages not already earned shall not, without the previous permission of an Inspector, exceed an amount equivalent to the wages earned by the employed person during the preceding two (Bombay four) calendar months, or if he has not been employed for that period, mice the wages he is likely to earn during the two (Mumbai four) subsequent calendar months;
- the advance may be recovered in installments by deductions from wages spread over not more than twelve (Bombay eighteen) months. No installment shall exceed one-third, or where the wage of any wage-period are not more than twenty rupees, one fourth of the wages for the wage-period in respect of which the deduction is made;
- the amounts of all advances sanctioned and the payment thereof shall be entered in a prescribed register;
- (Bombay only) the rate of interest charged for advances granted shall not exceed 6 per cent per annum. Penalty for contravention is fine up to ₹ 500.

8.6.5 Deductions for Absence from Duty

Deductions may be made under clause (b) of subsection (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work. The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage period, during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by the Provincial Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment)

Notes

and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Notes Deductions for absence from duty. Deductions from wages on account of absence of an employed person should be proportionate to the period of absence from work. If a man is absent for one day out of 8, he can only lose 1/8 of his wages and the employer cannot make a greater deduction because of the inconvenience occasioned to him by such absence (*Arvind Mills Ltd. vs. K. R. Gadgil*, AIR 1941, Bom. 26). Also as per sub-section (2) of this section, if the duration of his wage period is one month, the total number of working days being 25, and the employed person is absent from duty for four days, the maximum deduction allowed is 4/25th of the wages for the month. This is so because the amount of deduction is to be proportionate to the period for which a person is required to work which is 25 days in the present case. This section lays down the maximum amount of deduction. It may be less if the employer so wills.

Caution As an exception to what is said in the above paragraph, the employer is entitled to make deduction upto 8 days of wages where ten or more employed persons acting under concert absent themselves without due notice and without reasonable cause. It may be noted that the legislature has not used the word 'strike' though this proviso relates to strike so called. The reason seems to be that the word 'strike' is used in different senses and has no accepted connotation.

8.6.6 Deductions for Damage of Loss (Sec. 10)

A deduction for damage to or loss or goods expressly entrusted to the employed person for custody, or for loss of money which he is required to account can be made where such loss is directly attributable to his neglect or default. A deduction for damage or loss shall not exceed the amount of damage or loss caused to the employer by his neglect or default. A deduction for damage or loss shall not be made until the employed person has been given an opportunity of showing cause against the deduction. All deductions and realisations in respect of damage or loss shall be recorded in a register to be kept by the person responsible for the payment of wages.

Self Assessment

State whether the following statements are true or false:

11. An advance of money made before employment must be recovered from the first payment of wages, but advances given for travelling expenses can in no case be recovered.
12. A deduction for damage or loss shall not be made until the employed person has been given an opportunity of showing cause against the deduction.

8.7 Penalty for Offences under the Act

The penalties for non-compliance of the Act is prescribed in section 20 of the Payment of Wages Act, 1936.

Notes

Penalties prescribed are from ₹ 1,500-7,500. Repeat offences attract 1 to 6 months imprisonment and fine from ₹ 3,750-22,500. Delayed wage payments attract penalty of ₹ 750 per day of delay.

Penalty for Offences under the Act (Sec. 20)

Any person responsible for contravention of the following provisions of the Act, for the payment of wages to an employed person, shall be punishable with fine extending to not less than ₹ 200 but to a maximum of ₹ 1000:

(a) Failure to maintain such register or record; or

(b) Willful refusal or neglect without lawful cause to furnish such information or return; or

(c) Willfully furnishing or causing to be furnished any information or return which he knows to be false; or

(d) Refusal to answer or willfully giving a false answer to any question necessary for obtaining any information required to be furnished under this Act.

The following offences shall be punishable with a minimum fine of ₹ 200/- but extend to ₹ 1000/- under Sec. 20(4) of the Act.

(a) Willfully obstructing an Inspector in the discharge of his duties under the Act; or

(b) refusal or willfully neglecting to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision or inquiry authorised by or under this Act in relation to any railway, factory or industrial or other establishment or

(c) Willful refusal to produce, on demand of an inspector, any register or other document kept in pursuance of this Act; or

(d) preventing or attempting to prevent or doing anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act.

Section 20(5) lays down that if any person who has been convicted of any offence punishable under this Act, is again guilty of involving contravention of the same provision. He shall be punishable on subsequent conviction with imprisonment for a term which shall not be less than one month, but which may extend to six months with fine, which shall not be less than ₹ 500, but may extend to ₹ 3000. But for the purposes of this sub-section, no cognizance shall be taken of any conviction made than two years.

According to Sec. 20(6); if any person fails or willfully, neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall without prejudice to any other action that may be taken against him, be punishable with additional fine, which may extend to ₹ 100/- for each day for which such failure or neglect continues.

Procedure in Trial of Offences (Sec. 21)

This section provides that before any Court shall take cognizance of a complaint against any person for an offence under this section, the following conditions must be fulfilled;

(i) an application in respect of the facts constituting of offence has been presented under Sec. 15; (ii) the application must have been granted wholly or in part, and (iii) the authority empowered under Sec. 15 or the Appellate Court granting the application must have sanctioned the making of the complaint for such offence.

Notes

Sec. 21 (2) provides furthers that before sanctioning the making of a complaint against any person for an offence, the authority empowered under Sec. 15 or the Appellate Court, as the case may be, shall give an opportunity to such person of showing cause against the granting of such sanction. The sanction shall not be granted if such person satisfied the authority or Court that his default was due to:

(a) *a bona fide* error or *bona fide* dispute as to the amount payable to the employed person; or

(b) the occurrence of an emergency or the existence of exceptional circumstances; or

(c) the failure of the employed person to apply for or accept payment

Sec 21 (3) provides that no Court shall take cognizance of a contravention of any rule made under Sec 26, except on a complaint made by or with the sanction of an Inspector under Act.

Sec 21 (4) provides that in imposing any fine for an offence under Sec. 20(1) the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under Sec. 15.

Bar for Suit (Sec. 22)

This section provides that a suit for the recovery of wages or of any wrongful deduction from wages shall not be entertained by any Court under the following circumstances.

(a) The amount claimed forms the subject of an application under sec. 15 which has been presented by the plaintiff and is pending before the authority appointed under this section or of an appeal under Sec 17; or

(b) The amount claimed had formed the subject of a direction under Sec. 15 in favour of the plaintiff; or

(c) The amount claimed had been adjudged in any proceeding under Sec. 15 not to be owed to the plaintiff; or

(d) The amount claimed could have been recovered by an application under Sec. 15

Protection of Action taken in Good-faith (Sec.22 A)

A suit, prosecution, or the other legal proceeding shall not lie against the Government or any officer of the Government for any thing which is in good-faith done or intended to be done under this Act.

Contracting Out (Sec. 23)

Any contract or agreement whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void insofar as it purports to deprive him of such right. Sec 23 only prevents an employee from contracting away the rights which are given to him by the Act and that it does not prevent him from entering into an agreement advantageous or beneficial- to him. (Case: *F.W. Heilgers Co. v. Nagesh Chandra Chakrawarti*, AIR 1949, FC 142) In a decision of the Court (In *Dinaram Chutiya v. Divisional Manager*, AIR 1958), it was held that the mere deduction of allowance either partial or whole cannot be said to contravene Sec. 23 of the Act. It was further observed in this case that a contract validly entered into between the employer and the employee by whom the contract of service has been modified as regards the amount of wages is not hit by Sec. 23. This Act confers the following subject: (i) to receive wages; (ii) to receive them at the proper time specified in the Act; and (iii) to receive from without deduction.

Notes

The employer and the employees may, by mutual agreement, change the scale of wages, and such agreement does not amount to contracting out within the preview of Sec. 23 of the Act. It was held that Sec 23 of the Payment of Wages Act does not prevent the employee from entering into an agreement advantageous or beneficial to him. Deduction from wages is for the betterment of employees.

Case Study

The Divisional Engineer, G.I.P. Railway v. Mahadeo Raghoo and Anothers

In case of the Divisional Engineer, *G.I.P. Railway v. Mahadeo Raghoo and Anothers*, respondent was a gangman in the employ of the Central Railway Act that time his wages were ₹ 18 per month plus dearness allowance. With effect from the 1st November 1947 the Railway Board under Ministry of Railways of the Government of Indian introduced a scheme of grant of compensatory (city) allowance and house rent allowance at rates specified in their memorandum. This scheme was modified by the Railway Board's letter. As a result of this scheme certain railway employees stationed at specified headquarters were eligible for the allowance aforesaid at certain specified rates. The 1st respondent thus became entitled to the allowance of ₹ 10 per month. Therefore he was offered a rent allowance by the government which he refused. The question came up for consideration that whether deduction could be made regarding the house allowance.

The Court held that, Section 7 of the Act deals with such deductions as may be made from the wages as defined in the Act, of an employee. Sub-section (2) of section 7 categorically specifies the heads under which deductions may lawfully be made from wages. Clause (d) of this sub-section has reference to "deductions for house accommodation supplied by the employer", and section 11 provides that such a deduction shall not be made unless the house accommodation has been accepted by the employee and shall not exceed the amount equivalent to the value of such accommodation. The definition of "wages" in the Act also excludes from its operation the value of house accommodation referred to in sections 7 and 11 as aforesaid. The legislature has used the expression "value of any house accommodation" in the definition of "wages" as denoting something which can be deducted from "wages". The one excludes the other. It is thus clear that the definition of "wages" under the Act cannot include the value of any house accommodation supplied by the employer to the employee; otherwise it would not be a legally permissible deduction from wages. It is equally clear that house rent allowance which may in certain circumstances as aforesaid be included in "wages" is not the same thing as the value of any house accommodation referred to in the Act. That being so, there is no validity in the argument advanced on behalf of the 1st respondent that rule 3(i) aforesaid is inconsistent with the provisions of sections 7 and 11 of the Act. Therefore the appeal allowed.

Question

Critically analyse the above case

Source: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1593043

Notes

Self Assessment

State whether the following statements are true or false:

13. All deductions and realisations in respect of damage or loss shall be recorded in a register to be kept by the person responsible for the payment of wages.
14. Deductions for house accommodation and for amenities and services rendered by the employer are permitted.
15. Every payment made by the employed person to the employer or his agent.

8.8 Summary

- The Act applies to the wages of persons employed in any factory or by a railway administration or by a contractor to a railway administration.
- The Act can be extended by the Provincial Government to any class of persons or establishments after giving three months' notice.
- For definition of 'factory' and railway administration, see notes under Section 2.
- The Act applies to all matters referred to therein except that it does not affect any special law or any specific form of procedure prescribed under any law for the time being in force.
- The employer and employee are always been in conflict for one or the other reasons.
- Wages are one of those issues. And deduction from wages has always been criticized by the employees.
- Though there are various provisions made under the Payment of Wages Act, 1936 where deduction can be made in certain circumstances.
- But such deduction must be permissible deduction so that the employers do not get resentful with such deduction.
- Therefore Section 7 to Section 12 specifically provides for the deduction that can be made from the wages of the employee.
- A deduction for damage to or loss or goods expressly entrusted to the employed person for custody, or for loss of money which he is required to account can be made where such loss is directly attributable to his neglect or default.

8.9 Keywords

Allowance: An allowance is an amount of money set aside for a designated purpose.

Basic rate of pay: Basic rate of pay is used to calculate pay for work on a rest day or public holiday.

Bonus: The word Bonus refers to extra pay due to good performance.

Deduction: An expense subtracted from adjusted gross income when calculating taxable income, such as for state and local taxes paid, charitable gifts, and certain types of interest payments.

Factory: A building or buildings where goods are manufactured or assembled.

Notes

Fines: A fine is money paid usually to superior authority, usually governmental authority, as a punishment for a crime or other offence.

Remuneration: Remuneration is the total compensation that an employee receives in exchange for the services he/she performed for the employer.

Wages: Wages means all remuneration's expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.

8.10 Review Questions

1. Write short note on industrial establishment.
2. What are the basic provisions of the Payment of Wages Act, 1936 Act?
3. Explain the various responsibility of Payment of Wages Act, 1936 Act.
4. Explain two methods for computation and fixing of wages.
5. What are the rules in Payment of Wages Act?
6. Discuss about the exemption from compliance with the time limit for Payment of Wages.
7. What is Fines? Explain the rules apply to deductions by way of fines.
8. What are the deductions for recovery of advances?

Answers: Self Assessment

1.	False	2.	True
3.	Coin or currency notes	4.	Working day
5.	28th March, 1937	6.	month or complete month
7.	five	8.	Basic Rate of Pay; Gross Rate of Pay
9.	True	10.	False
11.	True	12.	True
13.	True	14.	True
15.	True		

8.11 Further Readings

Books

Davidov, Guy & Langille, Brian (2011), *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Notes

Online links

http://business.gov.in/legal_aspects/wages_1938.php

http://www.delhi.gov.in/wps/wcm/connect/doit_labour/Labour/Home/Acts+Implemented/Summary+of+the+Acts+Implemented/The+Payment+Of+Wages+Act,+1936

http://www.scribd.com/doc/3044640/payment-of-wages-act-1936

http://www.management4all.org/2009/11/payment-of-wage-act-1938.html

http://in.docsity.com/en-docs/Labour_Laws_-_Payment_of_Wages_Act__1936_-_Prof_R_N_Bhatt

http://www.mom.gov.sg/employment-practices/employment-rights-conditions/salary/Pages/calculation-salary.aspx#basic

http://www.ma-law.org.pk/pdflaw/PAYMENT%20OF%20WAGES%20ACT.pdf

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Unit 9: Minimum Wages Act, 1948

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Objectives

After studying this unit, you will be able to:

- Explain object and scope the Act
- Define various important definitions
- Discuss the manner of fixation of minimum wages
- Explain procedure for fixation and revising minimum wages
- Elucidate various safeguards available in payment of minimum wages

Introduction

The Minimum Wages Act prescribes minimum wages for all employees in all establishments or working at home in certain employments specified in the schedule of the Act. Central and State Governments revise minimum wages specified in the schedule. The objective of this study lesson is to thoroughly acclimatize the students with the law relating to minimum wages.

Notes

In a labour surplus economy like India wages couldn't be left to be determined entirely by forces of demand and supply as it would lead to the fixation of wages at a very low level resulting in exploitation of less privileged class. Keeping this in view, the Government of India enacted the Minimum Wages Act, 1948. The purpose of the Act is to provide that no employer shall pay to workers in certain categories of employments wages at a rate less than the minimum wage prescribed by notification under the Act. The Act provides for fixation/periodic revision of minimum wages in employments where the labour is vulnerable to exploitation. Under the Act, the appropriate Government, both Central and State can fix/revise the minimum wages in such scheduled employments falling in their respective jurisdiction.

The term Minimum Wage Fixation implies the fixation of the rate or rates of minimum wages by a process or by invoking the authority of the State. Minimum wage consists of a basic wage and an allowance linked to the cost of living index and is to be paid in cash, though payment of wages fully in kind or partly in kind may be allowed in certain cases. The statutory minimum wages has the force of law and it becomes obligatory on the part of the employers not to pay below the prescribed minimum wage to its employees. The obligation of the employer to pay the said wage is absolute. The process helps the employees in getting fair and reasonable wages more particularly in the unorganised sector and eliminates exploitation of labour to a large extent. This ensures rapid growth and equitable distribution of the national income thereby ensuring sound development of the national economy.

It has been the constant endeavour of the Government to ensure minimum rates of wages to the workers in the sweated industries and which has been sought to be achieved through the fixation of minimum wages, which is to be the only solution to this problem.

9.1 Object and Scope of the Act

The Minimum Wages Act was passed in 1948 and it came into force on 15th March, 1948. The National Commission on Labour has described the passing of the Act as landmark in the history of labour legislation in the country. The philosophy of the Minimum Wages Act and its significance in the context of conditions in India has been explained by the Supreme Court in *Unichoyi* v. *State of Kerala* (AIR 1962 SC 12), as follows:

According to its preamble the Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as Scheduled Employments'. The Act extends to whole of India.

The Minimum Wages Act, 1948 is a land mark in the history of labour legislation in the country. In a country like ours where the number of unemployed persons is very large, the legislators realized that if the rule of market is allowed to prevail, it could be difficult to prevent sweating or exploitation of labour through payment of unduly low wage. It was to prevent this position that the Act was enacted and specific provisions were made for determining minimum wages in respect of the scheduled employments.

Once a minimum wages is fixed according to the provisions of the Minimum Wages Act, it is not open to the employer to plead his inability to pay the said wages to his employees. In other words, once the minimum wage is determined under the Act, the obligation of the employer to pay the said wage is absolute. The appropriate Government under the Act can fix minimum rates of wages payable to employees employed in the employments included in schedule I and schedule II. Here, the appropriate Government means the Central or the State Government as specified in the Act.

The appropriate Government has also been empowered to include any employment in the schedules. The original schedule contains 19 employments. The West Bengal Government has so far included 42 employments in the schedule.

Notes

As per provisions of the Act (Sec 3, 4 & 11) the Minimum Wage may be fixed at "time rate", "piece rate", "guaranteed time rate" and "overtime rate". The minimum wage may consist of basic wage, and an allowance linked to cost of living index. The minimum wage shall be paid in cash, although payment of wages wholly or partly in kind may be allowed in particular cases. The Government can also fix the number of hours of work, provide for weekly day of rest, payment of remuneration in respect of such days of rest, payment of overtime wages, and payment for work on a day of rest at a rate equal to overtime rate. Section 2(3) of the Act provides that in fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for (a) different scheduled employments, (b) different classes of work in the same scheduled employment, (c) adult, adolescent, children and apprentices or (d) different localities. Such minimum wage may be fixed by hour, by the day, by the month or any other period as may be prescribed.

The Act provides for the appointment of Committees and sub-committees to hold enquiries and advise the appropriate Government in fixing or revising the minimum rates of wages and to appoint an Advisory Board for the purpose of coordinating the work of the Committees and sub-committees and also to advise the appropriate Government generally in the matter of fixing and revising the minimum rate of wages. The rates may be revised at such intervals not exceeding five years as the appropriate Government thinks fit. All these bodies are tripartite in composition, consisting of persons nominated by the appropriate Government, persons representing the employers and employees concerned in equal number and independent persons not exceeding one third of the total number of members. One independent person has to be appointed as the Chairman by the appropriate Government. (Secs. 5, 7, 8 & 9)

The Act provides for two different procedures for fixation and revision of minimum rates of wages. Either of them, the "Committee method" or the "Notification method" may be followed. In the first method the appropriate Government may appoint Committees or sub-committees to hold enquires and to advise it in respect of such fixation or revision. Based on the advice of the Committees the appropriate Government may fix or revise the rates by a notification in the Official Gazette. The other method requires the appropriate Govt. to publish its proposal by a notification in the Official Gazette for information of persons likely to be affected and specify a date not less than two months from the date of notification on which the proposal will be considered. The Government then considers the representations received before the specified date, consults the Advisory Board and fixes or revises the rate by notification in the Official Gazette. The State Government has fixed minimum wages in 55 employments out of which notifications in respect of a few employments have been quashed by Honourable Calcutta High Court.

Self Assessment

Fill in the blanks:

1. 'Appropriate Government' mean in relation to any scheduled employment means , The Central Government, The railway administration and The ……..
2. According to Section 3(2), the "Appropriate Government" fix minimum rate of wages for time work, piece work and ……..
3. The first method used by the 'Appropriate Government' to fix minimum wages in respect of scheduled employment is called the ……
4. Under this Act, payment of less than the minimum rates of wages notified by the "Appropriate Government is an ……

Notes

5. Under Section 20(1) of the Act, the Appropriate Government may appoint any Commissioner for Workmen's Compensation; any officer of the Central Government exercising functions as Labour Commissioner for any region; and/or any officer of the State Government as an authority to hear and decide cases related to ……

6. The Act provides that …… Minimum Wage rate may be fixed for a) different scheduled employments

7. Minimum wages payable under this Act shall be paid in ……

Notes "What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour."

Task Discuss the object and scope of the Minimum Wages Act.

9.2 Important Definitions

Appropriate Government [Section 2(b)]

Appropriate Government means-

(i) in relation to any scheduled employment carried on by or under the authority of the Central or a railway administration, or in relation to a mine, oilfield or major part or any corporation established by a Central Act, the Central Government, and

(ii) in relation to any other scheduled employment, the State Government.

Employee [Section 2(i)]

Employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an outworker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale purpose of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises, net being premises under the control and management of that person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of Armed Forces of the Union.

Notes

Employer [Section 2(e)]

Employer means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except, in sub-section (3) of Section 26—

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person of authority is so appointed, the Head of the Department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the Chief Executive Officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner of the supervision and control of the employees or for the payment of wages.

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

Scheduled Employment [Section 2(g)]

Scheduled employment means an employment specified in the Schedule or any process or branch of work forming part of such employment.

Notes The schedule is divided into two parts namely, Part I and Part II. When originally enacted Part I of Schedule had 12 entries. Part II relates to employment in agriculture. It was realised that it would be necessary to fix minimum wages in many more employments to be identified in course of time. Accordingly, powers were given to appropriate Government to add employments to the Schedule by following the procedure laid down in Section 21 of the Act. As a result, the State Government and Central Government have made several additions to the Schedule and it differs from State to State.

Addition of New Employments

The State Governments and the Union Territories review the Scheduled Employments under their jurisdiction from time to time and add new employments in respect of which these are of the opinion that minimum rates of wages should be fixed statutorily in addition to the existing ones.

Notes

Example: During the year 2005, three State Governments namely Bihar, Kerala and Sikkim have added employments to the Schedule appended to the Act. A total to thirty-one employments have been added to the schedule of the Act during the year under reference.

Wages [Section 2(h)]

Wages means all remunerations capable of being expressed in terms of money, which would, if the terms of the contract of employment, express of implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include:

(i) the value of:

(a) any house accommodation, supply of light, water medical;

(b) any other amenity or any service excluded by general or social order of the appropriate Government;

(ii) contribution by the employer to any Pension Fund or Provides Fund or under any scheme of social insurance;

(iii) any traveling allowance or the value of any traveling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment;

(v) any gratuity payable on discharge.

Self Assessment

Fill in the blanks:

8. The appropriate government may, by notification in the ..... appoint inspectors as it thinks fit to be Inspectors for the purposes of this Act.
9. Any employer who contravenes any provision of this Act or of any rule or order made there under shall, if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to ₹ .....
10. The appropriate government may, subject to the condition of previous publication, by notification in the ..... make rules for carrying out the purposes of this Act.

9.3 Fixation of Minimum Rates of Wages [Section 3(1)(A)]

Section 3 lays down that the appropriate Government shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part ii of the Schedule, and in an employment added to either part by notification under Section 27. In case of the employments specified in Part II of the Schedule, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether. In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities: [*Basti Ram* v. *State of, A.P.* AIR 1969 A.P. 227].

Notwithstanding the provisions of Section 3(1)(a), the appropriate Government may not fix minimum rates of wages in respect of any scheduled employment in which less than 1000 employees in the whole State are engaged. But when it comes to its knowledge after a finding

Notes

that this number has increased to 1,000 or more in such employment, it shall fix minimum wage rate.

Caselet

Bijoy Cotton Mills v. State of Ajmer

The constitutional validity of Section 3 was challenged in *Bijoy Cotton Mills v. State of Ajmer,* 1955 S.C. 3. The Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guarantee under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public and with a view to carrying out one of the Directive Principles of the State Policy as embodied in Article 43 of the Constitution, are protected by the terms of Clause (6) of Article 9.

Source: indiankanoon.org/doc/1291554/

9.3.1 Revision of Minimum Wages

According to Section 3(1)(b), the appropriate Government may review at such intervals as it may thing fit, such intervals not exceeding five years, and revise the minimum rate of wages, if necessary. This means that minimum wages can be revised earlier than five years also.

9.3.2 Manner of Fixation/Revision of Minimum Wages

According to Section 3(2), the 'Appropriate Government' may fix minimum rate of wages for:

(a) time work, known as a Minimum Time Rate;

(b) piece work, known as a Minimum Piece Rate;

(c) a Guaranteed Time Rate for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and

(d) a Over Time Rate i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

Section 3(3) provides that different minimum rates of wages may be fixed for –

(i) different scheduled employments;

(ii) different classes of work in the same scheduled employments;

(iii) adults, adolescents, children and apprentices;

(iv) different localities

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

(i) by the hour,

(ii) by the day,

Notes

(iii) by the month, or

(iv) by such other large wage periods as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day as the case may be, may be indicated.

However, where wage period has been fixed in accordance with the Payment of Wages Act, 1986 vide Section 4 thereof; minimum wages shall be fixed in accordance therewith [Section 3(3)].

Task What points should be taken into consideration while fixing minimum wages?

9.3.3 Minimum Rate of Wages (Section 4)

According to Section 4 of the Act, any minimum rate of wages fixed or revised by the appropriate Government under Section 3 may consist of –

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such worker (hereinafter referred to as the cost of living allowance); or

(ii) a basic rate of wages or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates, where so authorized; or

(iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

The cost of living allowance and the cash value of the concessions in respect of supplies essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such directions specified or given by the appropriate Government.

9.3.3 Procedure for Fixing and Revising Minimum Wages (Section 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

First Method [Section 5(1)(a)]

This method is known as the "Committee Method". The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

Notes It was held in *Edward Mills Co.* v. *State of Ajmer* (1955) AIR SC that Committee appointed under Section 5 is only an advisory body and that Government is not bound to accept its recommendations.

Notes

As regards composition of the Committee, Section 9 of the Act lays down that it shall consist of persons to be nominated by the appropriate Government representing employers and employee in the scheduled employment, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman of the Committee by the appropriate Government.

Second Method [Section 5(1)(b)]

The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect [1996 II LLJ 267 Kar}.

Did u know? **Minimum wage – whether to be paid in cash or kind**

Section 11 of the Act provides that minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government, on being satisfied, may approve and authorize such payments. Such Government can also authorize for supply of essential commodities at concessional rates. Where payment is to be made in kind, the cash value of the wages in kind or in the shape of essential commodities on concessions shall be estimated in the prescribed manner.

Caution ***Payment of minimum wages is obligatory on employer (section 12):*** Payment of less than the minimum rates of wages notified by the appropriate Government is an offence. Section 12 clearly lays down that the employer shall pay to every employee engaged in a scheduled employment under him such wages at a rate not less than the minimum rate of wages fixed by the appropriate Government under Section 5 for that class of employment without deduction except as may be authorized, within such time and subject to such conditions, as may be prescribed.

9.3.4 Fixing Hours for a Normal Working Day (Section 13)

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, by virtue of Section 13 the appropriate Government may –

(a) fix the number of work which shall constitute a normal working day, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such day of rest;

Notes

(c) provide for payment of work on a day of rest at a rate not less than the overtime rate.

The above stated provision shall apply to following classes of employees only to such extent and subject to such conditions as may be prescribed:

(a) Employees engaged on urgent work, or in any emergency, which could not have been foreseen or prevented;

(b) Employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

(c) Employees whose employment is essentially intermittent;

(d) Employees engaged in any work which for technical reasons, has to be completed before the duty is over;

(e) Employees engaged in any work which could not be carried on except at times dependent on the irregular action of natural forces.

For the purpose of clause (c) employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on ground that the daily hours of the employee, or if these be no daily hours of duty as such for the employee, the hours of duty, normally includes period of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

There is correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on basis of standard normal working hours, namely 48 hours a week; *Benode Bihari Shah* v. *State of W.B.*, 1976 Lab I.C. 523 (Cal).

9.3.5 Payment of Overtime (Section 14)

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act by the hours, the day or by such longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under this Act or under any other law of the appropriate Government for the time being in force whichever is higher. Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages (1998 LLJ I SC 815).

9.3.6 Wages of a Worker who Works less than Normal Working Day (Section 15)

Where the rate of wages has been fixed under the Act by the day for an employee and if he works on any day on which he employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day.

Provided that he shall not receive wages for full normal working day—

(i) if his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work, and

(ii) such other cases and circumstances as may be prescribed.

Notes

9.3.7 Minimum Time – Rate Wages for Piece Work (Section 17)

Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid in terms of Section 17 of the Act at minimum time rate.

9.3.8 Maintenance of Registers and Records (Section 18)

Apart from the payment of the minimum wages, the employer is required under Section 18 to maintain registers and records giving such particulars of employees under his employment, the work performed by them, the receipts given by them and such other particulars as may be prescribed. Every employee is required also to exhibit notices, in the prescribed form containing particulars in the place of work. He is also required to maintain wage books or wage-slips as may be prescribed by the appropriate Government and the entries made therein will have to be authenticated by the employer or his agent in the manner prescribed by the appropriate Government.

9.3.9 Authority and Claims (Sections 20 and 21)

Under Section 20(1) of the Act, the appropriate Government, may appoint any of the following as an authority to hear and decide for any specified area any claims arising out of payment of less than the minimum rate of wages or in respect of the payment of remuneration for the days of rest or of wages at the rate of overtime work:

(a) any Commissioner for Workmen's Compensation; or

(b) any officer of the Central Government exercising functions as Labour Commissioner for any region; or

(c) any officer of the State Government not below the rank of Labour Commissioner; or

(d) any other officer with experience as a Judge of a Civil Court or as the Stipendiary Magistrate.

The authority so appointed shall have jurisdiction to hear and decide claim arising out of payment of less than the minimum rates of wages or in respect of the payment remuneration for days of rest or for work done on such days or for payment of overtime.

The provisions of Section 20(1) are attracted only if there exists a disputed between the employer and the employee as to the rates of wages. Where no such dispute exists between the employer and employees and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off days is due to an employee or not, the appropriate remedy is provided by the Payment of Wages Act, 1936.

Self Assessment

Fill in the blanks:

11. Wages fixed or revised by the Government in respect of scheduled employments from time to time which consists of Basic wage + variable dearness allowance are called as .....

12. Any employee on any day having worked excess of number of hours prescribed is ..... to over time at double the wage except in agriculture wherein it is 1 ½ times of the wage.

13. Full form of VDA is .....

Notes

9.4 Offences and Penalties

According to Section 22 of the Minimum Wages Act, any employer who paid his employees less than the minimum wages fixed by the appropriate government is punishable with imprisonment and fine. The term of imprisonment may extend to six months or with fine. The fine may be extended to 500 rupees. The employers are also punishable with both imprisonment and fine.

Fixing Hours for a Normal Working Day to Pay Minimum Wages to Employees

According to Section 13 of the Minimum Wages Act, the government may fix the number of work in a normal working day. One or more specified intervals are included here. The government may also provide a day of rest in a week. The employees are paid at a rate for the rest day also as provided by the government which shall not be less than the overtime rate. These provisions include the following classes of schedule employees:

(i) Employees engaged in emergency which could not be prevented or those employees who are engaged in urgent work.

(ii) There are some complementary or preparatory works which should be carried on outside the limits fixed by the employer. The employees working in such types of works are included in this provision.

(iii) There are some works which have to be completed for some technical reasons before the duty is over. The employees engaged in such work are also included in this provision.

(iv) Sometime there are such work which could not be done except at times dependent on the irregular action of the natural forces. The employees engaged in these type of works are included in this provision.

(v) It also included those employees whose employment is necessarily intermittent. Their working hours include period of inaction i.e. the employee is not called upon to present physically though he is on duty.

Section 22 of the Act provides that any employer who (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

While imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

It is further stipulated under Section 22A of the Act that any employer who contravenes any provision of this Act or of any rule or order made there under shall if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

When there exists a dispute between the employer and employee arising out of payment less than the minimum wage rate, the appropriate government appoints an authority to hear and decide claim. The authority may be a Commissioner for workmen's compensation, any officer of the Central Government who works as Labour Commissioner for any region, an officer equal to the rank of a Labour Commissioner from the State government and a Judge of a Civil Court.

