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LABOR LEGISLATION AND CASE LAW-I

M.B.A., (HRM) First Year

Semester – I, Paper-V

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M.B.A., (HRM) – LABOR LEGISLATION AND CASE LAW-I

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FOREWORD

Since its establishment in 1976, Acharya Nagarjuna University has been forging ahead in the path of progress and dynamism, offering a variety of courses and research contributions. I am extremely happy that by gaining 'A+' grade from the NAAC in the year 2024, Acharya Nagarjuna University is offering educational opportunities at the UG, PG levels apart from research degrees to students from over 221 affiliated colleges spread over the two districts of Guntur and Prakasam.

The University has also started the Centre for Distance Education in 2003-04 with the aim of taking higher education to the doorstep of all the sectors of the society. The centre will be a great help to those who cannot join in colleges, those who cannot afford the exorbitant fees as regular students, and even to housewives desirous of pursuing higher studies. Acharya Nagarjuna University has started offering B.Sc., B.A., B.B.A., and B.Com courses at the Degree level and M.A., M.Com., M.Sc., M.B.A., and L.L.M., courses at the PG level from the academic year 2003-2004 onwards.

To facilitate easier understanding by students studying through the distance mode, these self-instruction materials have been prepared by eminent and experienced teachers. The lessons have been drafted with great care and expertise in the stipulated time by these teachers. Constructive ideas and scholarly suggestions are welcome from students and teachers involved respectively. Such ideas will be incorporated for the greater efficacy of this distance mode of education. For clarification of doubts and feedback, weekly classes and contact classes will be arranged at the UG and PG levels respectively.

It is my aim that students getting higher education through the Centre for Distance Education should improve their qualification, have better employment opportunities and in turn be part of country's progress. It is my fond desire that in the years to come, the Centre for Distance Education will go from strength to strength in the form of new courses and by catering to larger number of people. My congratulations to all the Directors, Academic Coordinators, Editors and Lesson-writers of the Centre who have helped in these endeavors.

Prof.K.GangadharaRao

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105HR26: LABOUR LEGISLATION AND CASE LAW- I

UNIT – I

Industrial Jurisprudence: Concept and Objectives; Classification and Principles of labour Legislation: Growth of Labour Legislation in India; Indian Constitution and Labour Legislation: Labour Legislation and Judicial Activism; **International Labour Organisation (ILO) Conventions:** Recommendations and their impact on Labour Legislation; **Social Justice:** Concept and its Role in Labour Legislation: Natural Justice: Concept and Principles of Natural Justice.

UNIT – II

The Factories Act 1948, Contract labor (Regulation and Abolition) Act, 1970, the Interstate Mirgrant Workmen (Regulation of Employment and Conditions of service) Act, 1979, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

UNIT – III

The Mines Act, 1952, Dock Workers (Safety, health and Welfare) Act, 1986, Plantation Labor Act 1951,

UNIT – IV

Working Journalist (Fixation of Rates of wages) Act, 1958, Motor Transport Workers Act, 1961, Sales Promotion employee (Condition of Service) Act,1976), Beedi and Cigar Workers (Conditions of Employment) Act, 1966

UNIT – V

The Working Journalist and other Newspaper Employee (Condition of Service) and Miscellaneous Provision Act, 1955, Cine workers Cinema theatre workers (Regulation of Employment) Act, 1981

Case Law: There shall be a compulsory question on Case Law in the Paper.

Note:The Case Laws in respect of below listed circulated to the students and the same covered in the question paper setting.

CASE LAW

1. The Factories Act, 1948

1. Chintaman Rao Vs. State of Madhya Pradesh Reported in A.I.R., 1958 Sc 388.
2. J.K. Industgries Limited etc., Vs. the Chief Inspector of Factories and Boilers and Others etc., Reported in 1996 LLR 961 (SC)
3. Ardeshir H. Bhiwandiwalla Vs. State of Bombay. Reported in A.I.R. 1962 SC (29)

2. The Contract Labour (Regulations and Abolition) Act, 1970

4. Gammon India Limited Vs. Union of India 1974(11) LLJ 489 (SC) Reported in 1974 (1), LLJ 489 (SC).
5. Hindustan Steel Works Construction Limited Vs. The Commissioner of Labour and Others, Reported in 1996 LLR., 865 (SC).
6. Steel Authority of India Ltd., and Others Vs. National Union Water Front Workers and Others. Reported in 2001 – II – LLJ (SC – 1087)

Prescribed Books:

1. L.C.Kaku A study on Mine Management, Legislation & General Safety,.
2. Sharma R.C(2016) Industrial Relations and Industrial Legislation 2nd Edition Eastern Economy Edition .

3. PBN sinha, Indu Bala Sinha (2017) Industrial Relations and Trade Unions & Labor Legislations, , 3rd Edition Person Publication
4. M.C. Kuchhal, VNK Kuchhal (2018) Business Legislation & Management, 3rd editions, Vikas Publications 2018.
5. Jeremy Bentham (2020) Theory of Legilsation, , Alpha Edition
6. Lakshmi Narain Aggarwal, CBCS L.N (2020) Labor Legislation. Koli Publications,
7. Jayant K.Jaiswal (2020) OSHWCC- The Occupational safety Health, Working Conditions code,
8. Dr.O.P.Gupta (2021) Labor Legislations in India, Sanjay Publication 2021.
9. Pooja Dubey & Dr.Sweta, (2021) Business Legislation and Industrial Relations , AB Publications,
10. Padam Singh, Sudeshna Singh, Praveen kumar (2021) Labor Legsilation, Vayu Education of India .

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LESSON-1

INDUSTRIAL JURISPRUDENCE

Learning objectives

- ✓ To understand the evolution of Industrial Jurisprudence in India
- ✓ To Learn the Origin of Labor legislation
- ✓ To Study the Classification of Labour Legislations
- ✓ To Know the Principles of Labor Legislation
- ✓ To Outline and Principles and Growth Labor Legislations

Structure

- 1.1 Introduction
- 1.2 Second Industrial Revolution
 - 1.1.1 Banks And Industrial Financiers
 - 1.1.2 Communication and Banking in the Industrial Revolution
- 1.2 Evil Impact of Industrial Revolution of India
 - 1.2.1 Economic Evils
 - 1.2.2 Social evils
- 1.3 Labour Problems in India
- 1.4 Evolution of Industrial Jurisprudence in India
- 1.5 Development of Labour Laws
- 1.6 Labor Legislation
 - 1.6.1 Industrial Revolution and the need for Labour Legislations
- 1.7 Origin of Labour Legislations
- 1.8 The Classification of Labour Legislations
 - 1.8.1 The Regulative Labour Legislations
 - 1.8.2 The Protective Labour Legislations
 - 1.8.3 Wage-Related Labour Legislations
 - 1.8.4 Social Security Labour Legislations
 - 1.8.5 Welfare Labour Legislations
- 1.9 Principles of Labor Legislation
- 1.10 Growth of Labor Legislation
- 1.12 Summary
- 1.13 Key words
- 1.14 Self Assessment questions
- 1.15 Suggested Readings

1.1 Introduction

The twentieth century witnessed the development of Industrial Jurisprudence in the country. The growth of industrial jurisprudence can significantly be noticed not only from the increase in labour and industrial legislation but also from a large number of industrial law issues decided by the SC and HC. This has directly affected a large population of the country consisting of industrialists, workmen and their families. A constitution inspired by the vision of social justice is committed to the cause of up liftment of labour. Well balanced industrial development leads to increased productivity which in turn is a factor of national progress. Labour makes a significant contribution in this respect.

The study of labour law is not confined to mastering the rules and regulations relation

to the employment of the workforce. Its wings spread wider.

It has its aim on the societal impulses on, and state reactions to the complex socioeconomic, human and political problems arising out of the constant conflicts between different classes. The economic liberalization process started in the nineties had a definite impact on the labour laws in the country. In this backdrop, this course is an attempt to study the laws relating to industrial relations in the country

To cope with these problems, industrial legislations were enacted in India. To keep pace with the changing socio-economic conditions in India, the legislature as well as the courts had to check the unfavorable growth of the industrial legislations. Industrial legislation finds its origin from industrial jurisprudence, which is a development of the 20th century world. In India, industrial jurisprudence prevailed before independence, but it was in the elementary form.

Industrial revolution was the emanating factor behind the growth of the industrial jurisprudence
Industrial Revolution

The Industrial revolution brought with it the most inhuman aspect of human life. It saw the exploitation of a man by a man. The maximization of profit, even at the cost of the life of the labourers, was the paramount goal of the employer. 'Freedom of contract' was the evident result.

The employer was free to fire the employee, at his arbitrariness. Thus, the employees were always at the loss. To protect the interest of the employees, the legislature and courts in India took a giant step to give birth to the industrial jurisprudence in India through the enactments and the later through the judgements.

The scope of industrial jurisprudence not only covers the protection of interests of the employees but it also aims at securing a cordial relationship between the employers and employees in a working unit

ILO came into existence in 1919 From slave-master to earner-workers-employees Freedom of contract Labourers problem

The industrial revolution marked a period of development in the latter half of the 18th century that transformed largely rural, agrarian societies in Europe and America into industrialized, urban ones.

Goods that had once been painstakingly crafted by hand started to be produced in mass quantities by machines in factories

Fueled by the game-changing use of steam power, the Industrial Revolution began in Britain and spread to the rest of the world, including the United States, by the 1830s and 40s. Modern historians often refer to this period as the First Industrial Revolution, to set it apart from a second period of industrialization that took place from the late 19th to early 20th centuries and saw rapid advances in the steel, electric and automobile industries. 1752-19th century starting first industrial revolution period

1.2 Second Industrial Revolution

By the end of the 19th century, with the co-called Second Industrial Revolution underway, the United States would also transition from a largely agrarian society to an

increasingly urbanised one, with all the attendant problems. By the mid-19th century, industrialization was well-established throughout the western part of Europe and America's northeastern region. By the early 20th century, the US had become the world's leading industrial nation.

