LOVELY PROFESSIONAL UNIVERSITY

LABOUR LAWS

Edited By

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SYLLABUS

Labour Laws

Objectives:

- To familiarize the students with various aspects of Industrial Relations in India
- To have thorough knowledge of Labour Laws prevalent in India
- To develop an understanding of implications of Labour Laws on Industrial relations

Sr. No.	Topics
1.	**Introduction to Labour Legislation:** Philosophy of Labour Laws, Industrial Relations and Human Resource Management Labour Laws: Concept, Origin, Objectives and Classification.
2.	**Factories Act:** approval, licensing and registration: health, safety and welfare measures of employees; provisions regarding employments of adults, women and children in factories.
3.	**Industrial Dispute Act:** Definitions, Authorities and procedure to settle industrial disputes.
4.	**Payment of Wages Act:** Definitions, Methods for computing and fixing wages.
5.	**The Workmen Compensation Act, 1923:** Definition of Commissioner ,Workmen, Disablement, Rules regarding Workmen's compensation, Defences available to employers, Amount and Distribution of Compensation, Enforcement of Act.
6.	**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.
7.	**Trade Union Act:** Provisions, Authorities and Registration; amalgamation and dissolution.
8.	**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.
9.	**The Maternity Benefit Act, 1961:** Objective, Coverage, Benefits, penalties The Employees' State Insurance Act, 1948: objective, scope, coverage, benefits, The role of ESI Corporation and ESI Hospitals.
10.	**The Payment of Gratuity Act, 1972:** Objective, Coverage, Employers' obligations, benefits.

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Unit 1: Philosophy of Labour Laws

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Objectives

After studying this unit, you will be able to:

- Explain approach to labour law and labour relations
- Discuss the constitutional directives and limitations to labour law
- Get an overview of social justice and labour laws
- Describe the public interest litigation (PIL) for enforcement of labour law
- Discuss industrial adjudication

Introduction

In order to appreciate various labour legislation it is necessary to know the philosophy of Labour Laws. Over the years labour laws have undergone a change with regard to the object and scope. Early labour legislation was enacted to safeguard the interest of employers. It was governed by the doctrine of laissez faire. Modern labour legislation on the other hand aims at protecting workers against exploitation by employers. The advent of doctrine of welfare state is based on the notion of progressive social philosophy which has rendered the old doctrine of laissez faire obsolete. The theory of "hire and fire" as well as the theory of "supply and demand" which found free scope under the old doctrine of laissez faire no longer holds good. 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 philosophy of labour laws.

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1.1 Approach to Labour Law and Labour Relations

Labour law seeks to regulate the relations between an employer or a class of employers and their employees. The access of this law is the widest, in that it touches the lives of far more people, indeed millions of men & women as compared to any other branch of law and this is the aspect which makes it the most fascinating of all branches of law and the study of this subject is of enormous dimension and of ever changing facets.

There has been a remarkable change in the approach to Labour law and industrial relations since the World War II Philadelphia Charter adopted in 1944 provided that "Labour is not a commodity" and that "poverty anywhere is a danger to prosperity everywhere". W. Friedmann and others who have tried to analyse the essential characteristics of the legal development in this branch of law consider 'social-duty' on the part of employer as the main bed rock on which this law is built. This is exemplified by the very approach of law makers to the construction of a wage packet of the working man in the post-second World War period, wage fixation and legislation relating to condition of work. The Indian Constitution lays down broad guidelines to be followed by State.

Did u know? The Supreme Court in D.N. Banerji v. P.R. Mukherjee, AIR 1953 SC 58 stated that the law as developed after the second World War, particularly in a welfare State has reversed the theories of Sir Henry Maine and now society progresses form contract to status and the post war world has seen considerable legislation laying down conditions of service and also ensuring by laws payment of minimum wages.

1.1.1 Basis of Labour Relations Law

Otto Kahn-Freund in his book on Labour and the Law makes the following points:

(i) The system of collective bargaining rests on a balance of the collective forces of management and organised labour. The contribution which the courts have made to the orderly development of collective labour relations has been infinitesimal. Collective bargaining is a process by which the terms of employment and conditions of service are determined by agreement between management and the union. In effect, "It is a business deal (which) determines the price of labour services and terms and conditions of labour's employment."

(ii) The Law governing labour relation is one of the central branches of the law on which the very large majority of people earn their living. Nonetheless, law is a secondary force in human relations and especially in labour relations.

(iii) Law is a technique for the regulation of social power. This is true of labour law as it is of other aspects of any legal system. Labour Law also seeks to lay down minimum standard of employment. It lays down norms by which basic conditions of labour are fulfilled such as maximum working hours, minimum safety conditions, minimum provisions for holidays and leave protection for women and children from arduous labour, prohibition of children below certain age from employment and provision for minimum standards of separation benefits and certain provision for old age.

1.1.2 Purpose of Labour Legislation

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

(i) It establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy;

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(ii) By providing a framework within which employers, workers and their representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy;

(iii) It provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced.

But experience shows that labour legislation can only fulfills these functions effectively if it is responsive to the conditions on the labour market and the needs of the parties involved. The most efficient way of ensuring that these conditions and needs are taken fully into account is if those concerned are closely involved in the formulation of the legislation through processes of social dialogue. The involvement of stakeholders in this way is of great importance in developing a broad basis of support for labour legislation and in facilitating its application within and beyond the formal structured sectors of the economy.

Caselet

Airport Authority of India

The writ petition was filed by the Airport Authority of India, challenging the impugned order passed by the authority under Rule 25 (2)(v)(a) & (b) of Contract Labour (R&A) Central Rules dated 27.04.2001, whereby it was held that the members of the second respondent in the category of Safaiwala/cleaner/sweeper under the contractor engaged by the petitioner are performing not the same, but similar work as performed by the corresponding category of directly employed workers of the petitioner. The provision contained under Rule 25(2)(v)(a) of the Contract Labour Act, 1971, makes it very clear that in a case where the contract workman performs the same or similar kind of work as the workmen directly employed by the Principal employer, then the benefits to such a contract workman shall be the same, as applicable to the workmen directly employed by the principal employer. Therefore the said rule mandates that the benefits shall be equal both to a workmen engaged by a contractor as well as the workmen engaged by the principal employer. The Court held that no distinction can be made against Contract labour. Contract labour is entitled to the same wages, holidays, hours of work and conditions of service as are applicable to workmen directly employed by the principal employer under the appropriate industrial and labour laws. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner. Thus the Court held that the order impugned is perfectly in order and no interference needs to be called for and accordingly dismissed the writ petition.

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. Labour law seeks to regulate the relations between an employer or a class of employers and their employees.
2. Law is a technique for the regulation of political power.
3. Labour is a commodity.

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1.2 Constitutional Directives and Limitations to Labour Law

Following are the Constitutional Directives and Limitations to Labour Law:

1.2.1 Constitutional Directives to Labour Laws

The people of India resolved, on November 26, 1949, to constitute India into a sovereign democratic republic and secure to all its citizens.

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity

They framed a Constitution which seeks to provide a frame work for the achievement of these objectives. The Preamble has been amplified and elaborated in Part IV of the Constitution, which deals with the Directive Principle of State Policy. The State has been directed to promote the welfare of the people by securing and protecting as effectively as may, a social order in which justice, social economic and political, shall inform all institutions of the national life. Further, the State has been directed to strive to secure, inter alia,

(i) an adequate means of livelihood,

(ii) the proper distribution of ownership and control of the, material resources of the community so that it may best subserve the common need,

(iii) the prevention of the concentration of wealth and means of production,

(iv) equal pay for equal work to men and women,

(v) the health and strength of workers,

(vi) right to work,

(vii) right to education and to public assistance in cases of undeserved want, just and humane conditions of work and for maternity relief,

(viii) living wage and decent standard of life to labourers

(ix) higher level nutrition and standard of living and improved public health.

The Directive Principles spell out the socio-economic objectives of the national policy to be realised by labour; legislation as well as by other legislations. These are directives to the legislature, executive and the judiciary, which are committed to make, interpret and enforce law.

1.2.2 Constitutional Limitations on Labour Laws

Although labour policy seeks to create high minimum standards of employment, the choice of the legislature in seeking to achieve the objective are not unqualified. Minimum standard legislation is subject to various limitations. To begin with, in order to guarantee the fundamental rights, the Indian Constitution imposes certain limitations on the legislations on the legislature and the executive. To the extent it is inconsistent with or derogatory to a fundamental right, the legislation is void. Fundamental rights are enforceable by the courts under Articles 32 and 226.

The fundamental rights are enumerated in Part-III of the Constitution. The whole object of Part-III is to provide protection for the freedom and rights mentioned therein against arbitrary action

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by the State. Of particular relevance is Article 14, which provides that "the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India". In addition to this, Article 16 guarantees equality of opportunity in matters of public employment. Further, Article 19 guarantees "the right to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to practice any profession, and to cant' on any occupation, trade or business." These constitutional guarantees are of great practical significance in the area of labour law, including minimum standard legislation. Equal; protection constitutes a limitation on the legislative power to select or decide which business or industry must achieve minimum standards. The right to carry on trade profession or business limits the burden which the legislation may place on business in the interest of workers. The freedom of speech, assembly, association and unionisation protect workers in their efforts to achieve their objectives through self in organising, picketing or striking.

Article 21 provides protection of life and personal liberty. It provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 23 prohibits traffic in human beings and forced labour. It says (i) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Life, in Article 21, has been interpreted by the Supreme Court as including livelihood and the Court has held in several cases that any employment below minimum wage levels is impermissible as it accounts to slavery as understood in Article 23. Holding a person in bondage is a Constitutional crime. Article 24 places a ban on employment below the age of 14 in any factory or mine or engaged in any other hazardous employment.

Self Assessment

State whether the following statements are true or false:

4. The Preamble has been amplified and elaborated in Part IV of the Constitution, which deals with the Directive Principle of State Policy.
5. The fundamental rights are enumerated in Part-III of the Constitution.
6. Article 19 provides protection of life and personal liberty.

1.3 Social Justice and Labour Laws

In the realm of labour laws there has been in reality continuous legislative activity by the Supreme Court ever since the Constitution was promulgated. The Supreme Court has performed a pioneering role in evolving first principles of industrial law which are so sound that they are largely still followed today despite the dynamic nature of industrial law.

The fundamental principle which was laid down by the Supreme Court in this respect was the principle of social Justice. In fact, other principles of labour law only flow from this basic principle, and hence we may consider it at some length. Social Justice connotes the balance of adjustments of the various interests concerned in the social and economic structure of society. It aims at promoting harmony in Industrial relations upon an ethical and economic basis, and its ultimate objective of peace in Industry. Thus, social justice is an objective of peace in industry. Thus, social justice is an application in the field of labour laws of the basic principle of sociological jurisprudence of harmonising conflicting interests. Social Justice recognised that workers are in a weak bargaining position vis-a-vis the employer, and it seeks to remedy this situation.

Did u know? In J.K. Cotton Spinning &Weaving Mills v. Labour Appellate Tribunal, AIR 1964 SC 737 the Supreme Court observed.

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"The development of industrial law during the last decade and several decisions of this court in dealing with industrial matters have emphasized the relevance, validity and significance of the doctrine of social, justice. The concept of social justice is not narrow or one-sided or pedantic. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities. Nevertheless in dealing with industrial matters it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It therefore endeavours to resolve the competing claims of employees by finding a solution which is just and fair to both parties with the object of establishing harmony between labour and capital, and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of the national economy, and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication."

Social justice is not based on contract. In fact it is an abridgement of the freedom of contract. The days of hire and fire are gone and the Industrial Court has power to intervene if it is demonstrated that the contract of employment needs to be revised in the interests of social Justice. In fact the Industrial Courts enjoy immense wide powers which no civil court possesses, namely, to create new contracts, modify existing contracts and confer new rights and privileges.

However the principle of social justice does not permit the Industrial Courts to act as despots and do anything they please. The Industrial Court must follow Industrial law and decide the dispute on settled principles. The Supreme Court has struck a note of caution that the need of the hour is more production; consequently the Tribunal should not be unduly generous in the matter of granting leave. Similarly, an Industrial Court cannot grant housing accommodation to the workers for this would impose too heavy a burden on the employer.

Did u know? In Patna Electric Supply v. Workers Union, AIR 1959 SC 1036 the Supreme Court observed:

"Social Security for the weaker sections is of utmost importance. But then we cannot forget the limitations under which we are living. While we should not forget our social goals, our purpose may be defeated if we do not approach our problems in a pragmatic way. "

Thus, social justice requires the Industrial Courts to strike a balance between the conflicting claims of employer and worker. While the employer has a fundamental right to run his business, his right has to be adjusted with the employees' right to social justice. The former pertains to the realm of fundamental rights in our Constitution, the latter to the realm of the Directive Principles. The Ultimate aim is to have peace in industry so that production may increase and the national economy may grow.

Self Assessment

Fill in the blanks:

7. The fundamental principle which was laid down by the Supreme Court in this respect was the principle of ..... .
8. The Industrial Court must follow ..... and decide the dispute on settled principles.
9. Social justice is not based on ..... .

1.4 Public Interest Litigation (PIL) for Enforcement of Labour Law

"Public interest Litigation", in simple words, means, litigation filed in a court of law, for the protection of "Public Interest", such as pollution, Terrorism, Road safety, constructional hazards etc. Public Interest Litigation, in Indian law, means litigation for the protection of public interest.

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It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation is the power given to the public by courts through judicial activism.

Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and precede suo motu or cases can commence on the petition of any public-spirited individual.

Notes The Supreme Court in S.P. Gupta v. Union of India, popularly known as the Transfer of Judges case AIR 1982 SC 149 formulated the principle of public interest litigation in the following words:

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction or writ or order."

In People's Union for Democratic Rights v Union of India (1982) 2 L.L.J 454 popularly known as Asiad case the Court found the view, which held that public interest litigation unnecessarily clog the dockets of the Court and add to the already staggering arrears of cases pending for years and should be discouraged, to be totally perverse, smacking of an elitist and status quo approach. On the contrary, the Court found that the doors of the courts were open for vindicating the right of the wealthy and the affluent and held that those who have decried public interest litigation did not seem to realise that courts were not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they existed also for the poor and the downtrodden. The Court accordingly treated the letter written to a judge to be a writ petition.

PIL represents the first attempt by a developing common law country to break away from legal imperialism perpetuated for centuries. It contests the assumption that the most western the law, the better it must work for economic and social development such law produced in developing states, including India, was the development of under develop men. The shift from legal centralism to legal pluralism was prompted by the disillusionment with formal legal system. In India, however instead of seeking to evolve justice- dispensing mechanism ousted the formal legal system itself through PIL. The change as we have seen, are both substantial and structural. It has radically altered the traditional judicial role so as to enable the court to bring justice within the reach of the common man. Further, it is humbly submitted that PIL is still is in experimental stage. Many deficiencies in handling the kind of litigation are likely to come on the front. But these deficiencies can be removed by innovating better techniques. In essence, the PIL develops a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interests of the weaker elements in the community. We may end with the hope once expressed by Justice Krishna Iyer, "The judicial activism gets its highest bonus when its orders wipe some tears from some eyes".

Caution Public Interest Litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only "Public Interest" there are various areas where a Public Interest Litigation can be filed.

Notes

1.4.1 Maintainability of the Writ Petition under Article 32

In Asiad case the Supreme Court examined whether there was any violation of fundamental right in this petition and observed:

"The complaint of violation of Art.24 based on the averment that children below the age of 14 years are employed in the construction work of the Asiad projects, is clearly a complaint of violation of a fundamental right. So also when the provisions allege non-observance of the provisions of the Equal Remuneration Act, 1976 it is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Art 14. Then there is the complaint of non-observance of the provision of the Contract Labour (Regulations &Abolition) Act 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and this is also in our opinion a complaint relating to violation of Art.21."

Further it was added:

"Now the rights and benefit on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made staturily responsible for securing such rights and benefits to the workmen. That leaves for consideration the complaint in regard to non payment of minimum wages to the workmen under the Minimum Wages Act, 1948. We are of the view that this complaint is also one relating to breach of a fundamental right and for reasons which we shall presently state, it is the fundamental right enshrined in Article 23 which is violated, by non-payment of minimum wage to the workmen."

Task Is it maintainable as a writ petition? Give reasons with support of your answer.

Self Assessment

State whether the following statements are true or false:

10. Public Interest Litigation means litigation for the protection of public interest.
11. The shift from legal centralism to legal pluralism was not prompted by the disillusionment with formal legal system.
12. The court can itself take cognizance of the matter and precede suo motu or cases can commence on the petition of any public-spirited individual.

1.5 Industrial Adjudication

In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand

and the workmen's organisation on the other and the industrial tribunal has got to arrive at some equitable arrangement for averting strikes and lockouts Which impede production of goods and the industrial development of the country. The tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function. Adjudication is a procedure for resolving disputes without resorting to lengthy and expensive court procedure.

Disciplining a workman is one of the key methods of curtailing disputes amongst them and achieving maximum productivity.

Example: Accordingly, the Supreme Court of India ("SC") in Hombe Gowda Educational Trust v. State of Karnataka, stated that giving managers the power to punish a workman according to law, even if the punishment may result in some hardship is important. But, one needs to bear in mind that conducting disciplinary proceedings against a workman is most controversial and often lead to long drawn-out cases. Hence, the management of any industrial establishment must cautiously approach such proceedings and strictly follow the procedure laid down by judicial precedents. The present bulletin focuses on the requirements of holding a domestic enquiry with respect to indiscipline on part of a workman, the procedure to be followed thereunder and the impact of section 11A of the Industrial Disputes Act, 1947 ("the Act") on domestic enquiries.