Notes

Self Assessment

State whether the following statements are true or false:

14. The hours of work in a day are nine in case of an adult.

15. Claims can be filed by Inspectors before the Authorities concerned in the prescribed format.

Case Study

Government Interest in the Field of "Employee Satisfaction Schemes"

Governments all over the world had neither the time nor the interest to care for the problems pertaining to labour arising in industry till the end of 1940's. But the need for governmental interference arose out of the belief that government is the custodian of industrial and economic activities.

Since the 1940s the Government of India has increased its regulations of the way employers treat employees. The Trade Unions Act, 1926, permits workers to join unions, the Minimum Wages Act, 1948, guarantees a minimum wages, The Factories Act,1948, ensures a safe and healthy environment, the Workmen's Compensation Act, 1923, offers compensation to injured workers, the Payment of Wages Act, 1936, checks fraudulent practices, union management relations, compensation issues, dispute settlement, etc., is quite rigorous and elaborate. There are laws that prohibit discrimination and restrict the freedom of employers to make HR decisions in other areas as well.

As the guardian of the economy and as a regulator of employment relations, the central government does not seem to loosen its grip in the near future. Experts believe that the trend towards increased government intervention will continue. They base their arguments on the current trends in developed countries in this area in the form of employer-sponsored health insurance schemes, greater job security, improved treatment, etc.

Others, however, are not very optimistic about governments trying to regulate the employer-employee relations closely. Competitive pressures, deregulation of industry, rising wages bills, increasing number of older employees needing social security protection, inflationary pressures, heavy taxes and host of others factors having a significant bearing on the profitability of a firm do not seem to support government's active intervention in industry. These experts contend that if Indian firms have to remain competitive in international markets, they should freed from all types of control, especially those imposed by the government.

Questions

1. Which Trend do you think will occur and why?

2. If a government regulation continues to increase, how will HR departments be affected?

Source: http://indiankanoon.org

9.5 Summary

- The Minimum Wages Act, empowers the Government to fix minimum wages for employees working in specified employments. It provides for review and revision of minimum wages already fixed after suitable intervals not exceeding five years.

Notes

- It extends to the whole of India and applies to scheduled employments in respect of which minimum rates of wages have been fixed under this Act.
- The appropriate government shall fix the minimum rates of wages payable to employees employed in a scheduled employment.
- It may review at such intervals not exceeding five years the minimum rates of wages so fixed, and revise the minimum rates if necessary.
- The employer shall pay to every employee in a scheduled employment under him wages at the rate not less than the minimum rates of wages fixed under the Act.
- The Act also provides for regulation or working hours, overtime, weekly holidays and overtime wages. Period and payment of wages, and deductions from wages are also regulated.
- The Act provides for appointment the authorities to hear and decide all claims arising out of payment less than the minimum rates of wages or any other monetary payments due under the Act. The presiding officers of the Labour court and Deputy Labour Commissioners are the authorities appointed.

9.6 Keywords

Adolescent: "Adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

Adult: "Adult" means a person who has completed his eighteenth year of age.

Appropriate government: "Appropriate government" means: (i) in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration] or in relation to a mine oil field or major port or any corporation established by a Central Act the Central Government and (ii) in relation to any other scheduled employment the State Government.

Child: "Child" means a person who has not completed his fourteenth year of age.

Competent authority: "Competent authority" means the authority appointed by the appropriate government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification.

Cost of living index number: "Cost of living index number" in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employee in such employment.

Prescribed: "Prescribed" means prescribed by rules made under this Act.

Schedule employment: "Schedule employment" means an employment specified in the Schedule or any process or branch of work forming part of such employment.

9.7 Review Questions

1. Enumerate the procedure for fixing and revising the minimum wages.
2. What are the provisions regarding fixing of wages?
3. What are provisions related to revision of wages?

Notes

4. What are the penalties for the non-compliance of the Act?
5. Is there a separate minimum wage legislation in India?
6. Do one or more minimum wage/s, exists in India?
7. At what level are minimum wages determined?
8. On what basis is/are minimum wage/s declared?
9. In case of daily/weekly/monthly minimum wage, are number of working hours considered while fixing minimum wages?
10. Who all are involved in setting minimum wages?
11. How are up ratings (adjustments) of minimum wage/s decided upon?
12. Which are the components of minimum wages in India?
13. How frequently is the fixed component of minimum wages updated?
14. How frequently is the variable component of minimum wage updated?

Answers: Self Assessment

1.	State government	2.	Guaranteed Time Rate
3.	Committee method	4.	Offence
5.	Payment of wages	6.	Different
7.	Cash	8.	Official Gazette
9.	500	10.	Official gazette
11.	Minimum wages	12.	Entitled
13.	Variable Dearness Allowance	14.	True
15.	True		

9.8 Further Readings

Books

Davidov, Guy & Langille, Brian (2011), *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Online links

http://business.gov.in/legal_aspects/wages_1938.php

http://www.delhi.gov.in/wps/wcm/connect/doit_labour/Labour/Home/Acts+Implemented/Summary+of+the+Acts+Implemented/The+Payment+Of+Wages+Act,+1936

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http://www.scribd.com/doc/3044640/payment-of-wages-act-1936

http://www.management4all.org/2009/11/payment-of-wage-act-1938.html

http://in.docsity.com/en-docs/Labour_Laws_-_Payment_of_Wages_Act__1936_-_Prof_R_N_Bhatt

http://www.mom.gov.sg/employment-practices/employment-rights-conditions/salary/Pages/calculation-salary.aspx#basic

http://www.ma-law.org.pk/pdflaw/PAYMENT%20OF%20WAGES%20ACT.pdf

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Unit 10: Industrial Disputes Act, 1947

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Objectives

After studying this unit, you will be able to:

- Explain the definitions under Industrial Disputes Act
- Discuss the objectives and scope of Industrial Disputes Act
- Get an overview of authorities under this Act
- Describe the procedure and machinery for investigation and settlement of disputes
- Discuss measures for prevention of conflicts and disputes

Introduction

Based on the experiences of Trade Disputes Act, 1929 and usefulness of rule 81 (a) of the Defence of India Rules, the bill pertaining to Industrial Disputes Act, 1947 embodied the essential principles of rule 81 (a) which was acceptable to both employers and workers retaining most parts of the provisions of Trade Disputes Act, 1929. This legislation is designed to ensure industrial peace by recourse to a given form of procedure and machinery for investigation and settlement of industrial disputes.

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Its main objective is to provide for a just and equitable settlement of disputes by negotiations, conciliation, dedication, voluntary arbitration and adjudication instead of by trial of strength through strikes and lock-outs. As State Governments are free to have their own labour laws, States like UP, MP, Gujarat and Maharashtra have their own legislation for settlement of disputes in their respective states. U.P. legislation is known as U.P. Industrial Disputes Act, while others have Industrial Relations Act more or less on the lines of Bombay Industrial Relations Act, 1946. The purpose of this unit is to enable the students to comprehend basic expressions. At the end of this unit, you should be able to understand various concepts regarding Industrial Dispute Act.

Industrial disputes are organised protests against existing terms of employment or conditions of work. According to the Industrial Dispute Act, 1947, an Industrial dispute means

"Any dispute or difference between employer and employer or between employer and workmen or between workmen and workmen, which is connected with the employment or non-employment or terms of employment or with the conditions of labour of any person"

In practice, industrial dispute mainly refers to the strife between employers and their employees. An Industrial dispute is not a personal dispute of any one person. It generally affects a large number of workers' community having common interests.

The World War I (1914-1919) brought a new awakening among the working class people who were dominated by the employers regarding the terms and conditions of service and wages. The workers resorted to strikes to fulfill their demands and the employers retaliated by declaring lockouts. During the period 1928-29 the numerous strikes and lock-outs forced the Government to enact the Trade Disputes Act, 1929.

The Trade Disputes Act, 1929 was introduced for the settlement of industrial disputes. This Trade Union Act gave the trade unions a legal status. The main object of the Act was to make provision for the establishment of Courts of Enquiry and Boards of Conciliation with a view to investigating and settling trade disputes. But, this Act failed to create favorable atmosphere in the industry and settle the disputes. The main defect of the Act was that no provision was has been made to render the proceedings institutable under the Act while restraint had been imposed on the right of strike and lock-out in the public utility services. But, later this defect was overcome by empowering under Rule 81-A, of the Defense of Indian Rules to refer industrial disputes to adjudicator for settlement during the Second World War (1938-1945). The rule provide speedy remedies for industrial disputes by compulsory reference of disputes to conciliation or adjudication, by making the awards of adjudicators legally binding on the parties, by prohibiting strikes and lock-outs during the pendency of conciliation or arbitration proceeding.

With the termination of the Second World War, Rule 81-A was about to lapse on 1st October, 1946, but it was kept alive by recourse to Government's Emergency Powers. The main provision was retained in the Industrial Disputes Act, 1947.

The main purpose of the Industrial Disputes Act, 1947 is to ensure fair terms between employers and employees, workmen and workmen as well as workmen and employers. It helps not only in preventing disputes between employers and employees but also help in finding the measures to settle such disputes so that the production of the organization is not hampered. In this unit, we are going to discuss the Industrial Disputes Act, 1947 and its importance. This unit encompasses the different authorities and their duties in the settlement of disputes. It also discuss about the reference of disputes. Through this unit, you will be able to know about the different award given by the different authorities under the Act. Thus, you will able to understand through this unit, the procedures of settlement of the disputes as well as the duties of different authorities as well as the way of reference of disputes.

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10.1 Definitions

As per Section 2(k) of Industrial Disputes Act, 1947, an industrial dispute in defined as any dispute or difference between employers and employers, or between employers and workmen, or between workmen and which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

This definition includes all the aspects of a dispute. It, not only includes the disagreement between employees and employers, but also emphasizes the difference of opinion between worker and worker. The disputes generally arise on account of poor wage structure or poor working conditions. This disagreement or difference could be on any matter concerning the workers individually or collectively. It must be connected with employment or non-employment or with the conditions of labour.

The Industrial Disputes Act, 1947 recognizes certain rights to the employees employed by the employer. For the purposes of Industrial Disputes Act, 1947, workman has been defined as under:

"Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

- who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- who is employed in the police service or as an officer or other employee of a prison; or
- who is employed mainly in a managerial or administrative capacity; or
- who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature

Notes From the point of view of the employer, an industrial dispute resulting in stoppage of work means a stoppage of production. This results in increase in the average cost of production since fixed expenses continue to be incurred. It also leads to a fall in sales and the rate of turnover, leading to a fall in profits. The employer may also be liable to compensate his customers with whom he may have contracted for regular supply. Apart from the immediate economic effects, loss of prestige and credit, alienation of the labor force, and other non-economic, psychological and social consequences may also arise. Loss due to destruction of property, personal injury and physical intimidation or inconvenience also arises.

For the employee, an industrial dispute entails loss of income. The regular income by way of wages and allowance ceases, and great hardship may be caused to the worker and his family. Employees also suffer from personal injury if they indulge into strikes or picketing; and the psychological and physical consequences of forced idleness. The threat of loss of employment in case of failure to settle the dispute advantageously, or the threat of reprisal action by employers also exists.

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

(a) "Appropriate Government" means

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited, the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987), or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government;

(aa) "arbitrator" includes an umpire;

(aaa) "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,

(iii) 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;

(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A;

(bb) "banking company" means a banking company as defined in section 5 of the Banking Companies Act, 1949 (10 of 1949), having branches or other establishments in more than one State, and includes the Export-Import Bank of India the Industrial Reconstruction Bank of India, the Industrial Development Bank of India, the Small Industries Development Bank of India

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established under section 3 of the Small Industries Development Bank of India Act, 1989, the Reserve Bank of India, the State Bank of India, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), and any subsidiary bank, as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(c) "Board" means a Board of Conciliation constituted under this Act;

(cc) "closure" means the permanent closing down of a place of employment or part thereof;

(d) "conciliation officer" means a conciliation officer appointed under this Act;

(e) "conciliation proceeding" means any proceeding held by a conciliation officer or Board under this Act;

(ee) "controlled industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;

(f) "Court" means a Court of Inquiry constituted under this Act;

(g) "employer" means

(i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the Chief Executive Officer of that authority;

(gg) "executive", in relation to a trade union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted;

(i) a person shall be deemed to be "independent" for the purpose of his appointment as the Chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute:

Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government the nature and extent of the shares held by him in such company;

(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

(k) "industrial dispute" means any dispute or difference between employers and employers, 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;

(ka) "Industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then (a) if any unit of such establishment or undertaking carrying on any.

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10.1.1 Other Important Terms Related to the Act

(i) Existence of a Dispute or Difference

The existence of a dispute or difference between the parties is central to the definition of industrial dispute. Ordinarily a dispute or difference exists when workmen make demand and the same is rejected by the employer. However, the demand should be such which the employer is in a position to fulfil. The dispute or difference should be fairly defined and of real substance and not a mere personal quarrel or a grumbling or an agitation. The term "industrial dispute" connotes a real and substantial difference having some element of persistency, and likely, and if not adjusted, to endanger the industrial peace of the community. An industrial dispute exists only when the same has been raised by the workmen with the employer. A mere demand to the appropriate Government without a dispute being raised by the workmen with their employer regarding such demand, cannot become an industrial dispute (*Sindhu Resettlement Corporation Ltd.* v. *Industrial Tribunal*, 1968-I L.L.J. 834 S.C.). However, in *Bombay Union of Journalists* v. *The Hindu,* AIR 1964 S.C. 1617, the Supreme Court observed that for making reference under Section 10, it is enough if industrial dispute exists or is apprehended on the date of reference. Therefore, even when no formal demands have been made by the employer, industrial dispute exists if the demands were raised during the conciliation proceedings. When an industrial dispute is referred for adjudication the presumption is that, there is an industrial dispute (*Workmen* v. *Hindustan Lever Ltd.,* (1984) 4 SCC 392).

Unless there is a demand by the workmen and that demand is not complied with by the management, there cannot be any industrial dispute within the meaning of Section 2(k). Mere participation by the employer in the conciliation proceedings will not be sufficient (*W.S. Insulators of India Ltd.* v. *Industrial Tribunal, Madras*, 1977-II Labour Law Journal 225).

(ii) Parties to the Dispute

Most of the industrial disputes exist between the employer and the workmen and the remaining combination of persons who can raise the dispute, has been added to widen the scope of the term "industrial dispute". So the question is who can raise the dispute? The term "industrial dispute" conveys the meaning that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides. The disputes can be raised by workmen themselves or their union or federation on their behalf. This is based on the fact that workmen have right of collective bargaining. Thus, there should be community of interest in the dispute.

It is not mandatory that the dispute should be raised by a registered Trade Union. Once it is shown that a body of workmen either acting through their union or otherwise had sponsored a workmen's case, it becomes an industrial dispute (*Newspaper Ltd., Allahabad* v. *Industrial Tribunal,* AIR 1960 S.C. 1328). The dispute can be raised by minority union also. Even a sectional union or a substantial number of members of the union can raise an industrial dispute. However, the members of a union who are not workmen of the employer against whom the dispute is sought to be raised cannot by their support convert an individual dispute into an industrial dispute. In other words, persons who seek to support the cause must themselves be directly and substantially interested in the dispute and persons who are not the employees of the same employer cannot be regarded as so interested. But industrial dispute can be raised in respect of non-workmen (*Workmen* v. *Cotton Greaves & Co. Ltd.,* 1971 2 SCC 658). Industrial dispute can be initiated and continued by legal heirs even after the death of a workman (LAB 1C 1999 Kar. 286).

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Individual Dispute whether Industrial Dispute?

Till the provisions of Section 2-A were inserted in the Act, it has been held by the Supreme Court that an individual dispute per se is not industrial dispute. But it can develop into an industrial dispute when it is taken up by the union or substantial number of workmen (*Central Province Transport Service* v. *Raghunath Gopal Patwardhan,* AIR 1957 SC 104). This ruling was confirmed later on in the case of *Newspaper Ltd.* v. *Industrial Tribunal*. In the case of *Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estate*, (1958) I. L.L.J. 500, the Supreme Court held that it is not that dispute relating to "any person" can become an industrial dispute. There should be community of interest. A dispute may initially be an individual dispute, but the workmen may make that dispute as their own, they may espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workmen. All workmen need not to join the dispute. Any dispute which affects workmen as a class is an industrial dispute, even though, it might have been raised by a minority group. It may be that at the date of dismissal of the workman there was no union. But that does not mean that the dispute cannot become an industrial dispute because there was no such union in existence on that date. If it is insisted that the concerned workman must be a member of the union on the date of his dismissal, or there was no union in that particular industry, then the dismissal of such a workman can never be an industrial dispute although the other workmen have a community of interest in the matter of his dismissal and the cause for which on the manner in which his dismissal was brought about directly and substantially affects the other workmen. The only condition for an individual dispute turning into an industrial dispute, as laid down in the case of *Dimakuchi Tea Estate* is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal. Further, the community of interest does not depend on whether the concerned workman was a member or not at the date when the cause occurred, for, without his being a member the dispute may be such that other workmen by having a common interest therein would be justified in taking up the dispute as their own and espousing it. Whether the individual dispute has been espoused by a substantial number of workmen depends upon the facts of each case.

If after supporting the individual dispute by a trade union or substantial number of workmen, the support is withdrawn subsequently, the jurisdiction of the adjudicating authority is not affected. However, at the time of making reference for adjudication, individual dispute must have been espoused, otherwise it will not become an industrial dispute and reference of such dispute will be invalid.

(iii) Subject Matter of Dispute

The dispute should relate to employment or non-employment or terms of employment or conditions of labour of any person. The meaning of the term "employment or non-employment" was explained by Federal Court in the case of *Western India Automobile Association* v. *Industrial Tribunal*. If an employer refuses to employ a workman dismissed by him, the dispute relates to non-employment of workman. But the union insists that a particular person should not be employed by the employer, the dispute relates to employment of workman. Thus, the "employment or non-employment" is concerned with the employers failure or refusal to employ a workman. The expression "terms of employment" refers to all terms and conditions stated in the contract of employment. The expression terms of employment would also include those terms which are understood and applied by parties in practice or, habitually or by common consent without ever being incorporated in the Contract (*Workmen* v. *Hindustan Lever Ltd.,* 1984 1 SCC 392).

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The expression "condition of labour" is much wider in its scope and usually it was reference to the amenities to be provided to the workmen and the conditions under which they will be required to work. The matters like safety, health and welfare of workers are also included within this expression.

It was held that the definition of industrial dispute in Section 2(k) is wide enough to embrace within its sweep any dispute or difference between an employer and his workmen connected with the terms of their employment. A settlement between the employer and his workmen affects the terms of their employment. Therefore *prima facie,* the definition of Industrial dispute in Section 2(k) will embrace within its sweep any fraudulent and involuntary character of settlement. Even a demand can be made through the President of Trade Union (1988 1 LLN 202). Dispute between workmen and employer regarding confirmation of workman officiating in a higher grade is an industrial dispute (1984 4 SCC 392).

Employer's failure to keep his verbal assurance, claim for compensation for loss of business; dispute of workmen who are not employees of the Purchaser who purchased the estate and who were not yet the workmen of the Purchaser's Estate, although directly interested in their employment, etc. were held to be not the industrial disputes. Payment of pension can be a subject matter of an industrial dispute (*ICI India Ltd.* v. *Presiding Officer L.C.,* 1993 LLJ II 568).

(iv) Dispute in an "Industry"

Lastly, to be an "industrial dispute", the dispute or difference must relate to an industry. Thus, the existence of an "industry" is a condition precedent to an industrial dispute. No industrial dispute can exist without an industry. The word "industry" has been fully discussed elsewhere. However, in *Pipraich Sugar Mills Ltd.* v. *P.S.M. Mazdoor Union,* A.I.R. 1957 S.C. 95, it was held that an "industrial dispute" can arise only in an "existing industry" and not in one which is closed altogether.

The mere fact that the dispute comes under the definition of Section 2(k) does not automatically mean that the right sought to be enforced is one created or recognised and enforceable only under the Act (*National and Grindlays Bank Employees Union, Madras* v. *I. Kannan* (*Madras*), 1978 Lab. I.C. 648). Where the right of the employees is not one which is recognised and enforceable under the Industrial Disputes Act, the jurisdiction of the Civil Court is not ousted.

(v) Strike

"Strike" means 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. [Section 2(q)].

Strike is a weapon of collective bargaining in the armour of workers. The following points may be noted regarding the definition of strike:

(i) Strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or in a concerted manner. Time factor or duration of the strike is immaterial. The purpose behind the cessation of work is irrelevant in determining whether there is a strike or not. It is enough if the cessation of work is in defiance of the employer's authority.

Proof of formal consultations is not required. However, mere presence in the striking crowd would not amount to strike unless it can be shown that there was cessation of work.

(ii) A concerted refusal or a refusal under a common understanding of any number of persons to continue to work or to accept employment will amount to a strike. A general strike is one when

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there is a concert of combination of workers stopping or refusing to resume work. Going on mass casual leave under a common understanding amounts to a strike. However, the refusal by workmen should be in respect of normal lawful work which the workmen are under an obligation to do. But refusal to do work which the employer has no right to ask for performance, such a refusal does not constitute a strike (*Northbrooke Jute Co. Ltd.* v. *Their Workmen,* AIR 1960 SC 879). If on the sudden death of a fellow-worker, the workmen acting in concert refuse to resume work, it amounts to a strike (*National Textile Workers Union* v. *Shree Meenakshi Mills,* (1951) II L.L.J. 516).

(iii) The striking workman must be employed in an "industry" which has not been closed down.

(iv) Even when workmen cease to work, the relationship of employer and employee is deemed to continue albeit in a state of belligerent suspension. In *Express Newspaper (P) Ltd.* v. *Michael Mark,* 1962-II, L.L.J. 220 S.C., the Supreme Court observed that if there is a strike by workmen, it does not indicate, even when strike is illegal, that they have abandoned their employment. However, for illegal strike, the employer can take disciplinary action and dismiss the striking workmen.

Types of Strike and their Legality

(i) ***Stay-in, sit-down, pen-down or tool-down strike:*** In all such cases, the workmen after taking their seats, refuse to do work. Even when asked to leave the premises, they refuse to do so. All such acts on the part of the workmen acting in combination, amount to a strike. Since such strikes are directed against the employer, they are also called primary strikes. In the case of *Punjab National Bank Ltd.* v. *All India Punjab National Bank Employees Federation,* AIR 1960 SC 160, the Supreme Court observed that on a plain and grammatical construction of this definition it would be difficult to exclude a strike where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work. Refusal under common understanding not to work is a strike. If in pursuance of such common understanding the employees enter the premises of the Bank and refuse to take their pens in their hands that would no doubt be a strike under Section 2(q).

(ii) ***Go-slow:*** Go-slow does not amount to strike, but it is a serious case of misconduct

In another case, it was observed that slow-down is an insidious method of undermining the stability of a concern and Tribunals certainly will not countenance it. It was held that go slow is a serious misconduct being a covert and a more damaging breach of the contract of employment (*SU Motors* v. *Workman*, 1990-II LLJ 39). It is not a legitimate weapon in the armoury of labour. It has been regarded as a misconduct.

(iii) ***Sympathetic strike:*** Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic strike. This is an unjustifiable invasion of the right of employer who is not at all involved in the dispute. The management can take disciplinary action for the absence of workmen. However, in *Ramalingam* v. *Indian Metallurgical Corporation, Madras,* 1964-I L.L.J. 81, it was held that such cessation of work will not amount to a strike since there is no intention to use the strike against the management.

(iv) ***Hunger strike:*** Some workers may resort to fast on or near the place of work or residence of the employer. If it is peaceful and does not result in cessation of work, it will not constitute a strike. But if due to such an act, even those present for work, could not be given work, it will amount to strike (*Pepariach Sugar Mills Ltd*. v. *Their Workmen*).

(v) ***Work-to-rule:*** Since there is no cessation of work, it does not constitute a strike.

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Legality of Strike

The legality of strike is determined with reference to the legal provisions enumerated in the Act and the purpose for which the strike was declared is not relevant in directing the legality. Section 10(3), 10A(4A), 22 and 23 of the Act deals with strike. Sections 22 and 23 impose restrictions on the commencement of strike while Sections 10(3) and 10A(4A) prohibit its continuance.

The justifiability of strike has no direct relation to the question of its legality and illegality. The justification of strike as held by the Punjab & Haryana High Court in the case of *Matchwell Electricals of India* v. *Chief Commissioner,* (1962) 2 LLJ 289, is entirely unrelated to its legality or illegality. The justification of strikes has to be viewed from the stand point of fairness and reasonableness of demands made by workmen and not merely from stand point of their exhausting all other legitimate means open to them for getting their demands fulfilled.

As regards the wages to the workers strike period are concerned, the Supreme Court in *Charakulam Tea Estate* v. *Their Workmen,* AIR 1969 SC 998 held that in case of strike which is legal and justified, the workmen will be entitled to full wages for the strike period. Similar view was taken by the Supreme Court in *Crompton Greaves Ltd. case* 1978 Lab 1C 1379 (SC).

The *Supreme Court in Statesman Ltd.* v. *Their Workman,* AIR 1976 SC 758 held that if the strike is illegal or unjustified, strikers will not be entitled to the wages for the strike period unless considerate circumstances constraint a different cause. Similar view was taken by the Supreme Court in *Madura Coats Ltd.* v. *The Inspector of Factories, Madurai,* AIR 1981 SC 340.

The Supreme Court has also considered the situation if the strike is followed by lockout and *vice versa*, and both are unjustified, in *India Marine Service Pvt. Ltd.* v. *Their Workman,* AIR 1963 SC 528. In this case, the Court evolved the doctrine of "apportionment of blame" to solve the problem. According to this doctrine, when the workmen and the management are equally to be blamed, the Court normally awards half of the wages. This doctrine was followed by the Supreme Court in several cases. Thus, the examination of the above cases reveal that when the blame for situation is apportioned roughly half and half between the management and workmen, the workmen are given half of the wages for the period involved.

A division bench of the Supreme Court in the case of *Bank of India* v. *TS Kelawala,* (1990) 2 Lab 1C 39 held that the workers are not entitled to wages for the strike period. The Court observed that "the legality of strike does not always exempt the employees from the deduction of their salaries for the period of strike". The Court, further observed, "whether the strike is legal or illegal, the workers are liable to lose wages does not either make the strike illegal as a weapon or deprive the workers of it".

(vi) Lock-out

"Lock-out" 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. [Section 2(l)]

In lock out, the employer refuses to continue to employ the workman employed by him even though there is no intention to close down the unit. The essence of lock out is the refusal of the employer to continue to employ workman. Even if suspension of work is ordered, it would constitute lock out. But mere suspension of work, unless it is accompanied by an intention on the part of employer as a retaliation, will not amount to lock out.

Locking out workmen does not contemplate severance of the relationship of employer and the workmen. In the *case Lord Krishna Sugar Mills Ltd.* v. *State of U.P.,* (1964) II LLJ 76 (All), a closure of a place of business for a short duration of 30 days in retaliation to certain acts of workmen (i.e. to teach them a lesson) was held to be a lock out. But closure is not a lock out.

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Notes Lock out is an antithesis to strike. Just as "strike" is a weapon available to the employees for enforcing their industrial demands, a "lock out" is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands (*Express Newspapers (P) Ltd. v. Their Workers* (1962) II L.L.J. 227 S.C.).

(vii) Lay-off

"Lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer to give employment due to following reasons, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched:

(a) shortage of coal, power or raw materials, or

(b) accumulation of stocks, or

(c) break-down of machinery, or

(d) natural calamity, or

(e) for any other connected reason. [Section 2(kkk)]

Example: Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause.

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during this second half of the shift for the day and is given employment, then, he shall be deemed to have been laid-off only for one-half of that day.

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.

From the above provisions, it is clear that lay-off is a temporary stoppage and within a reasonable period of time, the employer expects that his business would continue and his employees who have been laid-off, the contract of employment is not broken but is suspended for the time being. But in the case of *M.A. Veirya* v. *C.P. Fernandez,* 1956-I, L.L.J. 547 Bomb., it was observed that it is not open to the employer, under the cloak of "lay-off", to keep his employees in a state of suspended animation and not to make up his mind whether the industry or business would ultimately continue or there would be a permanent stoppage and thereby deprive his employees of full wages. In other words, the lay-off should not be *mala fide* in which case it will not be lay-off. Tribunal can adjudicate upon it and find out whether the employer has deliberately and maliciously brought about a situation where lay-off becomes necessary. But, apart from the question of *mala fide,* the Tribunal cannot sit in judgement over the acts of management and investigate whether a more prudent management could have avoided the situation which led to lay-off (*Tatanagar Foundry* v. *Their Workmen,* A.I.R. 1962 S.C. 1533).

Further, refusal or inability to give employment must be due to (i) shortage of coal, power or raw materials, or (ii) accumulation of stock, or (iii) break-down of machinery, (iv) natural

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calamity, or (v) for any other connected reason. Financial stringency cannot constitute a ground for lay-off (*Hope Textiles Ltd*. v. *State of MP,* 1993 I LLJ 603).

Lastly, the right to lay-off cannot be claimed as an inherent right of the employer. This right must be specifically provided for either by the contract of employment or by the statute (*Workmen of Dewan Tea Estate* v. *Their Management*). In fact, lay-off is an obligation on the part of the employer, i.e., in case of temporary stoppage of work, not to discharge the workmen but to lay-off the workmen till the situation improves. Power to lay-off must be found out from the terms of contract of service or the standing orders governing the establishment (*Workmen* v. *Firestone Tyre and Rubber Co.,* 1976 3 SCC 819).

There cannot be lay-off in an industrial undertaking which has been closed down. Lay-off and closure cannot stand together.

Difference between Lay-off and Lock-out

(1) In lay-off, the employer refuses to give employment due to certain specified reasons, but in lock-out, there is deliberate closure of the business and employer locks out the workers not due to any such reasons.

(2) In lay-off, the business continues, but in lock-out, the place of business is closed down for the time being.

(3) In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified.

(4) Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining.

(5) Lock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

However, both are of temporary nature and in both cases the contract of employment is not terminated but remains in suspended animation.

(viii) Retrenchment

"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 or 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.

(c) termination of the service of workman on the ground of continued ill-health.

Thus, the definition contemplates following requirements for retrenchment:

(i) There should be termination of the service of the workman.

(ii) The termination should be by the employer.

(iii) The termination is not the result of punishment inflicted by way of disciplinary action.

Notes

(iv) The definition excludes termination of service on the specified grounds or instances mentioned in it. [Section 2(oo)]

The scope and ambit of Section 2(oo) is explained in the case of *Santosh Gupta* v. *State Bank of Patiala,* (1980) Lab.I.C.687 SC), wherein it was held that if the definition of retrenchment is looked at unaided and unhampered by precedent, one is at once struck by the remarkably wide language employed and particularly the use of the word „termination for any reason whatsoever. If due weight is given to these words, i.e. they are to be understood as to mean what they plainly say, it is difficult to escape the conclusion that retrenchment must include every termination of service of a workman by an act of the employer. In the case of *Punjab Land Development Corporation Ltd.* v. *Labour Court, Chandigarh,* (1990) II LLJ 70 SC, the Supreme Court held that expression "retrenchment" means termination by employer of services of workman for any reason whatsoever except those expressly excluded in the Section itself.