1.2.1 Banks And Industrial Financiers

Banks and industrial financiers rose to new prominence during the period, as well as a factory system dependent on owners and managers. A stock exchange was established in London in the 1790s.

1.2.2 Communication and Banking in the Industrial Revolution

The latter part of the industrial Revolution also saw key advances in communication methods, as people increasingly saw the need to communicate efficiently over long distances. In 1837, British inventors William Cooke and Charles Wheatstone patented the first commercial telegraph system.

Cooke and Wheatstone's system would be used for railroad signaling, as the speed of the new trains had created a need for more sophisticated means of communication.

In 1776, Scottish social philosopher Adam Smith (1723-1790), who is regarded as the founder of modern economics, published *The Wealth of Nations*.

In it, Smith promoted an economic system based on free enterprise, the private ownership of means of production, and lack of government interference.

Though many people in Britain had begun moving to the cities from rural areas before the Industrial Revolution, this process accelerated dramatically with industrialization, as the rise of large factories turned small towns into cities over the span of decades. This rapid urbanization brought significant challenges, as overcrowded cities suffered from pollution, inadequate sanitation, and a lack of clean drinking water. Meanwhile, even as industrialization increased economic output overall and improved the standard of living for the middle and upper classes, poor and working class people continued to struggle.

The mechanization of labor created by technological innovation replaced handmade working in factories, which were increasingly tedious (and sometimes dangerous), and many workers were forced to work long hours for pitifully low wages.

The word "luddite" refers to a person who is opposed to technological change.

The term is derived from a group of early 19th century English workers who attacked factories and destroyed machinery as a means of protest. They were supposedly led by a man named Ned Ludd.

Positive and Negatives of the Industrial Revolution are Complex

On one hand, unsafe working conditions were widespread and pollution from coal and gas are legacies we still struggle with today. On the other, the move to cities and inventions that made clothing, communication, and transportation more affordable and accessible to the masses changed the course of world history.

Regardless of these questions, the Industrial Revolution had a transformative economic, social, and cultural impact, and played an integral role in laying the foundation for

modern society. with it the most inhuman aspect of the human life It saw the exploitation of a man by a man The maximization of profit, even at the cost of the life of the labourers, was paramount goal of the employer. 'Freedom of contract' was evident result

The employer was free to fire the employee, at his arbitrariness. Thus the employees were always at the loss. After the IR some problems, such as working hours, wages, unemployment, accidents, employment of women and children etc, arose. Children and women were hired for less pay About two-third workers in some factories were children workers were worked from 12 to 14 hours a day under terrible conditions To keep the children awake, mill supervisors beat them They found half an hour for lunch and an hour for dinner

1.3 Evil Impact of Industrial Revolution of India

As per the economic policy of the British government, they never wanted to make India an industrial base, rather they wanted to make India a supplier of raw materials for their industries. Instead of promoting industries in India, they continued to de-industrialize and treat roughly the Indian economy. Further with the initiation of industrial revolution in England, the British government continued its efforts to further exploit the Indian economy As a result, in 1947, when the British left, India represented an insolvent economy, a sick society and the present danger of the evil effects of neocolonialism However, the evil impact of industrial revolution can be classified into social evils and economic evils.

1.3.1 Economic Evils

The artisans lost the psychological satisfaction that they derived in producing goods themselves. In the industries, they had to produce only a part of the finished goods. The labourers were underpaid. They could just earn from hand to mouth The wages were sufficient to provide them with the daily bread, but at the cost of other necessities of their life not secure The term of employment was arbitrariness The employers were free to exercise their in discharging the labourers periodic unemployment and under-employment

1.3.2 Social evils

The overcrowded cities, due to the large-scale migration of the village population in the cities led to the industrial slums and acute housing problems It had its adverse impact on the health of the workers and also led to the sanitation problems in the cities The working condition in the factories was hazardous Moreover, the long hours of duty, with no rest and no facility of recreation disfigured the welfare of the workers. The machines were taken care of by the factory owners, with the little regard for the safety of the workers. Workers were exposed to serious accidents caused by the improperly managed machines in the factory. These accidents were not taken seriously by the factory owner The victims of such accidents did not have any right to compensation. Due to the inadequate wages, the wives and children of the workers were exposed to the exploitation by the factory owners. They were employed at low wages without regard to their physical conditions

1.4 Labour Problems in India

The factory owners paid their sole attention towards the maintenance of the machines irrespective of the health and working conditions of the workers. The employers neglected the conditions of the workers as the manual labour was abundantly available to them. The workers were underpaid. They could not raise their voice. They were illiterate and poor, so were ignorant of their rights. Taking the advantage of this situation, the employers dictated

their own terms. The government also did not interfere in the matter as it was deemed to be a freedom of contract. The situation worsened further. The government could not just see it as a neutral player and it had to interfere. Moreover, some of the philanthropic agencies like the Servants of India Society and Social Service League raised their voices against the power.

1. Later some industrial social workers also raised voice against these problems
2. Initially, they lacked in the resources and bargaining power but they were successful in mobilizing the public voice against these problems
3. Later, the factory owners also realised the seriousness of the problem and also that a contented worker will add to the productivity of the factory.
4. Later, the government also, could not confine itself to a neutral spectator
5. The government also realised that it was in the interest of the national economy as well as the labourers that constitute a bulk of the population in India.
6. Thus the drive for the welfare of the labourers and for the protection of the Indian economy compelled the government to intervene in the situation

1.5 Evolution of Industrial Jurisprudence in India

The evolution of Industrial Jurisprudence in India can be traced to the period of post Independence. Before the Independence, the industrial jurisprudence existed in an elementary form. To protect the interest of the employees, the legislature and courts in India took a giant step to give birth to the industrial jurisprudence in India through the enactments and the later through the judgments. The scope of industrial jurisprudence not only covers the protection of interests of the employees but it also aims at securing a cordial relationship between the employers and employees in a working unit.

Further, a non-cooperation movement saw its birth that is also called swadeshi movement, which emphasized on the use of indigenous goods and boycott of the foreign goods. The history of labor legislation in India is interwoven with the history of British colonialism. The industrial/labor legislations enacted by the British were primarily intended to protect the interests of the British employers. Considerations of British political economy were naturally paramount in shaping some of these early laws.

1.6 Development of Labour Laws

Labor law arose due to the demands of workers for better conditions, the right to organize, and the simultaneous demands of the employers to restrict the powers of workers in many organizations and to keep labor costs low. Industrial law distinguishes itself from other branches of law

It is the body of legal enactment and judicial principles which deals with employment and non-employment, wages, working conditions, industrial relations, social securities and labour welfare of employees.

It is in effect a state intervention to put restrictions on employers on one hand and workmen on the other hand to prevent exploitation to attain industrial peace. Industrial legislation aims at protecting the workers from exploitation and strengthen the values of industrial relations

The main concept of industrial legislation is to fasten together both labour and capital in order to create an atmosphere in which they are indivisible whole in the production. Peaceful industrial atmosphere is the objective of all the legislations through which the

interest of the employer and the employees are protected

The legislation provides an effective tool to settle industrial disputes and tries to provide a safe and healthy industrial atmosphere. It also aims at extending more and more welfare activities and providing social securities.

The ultimate aim is to obtain proper growth of industries. With the development of industries two distinct class, size workman and employed are emerging

The self employed independent person is the thing of the part So labour is sold and purchased on a massive scale. This is required because they have to purchase commodities for their livelihood from the sale of their labour. Everyone has to live in the new industrial culture.

Almost every nation including India is not free from the evils of industrialization like poverty, low standard of living drinking, gambling, immoral traffic, growing slums, etc The workers are exposed to industrial accidents and industrial sickness. It is also a great concern for the society as a whole, and government in particular, the workers have to adjust with this industrial atmosphere and industrial discipline along with the new surroundings.

The rule and regulations bring about certain amount of compulsion for the curtailment of the freedom they were enjoying as free citizens

The ordinary civil laws cannot deal with the problems of industrial workers. Therefore, there is a need for separate industrial legislation to regulate the matters connected with the industry. Ist is to achieve certain specific objectives relating to industrial activities.

The large industries have several types of machines and workers are exposed to risk of accidents. It is necessary to protect their interest at the time of distress with suitable legislations

It has been widely accepted that labour legislation should be based on social justice and humanitarian aspects. The legislation cannot ignore the local problems and conditions.

ILO has laid down certain principles to be adopted in industrial and labour legislations social justice, social welfare, national economy and international standard are the guiding principles of labour legislations.

World today has democratic set up in almost all the countries. People expect that ¹⁰ it is the duty of government to protect the weak from exploitation by strong and powerful The industrial worker being economically weak, will be exploited by the powerful employers if protection is not provided to them.

State is the supreme authority for law making protection of people through suitable legislations should be the objective of all progressive governments. So the state should encourage the industrial workers and employers to settle their problems with mutual consultation and equal partners in production

In industrial conflicts the introduction of collective bargaining, mediation, arbitration, adjudication etc. are the outcome of the thinking of the modern governments to maintain industrial peace by mutual consultation

The government by various legislations has provided support to both workers and employers in their efforts to maintain industrial peace and dignity of labour

The right of social security, and other measures that can improve the status of the workers reflects in several labour legislations

It was always a concern for all those who were interested in labour matters about the plights of unorganized workers, children and women

The wanted to prevent exploitation of these worker by introducing protective legislations to control and fix minimum wages and working conditions

The principle of labour legislation is always based on the past and present circumstances and the requirement of the society

This standard fixed by legislations will change only after passing future legislation on the same subject. Labour laws have to be implemented in it true spirit and discretion cannot be exercised by the law administrators

When it is necessary to adopt flexible laws the power to change such laws are always vested with the government. In doing so, the Act itself gives power to the government to change the provisions in accordance with future requirements

1.7 Labor Legislation

Law comes into existence to cater to the growing needs of society, which may be caused by technological, economic, political, social changes. Law is a dynamic concept. Law is like a citadel which requires regular repairs, revamping and replacement. "Life and Laws have moved together in history and it must do in future". It is in this perspective that the Labour Legislations have to be studied

1.7.1 Industrial Revolution and the need for Labor Legislations

Society evolves institutions to abhor vacuum created by changes. Industrial Revolution is a 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 terms of contract were usually verbal and mostly used in cases of breaches, leading to prosecution and imprisonment of workers. Labor 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 civilized 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 labor 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.