1.5.1 The Adjudication Process

Following are the processes of Adjudication:

Commencement

The adjudication process begins when the party referring the dispute to adjudication gives written notice of its intention to do so. The Scheme for Construction Contracts provides that this Notice of Adjudication should briefly set out the following:

- a description of the nature of the dispute and the parties involved;
- details of where and when the dispute arose;
- the nature of the remedy being sought;
- names and addresses of the parties to the contract, including addresses where documents may be served.

The Notice of Adjudication is the first formal step in the adjudication procedure. Save for the minimum information set out above, there is no particular requirement as to the form of the document.

Appointment of the Adjudicator

Following service of the Notice of Adjudication, the next step is to appoint an adjudicator. The appointment of an adjudicator must be secured within seven days from service of the Notice of Adjudication. The parties can agree on an individual to act as the adjudicator or, if agreement cannot be reached, the party who referred the dispute to adjudication may make an application to an Adjudicator Nominating Body (ANB). This is usually done by completing a form and paying the required fee. On receipt of a request to nominate an adjudicator, the ANB should communicate their selection to the party who referred the dispute to adjudication within five days of the request. In the event that an ANB fails to do this the whole process must begin again.

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The referral notice

The referral notice must be served within seven days of service of the Notice of Adjudication. This is the document that sets out in detail the case of the party who is referring the dispute to adjudication and it should be accompanied by documentation in support of the claim together with expert reports (if any) and witness statements. It is important to ensure that the referring party is in a position to serve this notice - there have been instances where the ANB has appointed an adjudicator 24 hours before the seven-day period expires, in which case the adjudicator will need the notice within a day. A copy should be sent to the other party at the same time.

Timetable involved

The Construction Act sets out a tight timetable of within 28 days of service of the referral notice for submission of a response and for the adjudicator's ultimate decision. However this may be extended with the consent of the adjudicator. The rationale behind the process was to obtain quick and cost effective results which are of a binding nature unless reviewed by litigation or arbitration. This relies on timescales being tight.

Responding party's response

This is essentially the other party's defence, and is required to be served within seven days of the Referral Notice. Requests for this to be extended to 14 days are usually agreed. The HGCRA does not demand a response or further submissions - the need for one is a matter for the adjudicator.

The decision

The adjudicator is required to reach his decision within 28 days of service of the referral notice. This period can be extended by a further 14 days if the party who referred the dispute in the first place agrees, or can be further extended if both parties agree.

The decision is final and binding, providing it is not challenged by subsequent arbitration or litigation. The parties are obliged to comply with the decision of the adjudicator, even if they intend to pursue court or arbitration proceedings. In the majority of adjudicators' decisions the parties accept the decision, however if they choose to pursue subsequent proceedings the dispute will be heard afresh - not as an 'appeal' of the adjudicator's findings. A party cannot adjudicate the same issue in further adjudication proceedings.

Costs

The Construction Act makes no mention of how costs should be dealt with. However changes to the Act which come into force on 1 October 2011 provide that any contractual provision which attempts to allocate the costs of adjudication between the parties will be invalid unless it is made after the adjudicator is appointed. This applies to agreements both as to the allocation of the adjudicator's fees and expenses and agreements as to who is to bear the parties' own costs. This provision seeks to prevent parties agreeing contractual terms which place all the costs risk on one party.

Adjudicator's fees and expenses

The parties will be jointly and severally liable to pay the adjudicator a reasonable amount in respect of fees for work reasonably undertaken and expenses reasonably incurred by him. This means that both parties can be pursued for these fees, or that either party may be pursued for the whole amount. The adjudicator may decide himself what sum is reasonable but, if there is any dispute, an application can be made to the court for determination. This provision applies only

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to adjudications which contain the required adjudication provisions set out in the Construction Act, not to adjudications which rely on the provisions of the Scheme for Construction Contracts.

The Local Democracy, Economic Development and Construction Act provide that:

- the parties may agree, in the construction contract, to confer power on the adjudicator to allocate his fees and expenses between them - this agreement must be in writing;
- if the parties agree, in the construction contract, to allocate liability for their own costs of the adjudication that provision will be ineffective;
- the parties are free to agree liability for their own costs of the adjudication after the notice of intention to refer has been given - if they do so, this agreement must be in writing.

The Act does not address what will happen if a contract provision allocates liability for both the parties' costs and the adjudicator's fees and expenses. It is arguable that in such a situation the whole clause will be ineffective.

Interest

The adjudicator can only deal with interest on sums awarded if the contract contains a provision dealing with interest, or alternatively if the parties agree.

Self Assessment

Fill in the blanks:

13. ..... a workman is one of the key methods of curtailing disputes amongst them and achieving maximum productivity.
14. The Construction Act sets out a tight timetable of within ..... days of service of the referral notice for submission of a response and for the adjudicator's ultimate decision.
15. The ..... can only deal with interest on sums awarded if the contract contains a provision dealing with interest, or alternatively if the parties agree.

Case Study

Labour Unrest at Maruti

Maruti Udyog Ltd. (MUL) is one of India's leading automobile manufacturers and the market leader in the car segment, both in terms of volume of vehicles sold and revenue earned. It was established in February 1981, by Sanjay Gandhi, the younger son of then Prime Minister of India, Mrs Indira Gandhi. It was taken over by Govt. of India in February' 1982. In October of the year 1983, Maruti entered into the collaboration with Suzuki Motors, by which Suzuki acquired 26% of the equity and agreed to provide the latest technology as well as Japanese management practices. The commercial production and sales began by the end of 1983. The introduction of the Maruti 800 in 1983 marked the beginning of a revolution in the Indian automobile industry. In Late 1990's the company had serious differences with Govt. over appointment of company's managing director. Suzuki referred the case for International arbitration and finally withdraws the case after an amicable settlement was reached between Suzuki and Government of India.

For most of its history, Maruti Udyog had relatively few problems with its labour force. The company trusts its employees to a greater extent and the employees in turn respond by being totally devoted to the company. Both the managers and workers of Maruti wore

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the same uniform and ate at the same canteen even during the period of agitation. After recovering from the strike Maruti had a perceptible change in culture. A VRS scheme introduced soon afterwards increased the sense of insecurity amongst employees, but it was all for a good cause.

During the 1980s and early 90s the level of employee satisfaction at Maruti was comparatively higher than most manufacturing companies in the country as they received significantly higher salaries as compared to employees of other companies. Generally the Wage rates and earnings of workers at Maruti were result of a series of revisions based on bilateral negotiations. The pre-revised (before 2001 strike) labour cost per vehicle in Maruti at ₹ 2,696 compared unfavorably with ₹ 1,617 of its closest rival Hyundai. Worker's incentive earning had been equal to almost their entire basic and dearness. In 2000, the average basic and dearness allowance was ₹ 7,000 and the incentive earnings were around ₹ 6,500. With incentives accounting for a more than as usual and sizable proportion of the pay packet, workers badly needed the incentive scheme. Maruti's worked formed part of middle class, not working class. Over two-thirds apparently owned flats/houses and cars.

In MUL the control and power is mostly in the hands of management. During the workers strike in 2000 the management refused to agree to the workers demands. The officers ran the plant by supervising the operations of the plant and hiring contractual labour. This made it difficult for workers to sustain the strike. They had to call off the strike and were in fact forced them to agree to some changes laid down by the management. The power of Japanese has always been there in an implicit manner. The Japanese have acted as conflict resolvers whenever there have been any conflicts within or between departments. Many times the departments play politics with other departments by trying to use the referent power available due to closeness with Japanese management. With the increase in stake of Suzuki Motor Corp. the legitimate power of the Japanese management has further increased.

The car market in India become highly competitive in late 1990s with almost all major players entering the Indian market with manufacturing of various models. So company suffered a decline of market share. As Maruti's salary structure comparatively higher than most manufacturing companies, due to this competition and decline in profit, the company could not live up to the expectations of the employees. As a result worker unrest started to grow in the company.

In September 2000 the Maruti Udyog Employees Union went on an indefinite strike if their demands were not met. The employees were demanding a new incentive scheme, improved pension scheme, better work environment and filling up of supervisory vacancies. However the management refused to accede to these demands.

Production fell by around 40 % for a period of 3 months. During this period the engineers at the managerial positions manned the assembly lines to ensure that production does not stop completely. The top management of Maruti were under some pressure to negotiate with the workers. However, the government decided not to interfere directly and the management insisted that the workers stop the agitation and agree to adhere to the code of conduct specified by them.

The strike ended in January 2001 with the union members agreeing to by the code of conduct. About half of the employees (40) suspended/terminated during the course of the agitation were not taken back on duty. Thus the management retained the upper hand after the strike ended and the work culture at Maruti changed significantly after this. Some of the changes which took place were as follows:

1. The sense of job security that the workers enjoyed at Maruti diminished. In subsequent years a number of non-performers were asked to opt for a voluntary Retirement (VRS) and by introducing VRS, 1251 jobs were reduced.

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2. De-recognized Maruti Udyog Employees Union (MUEU) by dismissing the union members and the MUEU was not allowed to conduct a single general body meeting after the lockout and recognized new union called Maruti Kamgar Union and it was set up in December 2000 with 28 members.
3. The company started relying more on casual (contractual) labor to decrease its costs.
4. The proportion of variable performance based pay out of the total increased significantly.

Questions:

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

Source: http://www.scribd.com/doc/44741654/Case-study-report-on-Labour-unrest-at-Maruti

1.6 Summary

- Labour law seeks to regulate the relations between an employer or a class of employers and their employees.
- There has been a remarkable change in the approach to Labour law and industrial relations since the World War II.
- The State has been directed to promote the welfare of the people by securing and protecting as effectively as may, a social order in which justice, social economic and political, shall inform all institutions of the national life.
- The Directive Principles spell out the socio-economic objectives of the national policy to be realised by labour; legislation as well as by other legislations.
- The fundamental rights are enumerated in Part-III of the Constitution.
- Article 21 provides protection of life and personal liberty.
- The fundamental principle which was laid down by the Supreme Court in this respect was the principle of social Justice.
- The Industrial Court must follow Industrial law and decide the dispute on settled principles.
- Public Interest Litigation is the power given to the public by courts through judicial activism.
- PIL represents the first attempt by a developing common law country to break away from legal imperialism perpetuated for centuries.
- In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law.

1.7 Keywords

Adjudication: Adjudication is a procedure for resolving disputes without resorting to lengthy and expensive court procedure.

Adjudicator: An adjudicator is someone who presides, judges and arbitrates during a formal dispute

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Collective Bargaining: Collective bargaining is the process in which working people, through their unions, negotiate contracts with their employers to determine their terms of employment, including pay, benefits, hours, leave, job health and safety policies, ways to balance work and family and more.

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

Labour: A social class comprising those who do manual labor or work for wages.

Labour Laws: Body of rulings pertaining to working people and their organizations, including trade unions and employee unions, enforced by government agencies.

Labour Relations: Labor relations encompasses all the interchanges between employers and employees

Public Interest Litigation: In Indian law, public interest litigation means litigation for the protection of the public interest.

Regulation: A rule or directive made and maintained by an authority.

Social Justice: Social justice is defined as justice exercised within a society, particularly as it is exercised by and among the various social classes of that society.

Writ Petition: A special request that the Court of Appeal grant immediate relief from a trial court order.

1.8 Review Questions

1. What is the basis of Labour Relations Law?
2. Highlight the purpose of Labour Legislation.
3. Discuss the Constitutional Directives to Labour Laws.
4. Throw some light on the Constitutional Limitations on Labour Laws.
5. "The fundamental principle which was laid down by the Supreme Court in this respect was the principle of social Justice." Elucidate.
6. Do you agree with the statement that Social justice is not based on contract? If yes, give reasons.
7. Define Public interest Litigation.
8. Describe the maintainability of the Writ Petition.
9. What do you understand by Industrial Adjudication?
10. Explain the process of Adjudication.

Answers: Self Assessment

1.	True	2.	False
3.	False	4.	True
5.	True	6.	False
7.	Social Justice	8.	Industrial Law
9.	Contract	10.	True

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11. False
12. True
13. Disciplining
14. 28
15. Adjudicator

1.9 Further Readings

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Unit 2: Labour Laws, Industrial Relations and Human Resource Management

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Objectives

After studying this unit, you will be able to:

- Explain the conceptual basis of labour
- Discuss the HRM and its implications for industrial relations management
- Get an overview of the theory of the conflict between industrial relations and human resource management
- Describe the labour laws orientation

Introduction

The basis of changing the practice of industrial relations management from a reactive to a strategic mode could revolve around the following concepts and propositions which are based on the concept of alienation is the key to the analysis of condition of wage labour given the reality of contradiction-ridden organisational and societal totalities. The concept of alienation is also the key to a better understanding of the interface between human resources development and industrial relations. Any consideration of change from reactivity to strategic proactivity, in the process of considering the effect of the concept of human resources development on industrial relations should, therefore, be founded on the evolution of strategies oriented to the disalienation of direct producers. 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 concept of Labour Laws, Industrial Relations and Human Resource Management.

2.1 Conceptual Basis of Labour

The notion of totality refers to the axiom that any issue, any problem, any practice, any subsystem should be seen in perspective. A blinkered approach could not only distort but could even distract the attention from the core of the problem. The concept of totality has two dimensions

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a static dimension and a dynamic dimension. For instance, the static dimension of any given society would be the definition of that society at a particular moment of history. The dynamic dimension would be the stages of the evolution of that society upto the moment of the present analysis. The totality of the static dimension of society would include the techno-economic, politico-legal, socio-cultural structures and processes. The dynamic aspect of any society would focus on the mode of production, relations of production and relations in production. Hence, an analysis of any aspect of society should be sensitive not only to its present mode but should also be sensitive to how the present mode has evolved. Any discussion of strategic industrial relations management should take into account the mode of production and the relations of production as well as the techno-economic, politico-legal and socio-cultural structures and processes given the dominant mode of production.

The "totality" referred to above is not by any means a harmonious configuration of parts. There are inherent contradictions in the totality given the relations of production of a given mode of production. Sensitivity to the structural contradictions of the totality is essential to any analysis of human resources management. The structural contradictions flow from the struggle between those who own and/or control production and those who sell their labour for wages. The forms of these struggles will vary depending on the mode of production and the relations of production; labour management relations and human resources development are conceptualised and operationalised within the framework of a contradiction-ridden totality both at the societal level as well as at the organisational level.

The worker experiences the work organisation as alienating. The politico-economic structure of the work organisation, the drive towards profit generation, the hierarchy of control, division of labour, the dehumanising structure of work processes, exploitative management practices and procedures, the manipulation of worker behaviour in organisations and other factors combine to form the basis of the worker experience of alienation.

The alienation of the worker consists in a complex of factors:

1. That work is external to the worker. It does not flow from his own creativity, from his own volition, from his own aspirations. The politico-economic structure of the work environment divests the worker of his power to control the modalities of his working life.
2. Working is forced on the worker because of the urgent need for satisfying his various survival needs. Work itself is not the satisfaction of a need but merely a means.
3. As a worker, he surrenders his freedom to the organisation and to impersonal market forces in return for wages. His condition amounts to wage slavery.
4. The alienated worker, therefore, has no control over what work he has to do, what his work is going to produce and also over the structure and process enveloping his working life. He, on the contrary, through his work, creates power structures and processes which in turn contribute relentlessly to his own oppression and exploitation.

Caselet

Anant Spinning Mills

The Union of the workers gave a demand notice under section 2K of ID Act 1947 to the management of Anant Spinning Mills, Mandideep. Negotiations on the said demand notice are going on before Dy. Labour Commissioner, Bhopal and subsisting settlement dated 07.10.2001 is still in operation.

In order to pressurize the management, the workers in consent resorted to illegal and unjustified strike at 8am on 01.06.2002. On the said date, at about 8am, Mr. Mahendra Kumar Sharma, Code No. 26203, Department winding along with M/s Mohan Singh

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Solanki, Siaram Garg, Mukesh Kumar gathered at the main gate of the factory and stopped the willing workers to attend their duties and obstructed the movement of the goods from and to the factory. Mr. Mahendra Kumar Sharma along with above named workers took a leading part in the strike, stopped the willing workers at the main gate, instigated and threatened them. When some workers entered the mill, Mr. Mahendra Kumar Sharma and above said workers started shouting, "Management, hai-hai. Hamari maangein poori karo, jo humse takraega, choor-choor ho jayega." He along with the above said workers started throwing stones at the main gate resulting in loss of company property and damage to the chief security officer's office.

On 02.06.2002, at about 8am Mr. Mahendra Kumar Sharma along with Mr. Mohan Singh Solanki, Siaram Garg, Mukesh Kumar and other striking workers instigated and threatened M/s Ram Kumar, Prakash Chand and Sham Lal who were coming on duty by saying, "Tum hathtal mein shamil ho jao, nahin to tumhara jeena haram kar denge. Mandideep mein jaoge to tumhari tangen tod denge."

On 02.06.2002 at about 4pm, Mr. Mahendra Kumar Sharma led a mob of striking workers and gathered at the main gate of the factory and raised the slogans, "hum apni mangen manvaa kar rahenge, jo saala afsar hume kaam par aane ko kahega, usko joote marenge, chamchon ki tangen tod denge."

Mr.Mahendra Kumar Sharma along with M/s Mohan Singh Solanki and Siaram Garg is taking a leading part in the strike, and on 03.06.2202 at 3pm, he threatened M/s Ram Kumar, Madan Lal and Ram Avtar by saying "Agar kam per gae to tangen tod denge." And also abused them in unparliament language.

On 03.06.2002 at about 7:45 am, Mr. Mahendra Kumar Sharma along with above said striking workers stopped the bus no. MP03A-757 carrying female workers near Jileten factory. He along with other striking workers was having lathis and red flags and he threatened the female workers by saying, "Agar tum humara sath nahi dogi, to tumhe utha kar le jayenge." The female workers got frightened and started crying for help. Security guards who were following the bus reported the matter in the police post mandideep.