The expression "for any reason whatsoever" in Section 2(oo) could not be safely interpreted to include the case of discharge of all workmen on account of *bona fide* closure of business, because for the application of definition, industry should be a working or a continuing or an existing industry, not one which is altogether a closed one. So the underlying assumption would be of course, that the undertaking is running as an undertaking and the employer continues to be an employer (*Hariprasad Shivshankar Shukla* v. *A.D.Divakar,* (1957) SCR 121), hereinafter referred to as *Hariprasad* case.

The *Hariprasad* case and some other decisions, lead to the unintended meaning of the term "retrenchment" that it operates only when there is surplus of workman in the industry which should be an existing one. Thus, in effect either on account of transfer of undertaking or an account of the closure of the undertaking, there can be no question of retrenchment within the meaning of the definition contained in Section 2(oo). To overcome this view, the Government introduced new Sections 25FF and 25FFF, providing that compensation shall be payable to workmen in case of transfer of an undertaking or closure of an undertaking to protect the interests of the workmen. Thus, the termination of service of a workman on transfer or closure of an undertaking was treated as „deemed retrenchment , in result enlarging the general scope and ambit of the expression (retrenchment) under the Act.

10.1.2 Unfair Labour Practices

A new Chapter VC relating to unfair labour practices has been inserted. Section 25T under this Chapter lays down that no employer or workman or a Trade Union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice. Section 25U provides that any person who commits any unfair labour practice 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.

Notes ***Dismissal, etc., of an individual workman to be deemed to be an industrial dispute;*** Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

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Caselet

Twenty-first Century Printers Ltd., Mumbai v. K.P. Abraham and Anr - Is an Officer Functioning in the Management Capacity not a Workman?

Twenty-first Century Printers Ltd., Mumbai, was engaged in the manufacture of printed packing material. They had appointed K.P. Abraham as Purchase Officer. In the course of employment, the Company asked him to carry some article from Mumbai to Ahmedabad, which he declined to carry. The incident took an ugly turn and the Company decided to terminate K.P. Abraham's services. The main issue raised in this petition was whether K.P. Abraham was a workman as his function is managerial one coming under the exception in Section 2 (s) (iii) of the Industrial Disputes Act, 1947, and as such, he is not a workman.

Labour Court Judgment

However, the labour court held that K.P. Abraham was a workman under the Industrial Disputes Act, 1947, and termination of his service was illegal. The Presiding Officer also directed his reinstatement with continuity of service and payment of full back wages. The Petitioner challenged the award of labour court in the Bombay High Court. Decision: The Hon'ble High Court allowed the writ petition and quashed the order of labour court which held K.P. Abraham a workman and set aside his termination. The High Court held that the purchase office functioning in the managerial capacity will not be a workman under the Industrial Disputes Act.

Source: http://www.phindia.com/srm/Court_Cases.pdf

Self Assessment

State whether the following statements are true or false:

1. The Industrial Disputes Act, 1957 recognizes certain rights to the employees employed by the employer.
2. The employer may also be liable to compensate his customers with whom he may have contracted for regular supply.
3. Arbitrator includes an umpire.

10.2 Objectives and Scope of Industrial Disputes Act

The Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

Various studies indicate that Indian labour laws are highly protective of labour, and labour markets are relatively inflexible. These laws apply only to the organised sector. Consequently, these laws have restricted labour mobility, have led to capital-intensive methods in the organised sector and adversely affected the sector's long-run demand for labour. Labour being a subject in the concurrent list, State-level labour regulations are also an important determinant of industrial performance. Evidence suggests that States, which have enacted more pro-worker regulations, have lost out on industrial production in general.

Notes

The Industrial Disputes Act (IDA) of 1947. Particular attention has been paid to its Chapter V-B, introduced by an amendment in 1976, which required 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. It is argued that since permission is difficult to obtain, employers are reluctant to hire workers whom they cannot easily get rid of.

Caution Job security laws thus protect a tiny minority of workers in the organised sector and prevent the expansion of industrial employment that could benefit the mass of workers outside. It is also argued that the restriction on retrenchment has adversely affected workplace discipline, while the threshold set at 100 has discouraged factories from expanding to economic scales of production, thereby harming productivity.

Several other sections of the IDA allegedly have similar effects, because they increase workers' bargaining strength and thereby raise labour costs either directly through wages or indirectly by inhibiting work reorganization in response to changes in demand and technology. The Act also lays down

10.2.1 Objectives of Industrial Disputes Act

Following are the objectives of Industrial Disputes Act:

- Promotion of measures for securing amity and good relations between employer and workmen
- Investigation and settlement of industrial disputes
- Prevention of illegal strike and lock-outs
- Relief to workmen in the matter of lay-off, retrenchment and closure of an undertaking
- Promotion of Collective Bargaining

10.2.2 Scope and Coverage of Industrial Disputes Act

The Industrial Disputes Act, 1947, extends to the whole of India, and is applicable to all industrial establishments employing one or more workmen. It covers all employees both technical and non-technical, and also supervisors drawing salaries and wages upto ₹ 1600 per month. It excludes persons employed in managerial and administrative capacities and workmen subject to Army Act, Navy Act, Air Force Act and those engaged in police, prison and civil services of the Government. As regards disputes, it covers only collective disputes or disputes supported by trade unions or by substantial number of workers and also individual disputes relating to termination of service. For purposes of this act the term "dispute" is defined as dispute or difference between employers and employees, which is connected with the employment and non-employment or the terms of employment or with the condition of labour of any person [section 2(k)].

Industrial Disputes concerning any industry carried on by or under the authority of Central Government or by a Railway company or concerning any such controlled industry as may be specified in this behalf by the central government.

Notes

Example: In relation to other industrial disputes the State Government: *In HEC Majdoor Union Vs. State of Bihar* S.C. (1969), it was held that in respect of Central Public Sector Undertakings the State where the factory was situated was the appropriate Government. This decision was changed in *Air India* case S.C. 1997 where it was held that in respect of Central Public Undertakings the appropriate Government is the Central Government. This definition of appropriate Government is applicable to Contract Labour (R&A) Act, 1970 and Payment of Bonus ACT, 1965.

The term "Industry" includes not only manufacturing and commercial establishments but also professionals like that of the lawyers, medical practitioners, accountants, architects, etc., clubs, educational institutions like universities, cooperatives, research institutes, charitable projects and other kindred adventures, if they are being carried on as systematic activity organised by cooperation between employers and employees for the production and/or distribution of goods and services calculated to satisfy human wants and wishes. It also includes welfare activities or economic adventures or projects undertaken by the government or statutory bodies, and, Government departments discharging sovereign functions if there are units which are industries and which are substantially severable units. (Judgement dated 21.2.78 in the civil appeals no. 753-754 in the matter of *Bangalore Water Supply & Sewerage Board etc. Vs. Rajappa & Sons*, etc.).

Sec. 2 (s) defines "workman" as any person (including an apprentice) employed in any industry to do any skilled, unskilled manual, supervisory, operational, technical or clerical work for hire or reward. Whether the terms of employment be expressed or employed and for the purposes of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged, retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute but does not include any such person (i) who is subject to Air Force Act, Army Act or Navy Act or (ii) who is employed in police service or prison service, (iii) who is employed mainly in a managerial and advisory capacity or (iv) who being employed in supervisory capacity draws wages exceeding ₹ 1600/- and exercises by the nature of the duties attached to the office or by means of powers vested in him, functions mainly of a managerial nature. *May and Baker India* case S.C. (1976) which led to passing of Sales Promotion Employees Act, 1976, had been stipulated that sales / medical representatives are not workmen under Sec. 2(s) of ID Act.

The provisions of ID Act, 1947 will be applicable to certain class of working journalists as per section 3 of Working Journalists Act, 1951.

10.2.3 Causes of Industrial Disputes

The causes of industrial disputes can be broadly classified into two categories: economic and non-economic causes. The economic causes will include issues relating to compensation like wages, bonus, allowances, and conditions for work, working hours, leave and holidays without pay, unjust layoffs and retrenchments.

- The non-economic factors will include victimization of workers, ill treatment by staff members, sympathetic strikes, political factors, indiscipline etc.
- ***Wages and allowances:*** Since the cost of living index is increasing, workers generally bargain for higher wages to meet the rising cost of living index and to increase their standards of living. In 2002, 21.4% of disputes were caused by demand of higher wages and allowances. This percentage was 20.4% during 2003 and during 2004 increased up to 26.2%. In 2005, wages and allowances accounted for 21.8% of disputes.
- ***Personnel and retrenchment:*** The personnel and retrenchment have also been an important factor which accounted for disputes. During the year 2002, disputes caused by personnel were 14.1% while those caused by retrenchment and layoffs were 2.2% and 0.4%

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respectively. In 2003, a similar trend could be seen, wherein 11.2% of the disputes were caused by personnel, while 2.4% and 0.6% of disputes were caused by retrenchment and layoffs. In year 2005, only 9.6% of the disputes were caused by personnel, and only 0.4% were caused by retrenchment.

- ***Indiscipline and violence:*** From the given table, it is evident that the number of disputes caused by indiscipline has shown an increasing trend. In 2002, 29.9% of disputes were caused because of indiscipline, which rose up to 36.9% in 2003. Similarly in 2004 and 2005, 40.4% and 41.6% of disputes were caused due to indiscipline respectively. During the year 2003, indiscipline accounted for the highest percentage (36.9%) of the total time-loss of all disputes, followed by cause-groups wage and allowance and personnel with 20.4% and 11.2% respectively. A similar trend was observed in 2004 where indiscipline accounted for 40.4% of disputes.
- ***Bonus:*** Bonus has always been an important factor in industrial disputes. 6.7% of the disputes were because of bonus in 2002 and 2003 as compared to 3.5% and 3.6% in 2004 and 2005 respectively.
- ***Leave and working hours:*** Leaves and working hours have not been so important causes of industrial disputes. During 2002, 0.5% of the disputes were because of leave and hours of work while this percentage increased to 1% in 2003. During 2004, only 0.4% of the disputes were because of leaves and working hours.

Table 10.1: Percentage Distribution of Disputes by Causes

Cause Group	2002	2003	2004	2005
Wages & Allowances	21.3	20.4	26.2	21.8
Personnel	14.1	11.2	13.2	9.6
Retrenchment	2.2	2.4	0.2	0.4
Lay-Off	0.4	0.6	-	0.2
Indiscipline	29.9	36.9	40.4	41.6
Violence	0.9	1	0.9	0.4
Leave and Hours of Work/Shift Working	0.5	1	0.4	-
Bonus	6.7	6.7	3.5	3.6
Inter/Intra Union Rivalry	0.4	0.6	0.4	0.4
Non-implementation of agreements and awards etc.	3.1	1	1.1	0.9
Charter of Demands	10.5	8.8	5.7	7.1
Work Load	0.5	0.4	0.7	1.1
Standing orders/rules/service conditions/safety measures	1.8	1	2.4	0.2

Source: http://industrialrelations.naukrihub.com/images/disputes.JPG

Self Assessment

Fill in the blanks:

4. ..... being a subject in the concurrent list, State-level labour regulations are also an important determinant of industrial performance.

Notes

5. For purposes of this act the term ..... is defined as dispute or difference between employers and employees, which is connected with the employment and non-employment or the terms of employment or with the condition of labour of any person.- section 2(k).

6. Sec. 2 (s) defines ..... as any person (including an apprentice) employed in any industry to do any skilled, unskilled manual, supervisory, operational, technical or clerical work for hire or reward.

10.3 Authorities under this Act

Following are the Authorities under the Industrial Disputes Act:

1. Works Committee

In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

Notes It shall be the duty 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.

2. Conciliation Officers

The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes. A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

3. Boards of Conciliation

The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute. A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit. The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

Notes

A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

4. Courts of Inquiry

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

Provided that, if the appropriate Government notifies the court that the services of the chairman have ceased to be available, the court shall not act until a new chairman has been appointed.

5. Labour Courts

The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act. A Labour Court shall consist of one person only to be appointed by the appropriate Government. A person shall not be qualified for appointment as the Presiding Officer of a Labour Court, unless

- he is, or has been, a Judge of a High Court; or
- he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
- he has held any judicial office in India for not less than seven years; or
- he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

6. Tribunals

The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule [and for performing such functions as may be assigned to them under this Act]. A Tribunal shall consist of one person only to be appointed by the appropriate Government. A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-

(a) he is, or has been, a Judge of a High Court; or

(aa) he has, for a period of not less than three-years, been a District judge or an Additional District Judge.

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

Notes

Did u know? Section 7A empowers the appropriate Government to constitute one or more Industrial Tribunals for adjudication of the disputes relating to any matter specified in the Schedules. The Second Schedule enumerated the matters which fall within the jurisdiction of the Labour Court. The Third Schedule enumerates the matters which fall within the jurisdiction of the Industrial Tribunal, *Jagdish Narain Sharma v. Rajasthan Patrika Ltd, 1994,* LIR 265(Raj).

7. National Tribunals

The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes. A National Tribunal shall consist of one person only to be appointed by the Central Government. A person shall not be qualified for appointment as the presiding officer of a National Tribunal [unless he is, or has been, a Judge of a High Court.] The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

Self Assessment

State whether the following statements are true or false:

7. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926.
8. A Tribunal shall consist of two people only to be appointed by the appropriate Government.
9. The Central Government may, if it so thinks fit, appoint four persons as assessors to advise the National Tribunal in the proceeding before it.

10.4 Procedure and Machinery for Investigation and Settlement of Disputes

For industrial disputes which are not prevented or settled by, collective bargaining or Works Committees or by bipartite negotiations, the following authorities are provided under the Industrial Disputes Act for resolving the same.

- Conciliation Officer and Board of Conciliation
- Voluntary Arbitration
- Adjudication by Labour Court, Industrial Tribunal, and National Tribunal

10.4.1 Conciliation

Conciliation in industrial disputes is a process by which representatives of management and employees and their unions are brought together before a third person or a body of persons with a view to induce or persuade them to arrive at some agreement to their satisfaction and in the larger interest of industry and community as a whole. This may be regarded as one of the phases of collective bargaining and extension of process of mutual negotiation under the guidance of a third party, i.e. Conciliation Officer, or a Board of Conciliation appointed by the Government.

Notes

Both the Central and State Governments are empowered under the Industrial Disputes Act, 1947 to appoint such number of conciliation officers as may be considered necessary for specified areas or for specified industries in specified areas either permanently or for limited periods.

Notes The main duty of a Conciliation Officer is to investigate and promote settlement of disputes. He has wide discretion and may do all such things, as he may deem fit to bring about settlement of disputes. His role is only advisory and mediatory. He has no authority to make a final decision or to pass formal order directing the parties to act in a particular manner.

Process of Conciliation

Where any industrial dispute exists or is apprehended, and is brought to the notice of conciliation officer by the parties concerned, or is referred to him by the government, or he receives a notice of strike or lock-out, he is to hold conciliation proceedings in the prescribed manner. Conciliation proceedings are obligatory in case of public utility services, and in such cases conciliation proceedings have to be started immediately after receiving notice of strike or lock-out or reference from the Government. In such cases conciliation proceedings are deemed to have commenced from the time the notice of strike is received by the conciliation officer. In other cases conciliation may be initiated at the discretion of the Government. The conciliation officer' may send formal intimation to the parties concerned declaring his intention to commence conciliation proceedings with effect from the date he may specify. He may hold meetings with the parties to the dispute either jointly or separately.

A joint meeting saves time and also affords parties an opportunity to meet each other and put forward their respective view points and comments about the dispute. Conciliation proceedings are to be conducted expeditiously in a manner considered fit by the conciliation officer for the discharge of his duties imposed on him by the Act, If a settlement is arrived at in the course of the conciliation proceedings, memorandum of settlement is worked out and signed by the parties concerned, and it becomes then binding on all parties concerned for a period agreed upon.

The conciliation officer is to send a report to the Government giving full facts along with a copy of the settlement. If no agreement is arrived at, the conciliation officer is required to submit a full report to the Government explaining the causes of failure.

After considering the failure report the Government may refer the dispute to the Board of Conciliation, arbitration, or for adjudication to Labour Court or Industrial Tribunal. If the Government does not make such a reference, it shall record and communicate to the parties concerned the reasons thereof. While exercising its discretion, the Government must act in a bonafide manner and on consideration of relevant matters and facts. The reasons must be such as to show that the question was carefully and properly considered. The conciliation officer has to send his report within 14 days of the commencement of conciliation proceedings, and this period may be extended as may be agreed upon by the parties in writing.

The conciliation officer is not the judicial officer. After reporting that no settlement could be arrived at, he cannot be debarred from, making fresh effort to bring about a settlement. But he cannot take final decision by himself.

Powers of Conciliation Officer

Under the Act, conciliation is not a judicial activity. It is only administrative, since it is executed by the Government agency. Although conciliation officer is not a judicial officer, but to enable

him to discharge his duties cast upon him under the Act, he has been empowered to enter the premises occupied by an establishment to which the dispute relates after giving reasonable notice for inspecting same, or any of its machinery, appliances or articles. He can also interrogate any person there in respect of anything situated therein or any matter relevant to the subject matter of conciliation. He can also call for any document which he has ground for considering relevant in the dispute, or to be., necessary for the purposes of verifying the implementation of any award or carrying out any other duty imposed on him under the Act. He is also empowered to enforce the attendance of any person for the purpose of examination of such persons. For all these purposes the conciliation officer shall have the same power as are vested in a Civil Court under the Code of Civil Procedure. He is also deemed to be public servant within the meaning of Sec. 21 of the Indian Penal Code.

Settlements In and Outside Conciliation

A settlement arrived at in proceedings under the Act is binding on all the parties to the dispute. It is also binding on other parties if they are summoned to appear in conciliation proceedings as parties to the dispute. In case of employer such a settlement is also binding on his heirs, successors, assigns in respect of establishment to which these dispute relate. In regard to employees, it is binding on all persons who were employed in establishment or part of the establishment to which the dispute' relates on the date of dispute, and to all persons who subsequently become employed in that establishment.

A settlement arrived at by agreement between the management and workers or their unions outside conciliation proceedings are binding only on the parties to the agreement. (Section 18)

Board of Conciliation

This is a higher forum which is constituted for a specific dispute. It is not a permanent institution fake the Conciliation Officer, The Government may, as occasion arises, constitute a Board of Conciliation for settlement of an industrial dispute with an independent chairman and equal representatives of the parties concerned as its members. . The chairman, who is appointed by the Government, is to be a person unconnected with the dispute or with any industry directly affected by such dispute. Other members are to be appointed on the recommendations of the parties concerned; and if any party fails to make recommendation, the Government shall appoint such persons as it thinks fit to represent that party. The Board cannot admit a dispute in conciliation on its own.-It can act only when reference is made to it by the Government. (Section 5).

Notes As soon as a dispute is referred to a Board, it has to endeavour to bring about a settlement of the same. For this purpose, it has to investigate the dispute and all matters affecting the merits and right settlement thereof, for the purpose of inducing the parties to come to a fair and amicable settlement. Procedure followed by the Board in this regard is almost the same as adopted by the conciliation officers. The Board is, however, required to submit its report within two months of the date on which the dispute was referred to it, or within such short period as the Government may fix in this behalf. The proceedings before the Board are to be held in public, but the Board may at any stage direct that any witness shall be examined or proceedings shall be held in camera.

If a settlement is arrived at, a report with a copy of the settlement is submitted, to the Government. If the Board fails to bring about settlement, a report is submitted to the Government stating the facts and circumstances, the steps taken, reasons for failure along with its findings. After considering its findings the Government may refer the dispute for voluntary arbitration if both

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the parties to the dispute agree for the same, or for 'Adjudication to Labour Court or Industrial Tribunal or National Tribunal. There period of submission of report may be extended by the Government beyond two months as agreed upon by the parties in writing. A member of the Board may record any minute of dissent from the report, or from any recommendation made therein. With the minute of dissent the report shall be published by, the Government within thirty days from the receipt thereof. A Board of Conciliation can only try to bring about a settlement. It has no power to impose a settlement on the parties to the dispute. The Board has the power of a Civil Court for, (i) enforcing the attendance of any person and examining on oath; (ii) compelling the production of documents and material objects; (iii) issuing commissions for the examination of witnesses. The enquiry or investigation by the Board is regarded as judicial proceedings.

The Boards of conciliation are rarely appointed by the Government these days. The original intention was that major disputes should be referred to a Board and minor disputes shout be handled by the conciliation officers. In practice, however, it was found that when the Parties to the dispute could not come to an agreement between themselves, their representatives on the Board in association with independent chairman (unless latter had the role of an umpire or arbitrator), could rarely arrive at a settlement. The much more flexible procedure followed by the conciliation officer is found to be more acceptable. This is more so when disputes relate to a whole industry, or important issues, and a senior officer of the Industrial Relations Machinery, i.e. a senior officer of the Directorate of Labour, is entrusted with the work of conciliation. The Chief Labour Commissioner (Central) or Labour Commissioner of the State Government generally intervene themselves in conciliation when important issues form the subject matters of the dispute.

Did u know? Court of Inquiry may be constituted for inquiring about matter appearing to be connected with or relevant to an I.D. The court may consist of one or more independent persons. It has to submit its report within six months on the matter referred to Units. (Sec. 6).

10.4.2 Voluntary Arbitration

When Conciliation Officer or Board of Conciliation fails to resolve conflict/dispute, parties can be advised to agree to voluntary arbitration for settling their dispute. For settlement of differences or conflicts between two parties, arbitration is an age old practice in India. The Panchayat system is based on this concept. In the industrial sphere, voluntary arbitration originated at Ahmedabad in the textile industry under the influence of Mahatma Gandhi. Provision for it was made under the Bombay Industrial Relations Act by the Bombay Government along with the provision for adjudication, since this was fairly popular in the Bombay region in the 40s and 50s. The Government of India has also been emphasizing the importance of voluntary arbitration' for settlement of disputes in the labour policy chapter in the first three plan documents, and has also been advocating this step as an essential feature of collective bargaining. This was also incorporated in the Code of Discipline in Industry adopted at the 15th Indian Labour Conference in 1958. Parties were enjoined to adopt voluntary arbitration without any reservation. The position was reviewed in 1962 at the session of the Indian Labour Conference where it was agreed that this 'step would be the normal method after conciliation effort fails, except when the employer feels that for some reason he would prefer adjudication. In the Industrial Trade Resolution also which was adopted at the time of Chinese aggression, voluntary arbitration was accepted as a must in all matters of disputes. The Government had thereafter set up a National Arbitration Board for making the measure popular in all the states, and all efforts are being made to sell this idea to management and employees and their unions.

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In 1956 the Government decided to place voluntary arbitration as one of the measures for settlement of a dispute through third party intervention under the law. Sec. 10A was added to the Industrial Disputes Act, and it was enforced from 10th March, 1957.

Reference of Disputes for Arbitration

Where a dispute exists or is apprehended, it can be referred for arbitration if the parties to the dispute agree to do so by submitting a written agreement to that effect, mentioning the person acceptable to them as arbitrator and also the issues to be decided in arbitration - proceedings, to the Government and the Conciliation Officer concerned before it is referred for adjudication to Labour Court or Tribunal. The Agreement must be signed by both the parties. Both under Sec. 10A and 10(2) reference is obligatory.

Where an agreement provides for even number of arbitrators, it will provide for the appointment of another person as an Umpire who shall decide upon the reference if the arbitrators are divided in their opinion. The award of the Umpire shall be deemed to be the arbitration award for the purposes of the Act.

The appropriate Government shall within one month from the date of the receipt of the copy of the arbitration agreement publish the same in the Official Gazette if the Government is satisfied that the parties, who have signed the agreement for arbitration, represent majority of each party; otherwise it can reject the request for arbitration.

Where any such notification has been issued, the employer and workmen who are not parties to the arbitration agreement, but are concerned in the dispute, shall be given an opportunity to present their case before the arbitrator or arbitrators.

The arbitrator shall investigate the dispute and submit to the Government the Arbitration Award signed by him.

Where an industrial dispute has been referred for arbitration and notification has been issued, the Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute, which may be in existence on the date of reference.

The arbitration award which is submitted to the Government and becomes enforceable, is binding on all parties to the agreement and all other parties summoned to appear in the proceedings as parties to dispute. Such an award is also binding on all, employees at the time of award, or to be employed subsequently even if they are not party to the initial agreement. If the arbitration agreement is not notified in the Official Gazette under Sec. 10-A, it is applicable only to the parties who have agreed to refer the dispute for arbitration.

Arbitration Award is enforceable in the same manner as the adjudication award of Labour Court or Industrial Tribunal.

Arbitration is an alternative to adjudication and the two cannot be used simultaneously. It is voluntary at the discretion of the parties to a dispute. Arbitrator is a quasi-judicial body. He is an independent person and has all the attributes of a statutory arbitrator. He has wide freedom, but he must function within the limit of his powers. He must follow due procedure of giving notice to parties, giving fair hearings, relying upon all available evidence and documents. There must be no violation of the principles of natural justice.

Acceptance of Arbitration

Voluntary arbitration has been recommended and given place in law by the Government. Experience, however, shows that although the step has been strongly pressed by the Government for over thirty years it has yet to take roots. During the last decade not even 1% of the disputes

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reported were referred for arbitration. The National, Commission on Labour examined the working of arbitration as a method of settling disputes, and found that it was yet to be accepted by the parties, particularly by the 'employers, unreservedly. The main hurdles noticed yet are:

- Choice of suitable arbitrator acceptable to both parties.
- Payment of-arbitration-fees-Unions can seldom afford to share such costs equally with management.

Apart from these, it appears that arbitration under the Act is not correctly understood by the employers and trade unions. When arbitration is suggested, the impression often is that matter is to be left to the sole decision of an individual who can act in any manner he likes. The sanctity of the decision by an arbitrator is also held in doubt. The fact that law covers voluntary arbitration, and places it almost parallel to adjudication, is not appreciated or known widely.

Caution Undoubtedly an arbitrator can give a decision more promptly and enjoys greater freedom since he is not bound by fetters of law and procedure. He is also not required to only interpret the technicality and meaning of statutory provisions. He is required in fact to decide the issue on grounds of natural justice and fair play to both the parties. Arbitration if accepted voluntarily and not under any duress or pressure, should provide a more wholesome answer. It, however, is for the parties to give a trial to this measure.

10.4.3 Adjudication

Unlike conciliation and arbitration, adjudication is compulsory method of resolving conflict. The Industrial Disputes Act provides the machinery for adjudication, namely, Labour Courts, Industrial Tribunals and National Tribunals. The procedures and powers of these three bodies are similar as well as provisions regarding commencement of award and period of operation of awards. Under the provisions of the Act, Labour Courts and Industrial Tribunals can be constituted by both Central and State Governments, but the National Tribunals can be constituted by the Central Government only, for adjudicating disputes which, in its opinion, involve a question of national importance or of such a nature that industrial establishments situated in more than one State are likely to be affected by such disputes.

Labour Court

It consists of one person only, who is also called the Presiding Officer, and who is or has been a judge of a High Court, or he has been a district judge or an additional district judge for a period not less than three years, or has held any judicial office in India for not less than seven years. Industrial disputes relating to any matter specified in the Second Schedule of the Act (Appendix-III) may be referred for adjudication to the Labour Court. (Section 7).

Industrial Tribunal

This is also one-man body (Presiding Officer). The Third Schedule of the Act mentions matters of industrial disputes which can be referred to it for adjudication (Appendix-IV). This Schedule shows that Industrial Tribunal has wider jurisdiction than the Labour Court. The Government concerned may appoint two assessors to advise the Presiding Officer in the proceedings. (Section 7A)

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National Tribunal

This is the third adjudicatory body to be appointed by the Central Government under the Act for the reasons already mentioned above. It can deal with any dispute mentioned in Schedule II and III of the Act or any matter which is not specified therein. This also consists of one person to be appointed by the Central Government, and he must have been a Judge of a High Court. He may also be assisted by two assessors appointed by the Government to advise him in adjudicating disputes.

The presiding officers of the above three adjudicatory bodies must be independent persons and should not have attained the age of 65 years. Again, these three bodies are not hierarchical. It is the prerogative of the Government to refer a dispute to these bodies. They are under the control of the labour department of the respective State Government and the Central Government. The contending parties cannot refer any dispute for adjudication themselves, and the awards of these bodies are binding on them. (Section 7B)

Reference of Dispute for Adjudication (Section 10)

If a dispute is not settled by direct negotiation, or conciliation, if the parties do not agree to get it settled by voluntary arbitration, the Government at its discretion may refer it to Labour Court, Industrial Tribunal or National Tribunal, depending upon whether the matter of the dispute appears in the Second of Third Schedule of the Act. However, if the parties to the dispute jointly or separately apply for a reference to Labour Court or Tribunal, the Government is obliged to make a reference accordingly if it is satisfied that the persons applying represent the majority of each party. Disputes which are considered vexatious or frivolous are not referred to adjudication. The Government has also the power to refer disputes which have not taken place, but are only apprehended. After referring the dispute to adjudication the Government can prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of its reference.

An order referring a dispute to Labour Court or Industrial Tribunal or National Tribunal shall specify the period within which they shall submit their award on such dispute to the Government concerned. In case of individual disputes such a period shall not exceed three months. The period can, however, be extended if the parties concerned apply for such extension, or the Labour Court or Industrial Tribunal may consider expedient to do so for the reason to be recorded. The proceedings before these authorities shall not lapse on the ground that the proceedings have not been completed' within the specified time or by reason of the death of any of the parties to dispute being a workman. In computing any period specified in the order of reference, the period if any, for which proceedings had been stayed by the injunction of the Civil Court, shall be excluded.

When the Central Government is the appropriate Government in relation to any industrial dispute, it can refer the dispute for adjudication to Labour Court or Industrial Tribunal appointed by the State Government instead of setting up its own Labour Court or Tribunal for that purpose.

Effectiveness of Adjudication Machinery

Initially trade unions affiliated to all political parties were enthusiastic in getting their disputes settled by conciliation and adjudication as provided under the Industrial Disputes Act, 1947. Their enthusiasm started waning when they found this method of settling disputes as very time consuming. Not a few employers also started questioning the credibility of the presiding officers of the Labour Courts and Industrial Tribunals, who are generally retired persons engaged on yearly contract basis. Some trade union leaders now prefer to get disputes settled by pressurised

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bargaining rather than by adjudication. Quite a number of disputes are reported to be pending with Labour Courts and Industrial Tribunals for four or five years, and for still longer periods in High Courts and the Supreme Court. It, therefore, appears that the machinery provided by the Industrial Disputes Act is failing to cope with demand made on it. Its record shows that is far from successful in resolving conflict effectively. This may be due to red-tapism and bureaucratic delays and complicated procedure which are inherent in the Government organisation. Such delays have encouraged militancy or violence in management and union relations.

The Industrial Disputes Act as amended recently (Act 46 of 1982), provides time limits for the disposal of disputes by Labour Courts and Tribunals, but these time limits are observed rarely. The amended Act also provides for setting up machinery- within the establishment for prompt handling of grievances, but this amendment has yet to be given effect to. Over thirty years back, National Commission on Labour recommended setting up of more independent machinery in the form of Industrial Relations Commissions, and this recommendation is still under the consideration of the Government. In view of all this it is no wonder that union and management relations in the country are still brittle, and arrangements for settlement of disputes need considerable improvement.

Self Assessment

Fill in the blanks:

10. The main duty of a ..... Officer is to investigate and promote settlement of disputes.
11. A Board of Conciliation can only try to bring about a .....
12. The Boards of conciliation are rarely appointed by the ..... these days.