1.8 Origin Of Labour Legislations

The origin of labor legislation is the history of continuous and relentless struggle for emancipation of working class from clutches of aggressive capitalism. The struggle was between two unequal's. The contract between capital and labor 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.

1.9 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

1.9.1 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 organizations of employers and workers as well as their mutual relationships.

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

1.9.2 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 :

1. Factories Act,1948
2. The Mines Act,1952
3. The Plantations Labour Act,1951
4. The Motor Transport Workers Act,1961
5. The Shops and Establishments Acts
6. Beedi and Cigar Workers Act 1966

1.9.3 Wage-Related Labour Legislations

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

1. The Payment of Wages Act,1936
2. The Minimum Wages Act, 1948
3. The Payment of Bonus Act, 1965
4. The Equal Remuneration Act, 1976

1.9.4 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.

1. The Workmen's Compensation Act, 1923
2. The Employees' State Insurance Act, 1948
3. The Coal Mines PF Act, 1948.
4. The Employees PF and Miscellaneous Provisions Act, 1952
5. The Maternity Benefit Act, 1961
6. 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 it provides for payment or lay-off, retrenchment and closure compensation.

1.9.5 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 labor-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.

1. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.
2. The Mica Mines Welfare Fund Act, 1946
3. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
4. Welfare Fund Act, 1976
5. The Cine Workers Welfare Fund Act, 1981.
6. In addition, some state governments have also enacted legislations for welfare funds.
7. Beedi Workers Welfare Fund Act, 1976

1.10 Principles of Labor Legislation

1. An harmonious environment Cooperation between the worker and the employers Rational remuneration and Appropriate working conditioning
2. From the modest to the welfare state, the socio-economic conditions have faced drastic changes, not only in India but also across the world
3. The principal concern of the pre-independence industrial jurisprudence was the inadequacy of the working condition of the workers at the factories
4. There was hardly any deal with social justice to the working class. It was only after the commencement of our constitution, that the adequate provisions for social justice to the workers were inserted. Before independence, India was not only a great agricultural country, but also a manufacturing country.
5. But the British government, as a matter of their policies always intended to discourage the Indian industries
6. This led to a widespread nationalism in India which laid emphasis on the boycott of the foreign goods.

1.11 Growth of Labor Legislation

Labor 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 labor 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 labor legislation. To make the point clear, a few example 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. Orr 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 expectation of industrial so the institution of labour legislation.

1.12 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 is a developing concept and require ceaseless efforts to achieve them on continuous basis.

1.13 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 hub. Labour legislations have now acquired the status of a separate branch of jurisprudence because of its special features and changing juristic ideas. Therefore, an idea about its concept, origin, development, objectives and classification etc. will be of immense help to comprehend its principles.

1.14 Key words

Labor laws- Labour law arose due to the demands of workers for better conditions, the right to organize, and the simultaneous demands of the employers to restrict the powers of workers in many organisations and to keep labour costs low Industrial law distinguishes itself from other branches of law.

Labor Legislation- Law comes into existence to cater to the growing needs of society, which may be caused by technological, economic, political, social changes. Law is a dynamic concept. Law is like a citadel which requires regular repairs, revamping and replacement. "Life and Laws have moved together in history and it must do in future".

The Regulative Labor 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.

The Protective Labor Legislations- Under this category come those legislations whose primary purpose is to protect labor standards and improve the working conditions. Laws laying down the minimum labor 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

Welfare Labor 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 labor-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

1.15 Self Assessment Questions

1. Briefly discuss the Evolution of Industrial Jurisprudence in India ?
2. Examine the Origin of Labor Legislation in India?
3. Describe the Classification of Labor Legislation in India?
4. Explain the Principles and Growth of Labor Legislations in India?

1.16 Suggested Readings

1. Labor Laws (2011) I.A Saiyed Himalaya Publishing House
2. Taxmann(2020) Labour Laws with Code on Wages Book Taxman's Publications
3. Dr. O. P. Gupta, Dr. Vijay Gupta (2021) Labour Legislation In India: Revised Edition SBPD Publishing House, Agra.
4. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers
5. Commercial Labour Laws Edition 2022 Commercial Law Publishers House.
6. Srivastava S.C(2022) Industrial Relations and Labour Laws Sixth Edition Vikas Publishing House Pvt Ltd
7. Padhi P.K (2021) Labour and Industrial Laws Forth Edition PHI Learning
8. V.K. Kharbanda (2022) LPH's Labour Law Digest Edition Law Publishing House
9. Commercial's New Labour & Industrial Code along with Draft Rules 3rd Edition 2022
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LESSON -2

INDIAN CONSTITUTION AND LABOR LEGISLATION

Learning Objectives

- ✓ To Study the Fundamental Rights and Labour Legislations
- ✓ To Know the Directive Principles and State Policy and Labour Legislations
- ✓ To focus on the Judicial Wisdom Of The Courts And Labour Legislations
- ✓ To elaborate the Judicial activism or Judicial Intervention

Structure

- 2.1 Introduction
- 2.2 Fundamental Rights and Labour Legislations
- 2.3 Directive Principles and State Policy and Labor Legislations
- 2.4 Judicial Wisdom Of The Courts And Labour Legislations
- 2.5 Judicial Activism
- 2.6 Judicial activism or Judicial Intervention
- 2.7 Summary
- 2.8 Key words
- 2.9 Self assessment questions
- 2.10 Suggested Readings

2.1 Introduction

To be called civilized, a society has to concede to its working class ⁴ the right to live with dignity and security as human beings. This thinking finds expression in the Universal Declaration of Human Rights, the preambles of League of Nations and United Nations, Organisation. The aspiration of the working class finds expressions, at national level, in the Constitution of the nation.

After India became independent, it adopted a Constitution on the 26 Apr 1949. Indian Constitution is a unique basic national document. Besides providing basic principles for governance, it presents the aspirations of the Weaker Section of Society, specially the working classes. It is also a strange phenomenon of history that national freedom struggle and struggle of working class emancipation coincided and our leaders fought for both- the betterment of worker's lots and India's freedom. During this period, they made some promises and pledges to the working classes, which were to be redeemed after independence. The redemption of all those promises and pledges get expression in our Constitution.

Constitution is the supreme law of a nation and all legislations draw their inspiration from it. Constitution is a document of social revolution casting an obligation on every instrumentality including the judiciary to transform the status quo ante into a new human order in which justice, social, economic and political will inform all institutions of national life and there should be equality of status and opportunity to all. The trinity of Indian Constitution, the Preamble, the Fundamental Rights and the Directive Principles of State Policy, embody the fundamental principles, which provide guide to all legislations, including the labour legislations. This constitutional trinity assures its citizens to provide "Socialistic

Pattern of Society" and create "Welfare State" and all legislations, specially the Labour legislations, are deeply influenced by them.

The importance and utility of the Preamble has been pointed out in several decisions of our Supreme Court. Though, by itself, it is not enforceable by the court of law, the preamble states the objectives which the Constitution seeks to establish and promote.

The Preamble to our Constitution serves two purposes.

- (1). It indicates the source from which it derives its authority
- (2). It starts the objectives which it seeks to establish and promote.

The preamble seeks to secure to all its citizens:

1. Justice, Social, Economic and Political
2. Liberty of thought, expression, belief, faith and worship
3. Equality of status and of opportunity

Fraternity, assuring the dignity of the individual and unity and integrity of nation These principles enshrined in Preamble of our constitution provide the bedrock for framing all labour and social. legislation and their progressive and creative interpretation in favour of working classes. These principles run through our labour legislations like invisible golden threads and provide them strength and stamina to meet the aspirations of working classes; whether it is protective legislations, social security legislations, welfare legislations or even industrial relations legislations, they all heavily lean towards working classes due to the philosophy provided in the preamble.

2.2 Fundamental Rights and Labour Legislations

Part III (Article 14 to 35) deal with Fundamental Rights. They can be grouped together under as

- (1). The Right to Equality (Article 14 to 18)
- (2). The Right to Freedom (Article 19 to 22)
- (3). The Right against Exploitation (Article 23 to 24)
- (4). The Right to Freedom of Religion (Article 25 to 30)
- (5). Cultural and Educational Rights (Articles 29-30)
- (6). The Right to Constitutional Remedies (Articles 32 to 35)

Since the Fundamental Rights have been guaranteed to protect the public from repressive state actions, judicial decisions tend to expand the scope of word 'State' as defined by Article 12 of the Constitution. A liberal interpretation is made of the words "other authorities" so as to include any instrumentality or agency of the Government whether an individual or a corporation like Life Insurance Corporation (See Prakash Rakhi vs. Union of India-SC 1981) or society like the Indian Statistical Institute registered under the Societies Registration Act, 1960, or a company like Steel Authority of India. All have to fulfil the tests laid down by the court in their dealings with their employees (Ajay Hasia vs. Kahlid Mujid-SC 1981).