The above conduct on the part of Mr. Mahendra Kumar Sharma and above named striking workers constitutes a major misconduct under the certified Standing Orders No. 12.1(K), (L), (N), (V) & (Z).

Source: http://www.hrmindex.com/hr-forum/employee-relations/12297-industrial-relations-ir-case-studies

Self Assessment

State whether the following statements are true or false:

1. A blinkered approach could only distort but could even distract the attention from the core of the problem.
2. Sensitivity to the structural contradictions of the totality is not essential to any analysis of human resources management.
3. Work itself is not the satisfaction of a need but merely a means.
4. That work is external to the worker.

2.2 HRM: Implications for Industrial Relations Management

Human resource management is about managing people so that businesses are competitive and successful. To do this in a fast-changing global economy, HRM & IR professionals keep up with issues and trends that affect employment relationships - the labour market and economics, the

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product or service market, the political environment, environmental concerns, technological change, employment regulations, organisational psychology and social trends.

The Human Resource Management (HRM) function of an organisation manages the individual aspects of the employment relationship - from employee recruitment and selection to international employment relations, salaries and wages. HRM is a complex blend of science and art, creativity and common sense. At one level, HR practice draws on economics, psychology, sociology, anthropology, political studies, and strategic and systems thinking. At an operational level, success depends on interpersonal relationships. HR professionals are often the "go to" people in an organisation for advice and information. When things go wrong employees rely on the integrity and ability of HRM staff to manage and advice on issues without taking sides. They may also train and develop staff to ensure the business performs well, that it meets its goals and continually improves within legislative frameworks. HRM practitioners also keep up-to-date with legislation and analyse contemporary employment issues.

Industrial relations are also a multidisciplinary field that studies the collective aspects of the employment relationship. It is increasingly being called employment relations (ER) because of the importance of non-industrial employment relationships. IR has a core concern with social justice through fair employment practices and decent work. People often think industrial relations is about labour relations and unionised employment situations, but it is more than that. Industrial relations covers issues of concern to managers and employees at the workplace, including workplace bargaining, management strategy, employee representation and participation, union-management co-operation, workplace reform, job design, new technology and skill development. An IR expert will more usually work for a trade union in order to represent employees' interests. However, they may work for an employer in an HRM department, or for an employers' association or consultancy, serving the employers' interests. Major tasks of HRM and IR are: hiring staff, negotiation of employment contracts and conditions, performance management and reward systems, dispute resolution, disciplinary processes, ensuring health and safety of staff, employee motivation, design of work, team and organisation restructuring, and training and development.

HRM practitioners are responsible not only for the smooth running of processes but also at a senior level for the bigger picture planning, strategising and policy-making as they affect staff and employment relationships. Senior HRM practitioners can take a lead in advising on the where and the how of an organisation's direction - on the staffing, skills and training requirements to get there and on the communication or influencing processes needed to pave the way. For example, an organisation establishing online services will require a certain skill set to deliver this. The HR function will assess current staff capability, their training needs, and the options if some staff is unable to meet requirements. Managers in a company may also fulfill many HRM functions. Smaller businesses may not employ HRM professionals. Instead they may use HRM consultants as needed, or do it themselves with variable success.

Self Assessment

State whether the following statements are true or false:

5. Human resource management is about managing people so that businesses are competitive and successful.
6. IR has a core concern with social justice through fair employment practices and decent work.
7. HRM practitioners are responsible only for the smooth running of processes.
8. The Human Resource Management (HRM) function of an organisation manages the individual aspects of the employment relationship.

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2.3 The Theory of the Conflict between Industrial Relations and Human Resource Management

In considering the relationship between HRM and IR, two central concerns are: in what way does HRM pose a challenge to IR and how can conflicts between the two, if any, be reconciled so that they can complement each other? This section concerns itself with the first of these two issues. In considering the issue, it is necessary to identify the broad goals of each discipline. The goals of HRM have already been identified in the previous section. It remains to consider some of the basic objectives of IR, which could be said to include the following:

1. The efficient production of goods and services and, at the same time, determination of adequate terms and conditions of employment, in the interests of the employer, employees and society as a whole, through a consensus achieved through negotiation.
2. The establishment of mechanisms for communication, consultation and cooperation in order to resolve workplace issues at enterprise and industry level, and to achieve through a tripartite process, consensus on labour policy at national level.
3. Avoidance and settlement of disputes and differences between employers, employees and their representatives, where possible through negotiation and dispute settlement mechanisms.
4. To provide social protection where needed e.g. in the areas of social security, safety and health, child labour, etc.
5. Establishment of stable and harmonious relations between employers and employees and their organizations, and between them and the State.

IR is essentially pluralistic in outlook, in that it covers not only the relations between employer and employee (the individual relations) but also the relations between employers and unions and between them and the State (collective relations). IR theory, practice and institutions traditionally focus more on the collective aspect of relations. This is evident from the central place occupied by labour law, freedom of association, collective bargaining, the right to strike, employee involvement practices which involve unions, trade unionism and so on. HRM deals with the management of human resources, rather than with the management of collective relations. There is of course a certain measure of overlap. Individual grievance handling falls within the ambit of both disciplines, but dispute settlement of collective issues more properly falls within the scope of IR. Policies and practices relating to recruitment, selection, appraisal, training and motivation form a part of HRM. Team-building, communication and cooperation, though primarily HRM initiatives, have a collectivist aspect. Thus joint consultative mechanisms are as much IR initiatives, which may (as in Japan) supplement collective bargaining. But IR has not, in regard to team-building for instance, developed any techniques or theories about how to achieve it; in fact, it is not a focus of attention because it implies a potential loyalty to the enterprise through the team and is seen as conflicting with loyalty to the union. IR has a large component of rules which govern the employment relationship. These rules may be prescribed by the State through laws, by courts or tribunals, or through a bipartite process such as collective bargaining. HRM differs in this respect from industrial relations in the sense that it does not deal with such procedures and rules, but with the best way to use the human resource through, for example, proper selection and recruitment, induction, appraisal, training and development, motivation, leadership and intrinsic and extrinsic rewards. Thus "at its most basic HRM represents a set of managerial initiatives." Four processes central to a HRM system - selection, appraisal, rewards and development - leave only limited room for IR as a central element in the human resource system. "Based on theoretical work in the field of organizational behaviour it is proposed that HRM comprises a set of policies designed to maximise organizational integration, employee commitment, flexibility and quality of work. Within this model, collective industrial relations have, at best, only a minor role.

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A discernible trend in management is a greater individualisation of the employer-employee relationship, implying less emphasis on collective, and more emphasis on individual relations. This is reflected, for instance, in monetary and non-monetary reward systems.

Example: In IR the central monetary reward is wages and salaries, one of its central themes (given effect to by collective bargaining) being internal equity and distributive justice and, often, standardisation across industry. HRM increasingly places emphasis on monetary rewards linked to performance and skills through the development of performance and skills-based pay systems, some of which seek to individualise monetary rewards (e.g. individual bonuses, stock options, etc.).

HRM strategies to secure individual commitment through communication, consultation and participatory schemes underline the individualisation thrust, or at least effect, of HRM strategies. On the other hand, it is also legitimate to argue that HRM does not focus exclusively on the individual and, as such, does not promote only individual employment relations.

Notes The potential conflict between emphasizing the importance of the individual on the one hand, and the desirability of cooperative team work and employee commitment to the organization, on the other, is glossed over through the general assumption of unitarist values ..: HRM stresses the development of a strong corporate culture -not only does it give direction to an organization, but it mediates the tension between individualism and collectivism, as individuals socialised into a strong culture are subject to unobtrusive collective controls on attitudes and behaviour.

Some of the tensions between IR and HRM arise from the unitarist outlook of HRM (which sees a commonality of interests between managements and employees) and the pluralist outlook of IR (which assumes the potential for conflict in the employment relationship flowing from different interests). "It is often said that HRM is the visual embodiment of the unitarist frame of reference both in the sense of the legitimation of managerial authority and in the imagery of the firm as a team with committed employees working with managers for the benefit of the firm." How to balance these conflicting interests and to avoid or to minimize conflicts (e.g. through promotion of negotiation systems such as collective bargaining, joint consultation, dispute settlement mechanisms within the enterprise and at national level in the form of conciliation, arbitration and labour courts) in order to achieve a harmonious IR system is one central task of IR. The individualization of HRM, reflected in its techniques which focus on direct employer-employee links rather than with employee representatives, constitutes one important difference between IR and HRM.

Did u know? The empirical evidence also indicates that the driving force behind the introduction of HRM appears to have little to do with industrial relations; rather it is the pursuit of competitive advantage in the market place through provision of high-quality goods and services, through competitive pricing linked to high productivity and through the capacity swiftly to innovate and manage change in response to changes in the market place or to breakthroughs in research and development ... Its underlying values, reflected in HRM policies and practices, would appear to be essentially unitarist and individualistic in contrast to the more pluralist and collective values of traditional industrial relation.

Task As a HR Manager, how will you eliminate the tensions between IR and HRM occur from the unitarist viewpoint of HRM.

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Self Assessment

Fill in the blanks:

9. ..... theory, practice and institutions traditionally focus more on the collective aspect of relations.
10. Team-building, communication and cooperation, though primarily HRM initiatives, have a ..... aspect.
11. A discernible trend in management is a greater ..... of the employer-employee relationship, implying less emphasis on collective, and more emphasis on individual relations.
12. IR is essentially ..... in outlook

2.4 Labour Laws Orientation

Indian Labour Laws have both the sides - the positive ones and the negative ones. The positive side provides basic rights-and facilities for human existence and human dignity - the right to combine, the right to expression, the right to live and minimum standard and safety etc. which HRM also aims at macro-level. But the negative side of labour-Laws is more prominent and every society revises and reviews, invents and reinvents better systems and governance it does hamper the integration of HRM and Industrial Relations.

Caution Labour Laws should provide the necessary direction and leave details on HR/IR management, so that they develop healthier and sounder systems and practices.

Our Labour Laws have following negative orientations:

1. Over protective
2. Over negative
3. Over reactive
4. Fragmented and ad hoc
5. Outdated and irrelevant

The above are stated below:

1. It is almost impossible for an employer to remove any workman for his inefficiency. This has led to lethargic and restrictive work-culture which is against the postulates of HRM.
2. Our Labour Laws generally negate change and progress than facilitate and enable them to happen. They say no to proposition than encourage them to happen. Positivity is the main postulate of HRM which does not find favour with most of our labour laws.
3. Our labour laws are mostly to fight the fire when it has broken out. They are reactive than proactive in orientation. The ID Act 1947 comes into operation after a dispute has erupted or is apprehended It does not say anything about the genesis and background of disputes. HRM talks of proaction, pre-emption and prevention than only cure.
4. Our Labour Laws are mostly fragmented, ad hoc and piecemeal. Sometimes, they contradict each other. They create more confusion, at times, than giving clear solutions. HRM approach is integrated and pointed approach, quite clear and visible.
5. Our Labour Laws have mostly become outdated, obsolete and irrelevant. They were framed at one point of time with specific problems in view. Times have changed and so have changed the problems. They should change accordingly to cater to the needs of time.

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They should be dynamic ones. But they have remained static and rigid, which is against the spirit of HRM.

Law is a dynamic concept. It comes into existence to cater to the growing needs of society, which may be caused by technological, economic, political and social changes. Life and laws have moved together in history and it must do so in future also. Every society revises and reviews, invents and reinvents better systems and governance. Labour laws came into being to take care of certain aberrations created by Industrial Revolution. Now, we have entered post Industrial Revolution era. Hence our laws should come out of Industrial Revolution mode and be progressive in their outlook.

The desirable orientations of labour laws can be that they have to be enabler and facilitators than controllers of industrial relations. They have to be proactive, positive and progressive and encourage individual development, group-cohesiveness and organisational well-being than combating and fighting, building the culture of trust and good-will than creating mistrust and hatred in industry. There should be a few labour legislations -setting the guidelines and providing the road-maps for working together than a number of them encouraging litigations.

Self Assessment

Fill in the blanks:

13. ..... should provide the necessary direction and leave details on HR/IR management, so that they develop healthier and sounder systems and practices.
14. Labour laws came into being to take care of certain aberrations created by ..... .
15. The desirable orientations of labour laws can be that they have to be enabler and facilitators than ..... of industrial relations.
16. ..... approach is integrated and pointed approach.

Case Study **Hindustan Textile Mills**

Hindustan Textile Mills is a spinning unit of 50,000 spindles. The main product is cotton yarn of 40 count. The mil is situated in central India. Mr. T Patel who is the General Manager of the plant manages the unit. He is a B. tech of 1960 batch and is associated with the organization for the last 15 years. The plant started its production in the year 1989. The total strength the worker is 1750. All the workers are on the regular rolls of Hindustan Textile Mills and majority of them belong to Bihar. The workers are not unionized but strong groups from particular regions have influence on the workforce from a particular area. Mr. Pramod Mishra joined the mill on 01.12.1995 as Trainee and he was promoted as Tenter from 8.8.2000 in the ring department. He belongs to Chhapra district of Bihar. On 25.9.2001, Pramod Mishra was taking charge of the night shift and there was some argument that took place with the evening shift, Mr. Babloo, Mr. Mahesh, shift officer intervened in the matter and the issue was resolved. Babloo is a resident of Balia in U.P. On 10.10.2001, in the night shift at around 1:30 am, Rakesh Kumar working as Tenter in blow room met with an accident. His right arm came in to contact with the machine and he shouted for help. Pramod Mishra rushed to the spot and meanwhile 3 other workers of Speed frame and draw frame also reached the spot and started their effort to pull Rakesh from the machine, Mr. Mahesh, shift officer with the timekeeper Mr. Kanhaiya Lal also joined them. There was blood all around. Mr. Mahesh intervened in between and took charge of the machine along with Mr. Gyan Singh, maintenance

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foreman. They were able to pull Rakesh Kumar out of the machine and in the meanwhile there were group of 50 workers gathered on the sot. Kanhaiya took Rakesh to the hospital. Meanwhile there was an argument that started between Mr. Pramod Mishra and shift officer Mr. Mahesh that the machines are not safe and the management is not keen about the safety of workers. Mr. Radhey, Mr. Deendayal, Mr. Prabhu Prakash also joined Mr. Pramod Mishra. Pramod Mishra took an iron rod from the blow room and started shouting to all the workers to stop the plant. He along with Mr. Radhey, Mr. Deendayal and Mr. Prabhu forced all workers to come out of the plant and damaged window glasses of the main hall. The whole issue took an ugly turn.

Questions:

1. You are the Personnel Manager. How will you handle the situation and describe the legal as well as other actions to resolve the issue.
2. Critically analyse the above case.

Source: http://www.hrmindex.com/hr-forum/employee-relations/12297-industrial-relations-ir-case-studies

2.5 Summary

- The dynamic aspect of any society would focus on the mode of production, relations of production and relations in production.
- The worker experiences the work organisation as alienating.
- Human resource management is about managing people so that businesses are competitive and successful.
- The Human Resource Management (HRM) function of an organisation manages the individual aspects of the employment relationship - from employee recruitment and selection to international employment relations, salaries and wages.
- Industrial relations are also a multidisciplinary field that studies the collective aspects of the employment relationship.
- HRM practitioners are responsible not only for the smooth running of processes but also at a senior level for the bigger picture planning, strategising and policy-making as they affect staff and employment relationships.
- IR is essentially pluralistic in outlook, in that it covers not only the relations between employer and employee (the individual relations) but also the relations between employers and unions and between them and the State (collective relations).
- A discernible trend in management is a greater individualisation of the employer-employee relationship, implying less emphasis on collective, and more emphasis on individual relations.
- Indian Labour Laws have both the sides - the positive ones and the negative ones.
- Law is a dynamic concept.

2.6 Keywords

Employee: A person who is hired to provide services to a company on a regular basis in exchange for compensation and who does not provide these services as part of an independent business.

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.

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Human Resource Management: The process of hiring and developing employees so that they become more valuable to the organization.

Industrial Relations: Industrial relations (or employment relations) is about the dynamics of the employment relationship between employees and their employers.

Labour Relations: A labor relation is the study and practice of managing unionized employment situations.

Negotiation: It is a process by which compromise or agreement is reached while avoiding argument.

Organisation: Organisation is a systematic arrangement of people to accomplish some specific purpose.

Practitioners: A practitioner is someone who engages in an occupation, profession, religion, or way of life.

Psychology: The scientific study of the human mind and its functions, especially those affecting behaviour in a given context.

Strategy: A method or plan chosen to bring about a desired future, such as achievement of a goal or solution to a problem.

Worker: A person who is employed and work hard.

2.7 Review Questions

1. Discuss the notion of totality.
2. Highlight the factors of the alienation of the worker.
3. Define HRM.
4. "Industrial relations are also a multidisciplinary field that studies the collective aspects of the employment relationship." Elucidate.
5. Describe the responsibility of HRM practitioners.
6. Explain the relationship between HRM and IR.
7. What are the basic objectives of IR?
8. Discuss the pluralistic outlook of IR.
9. Throw some light on the negative orientation of labour laws.
10. "Law is a dynamic concept." Explain.

Answers: Self Assessment

1.	False	2.	False
3.	True	4.	True
5.	True	6.	True
7.	False	8.	True
9.	Industrial Relations	10.	Collectivist
11.	Individualisation	12.	Pluralistic
13.	Labour Laws	14.	Industrial Relations
15.	Controllers	16.	HRM

Notes

2.8 Further Readings

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Unit 3: Labour Laws: Concept, Origin, Objectives and Classification

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Objectives

After studying this unit, you will be able to:

- Explain the concept of labour legislations
- Discuss the origin of labour legislations
- Get an overview of objectives of the labour legislations
- Describe the classification of labour legislations

Introduction

In the previous unit, we dealt with the relation of Labour Laws, IR and HRM. Labour law arose due to the demands of workers for better conditions, the right to organize, and the simultaneous demands of employers to restrict the powers of workers in many organizations and to keep labour

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costs low. Employers' costs can increase due to workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power - which some employers may oppose. The state of labour law at any one time is therefore both the product of, and a component of, struggles between different interests in society. 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 concept, origin, objectives and classification of Labour Legislation.