10.5 Measures for Prevention of Conflicts and Disputes; Penalties under the Act

The Act not only provides machinery for investigation and settlement of disputes, but also some measures for the containment and prevention of conflicts and disputes. Important preventive measures provided under the Act are:

1. Setting up of Works Committees in establishments employing 100 or more persons, with equal number of representatives of workers and management for endeavouring to compose any differences of opinion in matters of common interest, and thereby promote measure for securing and preserving amity and cordial relations between the employer and workmen. The representatives of workmen will not be less than the representatives of employers and such representatives of workmen will be from among the workmen engaged in the establishment and in consultation with registered trade unions. The decision of the works committee carries weight but is not conclusive and binding; its duties is to smooth away friction then to alter conditions of services, etc. (Section 3).

2. Prohibition of changes in the conditions of service in respect of matters laid down in the Fourth Schedule of the Act (a) without giving notice to the workmen affected by such changes; and (b) within 21 days of giving such notice. No such prior notice is required in case of (a) Changes affected as a result of any award or settlement; (b) Employees governed by Government rules and regulations.

3. Prohibition of strikes and lock outs in a public utility service (a) without giving notice to other party within six weeks before striking or locking out, (b) within 14 days of giving such notice, (c) before the expiry, of the date of strike or lock-out specified in the notice and during the

pendency of any conciliation proceedings before a conciliation office and seven days after the conclusion of such proceedings. In non-public utility services strikes and lock out are prohibited during the pendency of conciliation proceedings before the Board of Conciliation and seven days after the conclusion of such proceedings, during the pendency of proceedings before an arbitrator, labour court, and Industrial Tribunal and National Tribunal, during the operation of an award and settlement in respect of matters covered by the settlement or award. (Sections 22 and 23)

4. Prohibition of Unfair Labour Practices: Sec. 25 T and 25 U prohibit employers, employees and unions from committing unfair labour practices mentioned in the Schedule V of the Act. Commission of such an offence is punishable with imprisonment up to six months and fine up to ₹ 1000, or both. (Ch. V -C)

5. Requiring employers to obtain prior permission of the authorities concerned before which disputes are pending for conciliation, arbitration and adjudication, for changing working and employment conditions, or for dismissal or discharging employees and their union leaders. (Section 33)

6. Regulation, of lay-off and retrenchment and closure of establishment: Sec. 25 and its sub-sections require employers to (a) pay lay-off compensation to employees (in establishments employing 50 or more) for the period that they are laid-off, at the rat of 50% of the salary or wages which they would have paid otherwise, (b) give one month notice, and three months notice in case of establishments employing 100 or more persons or pay in lieu of notice, and also pay compensation at the rate of 15 days wages for every completed year of service for retrenchment and closing establishments (c) Retrench employees on the basis of first come last go, and (d) obtain permission from the Government for retrenchment and laying off employees and closing, of establishments employing 100 or more persons.

Penalties

1. Penalty for Illegal Strikes

Any workman, who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees or with both. [Section 26(1)]

In the case of *Vijay Kumar Oil Mills* v. *Their Workmen,* it was held that the act of a workman to participate in an illegal strike gives the employer certain rights against the workman, which are not the creation of the Statute but are based on policy, and the employer has every right to waive such rights. In a dispute before the Tribunal, waiver can be a valid defence by the workman. However, waiver by the employer cannot be a defence against prosecution under Section 26 and something which is illegal by Statute cannot be made legal by waiver (*Punjab National Bank* v. *their Workmen).*

2. Penalty for Illegal Lock-outs

Any employer, who commences, continues, or otherwise, acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both. [Section 26(2)]

3. Penalty for Instigation etc.

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a

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term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 27)

4. Penalty for giving Financial Aid to Illegal Strikes and Lock-outs

Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 28)

5. Penalty for Breach of Settlement or Award

Any person who commits a breach of any term of any settlement or award which is binding on him under this Act, should be punishable with imprisonment for a term which may extend to six months, or with fine or with both, and where the breach is a continuing one with a further fine which may extend to two hundred rupees for everyday during which the breach continues after the conviction for the first, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation to any person who, in its opinion has been injured by such breach. (Section 29)

6. Penalty for Disclosing Confidential Information

Any person who willfully discloses any such information as is referred to in Section 21 in contravention of the provisions of that section shall, on complaints made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both. (Section 30)

7. Penalty for Closure without Notice

Any employer who closes down any undertaking without complying with the provisions of Section 25-FFA shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees, or with both. (Section 30-A)

8. Penalty for other Offences

Any employer who contravenes the provisions of Section 33 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.

Further, whoever contravenes any of the provisions of this Act or any rules made there under shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees. (Section 31)

9. Offence by Companies, etc.

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not) every director, manager, secretary, agent or other officer or person concerned with management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence. (Section 32)

Notes

Task As a Manager, what measures will you take in order to prevent Conflicts and Disputes in your organisation.

Self Assessment

State whether the following statements are true or false:

13. Setting up of Works Committees in establishments employing 200 or more persons, with equal number of representatives of workers and management for endeavouring to compose any differences of opinion in matters of common interest.
14. Employees and unions from committing unfair labour practices mentioned in the Schedule V of the Act.
15. In non-public utility services strikes and lock out are prohibited during the pendency of conciliation proceedings before the Board of Conciliation and seven days after the conclusion of such proceedings, during the pendency of proceedings.

Case Study

V.J. Textiles – Industrial Disputes Resolution System under the Industrial Disputes Act, 1947

V.J. Textiles is a leading industry having a workforce of more than 1,200 employees, engaged in manufacturing cotton yarn of different counts. The Company has a well-established distribution network in different parts of the country. It has modernized all its plants, with a view to improve the productivity and maintain quality. To maintain good human relations in the plants and the organization as a whole, it has extended all possible facilities to the employees. Compared to other mills, the employees of V.J. Industries are enjoying higher wages and other benefits. The Company has a Chief Executive, followed by executives' in-charge of different functional areas. The Industrial Relations Department is headed by the Industrial Relations Manager.

The employees are represented by five trade unions — A, B, C, D and E (unions are alphabetically presented based on membership) — out of which the top three unions are recognized by the management for purposes of negotiations. All the unions have maintained good relations with the management, both individually and collectively. For the past ten years, the Company has been distributing bonus to the workers at rates more than the statutory minimum prescribed under the Bonus Act. Last year, for declaration of the rate of bonus, the management had a series of discussions with all recognized unions and finally announced a bonus which was, in turn, agreed upon by all the recognized unions. The very next day when the management prepared the settlement and presented it before the union representatives, while Unions A and C signed the same, the leader of Union B refused to do so and walked out, stating that the rate of bonus declared was not sufficient. The next day Union B issued a strike notice to the management asking for higher bonus.

The management tried its best to avoid the unpleasant situation, but in vain. As a result, the members of Union B went on strike. They were joined by the members of Union D also. During the strike, the management found that leader of Union A, soon after the first meeting, had stated in the presence of a group of workers, "lt is because of me that the

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management has agreed to declare this much amount of bonus to the employees; Union B has miserably failed in its talks with the management for want of initiative and involvement". This observation somehow reached the leader of Union B as a result of which he felt insulted. Soon after identifying the reason for Union B's strike call, the Industrial Relations Manager brought about a compromise between the leaders of Unions A and B. Immediately after this meeting, the strikers (members of Unions B and D) resumed work and the settlement was signed for the same rate of bonus as was originally agreed upon.

Questions

1. Was the leader of Union A justified in making remarks which made the leader of Union B feel offended?
2. What should be management's long-term strategy for avoiding recurrence of inter union differences on such issues?
3. If you were the Industrial Relations Manager, what would you have done had the Union B resorted to strike for a reason other than that mentioned in the case?

Source: http://www.phindia.com/srm/Real-Time-Chap-07.pdf

10.6 Summary

- An industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment.
- It is a disagreement between an employer and employees' representative; usually a trade union, over pay and other working conditions and can result in industrial actions.
- When an industrial dispute occurs, both the parties, that is the management and the workmen, try to pressurize each other.
- The management may resort to lockouts while the workers may resort to strikes, picketing or gheraos.
- The object of the Act is to make provisions for investigation and settlement of industrial disputes.
- The purpose is to bring the conflicts between employer and employees to an amicable settlement.
- The Act provides machinery for settlement of disputes, if dispute cannot be solved through collective bargaining.
- Section 10, Industrial Disputes Act, 1947 provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time; by order in writing refer the dispute for redressal before the competent Jurisdictional Tribunals or as provided in the Act.
- Section 10A, Industrial Disputes Act, 1947 provides that where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may at any time before the dispute has been referred to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such persons (including the presidency officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator as may be specified in the arbitration agreement.

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- Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice has been received, shall hold conciliation proceedings in the prescribed manner.

10.7 Keywords

Adjudication: Adjudication is a procedure for resolving disputes without resorting to lengthy and expensive court procedure.

Arbitration: Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.

Arbitrator: An independent person or body officially appointed to settle a dispute.

Conciliation: Conciliation in industrial disputes is a process by which representatives of management and employees and their unions are brought together before a third person or a body of persons with a view to induce or persuade them to arrive at some agreement to their satisfaction and in the larger interest of industry and community as a whole.

Conflict: Conflict may be defined as a struggle or contest between people with opposing needs, ideas, beliefs, values, or goals.

Government: A group of people that governs a community or unit. It sets and administers public policy and exercises executive, political and sovereign power through customs, institutions, and laws within a state.

Industrial Disputes: Industrial disputes are conflicts, disorder or unrest arising between workers and employers on any ground.

Industry: Economic activity concerned with the processing of raw materials and manufacture of goods in factories.

Labour Courts: It consists of one person only, who is also called the Presiding Officer, and who is or has been a judge of a High Court, or he has been a district judge or an additional district judge for a period not less than three years, or has held any judicial office in India for not less than seven years.

Tribunals: A tribunal is a committee or court which is convened to address a special issue.

Workman: A person with specified skill in a job or craft.

10.8 Review Questions

1. What is the object and scope of the Industrial Disputes Act, 1947?
2. Write short notes on: (a) Industrial Dispute; (b) Workman; (c) Lay off; (d) Retrenchment; (e) Strike; (f) Lock-out;
3. Describe the various steps in settlement of an industrial dispute. Is it incumbent on the appropriate Government to refer every industrial dispute to adjudication?
4. Describe briefly the authorities provided in the Act for adjudication of industrial disputes.
5. Mention a few unfair labour practices on the part of employers and on the part of workmen.
6. Briefly discuss the provisions relating to illegal strikes and lock-outs.
7. Write short notes on:
   (a) Workman.

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(b) Industrial dispute.

(c) Protected workmen.

(a) Layoff and retrenchment.

8. Who can raise an industrial dispute?

9. What happens when the dispute is referred to labour court?

10. Differentiate between strikes, lock out and lay off.

Answers: Self Assessment

1.	False	2.	True
3.	True	4.	Labour
5.	Dispute	6.	Workman
7.	True	8.	False
9.	False	10.	Conciliation
11.	Settlement	12.	Government
13.	False	14.	True
15.	True		

10.9 Further Readings

Books

Davidov, Guy & Langille, Brian (2011), *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Online links

http://www.irtsa.net/Industrial_Disputes_Act.pdf

http://artassam.nic.in/Industries%20&%20Commerce%20%20Deptt/Industrial%20Disputes%20Act,%201947.pdf

http://business.gov.in/legal_aspects/indl_disputes.php

http://www.vakilno1.com/bareacts/industrialdisputesact/industrialdisputesact.htm

http://industrialrelations.naukrihub.com/industrial-disputes.html

Unit 11: Trade Unions Act, 1926

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Objectives

After studying this unit, you will be able to:

- Explain the genesis of the Act
- Discuss the authorities under trade union
- Get an overview of the registration of trade union
- Describe the amalgamation, dissolution and penalties in trade union

Introduction

The Trade Unions Act, 1926 provides for registration of trade unions with a view to render lawful organisation of labour to enable collective bargaining. It also confers on a registered trade union certain protection and privileges.

The Act extends to the whole of India and applies to all kinds of unions of workers and associations of employers, which aim at regularising labour management relations. A Trade Union is a combination whether temporary or permanent, formed for regulating the relations not only between workmen and employers but also between workmen and workmen or between employers and employers.

Beside the Bombay Industrial Relations Act, 1946, and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, Trade Unions Act, 1926 is the only legal framework for the trade unions by conceding to workmen their right of association and organising unions. It permits any seven persons to form their union and get it registered under the Act Registration of unions is optional and not compulsory. The National Commission on Labour (1969) recommended compulsory recognition of trade unions, but this recommendation is still under the consideration of the Government. However, the (1982) amendment of the Industrial Disputes Act, 1947, makes registration compulsory virtually by defining the term "Trade Union", for the purposes of this Act, as a Union registered under the Trade Unions Act, 1926. This gives Unions certain rights and immunities which unregistered Trade Unions do not enjoy. Therefore, workers tend to be members of registered trade unions. Besides specifying the procedure for registration of union, this Act lays down the guidelines for the day to day working of the registered unions. The purpose of this unit is to enable the students to comprehend basic expressions. At the end of this unit, you should be able to understand various concepts regarding the Trade Union Act.

The Trade Unions Act was passed before independence to provide legal protection to employee' collectives and regulate them. Under the act, trade unions are to be registered with the appropriate government appointed Registrar of Trade Unions.

Maintaining smooth relations between management and labor has been one of the main objectives of Indian Industrial relations. Laws falling under this domain are mainly regulative in nature. They specify the dos and don'ts.

The Trade Unions Act, 1926 allows freedom for any seven employees to apply to register a trade union, but a later amendment (2001) specified the minimum membership as 10% of union able employees or 100 employees, which ever is less. The act does not make registration compulsory. However, the registered trade union protection from certain civil and criminal actions.

The act does not specify any criterion or method for recognition of trade union by the employer as the representative of employees. Various State Governments, like Maharashtra, have enacted separate legislations to deal with recognition.

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The Industrial Employment (Standing Orders) Act, 1946 is regulatory in nature and is applicable to industrial establishments under the jurisdiction of central and state governments. By formally defining conditions of employment, the act serves to reduce conflict and also be a communication mechanism between management and labour.

Industrial establishments have to frame standing orders and apply for certifications for those as well. Certifications will be done by designated certifying officer after inviting objections from workmen or trade unions and considering the objections. In the absence of certified standing orders, the model standing orders provided in the act automatically apply, except in Gujarat and Maharashtra.

The primary tone of the Industrial Disputes (ID) Act of 1947 is regulatory since it puts restrictions on the direct actions that can be taken by both the parties involved in the industrial dispute. Different conflict resolution forums have been proposed, including works committees (Section 3), conciliation officers (Section 4) boards of conciliation (Section 5) courts of inquiry (Section 6) and labor courts (Section 7) tribunals (Section 7A) and the national tribunal (Section 7B). The act also allows the government to intervene in the interest of maintaining industrial peace. Since it came to force, the act has been amended many times.

In the context of demand for labor reforms, the suitability of the different provisions of the act has been questioned from the perspective of increasing employment productivity, and flexibility. The debate on the ID act starts with the definition of the industry itself, which got widened by the Supreme Court in the *Landmark Bangalore Water Supply and Sewage Board v. Rajappa, (1978)* case.

The act also requires organizations to give a notice of change (Section 9A) – and advance notice of 21 days – if there is any change at the work place affecting the workers. However Section 9B allows the government to exempt firms from Section 9 A in terms of public interest. Section 10 gives the government power to refer industrial disputes to boards, courts or tribunals for the purpose of arriving at a settlement.

The act also places restrictions on employees in public utilities going on strike (sections 22, 23, and 24) without appropriate notice (6 weeks and 14 days before giving the notice) or when any conciliation effort is operational. It also has provisions for firms employing more than 50 workmen (Section 25 A) regarding layoffs, payment of layoff compensation (Section 25 C) retrenchment of workmen after giving sufficient notice (Section 25F) and for closure of undertaking (section 25 FFA).

11.1 Genesis of the Act

Trade union is a voluntary organization of workers pertaining to a particular trade, industry or a company and formed to promote and protect their interests and welfare by collective action. They are the most suitable organisations for balancing and improving the relations between the employer and the employees. They are formed not only to cater to the workers' demand, but also for inculcating in them the sense of discipline and responsibility.

In India, the first organised trade union was formed in 1918 and since then they have spread in almost all the industrial centres of the country. The legislation regulating these trade unions is the Indian Trade Unions Act, 1926. The Act deals with the registration of trade unions, their rights, their liabilities and responsibilities as well as ensures that their funds are utilised properly. It gives legal and corporate status to the registered trade unions. It also seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class. The Act is applicable not only to the union of workers but also to the association of employers. It extends to whole of India. Also, certain Acts, namely, the Societies Registration Act, 1860; the Co-operative Societies Act, 1912; and the Companies Act, 1956 shall

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not apply to any registered trade union, and that the registration of any such trade union under any such Act shall be void.

The Act is administered by the Ministry of Labour through its Industrial Relations Division. The Division is concerned with improving the institutional framework for dispute settlement and amending labour laws relating to industrial relations. It works in close coordination with the Central Industrial Relations Machinery (CIRM) in an effort to ensure that the country gets a stable, dignified and efficient workforce, free from exploitation and capable of generating higher levels of output. The CIRM, which is an attached office of the Ministry of Labour, is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. The CIRM is headed by the Chief Labour Commissioner (Central). It has been entrusted with the task of maintaining industrial relations, enforcement of labour laws and verification of trade union membership in central sphere. It ensures harmonious industrial relations through:-

- Monitoring of industrial relations in Central Sphere;
- Intervention, mediation and conciliation in industrial disputes in order to bring about settlement of disputes;
- Intervention in situations of threatened strikes and lockouts with a view to avert the strikes and lockouts;
- Implementation of settlements and awards.

11.1.1 Objectives of Trade Union

They aim to:

- Secure fair wages for workers and improve their opportunities for promotion and training.
- Safeguard security of tenure and improve their conditions of service.
- Improve working and living conditions of workers.
- Provide them educational, cultural and recreational facilities.
- Facilitate technological advancement by broadening the understanding of the workers.
- Help them in improving levels of production, productivity, discipline and high standard of living.
- Promote individual and collective welfare and thus correlate the workers' interests with that of their industry.

11.1.2 Basic Provisions

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

1. The Act provides for the registration of the trade unions with the 'Registrars of Trade Unions' set up in different States, like the Office of Registrar (Trade Union) set up by the Government of National Capital Territory of Delhi. For registration of a trade union, seven or more members of the union can submit their application in the prescribed form to the Registrar of trade unions.

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Notes The application shall be accompanied by a copy of the 'rules of the trade union' and a statement giving the following particulars:- (i) Names, occupations and addresses of the members making the application; (ii) The name of the trade union and the address of its head office; (iii) The titles, names, ages, addresses and occupations of the office bearers of the trade union as per the format given in the Trade Unions Act, 1926. The Registrar, on being satisfied that the Union has complied with all the requirements of this Act, shall register the trade union. Thereafter, it shall issue a certificate of registration in the prescribed form as a conclusive evidence of registration of that trade Union.

2. 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 proformae to Labour Bureau, Ministry of Labour and Employment. The Labour Bureau on receiving the annual returns from different States/Union Territories consolidates the all India statistics and disseminates them through its publication entitled the 'Trade Unions in India' and its other regular publications.

3. The general funds of a registered trade union shall not be spent on any other objects than those specified in the Act. Also, a registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, for the promotion of the civic and political interest of its members.

Did u know? No member shall be compelled to contribute to such fund and a member who does not contribute to the said fund shall not be excluded from any benefits of the trade union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union by reason of his contribution to the said fund.

4. No office-bearer or member of a registered trade union shall be liable to punishment under the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as specified in the Act, unless the agreement is an agreement to commit an offence.

5. No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such an act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital of his labour as he wills.

6. The account books of a registered trade union and the list of members thereof shall be open to inspection by an office-bearer or member of the trade union at such times as may be provided for in the rules of trade union.

7. A person shall be disqualified for being chosen as, and for being a member of, the executive or any other office-bearer or registered trade union if- (i) he has not attained the age of eighteen years; (ii) he has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

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8. Every office-bearer or other person bound by the rules of the trade union shall be punishable with the payment of fine, if:-

- Default is made on the part of any registered trade union in giving any notice or sending any statement or other document as required by or under any provision of this Act; or
- Any person willfully makes, or causes to be made, any false entry in, or any omission from, the general statement or in or from any copy of rules or of alterations of rules sent to the Registrar; or
- Any person who, with intent to deceive, gives to any member of a registered trade union or to any person intending or applying to become a member of such trade union any document purporting to be a copy of the rules of the trade union or of any alterations to the same which he/ she knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of an unregistered trade union to any person on the pretence that such rules are the rules of a registered trade union.

9. Any registered trade union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of the Act, change its name. The change in the name of a registered trade union shall not effect any of its rights or obligation or render defective any legal proceeding by or against the union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued by its new name.

10. Any two or more registered trade unions may become amalgamated together as one trade union with or without the dissolution or division of the funds of such trade unions or any of them, provided that the votes of at least one-half of the members of each or every such trade union entitled to vote are recorded, and that at least sixty percent of the votes recorded are in favour of the proposal. Such an amalgamation shall not prejudice any right of any such unions or any right of a creditor or any of them.

11. When a registered trade union is dissolved, notice for the dissolution signed by seven members and by the Secretary of the trade union shall, within fourteen days of the dissolution, be sent to the Registrar and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the trade union, and the dissolution shall have effect from the date of such registration.

11.1.3 Features of Trade Unions Act

The Trade Unions Act, 1926 has been amended from time to time and the most important being the Trade Unions (Amendment) Act, 2001. This Act has been enacted in order to bring more transparency and to provide greater support to trade unionism in India. Some of the salient features of the Trade Unions (Amendment) Act, 2001 are:-

1. No trade union of workmen shall be registered unless at least 10% or 100, whichever is less, subject to a minimum of 7 workmen engaged or employed in the establishment or industry with which it is connected are the members of such trade union on the date of making of application for registration.

2. A registered trade union of workmen shall at all times continue to have not less than 10% or 100 of the workmen, whichever is less, subject to a minimum of 7 persons engaged or employed in the establishment or industry with which it is connected, as its members.

3. A provision for filing an appeal before the Industrial Tribunal/Labour Court in case of non-registration or for restoration of registration has been provided.

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4. All office bearers of a registered trade union, except not more than one-third of the total number of office bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the trade union is connected.

5. Minimum rate of subscription by members of the trade union is fixed at one rupee per annum for rural workers, three rupees per annum for workers in other unorganised sectors and 12 rupees per annum in all other cases.

6. The employees who have been retired or have been retrenched shall not be construed as outsiders for the purpose of holding an office in the trade union concerned.

7. For the promotion of civic and political interest of its members, unions are authorized to set up separate political funds.

Hence, trade union legislation ensures their orderly growth, reduce their multiplicity and promote internal democracy in the industrial organisation and the economy. The trade unions have thus acquired an important place in the economic, political and social set up of the country.

11.1.4 Scope and Coverage

The expression "Trade Union" under the Act includes both employers and workers organizations Employers organisations also can be registered as trade unions. The intention is to place both on par in matters of rights and responsibilities. It is primarily the objective of an association or combination which determines whether it is a trade union or not.

The federation of two or more trade unions mentioned in the definition can be seen in shape of Industrial Federations of Trade Unions.

Bombay Industrial Relations Act, 1948 is the most important state enactment. The relevant features of the act are (a) compulsory recognition of union by employer, (b) giving the right to workers to get their case represented either through representative union or where there is no representative union in industry/center/unit through elected representative of workers or through Government labour officer.

There is no provision in the Trade Unions Act, 1926 about sorting out inter or intra trade union disputes. In such eventuality, aggrieved party has to take recourse to common law of the land and redressal through courts.

This Act extends to the whole of India. Under the Act, the term "Trade Union" is defined as 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 employer and employers, or for imposing restrictive conditions on the conduct of any trade of business, and includes any federation of two or more trade unions. In other words, a trade union is a combination or association of not only of workmen but also of the employers. The Act, therefore, applies not only to the unions of workers but also to the associations of employers. (Sec. 2h)

Caselet

IG Metall – A Trade Union in Crisis?

On April 24, 2006, an agreement was reached between IG Metall Trade Union (IG Metall, also known as Industrie Gewerkschaft Metall or German Metalworker's Union), one of the oldest and largest trade unions in Germany and Gesamtmetall National Employers' Group (Gesamtmetall) on the wage increase for the union's 3.4 million

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members. Under the agreement, which was valid for 13 months, its members would receive a wage hike of three percent from June 2006 and a one time payment of 310 Euros as bonus for the months of March, April, and May 2006. This agreement avoided a series of nationwide strikes that IG Metall had planned to hold in Germany.

After the agreement, Gesamtmetall members threatened to cut jobs or move them out of Germany. They said that the agreement would increase labor costs and make exports less competitive.

It was estimated that an IG Metall worker in Germany made on an average about 25 Euros an hour when compared to 6 Euros per hour earned by a worker in East European countries. The employers also warned that this wage increase could threaten the recovery of the fragile German economy. They felt that the agreement would worsen the unemployment situation in Germany. Anton Boerner, head of one of the employer's federation wrote, "It's going to be very, very difficult for employment in Germany. Three percent is simply too much." The agreement was of great significance to the German economy, the biggest economy in Europe, as it set the agenda for other trade unions in Germany in terms of collective bargaining.

In Germany, most negotiations for collective bargaining and other agreements are negotiated between the trade unions and regional employer associations representing the entire sector rather than with individual companies.

Earlier in January 2006, IG Metall had demanded a five percent increase in pay as it felt that these companies were making huge profits. It said that the increase in pay would help the members cope with the rising cost of living, increase their purchasing power, and to withstand the increase in valued added tax from 16 percent to 19 percent, which the German government proposed to implement in 2007.

The agreement would also influence inflation and price stability in the German economy, and have repercussions on the wider European economy. Earlier, the European Central Bank (ECB) president, Jean-Claude Trichet, warned German companies against allowing any pay increase. He said that if the pay demand was met, the ECB would be forced to raise interest rates to counter inflation.

Controversy is not new to IG Metall. Over the decades, the union has played an important role in German labor relations and is considered by many as the pioneer in collective bargaining in Germany. IG Metall has both blue and white collared workersas its members. Though it is primarily a metalworkers' union and represents the metal industry labor, it has members from other industry sectors as well. Over the years, IG Metall has made significant contributions to the evolution of industrial relations in Germany. But, it has also been accused of irrational protection and harming the interests of workers and employees. The achievements and accusations present a contrasting and interesting picture of a trade union in a changing business environment.

Source: http://www.icmrindia.org/casestudies/catalogue/Human%20Resource%20and%20Organization%20Behavior/IG%20Metall-Trade%20Union%20in%20Crisis-Human%20Resource%20Management.htm

Self Assessment

State whether the following statements are true or false:

1. The legislation regulating these trade unions is the Indian Trade Unions Act, 1926.
2. The Act is applicable only to the union of workers.

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3. The general funds of a registered trade union shall not be spent on any other objects than those specified in the Act.
4. The Trade Unions Act, 1926 has been amended from time to time and the most important being 2000.

11.2 Authorities under Trade Union

The authorities of trade union are as follows:

11.2.1 All India Trade Union Congress (AITUC)

This National Federation was established in 1921. Ideologically it is linked with the communist philosophy and therefore espouses a more radical approach, as compared to some of the other federations, in attaining the workers' interests and goals. The major objectives of AITUC are:

(a) To establish a socialist state in India and the nationalisation of the means of production, distribution and exchanges as far as possible.

(b) To improve the economic and social conditions of the working class, by securing better terms and conditions of employment.

(c) To safeguard and promote the workers' right to free speech, freedom of association and assembly and the right to strike.

Example: For the furtherance of these objectives the means to be adopted by AITUC are to be legitimate, peaceful and democratic, viz, legislation, education, mass meeting, negotiations, demonstrations and as a last resort, the staging of a strike.

Notes **Membership and Finance**

The sources of funds are:

1. An annual contribution of ₹ 15 for unions with 500 members and less;
2. Affiliation fees at the rate of 5 paise per member with a minimum of ₹ 20 for unions with a membership above 500;
3. A delegate fee of ₹ 12 per delegate; and
4. Any other levy which may be fixed by a two-thirds majority of the General Council. The levy is fixed at the rate of ₹ 5 per 1000 members.

11.2.2 Indian National Trade Union Congress (INTUC)

This union was organised in 1947 with active support and encouragement from Congress leaders. It wanted to bring about a peaceful and non-violent solution to industrial disputes. It seeks to establish a society in which there is an opportunity for the development of individuals and the eradication of anti-social concentration of power in any form and therefore to nationalise industry. The main objectives are:

(a) To ensure full employment.

(b) To secure greater participation of workers in the management of enterprises.

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(c) To secure complete organisation of all categories of workers including agricultural labour.

(d) Organise workers on an industry-wise basis.

(e) To improve the conditions at work and to provide various social security measures.

(f) To develop among the workers a sense of responsibility towards industry and the community.

Caution The means to be adopted for the furtherance of these objectives are to be peaceful through due process of law and negotiations.

Notes **Membership and Finance**

Any organisation of workers accepting the constitution of the INTUC and with a subscription rate of not less than 25 paise per month is entitled to affiliation with the INTUC provided it is not affiliated with any rival organisation or any of its executive committee members are not members of a rival union. All the unions affiliated to INTUC and belonging to the same industry are required to join the corresponding industrial federation, e.g., the Indian National Textile Workers Federation, the National Federation of Indian Railwaymen, etc.

Every affiliated organisation is required to pay the Congress an annual affiliation fee at the rate of 10 paise per member on its rolls subject to a minimum of ₹ 15.

11.2.3 Hind Mazdoor Sabha (HMS)

This national federation came into being in 1948. This federation espouses the socialist philosophy and has linkages with socialist parties. However, there has been a division within the socialist ranks with the emergence of the Hind Mazdoor Panchayat, another federation with socialist leanings. The main aims of the Hind Mazdoor Sabha are:

(a) To promote the economic, political and social interests of the workers and to improve their terms and conditions of employment.

(b) To form a federation of unions from the same industry or occupation at the national level.

(c)To promote the formation of cooperative societies and to foster workers education.

The methods employed shall be legitimate, peaceful and democratic.

Notes **Membership and Finance**

The membership of HMS is open to all bonafide trade unions, including federations of trade unions. The general council of the Sabha has authority to accept or reject any application. The collection of funds of HMS is carried out through:

1. Affiliation fees of 5 paise per member per annum subject to a minimum of ₹ 20.
2. A delegate fee of ₹ 3 per delegate.
3. Any other levy that may be fixed by the general council.

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11.2.4 Centre of Indian Trade Unions (CITU)

This is a national federation which was established in 1971 as a result of the split in the AITUC which was a sequel to the split in the CPI, a new center; the Centre of Indian Trade Unions (CITU) emerged owing to its allegiance to the CPI (M). It is animated by the goal of organising workers to further their interests in economic, social and political matters. To further its objectives the methods to be adopted by CITU are legislation, demonstrations, agitations and intensification of the class struggle.

Notes **Membership and Finance**

Any union can be affiliated to CITU by paying a subscription (affiliation fee) of 20 paise per year per member (minimum of ₹ 40 per union if it is small). Each union applies to the State committee which after scrutinising, recommends its acceptance to the central committee.

The funds of CITU are derived from:

1. The affiliation fees of 20 paise per member per year to a minimum of ₹ 40.
2. The delegate fee of ₹ 5 per delegate.
3. Any other levy that may be fixed by the general council.