Fundamental Rights are subject to reasonable restrictions. Therefore, Article 14, dealing with the right to equality and equal protection of law is subject to reasonable classification as absolute equality is impossibility. In Charanjit Lal Choudhary vs. Union of India-SC 1951, it is observed "The guarantee... forbids class legislation but does not forbid classification which rests upon reasonable grounds of distinction". Classification can be on

the basis of age, sex (provisions under Factories Act, 1948, Sections 26, 27 etc. for children and women), nature of trade profession or occupation framing rules for recruitment or promotions of public servants to secure efficiency (Gangaram vs. Union of India-SC. 1970), fixing of different minimum wages for different industries (Chandra Boarding vs. State of Mysore-SC. 1970). To be valid, the classification must be operational and not arbitrary. In the case, *Bharatiya Dak Tar Mazdoor Munch vs. Union of India, SC 1987*, it was held that Classification of employees of P&T deptt. into regular employees and casual employees for the purpose of paying the latter less than minimum payable to regular employees is not tenable and violative of Article 14 and 16 of Constitution. It also amounts to exploitation of labour and is opposed to clause (2) of Article 38 which provides that the State in particular strive, to "minimise inequality in income".

Article 16 (1) and (2) of the Constitution guarantees equality of opportunity to all the citizens in matter of appointment to any office or any other employment under the State. Clauses (3), (4) & (5) lay down, by way exceptions, reasonable classification and provisions for backwards and for religious institutions.

Article 19 in its various sub clauses provide Article 19 in its various sub clauses provides, inter alia, freedom of association; freedom to carry on trade or business and freedom of speech, which are relevant to labour legislation.

Article 21 proclaims that "no person shall be deprived of his life or personal liberty except according to procedures established by law". With passage of time, and compelling social needs, however, the courts have given a very liberal and wide interpretation of the term "life" or "Personal Liberty". In *Bandhua Mukti Morcha vs. union of India-SC 1984*, it was held that Article 21 assures a citizen the right to live with human dignity free from exploitation. The Govt. is bound to ensure observance of social welfare and labour laws enacted to secure for workmen a life compatible with human dignity. Again in *Ogla Tellis 12-Dec-06 vs. Bombay Municipal Corporations - S.C. 1985*, this was affirmed.

Article 23 and 24 guarantee the right against exploitation. Clause(1) of Article 23, prohibits traffic in human beings; and any form of forced labour and makes them punishable offence. In *People's Union for Democratic Rights vs. Union of India Sc. 1983*, it was held that labour or services for a remuneration less than a minimum wages amounts to "forced labour". In this case, a letter written to Justice Bhagwati regarding the working conditions of construction workers engaged in building structures connected with Asian Games was entertained as Writ Petition, setting aside the technicalities of locus - standi and other procedures. The court held that when judicial redressal is sought for legal injury suffered by a person or persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the court and the attention of the court is drawn to such legal injury by a member of public, even by a letter, the same will be entertained by the court as a writ petition to bring justice within the reach of the poor masses.

In *Bandhua Mukti Morcha vs. Union of India (SC 1984) S.C.* held that Government was bound to ensure observance of social welfare and labour laws enacted to secure to workmen a life of basic human dignity. So also, *Neerja Choudhary vs. State of MP SC - 1984*, held that wherever it is found that any workman is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labour, unless the employer or the state government proves otherwise. Similarly, the Court said that the plainest requirement of Article 21 and 23 is that bonded labour not only be identified and

redressed but also suitably rehabilitated.

⁸ Article 24 of the Constitution prohibits the employment of children below the age of 14 years in factories, mines or any other hazardous work. The idea is to protect the health and well being of children. However, the article does not prohibit the employment of children in easy and less strenuous work.

Articles 32 to 35 guarantee the right to constitutional remedies, as ³ right without a remedy is a meaningless formality. It is the remedy which makes the right real. In view of this, the S.C. has evolved the innovative strategy by encouraging Public Interest Litigation aimed at providing easy access to justice to the poor and weaker sections of Indian Society (generally labourers) and giving a powerful tool to public spirited individuals and social action groups to combat exploitation and injustice. In the cases like People's Union for Democratic Rights, Bandhua Mukti Morcha etc., the S.C. departed from traditional principles of locus standi to entertain even the letter by a member of public as writ petition to give relief to poor and illiterate workmen.

2.3 Directive Principles and State Policy and Labour Legislations

Articles 36 to 51 form Part IV of the Constitution and they deal with the goal of economic democracy through socio-political content of political freedom and the concept of Welfare State. Though earlier decisions of the Supreme Court paid scant attention to the Directives on the ground that they are not enforceable in law courts, later decisions, specially from Keshavanand Bharati case, onwards, the following propositions have come before the courts for consideration.

- (1). There is no disharmony between Directive Principles and Fundamental Rights. They supplement each other.
- (2). Even Fundamental Rights can not be ensured unless Directive Principles are implemented.
- (3). Parliament is competent to amend or abrogate any Fundamental Right to enable state to implement Directives.

In *Minerva Mills vs. Union of India*, it was held that Directive Principles and Fundamental Rights should be harmonised without considering Directives as inferior and subservient to Fundamental Rights. Similarly a law which is inconsistent with Directives should be regarded as unreasonable while any action taken to give effect to any of the Directives should be regarded as reasonable (*Kasturi vs. State of J. & K.* - S.C. 1992). Against this backdrop, some of the Directives which are the backbone of labour jurisprudence, may be examined.

⁴ Article 38 – (a) directs the state to promote welfare of the people by securing and protecting a social order in which justice social, economic and political, shall inform all the institutions of national life.

(b) directs that State shall, in particular, strive to minimise inequality in income and endeavour to eliminate inequality in status, facilities and opportunities amongst individuals as well as groups of people in different areas and vocations.

Articles 39 - declares that the state shall, in particular, direct its policy towards securing that citizens, men and women equally, have the right to an adequate means of livelihood. that the ownership and the control of the material resources of the community are

so distributed as to best subserve the common good. that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment. that there is equal pay for equal work for both men and women. the health and strength of the workers, men and women and the tender age of the children not abused and that the citizens are not forced by economic necessity to enter the avocations unsuited to their health and strength. the children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and are protected against exploitation against moral and material abandonment.

⁷ Article 41 - directs that the State shall within the limit of its economic capacity and development make effective provision for securing right to work, to education, and to public assistance in case of unemployment old age, sickness and disablement and in other cases of undeserved want.

Article 42 - directs the state to make provision for securing just and humane conditions of work and for maternity relief.

Article 43 - directs that the state shall endeavour to secure, by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or other living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

Certainly these Articles envisage labour legislation as reasonable restrictions upon certain fundamental rights, especially freedom of business. Thus an employer must pay minimum bonus even during a year of loss. - (Jalan Trading vs. Aney SC 1979).

⁷ Article 43A - inserted in Constitution (42nd Amendment) directs that the state shall take steps, by suitable legislations, or in any other way, to secure the participation of workers in management of undertakings, establishments or other organizations engaged in any industry. This would mean that workers would no longer be hired labourers, but partners, (Hindustan Tin Works vs. Employers - SC 1979, Gujarat Steel Tubes vs. Mazdoor Sabha - SC 1980) interested in the success of the enterprise and would have share in the profits.

All these are fine. But while inserting Article 51A - Fundamental Duties, no mention was made of their duty nor even moral obligation to refrain from slowing down, striking etc. without observing legal formalities.

2.4 Judicial Wisdom Of The Courts And Labour Legislations

It is interesting to note the judicial wisdom displayed by Indian Courts in making a harmonious construction of Fundamental Rights and Directive Principles is simply unique. This has helped the courts to uphold legislation aimed at social justice on the ground that such a legislation was in line with Directive Principles which are reasonable restrictions on certain fundamental rights. Thus such legislation would be in public interest. In this matter of relative importance of the Fundamental Rights and

Directive Principles there has been one important controversy between legislature and judiciary. This was in regard to property as fundamental right which appeared to clash with social justice as prescribed in Directive Principles. The controversy finally got resolved in the Constitutional amendment-(44th) which deleted ownership of property from Fundamental Rights and made it a legal right.

A number of leading cases covering various aspects of labour laws ranging from the validity of minimum wages to public interest litigation, clearly show that the courts always considered the economic uplift of workers as something vital for the progress of the country. The Courts have been firm in ensuring that there is no violation of labour laws enacted for the benefits of the working classes. While deciding cases involving industrial disputes, the courts have always had in mind the Constitutional directives and have treated them as reasonable restrictions on Fundamental Rights. In fact, the concept of reasonable restrictions runs like a golden thread through the entire fabric of Constitution and amply reflected in labour legislations. Labour jurisprudence related to adjudication proceedings has been put on firm footing in the last five decades. Since the welfare of the workers is the primary concern of especially Part IV of the Constitution, industrial adjudication has always kept the needs of social justice in mind. Every department of labour jurisprudence has thus been inspired and guided by the provisions of the Constitution of India, especially those contained in Part IV.

The right to just and humane conditions of work also contain provisions for medical care and the safety of the workers together with other essential physical well-being, even leisure. In many pronouncements, (Manohar Lal vs. State of Punjab – SC 1961 and many others) the courts recognise the right to appropriate leisure time through well regulated and limited hours of work, rest intervals during working hours, weekly holidays, earned leave and other leaves with wages.

To ensure and to regulate all these rights, proper labour legislations are required. It should be noted that the norms and the standards prescribed in the various enactments are the minimum. It is open to the employers and the workers to negotiate or the industrial courts to adjudicate improvements, wherever required. Whether it is bonded labour, child labour, sweated labour, contract labour or sexual harassment of female employees, courts have intervened going out of way and directed the executive and legislature to make suitable arrangements for their safety, security and welfare. In Air India Case SC 1997, Courts have gone beyond legislation and recommended the absorption of contract labour with the permanent establishment. In Vishakha vs. State of Rajasthan SC 1997 has recommended steps for prevention of sexual harassment to working women and directed establishments to follow certain ground rules.