3.1 The Concept of Labour Legislations

Society evolves institutions to abhor vacuum created by changes. Industrial Revolution is an epoch-making event, which completely changes the lifestyles of society from agricultural and pastoral to industrial and materialistic one. The industrial society brought about, in its wake, excessive exploitation of the working classes by the employer who took advantage of the individual dispensability of the worker and wanted maximum profit on his investment. The golden rule of capitalism that "Risk and Right" go together provided them with prerogatives to "hire and fire". The other legal concepts which were then available were those of Master and Servant and carrot and stick etc. The principle of common law was in operation. The law of contract used to govern the relation between worker and the employer in which individual contact was struck, the terns of contract were usually verbal and mostly used in cases of breaches, leading to prosecution and imprisonment of workers. Labour and Migration Act was another legislation which gave rise to the "Indentured labour system". Anti-Combination legislations were in vague treating 'combination' of workers as act of criminal conspiracy. Longer hours of work, abysmally low wages, no safety and welfare provisions, and no insurance - the exploitation at large. State was adopting the policy of Laissez-faire (let not interfere) and employers abused workers, taking advantage of the situation.

Every society on its onwards march revises, reviews, refurbishes and reinvents its legal concept and civilised ways of living. The changes brought about by the industrial revolution created some gaps and it became the responsibility of the society to fill-up those gaps. Society went for certain social devices to take care of the gaps, which are known as labour legislation.

The labour legislations are the products of Industrial Revolution and they have come into being to take care of the aberrations created by it. They are different from common legislations, because they come to alleviate special disorders created by specific circumstances. Therefore, they are specific and not general in orientation, philosophy and concept.

3.1.1 The Main Ingredients of Labour Legislations

Labour legislation regards individuals as workers, whereas the general legislation regards him a citizen. The principles governing labour legislations are more influenced by the postulates of social justice than general justice. Workers are the weaker class of industrial society and have suffered long at the hands of employers. Therefore, these sets of legislations go out of way in protecting workers and securing justice to them. The influences of 'discriminative justice and distributive justice' can be clearly seen over them. All the labour legislations are heavily skewed towards labour and they are specifically designed like that.

Labour legislation seeks to deal with problems arising out of occupational status of the individual. Consequently, such problems as hours of work, wages, working conditions, trade unions, industrial disputes etc. come to be the main, subject matter of labour legislations. Thus, the behaviour of the individual or his groups is the function of labour legislation as of any other legislation. But under labour legislation, the individual is affected in the capacity of a worker or an employer. Therefore, the persons who are neither the employers nor the workers are least affected directly by labour legislation. To make the point clear, a few examples are necessary.

A legislation regarding working conditions such as the factory legislation or laws regarding payment of wages or compensation for work injury or employment of women or children impinge upon the individuals as workers and the employers. On the contrary, a law regarding ownership of property or a law relating to the marriage or sales tax affects him as a citizen.

Individuals have different roles to perform and different laws are designed for regulating the different roles. It is the role-relation that determines whether a particular legislation falls under the category of labour legislation, social legislation or general legislation. All these legislations try to meet the specific objectives of their respective target groups- that is:

(a) to provide subsistence,

(b) to aim at abundance,

(c) to encourage equality, and

(d) to maintain security.

As labour legislations are to regulate the conditions of labour, in the industrial milieu, it is required to be adjusted as per the changing requirements of industry. This has to be done more frequently than the general legislation where changes are not that swift. Unless ' labour legislations are subjected to frequent revision and not left to continue as they are, they become obsolete and irrelevant. The Indian Labour Legislations are the best example. Most of them have become outdated as the required revisions have not been affected and gaps have been created between the expectations of industrial so the institution of labour legislation.

Example: Labour is a concurrent subject in the Constitution of India implying that both the Union and the state governments are competent to legislate on labour matters and administer the same. The bulk of important legislative acts have been enacted by the Parliament.

3.1.2 Principles of Social Justice, Social Equality, Social Security, National Economy and Labour Legislations

Labour Legislations contain the principles of social justice, social equity, social security and national economy in their concept. Social justice implies two things:

- First, equitable distribution of profits and other benefits of industry between owner and workers.
- Second, providing protection to workers against harmful effect to their health, safety and morality.

Social equality provides the flexibility in labour legislations to adjust to the need of the industrial society. Social security envisages collective action against social risks which constitute the crux of the labour legislation. National Economy provides the standards to be set for the labour legislations. Human Rights principles and human dignity postulates provide the broader base for the concept of labour legislations. Thus, these principles are the fundamentals for understanding the concept of Labour jurisprudence.

Caselet

Labor Unrest at Toyota India

On January 08, 2006, Toyota Kirloskar Motor Private Limited (TKM) announced an indefinite lockout of its vehicle manufacturing plant at Bidadi located near Bangalore, Karnataka. The decision was taken following a strike, which had entered its third day, by the Toyota Kirloskar Motor Employees Union (Employee Union),

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the only company recognized union. The lockout notice stated that the strike was illegal as the Employee Union did not give the mandatory 14 day notice period as per Industrial Disputes Act, 1947. It also stated that the workers were indulging in violence and destruction. TKM was a joint venture, established in 1997, between Toyota Motor Corporation (Toyota), Japan's largest car company and the second-largest car manufacturer in the world, and the Kirloskar Group of India.

Toyota holds an 89% equity stake and while the Kirloskar Group holds the remaining 11%. Toyota has invested nearly US$ 336 million (INR 15 billion) in the plant with capacity of producing 60,000 units per year. Toyota manufactures its world famous cars like Corolla, Camry and Innova at the plant. The plant had a total workforce of 2,378 out of which around 1,550 employees belonged to the Employee Union.

On January 06, 2006, the Employee Union went on strike with the demand to reinstate three dismissed employees, ten suspended employees, and improve the work conditions at the plant. These employees had been dismissed and suspended by the company, on disciplinary rounds, for attacking a supervisor and misconduct. TKM declared that it would not rehire nor reinstate those employees culminating in the strike and lockout. TKM made several serious allegations against the Employee Union.

The company said that the striking workers were threatening to blowup LPG gas cylinders in the company premises, obstructing the outward movement of manufactured vehicles, illegally stopping production, and manhandling other workers, who were not part of the Employee Union, to strike. In response, the Employee Union said that three employees were dismissed because they were actively participating in trade union activities and the company wanted to suppress the trade union. They further said that working conditions at the plant were inhuman and 'slave like.

They were often made to stretch their working hours without sufficient relaxation and compensation. The issue took a new turn when representatives from the management at TKM refused to attend a meeting before the Labor Commissioner on January 09, 2006 for resolving the dispute with the union. The company said that the atmosphere was not conductive for talks as the Employee Union was in a violent and agitated mood. Though, the company appealed for two weeks time to appear before the Labor Commissioner so that situation could become stable, they were given time only till January 12, 2006. The Employee Union got support from various trade unions and demanded the intervention of the state government to help resolve the dispute in their favor. TKM continued with partial production of vehicles with the help of non-unionized workers and the management staff, who were specially trained for these kinds of emergencies.

However, the company's output had fallen from 92 vehicles per day to 30 vehicles with an estimated production loss of around INR 700 million. The Company lifted the lockout on January 21, 2006 stating that it was responding to the request from workers who eager to return to work. The workers were required to sign a good conduct undertaking to maintain discipline and ensure full production. The Employee Union relented and withdrew their strike following a Government Order on January 21, 2006, which was against the strike and referred the issue to the third Additional Labor Court. However, the union said that they would not sign the good conduct declaration specified by TKM.

The unrest had other ramifications as the Toyota spokesperson said that the company would rethink its recent decision to build a second car manufacturing plant in the state. It was also felt that this incident would seriously affect the Karnataka Government's efforts in trying to attract Volkswagen to establish a vehicle manufacturing plant in the state. This was the second dispute involving a Japanese vehicle manufacturer and trade unions in India.

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Earlier in July 2005, workers of Honda Motor & Scooters India Limited had a violent clash with the police at Gurgaon, near New Delhi, resulting in a revenue loss of around INR 1.25 billion for the company.

This recent rise in trade union activism resulting in violence and business loss has attracted the attention of the national and international media. With around US$ 2 billion equity investment since 1991, Japan was the fourth largest investor in India. During the Honda incident, the Japanese ambassador in India had stated that these kinds of incidents would show India in poor light.

Source: http://www.citehr.com/25642-labour-unrest.html

Self Assessment

State whether the following statements are true or false:

1. Labour legislation regards individuals as citizen, whereas the general legislation regards him a worker.
2. Labour and Migration Act was another legislation which gave rise to the "Indentured labour system".
3. Labour legislation seeks to deal with problems arising out of occupational status of the individual.
4. National equality provides the flexibility in labour legislations to adjust to the need of the industrial society.

3.2 Origin of Labour Legislations

The origin of labour legislation is the history of continuous and relentless struggle for emancipation of working class from cloches of aggressive capitalism. The struggle was between two unequal. The contract between capital and labour could never be struck on equitable terms. The social scientists interpreted this struggle in different ways. The point, however, was to change it. The change contemplated was one of transforming a slave into partner and thereby bridle the power of capital to impose its own terms on the workmen.

Various factors helped this process to take place. The struggle was not easy. Numerous forces, directly and indirectly, hastened the pace facilitating the passing of labour friendly legislation.

Notes The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Labour is a concurrent subject in the Constitution of India implying that both the Union and the state governments are competent to legislate on labour matters and administer the same. The bulk of important legislative acts have been enacted by the Parliament.

3.2.1 Factors Influencing Labour Legislations

Following are the factors affecting labour legislations:

Early Exploitative Industrial Society

The origin of labour legislation lies in the excesses of the early industrialism that followed Industrial Revolution. The early phase of industrialisation in the capitalist countries of the

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world was an era of unbridled individualism, freedom of contract and the laissez-faire, and was characterised by excessive hours of work, employment of young children under very unhygienic and unhealthy conditions, payment of low-wages and other excesses. Naturally, such excesses could not have continued for long without protest and without demand for reforms. The early Factories Acts flowed from these excesses and manifested the desire of the community in general to protect its weaker section against exploitation. The workers had very little legal protection available. Therefore, it can be safely said that the labour legislations are the natural children of industrial revolution.

Impact of Contemporary Events

The impacts of contemporary events are as follows:

- Along with Industrial Revolution, Revolutionary thinking of Rousseau, J.S. Mill, the French Revolution, Hegel, Marx & Engels and Russian Revolution greatly influenced the thought processes and hastened the pace of labour jurisprudence.
- The world wars made it possible for the labourers to realise their importance that unless they produce, it will be difficult for warring nations to win. Therefore, they must stake their claims for better quality of work life.
- The revolution in science, technology, the communication and telecommunication also helped in bringing the world, closer. It became easier for the working classes of the underdeveloped world to know the better conditions of service of their counterparts in the developed world.

The Growth of Trade Unionism

The Trade Union movement, which itself springs from industrial revolution has been another factor which has quickened the growth of labour legislations. On the one hand, their demands for protection of the interests of the working class led to legislations in the field of wages, hours of work, women's compensation, social security and other areas; on the other hand, their growth necessitated legislations for the regulation of industrial disputes, their prevention and settlement and trade union rights and privileges. Trade unions have been as much conditioned by labour legislations as they have conditioned them.

Growth of Political Freedom and Extension of Franchise

Gradual extension and adoption of universal adult suffrage placed in the hands of the working class, a powerful instrument to influence the cause of state policy. Their representatives started espousing the cause of labour and getting progressive legislations passed. The workers used their political powers for betterment and amelioration of their lots.

Rise of Socialist and other Revolutionary Ideas

In his analysis of capitalism, Marx showed that the exploitation of labour was inherent in the capitalist economic system. Therefore, he advocated the overthrow of capitalist system. The echo of the slogan, "the workers of the world unite, you have nothing to lose but your chains", reverberating throughout the capitalist world, sent a shudder among the conservative and capitalist circles to which ameliorative and protective labour legislations came as safe alternatives. They readily grasped labour legislations as antidote to the spread' of revolutionary ideas. The Fabian Society of England, the establishment of socialist and communist parties in many countries and first and second internationals strengthened the trend for progressive labour legislations.

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The Growth of Humanitarian Ideas and the Concept of Social Welfare and Social Justice

The humanitarian ideas and role of humanitarians, the philanthropic and social reformers influenced the shape of labour legislation. Early Factories Acts were made possible because of the efforts of the humanitarians like Hume, Place, Shaftesbury and others. Researches in Social Sciences like Sociology, Psychology and Anthropology exploded the myth of the natural elite and gave a powerful push to the movement of social reforms, social change, social justice and labour legislations.

Establishment of I.L.O.

The establishment of the I.L.O. in 1919 has been a very potent factor in conditioning the course of labour legislation all over the world. The acceptance of the principle that "labour is not a commodity" and the slogan that "Poverty anywhere constitutes a danger to prosperity everywhere", have influenced the course of labour legislations in all the countries. The ILO, through persistent investigation of workers' living conditions has continuously established the need for ameliorative labour legislation. It has initiated proposals for labour legislations, subjected them to elaborate discussions and reviews and has adopted Conventions and Recommendations. The ILO by trying to establish uniform labour standards in so far as the diverse conditions and uneven economic developments of the world permit, has done a singular service in the field of labour legislation.

Notes ILO, through Conventions and Recommendations, have undertaken the task of creating - international minimum standards of labour which constitute the International Labour Code. They cover a wide range of subjects including wages, hours of work, annual holidays with pay, minimum age of employment, medical examination, maternity protection, industrial health, safety and welfare, social security, freedom of association, right to organise and bargain collectively, employment conditions of seamen and unemployment.

The ILO standards have influenced Indian Labour Legislations to a great extent. ILO standards have formed the sheet-anchor of Indian Labour Legislations, especially after 1946 when Indian National Government assured office. The Directive Principles of State Policy in Articles 39, 41, 42, 43 and 43A of the Constitution, lay down policy objectives in the field of labour having close resemblance and influence to the ILO Constitution and the Philadelphia Charter of 1944. Thus, the ILO both directly and indirectly has had a great influence on the Indian Labour Scene and Labour Legislation.

Did u know? International Labour Organisation (ILO) was one of the first organisations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I. In Great Britain, the Whitley Commission, a subcommittee of the Reconstruction Commission, recommended in its July 1918 Final Report that "industrial councils" be established throughout the world. The British Labour Party had issued its own reconstruction programme in the document titled Labour and the New Social Order. In February 1918, the third Inter-Allied Labour and Socialist Conference (representing delegates from Great Britain, France, Belgium and Italy) issued its report, advocating an international labour rights body, an end to secret diplomacy, and other

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goals. And in December 1918, the American Federation of Labor (AFL) issued its own distinctively apolitical report, which called for the achievement of numerous incremental improvements via the collective bargaining process.

Task Do you think that the establishment of ILO brings out changes in the labour legislation? If yes, give reason.

3.2.2 Factors Specific to India

The factors discussed above are the general factors influencing the shape of labour legislation. There are specific factors, peculiar to India which has influenced labour legislations.

Influence of colonial rule

Most of the early labour legislation came into being because of the pressure from the manufacturers of Lancashire and Birmingham; because labour employed in factories and mills in India were proving very cheap in comparison to their British counterpart. No doubt, these legislations were beneficial to Indian labour but this benefit was incidental to the main purpose, i.e. the protection of the interests of British Capitalists.

The British Civil Servants carried with them the British tradition of democracy and pragmatism. The Workman Compensation Act, 1923, the Indian Trade Unions Act, 1926, the Payment of Wages Act, 1936 etc. followed British pattern

The struggle for national emancipation and adoption of Indian Constitution

The Industrial Workers got support from the freedom struggle and nationalist leaders who made tireless efforts to get protective labour legislations enacted. The Indian Trade Unions Act, the appointment of Royal Commission on Labour etc. was because of pressure from freedom struggle.

The leaders of the national movement had promised the establishment of a better and just social order after independence; which was ultimately embodied in the Preamble, Fundamental Rights and Directive Principles of State Policy of the Indian Constitution.

We have plethora of labour legislations immediately after independence -

- The Factories Act, 1948
- The E.S.I. Act, 1948
- The Minimum Wages Act, 1948
- Mines Act, 1952
- Employees P.F.& Miscellaneous Provisions Act, 1952
- Plantation Labour Act, 1951
- Payment of Bonus Act, 1965

Did u know? The legislations can be categorized as follows:

1. Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement.

2. Labour laws enacted by Central Government and enforced both by Central and State Governments.
3. Labour laws enacted by Central Government and enforced by the State Governments.
4. Labour laws enacted and enforced by the various State Governments which apply to respective States.

Self Assessment

State whether the following statements are true or false:

5. The contract between capital and labour could be struck on equitable terms.
6. The origin of labour legislation lies in the excesses of the early industrialism that followed Industrial Revolution.
7. The establishment of the ILO in 1920 has been a very potent factor in conditioning the course of labour legislation all over the world.
8. The British Civil Servants carried with them the British tradition of democracy and pragmatism.

3.3 Objectives of the Labour Legislations

Labour legislation in India has sought to achieve the following objectives:

1. Establishment of justice- Social, Political and Economic.
2. Provision of opportunities to all workers, irrespective of caste, creed, religion, beliefs, for the development of their personality.
3. Protection of weaker section in the community.
4. Maintenance of Industrial Peace.
5. Creation of conditions for economic growth.
6. Protection and improvement of labour standards.
7. Protect workers from exploitation:
8. Guarantee right of workmen to combine and form association or unions.
9. Ensure right of workmen to bargain collectively for the betterment of their service conditions.
10. Make state interfere as protector of social well being than to remain an onlooker.
11. Ensure human rights and human dignity.