Self Assessment

Fill in the blanks:

5. ..... is linked with the communist philosophy and therefore espouses a more radical approach, as compared to some of the other federations, in attaining the workers' interests and goals.
6. ..... union was organised in 1947 with active support and encouragement from Congress leaders.
7. ..... federation espouses the socialist philosophy and has linkages with socialist parties.
8. ..... is a national federation which was established in 1971 as a result of the split in the AITUC which was a sequel to the split in the CPI.

11.3 Registration of Trade Union

Following perspectives included in the registration of trade union:

11.3.1 Appointment of Registrars

Under Section 3, the Appropriate Government shall appoint a person to be the Registrar of Trade Unions for each State. The appropriate Government may appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit. The appropriate Government may appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit for the purpose of exercising and discharging, under the superintendence and direction of the Registrar, such powers and functions of the Registrar under this Act as it may, by order, specify and define the

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local limits within which any such Additional or Deputy Registrar shall exercise and discharge the powers and functions so specified.

Subject to the provisions of any order under sub-section (2), where an Additional or Deputy Registrar exercises and discharges the powers and functions of a Registrar in an area within which the registered office of a Trade Union is situated, the Additional or Deputy Registrar shall be deemed to be the Registrar in relation to the Trade Union for the purposes of this Act.

Notes **Powers of Registrar**

The Registrar has power to enquire about the legality of the new election of the office-bearers of a Trade Union; *Mohan Lal v. Registrar of Trade Unions*, 1983 Lab IC 1883.

11.3.2 Mode of Registration

Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act:

Provided that no Trade Union of workmen shall be registered unless at least ten per cent or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration:

Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the applications.

11.3.3 Application for Registration

Every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:—

(a) the names, occupations and address of the members making application;

(aa) in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;

(b) the name of the Trade Union and the address of its head office; and

(c) the titles, names, ages, addresses and occupations of the [office-bearers] of the Trade Union.

Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

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11.3.4 Registration

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

Comments

The duties of the Registrar were to examine the application and to look at the objects for which the Union was formed. If those objects were objects set out in the Act, and if those objects did not go outside the objects prescribed in the Act and if all the requirements of the Act and the regulations made thereunder had been complied with, it was his duty, to register the Union; *Inland Steam Navigation Workers Union (in re:)*, 1936 IC 378.

Powers of Registrar

No provision of law provides for holding of election under the supervision of Registrar, Trade Unions. Therefore, the petitioner is right in submitting that there is no legal authority for issuance of impugned orders under which the internal disputes were referred for adjudication by the independent Board and upon its recommendations, election is directed to be held under the supervision of Registrar of Trade Unions; *Tata Workers Union v. State of Jharkhand*, 2002 LLR 806 (Jhar HC).

Question of fact or law

The Registrar is not a quasi-judicial authority and cannot, therefore, decide any disputed question of fact or law; *O.N.G.C. Workmen's Association v. State of West Bengal*, (1988) 57 FLR 522 (Cal).

Scope

Provisions of this section relate to only registration of a trade union. It is only a Civil Court which has jurisdiction to decide that dispute since under the Trade Unions Act, there is no provision permitting or empowering the Registrar to refer internal disputes relating to office-bearer for adjudication to any other forum; *R.N. Singh v. State of Bihar*, 1998 LLR 645.

11.3.5 Certificate of Registration

The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act. The registration gives a stamp of due formation of the Trade Union and assures the mind of the employer that the Trade Union is an authenticated body. The names and occupation of whose office-bearers also become known; *Food Corporation of India Staff Union v. Food Corporation of India*, 1995 LLR 309 (SC) 3 JJ.

11.3.6 Cancellation of Registration

The Registrar can withdraw or cancel registration if it has been obtained by fraud or mistake, or the trade union has ceased to exist, or it has contravened any provision of the Act, or has deleted any rule providing any matter required under this Act. The trade union concerned has, however, to be given two months' previous notice specifying the reasons for withdrawal or cancellation

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of registration. The union can appeal in a Civil, Court against the order of the Registrar either for refusing registration or withdrawing or cancelling registration certificate. (Sec. 10 and 11)

11.3.7 Appeal

Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal—

(a) where the head office of the Trade Union is situated within the limits of a Presidency town to the High Court, or

(aa) where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal, to that Court or Tribunal, as the case may be;

(b) where the head office is situated in any area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the [appropriate Government] may appoint in this behalf for that area.

The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order or withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

For the purpose of an appeal under sub-section (1) an appellate Court shall, so far as may be, follow the same procedure and have the same power as it follows and has when trying a suit under the Code of Civil Procedure, (5 of 1908), and may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the said Code.

In the event of the dismissal of an appeal by any Court appointed under clause (b) of sub-section (1) the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers of an appellate Court under sub-sections (2) and (3), and the provisions of those sub-sections shall apply accordingly.

State Amendment

11.3.8 Obligations Registered Trade Unions

Registration makes it obligatory for a trade union to:

(i) allow any person of the age of 15 years and above to be a member of the union subject to any rules of the trade union to the contrary, and enjoy all the privileges attached to membership; (Sec 21)

(ii) have 50% of the office bearers of the union from among the persons actually engaged or employed in industry with which the trade union is concerned, and the remaining 50% can be outsiders; say lawyers, politicians, social workers and others who are not in any way connected with the industry/undertaking, of which the workers are members of the union. A person is disqualified to be a member of the executive or any other office-bearer of registered trade union if he has not attained the age of 18 years, or if he has been convicted of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release; (Sec. 21-A, 22)

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(iii) keep account books and membership register available for inspection by any member or officer of the union; (Sec. 20)

(iv) send to the Registrar on or before the prescribed date an annual statement of receipts and assets and liabilities of the union audited in the prescribed manner as on 31st December, together with the statement showing changes in the office bearers and rules of the union made during the year. (Sec. 28)

11.3.9 Rights of Registered Trade Unions

A registered trade union has the right to:

(i) spend the general fund for payment of salaries, allowances and expenses to its office-bearers, prosecution or defense, of any legal proceedings for securing or protecting any rights of trade union, conduct of trade disputes, compensation to members for any loss arising from trade disputes, provision of educational, social, or religious benefits for members, publication of periodicals on labour matters, issue of or undertaking of liability under policies of assurance on the lives of members or policies of members against sickness, accident or unemployment, contribution to any cause intended to benefit workmen in general upto 25% of the gross income accrued to the fund, and any other object notified by the appropriate Government; (Sec. 15)

(ii) constitute a separate political fund for the promotion of civic and political interests of. members Contribution to this fund is, however, not obligatory for the members, or a condition for becoming member of the union. The political fund can be used for setting up candidates and meeting their election expenses, holding elections and political meetings and maintenance of members elected to the Parliament or State Assembly or any local authority; (Sec. 16)

(iii) claim protection from being prosecuted under sub-section (2) of Sec. 120B of the Indian Penal Code for bonafide trade union activities under Sec. 17 of the Act. The protection provided to the members and office-bearers of the Trade Union is partial in the sense that the immunity is available only in respect of agreements made between the members for the purpose of furthering any legitimate objective of the trade union as provided under section 15 of the Act. If the agreement is the agreement to do an act which is an offence, no immunity can be claimed in certain cases; (Sec. 17 and 18)

(iv) Sec. 18 of the Trade Unions Act deals with immunity from Civil Proceedings. A person is liable in torts for deliberately bringing out a breach of contract of employment between the employer and employee. But a registered trade union, its members or office-bearers are protected from being sued for inducing a person to break his contract of employment or for interfering with the trade, business or employment of some other person provided such inducement is in contemplation or furtherance of trade disputes.

(v) change its name with the consent of two-third of the total number of its members under intimation to the Registrar of Trade Unions. The change takes effect from the date it is registered by the Registrar; (Sec. 23 and 25) and

(vi) amalgamate the union with any other union by recording votes of at least 50% of the members, of which 60% must be in favour of amalgamation. This must be intimated to the Registrar, as it can, take effect after he registers it. (Sec 24,25)

Task Critically analyse the rights of registered trade unions.

Notes

Self Assessment

State whether the following statements are true or false:

9. Under Section 3, the Appropriate Government shall appoint a person to be the Registrar of Trade Unions for each State.
10. Every application for registration of a Trade Union shall not be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union.
11. The duties of the Registrar were to examine the application and to look at the objects for which the Union was formed.
12. The Registrar is a quasi-judicial authority and cannot, therefore, decide any disputed question of fact or law; O.N.G.C.

11.4 Amalgamation, Dissolution and Penalties in Trade Union

Following perspective explain the amalgamation and dissolution of trade union:

11.4.1 Amalgamation of Trade Union

Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty per cent. of the votes recorded are in favour of the proposal.

Did u know? **Merger of Trade Union**

On merger the Trade Union and its office-bearers do not lose their identity; *Rattan Kumar Dey v. Union of India*, (1991) 63 FLR 463 (Gau).

11.4.2 Dissolution of Trade Union

When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution be sent to the Registrar, and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and the dissolution shall have effect from the date of such registration.

Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

11.4.3 Penalties in Trade Union

The Act provides penalty of fine up to ₹ 500 for making any willful false entry in or any omission from the general statement to be submitted to the Registrar, and up to ₹ 200 for giving incorrect copy of the rule or any other document with the intent to deceive a member or a person intending to be a member. If any registered trade union defaults in giving any notice or sending any statement or other document as required under this Act, every officer or other person bound by the rules of the trade union to give or send the same, or, if, there is no such officer or person,

Notes

every member of the executive of the trade union, is punishable with a fine upto ₹ 5. If this default continues, an additional fine up to ₹ 5 for each week after the first week during which the default continues, may be imposed subject to an aggregate fine of ₹ 50. (Sec. 31 and 32)

Self Assessment

Fill in the blanks:

13. Any two or more registered Trade Unions may become ..... together as one Trade Union with or without dissolution or division of the funds of such Trade Unions.
14. Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of ..... of the Trade Union on dissolution.
15. The Act provides penalty of fine up to ..... for making any willful false entry.
16. If this default continues, an additional fine up to ..... for each week after the first week during which the default continues, may be imposed subject to an aggregate fine of ₹ 50.

Case Study

Philips India – Labour Problems at Salt Lake

The 16th day of March 1999 brought with it a shock for the management of Philips India Limited (PIL). A judgement of the Kolkata High Court restrained the company from giving effect to the resolution it had passed in the Extraordinary General Meeting (EGM) held in December 1998. The resolution was to seek the shareholders' permission to sell the Color Television (CTV) factory to Kitchen Appliances Limited, a subsidiary of Videocon. The judgement came after a long drawn, bitter battle between the company and its two unions Philips Employees Union (PEU) and the Pieco Workers' Union (PWU) over the factory's sale.

PEU president Kiron Mehta said, "The company's top management should now see reason. Ours is a good factory and the sale price agreed upon should be reasonable. Further how come some other company is willing to take over and hopes to run the company profitably when our own management has thrown its hands up after investing ₹ 70 crores on the plant." Philips sources on the other hand refused to accept defeat. The company immediately revealed its plans to take further legal action and complete the sale at any cost.

PIL's operations dates back to 1930, when Philips Electricals Co. (India) Ltd., a subsidiary of Holland based Philips NV was established. The company's name was changed to Philips India Pvt. Ltd. in September 1956 and it was converted into a public limited company in October 1957. After being initially involved only in trading, PIL set up manufacturing facilities in several product lines. PIL commenced lamp manufacturing in 1938 in Kolkata and followed it up by establishing a radio manufacturing factory in 1948. An electronics components unit was set up in Loni, near Pune, in 1959.

In 1963, the Kalwa factory in Maharashtra began to produce electronics measuring equipment. The company subsequently started manufacturing telecommunication equipment in Kolkata.

In the mid-1990s, Philips decided to follow Philips NV's worldwide strategy of having a common manufacturing and integrated technology to reduce costs. The company planned

Contd....

Notes

to set up an integrated consumer electronics facility having common manufacturing technology as well as supplier's base. Director Ramachandran stated that the company had plans to depend on outsourcing rather than having its own manufacturing base in the future. The company selected Pune as its manufacturing base and decided to get the Salt Lake factory off its hands.

In tune with this decision, the employees were appraised and severance packages were declared. Out of 750 workers in the Salt Lake division, 391 workers opted for VRS. PIL then appointed Hong Kong and Shanghai Banking Corporation (HSBC) to scout for buyers for the factory. Videocon was one of the companies approached.

Though initially Videocon seemed to be interested, it expressed reservations about buying an over staffed and underutilized plant. To make it an attractive buy, PIL reduced the workforce and modernised the unit, spending ₹ 7.1 crore in the process.

In September 1998, Videocon agreed to buy the factory through its nominee, Kitchen Appliances India Ltd. The total value of the plant was ascertained to be ₹ 28 crore and Videocon agreed to pay ₹ 9 crore in addition to taking up the liability of ₹ 21 crore. Videocon agreed to take over the plant along with the employees as a going concern along with the liabilities of VRS, provident fund etc. The factory was to continue as a manufacturing center securing a fair value to its shareholders and employees.

In December 2000, the Supreme Court finally passed judgement on the controversial Philips case. It was in favour of the PIL. The judgement dismissed the review petition filed by the workers as a last ditch effort. The judge said that though the workers can demand for their rights, they had no say in any of the policy decisions of the company, if their interests were not adversely affected.

Question

Critically analyse the above case

Source:http://www.icmrindia.org/casestudies/catalogue/Human%20Resource%20and%20Organization%20Behavior/Philips%20India-Labor%20Problems-Salt%20Lake-HROB%20Case%20Study.htm

11.5 Summary

- Trade union is an indispensable part of industrial sector in India.
- In fact trade unions act as an effective platform for the workers class to enjoy their due rights without being exploited. To strengthen the fundamental rights of voiceless working class trade unions are originated.
- Gradually trade union got recognition from the authority and became a legally approved representation of labor mass.
- In India various trade union related Acts and regulations are enacted to empower the working classes.
- Indian Trade Unions Act, 1926 is a principal act that provides adequate safeguards to the rights of labor masses.
- The Trade Unions Act, 1926 is a fountain head Act in India that provides varied rules and regulation related to trade unions.
- It has underlined wide range of provisions for the benefit of labour mass. This Act states all modalities related to trade union registration to trade dispute resolution.

Notes

- The Trade Unions Act, 1926 has defined the role of trade unions and also set certain controlling mechanisms and its main aims and objectives of this Act emphasizes on the reciprocal relationship between the employers and employees.
- Trade dispute can be defined as, any disputes that arises in between, employers and workmen, workmen and workmen or employers and employers, in connection of employment or non-employment or the terms of employment or the conditions of labour, of any person.
- Any seven or more members of a Trade Union may be subscribing their names to the rules of the Trade Union complying with the provisions of this Act with respect to registration, apply for its registration.
- Unless the agreement is an agreement to commit an offence as under section 15, no officers or members of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code.
- In the present shape, the Trade Union Act, 1926 does not serve the purpose and requires immediate amendment to make it more useful.
- The non-existence of provisions on Recognition of Trade Unions makes the Collective Bargaining processes absolutely difficult and industry faces acute difficulties in shape of inter-union rivalry and multiplicity of trade unions, having no or negligible following.

11.6 Keywords

Amalgamation: The combination of one or more companies into a new entity.

Authorities: Institutionalized and legal power inherent in a particular job, function, or position that is meant to enable its holder to successfully carry out his or her responsibilities.

Commissioner: Commissioner is in principle the title given to a member of a commission or to an individual who has been given a commission.

Dissolution: The closing down or dismissal of an assembly, partnership, or official body.

Industrial Relations: Industrial relations are the relationships between employees and employers within the organizational settings.

Intervention: An intervention is a deliberate process by which change is introduced into peoples' thoughts, feelings and behaviors.

Penalty: A punishment imposed for breaking a law, rule, or contract.

Registration: Entering certain information in a register, such as about invoices or mail delivered or received.

Statutory: Established, regulated or imposed by or in conformity with laws passed by a legislative body

Trade Union: Trade union is a voluntary organization of workers pertaining to a particular trade, industry or a company and formed to promote and protect their interests and welfare by collective action.

Workmen: A man employed to do manual labor.

11.7 Review Questions

1. Write short not on trade union.
2. What are the objectives of trade union?

Notes

3. Highlight the basic provisions of trade union.
4. Discuss the features of Trade Unions Act.
5. Describe the scope and coverage of Trade Union Act.
6. Write brief note on All India Trade Union Congress (AITUC).
7. Throw some light on the mode of registration of trade union.
8. Discuss appeal in trade union act.
9. Describe amalgamation of trade union.
10. What are the penalties in trade union?

Answers: Self Assessment

1.	True	2.	False
3.	True	4.	False
5.	AITUC	6.	INTUC
7.	HMS	8.	CITU
9.	True	10.	False
11.	True	12.	False
13.	Amalgamated	14.	Funds
15.	₹ 500	16.	₹ 5

11.8 Further Readings

Books

Davidov, Guy & Langille, Brian (2011), *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Online links

http://business.gov.in/legal_aspects/trade_unions.php

http://www.vakilno1.com/bareacts/tradeunionact/tradeunionact.htm

http://support.exportersindia.com/legal-aspects/trade-unions-act.htm

http://shodhganga.inflibnet.ac.in/bitstream/10603/610/11/11_chapter3.pdf

http://www.kkhsou.in/main/EVidya2/management/trade_union.html

http://www.vakilno1.com/bareacts/tradeunionact/S24.html

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Unit 12: Payment of Bonus Act, 1965

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Objectives

After studying this unit, you will be able to:

- Describe an overview of Payment of Bonus Act
- Explain the definitions under this Act
- Discuss the eligibility and disqualification of bonus
- Get an overview of computation of bonus payment
- Describe the powers of inspectors offences and penalties [Sec. 27]

Introduction

The Payment of Bonus Act, 1965 was enacted to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or productivity and for the matters connected therewith. The Act applies to:- (i) every factory as defined under the Factories Act, 1948; and (ii) every other establishment in which twenty or more persons are employed on any day during an accounting year. However, the Government may, after giving two months'

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notification in the Official Gazette, make the Act applicable to any factory or establishment employing less than twenty but not less than ten persons.

Annual Bonus is an important component of wage payable to workers. This forms 8 to 10% of the total earnings of workers. As its payment can now be claimed as a legal right, it is looked upon by the working class as a great hope and expectation. Again, as real wages payable to most of the workers in India have not reached even the prewar (1939) level, the annual bonus will continue to play the part of tilling the gap between the existing and the living wage. Though views have been expressed for the total abolition of bonus claim, and instead for raising the wage level, it appears that such a radical step has no chance of acceptance at least till the whole wage policy undergoes a rational and planned formulation in place of its present haphazard growth. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding the Payment of Bonus Act.

The Act is enforced through the Central Industrial Relations Machinery (CIRM). CIRM is an attached office of the Ministry of Labour and is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. It is headed by the Chief Labour Commissioner (Central).

Concept of annual profit bonus has a long history behind it. Originally bonus was regarded as a gift or an ex-gratia payment by any employer to his employees in cash or kind to motivate their efforts on important festivals like Diwali, Durga Puja and Onam. Before the First World War some European firms used to given free Dhoties and other household articles on festivals, while Indian firms gave gifts in cash and kind by way of bonus. In Bengal there was a system of paying bonus at the time of Durga Puja irrespective of profit and loss. In large concerns extra payments were made which were called bonus. A proper system of paying bonus was started during the First World War. In 1917 the textile industry in Bombay and Ahmedabad gave 10 recent increase in wages calling it a war bonus, and this was increased to 15 per cent 1918. After the war when some concerns stopped paying bonus. Workers claimed it (fit as a right, and went on strike. The matter was referred to a committee headed by the Chief Justice of Bombay in February, 1924. The Committee observed that the employees had not established any enforceable claim, customary, legal or equitable. However, workers continued to receive bonus as an ex-gratia payment in concerns which were making profit. During the years that followed bonus ceased to be a serious industrial relations problem due to economic recession.

During the 2nd World War, bonus again became a live issue when industries started making extraordinary profits. Though some employers paid bonus voluntarily, many disputes regarding bonus were referred to ad-hoc Industrial Courts of Tribunals for adjudication under the Defence of India Rules. Some of these disputes went upto the Supreme Court also. The adjudicators took the view that profits were made possible by the joint efforts of both capital and labour. The latter therefore had a right to share in the increased profits. This position continued until the Bombay High Court laid down that the payment of Bonus could be demanded by workers as a right, that is to say, a payment which could be made by the employer as extra remuneration for work done by employees under a contract, express of implied (*India Hume Pipe Company v. E.M. Nanavutty* 48 Bombay L.R., 551).

12.1 Objectives and Key Provisions of this Act

Following are the objectives of this Act:

- To improve statutory liability to pay bonus [reward for good work] in case of profits or losses.
- To prescribe formula for calculating bonus

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- To prescribe Minimum & Maximum percentage bonus
- To provide of set off/set on mechanism
- To provide redressal mechanism

The key provisions of the Act are:-

- According to the Act, the term 'employee' means "any person employed on a salary or wage not exceeding three thousand and five hundred 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".
- An employee is entitled to be paid by his employer a bonus in an accounting year subjected to the condition that he/she has worked for not less than 30 working days of that year.
- An employer shall pay minimum bonus at the rate of 8.33% of the salary or wages earned by an employee in a year or one hundred rupees, whichever is higher. Here it is not required that the employer has any allocable surplus in the accounting year. However, where an employee has not completed fifteen years of age at the beginning of the accounting year, the minimum bonus payable is 8.33% or sixty rupees, whichever is higher.
- In any accounting year, if the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer shall in lieu of such minimum bonus, be bound to pay bonus (maximum bonus) equivalent to the amount which shall not exceed 20% of the salary or wages earned by employees.
- In computing the allocable surplus, the amount set on or the amount set off shall be taken into account. In other words:- (i) If, in any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment, then the excess surplus is carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year for the purpose of payment of bonus; or (ii) If there is no or less allocable surplus in respect of that year, then such a shortfall is carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year.
- Where in any accounting year, any amount has been carried forward and set on or set off, then in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.
- All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer within a month from the date on which the award become enforceable or the settlement comes into operation, in respect of any dispute regarding payment of bonus. But, in any other case, it shall be paid within a period of eight months from the close of the accounting year.
- However, the Government may order, upon receiving application made to it by the employer and for sufficient reasons, to extend the said period of eight months to such further period or periods as it thinks fit, such that the total period so extended shall not, in any case, exceed two years.
- An employee shall be disqualified from receiving bonus if he/ she is dismissed from service for:- (i) fraud; or (ii) riotous or violent behaviour while on the premises of the establishment; or (iii) theft, misappropriation or sabotage of any property of the establishment

Notes

Notes **Applicability of Act (Sec. 1)**

Every factory wherein 10 or more persons are employed with the aid of power or An establishment In which 20 or more persons are employed without the aid of power on any day during an accounting year.

Duties and Rights of Employer

Duties of Employer are as follows:

- To calculate and pay the annual bonus as required under the Act.
- To submit an annual return of bonus paid to employees during the year to the Inspector, within 30 days of the expiry of the time limit specified for payment of bonus.
- To co-operate with the Inspector, produce before him the registers/records maintained, and such other information as may be required by them.
- To get his account audited as per the directions of a Labour Court/Tribunal or of any such other authority.

An employer has the following rights:

- Right to forfeit bonus of an employee, who has been dismissed from service for fraud, riotous or violent behaviour, or theft, misappropriation or sabotage of any property of the establishment.
- Right to make permissible deductions from the bonus payable to an employee, such as, festival/interim bonus paid and financial loss caused by misconduct of the employee.
- Right to refer any disputes relating to application or interpretation of any provision of the Act, to the Labour Court or Labour Tribunal.

Caselet

Ghewar Chand's Case

The principle that a ruling of a superior court is binding law is not of scriptural sanctity but is of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. So there is no impediment in reading Ghewar Chand's case as confined to profit-bonus, leaving room for non-statutory play of customary bonus. That case relates to profit bonus under the Industrial Disputes Act.

The major inarticulate premise of the statute is that it deals with-and only with-profit-based bonus. There is no categorical provision in the Bonus Act nullifying all other kinds of bonus, nor does such a conclusion arise by necessary implication. The core question about the policy of the Parliament that was agitated in that case turned on the availability of the Industrial Disputes Act as an independent method of claiming profit bonus de hors the Bonus Act and the Court took the view that it would be subversive of the scheme of the Act to allow an invasion from the flank in that manner. A discerning and concrete analysis of the scheme of the Act and the reasoning of the Court leaves no doubt that the Act leaves untouched customary bonus.

Source: http://indiankanoon.org/doc/191016/

Self Assessment

Notes

State whether the following statements are true or false:

1. The Act is enforced through the Central Industrial Relations Machinery (CIRM).
2. During the 2nd World War, bonus again became a live issue when industries started making extraordinary losses.
3. All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer within a month from the date on which the award become enforceable or the settlement comes into operation, in respect of any dispute regarding payment of bonus.

12.2 Definitions

In this Act, unless the context otherwise requires -

(1) Accounting Year

"Accounting Year" means-

(i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;

(ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not; (iii) in any other case-

(a) the year commencing on the 1st day of April; or

(b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced:

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit.

(2) Allocable Surplus

"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, 67% of the available surplus in an accounting year;

(b) in any other case, 60% of such available surplus;

(3) Available Surplus

"Available surplus" means the available surplus computed under Sec.5. The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6:

Notes

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of—

(a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 6; and

(b) an amount equal to the difference between—

(i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

(ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

(4) Direct Tax

"Direct Tax" means-

(a) any tax chargeable under-

(i) the Income-tax Act;

(ii) the Super Profits Tax Act, 1963 (14 of 1963);

(iii) the Companies (Profits) Surtax Act, 1964 (7 of 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.

(5) Employee

"Employee" means any person (other than an apprentice) employed on a salary or wage not exceeding 10,000/- rupees per month 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; (2007 amendment).

Rights of employees are as follows:

- Right to claim bonus payable under the Act and to make an application to the Government, for the recovery of bonus due and unpaid, within one year of its becoming due.
- Right to refer any dispute to the Labour Court/Tribunal Employees, to whom the Payment of Bonus Act does not apply, cannot raise a dispute regarding bonus under the Industrial Disputes Act.
- Right to seek clarification and obtain information, on any item in the accounts of the establishment.

(6) Establishment in Public Sector

Establishment in public sector means an establishment owned, controlled or managed by-

(a) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

Notes

(b) a corporation in which not less than forty per cent of its capital is held (whether singly or taken together) by-

(i) the Government; or

(ii) the Reserve Bank of India; or

(iii) a corporation owned by the Government or the Reserve Bank of India;

The provisions of the Payment of Bonus Act, 1965 do not ordinarily apply to an establishment in public sector. However, if the following two conditions are satisfied by such establishment in any accounting year, the provisions of the Act shall apply to such establishment as they apply to an establishment in the private sector:

(a) If in any accounting year, an establishment in the public sector sells goods produced or manufactured by it or renders any services, in competition with an establishment in private sector; and

(b) The income from such sale or services is not less than 20% of the gross income of the establishment in public sector in that year. (Section 20)

(7) Establishment in Private Sector

"Establishment in Private Sector" means any establishment other than an establishment in public sector.

Self Assessment

Fill in the blanks:

4. The ..... 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.
5. The ..... 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.
6. Establishment in ..... Sector means any establishment other than an establishment in public sector.

12.3 Eligibility and Disqualification of Bonus

The explanation and criteria for eligibility and disqualification of bonus are given below:

12.3.1 Eligibility for Bonus [Sec 8]

Every employee receiving salary or wages upto ₹ 3,500 p.m. and engaged in any kind of work whether skilled, unskilled, managerial, supervisory etc. is entitled to bonus for every accounting year if he has worked for at least 30 working days in that year.

Notes This ceiling of ₹ 3,500 has been revised to ₹ 10,000 with effect from November, 2007.

"Salary or wages" means all remuneration (other than remuneration in respect of overtime work), includes dearness allowance but does not include:

Notes

(i) any other allowance

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(iii) any travelling concession;

(iv) any bonus (including incentive, production and attendance bonus);

(v) any contribution paid or payable by the employer to any pension fund or provident fund;

(vi) any retrenchment compensation or any gratuity or other retirement benefit;

(vii) any commission payable to the employee.

Caution Free food allowance or free food by his employer, such food allowance or the value of such food in lieu of salary is deemed to form part of the salary or wages of such employee.

Did u know? ***Payment of Minimum Bonus:*** 8.33% of the salary or ₹ 100 (on completion of 5 years after 1st Accounting year even if there is no profit).

12.3.2 Disqualification of Bonus

Notwithstanding anything contained in this Act, 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 behavior while on the premises of the establishment; or

(c) theft, misappropriation or sabotage of any property of the establishment.

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

1. Life Insurance Corporation
2. The Indian Red Cross Society or any other institution of a like nature,
3. Universities and other educational institutions
4. Institutions (including hospitals, chambers of commerce and society welfare institutions) established not for purposes of profit,
5. Employees employed through contractors on building operations,
6. Employees employed by the Reserve Bank of India,
7. The Industrial Finance Corporation of India,
8. Financial Corporations,
9. The National Bank for Agriculture and Rural Development,
10. The Unit Trust of India,
11. The Industrial Development Bank of India

Notes

Task Does this Act prescribe any disqualifications also for claiming bonus? Explain.

Self Assessment

Fill in the blanks:

7. ..... means all remuneration (other than remuneration in respect of over-time work), includes dearness allowance.
8. An ..... shall be disqualified from receiving bonus under this Act, if he is dismissed from service for fraud.
9. Every employee receiving salary or wages up to ..... and engaged in any kind of work whether skilled, unskilled, managerial, supervisory etc. is entitled to bonus for every accounting year if he has worked for at least 30 working days in that year.

12.4 Computation of Bonus Payment

The method for calculation of annual bonus is as follow:

12.4.1 Computation of Gross Profits [Sec. 4]

There few differences in computation of gross profits in case of banking company and other than banking companies. For accurate computation of the gross profits in case of banking companies refer to First schedule and for other companies but not banking companies refer to Second schedule. But over view for computation of gross profits is mentioned below:

Net profit (P&L a/c) +Add following items

- Income tax
- Provision for: Bonus to employees, Depreciation, Direct taxes,
- Bonus paid to employees in respect of previous accounting years
- The amount, if any, paid to, or provided for payment to, an approved gratuity fund
- The amount actually paid to employees on their retirement or on termination of their employment for any reason
- Donations
- annuity due
- Capital expenditure (other than capital expenditure on scientific research
- capital losses
- capital losses (other than losses on sale) of Capital assets on which depreciation has been allowed for income-tax or agricultural income-tax).
- Losses of, or expenditure relating to, any business situated outside India.

Notes

Deduct

(a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income-tax).

(b) Profits of, and receipts relating to, any business situated outside India.

(c) Income of foreign concerns from investments outside India.

(d) Expenditure or losses (if any) debited directly to reserves, other than –

- Capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax) ;
- Losses of any business situated outside India.

(e) In the case of foreign concerns proportionate administrative (over head) expenses of Head Office allocable to Indian business.

(f) Refund of any direct tax paid for previous accounting years and excess provision, if any, of previous accounting years relating to bonus, depreciation, taxation or development rebate or development allowance, if written back.