In Indian conditions, unless the right to job-security is given to the workers, the right to just and humane conditions of work would prove futile, as an unscrupulous employer may force workers to abandon certain of their rights for fear of losing their jobs. Indian laws make it impossible for an employer to terminate the service of a workman whenever he so pleases. An employer can no longer wrongfully dismiss a workman and pay only monetary compensation without the liability of reinstatement. To-day, judicial proceedings can compel the employer to reinstate a workman, even if an employer does not wish to do that. Through various judgements, (for example Bharat Bank Ltd. Delhi vs. their employees - SC - 1950) the court made the significant statement that the industrial tribunal "has not merely to interpret or give effect to the contractual rights and obligations by the parties" but can create new rights and obligations between them that are necessary for maintaining industrial peace.

2.5 Judicial Activism

Judicial activism happens when the courts have power to review the State action. Article 13 read with Articles 32 and 226 of the Indian Constitution gives the power of judicial review to the higher judiciary to declare, any legislative, executive or administrative action, void if it is in contravention with the Constitution. The power of judicial review is a basic structure of the Indian Constitution.

Article 32 of the Indian Constitution gives right to every individual to move directly to the Supreme Court of India for the enforcement of his or her fundamental right. Article 32 confers power on the Supreme Court to issue any order or writ for the enforcement of any of the fundamental rights. The Supreme Court in *Fertilizer Corporation Kamgar Union v. Union Of India* held that the power of the Supreme Court under Article 32 is an integral part of the basic structure of the Indian Constitution "because it is meaningless to confer fundamental rights without providing an effective remedy for their enforcement, if and when they are violated." It cannot be suspended even during emergency. An appropriate writ/order under Article 32 for the enforcement of Articles 17, 23 and 24 can be passed against a private individual also.

Increasingly, the Supreme Court has interpreted Article 32 in a very liberal manner in many cases in order to enforce fundamental rights even against the private entities performing public functions.

Article 226 of the Indian Constitution gives power to the High Courts to issue any appropriate order or writ for the enforcement of fundamental right and other legal rights. In this context, the jurisdiction of High Court under Article 226 seems wider than the jurisdiction of Supreme Court under Article 32. Both Articles 32 and 226 are basic structure of the Indian Constitution. Article 227 further gives power of supervisory control to the High Court over the subordinate courts, special courts and tribunals.

Furthermore, the Supreme Court has power to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed by any court or tribunal under Article 136 of the Indian Constitution confers special power on. The Supreme Court exercises its special power in those cases where gross injustice happens or substantial question of law is involved.

Power under Article 136 is discretionary one and can be exercised to decide the case on justice, equity and good conscience. However it should be used with proper care and caution. In *Pritam Singh v. The State*, the Supreme Court said that wide discretionary power under Article 136 should be exercised sparingly and in exceptional cases only. In *Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar*, the Supreme Court said that Article 136 does not confer a right of appeal on a party but vests a vast discretion in the Supreme Court meant to be exercised on the considerations of justice, call of duty and eradicating injustice.

Again, curative petition has been invented by the higher judiciary in order to prevent abuse of process or to cure gross miscarriage of justice. It is also maintainable in case of violation of the principles of natural justice. The apex court in *Rupa Hura* judgment in 2002 said that the Bench considering curative petitions should have the three top judges of the Supreme Court. One of the most important constitutional provisions giving extraordinary power to the Supreme Court is

Article 142 of the Indian Constitution. This provision empowers the Supreme Court to pass suitable decree or order for doing complete justice in any pending matter before it. Despite the fact that the law-making power in India lies primarily with the Parliament only, the Supreme Court is able to legislate under Article 142 of the Indian Constitution. This provision is responsible for the judicial legislation in India. However, the judicial legislation is being done only when there is vacuum in law on the concerned subject matter. The

directions or rules issued by the Supreme Court under Article 142 would remain into force until the Parliament makes proper legislation on the subject matter. It means that the court understands the fact that appropriate law-making body is the Parliament only. For Parliament has more resources the Supreme Court to pass suitable legislation on the subject-matter

³ In *Vishaka v. State of Rajasthan*, the Supreme Court held that in the “absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by this Court under Article 141 of the Constitution

Considering the importance of Article 32 read with Article 142, it becomes necessary for the judiciary that it should perform its constitutional obligation where there is no legislation on the certain field and implement the rule of law.¹⁰ Again, the Supreme Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan*, acknowledged the importance of Article 142 of the Indian Constitution and said that the court has power under Article 142 to issue directions and guidelines for implementing and protecting the fundamental rights in the absence of any enactment. The court reiterated that any such direction, filling up the vacuum of legislation, is the law of the land. However, the Parliament has power to replace such directions e.g. the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 replaced the Vishakha Guidelines for prevention of sexual harassment issued by the Hon’ble Supreme Court of India in the year of 1997.

Judicial activism and shift from locus standi to public interest litigation Access to justice is a fundamental aspect of rule of law. If the justice is not accessible to all, establishment of the rule of law is not possible. The individuals fail to reach justice system due to various reasons including lack of basic necessities, illiteracy, poverty, discrimination, privacy, poor infrastructure of the justice system, etc.

The Supreme Court of India has recognised in many landmark judgments that access to justice is a fundamental right. Indian Judiciary has played an active role in ensuring access to justice for the indigent persons, members belonging to socially and educationally backward classes, victims of human trafficking or victims of beggar, transgender, etc. Since Independence, the Courts in India have been adopting innovative ways for redressing the grievances of the disadvantaged persons. In many cases, the Supreme Court exercised its epistolary jurisdiction¹³ and took Suo motto actions on mere postal letters disclosing the human rights violations in society. Human rights violations, which published in the newspapers, were taken into judicial consideration. The court entertains the petitions which are being filed by the public spirited persons in the public interest. By doing so, the superior courts have liberated themselves from the shackles of the principle of locus standi and given the birth to the Public interest litigation in India.

The shift from locus standi to public interest litigation made the judicial process “more participatory and democratic.” S.P. Sathie says: “The traditional paradigm of judicial process meant for private law adjudication had to be replaced by a new paradigm that was polycentric and even legislative. While under the traditional paradigm, a judicial decision was

binding on the parties (*res judicata*) and was binding in *persona*, the judicial decision under public interest litigation bound not only the parties to the litigation but all those similarly situated." The Supreme Court in *People's Union for Democratic Rights v. Union of India*¹⁶ held that public interest litigation is different from the traditional adversarial justice system. The court said that public interest litigation is intended to promote public interest. Public interest litigation has been invented to bring justice to poor and socially or economically disadvantaged sections of the society. The violations of constitutional or legal rights of such large number of persons should not go unnoticed. In *Fertilizer Corporation Kamgar Union v. Union of India*, the court held that public interest litigation is part of the participative justice.

Furthermore, the Supreme Court in *Bandhua Mukti Morcha v. Union of India* has justified the public interest litigation on the basis of "vast areas in our population of illiteracy and poverty, of social and economic backwardness, and of an insufficient awareness and appreciation of individual and collective rights". The Supreme Court of India in *Sheela Barse v. Union of India* said: "The compulsions for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher-in an egalitarian social-order and a welfare-State". While passing any order under public interest litigation, the intention of the court is to enforce constitution and rule of law in the society.

One of the landmark cases relating to the public interest litigation was *Hussainara Khatoon (I) v. State of Bihar*. A series of articles exposing the plight of under trial prisoners in the State of Bihar was published in a prominent newspaper. Many of the under trial prisoners had already served the maximum sentence without even being charged for the offence. A writ petition drawing the Court's attention to the issue was filed by an advocate. While accepting it as public interest involved, the Supreme Court held that right to speedy trial is a fundamental right under Article 21 of the Indian Constitution. The court directed the State to provide free legal facilities to the under trials so that they could get bail or final release.

In another case of *Sheela Barse v. State of Maharashtra*, a letter alleging custodial violence of women prisoners in jail was addressed to the Supreme Court. The letter was written by a journalist who had interviewed some women prisoners in jail. Treating the letter as a writ petition, the Supreme Court took cognizance and issued directions to the concerned authority. Similarly, epistolary jurisdiction was exercised by the Supreme Court in *Sunil Batra v. Delhi Administration* when a prisoner's letter was treated as writ petition. The prisoner alleged in the letter that Head Warden brutally assaulted another prisoner. The Court said that the technicalities cannot stop the court from protecting the civil liberties of the individuals. In *Municipal Council, Ratlam v. Vardichand*, the Court admitted the writ petition filed by a group of citizens who sought directions against the local Municipal Council for removal of open drains.

The Court said that if the "centre of gravity of justice is to shift as indeed the Preamble to the Constitution mandates, from the traditional individualism of *locus standi* to the community orientation of public interest litigation, the court must consider the issues as there is need to focus on the ordinary men."

Similarly, a petition seeking court's directions for protecting the lives of the people who made use of the water flowing in the river Ganga, was accepted as public interest

litigation by the Supreme Court of India in the case of *M.C Mehta v. Union of India*. In this case, the court directed the local bodies to take effective measures to prevent pollution of the water in the river Ganga.

In *Parmanand Katara v. Union of India*, a writ petition seeking court's directions, in order to provide immediate medical treatment to the persons injured in road or other accidents without going through the technicalities of the criminal procedure, was filed by an advocate. The Supreme Court accepted the application of the advocate and directed the medical establishments accordingly. Another good example of public interest litigation is *S.P. Gupta v. Union of India*.

In this case, the court recognized the locus standi of bar associations to file writs by way of public interest litigation. It was said that questioning the executive's policy of arbitrarily transferring High Court judges is in the public interest. Explaining the significance of public interest litigation, the court observed that: "It must now be regarded as well-settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go un-redressed and justice is done to him."