Proper regulation of employee-employer relationship is a condition precedent for planned, progressive and purposeful development of any society. The objectives of labour legislation are a developing concept and require ceaseless efforts to achieve them on continuous basis.

Example: In its landmark judgement in Hindustan Antibiotics v. The Workmen (A.I.R. 1967, S.C. 948; (1967) 1, Lab.L.J.114) the Supreme Court of India made a significant observation. The object of the Industrial law, said the Court, was to bring in improvements in the service conditions of industrial labour by providing them the normal amenities of life which would lead to industrial peace. This would accelerate the productive activities of the nation, bringing prosperity to all and further improving the conditions of labour.

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Caution The most efficient way of ensuring that these conditions and needs are taken fully into account is if those concerned are closely involved in the formulation of the legislation through processes of social dialogue. The involvement of stakeholders in this way is of great importance in developing a broad basis of support for labour legislation and in facilitating its application within and beyond the formal structured sectors of the economy.

Self Assessment

Fill in the blanks:

9. Proper regulation of ..... relationship is a condition precedent for planned, progressive and purposeful development of any society.
10. The objectives of labour legislation are a developing concept and require ceaseless efforts to achieve them on ..... basis.
11. Labour legislation in India has sought to ..... of weaker section in the community.
12. Labour legislation in India has sought to maintain of ..... Peace.

3.4 The Classification of Labour Legislations

On the basis of specific objectives which it has sought to achieve, the labour legislations can be classified into following categories:

1. Regulative
2. Protective
3. Wage-Related
4. Social Security
5. Welfare both inside and outside the workplace

3.4.1 The Regulative Labour Legislations

The main objective of the regulative legislations is to regulate the relations between employees and employers and to provide for methods and manners of settling industrial disputes. Such laws also regulate the relationship between the workers and their trade unions, the rights and obligations of the organisations of employers and workers as well as their mutual relationships.

- The Trade Unions Act, 1926
- The Industrial Disputes Act,1947
- Industrial Relations Legislations enacted by states of Maharashtra, MP, Gujarat, UP etc.
- Industrial Employment (Standing Orders) Act, 1946.

3.4.2 The Protective Labour Legislations

Under this category come those legislations whose primary purpose is to protect labour standards and improve the working conditions. Laws laying down the minimum labour standards in the areas of hours of work, supply, employment of children and women etc. in the factories, mines, plantations, transport, shops and other establishments are included in this category. Some of these are the following:

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- Factories Act,1948
- The Mines Act,1952
- The Plantations Labour Act,1951
- The Motor Transport Workers Act,1961
- The Shops and Establishments Acts
- Beedi and Cigar Workers Act 1966

3.4.3 Wage-Related Labour Legislations

Legislations laying down the methods and manner of wage payment as well as the minimum wages come under this category:

- The Payment of Wages Act,1936
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

3.4.4 Social Security Labour Legislations

They cover those legislations which intend to provide to the workmen social security benefits under certain contingencies of life and work.

- The Workmen's Compensation Act, 1923
- The Employees' State Insurance Act, 1948
- The Coal Mines PF Act, 1948.
- The Employees PF and Miscellaneous Provisions Act, 1952
- The Maternity Benefit Act, 1961
- Payment of Gratuity Act, 1972

Chapter V A of the Industrial Disputes Act 1947 is also, in a manner of speaking, of the character of social security in so far as its provides for payment or lay-off, retrenchment and closure compensation.

3.4.5 Welfare Labour Legislations

Legislations coming under this category aim at promoting the general welfare of the workers and improve their living conditions. Though, in a sense all labour laws can be said to be promoting the welfare of the workers and improving their living_ conditions and though many of the protective labour laws also contain chapters on labour welfare, the laws coming under this category have the specific aim of providing for the improvements in living conditions of workers. They also carry the term "Welfare" in their titles.

- Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.
- The Mica Mines Welfare Fund Act, 1946
- The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
- The Cine Workers Welfare Fund Act, 1981.

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- In addition, some state governments have also enacted legislations for welfare funds.
- Beedi Workers Welfare Fund Act, 1976

3.4.6 Miscellaneous

Besides the above there are other kinds of labour laws which are very important. Some of these are:

- The Contract Labour (Regulation & Abolition) Act, 1970
- Child Labour (Prohibition and Regulation) Act 1986
- Building and other construction workers (Regulation of Employment and Conditions of Service) Act 1996
- Apprentices Act 1961
- Emigration Act, 1983
- Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
- Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979
- Sales Promotion Employees (Condition of Service) Act 1976
- Working Journalists and other Newspapers Employees (Condition of Service and Miscellaneous Provision) Act, 1955.

Notes An important feature of almost all labour laws is the existence of employer-employee nexus. Besides, each labour law has its provisions in terms of coverage, based mainly on the number of employees, salary levels and so on. The definition of expressions used in different labour laws is not necessarily uniform. All these have resulted in considerable amount of litigation leading to a vast amount of industrial jurisprudence.

Another important point to note is that while all the labour laws, excepting Shops and Establishment Acts, are enacted by Parliament, quite a few of them are implemented both by the Central Government and the State Governments (including Union Territories) the jurisdiction being determined by the definition of the term 'appropriate government' in the relevant statute It is also relevant to point out that some of the Parliamentary laws are implemented exclusively by the State Governments, as for example Trade Unions Act 1926, Workmen's Compensation Act 1923. Plantation Labour Act 1951, Working Journalists Act 1955, Factories Act 1948 and so on.

Self Assessment

Fill in the blanks:

13. The main objective of the ..... legislations is to regulate the relations between employees and employers and to provide for methods and manners of settling industrial disputes.
14. Under ..... category come those legislations whose primary purpose is to protect labour standards and improve the working conditions.

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15. Legislations laying down the methods and manner of wage payment as well as the ..... wages come under this category the Payment of Wages Act, 1936.

16. Legislations coming under ..... category aim at promoting the general welfare of the workers and improve their living conditions.

Case Study

Labor Unrest at Honda Motorcycle & Scooter India (Private) Limited

On July 25, 2005, the management of the Honda Motorcycle & Scooter India (Private) Limited, (HMSI), a wholly-owned subsidiary of Honda Motor Company Limited (HMCL), encountered violent protests from workers that disrupted production at their plant in Gurgaon. HMSI was established on August 20, 1999, and a plant was set up at Manesar to manufacture two-wheelers for the Indian market. HMCL made an initial investment of ₹ 3 billion to establish the plant which had an annual production capacity of 200,000.

HMSI workers were severely beaten up by the police, and newspapers and TV channels gave wide coverage to the violence of the action. The protest followed six months of simmering labor unrest at the HMSI factory in which the workers also resorted to job slowdown8(since December 2004 when the workers' demand for an increase in wages was rejected by the HMSI management). With their demands being rejected by the management, the workers tried to form a trade union and this resulted in a confrontation with the management. Fifty workers of the production team were suspended and four others dismissed in May 2005. Apparently there was a show of strength between the management and the workers.

While the management alleged that the workers were resorting to 'go-slow' tactics and were threatening not to return to work until their colleagues had been reinstated, the workers alleged that the management was using pressure tactics such as victimization of active union members and a 'lock-out' to break the back of the union.

On July 25, 2005, the workers of the plant were demanding reinstatement of the suspended employees when some workers allegedly attacked policemen on the plant premises. This led to police intervention and a violent tussle ensued between the police and the workers in which workers protesting peacefully were also beaten up.

The police were reported to have overreacted and it was alleged that they had been overzealous in protecting the interests of the HMSI management, even without any direct request from the company's.

For companies, the incident brought to the fore the need to maintain sound industrial relations to ensure productive and profitable operations. The management and the workers traded allegations and counter allegations on what the root cause of the dispute was. They blamed each other for the situation that ultimately took an ugly turn on July 25, 2005. The management held the workers responsible for indiscipline and for slowing down production, while the workers insisted that there had been no indiscipline on their part and that the management was bringing up this issue only to prevent the formation of a trade union at HMSI.

Some analysts charged that the incident was fallout of the long-term oppression and malpractices at the Gurgaon factory by the HMSI management. They alleged that HMSI's management had violated certain laws relating to the welfare of workers. It was reported that a worker had allegedly been kicked by a Japanese manager on the shop floor in December 2004. The services of four other workers who had come to his rescue were allegedly terminated.

Contd...

Notes

Questions:

1. Analyze the role of external parties such as trade unions; political parties etc., in disturbing the working environment in a company
2. Examine top management's role in maintaining a peaceful working environment.

Source: http://www.icmrindia.org/casestudies/catalogue/Human%20Resource%20and%20Organization%20Behavior/Honda%20Motorcycle-Scooter%20India%20Private%20Limited-HROB%20Case%20Study.htm

3.5 Summary

- The evolution of labour jurisprudence is the culmination of the incessant struggle waged by the workers', all over the world for just and better conditions of work as well as security of their job.
- Labour legislations have now acquired the status of a separate branch of jurisprudence because of its special features and changing juristic ideas.
- As labour legislations are to regulate the conditions of labour, in the industrial milieu, it is required to be adjusted as per the changing requirements of industry.
- Industrial Revolution is an epoch-making event, which completely changes the lifestyles of society from agricultural and pastoral to industrial and materialistic one.
- Social equality provides the flexibility in labour legislations to adjust to the need of the industrial society.
- The origin of labour legislation is the history of continuous and relentless struggle for emancipation of working class from cloches of aggressive capitalism.
- Proper regulation of employee-employer relationship is a condition precedent for planned, progressive and purposeful development of any society.
- The main objective of the regulative legislations is to regulate the relations between employees and employers and to provide for methods and manners of settling industrial disputes.
- Every society on it's onwards march revises, reviews, refurbishes and reinvents its legal concept and civilised ways of living.
- Labour legislation seeks to deal with problems arising out of occupational status of the individual.

3.6 Keywords

Benefits: A payment or entitlement, such as one made under an insurance policy or employment agreement, or public assistance program.

Economy: The wealth and resources of a country or region, especially in terms of the production and consumption of goods and services.

Individualism: Concept that all values, rights, and duties originate in individuals and, therefore, the interests of the individuals are (or ought to be) ethically paramount as opposed to those of an abstract entity such as society. See also conservatism and liberalism.

Industrial Revolution: The Industrial Revolution was the transition to new manufacturing processes that occurred in the period from about 1760 to some time between 1820 and 1840.

Labour Legislations: Labour legislation seeks to deal with problems arising out of occupational status of the individual.

Notes

Laissez-faire: Laissez-faire is an economic environment in which transactions between private parties are free from tariffs, government subsidies, and enforced monopolies, with only enough government regulations sufficient to protect property rights against theft and aggression.

Legislations: 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.

Social Justice: Social justice is defined as justice exercised within a society, particularly as it is exercised by and among the various social classes of that society.

Social Security: Any government system that provides monetary assistance to people with an inadequate or no income.

Trade Union: An organization whose membership consists of workers and union leaders, united to protect and promote their common interests.

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.

3.7 Review Questions

1. Discuss the concept of Labour Legislations.
2. What are the main ingredients of Labour Legislations?
3. Explain the principles of Social Justice, Social Equality, Social Security, National Economy and Labour Legislations.
4. Throw some light on the origin of labour legislation.
5. Highlight the factors affecting labour legislations.
6. Write brief note on the struggle for national emancipation and adoption of Indian Constitution.
7. Discuss the Objectives of the Labour Legislations.
8. Explain the regulative Labour Legislations.
9. Elucidate Welfare Labour Legislations.
10. Highlight Wage-Related Labour Legislations.

Answers: Self Assessment

1.	False	2.	True
3.	True	4.	False
5.	False	6.	True
7.	False	8.	True
9.	Employer–Employee	10.	Continuous
11.	Protect	12.	Industrial
13.	Regulative	14.	Protective Labour Legislations
15.	Minimum	16.	Welfare Labour Legislations

Notes

3.8 Further Readings

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Unit 4: 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

Notes

Introduction

In the previous unit, we dealt with the concept, origin, objectives and classification of labour law. 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.

4.1 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 person 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 upto 1976.

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

Notes

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 creche 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, 36A, 64, 70, 80, 87, 89, 90, 91A, 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 7A, 7-13, 87A, 96A, 104A, 106A, 111A and 118A, 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 7A, 7B, 87A, 96A, 104A, 106A, 111A and 118A 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 41B, 41C and 41H, 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
- 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, 1988.

Notes

4.1.1 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.

4.1.2 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

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.

Notes

4.2 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 means a space enclosed by wall. [in re K.V.V. Sharma, 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
- 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.

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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) in as much 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., Mangalore v. Inspector of Factories, Mangalore, 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 1,948 defines a "worker" to mean:

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

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 44] 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. 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 faxed 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.

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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 &_ 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 7A, Section 7B, Section 11 or Section 12;
- Section 17, in so far 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;

(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 2'7) 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

(iii) 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

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 mid-night [Section 2 (e)]
- Week means a period of seven days beginning at mid-night 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)]

Notes

- 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.

4.3 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.

4.3.1 Procedure for Approval, Licensing and Registration of Factories

The factory is to be got approved and registered after obtaining a licence 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 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 flames 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 licence or renewal of licence, 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

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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.

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.

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4.4 Health, Safety and Welfare Measures of Employees

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

4.4.1 For Health

1. 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, stair-cases and passages should be cleaned regularly by sweeping and other effective means while washing of interior walls and roofs should take place at least once in 14 months and where these are painted with washable water paint, be repainted after every three years and -where oil paint is used at least once in five years. 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.

2. 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.

3. 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.

4. 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 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 work-room. 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.

5. 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;

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- prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workroom.

6. 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 work-room, 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 4.2 cubic meters after such commencement (Section 16). No account shall however be taken of any space which is more than 4.2 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.

7. 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.

8. 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.

9. 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.

10. 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.

4.4.2 For Safety

1. 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:

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

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

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

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

2. 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;
- 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.

3. 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

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4. 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.

5. 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, m1hoefficer 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 part of the machine.

6. 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.

7. 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).

8. 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 maintained but also thoroughly examined at least twice a year by competent persons.

9. 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

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vessel, cage, basket, fly-wheel, pulley, disc or similar appliances run by power. [Sub-section (3) of Section 30].

10. 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.

11. 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.

12. 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)].

13. 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 36A (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 36A (b)].

14. 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)]

15. 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).

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16. 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)].

17. 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 40A).

18. 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 40B).

4.4.3 For Welfare

1. 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).

2. 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)

3. 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,

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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).

4. 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).

5. 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 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 therefor;
- 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).

6. 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.

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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.

7. Creches (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.

8. 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).

50. Power to make rules to supplement this Chapter – 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?

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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.

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

Following are the provisions regarding Provisions regarding Employment of Adults, Women and Children in factories are as follows:

4.5.1 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.

(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. (Sections 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.

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(vi) ***Notice of Periods of Work for Adult Workers:*** A notice in the prescribed form containing an abstract of Act and rules framed thereunder, 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 Sections 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.

(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.

4.5.2 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

(a) no exemption from the provisions of section 54 may be granted in respect of any women;

(b) 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.

(c) there shall be no change of shifts except after a weekly holiday or any other holiday.

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.

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4.5.3 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)

(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 authorise 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 5 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

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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.

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.

4.6 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.

1. 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,

Notes

- 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.

2. 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, 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 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

Notes

and storage of 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)].

3. Specific responsibility of the occupier in relation to hazardous process

Under section 41C 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.

4. 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.

5. 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.

6. 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

7. 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 co-operation 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.

8. 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 w ho have the ultimate control over the affairs of the factory so that they take proper care

Contd...

Notes

for 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

4.7 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, 1948.
- 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 ₹ 1 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.

4.8 Keywords

Adolescent: A person who has completed 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; especially 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.

4.9 Review Questions

1. Give a brief history of Factory Legislation.
2. What amendments have been made by Act. No. 20 of 1987?
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. Critically examine the provisions for women and children working in a factory.
10. Are the following manufacturing processes hazardous?
    (a) bidi making
    (b) process of treatment and adaptation of sea water into salt.
    (c) conversion of raw films into a finished product.
11. Explain the essentials of the definition of worker under the Act.
12. Is it necessary for the occupier to get the premises approved when the factory is to be established?
13. What is the procedure for registration of factories?
14. Enumerate the provisions relating to protection of the health of workers.
15. Enumerate the provisions relating to welfare of workers.

Answers: Self Assessment

1.	False	2.	True
3.	True	4.	False
5.	False	6.	True

Notes

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

4.10 Further Readings

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

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

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Online links

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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 5: Industrial Disputes Act

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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

In the previous unit, we dealt with concepts of Factories Act. 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. 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 Disputes Act.

5.1 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 labor, 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 labor.

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 n 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;

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(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 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;

(h) clause (h) omitted by the A.O. 1950.

(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:

Notes

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.

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.

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.

Notes

5.2 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.

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.

5.2.1 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

5.2.2 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

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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 or major part the Central Government.

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 1955.

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.
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.
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.

5.3 Authorities under this Act

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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.

   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:

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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.

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 ILR 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 person 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.

5.4 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

5.4.1 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.

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

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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 any thing 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 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.

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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).

5.4.2 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.

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. 10A, 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 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.

5.4.3 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

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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 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. 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).

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 or 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 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.

5.5 Measures for Prevention of Conflicts and Disputes

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

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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: Secs. 25T and 25U 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 upto six months and fine upto ₹ 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.

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.

Notes

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 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

Notes

5.6 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.
- 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.

5.7 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.

Notes

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.