12.4.2 Computation of Available Surplus [Section 5]

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

12.4.3 Computation of Allocable Surplus [Sec. 2 (4)]

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

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

12.4.4 Set-on and Set-off of Allocable Surplus [Sec. 15]

Set-on (In case of Huge Profits)

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

Set-off (In case of Losses Occur)

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

Notes

Example:

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

Year	Amount equal to sixty per cent. or sixty-seven per cent., as the case may be, of a available surplus allocable as bonus	Amount payable as bonus	Set on or set off the year carried forward	Total set on or set off Carried Forward	
	₹	₹	₹	₹	of (year)
1.	1.04.167	1.04.167**	Nil	Nil	
2.	6,35,000	2,50,000*	set on 2,50,000*	set on 2,50,000*	(2)
3.	2,20,000	2,50,000* (inclusive of 30,000 from year-2)	Nil	Set on 2,20,000	(2)
4.	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 1,25,000	(2) (4)
5.	1,40,000	2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000 1,25,000	(2) (4)
6.	3,10,000	2,50,000*	Nil	Set on Nil + 1,25,000 60,000	(2) (4) (6)
7.	1,00,000	2,50,000* (Inclusive of 1,25,000 from year-4 and 25,000 from year-6)	Nil	Set on 35,000	(6)
8.	Nil (due to loss)	1,04,167** (inclusive of 35,000 from year-6)	Set off 69,167	Set off 69,167	(8)
12.	10,000	1,04,167***	Set off 94,167	Set off 69,167 94, 1267	(8) (9)
10.	2,15,000	1,04,167** (after setting off 69, 167 from year-8 and 41,666 from year-9)	Nil	Set off 52,501	(9)

* Maximum
** Minimum
The balance of ₹ 1,10,000 set on from Year-2 lapses.

Notes

Task State the deductions which are allowed under the Third Schedule of the Payment of Bonus Act, 1965 for the purpose of computation of 'Available surplus' in the case of a Banking Company, which is not a Foreign Company.

Self Assessment

State whether the following statements are true or false:

10. There few differences in computation of gross profits in case of banking company and other than banking companies.
11. Set off is the excess allocable surplus remain after paying the maximum bonus of 20% on the wage or salary of the employee.
12. When there are no profits (available surplus or allocable surplus) or the amount falls short or deficiency for payment of minimum bonus to employees 8.33%, such deficiency amount should be adjusted to the current accounting year from the Set-On amount which was carried forward in case of excess allocable surplus in the previous year.

12.5 Powers of Inspectors Offences and Penalties [Sec. 27]

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

12.5.1 Powers of Inspectors

The powers of inspectors are as follows:

1. 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-

- require an employer to furnish such information as he may consider necessary;
- at any reasonable time and with such assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require anyone found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wages or bonus in the establishment;
- 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;
- make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment;
- exercise such other power as may be prescribed.

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

3. Any person required to produce any accounts, books, register or other documents or to give information by an Inspector under sub-section (1) shall be legally bound to do so.

Notes

4. 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 (10 of 1949).

12.5.2 Offences and Penalties [Sec. 28 & 29]

The offences and penalties of Inspectors are as follows:

1. For contravention of the provisions of the Act or rules the penalty is imprisonment upto 6 months or fine up to ₹ 1000, or both.

2. In case of offences by companies, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: any 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.

Self Assessment

Fill in the blanks:

13. The appropriate government may, by notification in the ..... appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

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

15. For contravention of the provisions of the Act or rules the penalty is imprisonment up to ..... months or fine up to ₹ 1000, or both.

Case Study

Mumbai Kamgar Sabha, Bombay vs M/s Abdulbhai Faizullabhai & Ors on 10th March, 1976

A considerable number of workmen were employed by a large number of small businessmen in a locality in the city. Prior to 1965, the employers made ex-gratia payment to the workers by way of bonus which they stopped from that year. A Board of Arbitrators appointed under sec. 10A of the Industrial Disputes Act, to which the bonus dispute was referred, rejected the workers demand for bonus. The dispute was eventually referred to an Industrial Tribunal which in limine dismissed the workers' demand as being barred by res judicata, in view of the decision of the Arbitration Board. The Tribunal, in addition, held that bonus so far paid having been founded on tradition and custom, did not fall within the four-corners of the Bonus Act which is a complete code and came to the conclusion that the workers were not entitled bonus. On appeal to this Court it was contended that (i) the appellant-Union not being a party to the dispute had no locus standi, (ii) the claim of the workmen not being profit-based bonus, which is what the Bonus Act deals with, the Act has no application to this case; and (iii) since no case of

Contd....

Notes

customary or contract bonus was urged before the Arbitration Board such a ground was barred by the general principles of res judicata.

Dismissing the Appeal

In an industrial dispute the process of conflict resolution is informal, rough and ready and invites a liberal approach. Technically the union cannot be the appellant, the workmen being the real parties. There is a terminological lapse in the cause title, but a reading of the petition, the description of the parties, the grounds urged and grievances aired, show that the battle was between the workers and the employers and the Union represented the workers. The substance of the matter being obvious, formal defects fades away. Procedural prescriptions are handmaids, not mistresses of justice and failure of fair play is the spirit in which Courts must view processual deviances. Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances, conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker. In industrial law collective bargaining, union representation at conciliations, arbitrations, adjudications and appellate and other proceedings is a welcome development and an enlightened advance in industrial life. [597G] In the instant case the union is an abbreviation for the totality of workmen involved in the dispute. The appeal is, therefore, an appeal by the workmen compendiously projected and impleaded through the union. [598D] 592

The demands referred by the State Govt. under sec. 10(1) (d) of the Industrial Disputes Act, specifically speak of payment of bonus by the employers which had become custom or usage or a condition of service in the establishments. The subject matter of the dispute referred by the Government dealt with bonus based on custom or condition of service. The Tribunal was bound to investigate this question. The workers in their statements urged that the demand was not based on profits or financial results of the employer but was based on custom. The pleadings, the terms of reference and the surrounding circumstances support the only conclusion that the core of the cause of action is custom and/or term of service, not sounding in or conditioned by profits. The omission to mention the name of a festival as a matter of pleading did not detract from the claim of customary bonus. An examination of the totality of materials leads to the inevitable result that what had been claimed by the workmen was bonus based on custom and service condition, not one based on profit.

Question

Critically analyse the above case.

Source: http://indiankanoon.org/doc/191016/

12.6 Summary

- The Payment of Bonus Act, 1965 (Act No. 21 of 1965) is an important law on the topic of wages and bonus.
- The Payment of Bonus Act, 1965 is the principal act for the payment of bonus to the employees which was formed with an objective for rewarding employees for their good work for the organization.
- It is a step forward to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour with the employees.

Notes

- The payment of Bonus Act provides for payment of bonus to persons employed in certain establishments of the basis of profits or on the basis of production or productivity and for matters connected therewith.
- It extends to the whole of India and is applicable to every factory and to every other establishment where 20 or more workmen are employed on any day during an accounting year.
- The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees.
- An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for fraud; or riotous or violent behaviour while on the premises of the establishment; or theft, misappropriation or sabotage of any property of the establishment.
- 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.
- The Payment of Bonus Act, 1965 provides 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.
- The purpose of payment of bonus is to bridge the gap between wages paid and ideal of a living wage.

12.7 Keywords

Accounting Year: An accounting year is a twelve (to eighteen) month period over which a company's accounts are calculated.

Adjudication: Adjudication is a procedure for resolving disputes without resorting to lengthy and expensive court procedure.

Allocable Surplus: Allocable Surplus means; In relation to an employer, being a company (other than a banking company) which has not made arrangements prescribed under Income Tax Act for the declaration an payment of dividend in accordance with section 194 of that Act, 67% of such available surplus in an accounting year.

Bonus: A bonus payment is usually made to employees in addition to their base salary as part of their wages.

Direct Tax: A tax, such as income tax, that is levied on the income or profits of the person who pays it, rather than on goods or services.

Disqualification: The action of disqualifying or the state of being disqualified.

Gross Profits: Gross Profit or sales profit is the difference between revenue and the cost of making a product or providing a service, before deducting overhead, payroll, taxation, and interest payments.

Inspectors: An official employed to ensure that official regulations are obeyed, especially in public services.

Net profit: The profits after expenses not included in the calculation of gross profit have been paid.

Offences: A breach of a law or rule; an illegal act.

Notes

Rights: Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory.

12.8 Review Questions

1. Who is entitled to bonus under the Payment of Bonus Act, 1965?
2. Explain the meaning of "Accounting year" under the Payment of Bonus Act, 1965.
3. Explain the meaning of 'Allocable Surplus' and 'Available Surplus' stated in the Payment of Bonus Act, 1965.
4. X, a temporary employee drawing a salary of ₹ 3, 000 per month, in an establishment to which the Payment of Bonus Act, 1965 applies was prevented by the employers from working in the establishment for two months during the financial year 2001-2002, pending certain inquiry. Since there were no adverse findings 'X' was reinstated in service, later, when the bonus was to be paid to other employees, the employers refuse to pay bonus to 'X', even though he has worked for the remaining ten months in the year. Referring to the provisions of the Payment of Bonus Act, 1965 examine the validity of employer's refusal to pay bonus to 'X'.
5. The employer is a banking company. Point out so as to what items are required to be added to the "Net Profit" by the employer for calculating the "Gross Profit" in accordance with the First Schedule of the Payment of Bonus Act, 1965.
6. Prakash Chandra is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year –

   (a) overtime allowance,

   (b) dearness allowance,

   (c) commission on sales,

   (d) employer's contribution towards pension fund,

   (e) value of food.

   Examine as to which of the above payments form part of "salary" of Prakash Chandra under the provisions of the Payment of Bonus Act, 1965.
7. Specify the kinds of establishments which are not covered under the Payment of Bonus Act, 1965.
8. Referring the provisions of the Payment of Bonus Act, 1965, state whether the following persons are entitled to bonus under the Act:

   (i) An apprentice;

   (ii) An employee dismissed on the ground of misconduct;

   (iii) A temporary workman;

   (iv) A piece-rated worker.
9. Can the Payment of Bonus Act be made applicable to an establishment in the public sector?
10. Discuss the powers of inspectors
11. Describe the offences and penalties of inspectors.

Notes

Answers: Self Assessment

1.	True	2.	False
3.	True	4.	Available Surplus
5.	Direct	6.	Private
7.	Salary or Wages	8.	Employee
9.	₹ 3500	10.	True
11.	False	12.	True
13.	Official Gazette	14.	Official Gazette
15.	Six		

12.9 Further Readings

Books

Davidov, Guy & Langille, Brian (2011), *"The Idea of Labour Law,"* Oxford University Press.

Davis, Ja E (2012), *"Labour Laws,"* General Books.

Kumar, H.L. (2010), *"Labour Laws,"* Universal Law Publishing.

Rao, VSP (2008), " *Industrial Relations & Labour Laws*," Excel Books.

Singh, B.D. (2009), *"Labour Laws for Managers,"* Excel Books India.

Online links

http://business.gov.in/legal_aspects/wages_1965.php

http://www.vakilno1.com/bareacts/paymentofbonusact/section/s2.html

http://taxguru.in/corporate-law/main-provisions-of-payment-of-bonus-act-1965-in-brief.html

http://www.whatishumanresource.com/the-payment-of-bonus-act-1965

http://www.caclubindia.com/experts/the-payment-of-bonus-act-1965-452630.asp#.US2HUqJHJc0

http://www.blog.smsvaranasi.com/wp-content/uploads/2013/02/PAYMENT-OF-BONUS.pdf

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Unit 13: Consumer Protection Act

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Objectives

After studying this unit, you will be able to:

- Explain objective of the Consumer Protection Act, 1986
- Define consumer rights
- Discuss the meaning of consumer
- Discuss commercial purposes
- Elaborate on district forum
- Elaborate on State Consumer Protection Council
- Explain Central Consumer Protection Council
- Describe various offences and penalty under the Act

Introduction

The Consumer Protection Act (referred to hereafter as the CPA or "the Act") intends to regulate the marketing of goods and services to consumers, as well as the relationships, transactions and agreements between the consumers and the producers, suppliers, distributors, importers, retailers, service providers and intermediaries of those goods and services. The purpose of the Act is to promote and advance the social and economic welfare of consumers. Most entities, supplying goods and services, as well as the transactions they enter into with consumers will be governed by the Act. The preamble to the Act identifies the need to ensure accessible, transparent and efficient redress for consumers who are subjected to abuse or exploitation in the marketplace.

You buy a new bike for your daughter as a birthday gift. When she tries it in the park three weeks later, you both notice the front tire is bent. What do you do? Should you fix it yourself and avoid the trouble of going back to the store? Has the return time lapsed? Is the bike it still covered under warranty? What do you if you didn't purchase extra insurance coverage?

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The blue sweater, you bought has given you a rash. When you look at the label, you notice that it's not 100% cotton as advertised. Instead, it is made from a mix of unpronounceable materials. Can you dispute the seller's claims?

These are some of the scenarios that customers go through daily. Consumer protection laws are meant to protect us against these types of issues. That is why it's important to familiarize ourselves with the more common consumer protection laws.

A consumer is a user of goods and services; therefore, every producer is also a consumer. However, conflicting interests have categorised them, inevitably, into two different groups. The industrial revolution brought in the concept of standardisation and mass production and over the years, the type of goods and the nature of services available grew manifold. The doctrine of Caveat Emptor or let the buyer beware which came into existence in the middle ages had been replaced by the principle of Consumer Sovereignty or Consumer is the King. But, with tremendous increase in the world population, the growing markets were unable to meet the rising demand which created a gap between the general demand and supply levels in the markets.

This to some extent watered down the concept of Consumer Sovereignty, what with consumers being forced to accept whatever was offered to them. On the other hand, the expanding markets necessitated the introduction of various intermediaries between the producer and the ultimate consumer. Advertising, though ostensibly directed at informing potential consumers about the availability and uses of a product began to be resorted to as a medium for exaggerating the uses of ones products or disparaging others products so as to have an edge over competitors.

Unfair and deceptive practices such as selling of defective or sub-standard goods, charging exorbitant prices, misrepresenting the efficacy or usefulness of goods, negligence as to safety standards, etc. became rampant. It, therefore, became necessary to evolve statutory measures, even in developed countries, to make producers/traders more accountable to consumers. It also became inevitable for consumers to unite on a common platform to deal with issues of common concern and having their grievances redressed satisfactorily.

13.1 Genesis of Consumer Protection Laws

Consumer protection, as known today, has roots even in the daily lives of the Stone Age cave men. A seller sells a product to a buyer, the buyer finds the product not to be up to his satisfaction; coincidence, some would say. But is it? In the absence of definitive statistics, the instinct of a consumer living in a capitalist society would lead me to wonder if the seller intentionally did or did not do something that led to my compromised consumer satisfaction.

Today's consumerism finds its origin in the late 19th and early 20th century marketplace in the United States. The United States Congress made history in 1872 by enacting the very first of its kind consumer protection law, the mail fraud law, which makes it a punishable offence to commit mail order fraud. At best rudimentary and lacking teeth to curb anything but false advertising, this law did nothing to prevent unsafe, unhealthy and dangerous products from reaching the hands of trusting consumers.

The passage of the Sherman Anti Trust Act passed by the US Congress in 1890 was the next feather in the cap of consumerism. This act prevents and limits the formation of cartels and monopolies that challenge the very frame of consumer rights. The ground for the majority of antitrust law suits, this federal law does not address the most critical area of consumer protection, the product quality.

Apart from minor legislations at a state level, it was the beginning of the 20th century that marked the revival of the consumer protection movement, which had been docile for the past 15

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years or so; the impetus being the publication of The Jungle by Upton Sinclair in which the author described his disgust at the meat packing industry in Chicago. Horrified, President Theodore Roosevelt had these allegations verified independently by federal agents, who confirmed the distressful conditions of the meat that American consumers ate.

Soon afterwards in 1906, the US Congress passed the Pure Food and Drug Act which, along with the Sherly Amendment, curbs sellers from selling adulterated food/drugs and places guidelines on the accuracy of the data on labels. Together with the Meat Inspection Act, the government had ensured a legal framework to prosecute anyone who would willfully violate the quality of the food and medicines used by the consumers.

Other landmarks in the consumer protection movement were the establishment of the Federal Trade Commission (FTC) in 1914 and the establishment of the Food and Drug Administration (FDA) in 1931. This was closely followed by the Food, Drug and Cosmetic Act of 1938 which enabled the FDA to test new drugs before they reached the hands of the consumers.

In the mid twentieth century, the two stalwart figures in the consumer protection movement were Ralph Nader and John F Kennedy. In a historic speech in 1962, Kennedy was the first one to define the basic consumer rights as they are still used today. A milestone in the consumer protection movement came with the publishing of Ralph Nader's book 'Unsafe at Any Speed' in 1967. Leading to the enactment of The National Traffic and Motor Vehicle Safety Act in 1966, this book was the first attempt by a common citizen to exercise his consumer rights against the big corporate sharks.

Kennedy introduced the Consumer Bill of Rights in 1962 in the US Congress. This was closely followed by several bills legislations such as the Cigarette Labeling Act (1965), the Fair Packaging and Labeling Act (1966), and the Wholesome Meat Act (1967) and the establishment of the Consumer Product Safety Commission (CPSC) in 1972.

In India, as always the laws reach late. Obviously, the Indian politicians could not hold on any longer protecting their business patrons against public outcries of corporate fraud, deceit and callousness in general. So in December 1986, the Consumer Protection Act was reluctantly passed by the Indian Government to protect the consumers.

Independently if reviewed, the Consumer Protection Act 1986 has all the mistakes that the developed economies made with their consumer legislations over 25-50 years ago. One would assume that the Indian politicians would use their wisdom to not repeat the mistakes that have already been made by others, but then again, loopholes in the law means more protection for the corporate sharks. So willfully some "mistakes" may have been introduced.

The Consumer Protection Act, 1986 is at best a mediocre attempt at consumer protection. Nevertheless, better none than one when it comes to laws in India! It lacks teeth in several areas including safety, product labeling, execution of the law, and punishment of the violators of the law. Sadly, violators of consumer rights still enjoy absolute freedom in India to disregard safety and quality when it comes to consumer products despite this law. You may read more about the Consumer Protection Act, 1986 here.

The need to ensure the basic rights to health, safety, etc. of consumers have long been recognised the world over and various general legislations were enacted in India and abroad in this direction. In India, the general enactments other than the law of torts which ultimately aimed at protection of consumers interests are the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Dangerous Drugs Act, 1930, the Agricultural Produce (Grading and Marketing) Act, 1937, the Drugs and Cosmetics Act, 1940, the Indian Standards Institution (Certification Marks) Act, 1952, the Prevention of Food Adulteration Act, 1954, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Essential Commodities Act, 1955, the Standards of Weights and Measures Act, 1976, the Trade and Merchandise Marks Act, 1958, (Now Trade Marks Act, 1999),

the Patents Act, 1970, the Hire Purchases Act, 1972 and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

These legislations contained regulatory provisions and contravention of these provisions attracted civil liability. This meant that an ordinary consumer had no other remedy but to initiate action by way of a civil suit which involved lengthy legal process proving to be too expensive and time consuming for lay consumers. In fact, at times, the time and cost involved in the legal process was disproportionate to the compensation claimed and granted to an individual consumer. Though the MRTP Commission proved to be far more accessible and less time-consuming than the Civil Courts, its single central location at New Delhi did not make the redressal agency accessible to all consumers, especially those located in the remote towns and villages of the country. Therefore, it became necessary to evolve laws directed at protecting the consumers and at the same time, providing for remedies which are simpler, more accessible, quicker and less expensive.

This paved the way for enactment of the Consumer Protection Act in 1986 providing for simple, quick and easy remedy to consumers under a three-tier quasi-judicial redressal agency at the District, State and National levels. To make the Act more effective and meaningful, necessary changes have been brought by Consumer Protection (Amendment) Act, 2002, which came into force w.e.f. March 15, 2003.

Self Assessment

State whether the following statements are true or false:

1. A medical practitioner can be sued under Consumer Protection Act, 1986.
2. Consumer forums adjudicate disputes involving scale of pay.
3. Section 24 A of the Consumer Protection Act, 1986 provides a limit of two years within which a complaint is required to be filed.
4. The government supplying water is meant to be performing a statutory function which cannot be termed to be rendering of service.
5. Cancellation of flight on account of technical snag is a deficiency in service.
6. Central Government can make a complaint under CPA, 1986.

13.2 Objectivity and the Definitions of the Consumer Protection Act, 1986

The objectives of the CPA, 1986 are to provide for the basic rights of consumers that are sought to be promoted and protected are:

- the right to be protected against marketing of goods and services which are hazardous to life and property;
- the right to be informed about the quality, quantity, potency, purity, standard and price of goods, or services so as to protect the consumer against unfair trade practices;
- the right to be assured, wherever possible, access to variety of goods and services at competitive prices;
- the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

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- the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- right to consumer education.

This is based on the basic rights of consumers as defined by the International Organisation of Consumers (IOCU) viz., the Rights to Safety, to Information, of Choice, to be heard, to Redressal, to Consumer Education, to Healthy Environment and to Basic Needs.

Notes According to the preamble, the Act is to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

Scope of the Act

The Act extends to the whole of India except the State of Jammu and Kashmir and applies to all goods and services unless otherwise notified by the Central Government. The Act received the Presidents assent on 24.12.1986. However, all provisions of the Act except those relating to establishment, composition, jurisdiction, etc. of the Consumer Disputes Agencies (which came into force on 1.7.1987) came into force on 15.4.1987

Definitions

Section 2(1) of the Act defines various terms used in the Act. Some of the definitions are given hereunder:

Complainant means

(i) a consumer, or

(ii) any voluntary consumer association registered under the Companies Act, 1956, or under any other law for the time being in force; or

(iii) the Central Government or any State Government, who or which makes a complaint; or

(iv) one or more consumers where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or representative;

who or which makes a complaint [Section 2(1)(b)]

An association of persons, to have *locus standi* as consumer, it is necessary that all the individual persons forming the association must be consumers under Section 2(1)(d) of the Act having purchased the same goods/hired the same service from the same party i.e. they should have a common cause of action. Thus, unlike MRTP Act, 1969, the Redressal Machinery under Consumer Protection Act, 1986 has no power to initiate cases *suo-moto*.

Complaint means any allegation in writing made, with a view to obtaining any relief, by a complainant that

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

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(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—

- fixed by or under any law for the time being in force;
- displayed on the goods or any package containing such goods;
- displayed on the price list exhibited by him by or under any law for the time being in force;
- agreed between the parties.

(v) goods which will be hazardous to life and safety when used are being offered for sale to the public,—

- in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
- if the trader could have known with due diligence that the goods so offered are unsafe to the public.

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety [Section 2(1)(c)].

Consumer means any person who

(a) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(b) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose [Section 2(1)(d)].

Caution It has been clarified that the term commercial purpose does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood by means of self-employment.

Therefore, to be a consumer under the Act:

(i) the goods or services must have been purchased or hired or availed of for consideration which has been paid in full or in part or under any system of deferred payment, i.e. in respect of hire purchase transactions;

(ii) goods purchased should not be meant for resale or for a commercial purpose. Goods purchased by a dealer in the ordinary course of his business and those which are in the course of his business to supply would be deemed to be for resale; and

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(iii) in addition to the purchaser(s) of goods, or hirer(s) or users of services, any beneficiary of such services, using the goods/services with the approval of the purchaser or hirer or user would also be deemed a consumer under the Act.

A purchase of goods can be said to be for a commercial purpose only if the goods have been purchased for being used in some profit making activity on a large-scale, and there is close and direct nexus between the purchase of goods and the profit-making activity. *In Laxmi Engineering Works v. P.S.G. Industrial Institute, Supreme Court* held that the explanation to Section 2(1)(d) is clarificatory in nature. It observed that whether the purpose for which a person has bought goods is a commercial purpose is always a question of facts and to be decided in the facts and circumstances of each case. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self employment such purchaser of goods would yet be a consumer. The Supreme Court further observed that if a person purchased a machine to operate it himself for earning his livelihood, he would be a consumer. If such person took the assistance of one or two persons to assist him in operating the machine, he would still be a consumer. But if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a consumer.

Example: In *Bhupendra Jang Bahadur Guna v. Regional Manager and Others* (II 1995 CPJ 139), the National Commission held that a tractor purchased primarily to till the land of the purchaser and let out on hire during the idle time to till the lands of others would not amount to commercial use.

In *Laxmiben Laxmichand Shah v. Sakerben Kanji Chandan and others* 2001 CTJ 401 (Supreme Court) (CP), the Supreme Court held that the tenant entering into lease agreement with the landlord cannot be considered as consumer under Section 2(1)(d) of the Act. Where there was no provision in the lease agreement in respect of cleaning, repairing and maintaining the building, the rent paid by tenant is not the consideration for availing these services and therefore, no question of deficiency in service.

Example: In the case of *Super Engineering Corporation (HUF) v. Sanjay Vinayak Pant* (F.A. No. 17/1991 decided on 10.12.1991) the National Commission observed that to determine whether the goods had been purchased for a commercial purpose or not, had to be decided, after giving the parties concerned to lead evidence on this point, whether the goods were to be used for profit-making activity on a large scale or for use in small venture in order to make a living as distinguished from large scale activity for profit.

The question as to whether the widow of the deceased policy holder was a consumer under the Act was decided in the affirmative by the State Commission in Andhra Pradesh in the case of *A Narasamma v. LIC of India.* The State Commission held that as the term consumer includes any beneficiary of service other than the person who hires the services for consideration, the widow being the beneficiary of services is a consumer under the Act entitled to be compensated for the loss suffered by her due to negligence of the LIC.

Goods, in terms of Section 2(1)(i) has been defined to mean goods as defined in the Sale of Goods Act, 1930. As per Section 2(7) of the Sale of Goods Act, 1930 Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. Therefore, most consumer products come under the purview of this definition.

In *Morgan Stanley Mutual Fund v. Kartik Das* (1994) 3 CLJ 27, the Supreme Court held that an application for allotment of shares cannot constitute goods. It is after allotment, rights may arise

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as per the articles of association of the company. At the stage of application there is no purchase of goods for consideration and again the purchaser cannot be called the hirer of services for consideration.

Service: The term *'service'* is defined under Section 2(1)(o) as to mean service of any description which is made available to potential users and includes, but not limited to the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

Passengers travelling by trains on payment of the stipulated fare charged for the ticket are consumers and the facility of transportation by rail provided by the railway administration is a service rendered for consideration as defined in the Act Subscribers of telephones would also be consumer under the Act.

In *Consumer Unity and Trust Society v. State of Rajasthan* (First Appeal No. 2/89, order dated 15.12.1989), the National Commission, while hearing an appeal from the State of Rajasthan, held that complaints against government hospitals cannot be entertained under the Act on the ground that a person receiving treatment in such hospital is not a consumer as the patient does not hire the services of the hospital. Moreover, the treatment provided is free of charge, and therefore, it does not amount to service.

Did u know? As for what is meant by the expression 'contract of personal service', the interpretations are varied. Broadly speaking, any service rendered under a contract of personal service includes service rendered in a private capacity e.g. employee-employer relationship.

Liability of Medical Officer Employed by a Hospital Rendering Service Free of Charge: The medical officer who is employed in the hospital renders service on behalf of the hospital administration and if the services as rendered by the hospital do not fall within the ambit of Section 2(1)(o), being free of charge, the same service can not be treated as service under Section 2(1)(o) for the reason that it has been rendered by a medical officer in the hospital who receives salary for employment in the hospital. There can be no direct nexus between the payment of the salary to the medical officer by the hospital administration and the person to whom service is rendered. The salary paid by the hospital administration to the employee medical officer could not be regarded as payment made on behalf of the person availing the service as a consumer under Section 2(1)(d) in respect of the service rendered to him. The service rendered by the employee-medical officer to such a person would, therefore, continue to be service rendered free of charge and would be outside the purview of Section 2(1)(o).

Taxes Paid by Consumers is 'Consideration for Service' Rendered Free of Charge in Government Hospitals: The tax paid by the person availing the service at a Government hospital can not be treated as a consideration or charge for the service rendered at the hospital and such service, though rendered free of charge would not cease to be so because the person availing the service happened to be a tax payer. The reason for this is plain. There are certain essential characteristics of a tax which are evolved by courts. They are: (i) it is imposed under statutory power without the taxpayers consent and the payment would be enforced by law; (ii) it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax, and (iii) it is part of the common burden, the quantum of imposition upon the tax payer depends generally upon his capacity to pay.

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Caselet

The Indian Merchants Association's Case

The Supreme Court in the case of *Indian Merchants Association v. V P Santha*, (CA No. 688 of 1993 decided on 13th November 1995) observed that a contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. A contract of service on the other hand implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. The Parliamentary draftsman was well aware of this well-accepted distinction between 'contract of service' and 'contract for services' and had deliberately chosen the expression 'contract of service' instead of the expression 'contract for service' in the exclusionary part of the definition of 'service', this being the reason being that an employer could not be regarded as a consumer in respect of the services rendered by his employee in pursuance of contract of employment. By affixing the adjective 'personal' to the word 'service' the nature of the contracts which were excluded were not altered. The adjective only emphasized that what was sought to be excluded was personal service only. The expression contract of personal service in the exclusionary part of Section 2(1)(o) must, therefore, be construed as excluding the services rendered by an employee to his employer under the contract of personal service free from the ambit of the expression service.

Source: http://www.labourguide.co. /consumer-protection-act/

Service Rendered under Medicare Insurance Scheme

Service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing the service has taken an insurance policy for medical care where under the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of service as defined in Section 2(1)(o). Similarly, where as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, service rendered to such an employee and his family members would not be free of charge and would constitute service under Section 2(1)(o) of the Act.

In *State of Haryana v. Santra* [2000(3) SCALE 417], the Supreme Court held that in a country where the population has been increasing rapidly and the Government has taken up the family planning as an important programme, the medical officer as also the State Government must be held responsible in damages if the family planning operation is a failure on account of the medical officers negligence because this has created additional burden on the parents of the child.

In the case of *Alex J. Rebello v. Vice Chancellor, Bangalore University and others*, 2003 CTJ 575 (CP) (NCDRC) the National Commission has held that the University in conducting examination, evaluating answer sheets and publishing the result was not performing any service for consideration and a candidate who appeared for the examination cannot be regarded as a consumer.

Consumer Dispute means a dispute where the person against whom a complaint has been made, denies or disputes the allegation contained in the complaint [Section 2(1)(e)].

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Restrictive Trade Practice means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

(a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

(b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services [Section 2(1)(nn)].

Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods [Section 2(1)(f)].

It is clear from the above definition that non-fulfilment of any of the standards or requirements laid down under any law for the time being in force or as claimed by the trader in relation to any goods fall under the ambit of defect. Therefore, contravention of any of the provisions of enactments such as the Drugs & Cosmetics Act, 1950, Standards of Weights and Measures Act, 1976, the Prevention of Food Adulteration Act, 1955, the Indian Standards Institution (Certification Marks) Act, 1952 etc. or any rules framed under any such enactment or contravention of the conditions or implied warranties under the Sale of Goods Act, 1930 in relation to any goods have also been treated as a defect under the Act. Fault, imperfection or shortcoming in quality, quantity, potency, purity or standard as claimed by the trader in any manner whatsoever in relation to goods is to be determined with reference to the warranties or guarantees expressly given by a trader.

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service [Section 2(1)(g)].

Failure to maintain the quality of performance required by the law or failure to provide services as per warranties given, by the provider of the service would amount to deficiency.

Example: In *Divisional Manager, LIC of India v. Bhavanam Srinivas Reddy,* the National Commission observed that default or negligence in regard to settlement of an insurance claim (on allegation of suppression of material facts, in this particular case) would constitute a deficiency in service on the part of the insurance company and it will be perfectly open for the aggrieved consumer to approach the Redressal Forums to seek appropriate relief.

In *Jaipur Metals and Electrical Ltd. v. Laxmi Industries,* the National Commission held that a reading of Section 2(1)(g) of the Act shows that deficiency must pertain to the performance in terms of quality, nature and manner to be maintained or had been undertaken to be performed in pursuance of a contract.