However, the public interest litigation should not be abused by anyone. It cannot be allowed to be used for creating nuisance or for obstructing administration of justice.

Judicial activism and fundamental rights jurisprudence In India, the judiciary has developed the fundamental rights jurisprudence while giving the liberal interpretation to the 'right to life and personal liberty'. In its landmark judgments, the Supreme Court recognized prisoners' rights including access to court and legal facilities, right to meet his or her family relatives and friends, freedom of speech and expression, right to compensation,³⁴ mental privacy, etc.

The judiciary in India is again responsible for the fundamental right to live in healthy environment, implementing Precautionary and Polluter Principles as basic features of the sustainable development, the application of doctrine of public trust for the protection and preservation of natural resources, etc.

The Supreme Court recognized the fundamental right to education to children. In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court held that right to education is implicit in and flows from the right to life guaranteed under Article 21. The Hon'ble Supreme Court of India in *Mohini Jain v. State of Karnataka*⁴⁰ said that the cumulative effect of Articles 21, 38, Articles 39 (a) and (b), 41 and 45 bind the State to provide education to all of its citizens.⁴¹ The Supreme Court declared that the right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.

Finally, the Court announced that the State Government is under an obligation to make endeavor to provide educational facilities at all levels to its citizens. The Constitutional validity of right to education was again discussed by the Supreme Court in *J.P. Unnikrishnan v. State of A.P.* The Supreme Court held that the right to education under Article 21 must be

read with the directive principles in Part IV of the Indian Constitution. The Court said that right to education means: “

- (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and
- (b) after a child/citizen completes the age of 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its developments.”

By the Constitution (Eighty-sixth Amendment) Act of 2002, three new provisions i.e., Article 21A, new Article 45 and 51-A(k) were inserted into the Indian Constitution. Currently, Right of Children to Free and Compulsory Education Act, 2009 enforces fundamental right to education in India.

Due to judicial intervention only, the government was directed to rehabilitate the children of prostitutes.⁴⁵ It was ordered that the children of prostitutes should not be allowed to live with their mothers in the undesirable surroundings of prostitute homes. They require accommodation and rehabilitation in reformatory homes. Increasingly, the Supreme Court of India in Vishal Jeet v. Union of India, again issued directions to the government to rehabilitate such children. In Bachpan Bachao Andolan v. Union of India, the Supreme Court directed the government to prohibit the employment of children in circuses in order to implement the fundamental right to education. The government was ordered to raid in these circuses to free children. The court directed the government to provide shelter and rehabilitation to all rescued children at care and protective homes until they attain the age of 18 years.

2.6 Judicial activism or Judicial Intervention

At many places, the Parliament has accused the judiciary on the ground of judicial intervention. Parliament has said that the judiciary overreaches its constitutional power.

In Prakash Singh v. Union of India,⁴⁸ the petitioners sought directions against the Union of India and State Governments to constitute various Commissions and Boards laying down the policies and ensuring that police perform their duties and functions free from any pressure and also for separation of investigation work from that of law and order.

Similarly, in Vineet Narain v. Union of India, the Supreme Court invoked Articles 32 and 142 of the Indian Constitution and issued directions to the government in order to bring transparency and accountability in the Central Bureau of Investigation (CBI). On May 11, 2016, the Hon'ble Supreme Court of India in Swaraj Abhiyan-(I) v. Union of India & Ors., directed the Ministry of Agriculture in the Union of India to update and revise the Drought Management Manual. The apex court also directed the Union government to set up a National Disaster Mitigation Fund within three months.

Nevertheless, Finance Minister, Arun Jaitley expressed the difficulty to create a third fund outside the National Disaster Response Fund and the State Disaster Response Fund, keeping in view that the Appropriation Bill is being passed. He also raised concern about India's budget-making being subject to judicial review.

Recently, on 16 October 2015 the Constitution Bench of Supreme Court in Supreme Court Advocates-on-Record-Association v. Union of India, in a majority of 4:1 declared the National Judicial Appointments Commission (NJAC) Act and the Constitutional Amendment

unconstitutional as violating judicial independence.

The Court said that the existing collegium system relating to appointment and transfer of judges would again become "operative." Justice Khehar said that the absolute independence of judiciary, from other organs of governance, protects the rights of the people.

The Supreme Court's rulings on National Eligibility-cum-Entrance Test (NEET) i.e., single test for admissions in medical courses, reformation in Board for the Control of Cricket in India (BCCI), filling up the judges' post, etc. have been considered as the judicial intervention by the government.

There is no dispute on the fact that the judiciary should also self regulate itself. It should also put some restraints on its powers, whenever it is required. The Supreme Court in Divisional Manager, Aravali Golf Course v. Chander Has observed that: "Judges must know their limits and must not try to run the Government.

They must have modesty and humility, and not behave like Emperors. There is broad separation of powers under the Constitution and each organ of the State-the legislature, the executive and the judiciary- must have respect for the others and must not encroach into each other's domains."

However, it is submitted that NJAC decision should not be read as if the judiciary has crossed its Laxmanrekha. The Supreme Court is also welcoming the full-fledged debate on the existing collegiums system and wants it to be updated. Indian Constitution has given the special status to the Supreme Court and High Courts. Indian higher judiciary has power to review any legislative, executive and administrative action of the State. The Higher Courts in India entertain the petitions which are being filed by the public spirited persons in the public interest. Again, one should not forget that it is all because of the judicial activism that the indigent persons, members belonging to socially and educationally backward classes, victims of human trafficking or victims of beggar, transgender, etc. have somehow been provided with the adequate legal assistance in the process of the enforcement of their fundamental rights. Furthermore, Article 142 of the Indian Constitution gives the Supreme Court a power to pass suitable decree or order for doing complete justice in any pending matter

2.7 Summary

It is noteworthy that to safeguard their basic rights workers' all over the world had to struggle continuously and thus bring about a new turn to judicial thinking. Today, the rights of labour are set forth in the positive laws of almost every nation, yet much is still to be done so that in practice, all workers can enjoy the fruits of their labour and live a decent and dignified life in civilised Society. As we have seen, the Constitution of India has gone out of way to protect rights and privileges of workers, ensuring a decent and dignified life. But a lot is required to be done for the workers of unorganised sector - bonded labour, child labour, female labour, labourers of sweated industry and agricultural labour. The Constitution has the inherent potency, but its instrumentalities have not come-up to the expectation and have failed the Constitution. Therefore, even after five decades of independence, laborer's in these areas are exploited, despite best intentions of the Constitution. Much is required to be done.

2.8 Key words

Judicial activism- happens when the courts have power to review the State action. Article 13 read with Articles 32 and 226 of the Indian Constitution gives the power of judicial review to the higher judiciary to declare, any legislative, executive or administrative action, void if it is in contravention with the Constitution

Constitution- Constitution is the supreme law of a nation and all legislations draw their inspiration from it. Constitution is a document of social revolution casting an obligation on every instrumentality including the judiciary to transform the status quo ante into a new human order in which justice, social, economic and political will inform all institutions of national life and there should be equality of status and opportunity to all

Fundamental Rights - Fundamental Rights have been guaranteed to protect the public from repressive state actions, judicial decisions tend to expand the scope of word 'State' as defined by Article 12 of the Constitution.

Judicial wisdom- It is interesting to note the judicial wisdom displayed by Indian Courts in making a harmonious construction of Fundamental Rights and Directive Principles is simply unique. This has helped the courts to uphold legislation aimed at social justice on the ground that such a legislation was in line with Directive Principles which are reasonable restrictions on certain fundamental rights.

2.9 Self Assessment Questions

1. Briefly discuss the Fundamental Rights and Labour Legislations
2. Examine the Fundamental Rights and Labour Legislations
3. Elaborate Directive Principles and State Policy and Labour Legislations
4. Describe the Judicial Wisdom Of The Courts And Labour Legislations
5. Differentiate between the Judicial activism or Judicial Intervention

2.10 Suggested Readings

1. Labor Laws (2011) I.A Saiyed Himalaya Publishing House
2. Taxmann(2020) Labour Laws with Code on Wages Book Taxman's Publications
3. Dr. O. P. Gupta, Dr. Vijay Gupta (2021) Labour Legislation In India: Revised Edition SBPD Publishing House, Agra.
4. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers
5. Commercial Labour Laws Edition 2022 Commercial Law Publishers House.
6. Srivastava S.C(2022) Industrial Relations and Labour Laws Sixth Edition Vikas Publishing House Pvt Ltd
7. Padhi P.K (2021) Labour and Industrial Laws Forth Edition PHI Learning
8. V.K. Kharbanda (2022) LPH's Labour Law Digest Edition Law Publishing House
9. Commercial's New Labour & Industrial Code along with Draft Rules 3rd Edition 2022
10. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers

LESSON -3

ILO CONVENTIONS

Learning Objectives

- ✓ To study ILO Conventions
- ✓ To Know the Recommendations of ILO
- ✓ To Outline International Labor conference

Structure

3.1 Introduction

3.2 ILO conventions

3.3 Fundamental Conventions

- 3.3.1 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- 3.3.2 Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- 3.3.3 Forced Labour Convention, 1930 (No. 29)
- 3.3.4 Abolition of Forced Labour Convention, 1957 (No. 105)
- 3.3.5 Minimum Age Convention, 1973 (No. 138)
- 3.3.6 The General Conference of the International Labour Organization
- 3.3.7 Equal Remuneration Convention, 1951 (No. 100)
- 3.3.8 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- 3.3.9 Occupational Safety and Health Convention, 1981 (No. 155)
- 3.3.10 Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

3.4 Recommendations of ILO

3.4.1 International labour Conference

3.4.2 Governing Body

3.5 Summary

3.6 Key words

3.7 Self Assessment Questions

3.8 Suggested Readings

3.1 Introduction

The ILO was created in 1919 under the treaty of Versailles. After the world war one, the urgent need to placate the labour class was felt, which was increasingly becoming a powerful social strata of the society. ILO was constituted to give a pragmatic approach to the ideal that Universal and long lasting peace could only be achieved when it based on social justice.