5.8 Review Questions

1. What do you mean by Industrial disputes?
2. Define an industrial dispute as per Industrial Disputes Act, 1947.
3. Discuss the concept of workman according to Industrial Disputes Act, 1947.
4. Discuss the objectives and scope of Industrial Disputes Act.
5. Describe in detail the scope and coverage of Industrial Disputes Act.
6. What authorities are included under Industrial Disputes Act?
7. Discuss the functions of Industrial Tribunals in detail.
8. What is the function of Labour Court? Discuss.
9. Explain the differences between Adjudication and Arbitration.
10. What measures does Industrial Dispute Act provides for Prevention of Conflicts and Disputes?

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		

Notes

5.9 Further Readings

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

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Notes

Unit 6: Payment of Wages Act, 1936

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Objectives

After studying this unit, you will 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

In the previous unit, we dealt with Industrial Dispute Act. 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 upto ₹ 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.

6.1 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 oil field; 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);

(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 travelling allowance or the value of any travelling 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

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.

Notes

6.2 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 co-operative 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 with holdings 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.

6.2.1 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.
- In industrial or other establishment a person responsible to the employer for the supervision and control of the industrial or other establishment.
- Upon railways (otherwise than in factories), if the employer is the railway administration and the person nominated in this behalf.

Notes

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. (A. I. R. 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 ..... .

6.3 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 subcontractor, 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 (ii) of section 2.

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).

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 1936.

Notes

6.4 Method for Computation and Fixing of Wages

There are two methods for Computation and Fixing of Wages:

6.4.1 Monthly Wages

For the purpose of calculating salary, a 'month' or 'complete month' refers to any one of the months in the calendar year.

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:

$$\text{Salary payable for incomplete month of work} = \frac{\text{Monthly gross rate of pay}}{\text{Total number of working days in that month}} \times \text{Total number of days the employee actually worked in that month}$$

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:

- ❖ overtime payments;
- ❖ bonus payments; or
- ❖ 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.

6.4.2 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.

Notes

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:

$$\frac{12 \times \text{monthly basic rate of pay}}{52 \times \text{average number of days an employee is required to work in a week}}$$

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:

- overtime payments;
- bonus payments; or
- 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:

- annual leave;
- hospitalisation leave; and
- maternity leave.

For a monthly-rated employee, the gross rate of pay for one day is calculated as follows:

$$\frac{12 \times \text{monthly gross rate of pay}}{52 \times \text{average number of days an employee is required to work in a week}}$$

For a piece-rated employee, the gross rate of pay for one day is calculated as follows:

$$\frac{\text{Total pay earned (with allowance) during the 14 calendar days immediately before a rest day/public holiday/outpatient sick leave}}{\text{Number of days worked during the same period of 14 calendar days}}$$

Notes

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:

- overtime payments;
- bonus payments; or
- 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.

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.
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 ..... .

6.5 Rules in Payment of Wages Act

Following are the rules applicable for in Payment of Wages Act area as follows:

6.5.1 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.

6.5.2 Time of Payment of Wages (Secs. 5, 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.

6.5.3 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 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

Fill in the blanks:

9. Every person responsible for the payment of wages must fix ..... .
10. The penalty for contravention of the provision is fine up to ₹ ..... .
11. No wage-period exceeds one month in any case

6.6 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:
   - The withholding of increment or promotion (including the shortage of increment at an efficiency bar);
   - The reduction to a lower post or time scale or to a lower stage in a time scale; or
   - Suspension;

6.6.1 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;

Notes

(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;

6.6.2 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).
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 instalments 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 instalments 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.

6.6.3 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 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 any 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.

6.6.4 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 travelling 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 he 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 instalment 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.

Notes

6.6.5 Deductions for Absence from Duty

Deductions may be made under clause (b) of sub-section (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) 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, A.I.R. 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.

6.6.6 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.

Notes

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

Self Assessment

State whether the following statements are true or false:

12. The fine shall be imposed on any employed person only for acts and omissions which has received approval of the State Government.
13. No fine shall be imposed on any employed person who is under the age of eighteen years.
14. 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.
15. 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.

Notes

6.7 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.

6.8 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.

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.

Notes

6.9 Review Questions

1. Define industrial establishment.
2. What are the basic provisions of the Payment of Wages Act, 1936?
3. Explain the various responsibility of Payment of Wages Act, 1936.
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 Fine? 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.	wage period	10.	200
11.	one moth	12.	True
13.	False	14.	True
15.	True		

6.10 Further Readings

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Online links

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http://in.docsity.com/en-docs/Labour_Laws_-_Payment_of_Wages_Act__1936_-_Prof_R_N_Bhatt

Notes

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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Unit 7: Definitions under Workmen's Compensation Act, 1923

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Objectives

After studying this unit, you will be able to:

- Study the genes of the Act
- Discuss the various definitions in Workmen's Compensation Act, 1923
- Identify the major provisions of this Act
- Explain the distribution of compensation

Introduction

In the previous unit we dealt with the Payment of Wages Act, 1936 which is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries. The unit also discussed about the basic Provisions, Responsibility, and Application of the Act and Identify the method for computation and fixing of wages. This unit will helps you to understand the definitions under Workmen's Compensation Act, 1923. The various sections and sub-sections of this unit will also summarises the major provisions of this

Notes

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 dependants 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 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.

7.1 Genes of the Act

The Workmen's Compensation Act, 1923 provides for payment of compensation to workmen and their dependants 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.

7.1.1 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.

Notes

7.1.2 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 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.

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.

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 dependants' benefit are available under this Act.

7.1.3 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 instalment 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 then 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 it self 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

Contd...

Notes

agreement is placed before the Commissioner in Bangalore, no compromise is allowed 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 dependants 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.

7.2 Definitions

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

7.2.1 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 bas 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.

7.2.2 Workman

The definition of the term "workman" is important because only a person coming within the definition is entitled to the reliefs 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 dependants 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 shalt, 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

7.2.3 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.

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

Notes

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)

Description of Injury			Percentage loss 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 .....
7. The general rule is that there must be the relationship of ..... between the employer and the workman.

Notes

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.

7.3 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:-
   - If the injury does not result in the total or partial disablement of the workman for a period exceeding three days.
   - 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 wilful 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 wilful 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 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

Notes

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.

7.4 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) 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

Notes

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 (Sections 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).

7.4.1 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 dependants of the workman. The amount of compensation is to be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit (Sections 2 and 8). If an employer is in default, in paying the compensation within one month from the date it fell due, the Commissioner may direct the recovery of not only the amount of the arrears but also a simple interest at the rate of six per cent per annum on the amount due. If, in the opinion of the Commissioner, there is no justification for the delay, an additional sum, not exceeding 50 per cent of such amount, may be recovered from the employer by way of penalty (Section 4A).

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

7.4.2 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 dependants cannot be assigned, attached or charged (Sections 9 and 17).

7.4.3 Claims and Appeals

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. 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.

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

7.4.4 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 (Sections 32-36).

Self Assessment

State whether the following statements are true or false:

13. The compensation payable to the workman or to his dependants cannot be assigned, attached or charged.

14. 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.

15. The percentage loss of earning capacity depends on the loss of limbs and varies from 1 per cent to 50 per cent.

Notes

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.

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

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Notes

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 ₹ 30,000-00 as being just and reasonable and a sum of ₹ 2,000-00 toward funeral and obsequious expenses etc. and therefore the petitioners are granted sum total compensation amount of ₹ 32,000-00."

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

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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 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

7.5 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 1948.
- 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.

Notes

- 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.

  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.

7.6 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.

7.7 Review Questions

1. What is the object of the Workmen's Compensation Act, 1923?
2. Define 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?

Notes

Answers: Self Assessment

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

7.8 Further Readings

Books

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

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

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Unit 8: Rules Regarding the Workmen's Compensation Act

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8.7 Summary

8.8 Keywords

8.9 Review Questions

8.10 Further Readings

Notes

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 defences of the employer
- Describe the amount of compensation (Section 4)
- Discuss the distribution of compensation (Section 8)
- 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.

8.1 Workmen's Compensation

Following aspects are included in the Workmen's Compensation:

8.1.1 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;

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

(iii) The wilful 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.

8.1.2 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 from 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

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(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.

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 give 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.

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

Notes

8.2 Rules in Workmen's Compensation

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

8.2.1 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 dependants 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;

Notes

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

(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.

8.2.2 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.

8.2.3 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 8.

(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.

8.2.4 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.

Notes

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 ..... .

8.3 Defences 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 defences:

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 defences and the rule "no negligence no liability made." It 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 defence 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 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.

Notes

In a civil suit for damages, it is open to the employer to plead all the defences 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 1938.

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 defences provided by the law of Torts.

8.4 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.

8.4.1 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:

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

8.4.2 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:

Notes

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

8.4.3 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.

8.4.4 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.

8.4.5 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.

8.5 Distribution of Compensation (Section 8)

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.

Notes

(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 dependant 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 sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit or may, in the discretion of the Commissioner, be allotted to any one dependant.

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

(7) Where any lumpsum 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 dependant 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 dependant, or for any other sufficient cause, vary his earlier orders regarding distribution or investment of compensation. But no such order 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.

Notes

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.

8.6 Enforcement of Act

8.6.1 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.

8.6.2 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).

8.6.3 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 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.

Notes

8.6.4 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.

8.6.5 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 dependants of a deceased workman or disallowing any claim of a person alleging himself to be such dependant;
- An order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or
- An order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions; 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.

8.6.6 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

Notes

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 dependants 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 dependants 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 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.

Contd...

Notes

"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 meagre 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 Asok 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 bylanes and sidelanes 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 Asok Kumar Ganguly, that the court "has a duty to interpret statutes with social welfare benefits in such a way as 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.

Contd...

Notes

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 meagre 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

8.7 Summary

- The language in Section 3 shows that injury is caused by accident and not 'by an accident'.
- The wilful 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.

Notes

- 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 defences 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.

8.8 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.

Defences: 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.

8.9 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 defences 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.
11. Highlight the role of Commissioners.

Notes

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

8.10 Further Readings

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Unit 9: 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]

Notes

Introduction

In the previous unit, we dealt with the rules regarding the Workmen's Compensation Act. 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.

9.1 An Overview of Payment of Bonus Act

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' notification in the Official Gazette, make the Act applicable to any factory or establishment employing less than twenty but not less than ten persons.

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).

9.1.1 Concept of Bonus

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 in 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 extra-ordinary 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

Notes

done by employees under a contract, express of implied (India Hume Pipe Company. v. E.M. Nanavutty 48 Bombay L.R., 551).

Example: The Supreme Court also held in the case of Associated Cement Co. Ltd. v. Their Workers, A.I.R. 1959 S.C. 967 that it is fair and just that labour should derive some share in the surplus available after meeting necessary prior charges.

9.1.2 Objectives 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
- To prescribe minimum & maximum percentage bonus
- To provide of set off/set on mechanism
- To provide redressal mechanism

9.1.3 Key Provisions

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 an 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 **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.

9.1.4 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**

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

Contd...

Notes

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

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 extra-ordinary 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.

9.2 Definitions

In this Act, unless the context otherwise requires -

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.

Notes

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.

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:

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.

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.

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).

Notes

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.

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);

(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)

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 therefrom 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.

Notes

9.3 Eligibility and Disqualification of Bonus

The explanation and criteria for Eligibility and Disqualification of Bonus are given below:

9.3.1 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 over-time work), includes dearness allowance but does not include:

(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).

9.3.2 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

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,

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 upto ..... 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.

9.4 Computation of Bonus Payment

The method for calculation of annual bonus is as follow:

9.4.1 Computation of Gross Profits [Sec. 4]

There are a 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 overview for computation of gross profits is mentioned below:

Notes

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.

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 –

  (i) 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);

  (ii) 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.

9.4.2 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].

9.4.3 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.

Notes

9.4.4 Set-on and Set-off of Allocable Surplus [Sec. 15]

Set-on (In case of huge profits)

Excess allocable surplus, remained 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.

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. Accordingly,
- Maximum bonus to which all the employees are entitled to be paid (20% of the annual salary or wage of all the employees) would be ₹ 2,50,000.

Year	Amount equal to sixty per cent. or sixty-seven per cent, as the case may be, of an 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)

Contd...

Notes

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)
9.	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.

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 are 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.

9.5 Powers of Inspectors, and 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.

Notes

9.5.1 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.
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).

9.5.2 Offences and Penalties [Secs. 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.

Notes

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 upto ..... months or fine up to ₹ 1000, or both.

Case Study

Mumbai Kamgar Sabha, Bombay vs M/s Abdulbhai Faizullabhai & Ors on 10 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 s. 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 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 s. 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 Govt. 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

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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/

9.6 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.
- 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.

9.7 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.

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Allocable Surplus: Allocable surplus means in relation to an employer, being a company (other than a banking company) which has not made arrangements prescibed under Income Tax Act for the declaration on 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, esp. 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.

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.

9.8 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 re-instated 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

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(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.

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.	Inspector
15.	Six		

9.9 Further Readings

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Unit 10: 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

In the previous unit, we dealt with Payment of Bonus Act. 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.

10.1 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 not apply to any registered trade union, and that the registration of any such trade union under any such Act shall be void.

The Act is administered by the Ministry of Labour through its Industrial Relations Division. The Division is concerned with improving the institutional framework for dispute settlement and amending labour laws relating to industrial relations. It works in close co-ordination with the Central Industrial Relations Machinery (CIRM) in an effort to ensure that the country gets a stable, dignified and efficient workforce, free from exploitation and capable of generating higher levels of output. The CIRM, which is an attached office of the Ministry of Labour, is also known

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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.

10.1.1 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.

10.1.2 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.

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.

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2. The registered trade unions (workers and 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.

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 wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement or in or from any copy of rules or of alterations of rules sent to the Registrar; or
   - Any person who, with intent to deceive, gives to any member of a registered trade union or to any person intending or applying to become a member of such trade union any document purporting to be a copy of the rules of the trade union or of any

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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.

10.1.3 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.

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.

10.1.4 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/centre/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 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,

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"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 workers as 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.
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.

10.2 Authorities under Trade Union

The authorities of trade union are as follows:

10.2.1 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.

10.2.2 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.

(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.

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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.

10.2.3 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.

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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.

10.2.4 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 centre; 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

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.

10.3 Registration of Trade Union

Following perspectives included in the Registration of Trade Union:

10.3.1 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 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

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.

10.3.2 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.

10.3.3 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.

10.3.4 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.

Notes

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.

10.3.5 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.

10.3.6 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 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. (Secs. 10, 11)

10.3.7 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;

Notes

(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.

10.3.8 Obligations of 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; (Secs. 21A, 22)

(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)

10.3.9 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 bona fide 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, 18)

(iv) Sec. 18 of the Trade Union 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; (Secs. 23, 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.

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.

Notes

10.4 Amalgamation, Dissolution and Penalties in Trade Union

Following perspective explain the Amalgamation and Dissolution of Trade Union:

10.4.1 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? 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).

10.4.2 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.

10.4.3 Penalties in Trade Union

The Act provides penalty of fine upto ₹ 500 for making any wilful false entry in or any omission from the general statement to be submitted to the Registrar, and upto ₹ 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, every member of the executive of the trade union, is punishable with a fine upto ₹ 5. If this default continues, an additional fine upto ₹ 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, 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 upto ..... for making any wilful false entry.
16. If this default continues, an additional fine upto ..... for each week after the first week during which the default continues, may be imposed subject to an aggregate fine of ₹ 50.

Notes

Case Study

Philips India - Labor 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 to set up an integrated consumer electronics facility having common manufacturing technology as well as suppliers 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 under utilized 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.

Contd...

Notes

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

10.5 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 Union 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 labor mass. This Act states all modalities related to trade union registration to trade dispute resolution.
- 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 120B of the Indian Penal Code.
- In the present shape, the Trade Unions 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.

Notes

10.6 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.

10.7 Review Questions

1. Define Trade union.
2. What are the objectives of Trade Union?
3. Highlight the basic provisions of Trade Union.
4. Discuss the features of Trade Union 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 2 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

Notes

9.	True	10.	False
11.	True	12.	False
13.	Amalgamated	14.	Funds
15.	₹ 500	16.	₹ 5

10.8 Further Readings

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Unit 11: Employees' Provident Fund Act, 1952

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Notes

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.

11.1 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 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.

11.1.1 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 dependants 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.

11.1.2 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 co-operative 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.

11.1.3 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 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.

Notes

Caselet **The Bharatkhand Textile Mfg. Co. vs The Textile Labour on 17 March, 1960**

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 S.C.R. 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 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 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

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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.

11.2 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.

(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;

Notes

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.

11.3 The Employees' Pension Scheme, 1995

Employees' Pension Scheme 1995 has been made applicable on 16.11.1995 retrospectively with effect from 1.4.1993. This new Scheme replaces the erstwhile Family Pension Scheme, 1971.

11.3.1 Membership

1. Every member of the Employees' Provident Scheme 1952 and opted for Employees Family Pension Scheme 1971.
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 15.11.1995 was given option to become member of the Employees' Pension Scheme 1995 upto 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.

11.3.2 Option Requirement

1. Members who have died during 1.4.1993 and 15.11.1995 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.

11.3.3 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.

Notes

11.3.4 Service for Pension

Actual service rendered after 16.11.1995 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.

11.3.5 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.

11.3.6 Benefits

1. ***Monthly Member Pension -*** Superannuation Pension/retirement on attaining the age of 58 years.
2. ***Pension Scheme Certificate -*** Document indicating pensionable 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.
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.

11.3.7 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.

11.3.8 Withdrawal Benefits

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.

11.3.9 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.

Notes

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.
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.

11.4 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 12% of wages in any industry or class of establishments.

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.

11.4.1 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.

11.4.2 Withdrawals

Under the scheme, a member may withdraw the full amount standing to his credit in the fund in the event of—

1. Retirement from service after attaining the age of 55;
2. Retirement on account of permanent and total incapacity;
3. Migration from India for permanent settlement abroad; and
4. 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.

Notes

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' co-operative 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 retrenchee 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.

11.4.3 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. Incase of change, a separate form for a fresh nomination should be filled in duplicate.