In *Punjab National Bank v. K.B. Shetty* (First Appeal No. 7 of 1991 decided on 6th August, 1991), ornaments kept in the banks locker were found lost though the certificate recorded by the custodian of the bank on the day the customer operated the locker stated that all lockers operated during the day have been checked and found properly locked. The National Commission unholding the decision of the State Commission, held the bank guilty of negligence and therefore, liable to make good the loss.

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However, failure to provide nursing and financing facilities to a small scale industry which consequently became sick cannot be said to constitute deficiency in service as in matters of grant or withholding of further advances and insisting on margin money, banks may exercise their discretion and act in accordance with their best judgement after taking into account various relevant factors. Therefore, the proper forum to agitate such grievances is a civil court (*Special Machines* v. *Punjab National Bank,* Original Petition No. 32/1989 decided on 22.12.1989; *M.L. Joseph* v. *SBI*, O.P. No. 2/1989 decided on 31.8.1989). It has also been held by National Commission in the case of *Mrs. Anumati v. Punjab National Bank* (2003 CTJ 921 (CP) (NCDRC) that the financial institutions have every right to protect their interests by taking conscious decisions. There shall be no deficiency in service where the bank takes conscious decision to adjust the fixed deposit of the joint holders against the loan taken by a third party when the FDR has been mortgaged as guarantee for loan.

In *Pradeep Kumar Jain v. Citi Bank* [1999(g) SCALE 662] the appellant purchased a car by taking a loan from the respondent bank, and gave post dated cheques to the bank not only in respect of repayment of loan installments but also of premium of insurance policy for succeeding years. On the expiry of the policy the bank failed to get the policy renewed. In the meantime the car met with an accident. The Supreme Court held that there is no deficiency in service because the obligation to renew the policy was on the appellant alone. But merely passing on two cheques to the bank for being paid to the insurance company the appellant would not absolve himself of his liability to renew the policy. The appellant also have certain duties to discharge in the matter of obtaining the policy and can not merely pass the blame to someone else.

Failure of a Housing Board to give possession of the flat after receiving the price and after registering it in favour of the allottee was held to be deficiency in service in the case of *Lucknow Development Authority v. Roop Kishore Tandon* F.N. No. 54/1990 decided on 10.10.1990.

Cancellation of train services by the railways due to disturbance involving violence so as to safeguard the passengers as well as its own property was held by the National Commission as not constituting deficiency in service on the part of the Railway. [*Dainik Rail Yatri Sangh (Regd.) v. The General Manager, Northern Railway* - I (1992) CPJ 218 (NC)]. Failure of the Railways to provide cushioned seats in the first class compartments as per specifications laid down by the Railway Board and to check unauthorised persons from entering and occupying first class compartments was held to be deficiency [N. *Prabhakaran v. General Manager, Southern Railway, Madras* - I (1992) CPJ 323 (NC).

In *Bhaskar Chowdhary v. Dr. Pramod Kumar Aggarwal* [1999 CCJ 31 (NCDRC)], the complainant passenger was holding confirmed air-conditioned class tickets from Allahabad to Howrah by Kalka Mail. The train was late. Since another train, Chambal Express going to Howrah was on the platform; the complainant approached the conductor and requested him to allow him to travel by that train. Since there was no air-conditioned class coach in that train, he was allowed to travel in first class compartment. An endorsement to that effect had been made on the tickets. While travelling anti fraud squad forced him to pay penalty as passenger without ticket.

The State Commission held that there was a deficiency in service by the railways. The National Commission on revision petition held that, as far as the complainant was concerned, he was under the *bona fide* impression that he was permitted to travel by Chambal Express on the basis of endorsement on the ticket he had obtained. The endorsement created an estoppel on the railway authority. The railway can not turn around and challenge its own action at a later stage.

In *Union Bank of India v. Seppo Rally OY* (1999) 35 CLA 203, the Supreme Court held that delay in payment of an unconditionally guaranteed amount by a bank in India to a non-resident in Finland in foreign currency can not be attributed to any deficiency in the service of the bank when the banks stand is that the delay is caused by the failure of a bank in Finland, to which the remittance was to have been made under the non-residents instructions to reply to the Indian

Banks valid query in this connection and the RBI took time to grant the necessary permission to make the remittance.

Task What do you understand by consumer disputes?

Self Assessment

Fill in the blanks:

7. The complaints can be made when the article purchased by the …… is defective.
8. Full form of DCPC is ……
9. Complaints can be registered within …… from the date on which the cause of action has arisen.

13.3 Consumer Protection Councils

The interests of consumers are sought to be promoted and protected under the Act *inter alia* by establishment of Consumer Protection Councils at the Central, State and District Levels. Chapter II of the Consumer Protection Act, 1986 comprising Sections 4 to 8 deals with Consumer Protection Councils.

Central Consumer Protection Council

Section 4 empowers the Central Government to establish a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council), consisting of the Minister in charge of Consumer Affairs in the Central Government, as its Chairman, and such number of other official or nonofficial members representing such interests as may be prescribed. However, the Consumer Protection Rules, 1987 restrict the number of members of the Central Council to 150 members.

Section 5 of the Act requires the Central Council to meet as and when necessary, but at least once in every year. The procedure in regard to transaction of its business at the meeting is given in Rule 4 of the Rules.

State Consumer Protection Council

Section 7 provides for the establishment of State Consumer Protection Councils by any State Government (by notification) to be known as Consumer Protection Council for (name of the State). The State Council shall consist of a Minister incharge of Consumer Affairs in the State Government as its Chairman and such number of other official or non-official members representing such interests as may be prescribed by the State Government and such number of other official or non official members, not exceeding ten, as may be nominated by the Central Government. The State Council shall meet as and when necessary but not less than two meetings shall be held every year. The procedure to be observed in regard to the transaction of its business at such meetings shall be prescribed by the State Government.

District Consumer Protection Council

In order to promote and protect the rights of the consumers within the district, section 8A provides for establishment in every district of a council to be known as the District Consumer

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Protection Council. It shall consist of the Collector of the district (by whatever name called), who shall be its Chairman and such number of other official and non-official members representing such interests as may be prescribed by the State Government. The District Council shall meet as and when necessary but not less than two meetings shall be held every year. The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

Self Assessment

State whether the following statements are true or false:

10. Lawyers are necessary to register a complaint under CPA, 1986
11. A consumer has a right to seek redressal under CPA, 1986

Caselet

Guilty of Negligence

A doctor qualified to practice homoeopathic system of medicines treating a patient with allopathic medicines and patient dies is a case of guilty of negligence.

In *Poonam Verma v. Ashwin Patel* [1996(4) SCALE 364] the respondent was a qualified medical practitioner in homoeopathic system of medicine. The appellant was the widow of a person who, it was alleged, had died because of the negligence of the respondent in administering allopathic medicines in which he was not qualified to practice. It was alleged that the deceased was treated to begin with, for viral fever on allopathic medicines and since his condition had not improved antibiotics were used without conducting proper tests. When his condition further deteriorated he was removed to a nursing home and after four days he was removed to a hospital in an unconscious state. Within a few hours thereafter he died.

Her complaint to the National Consumer Disputes Redressal Commission for damages for the negligence and carelessness of respondent in treating her husband was dismissed. Allowing the appeal the Supreme Court held that the respondent who had practised in allopathy without being qualified in that system was guilty of negligence *per se*. A person is liable at law for the consequences of his negligence.

Jurisdiction of the Commission: The Supreme Court observed that it is beyond doubt now that disputes regarding applicability of the Act to persons engaged in medical profession either as private practitioners or as Government doctors working in hospitals or Government dispensaries come within the purview of the Consumer Protection Act, 1986. It is also settled that a patient who is a consumer has to be awarded compensation for loss or injury suffered by him due to negligence of the doctor by applying the same tests as are applied in an action for damages for negligence.

In *Gopi Ram Goyal and others v. National Heart Institute and others*, 2001 CTJ 405 (CP) (NCDRC), the National Commission held that where the record and evidence shows that the conduct of the opposite parties i.e. doctors was more than reasonable and the level of care was as could be expected from professional in exercising reasonable degree of skill and knowledge. The complainant however failed to prove any case of negligence on the part of doctors, therefore the doctor cannot be held liable for death of patient.

Source: http://www.labourguide.co./consumer-protection-act

Notes

13.4 Redressal Machinery under the Act

The Act provides for three-tier quasi-judicial redressal machinery at the District, State and National level for redressal of consumer disputes and grievances. The District Forum has jurisdiction to entertain complaints where the value of goods/services complained against and the compensation, if any claimed, does not exceed ₹ 20 lakhs, the State Commission for claims exceeding ₹ 20 lakhs but not exceeding ₹ 1 crore; and the National Commission for claims exceeding ₹ 1 crore.

District Forum

Section 9 of the Act provides for the establishment of a District Forum by the State Government in each district of the State. However, the State Government may establish more than one District Forum in a district if it deems fit to do so. Section 10(1) provides that each District Forum shall consist of:

(a) a person who is, or who has been, or is qualified to be, a District Judge, who shall be its President;

(b) two other members one of whom shall be a woman, who shall have the following qualifications, namely:

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognised university,

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that a person shall be disqualified for appointment as a member if he—

(a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualification as may be prescribed by the State Government.

Every member of the District Forum shall hold office for a term of 5 years or upto the age of 65 years, whichever is earlier, and shall be eligible for reappointment for another term of five years or upto the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 10(1)(b) and such reappointment is also made on the basis of the recommendation of the Selection Committee. A member may resign his office in writing under his hand addressed to the State Government.

Task Explain the meaning and functions of district forum for redressal in consumer laws.

Notes

Jurisdiction of District Forum

Section 11 provides for the jurisdiction of the District Forum under two criteria pecuniary and territorial.

Pecuniary Limits

Section 11(1) empowers the District Forum to entertain complaints where the value of goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs.

Territorial Limits

Section 11(2) requires a complaint to be instituted in the District Forum within the local limits of whose jurisdiction the opposite party or the defendant actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint; or any one of the opposite parties (where there are more than one) actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint, provided that the other opposite party/parties acquiesce in such institution or the permission of the Forum is obtained in respect of such opposite parties; or the cause of action arises, wholly or in part.

In the case of *Dynavox Electronic Pvt. Ltd. v. B.J.S. Rampuria Jain College, Bikaner* (Appeal No. 4/89 before the Rajasthan CDRC), it was held that where in a contract, the machinery was supplied and installed at a particular place, a part of cause of action would be deemed to have arisen at that place, therefore, the complaint could be instituted in the District Forum within whose jurisdiction that place falls.

Section 16 of the Act empowers the State Government to establish the State Consumer Disputes Redressal Commission consisting of:

State Commission

Section 16 of the Act empowers the State Government to establish the State Consumer Disputes Redressal Commission consisting of:

(a) a person who is or has been a judge of a High Court appointed by the State Government (in consultation with the Chief Justice of the High Court) who shall be its President.

(b) not less than two and not more than such number of members, as may be prescribed, one of whom shall be a woman, who shall have the following qualifications, namely:

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognised university, and

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

Provided that not more than fifty per cent of the members be from amongst persons having a judicial background. "Persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level.

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A person shall be disqualified for appointment as a member if he:

(a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualification as may be prescribed by the State Government.

Every appointment shall be made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Commission, Secretary Law Department of the State and Secretary in charge of Consumer Affairs in the State. The proviso to this clause states that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman. Section 16(2) empowers the State Government to decide on the salary or honorarium and other allowances payable to the members of the State Commission and the other terms and conditions of service.

Every member of the State Commission shall hold office for a term of five years or upto the age of sixty-seven years, whichever is earlier and shall be eligible for reappointment for another term of five years or upto the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 16(1)(b) and such reappointment is made on the basis of the recommendation of the Selection Committee.

Jurisdiction of State Commission

Section 17 of the Act provides for the jurisdiction of the Commission as follows:

(a) the State Commission can entertain complaints where the value of the goods or services and the compensation, if any claimed exceed rupees twenty lakhs but does not exceed rupees one crore;

(b) the State Commission also has the jurisdiction to entertain appeals against the orders of any District Forum within the State. However, under second proviso to Section 15 no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty percent of the amount or rupees twenty-five thousand, whichever is less;

(c) the State Commission also has the power to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, if it appears to it that such District Forum has exercised any power not vested in it by law or has failed to exercise a power rightfully vested in it by law or has acted illegally or with material irregularity.

A complaint shall be instituted in a State Commission within the limits of whose jurisdiction, -

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

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(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises

Caution The State Commission's jurisdiction may be original, appellate or revisional. In respect of (c) above, the State Commission may reverse the orders passed by the District Forum on any question of fact or law or correct any error of fact or of law made by the Forum.

The National Commission in *Indian Airlines* v. *Consumer Education and Research Society*, (1992) CPR 4 (NC) held that in respect of the original jurisdiction of the State Commission, Section 17 only prescribes pecuniary limits. No territorial limits have been fixed for the exercise of original jurisdiction under the Act though the provision contained in Section 11(2) of the Act apply *mutatis mutandis* in the matter of entertaining original complaints by the State Commission. The territorial jurisdiction of the State Commission therefore extends to the territorial limit of the State. In the exercise of its appellate jurisdiction, the State Commission may entertain appeals only against the orders of any District Forum within the State. Similar condition also applies in respect of the State Commissions power to revise orders of the District Forums - only orders of the District Forum within the State may be subject to revision by the State Commission.

Transfer of Cases

Section 17A empowers the State Commission on the application of the complainant or of its own motion to transfer, at any stage of the proceeding any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

National Commission

Section 9 empowers the Central Government to establish the National Consumer Disputes Redressal Commission, by notification in the Official Gazette. Section 20(1) provides that the National Commission shall consist of—

(a) a person who is or has been a judge of the Supreme Court, to be appointed by the Central Government (in consultation with the Chief Justice of India), who shall be its President;

(b) not less than four and not more than such number of members as may be prescribed one of whom shall be a woman, who shall have the following qualifications, namely:-

(i) be not less than thirty-five years of age;

(ii) possess a bachelor's degree from a recognized university; and

(iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty percent of the members shall be from amongst the persons having judicial background. "Persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level.

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A person shall be disqualified for appointment if he:

(a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualification as may be prescribed by the Central Government.

Every appointment by the Central Government is required to be made on the recommendation of a Selection Committee consisting of a Judge of the Supreme Court to be nominated by the Chief Justice of India, the Secretary in the Department of Legal Affairs and the Secretary in charge of Consumer Affairs in the Government of India. Section 20(2) empowers the Central Government to fix the salary/honorarium and other allowances payable to the members as well as the other terms and conditions of their service. Every member of the National Commission shall hold office for a term of five years or upto seventy years of age, whichever is earlier and shall be eligible for reappointment for another term of five years or upto the age of seventy years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 20(1)(b) and such reappointment is made on the basis of the recommendation of the Selection Committee.

Caselet

No Deficiency of Service on the Part of the LIC

Premium paid to the agent of the LIC but the agent did not deposit the premium, death of the insured is a case of No deficiency of service on the part of the LIC.

In *Harshad J. Shah v. Life Insurance Corporation of India* [1997(3) SCALE 423 (SC)] the insured (since deceased) took out four life policies with double accident benefits, premium payable half-yearly. When the third premium fell due, the general agent of the Corporation met the person and took a bearer cheque towards the premium payable by him in respect of the policies. Although the cheque was encashed immediately thereafter, it was not deposited with the corporation for another three months. In the meantime, the insured met with a fatal accident and died. The corporation rejected the widow's claim for payment of the sum assured on the ground that the policies had lapsed for non-payment of premium within the grace period.

In the widows complaint to the State Commission under the Consumer Protection Act the Corporation pleaded that the amount of premium allegedly collected by the general agent could not be said to have been received by the Corporation, that the agent was not authorised to collect the premium amount. The State Commission held that in order to collect more business, agents of the Corporation collected premiums from policyholders either in cash or by cheque and then deposited the money so collected with the Corporation and that this practice had been going on directly within the knowledge of the Corporations administration, notwithstanding the departmental instructions that the agent was not

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authorised to collect the premiums. When the practice of the agent collecting the premiums from policyholders was in existence and the money was collected by the agent in his capacity and authority, the reasonable inference was that the corporation was negligent in its service towards the policyholder.

The National Commission, in appeal, was of the view that the insurance agent in receiving a bearer cheque from the insured towards payment of insurance premium was not acting as agent of the corporation nor could it be said that the corporation had received the premium on the date the bearer cheque was received by the agent, even though he deposited the sum with the corporation a day after the death of the insured.

Dismissing the appeal the Supreme Court held that the agent had no express authority to receive the premium on behalf of the Corporation. In his letter of appointment there was a condition expressly prohibiting him from collecting the premium. Nor could it be said that he had an implied authority to collect the premium, as regulation 8(4) expressly prohibited the agents from collecting premiums. Therefore, no case had been set up by the complainant before the State Commission that the Corporation by its conduct had induced the policyholders, including the insured, to believe that the agents were authorised to receive premiums on behalf of the Corporation. Nor was there any material on record that lent support to this contention. In the facts of this case there was no room to invoke the doctrine of apparent authority underlying Section 237 of the Indian Contract Act.

In *National Insurance Co. Ltd. v. Seema Malhotra* [2001(2) SCALE 140] (Supreme Court) a cheque was issued under a contract of insurance of motor car by the insured for payment of premium to the policy. However, cheque was dishonoured for want of funds in the account. Meanwhile, the car met an accident and badly damaged, killing the insured owner. The claim for insured amount was repudiated by the company.

The Supreme Court held that applying the principles envisaged under Section 51, 52 and 54 of Indian Contract Act, relating to reciprocal promises, insurer need not to perform his part of promise when the other party fails to perform his part and thus not liable to pay the insured amount.

Source: http://www.labourguide.co. /consumer-protection-act/the-consumer-protection-act-introduction

Jurisdiction of National Commission

Section 21 provides that the National Commission shall have jurisdiction:

(a) to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds rupees one crore;

(b) to entertain appeals against the orders of any State Commission. However, under second proviso to Section 19 no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty percent of the amount or rupees thirty-five thousands, whichever is less; and

(c) to call for the records and pass appropriate orders in any consumer dispute which is pending before, or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

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Complaints before the District Forum and State Commission

Section 12 provides that a complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with the District Forum by—

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognised consumer association, whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided, is a member of such association or not; or

(c) one or more consumers, where there are numerous consumers having the same interest with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central or the State Government as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

Every complaint filed under this section is required to be accompanied with such amount of fee and payable in such manner as may be prescribed. On receipt of a complaint, the District Forum may, by order, allow the complaint to be proceeded with or rejected. However, a complaint shall not be rejected unless an opportunity of being heard has been given to the complainant. It is also to be noted that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received. Where a complaint is allowed to be proceeded, the District Forum may proceed with the complaint in the manner provided under this Act. Where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

The explanation defines the term recognised consumer association as to mean any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force.

Thus, in case the affected consumer is unable to file the complaint due to ignorance, illiteracy or poverty, any recognised consumer association may file the complaint. The rule of "privity of contract" or *locus standi* which permits only the aggrieved party to take action has very rightly been set aside in the spirit of public interest litigation. Section 13 states the procedure to be followed by the District Forum or the State Commission on receipt of a complaint. On receipt of a complaint, a copy of the complaint is to be referred to the opposite party (or each of the opposite parties, where there are more than one) within twenty-one days from the date of its admission, directing him to give his version of the case within a period of 30 days. This period may be extended by another period of 15 days. If the opposite party admits the allegations contained in the complaint, the complaint will be decided on the basis of materials on the record. Where the opposite party denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the stipulated time, the dispute will be settled in the following manner:

(i) In case of Dispute Relating to Any Goods

Where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, a sample of the goods shall be obtained from the complainant, sealed and authenticated in the prescribed manner, for referring to the appropriate laboratory for the purpose of any analysis or test whichever may be necessary, so as to find out whether

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such goods suffer from any such defect. The appropriate laboratory would be required to report its finding to the referring authority, i.e. the District Forum or the State Commission within a period of forty-five days from the receipt of the reference or within such extended period as may be granted by these agencies [Section 13(1)(c)]. The term Appropriate laboratory has been defined to mean a laboratory or organisation recognised by the Central Government or a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect.

Section 13 empowers the District Forum/State Commission to require the complainant to deposit such amount as may be specified, towards payment of fees to the appropriate laboratory for the purpose of carrying out the necessary analysis or tests. The amount so deposited shall be remitted to the appropriate laboratory to enable it to carry out the analysis and send the report. On receipt of the report, a copy thereof is to be sent by District Forum/State Commission to the opposite party along with its own remarks. In case any of the parties i.e. opposite party or the complainant, disputes the correctness of the methods of analysis/test adopted by the appropriate laboratory, the concerned party will be required to submit his objections in writing in regard to the report.

After giving both the parties a reasonable opportunity of being heard and to present their objections, if any, the District Forum/State Commission shall pass appropriate orders under Section 14 of the Act.

(ii) In case of Dispute Relating to Goods not Requiring Testing or Analysis or Relating to Services

Section 13(2)(b) provides that where the opposite party denies or disputes the allegations contained in the complaint within the time given by the District/State Commission, the Agency concerned shall dispose of the complaint on the basis of evidence tendered by the parties. In case of failure by the opposite party to represent his case within the prescribed time, the complaint shall be disposed of on the basis of evidence tendered by the complainant.

Limitation Period for Filing of Complaint

Section 24A provides that the District Forum, the State Commission, or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. However, where the complainant satisfies the Forum/Commission as the case may be, that he had sufficient cause for not filing the complaint within two years, such complaint may be entertained by it after recording the reasons for condoning the delay.

Administrative Control

Section 24B authorises the National Commission to exercise administrative control over the State Commissions in the matter of calling for periodical returns regarding the institution, pendency and disposal of cases, issuance of instructions regarding adopting of uniform procedure in hearing of matters, serving copies of documents, translation of judgements etc. and generally overseeing the functioning of the State Commission/District forum to ensure that the objects and purposes of the Act are served in the best possible manner.

Similarly, the State Commission has been authorised to exercise administrative control over all the District forum within its jurisdiction in all the above matters.

Notes

Powers of the Redressal Agencies

The District Forum, State Commission and the National Commission have been vested with the powers of a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters:

(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed.

Under the Consumer Protection Rules, 1987, the District Forum, the State Commission and the National Commission have the power to require any person:

(i) to produce before and allow to be examined by an officer of any of these agencies, such books of accounts, documents or commodities as may be required and to keep such book, documents etc. under his custody for the purposes of the Act;

(ii) to furnish such information which may be required for the purposes of the Act to any officer so specified.

These redressal agencies have also been empowered to pass written orders authorising any officer to exercise the power of entry and search of any premises where the books, papers, commodities or documents are kept if there is any ground to believe that these may be destroyed, mutilated, altered, falsified or secreted. Such authorised officer may also seize books, papers, documents or commodities if they are required for the purposes of the Act, provided the seizure is communicated to the District Forum/State Commission/National Commission within 72 hours. On examination of such documents or commodities, the agency concerned may order the retention thereof or may return it to the party concerned.

Did u know? The District forum, the State Commission and the National Commission have the power to issue remedial orders to the opposite party directing him to do any one or more of the things referred to in Section 14(1)(a) to (i) as discussed herein below. The redressal agencies have also been empowered to dismiss frivolous and vexatious complaints under Section 26 of the Act and to order the complainant to make payment of costs, not exceeding ₹ 10,000 to the opposite party.

Self Assessment

State whether the following statements are true or false:

12. An appeal against the order of state commission can be filed before the National Commission.

13. Tie-in-sales involve selling of 2 items at the same price.

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13.5 Nature and Scope of Remedies under the Act

In terms of Section 14(1) of the Act, where the goods complained against suffer from any of the defects specified in the complaint or any of the allegations contained in the complaint about the services are proved, the District Forum/State Commission/National Commission may pass one or more of the following orders:

(a) to remove the defects pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;

Provided that the Forum/Commission shall have the power to grant positive damages in such circumstances as it deems fit;

(e) to remove the defects in goods or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(hb) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

It is to be noted that the minimum amount of sum so payable shall not be less than five percent of the value of such defective goods sold or service provided, as the case may be, to such consumers. Further, the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed.

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

The remedies that can be granted by the redressal agencies are therefore, wide enough to cover removal of defects/deficiency in goods/services, replacing defective goods with new goods, refunding price/charges paid by the complainant, payment of compensation for loss or damage suffered, providing costs to parties and issuing prohibitory orders directing the discontinuance of unfair trade practice, sale of hazardous goods etc. However, the redressal agencies have not been granted power to order injunctions.

Section 14(1)(d) provides that the redressal agency may order payment of compensation only in the event of negligence of the opposite party which resulted in loss or damage and not otherwise, i.e. even though the complainant has suffered loss or damage, he may not be entitled for compensation if he cannot prove negligence.

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Appeal

Section 15 entitles a person aggrieved by an order of the District Forum to prefer an appeal to the State Commission. Similarly any person aggrieved by any original order of the State Commission may prefer an appeal to the National Commission under Section 19. Likewise, any person aggrieved by any original order of the National Commission may prefer an appeal to the Supreme Court, under Section 23.

All such appeals are to be made within thirty days from the date of the order. However, the concerned Appellate authority may entertain an appeal after the said period of thirty days if it is satisfied that there was sufficient cause for not filling it within the prescribed period. The period of 30 days would be computed from the date of receipt of the order by the appellant.

It may be noted that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum/State Commission, shall be entertained by the State Commission/ National Commission respectively unless the appellant has deposited in the prescribed manner fifty percent of that amount or twenty five thousand rupees/thirty-five thousand respectively, whichever is less. It may be observed that appeals are allowable only against the original orders passed by the concerned redressal agency. Appellate orders passed by the State Commission or National Commission (i.e. on appeal against the orders of the District Forum or State Commission) cannot be further appealed against though on questions of law revision petitions may be filed. So also, the revisional orders passed by the State Commission or the National Commission are not appealable.

Penalties

Section 27 of the Act deals with penalties and provides that failure or omission by a trader or other person against whom a complaint is made or the complainant to comply with any order of the District Forum, State Commission or the National Commission shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine of not less than ₹ 2,000 but which may extend to ₹ 10,000, or with both.

However, on being satisfied that the circumstances of any case so require, the District Forum or the State Commission or the National Commission may impose a lesser fine or a shorter term of imprisonment. Section 27(3) prescribes that all offences under the Act to be tried summarily.

After conduct of the proceedings, if the relevant forum is satisfied that the allegation contained in the complaint about the service are proved, the following penalties may be imposed.

(a) Pay such amount as may be awarded by it as compensation to the Consumers for any loss or injury suffered by him.

(b) To remove the defect or deficiencies in the services in question

(c) To provide for adequate costs of parties.

Any person aggrieved by an order made by the District Forum may prefer an appeal against such an order to the State Commission within a period of 30 days from the date of the order.

In spite of the format of complaints directed in http://www.indiastudychannel.com/resources/41681-Procedures-for-Complaints-under-Consumer.aspx the beneficiaries should preferably route his complaints through his department which could arbitrate in the matter before forwarding the same to the Consumer Forum.

This will help in elimination of frivolous or vexatious complaints.

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The Consumer Protection Act, 1986 section 27 mentions that "Penalties" will occur:

Where a trader or a person against whom a complaint is made [or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person [or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

Provided that the District Forum, the State Commission or the National Commission, as the case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount, specified in this section.

Self Assessment

Fill in the blanks:

14. The complaint to be filed must be signed by the consumer or his …….

15. Consumer protection is a movement to safeguard the interest of …….

Caselet

Failure to Provide Basic Safeguards in the Swimming Pool – Deficiency in Service

In the case of *Sashikant Krishnaji Dole v. Shitshan Prasarak Mandali* [F.A. No. 134 of 1993 decided on 27.9.1995 (NCDRC)] the school owned a swimming pool and offered swimming facilities to the public on payment of a fee. The school conducted winter and summer training camps to train boys in swimming and for this purpose engaged a trainer/coach. The complainants had enrolled their son for learning swimming under the guidance of the coach. It was alleged that due to the negligence of the coach the boy was drowned and met with his death. The school denied that it had engaged the services of a coach and also denied any responsibility on its part. The coach claimed that he was a person with considerable experience in coaching young boys in swimming and that as in other cases he taught the deceased boy also the way in which he should swim and take all precautions while swimming. When the deceased was found to have been drowned the coach immediately took him out of the water and removed the water from his stomach and gave him artificial respiration and thereafter took him to a doctor, where he died.

The State Commission held the school and the coach deficient in rendering service to the deceased, that the coach was not fully trained, did not exercise even the basic common sense needed to counter an accident in swimming. He was so casual in his behaviour that he did not attempt to take prompt action to save the life of the deceased and so far as the school was concerned it did not even provide basic facilities nor did it provide any safeguards to prevent accidents.

Dismissing the appeal the National Commission observed that the State Commission had given cogent reasons for holding the school and the coach responsible for death of the deceased. A detailed examination of the depositions of eye witnesses showed that the Commission had correctly appreciated the evidence and come to the conclusion that the coach was negligent and the school did not provide the necessary life saving mechanism to save the lives of trainee students in cases of accidents.

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So far as the compensation was concerned the State Commission had taken all relevant factors into account and fixed the amount at ₹ 1.50 lakhs which was reasonable.

Source: http://www.consumerdaddy.com/

Case Study

Removal of Ladder of an Aircraft while Disembarking by the Passenger — Deficiency in Service

In *Station Manager, Indian Airlines v. Dr. Jiteswar Ahir* [First Appeal No. 270 of 1994 decided on 28.2.1996 (NCDRC)] when the complainant-passenger occupied his seat in the aircraft, an announcement was made that his luggage was lying on the ground unidentified and that he should disembark to identify his luggage. According to the complainant he moved towards the rear door, and finding that the step ladder was attached to the aircraft door, he stepped out on to the staircase but before he could actually put his entire body weight on the staircase the ladder was suddenly removed as a result of which he fell down on the ground and sustained bodily injuries which was reported to be about 10 percent. As against the complainant's claim of ₹ 10 lakhs the airlines was willing to pay ₹ 40,000 as compensation which according to them was the maximum statutory liability of the Corporation under the Carriage by Air Act, 1972.

The State Commission, after examining witnesses and the medical boards report held that there was dangerous deficiency in service and having regard to the expert opinion and other medical reports, it ordered payment of compensation of ₹ 4 lakhs and ₹ 1 lakh for mental agony and distress plus costs.

In appeal by the Corporation, the National Commission, upholding the State Commissions order, held that in terms of regulations relied upon by the appellant Corporation, if it was proved that the accident caused to the complainant had resulted in a permanent disablement, incapacitating him from engaging in or being occupied with his usual duties or his business or occupation, the liability could not exceed ₹ 5 lakhs. This case related to the incapacity and permanent disability to the extent of 10 per cent and, therefore, the compensation could not exceed ₹ 5 lakhs. The State Commissions assessment of compensation of ₹ 4 lakhs was justified, considering the age of the complainant (37 years) at the time of accident and his having lost earning capacity. The State Commission was also right in awarding compensation of rupees one lakh for the complainant's mental suffering and agony as well as feeling of inferiority in social relations.

Deficiency in service cannot be alleged without attributing fault, imperfection, and shortcoming or in adequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving deficiency in service is upon the person who alleged it. When the complainant has not established any willful fault, imperfection, shortcoming or inadequacy in the service of the respondent, there can be no deficiency in service.