The drafting of the constitution took place between the months of January to April in the year 1919. A labour commission, headed by Samuel Gompers (head of the American Federation of Labour (AFL) in the United States) was constituted for the purpose by the peace conference. The meetings of the commission took place in Paris and then in Versailles. The commission had the composition of members of nine countries, namely:- Belgium, Cuba, Czechoslovakia, France, Italy, Japan, Poland, the United Kingdom and the United States.

The commission ended up establishing a tripartite organisation, first of its kind in the

world, which brought together governments, employers and workers in its executive bodies. The rules that formed the part of the constitution were made on basis of the ideas tested within the confines of the International Association for Labour Legislation, founded in Basel in 1901.

The first time that an advocacy for an organization of international standing began was by two industrialists, namely Robert Owen (1771-1853) of Wales and Daniel Legrand (1783-1859) of France

The ILO was created after taking into account many factors, primarily relating to security, humanitarian, political and economic issues. These have been enshrined in the preamble of the ILO constitution.

The socio-political situation at the time of creation of ILO was grossly unjust to an average labourer. There was an ideological understanding amongst all the major industrialized nations that there is a pressing need to create a body which addresses the troubles being faced by the working class. The importance of social justice was felt in securing peace. Along with this, the industrial nations were also toying with the idea of globalisation. The importance of economic interdependence was being propagated and the need for cooperation to maintain an equitable working atmosphere was promulgated in all countries competing for markets.

Reflecting these ideas, the Preamble states

Whereas universal and lasting peace can be established only if it is based upon social justice; And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required; Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.

The areas of improvement listed in the Preamble remain relevant today, for example:

1. Regulation of the hours of work including the establishment of a maximum working day and week;
2. Regulation of labour supply, prevention of unemployment and provision of an adequate living wage;
3. Protection of the worker against sickness, disease and injury arising out of his employment;
4. Protection of children, young persons and women;
5. Provision for old age and injury, protection of the interests of workers when employed in countries other than their own;
6. Recognition of the principle of equal remuneration for work of equal value;
7. Recognition of the principle of freedom of association;
8. Organization of vocational and technical education, and other measures

3.2 ILO conventions

International labor standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers) and setting out basic principles and rights at work. They are either Conventions (or Protocols), which are legally binding international treaties that may be ratified by member states, or Recommendations, which serve as non-binding

guidelines. In many cases, a Convention lays down the basic principles to be implemented by ratifying countries, while a related Recommendation supplements the Convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to a Convention.

Conventions and Recommendations are drawn up by representatives of governments, employers and workers and are adopted at the annual International Labor Conference. Once a standard is adopted, member states are required under article 19(6) of the ILO Constitution, to submit it to their competent authority (normally Parliament) within a period of twelve months for consideration. In the case of Conventions, this means consideration for ratification. If it is ratified, a Convention generally comes into force for that country one year after the date of ratification. Ratifying countries undertake to apply the Convention in national law and practice and to report on its application at regular intervals. Technical assistance is provided by the ILO, if necessary. In addition, representation and complaint procedures can be initiated against countries for violations of a Convention that they have ratified (see applying and promoting ILS).

3.3 Fundamental Conventions

The ILO Governing Body had initially identified eight “fundamental” Conventions, covering subjects that were considered to be fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles were also covered by the ILO Declaration on Fundamental Principles and Rights at Work (1998) . Following the adoption of the Protocol of 2014 to the Forced Labour Convention, 1930, a ninth ILO instrument was then considered as "fundamental". At the 110th Session of the International Labour Conference in June 2022, the ILC adopted a Resolution on the inclusion of a safe and healthy working environment in the ILO’s framework of fundamental principles and rights at work . As a result, the ILO Declaration on Fundamental Principles and Rights at Work, 1998, has been amended to this effect and the Occupational Safety and Health Convention, 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) are now considered as fundamental Conventions within the meaning of the 1998 Declaration, as amended in 2022.

3.3.1 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The General Conference of the International Labour Organisation,

1. Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948;
2. Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session;
3. Considering that the Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" to be a means of improving conditions of labor and of establishing peace;
4. Considering that the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress";

5. Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation;
6. Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions;
7. adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organize Convention, 1948:

3.3.2 Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

1. The General Conference of the International Labour Organisation,
2. Having been convened at Geneva by the Governing Body of the International Labor Office, and having met in its Thirty-second Session on 8 June 1949, and
3. Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and
4. Having determined that these proposals shall take the form of an international Convention,
5. adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

3.3.3 Forced Labour Convention, 1930 (No. 29)

1. The original text of the Forced Labour Convention, 1930 (No. 29) made reference to a transitional period during which recourse to forced or compulsory labour might be had subject to specific conditions, as set out in Article 1, paragraphs 2 and 3, and Articles 3 to 24.
2. Over the years, the Governing Body, the International Labour Conference but also the ILO supervisory bodies, such as the Committee of Experts on the Application of Conventions and Recommendations, acknowledged that these provisions, commonly known as “transitional provisions” were no longer applicable. In 2014, the International Labour Conference adopted a Protocol to Convention No.29, which expressly provided for the deletion of the transitional provisions. The text below reflects this deletion. The original text of the Forced Labour Convention, 1930 (No. 29)

3.3.4 Abolition of Forced Labour Convention, 1957 (No. 105)

1. The General Conference of the International Labour Organisation,
2. Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fortieth Session on 5 June 1957, and
3. Having considered the question of forced labour, which is the fourth item on the agenda of the session, and
4. Having noted the provisions of the Forced Labour Convention, 1930, and
5. Having noted that the Slavery Convention, 1926, provides that all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery and that the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956, provides for the complete abolition of debt bondage and serfdom, and

6. Having noted that the Protection of Wages Convention, 1949, provides that wages shall be paid regularly and prohibits methods of payment which deprive the worker of a genuine possibility of terminating his employment, and
7. Having decided upon the adoption of further proposals with regard to the abolition of certain forms of forced or compulsory labour constituting a violation of the rights of man referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights, and
8. Having determined that these proposals shall take the form of an international Convention, adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-seven the following Convention, which may be cited as the Abolition of Forced Labour Convention, 1957

3.3.5 Minimum Age Convention, 1973 (No. 138)

1. The General Conference of the International Labour Organisation,
2. Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-eighth Session on 6 June 1973, and
3. Having decided upon the adoption of certain proposals with regard to minimum age for admission to employment, which is the fourth item on the agenda of the session, and
4. Noting the terms of the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965, and
5. Considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour, and
6. Having determined that these proposals shall take the form of an international Convention, adopts this twenty-sixth day of June of the year one thousand nine hundred and seventy-three the following Convention, which may be cited as the Minimum Age Convention, 1973:
7. Worst Forms of Child Labour Convention, 1999 (No. 182)

3.3.6 The General Conference of the International Labour Organization

1. Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and
2. Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and
3. Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

4. Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and
5. Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and
6. Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and
7. Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and
8. Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and
9. Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and
10. Having determined that these proposals shall take the form of an international Convention;
11. adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

3.3.7 Equal Remuneration Convention, 1951 (No. 100)

1. The General Conference of the International Labour Organisation,
2. Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and
3. Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and
4. Having determined that these proposals shall take the form of an international Convention,
5. adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Convention, which may be cited as the Equal Remuneration Convention, 1951

3.3.8 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

1. The General Conference of the International Labour Organisation,
2. Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and
3. Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and
4. Having determined that these proposals shall take the form of an international Convention, and
5. Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and
6. Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

7. adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

3.3.9 Occupational Safety and Health Convention, 1981 (No. 155)

1. The General Conference of the International Labour Organisation,
2. Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-seventh Session on 3 June 1981, and
3. Having decided upon the adoption of certain proposals with regard to safety and health and the working environment, which is the sixth item on the agenda of the session, and
4. Having determined that these proposals shall take the form of an international Convention,
5. adopts this twenty-second day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Occupational Safety and Health Convention, 1981:

3.3.10 Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

1. The General Conference of the International Labour Organization,
2. Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Ninety-fifth Session on 31 May 2006,
3. Recognizing the global magnitude of occupational injuries, diseases and deaths, and the need for further action to reduce them, and
4. Recalling that the protection of workers against sickness, disease and injury arising out of employment is among the objectives of the International Labour Organization as set out in its Constitution, and
5. Recognizing that occupational injuries, diseases and deaths have a negative effect on productivity and on economic and social development, and
6. Noting paragraph III(g) of the Declaration of Philadelphia, which provides that the International Labour Organization has the solemn obligation to further among the nations of the world programmes which will achieve adequate protection for the life and health of workers in all occupations, and
7. Mindful of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, 1998, and
8. Noting the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and other instruments of the International Labour Organization relevant to the promotional framework for occupational safety and health, and
9. Recalling that the promotion of occupational safety and health is part of the International Labour Organization's agenda of decent work for all, and
10. Recalling the Conclusions concerning ILO standards-related activities in the area of occupational safety and health - a global strategy, adopted by the International Labour Conference at its 91st Session (2003), in particular relating to ensuring that priority be given to occupational safety and health in national agendas, and
11. Stressing the importance of the continuous promotion of a national preventative safety and health culture, and
12. Having decided upon the adoption of certain proposals with regard to occupational safety and health, which is the fourth item on the agenda of the session, and

13. Having determined that these proposals shall take the form of an international Convention;
14. adopts this fifteenth day of June of the year two thousand and six the following Convention, which may be cited as the Promotional Framework for Occupational Safety and Health Convention, 2006.