11.4.4 Transfer

When a member leaves service in one establishment and obtains re-employment 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:

1. Re-employment in an establishment, whether exempted or unexempted, in another region/ sub-region;
2. Re-employment in an exempted establishment in the same region/sub-region;
3. Leaving service in an exempted establishment and re-employment in an unexempted establishment;
4. Re-employment in an establishment not covered under the Act

Notes

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.

11.4.5 Account Slip

As soon as possible after the completion of each accounting year, every member of the fund shall be supplied with an account slip showing:

1. The opening balance;
2. The amount contributed during the year;
3. The amount of interest credited or debited during the year; and
4. Closing balance,

Errors, if any, should be brought to the notice of the Commissioner within six months.

11.4.6 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.

Notes

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.

11.5 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.

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.

Notes

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.

11.6 Determination and Recovery of Money due to Employer

Following aspects explain the determination and recovery of money due to employer:

11.6.1 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 1860.

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 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.

11.6.2 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: 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 sections 8B to 8G.

Notes

Notes In this section, the expressions "dearness allowance" and "retaining allowance" shall have the same meanings as in section 6.

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.

11.7 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 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far 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;

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(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 in so far 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 noncompliance, 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 in so far as it relates to the payment of inspection charges.

21. 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 19 shall.

Case Study

Union of India & Anr vs Ogale Glass Works on 1 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

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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

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 mean while, 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%20 1952%20doctypes%3A%20supremecourt

11.8 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 and 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.

Notes

- The Employees' Provident Funds Act is intended to provide wider terminal benefits to the industrial workers.
- 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 and 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.

11.9 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.

11.10 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?

Notes

5. Can the amount standing to the credit of any member in the Fund be assigned, charged or attached?
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 14B 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 $8\frac{1}{3}$ percent?
14. Is any interest payable on the Provident Fund accumulations of a member?
15. What are the benefits provided under the Scheme?
16. Who is entitled to receive the accumulations in the Provident Fund account of a deceased member?

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
21.	False		

11.11 Further Readings

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Notes

Unit 12: The Maternity Benefit Act, 1961

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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 objective of this Act
- Describe the applicability and coverage of this Act
- Discuss the benefits and penalties of this Act
- Get an overview of the restrictions on employment
- Discuss the right to payment of maternity benefit

Introduction

In the previous unit, we dealt with Employees Provident Fund Act. The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. Such benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. The Act is applicable to mines, factories, circus industry, plantations, shops and establishments employing ten or more persons, except employees covered

under the Employees' State Insurance Act, 1948. It can be extended to other establishments by the State Governments. 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 Maternity Benefit Act.

12.1 Genesis of the Act

The Convention of "Protection of Motherhood" adopted in 1919 was the earliest among the ILO Conventions. In 1921, the Government of India reported that it was not possible to adopt the Convention passed in 1919 due to various reasons. A Bill was brought before the Central Legislative Assembly by a private member in 1924; urging the Government to make it compulsory for the employers to provide maternity benefit to women workers. However, the Bill was opposed by the government on the ground that the need for such a Bill was not felt and that if legislation was passed to that effect, it might have adverse repercussions on the employment of women. The Royal Commission on Labour, in its recommendations, also stressed the need for suitable maternity legislation, at least for women employed permanently in non seasonal factories. As the Government of India was slow to 'act on these recommendations, the provincial governments took the lead. The Government of Bombay passed the Maternity Benefit Act, way back in 1926. It was followed by Central Provinces, Madras, U.P., Bengal and some other provinces. The period of leave, the quantum of benefit and the qualifying conditions varied slightly from province. With a view to reducing the disparities relating to maternity protection under different provincial or State enactments, the Central Government passed the Maternity Benefit Act in 1961.

The Central Industrial Relations Machinery (CIRM) in the Ministry of Labour is responsible for enforcing this Act. CIRM is an attached office of the Ministry and is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. The CIRM is headed by the Chief Labour Commissioner (Central).

12.1.1 Main Provisions

The main provisions of the Act are:-

- No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. Also, no woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
- Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day. The 'average daily wage' means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee a day, which ever is higher.
- No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery. For the purpose of calculating the days on which a woman has actually worked in the establishment, the days for which she has been laid off during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.
- The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day.

Notes

- No deduction from the normal and usual daily wages of a woman entitled to maternity benefit shall be made by reason only of - (i) the nature of work assigned to her by virtue of the provisions of the Act; or (ii) breaks for nursing the child allowed to her under the provisions of the Act.
- If a woman works in any establishment after she has been permitted by her employer to absent herself for any period, during such authorised absence, she shall forfeit her claim to the maternity benefit for such period.
- If any employer contravenes the provisions of this Act or the rules made thereunder, he/she shall be punishable with imprisonment or with fine or with both; and where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

Caselet

Maternity Benefits in India

Ms. AB was employed in a company for the past 22 months and wishes to avail maternity benefits under the Maternity Benefit Act. She was receiving an annual salary of ₹ 375,000, paid in monthly instalments of ₹ 31,250.

In addition to the non-cash benefits listed above, she is entitled to cash benefits under the Act that include:

1. Advance payment of six weeks leave before delivery – ₹ 46,875
2. Advance payment of six weeks leave after delivery – ₹ 46,875 (after submitting proof of birth)
3. Medical bonus – ₹ 1,000
4. Additional leave with pay up to one month – ₹ 31,250

The total cash benefits that Ms. AB is entitled to amount to ₹ 213,500.

Furthermore, Ms. AB may not be dismissed while she is on maternity leave, and may also not be charged any penalty for not performing her work duties while on maternity leave. She is also entitled to be given light work up to 10 weeks prior to the delivery of the child, and two 15-minute nursing breaks per day until the child is 15 months old.

Source: http://www.india-briefing.com/news/maternity-benefits-india-5765.html/

Self Assessment

State whether the following statements are true or false:

1. The Convention of "Protection of Motherhood" adopted in 1920 was the earliest among the ILO Conventions.
2. As the Government of India was slow to act on these recommendations, the provincial governments took the lead.
3. The Central Industrial Relations Machinery (CIRM) in the Ministry of Labour is responsible for enforcing this Act.

Notes

12.2 Definitions

In this Act, unless the context otherwise requires,–

(a) "appropriate Government" means, in relation to an establishment being a mine, or an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, the Central Government and in relation to any other establishment, the State Government;

(b) "child" includes a still-born child;

(c) "delivery" means the birth of a child;

(d) "employer" means–

(i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(ii) in relation to an establishment under any local authority, 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;

(iii) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;

(e) "establishment" means--

(i) a factory;

(ii) a mine;

(iii) a plantation;

(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(iva) a shop or establishment; or

(v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable;

(f) "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(g) "Inspector" means an Inspector appointed under section 14;

(h) "maternity benefit" means the payment referred to in sub-section (1) of section 5;

(i) "mine" means a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952);

(j) "miscarriage" means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (45 of 1860);

(k) "plantation" means a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951;)

(l) "prescribed" means prescribed by rules made under this Act;

Notes

(m) "State Government", in relation to a Union territory, means the Administrator thereof;

(n) "wages" means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes--

(1) such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;

(2) incentive bonus; and

(3) the money value of the concessional supply of foodgrains and other articles,

but does not include--

(i) any bonus other than incentive bonus;

(ii) over-time earnings and any deduction or payment made on account of fines;

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and

(iv) any gratuity payable on the termination of service;

(o) "woman" means a woman employed, whether directly or through any agency, for wages in any establishment.

Self Assessment

Fill in the blanks:

4. ..... means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948).

5. ..... means a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952).

6. ..... earnings and any deduction or payment made on account of fines.

12.3 Objective of this Act

The Act was passed with a view to reduce disparities under the existing Maternity Benefit Act and to bring uniformity with regard to rates, qualifying conditions and duration of maternity benefits. The Act repealed the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929, the provisions of maternity protection under the

Plantations Labour Act, 1951 and all other provincial enactments covering the same field. However, the Act does not apply to factory or establishment to which the provision of Employee's State Insurance Act 1948 applies, except as otherwise provided in Sections 5A and 5B of the Act.

The Act extends to the whole of India. It applies, in the first instance: to every establishment being a factory, a mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; to every shop or establishment within the meaning of any law for the time being in force in relation to shop and establishments in a state, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

Notes The State Government is empowered to extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise with the approval of the Central Government by giving not less than two month's notice of its intention of so doing.

Notes

The Act has been amended from time to time. The Amendment of 1972 provides that in the event of the application of the Employees' State Insurance Act, 1948 to any factory or establishment, maternity benefit under the Maternity Benefit Act would continue to be available to women workers, until they become qualified to claim similar benefit under Employees' State Insurance Act.

Again, in 1973 the Act was amended so as to bring within its ambit establishments in the circus industry. A 1976 amendment further extends the scope of the Act to the women employed in factories or establishments covered by the ESI Act, 1948 and in receipt of wages exceeding entitlement specified in that Act.

The Act was again amended in 1988 to incorporate the recommendations of a working group of Economic Administration Reforms Commission. The Act was extended to shops or establishments employing 10 or more persons.

Did u know? The rate of maternity benefits was enhanced and some other changes were introduced. The Amendment of 1995 further expanded the coverage of the Act and recognized the medical termination of pregnancy and provided incentives for family planning.

Maternity Benefit (Amendment) Act, 1995 provides that there shall be a six weeks leave with wages in case of medical termination of pregnancy, two weeks leave with wages to women employees who undergo tubectomy operation and one month leave with wages in cases of illness arising out these two. By an amendment in 2008 the existing ceiling of maternity benefit was increased from ₹ 250 to ₹ 1000. The Central Government is empowered to increase the medical bonus from time to time subject to a maximum of ₹ 20, 000.

The Maternity Benefit Act aims to regulate the employment of women in certain establishments for certain periods before and after childbirth. It also provide for maternity benefits including maternity leave, wages, bonus, nursing breaks etc. This Act protects the dignity of motherhood and the dignity of a new person's birth by providing for the full and healthy maintenance of the women and her child at this important time when she is not working.

Self Assessment

State whether the following statements are true or false:

7. The Act extends to the whole of India.
8. The Act was extended to shops or establishments employing 20 or more persons.
9. The Central Government is empowered to increase the medical bonus from time to time subject to a maximum of ₹ 15,000.

12.4 Applicability and Coverage of this Act

The Act extends to the whole of India and applies to every establishment, factory, mine or plantation, including any such establishment belonging to the government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. The Act was brought into force in mines with effect from 1st November 1963, after repealing the Mines Maternity Benefit Act, 1941. The State government may extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

Notes

Caution But the State Government can do so only with the approval of the Central Government, after giving not less than two months' notice, by a notification in the Official Gazette, of its intention to do so.

The Act specifically excludes the applicability of the provisions of the Act to any factory or other establishment to which provisions of the Act to any factor or other establishment to which provisions of the Act to any factor or other establishment to which provisions of the Employees' State Insurance Act, 1948, apply for the time being. The Act was amended on May 1, 1976 to extend the benefits to all women employees earning more than the wage ceiling in establishments covered by the E.S.I. Act.

Conditions for Eligibility of Benefits

Following are the conditions for the eligibility of benefits:

1. Ten weeks before date of her expected delivery, she may ask employer to give her light work for a month (At that time she should produce a certificate that she is pregnant).
2. She should give written notice to employer about seven weeks before date of her delivery that she will be absent for six weeks before & after her delivery.
3. She should also name person to whom payment will be made in case she cannot take it herself.
4. She should take payment for the first six weeks before she goes on leave.
5. She will be entitled to two nursing breaks of fifteen minutes each in course of her daily work till her child is fifteen months old.
6. Leave for Miscarriage and Tubectomy Operation.
7. Leave with wages at rate of maternity benefit, for a period of six weeks immediately following day of her miscarriage or her medical termination of pregnancy.

Self Assessment

Fill in the blanks:

10. The Act was brought into force in mines with effect from ....., after repealing the Mines Maternity Benefit Act, 1941.
11. The ..... government may extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.
12. The Act was amended on .....-to extend the benefits to all women employees earning more than the wage ceiling in establishments covered by the E.S.I. Act.

12.5 Benefits and Penalties of this Act

The Maternity Benefit Act is a piece of social legislation enacted to promote the welfare of working women. It prohibits the working of pregnant women for a specified period before and after delivery. It also provides for maternity leave and payment of certain monetary benefits to women workers during the period when they are out of employment because of their pregnancy. Further, the services of a woman worker cannot be terminated during the period of her absence on account of pregnancy, except for gross misconduct.

Notes

Notes The maximum period for which a woman can get maternity benefit is twelve weeks. Of this, six weeks must be taken prior to the date of delivery of the child and six weeks immediately following that date.

To be entitled to maternity leave, however, a woman must have actually worked for not less than 80 days in the twelve months immediately preceding the day of her expected delivery. Only working days are taken into account when calculating these 80 days. Weekly holidays and all leave - paid or unpaid - are not included. However, if a workman is laid off from work, such periods will be deemed as working days.

To avail of the six weeks' leave before expected delivery, a notice must be given in writing stating the date of absence from work also a certificate of pregnancy. (There is a form for both which must be filled in). The employer has to pay the maternity benefit in advance for this period to the concerned employee or any person nominated for this purpose.

For the six weeks' leave from the date of delivery, another notice must be sent together with a certificate of delivery after the child is born. The employer has to pay to the employee, or her nominees, maternity benefit within 48 hours of receiving this notice. The failure to give notice for the subsequent six weeks does not, however, disentitle a woman from maternity benefit.

Did u know? Every woman entitled to maternity benefit is also entitled to a medical bonus of rupees two hundred and fifty if no pre-natal and post-natal care have provided for by the employer free of charge.

In case of miscarriage, a woman is entitled to six weeks leave with pay from the day of miscarriage. In this case, too, .she must give notice, together with a certificate of miscarriage.

Example: For illness arising out of pregnancy, delivery, premature birth or miscarriage, a woman employee can take extra leave up to a maximum period of one month. She has, of course, to get a certificate from a doctor in the prescribed form. This leave can be taken at any time during the pregnancy, or can be attached to the six weeks prior to or after delivery or miscarriage.

With a view to encourage planned parenthood, the Act provides for (a) six weeks leave with wages in cases of medical termination of pregnancy (MTP); (b) grant of leave with wages for a maximum period of one month in cases of illness arising out of MTP or tubectomy; and (c) two weeks' leave with wages to women workers who undergo tubectomy operation.,

A female employee can ask for light work for one month preceding the six weeks prior to her delivery or during these six weeks if, for any reason, she does not avail of her leave.

12.5.1 Penalties

Penalties in this Act should be given on following perspectives:

Penalty for contravention of Act by employer

(1) If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees:

Notes

Provided that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

(2) If any employer contravenes the provisions of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both:

Provided that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

Penalty for obstructing Inspector

Whoever fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made thereunder or conceals or prevents any person from appearing before or being examined by an Inspector shall be punishable with imprisonment which may extent to one year, or with fine which may extend to five thousand rupees, or with both.

Self Assessment

Fill in the blanks:

13. The ..... Act is a piece of social legislation enacted to promote the welfare of working women.
14. Every woman entitled to maternity benefit is also entitled to a medical bonus of ..... if no pre-natal and post-natal care have provided for by the employer free of charge.
15. A female employee can ask for light work for one month preceding the ..... weeks prior to her delivery or during these six weeks if, for any reason, she does not avail of her leave.

12.6 Restrictions on Employment

An employer is prohibited from knowingly employing any woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. Likewise, a woman is prohibited from working in any establishment during this period of six weeks. Further, no pregnant woman shall, on a request being; made by her, be given–

- Any work which is of an arduous nature;
- Any work which involves long hours of standing;
- Any work which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause miscarriage or otherwise adversely affect her health.

A female employee resuming duties after delivery is to be given two nursing breaks of prescribed duration, in addition to her regular rest intervals, to nurse the child until her child attains the age of fifteen months. Each State has its own rules as to the length of this break. (In Maharashtra, it is fifteen minutes).

An employer cannot reduce the salary on account of light work assigned to her or for breaks taken', to nurse her child. Further, she cannot be discharged or dismissed on grounds of absence arising out of pregnancy, miscarriage, delivery or premature birth. Nor can her service conditions be altered to her disadvantage during this period.

Notes

Notes If a woman entitled to maternity benefit dies before receiving her dues, the employer has to pay the person nominated by her in the notice, or to her legal representative, in case there is no nominee. If she dies during the six weeks before delivery, maternity benefit is payable only for the days up to and including the day of her death. If she dies during delivery or during the following six weeks, leaving behind a child, the employer has to pay maternity benefit for the entire six weeks; but if the child also dies during the period, then only for the days up to-and including the death of the child.

12.6.1 Forfeiture

A female employee, however, can be deprived of maternity benefit if:

1. after going on maternity leave, she works in any other establishment during the period she is supposed to, be on leave; and
2. during the period of her pregnancy, she is dismissed for any prescribed gross misconduct;

The acts which constitute misconduct are

(a) Wilful destruction of employer's goods or property;

(b) Assaulting any superior or co-employee at the place of work;

(c) Criminal offence involving moral turpitude resulting in conviction in a court of law;

(d) Theft, fraud or dishonesty in connection with the employer's business or property; and

(e) Wilful non-observance of safety measures or rules or wilful interference with safety devices or with fire fighting equipment.

The aggrieved woman may, within sixty days from the date, on which the order of such deprivation is communicated to her, appeal to the prescribed authority, and the decision of the authority on such appeal shall be final.

Self Assessment

State whether the following statements are true or false:

16. An employer is prohibited from knowingly employing any woman in any establishment during the five weeks immediately following the day of her delivery or her miscarriage.
17. Each State does not have its own rules as to the length of this break
18. An employer can reduce the salary on account of light work assigned to her or for breaks taken to nurse her child.