In *Ravneet Singh Bagga v. KLM Royal Dutch Fintimes* [1999(7) SCALE 43], the complainant booked a ticked from Delhi to New York by a KLM plane. The airport authorities in New Delhi did not find any fault in his visa and other documents. However at Amsterdam, the airport authorities instituted proceedings of verification because of which the appellant missed his flight to New York. After reaching New York, the airlines tendered apology to the appellant for the inconvenience and paid as a goodwill gesture a sum of ₹ 2,500. The

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appellant made a complaint to the National Commission under the Consumer Protection Act which was rejected.

The Supreme Court held that the respondent could not be held to be guilty of deficiency in service. The staff of the airline acted fairly and in a bona fide manner, keeping in mind security and safety of passengers and the Aircraft. The photograph on visa documents was a photo copy and not the original which was unusual. In the circumstances, the staff took some time to ascertain the truth and helped the appellant to reach New York the same day.

Question

Analyze the given cases and discuss the methods and functions of redressal and relaxation to the consumer.

Source: http://www.sethassociates.com/consumer-protection-act-in-india.case.study

13.6 Summary

- Consumer Protection Act, 1986 provides for simple, quick and easy remedy to consumers.
- The Act empowers the Central Government to establish a Council to be known as the Central Consumer Protection Council.
- The Act provides for the establishment of State Consumer Protection Councils by any State Government.
- The Act provides for establishment in every district of a council to be known as the District Consumer Protection Council.
- District Forum has jurisdiction to entertain complaints where the value of goods/services complained against and the compensation, if any claimed, is less than ₹ 20 lakhs, the State Commission for claims exceeding ₹ 20 lakhs but not exceeding ₹ 1 crore; and the National Commission for claims exceeding ₹ 1 crore.
- The District Forum, the State Commission, or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.
- The District Forum, State Commission and the National Commission have been vested with the powers of a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the certain matters.
- It covers all the sectors whether private, public, and cooperative or any person. The provisions of the Act are compensatory as well as preventive and punitive in nature and the Act applies to all goods covered by sale of goods Act and services unless specifically exempted by the Central Government;
- It enshrines the following rights of consumers:
  - (a) right to be protected against the marketing of goods and services which are hazardous to life and property;
  - (b) right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices;
  - (c) right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
  - (d) right to be heard and to be assured that consumers' interests will receive due consideration at the appropriate fora;

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(e) right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) right to consumer education;

- The Act also envisages establishment of Consumer Protection Councils at the central, state and district levels, whose main objectives are to promote and protect the rights of consumers;
- To provide a simple, speedy and inexpensive redressal of consumer grievances, the Act envisages a three-tier quasi-judicial machinery at the national, state and district levels. These are: National Consumer Disputes Redressal Commission known as National Commission, State Consumer Disputes Redressal Commissions known as State Commissions and District Consumer Disputes Redressal Forum known as District Forum; and
- The provisions of this Act are in addition to and not in derogation of the provisions of any other law for the time being in force.

13.7 Keywords

Consumer dispute: "Consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

Defect: "Defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods.

Deficiency: "Deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

District Forum: "District Forum" means a Consumer Disputes Redressal Forum established under clause (a) of section 9.

Goods: "Goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930).

Member: "Member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be.

National Commission: "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of section 9.

Notification: "Notification" means a notification published in the Official Gazette.

13.8 Review Questions

1. Discuss, in detail, the objects of Consumer Protection Act, 1986.
2. Briefly discuss the jurisdiction of the various Forums/Commissions under the Consumer Protection Act, 1986?
3. Explain the nature and scope of the remedies under the Act?
4. Write short notes on the following:

   (i) Complainant

   (ii) Deficiency in service

Notes

(iii) Power of redressal agencies

(iv) Limitation period for filing of complaint.

5. Discuss consumer's rights under Consumer Protection Act, 1986
6. What is the purpose of consumer protection law?
7. Who may lodge complaints?
8. What is a transaction?
9. When would the act not apply?
10. Who is a consumer?

Answers: Self Assessment

1.	True	2.	False
3.	True	4.	True
5.	False	6.	True
7.	Consumer	8.	District Consumer Protection Council
9.	2 years	10.	False
11.	True	12.	True
13.	False	14.	Authorized agent
15.	Consumers		

13.9 Further Readings

Books

Davidov, Guy & Langille, Brian, (2011), "*The Idea of Labour Law,*" Oxford University Press

Davis, Ja E, (2012), "*Labour Laws,*" General Books

Kumar, H.L., (2010),"*Labour Laws,*" Universal Law Publishing

Rao, VSP, (2008), " *Industrial Relations & Labour Laws*," Excel Books

Singh, B.D., (2009), "*Labour Laws for Managers,*" Excel Books India

Online links

http://business.gov.in/legal_aspects/wages_1965.php

http://www.vakilno1.com/bareacts/paymentofbonusact/section/s2.html

http://taxguru.in/corporate-law/main-provisions-of-payment-of-bonus-act-1965-in-brief.html

http://www.whatishumanresource.com/the-payment-of-bonus-act-1965

http://www.caclubindia.com/experts/the-payment-of-bonus-act-1965-452630.asp#.US2HUqJHJc0

http://www.blog.smsvaranasi.com/wp-content/uploads/2013/02/PAYMENT-OF-BONUS.pdf

Unit 14: Information Technology Act, 2000

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Objectives

After studying this unit, you will be able to:

- Describe various definitions provided in the IT Act, 2000
- Explain scope and applicability of the IT Act, 2000
- Elucidate the concept and functions of e-commerce

Notes

- Explain the legal recognition of electronic records
- Discuss the details of the licensing and the audit process
- Explain certifying authorities and its regulations
- Describe the concept of digital signatures
- Describe civil wrongs and cyber crimes
- Discuss in detail various penalties for non-compliance of the Act

Introduction

Since the beginning of civilization, man has always been motivated by the need to make progress and better the existing technologies. This has led to tremendous development and progress which has been a launching pad for further developments. Of all the significant advances made by mankind from the beginning till date, probably the most important of them is the development of Internet.

However, the rapid evolution of Internet has also raised numerous legal issues and questions. As the scenario continues to be still not clear, countries throughout the world are resorting to different approaches towards controlling, regulating and facilitating electronic communication and commerce.

The Parliament of India has passed its first Cyber law, the Information Technology Act, 2000 which provides the legal infrastructure for E-commerce in India. The said Act has received the assent of the President of India and has become the law of the land in India.

At this juncture, it is relevant for us to understand what the IT Act, 2000 offers and its various perspectives.

The Information Technology Act was enacted in the year 2000 and implemented w.e.f. 17th October, 2000 to give a fillip to the growth and usage of computers, internet and software in the country as well as to provide a legal framework for the promotion of e-commerce and e-transactions in the country. The Information Technology Act, 2000 which consist of 94 Sections in 13 Chapters and with Four Schedules provides for a legal framework for evidentiary value of electronic record and computer crimes which are of technological nature.

Cyberlaw is a new phenomenon having emerged much after the onset of Internet. Internet grew in a completely unplanned and unregulated manner. Even the inventors of Internet could not have really anticipated the scope and far reaching consequences of cyberspace. The growth rate of cyberspace has been enormous. Internet is growing rapidly and with the population of Internet doubling roughly every 100 days, Cyberspace is becoming the new preferred environment of the world.

With the spontaneous and almost phenomenal growth of cyberspace, new and ticklish issues relating to various legal aspects of cyberspace began cropping up. In response to the absolutely complex and newly emerging legal issues relating to cyberspace, Cyberlaw or the law of internet came into being. the growth of cyberspace has resulted in the development of a new and highly specialised branch of law called Cyberlaws-Laws of the Internet and the World Wide Web.

There is no one exhaustive definition of the term "Cyber law". However, simply put, Cyber law is a term which refers to all the legal and regulatory aspects of Internet and the World Wide Web. Anything concerned with or related to, or emanating from, any legal aspects or issues concerning any activity of netizens and others, in Cyberspace comes within the ambit of Cyber law. IT Act is based on Model law on e-commerce adopted by UNCITRAL.

Notes

14.1 Need Applicability and Definitions of the Act

To provide legal recognition for transactions:-

- Carried out by means of electronic data interchange, and other means of electronic communication, commonly referred to as "electronic commerce"
- To facilitate electronic filing of documents with Government agencies and E-Payments
- To amend the Indian Penal Code, Indian Evidence Act, 1872, the Banker's Books Evidence Act 1891, Reserve Bank of India Act,1934

14.1.1 Extent of Application

Extends to whole of India and also applies to any offence or contravention there under committed outside India by any person {section 1 (2)} read with Section 75- Act applies to offence or contravention committed outside India by any person irrespective of his nationality, if such act involves a computer, computer system or network located in India. Section 2 (1) (a) –"Access" means gaining entry into, instructing or communicating with the logical, arithmetic or memory function resources of a computer, computer resource or network.

14.1.2 Definition (Section 2)

(1) In this Act, unless the context otherwise requires,-

(a) "access", with its grammatical variation and cognate expressions, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network;

(b) "addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

(c) "adjudicating officer" means an adjudicating officer appointed under sub-section (1) of section 46;

(d) "affixing digital signature", with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of digital signature;

(e) "appropriate Government " means as respects any matter- enumerated in List II of the Seventh Schedule to the Constitution; relating to any State law enacted under List III of the Seventh Schedule to the Constitution, the State Government and in any other case, the Central Government;

(f) "asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature;

(g) "Certifying Authority" means a person who has been granted a license to issue a Digital Signature Certificate under section 24;

(h) "certification practice statement" issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Digital Signature Certificates;

(i) "computer" means electronic, magnetic, optical or other high-speed date processing device or system which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or relates to the computer in a computer system or computer network;

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(j) "computer network" means the interconnection of one or more computers through-

(i) the use of satellite, microwave, terrestrial lime or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

(k) "computer resources" means computer, computer system, computer network, data, computer database or software;

(l) "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable being used in conjunction with external files which contain computer programmes, electronic instructions, input data and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(m) "Controller" means the Controller of Certifying Authorities appointed under sub-section (1) of section 17'

(n) "Cyber Appellate Tribunal" means the cyber Regulations Appellate Tribunal established under sub-section (1) of section 48;

(o) "data" means a representation of information, knowledge, facts, concepts or instruction which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.

(p) "Digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

(q) "Digital Signature Certificate" means a Digital Signature Certificate issued under sub-section (4) of section 35;

(r) "electronic from", with reference to information. Means, any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(s) "Electronic Gazette" means Official Gazette published in the electronic form;

(t) "electronic record" means date, record or date generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(u) "function", in relation to a computer, includes logic, control, arithmetical process, deletion, storage and retrieval and retrieval and communication or telecommunication from or within a computer;

(v) "information' includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche;

(w) "intermediary" with respect to any particular electronic message, means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;

(x) "key pair", in an asymmetric crypto system, means a private key and its mathematically related public key., which are so related that the public key can verify a digital signature created by the private key;

(y) "law" includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President under article 240, Bills enacted as President's Act under sub-clause (a) of clause (1)

Notes

of article 375 of the Constitution and includes rules, regulations, bye-laws and order issued or made thereunder;

(z) "license" means a license granted to a Certifying Authority under section 24;

(za) "originator" means a license granted to a Certifying Authority under section 24;

(zb) "prescribed" means prescribed by rules made under the Act;

(zc) "private key" means the key of a key pair used to create a digital signature;

(zd) "public key" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate;

(ze) "secure system" means computer hardware, software and procedure that-

(a) are reasonably secure from unauthorised access and misuses;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures;

(zf) "security procedure" means the security procedure prescribed under section 16 by the Central Government;

(zg) "subscriber" means a person in whose name the Digital Signature Certificate is issued;

(zh) "verify", in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions, means to determine whether-

(a) the initial electronic record was affixed with the digital signature by the sue of private key corresponding to the public key of the subscriber;

(b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

Caselet

Official Website of Maharashtra Government Hacked

Mumbai, 20th September 2007 — IT experts were trying yesterday to restore the official website of the government of Maharashtra, which was hacked in the early hours of Tuesday.

Rakesh Maria, joint commissioner of police, said that the state's IT officials lodged a formal complaint with the Cyber Crime Branch police on Tuesday. He added that the hackers would be tracked down. Yesterday the website, http://www.maharashtragovernment.in, remained blocked.

Deputy Chief Minister and Home Minister R.R. Patil confirmed that the Maharashtra government website had been hacked. He added that the state government would seek the help of IT and the Cyber Crime Branch to investigate the hacking.

Contd....

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"We have taken a serious view of this hacking, and if need be the government would even go further and seek the help of private IT experts. Discussions are in progress between the officials of the IT Department and experts," Patil added.

The state government website contains detailed information about government departments, circulars, reports, and several other topics. IT experts working on restoring the website told Arab News that they fear that the hackers may have destroyed all of the website's contents.

According to sources, the hackers may be from Washington. IT experts said that the hackers had identified themselves as "Hackers Cool Al-Jazeera" and claimed they were based in Saudi Arabia. They added that this might be a red herring to throw investigators off their trail.

According to a senior official from the state government's IT department, the official website has been affected by viruses on several occasions in the past, but was never hacked. The official added that the website had no firewall.

Source: http://cyberlaws.net/cyberindia

14.1.3 Applicability of the Act

Act is applicable to:

(a) a negotiable instrument (Other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881;

(b) a power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882;

(c) a trust as defined in section 3 of the Indian Trusts Act, 1882;

(d) a will as defined in clause (h) of section 2 of the Indian Succession Act, 1925 including any other testamentary disposition

(e) any contract for the sale or conveyance of immovable property or any interest in such property;

(f) any such class of documents or transactions as may be notified by the Central Government

An Act to provide legal recognition for transactions carried out by means of electronic date interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternative to paper-based methods of communication and storage of information to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the India Evidence Act, 1872, the Banker's Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto;

Whereas the General Assembly of the United Nations by resolution A/RES/ 51/162, date 30th January 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law;

And whereas the said resolution recommends, *inter alia*, that all States give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper based methods of communication and storage of information;

Notes

And whereas it is considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records;

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:-

(1) This Act may be called the Information Technology Act, 2000.

(2) It shall extend to the whole of India and, save as otherwise provided in this Act, it applies also to any or contravention there under committed outside India by any person.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

(4) Nothing in this Act shall apply to-

(a) a negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881 (26 of 1881);

(b) a power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882 (7 of 1882);

(c) a trust as defined in section 3 of the Indian Trusts Act, 1882 (2 of 1882);

(d) a will as defined in clause (h) of section (2) of the Indian Succession Act, 1925 (39 of 1925), including any testamentary disposition by whatever name called;

(e) any contract for the sale or conveyance of immovable property or any interest in such property;

(f) any such class of documents or transactions as may be notified by the Central Government in the Official Gazette.

Self Assessment

State whether the following statements are true or false:

1. All cyber-crimes are not covered under the IT Act.
2. IT act, 2000 is based on the INCITRAL model law on e-commerce, 1996.
3. Electronic data evidence is admissible in court?
4. The IT Act for legal recognition of electronic documents.
5. According to the IT Act, hacking is a punishable offence.
6. E-mail is a valid and legal form of communication in our country.

14.2 Digital Signature

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Notes

Notes For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible-

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

14.2.1 Electronic Governance

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

- rendered or made available in an electronic form, and
- accessible so as to be usable for a subsequent reference.

14.2.2 Legal Recognition of Digital Signatures

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person (hen, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Explanation: For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

14.2.3 Use of Electronic records and digital signatures in Government and its agencies.

(1) Where any law provides for-

- the filing of any form application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner.
- the issue or grant of any license, permit, sanction or approval by whatever name called in a particular manner.
- the receipt or payment of money in a particular manner.

Then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment,

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as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

- the manner and format in which such electronic records shall be filed, created or issued.
- the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a)

14.2.4 Retention of Electronic Records

Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if-

- the information contained therein remains accessible so as to be usable for a subsequent reference.
- the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received.
- the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

  Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.
- Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

14.2.5 Publication of Rule, Regulation, etc., in Electronic Gazette

Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette:

Provided that where any rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form.

Sections 6, 7 and 8 not to confer Right to insist Document should be Accepted in Electronic Form

Nothing contained in sections 6, 7 and 8 shall confer a right upon any person to insist that any Ministry or Department of the Central Government or the State Government or any authority or body established by or under any law or controlled or funded by the Central or State Government should accept, issue, create, retain and preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

Notes

14.2.6 Power to make Rules by Central Government in Respect of Digital Signature

The Central Government may, for the purposes of this Act, by rules, prescribe-

- the type of digital signature.
- the manner and format in which the digital signature shall be affixed.
- the manner or procedure which facilitates identification of the person affixing the digital signature.
- control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments, and
- any other matter which is necessary to give legal effect to digital signatures.

Self Assessment

State whether the following statements are true or false:

7. DSC is digital signature certificate.
8. A digital signature is legally valid.
9. A document signed with a digital signature can be considered as valid evidence.

14.3 Attribution, Acknowledgment and Dispatch of Electronic Records

Details regarding the attribution and disintegration of dispatch of electronic records are discussed below.

14.3.1 Attribution of Electronic Records

An electronic record shall be attributed to the originator -

- if it was sent by the originator himself;
- by a person who had the authority to act on behalf of the originator in respect of that electronic record, or
- by an information system programmed by or on behalf of the originator to operate automatically.

14.3.2. Acknowledgment of Receipt

- Where the originator has not agreed with the addressee that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by -
  - ❖ any communication by the addressee, automated or otherwise, or
  - ❖ any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.
- Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless

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acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.

- Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

14.3.3. Time and Place of Dispatch and Receipt of Electronic Record

- Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.
- Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely :-

  a. if the addressee has designated a computer resource for the purpose of receiving electronic records

     i. receipt occurs at the time when the electronic, record enters the designated computer resource, or

     ii. if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee.

  b. if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

- Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.
- The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).
- For the purposes of this section -

  - If the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business.
  - If the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business.
  - "Usual place of residence", in relation to a body corporate, means the place where it is registered.

Notes

14.4 Secure Electronic Records and Secure Digital Signatures

To keep the users of electronic data away from the threats of unsafe online and offline data ruining, measures mentioned below can help the users for such purposes.

Secure Electronic Record

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

Secure Digital Signature

If, by application of a security procedure agreed to by the parties concerned, it can be verified that a digital signature, at the time it was affixed, was-

- unique to the subscriber affixing it.
- capable of identifying such subscriber.
- created in a manner or using a means under the exclusive control of the subscriber and is linked to the electronic record to which it relates in such a manner that if the electronic record was altered the digital signature would be invalidated, then such digital signature shall be deemed to be a secure digital signature.

Security Procedure

The Central Government shall for the purposes of this Act prescribe the security procedure having regard to commercial circumstances prevailing at the time when the procedure was used, including-

- The nature of the transaction.
- The level of sophistication of the parties with reference to their technological capacity.
- The volume of similar transactions engaged in by other parties.
- The availability of alternatives offered to but rejected by any party.
- The cost of alternative procedures, and
- The procedures in general use for similar types of transactions or communications.

Task What is the security procedure under IT Act, 2000?

14.5 Regulation of Certifying Authorities

Appointment of Controller and other Officers

- The Central Government may, by notification in the Official Gazette, appoint a Controller of Certifying Authorities for the purposes of this Act and may also by the same or subsequent notification appoint such number of Deputy Controllers and Assistant Controllers as it deems fit.

Notes

- The Controller shall discharge his functions under this Act subject to the general control and directions of the Central Government.
- The Deputy Controllers and Assistant Controllers shall perform the functions assigned to them by the Controller under the general superintendence and control of the Controller.
- The qualifications, experience and terms and conditions of service of Controller, Deputy Controllers and Assistant Controllers shall be such as may be prescribed by the Central Government.
- The Head Office and Branch Office of the office of the Controller shall be at such places as the Central Government may specify, and these may be established at such places as the Central Government may think fit.
- There shall be a seal of the Office of the Controller.

Caution The controller can only discharge his functions after the approval of general controller and the Central Government.

Functions of Controller

The Controller may perform all or any of the following functions, namely: -

- Exercising supervision over the activities of the Certifying Authorities.
- Certifying public keys of the Certifying Authorities.
- Laying down the standards to be maintained by the Certifying Authorities.
- Specifying the qualifications and experience which employees of the Certifying Authorities should possess.
- Specifying the conditions subject to which the Certifying Authorities shall conduct their business.
- Specifying the contents of written, printed or visual materials and advertisements that may be distributed or used in respect of a Digital Signature Certificate and the public key.
- Specifying the form and content of a Digital Signature Certificate and the key.
- Specifying the form and manner in which accounts shall be maintained by the Certifying Authorities.
- Specifying the terms and conditions subject to which auditors may be appointed and the remuneration to be paid to them.
- Facilitating the establishment of any electronic system by a Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems.
- Specifying the manner in which the Certifying Authorities shall conduct their dealings with the subscribers.
- Resolving any conflict of interests between the Certifying Authorities and the subscribers.
- Laying down the duties of the Certifying Authorities.
- Maintaining a data base containing the disclosure record of every Certifying Authority containing such particulars as may be specified by regulations, which shall be accessible to public.

Notes

Self Assessment

Fill in the blanks:

10. "A cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of ..... (with or without biometrics signature) and asymmetric crypto system.
11. The full form of PKI is .....
12. Primarily, it is the ..... of a State who has been empowered to adjudicate upon any contraventions under sections 43-45 of the Act.

14.6 Penalties, Offences and Adjudication

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network -

- accesses or secures access to such computer, computer system or computer network.

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- Downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium.
- Introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network.
- Damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmers residing in such computer, computer system or computer network.
- Disrupts or causes disruption of any computer, computer system or computer network.
- Denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means.
- Provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made there under.
- Charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network. He shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

Notes For the purposes of this section-

- "computer contaminant" means any set of computer instructions that are designed-
  - to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network, or

Contd....

Notes

- ❖ by any means to usurp the normal operation of the computer, computer system, or computer network.
- "computer data base" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network.
- "computer virus" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource.
- "Damage" means to destroy, alter, delete, add, modify or rearrange any computer resource by any means.

Penalty for Failure to Furnish Information Return, etc.

If any person who is required under this Act or any rules or regulations made thereunder to-

- Furnish any document, return or report to the Controller or the Certifying Authority fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure.
- File any return or furnish any information, books or other documents within the time specified therefore in the regulations fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues.

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Maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

14.7 Offences

The offences to be avoided for the honest following of the act are given below:

Tampering with Computer Source Documents

Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Explanation: For the purposes of this section, "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.

Notes

Hacking with Computer System

- Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hack:
- Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend upto two lakh rupees, or with both.

Publishing of Information which is Obscene in Electronic Form

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

Power of Controller to give Directions

- The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made thereunder.
- Any person who fails to comply with any order under sub-section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a Fine not exceeding two lakh rupees or to both.

Directions of Controller to a Subscriber to extend Facilities to Decrypt Information

- If the Controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the security of the State, friendly relations with foreign Stales or public order or for preventing incitement to the commission of any cognizable offence, for reasons to be recorded in writing, by order, direct any agency of the Government to intercept any information transmitted through any computer resource.
- The subscriber or any person in charge of the computer resource shall, when called upon by any agency which has been directed under sub-section (1), extend all facilities and technical assistance to decrypt the information.
- The subscriber or any person who fails to assist the agency referred to in sub-section (2) shall be punished with an imprisonment for a term which may extend to seven years.

Protected System

- The appropriate Government may, by notification in the Official Gazette, declare that any computer, computer system or computer network to be a protected system.

Notes

- The appropriate Government may, by order in writing, authorise the persons who are authorised to access protected systems notified under sub-section (1).
- Any person who secures access or attempts to secure access to a protected system in contravention of the provisions of this section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Penalty for Misrepresentation

Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any license or Digital Signature Certificate, as the case may be; shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

14.8 IT Act, 2000 & Amendments 2008

The IT (Amendment) Act, 2008 (ITAA 2008) has established a strong data protection regime in India. It addresses industry's concerns on data protection, and creates a more predictive legal environment for the growth of e-commerce that includes data protection and cybercrimes measures, among others. Sensitive personal information of consumers, held in digital environment, is required to be protected through reasonable security practices by the corporate. Additionally, ITAA 2008 makes it obligatory for them to protect data under lawful contracts by providing for penalty for breach of confidentiality and privacy. Privacy protection, a long felt need of consumers in India, and of clients overseas who are outsourcing their operations to Indian service providers, is now on a sound footing. It will go a long way in promoting trust in transborder data-flows to India. A strong data protection regime also requires that cybercrimes such as identity theft, phishing, data leakage, cyber terrorism, child pornography etc. be covered to ensure data security and data privacy. It has adequate provisions for data storage and audits to ensure that cyber security breaches can be handled through investigations and cyber forensics techniques. The Act also provides for security of critical infrastructure, by terming such cyber-attacks as cyber terrorism; and for establishing a national encryption policy for data security. ITAA 2008 thus enhances trustworthiness of cyberspace. In our interactions with the IT/BPO industry, banks, public sector, government organizations and others, we have found that knowledge about the ITAA 2008 is rather low. In addition to conducting several seminars and workshops on ITAA2 008, we decided to promote better understanding of the Act through FAQs. There could not have been a more qualified person to write the FAQs than Mr. Vakul Sharma, Supreme Court Advocate, who was an expert member of the committee that drafted these amendments. I hope the reader will find the FAQs useful.

Self Assessment

Fill in the blanks:

13. Chapter ..... Provides for penalties and adjudication under the IT Act.
14. IT act facilitates electronic ..... with the government agencies.
15. Not obeying the direction of Controller is an ..... under the IT Act.

Notes

Case Study

Three People held Guilty in Online Credit Card Scam

Customer's credit card details were misused through online means for booking air-tickets. These culprits were caught by the city Cyber Crime Investigation Cell in Pune. It is found that details misused were belonging to 100 people.

Mr. Parvesh Chauhan, ICICI Prudential Life Insurance officer had complained on behalf of one of his customer. In this regard Mr. Sanjeet Mahavir Singh Lukkad, Dharmendra Bhika Kale and Ahmead Sikandar Shaikh were arrested. Lukkad being employed at a private institution, Kale was his friend. Shaikh was employed in one of the branches of State Bank of India.

According to the information provided by the police, one of the customers received a SMS based alert for purchasing of the ticket even when the credit card was being held by him. Customer was alert and came to know something was fishy; he enquired and came to know about the misuse. He contacted the Bank in this regards. Police observed involvement of many Bank's in this reference.

The tickets were book through online means. Police requested for the log details and got the information of the Private Institution. Investigation revealed that the details were obtained from State Bank of India . Shaikh was working in the credit card department; due to this he had access to credit card details of some customers. He gave that information to Kale. Kale in return passed this information to his friend Lukkad. Using the information obtained from Kale Lukkad booked tickets. He used to sell these tickets to customers and get money for the same. He had given few tickets to various other institutions.

Cyber Cell head DCP Sunil Pulhari and PI Mohan Mohadikar A.P.I Kate were involved in eight days of investigation and finally caught the culprits.

In this regards various Banks have been contacted; also four airline industries were contacted.

DCP Sunil Pulhari has requested customers who have fallen in to this trap to inform police authorities on 2612-4452 or 2612-3346 if they have any problems.

Question

Research the whole case and analyse that the remedies or the actions taken were enough according to you or not?

Source: deity.gov.in

14.9 Summary

- Digital signatures on tax returns, government contracts, and consumer agreements were made legal with the Information Technology Act.
- Every business or agency accepting digital signatures must use software to create public keys and private keys.
- The signatory to an agreement must enter a full name or public key before the name is scrambled to create a private key.

Notes

- These two keys must be matched by the recipient of the contract to ensure the signer's identity. The Indian parliament prohibited digital signatures on trusts and wills because these documents require witnesses prior to filing.
- Another element of the Information Technology Act of 2000 was the creation of government bodies to anticipate new challenges to the law.
- The Cyber Regulations Advisory Committee is made up of public and private officials who consult with the government about the law's effect on electronic commerce.
- Lawsuits filed under the Act are heard in front of the Cyber Appellate Tribunal before appeals to higher courts.
- This act also requires digital publication of all activities of these committees as well as changes to the law for access by the general public.
- The Indian Parliament addressed concerns about new methods of online commerce with the Amendment Act of 2008.
- This revision changed Section 43 of the original Act to increase corporate for ensuring consumer identity security.
- The years following the Act's passage saw trends like online auction web sites and an increase in computer use for commercial transaction.
- Businesses that offer online transactions and digital signature capability to Indian consumers can also be sued for negligence under the amendment if they do not protect consumers against identity theft.

14.10 Keywords

Computer network: "Computer network" means the interconnection of one or more computers through: (i) the use of satellite, microwave, terrestrial lime or other communication media; and (ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

Controller: "Controller" means the Controller of Certifying Authorities appointed under sub-section (1) of section 17.

Digital Signature: "Digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3.

Digital Signature Certificate: "Digital Signature Certificate" means a Digital Signature Certificate issued under sub-section (4) of section 35;

Electronic Gazette: "Electronic Gazette" means Official Gazette published in the electronic form.

Electronic Record: "Electronic record" means date, record or date generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

Function: "Function", in relation to a computer, includes logic, control, arithmetical process, deletion, storage and retrieval and retrieval and communication or telecommunication from or within a computer.

Intermediary: "Intermediary" with respect to any particular electronic message, means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message.

Notes

Key pair: "Key pair", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key.

14.11 Review Questions

1. What are the various cyber offences listed under the Act?
2. Is it true that majority of cyber offences have been made bailable?
3. What are computer related offences?
4. Whether sending offensive messages through communication service is an offence?
5. What is the punishment for identity theft prescribed under the Act?
6. What are the penalties under IT Act?
7. How does the adjudication procedure works under the IT Act?
8. Discuss the importance of IT Act in e-governance?
9. What are the objectives of the IT Act?
10. Explain the need for advancement in the record keeping phenomenon in the country and how is it beneficial?

Answers: Self Assessment

1.	True	2.	True
3.	True	4.	True
5.	True	6.	True
7.	True	8.	True
9.	True	10.	Digital signature
11.	Public key infrastructure	12.	Adjudicating Officer
13.	IX	14.	Filing of documents
15.	Offence		

14.12 Further Readings

Books

Becky Hogge – *Barefoot into Cyberspace: Adventures in Search of Techno-Utopia*

Berin Szoka & Adam Marcus (eds.) – *The Next Digital Decade: Essays on the Future of the Internet*

Chris Marsden – *Internet Co-Regulation: European Law, Regulatory Governance and Legitimacy in Cyberspace*

Eddan Katz & Ramesh Subramanian (Eds.) -*The Global Flow of Information: Legal, Social, and Cultural Perspectives*

Evgeny Morozov – *The Net Delusion: The Dark Side of Internet Freedom* Micah Sifry – *WikiLeaks and the Age of Transparency*

Notes

Laura DeNardis – *Opening Standards: The Global Politics of Interoperability*

Philip Howard - *The Digital Origins of Dictatorships and Democracy: Information Technology and Political Islam*

Ronald J. Deibert, John G. Palfrey, Rafal Rohozinski and Jonathan Zittrain – *Access Contested: Security, Identity, and Resistance in Asian Cyberspace*

Virginia Eubanks – *Digital Dead End: Fighting for Social Justice in the Information Age*

Online links

http://www.mit.gov.in/sites/upload_files/dit/files/RNUS_CyberLaw_15411.pdf

http://www.sacw.net/article606.html

http://articles.timesofindia.indiatimes.com/2012-11-21/social-media/35257411_1_writ-petition-facebook-post-life-and-liberty

http://www.thehindu.com/news/states/tamil-nadu/validity-of-section-66a-of-it-act-challenged/article4116598.ece