12.7 Right to Payment of Maternity Benefit

The Right to Payment of Maternity Benefit are as follows:

(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

Notes

Notes For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of eighty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Notes For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

Continuance of payment of maternity benefit in certain cases.-

Every woman entitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employees' State Insurance Act, 1948 (34 of 1948), to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under section 50 of that Act.

Payment of maternity benefit in certain cases.-

Every woman--

(a) who is employed in a factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply;

(b) whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub-clause (b) of clause (9) of section 2 of that Act; and

(c) who fulfils the conditions specified in sub-section (2) of section 5,

shall be entitled to the payment of maternity benefit under this Act.

Notes

12.7.1 Notice of Claim for Maternity Benefit and Payment Thereof

Notice of Claim for Maternity Benefit and Payment are as follows:

(1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

Task As a Manager, what maternity benefits will you amend in your organization for the female employees?

Self Assessment

Fill in the blanks:

19. The maximum period for which any woman shall be entitled to maternity benefit shall be ..... weeks.

20. Any woman who has not given the ..... when she was pregnant may give such notice as soon as possible after the delivery.

21. The ..... to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act.

Notes

Case Study

Maternity Benefit Act is Applicable Upon Contractual Employees

The petitioner was appointed on contract basis for three years. She became pregnant. She absented for 106 days. She applied for maternity leave. She was directed to hand over charge. Her absence was treated as leave without pay. Maternity benefits were denied to her as per terms of contractual employment. The petitioner was notified that till the date of handing over the charge, the absence will be treated as leave without allowance and she was directed to hand over the office mobile and other assets, if any. Since the maternity leave applied was not sanctioned, the petitioner got issued a legal notice for sanction of maternity leave and for extending the legitimate benefits.

The petitioner delivered twins. The respondent terminated the contract of service with the petitioner by invoking terms and conditions of her appointment letter. The petitioner filed writ petition to quash the communications sent by the respondent, terminating the contract and office order treating the period of absence as leave without allowances and to direct the respondent to sanction maternity leave and disburse the pay and allowances for the period of maternity leave and for consequential benefits, including permitting her to resume duty after the expiry of the maternity leave or as per the medical advice.

The respondent in the counter has resisted the demands of the petitioner contending that the petitioner accepted the offer and is bound by the terms and conditions of the contract which does not provide for maternity leave benefits and hence, it is not open to the petitioner to claim maternity leave benefits. The respondent further stated that as the petitioner remained absent frequently on different dates on health grounds, issuance of the office order is justified. It was also stated that the post to which the petitioner was appointed was crucial post of Manager (Finance) which could not be kept vacant and it adversely affects the work. She was given one month's notice and thereafter her service was terminated. Even the respondent is not notified under section 2 of the Maternity Benefits Act, 1961.

Held, in terms of the provisions of the Maternity Benefits Act, 1961, a woman is prohibited from working in an establishment during the period of six weeks from immediately following the day of her delivery, miscarriage or medical termination of pregnancy. She would not be asked to work for the specified period in sub-section (4) of section 4. She would be entitled to the benefits of sections 6 and 9 of the Act. Any Rule or Regulation being subordinate legislation, is subject to provisions of the Parliament Act. Though the appointment order along with the terms and conditions appended thereto issued to the petitioner did not provide for grant of maternity leave and other benefits to which a woman employee would be entitled to, the respondent has an obligation to provide the benefits in view of the provisions contained in the Act as well as the Directive Principles of State Policy enshrined in Article 42 of the Constitution of India. It is not disputed that the petitioner had 17 days in her credit whereas she remained absent for 106 days on health ground.

Since she was a contract employee and did not have the leave to her credit, the respondent is right in treating the period as leave without allowance in excess of leave to her credit. Petitioner's prayer to permit her to resume her duty is not tenable since the appointment was purely on contract basis and that period is already over. However, the petitioner is entitled to all the benefits from the terms of appointment for the period of her maternity

Contd...

leave including maternity benefits and thereafter for a period of one month being the notice period. The petitioner is entitled to costs and the counsel fee of ₹ 5,000. Payment to the petitioner is made within one month. Petition is disposed of in part accordingly.

Question

Critically analyse the above case.

Source: http://www.indianstaffingfederation.org/maternity.html

12.8 Summary

- The Act was passed with a view to reduce disparities under the existing Maternity Benefit Acts and to bring uniformity with regard to rates, qualifying conditions and duration of maternity benefits.
- The Act repealed the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929, the provisions of maternity protection under the Plantations Labour Act, 1951 and all other provincial enactments covering the same field.
- One of the primary objectives of India's Maternity Benefit Act (1961) is to maintain the health of a pregnant female employee and her child.
- An abstract of the provisions of the Act and the rules made thereunder has to be exhibited in the language or languages of the locality in a conspicuous place in every of the establishment in which women are employed.
- The Act provides for penalties for the contravention of the provisions of the Act.
- The Central Government has power to exempt an establishment from the operation of all or any of the provisions of the Act if it is satisfied that the benefits granted by the establishment are not less favourable than those provided in the Act.
- Apart from the benefits provided under the Central Act, some State enactments provide additional benefits, such as free medical aid, maternity bonus, provision of creches, and additional rest intervals.
- If benefits are improperly withheld, a complaint can be made to the inspectors appointed by the government.
- Every woman shall be entitled to, and her employer shall be liable for, the payment of Maternity benefits at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day, says the provision under Section 5.
- The act applies to every factory, mine or plantation (including those belonging to government), and to every shop or establishment wherein 10 or more people are employed.
- To be eligible to receive maternity benefits, the pregnant female employee must have worked for at least 80 days within the 12 months immediately preceding her date of delivery.
- Pregnant female employees can receive payment of up to six weeks of leave before delivery, and then can receive payment while taking up to six weeks of leave after delivery (within 48 hours of submitting proof of birth).

Notes

12.9 Keywords

Claim: Legal demand or assertion by a claimant for compensation, payment, or reimbursement for a loss under a contract, or an injury due to negligence.

Factory: A building or buildings where goods are manufactured or assembled.

Maternity Benefit: Maternity Benefit is a payment by the Department of Social Protection to women on maternity leave from work.

Mines: A mine is an excavation in the earth from which ores and minerals are extracted.

Miscarriage: The expulsion of a fetus from the womb before it is able to survive independently, esp. spontaneously or as the result of accident.

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

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.

Protection: The action of protecting someone or something, or the state of being protected.

Provisions: The action of providing or supplying something for use.

Restrictions: The limitation or control of someone or something, or the state of being limited or restricted.

Wages: A fixed regular payment, typically paid on a daily or weekly basis, made by an employer to an employee, esp. to a manual or unskilled worker.

12.10 Review Questions

1. What is the object of the Maternity Benefit Act, 1961?
2. Which establishments are covered by the Act?
3. What are the benefits payable to a female employee under the Act?
4. Highlight the main provisions of the Maternity Benefit Act, 1961.
5. Discuss the applicability and coverage of the Maternity Benefit Act, 1961.
6. Explain the conditions for eligibility of benefits.
7. Elucidate the Penalties in this Act.
8. What are the Restrictions on Employment?
9. A female employee, however, can be deprived of maternity benefit. Discuss.
10. Describe the notice of claim for maternity benefit and payment.

Answers: Self Assessment

1.	False	2.	True
3.	True	4.	Factory
5.	Mines	6.	Overtime
7.	True	8.	False
9.	False	10.	1 Nov. 1963

Notes

11. State
12. 1 May, 1976
13. Maternity Benefit
14. 250
15. Six
16. True
17. False
18. False
19. 12
20. Notice
21. Failure

12.11 Further Readings

Books

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Notes

Unit 13: The Employees' State Insurance Act, 1948

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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

Notes

- Describe the benefits of this Act
- Discuss the role of ESI Corporation
- Get an overview of the role of ESI Hospital
- Discuss penalties and damages under this Act

Introduction

In the previous unit, we dealt with the act relating to Maternity Benefit. 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.

13.1 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.

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.

Notes

Wages

"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 7.30 a.m. 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 far away places return without consulting doctors after waiting for six to seven hours.

"I came in the morning at 9 a.m. 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.

"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

Notes

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

13.2 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 cover-age 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 Employee 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 through only to a limited extent. This Act becomes a wider spectrum than 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 else where 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.

13.2.1 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.

Notes

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.

13.3 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.

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 1 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

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 and Obtaining of the employer's Code No.

13.3.1 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.

13.3.2 Coverage

With the implementation of ESI scheme, at just two industrial centres 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 centres 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 Govts. 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.

Notes

9. The Act applies, in the first instance, to, non-seasonal factories employing 10 or more persons.

13.4 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:

13.4.1 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 paise, for a period of 124/309 days.

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.

13.4.2 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.

13.4.3 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.

Notes

13.4.4 Dependants' Benefit

The dependants' benefit consists of timely help to the eligible dependants of an insured person who dies as a result of an accident, or an occupational disease arising out, of, and in 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 dependant offsprings long as the infirmity lasts. Where .neither a widow nor a child is left, the dependants' benefit is payable to a dependant parent or grandparent for life, but equivalent to 3/10ths 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.

13.4.5 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.

13.4.6 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 hospitalisation 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.

13.4.7 Other Benefits

(a) Vocational rehabilitation: In case of disabled insured persons under 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 cares 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.

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

Notes

Self Assessment

Fill in the blanks:

10. The rate of this benefit is ..... per cent more than the standard benefit rates for 7 days for vasectomy and 14 days for tubectomy.
11. ..... 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.
12. 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.

13.5 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.

13.5.1 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]

13.5.2 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 re-employment 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.

13.5.3 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)

Notes

13.5.4 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:

13. ..... 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.
14. 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 ..... .
15. The ..... 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.

13.6 Role of ESI Hospital

Employees' State Insurance Hospitals in India are a part of ESIC (Employees' State Insurance Scheme of India), ESIC is a multidimensional social security system tailored to provide socio-economic protection to worker population and their dependants covered under the scheme. Besides full medical care for self and dependants, that is admissible from day one of insurable employment, the insured persons are also entitled to a variety of cash benefits in times of physical distress due to sickness, temporary or permanent disablement etc. resulting in loss of earning capacity, the confinement in respect of insured women, dependants of insured persons who die in industrial accidents or because of employment injury or occupational hazard are entitled to a monthly pension called the dependants benefit.

In ESIC, comprehensive medical care ranging from OPD, medical attendance, treatment, drugs, specialist consultation, hospitalization of insured persons (IPs) and their family members to super-speciality treatment, are provided under the Scheme.

Notes

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.

The ESI Corporation incurred about ₹ 268962.11 lakhs on the delivery of medical care in the last year. The expenditure is shared between the ESI Corporation and State Govt. in the ratio of 7:1. Medical Care expenditure is reimbursed to State Govt. based on ceiling which at present is ₹ 1500/- per IP unit/per annum.

The ESI Corporation has set up five zonal occupational Diseases Centre at New Delhi, Chennai, Kolkata, Mumbai and Indore for providing facilities for early detection and diagnosis of Occupational Diseases, and to cater to the needs of ESI Beneficiaries of the neighbouring State in the respective zones. The occupational diseases as defined in the third schedule of ESI Act, 1948 are considered to be arising out of/in the course of employment and are taken as equivalent to employment injury for providing Cash Benefits like Disablement Benefit, Dependants Benefit etc.

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 co-ordination 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.

The eligibility for super-specialty treatment is 3 months (with contribution paid for at least 39 days) of insurable employment for insured person (for self) and 6 months (with contribution paid for at least 78 days) of insurable employment by Insured Person for their family members. Such tertiary care (super-speciality treatment) is provided through in-house super speciality facilities available in some of ESI Hospitals or ESI-PGIMSRs or through large no. of advanced empanelled medical institutions on referral basis through tie-up arrangements. About 750 private hospitals in all India are now empanelled as tie-up Hospitals for ESIC.

ESI Corporation has taken a decision to set up one hospital in each State as Model Hospital. At present, ESIC has set up Model Hospital in 18 states. These hospitals are being up graded as per norms and standards laid down by ESI Corporation. The expenditure on Model Hospitals is fully borne by ESI Corporation. ESI Corporation is getting its hospitals and dispensaries graded by reputed organizations. Further action has been initiated for getting ISO certification in respect of hospitals and dispensaries. The range of services provided covers preventive, promotive, curative and rehabilitative services. Besides the out-patients services through dispensaries and IMP Clinics, the in-patient services are provided through ESI Hospitals or under arrangements with other hospitals. The ESI Corporation in its meeting held on 23.12.1997 approved the revision in the limit of expenditure on provision of initial equipments for new ESI Hospitals, Dispensaries, Detention wards and Ambulances. The expenditure on items given will be under shareable pool but from outside the ceiling on medical care.

As a part of initiative for overcoming the shortage of medical manpower and improving the services in ESI Hospitals, ESI Corporation has under taken a project for starting medical colleges, nursing colleges, dental colleges and training school for other para medical staff in ESIC/ESI Hospitals. Hospital Development Committees have been constituted in all ESI Hospitals and have

been given adequate administrative and financial powers for taking decisions for improvement in medical care facilities.

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.

Initial equipments for ESI Hospitals

The limit of expenditure for the purpose of providing initial equipments at the time of commissioning a new hospital is given below:-

1. Upto 50 beds ₹ 60 lacs
2. For 51 to 100 beds ₹ 85 lacs
3. For 101 to 250 beds ₹ 100 lacs
4. For 500 and above ₹ 150 lacs

Approved the Action Plan for the year 2000-2001 to develop the Super specialty within the existing ESI Hospitals and review of action on previous Action Plans for 1998-99 and 1999-2000. The State Govt. shall have to delegate adequate powers to the field level functionaries i.e. Director ESI Scheme, Medical Superintendents of ESI hospitals and Medical Officer In-charges of the ESI dispensaries for ensuring hassle free day-to-day functioning including purchase of drugs and dressings, maintenance of equipments and reimbursement of bills etc.

ESIC has taken a decision to provide primary, secondary and tertiary medical care services directly in the areas where there is no ESI Hospital within a distance of 25 kms. The facilities of ESIC would now be extended to workers in the unorganized sector under Rashtriya Swasthya Bima Yojna by making optimum use of under utilized hospitals and dispensaries of ESIC Corporation.

Self Assessment

State whether the following statements are true or false:

16. ESI Corporation has taken a decision to set up one hospital in each State as Model Hospital. At present, ESIC has set up Model Hospital in 20 states.
17. 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.
18. ESIC has taken a decision to provide primary, secondary and tertiary medical care services directly in the areas where there is no ESI Hospital within a distance of 25 kms.

13.7 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:

Notes

Any contribution due under the Act and not paid can be recovered through the District Collector under Section 45B 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.

Under Regulation 31A, 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.

Self Assessment

State whether the following statements are true or false:

19. The Act does not provide for penalties and damages for various offences.
20. The employer can raise any dispute for adjudication in the Employees' Insurance Court of the area, set up under Section 76 of the Act.
21. Under Regulation 31A, 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.

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 health care 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

Contd...

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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 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

Contd...

Notes

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/

13.8 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, where as, 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 head quarters 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.
- 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.

Notes

13.9 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, 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.

13.10 Review Questions

1. Define 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.
8. Describe the role of ESI Hospital.
9. Explain the initial equipments for ESI Hospitals.
10. Throw some light on the penalties and damages in this Act.

Answers: Self Assessment

1.	False	2.	False
3.	True	4.	ESI
5.	19 April 1948	6.	Directive
7.	True	8.	False
9.	True	10.	40

Notes

11.	Pension	12.	₹ 250
13.	Section 3	14.	Regulations
15.	Central Government	16.	False
17.	True	18.	True
19.	False	20.	False
21.	True		

13.11 Further Readings

Books

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Unit 14: The Payment of Gratuity Act, 1972

Notes

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14.1 Genesis of the Act
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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

Introduction

In the previous unit, we dealt with the ESIC Act. 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

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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 pensionary 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.

14.1 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;
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. 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).

14.1.1 Main Provision

The main provisions of the Act are:-

1. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:- (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.
2. 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.

Example: 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.

3. The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees.
4. For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the reduced wages.
5. The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

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.

6. 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.

Notes

7. 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.

14.1.2 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.

14.1.3 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;
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.

Notes

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 2A 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 inservice, in accordance with the standing orders, rules or regulations governing the employees of the establishment. In the instant case, there is no 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 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

Contd...

Notes

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.

14.2 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 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, 1957.

Notes

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.

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.

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 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.

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.

14.3 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:

Notes

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 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. Section 7(3A) 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.

8. 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 12 per cent per annum.

9. A copy of the notice shall be endorsed to the Controlling Authority.

14.4 Benefit of this Act

Following are the benefits 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 ..... days wages.

11. The total amount of ..... payable shall not exceed the prescribed limit.

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

14.5 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.

Gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years - on his superannuation; or on' his retirement or resignation; or on his death or disablement due to accident or disease. However, the completion of 5 years of continuous service for earning gratuity is not necessary if the termination of the employment of any employee is due to death or disablement. In case of death of the employee gratuity is payable to his nominee or to the guardian of such nominee.

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.

14.5.1 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.

14.5.2 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 pensionary 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.

Notes

14.5.3 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 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.

14.5.4 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.

14.5.5 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 thereunder 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:

Notes

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.

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 1997. It shall come into force on 24 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)* 15days 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:

13. Section 3 authorises the appropriate- government to appoint any officer as a controlling authority for the administration of the Act.

Notes

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.

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 and 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 and maintenance - Personal Cars and 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 and 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.

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

Contd...

Notes

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%20Studies7.pdf

14.6 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) disputes regarding gratuity under section 7 "Procedure of Determination of Gratuity" and under Sections 4 and 7 "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.

14.7 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.

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.

Notes

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.

14.8 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. Define 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
9.	True	10.	15
11.	Gratuity	12.	Higher
13.	True	14.	False
15.	True		

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Notes

14.9 Further Readings

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