3.4 Recommendations of ILO

3.4.1 International labour Conference

The meet up of the members of ILO annually in Geneva is called the international labour conference (also known as international parliament of labour). Two government delegates represent each member state. All the delegates have been given equal right of expression. Its working is described under Article 3 of the ILO constitution as The meetings of the General Conference of representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four representatives of each of the Members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members. The International Labour Conference has following important tasks The crafting and adoption of international labour standards in the form of Conventions and Recommendations.

- 1.
2. The Conference supervises the application of Conventions and Recommendations at the national level.
3. The Conference also examines the Global Report prepared by the office as a procedural act required by the declaration.
4. The Conference acts as a stage for the discussion of questions relating to social and labour issues. The central theme of discussion each year is the report presented by ILO's director general.
5. It passes resolutions for setting up guidelines for ILO's future deliberations and activities.

3.4.2 Governing Body

It is the executive wing of the ILO. The governing body meets thrice a year (March, June and November) to decide ILO's policy, elect the director- general, adopts the draft programmes and budgetary requirements, which are put in front of the conference.

The functioning of the governing body has been explained under Article 7 of the ILO constitution -

The Governing Body shall consist of fifty-six person

1. Twenty-eight (28) representing governments,
2. Fourteen (14) representing the employers, and
3. Fourteen (14) representing the workers.

In an organization as big as ILO, it is of high importance that the work being done should not go out of the desired path . For this, the working needs to be evaluated in a timely manner. This evaluation ensures that the ILO agenda of decent work and social justice is being forwarded. It is critically important also because the decision making process depends upon it, which leads to generation and sharing of knowledge in the ILO. The effectiveness of result delivery of the steps taken by ILO could be gauged efficaciously through a system of evaluation.

a) The United Nations has set out norms for developing a policy of evaluation. The main pointers of the policy are to

- i. Reinforce knowledge-generation sharing of the ILO's substantive work, and the processes, approaches and institutional arrangements for implementing such work;
- ii. Strengthen the complementarity between evaluation and other oversight and monitoring functions within the Office;
- iii. Clarify standards for engaging constituents in evaluation; and
- iv. Clarify the division of responsibilities in the ILO for carrying out an evaluation.

b) The ILO evaluation Policy (2005) is a document which lays down the reason of evaluation, types of evaluation and methods of evaluation. The objectives of the evaluation policy are given as to -

- i. Improve Office-wide transparency and accountability for impact of ILO actions to support its constituents;
- ii. Strengthen the decision-making process by the policy organs and senior management based on sound assessment of effectiveness, efficiency, relevance, impact and sustainability of ILO activities;
- iii. Contribute feedback for learning and ongoing improvement of the ILO's work.

Furthermore, the ILO carries out evaluation of its works at the primary level of governance and also amongst the decentralised levels. These evaluations are looked after by the evaluation office (EVAL). The types of evaluation mentioned in the document are. Strategy and policy evaluation - main purpose is to review major institutional policies and assess impact, effectiveness and benefits of ILO core strategies. This evaluation is done at least once per year.

b. Country programme evaluation - This kind of evaluation assesses the extent to which significant impacts are being made towards decent growth. Also, being at the country level, it feeds into the tripartite dialogue of the importance of ILO dialogue at the country level. It is done once every year, but with a rider that all regions need to be covered atleast once every four years.

c. Thematic evaluation - This is an annual evaluation which is aimed at assessing effectiveness and impact of specific means of actions and interventions. It also creates cross-cutting lessons to innovate and feed organizational learning on operational strategies.

d. Project evaluation - It assesses projects for relevance, efficiency, effectiveness, sustainability and contribution to broader impact. Planning and implementation of evaluation is the responsibility of the person to whom the project manager reports. There is no earmarked time limit. However they are midterm or final-term or as they are set out to be in the evaluation plan.

e. Organizational review (self-evaluation) is an important form of evaluation where relevance of the programme activities in relation to actual performance against planned outcome is measured. This is important because through this we get timely information and management decision in achieving planned outcomes against target and indicators. This self-evaluation is biennial. ILO provides accessibility to its evaluation data on its websites and maintains

transparency.

After completion of the evaluation reports, they are compiled in the form of Independent high-level strategy, policy and country programme evaluations. The Annual Evaluation Report (AER) and the official management response from the office.

These reports have a high importance because they serve as a model for formulating decisions by the governing body. Also, they are the precursor to the follow up by the high-level evaluations held by Evaluation Advisory Committee, set up by the Director-General. Apart from the centralized evaluation carried out by the governing body, there is decentralized evaluation carried out by the Evaluation Office (EVAL). EVAL also collects data regarding to management response and reports to Governing Body every November. The response contains analysis of the participation and contribution of members of the tripartite. EVAL has also laid down guidelines for ensuring that the recommendations based on the evaluation are in proper order.

Recommendations should -

- a) Be numbered in the report, and limited – ideally not more than 12
- b) Be formulated in a clear and concise manner
- c) Be relevant and useful
- d) Be supported by evidence and follow logically from findings and conclusions
- e) Link to the programme indicators when feasible
- f) Not be too general but specific to the strategy/country programme evaluated
- g) Specify who is called upon to act
- h) Specify action needed to remedy the situation
- i) Distinguish priority or importance (high, medium, low)
- j) Specify the recommended time frame for follow-up
- k) Acknowledge whether there are resource implication

Likewise, It is the duty of the ILO to ensure that the recommendations made in such manner are of the highest quality. They should be of such a form that takes cues from the beneficial practices so that they could be inculcated in future programmes. They should be easily accessible as well. Good practices, which is the term used by ILO for successful practices has been defined by ILO in the following words-

learned may become an “emerging good practice” when it additionally shows proven marked results or benefits and is determined by the evaluator to be considered for replication or up-scaling to other ILO projects.

An emerging good practice should demonstrate clear potential for substantiating a cause-effect relationship and may also show potential for replicability and broader application. It can derive from comparison and analysis of activities across multiple settings and policy sources or emerge from a simple, technically specific intervention.

The criteria to be followed by the evaluators for creation of the lesson of findings

- a) A lesson learned can refer to a positive experience, in the case of successful results; or to a negative experience, in the case of malfunctioning processes, weaknesses or undesirable influences.

- b) A lesson learned should specify the context from which it is derived, establish potential relevance beyond that context, and indicate where it might be applied.
- c) A lesson learned explains how or why something did or did not work by establishing clear causal factors and effects. Whether the lesson signals a decision or process to be repeated or avoided – the overall aim is to capture lessons that management can use in future contexts to improve projects and programmes.
- d) A lesson learned should indicate how well it contributes to the broader goals of the project or programme and establish, when possible, if those goals align appropriately with the needs of beneficiaries or targeted groups.
- e) Each of the following criteria should be considered, included and adequately explained, when appropriate: Context; Challenges; Links to Project Goals; Impact on Beneficiaries; Challenges/Successes; and any Causal Factors.

The Evaluation findings are utilized in the following manner.-

The collaboration between PARDEV (Partnering for Development) and EVAL (evaluation office) creates a process of appraisal meant for incorporating institutional knowledge. This knowledge is derived from independent evaluation

Findings data for research and organizational learning: The raw data being collected in this form is very useful as it gives important contribution towards analysing administrative and technical concerns. The ILO officials have access to the i-track database. This database has contains the summaries of the full evaluation reports.

They are also available on the EVAL public websites.

Technical cooperation strategies are made in accordance to the data sets of recommendations. These recommendations also help in forming the source of data which is deliberated upon for future high-level thematic evaluation.

The evaluations that are made independently are made to go through a mandatory management response exercise. Upon receiving these independent evaluations, the line management must decide whether the recommendations are to be accepted or not. If they are accepted, the line management must also report the action taken on the basis of the recommendations. The results of these exercise are presented to the EVAL, which reviews it. They are then compiled for the Annual Evaluation Report presented to the Governing Body. Evaluations are also made at the country/regional level, for which the recommendation response are presented to the Evaluation Advisory Committee (EAC) by the respective line management. All the bodies concerned with respect to the recommendations are addressed in the EAC quarterly meetings.

3.5 Summary

International Labour Organisation (ILO) is a nodal agency coming under the ambit of the United Nations (UN). Its primary objective is to deal with issues related to labour, namely, maintaining international labour standards, ensuring social protection and providing work opportunities to all. Established in 1919, it works towards setting up labour standards, developing policies and chalking out programmes promoting decent work for all men and women. The ILO functions with a unique tripartite structure, that brings together governments', employers' and workers' representatives. – The International Labour

Organisation (ILO) works towards providing such a decent work and productive employment to the labour force worldwide. This is done with a view of reducing poverty rates and achieving just globalization throughout. ILO functions on the basis of an underlying requirement of cooperation between governments', employers' and workers' organizations. Their cooperation is required for smooth functioning of the organization and ameliorating social and economic growth. The ILO sets labour standards, develop policies and devise programmes after taking into consideration the views put forward by all these members.

3.6 Key words

Fundamental Conventions- The ILO Governing Body had initially identified eight "fundamental" Conventions, covering subjects that were considered to be fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

ILO conventions- International labour standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers) and setting out basic principles and rights at work.

ILO Constitution - Article 3 of the ILO constitution as The meetings of the General Conference of representatives of the Members shall be held from time to time as occasion may require, and at least once in every year.

Governing Body- It is the executive wing of the ILO. The governing body meets thrice a year (March, June and November) to decide ILO's policy, elect the director- general, adopts the draft programmes and budgetary requirements, which are put in front of the conference.

3.7 Self Assessment Questions

1. Briefly Explain the ILO Conventions
2. Outline the Recommendations of ILO
3. Describe the International Labor conference?

3.8 Suggested Readings

1. Labor Laws (2011) I.A Saiyed Himalaya Publishing House
2. Taxmann(2020) Labour Laws with Code on Wages Book Taxman's Publications
3. Dr. O. P. Gupta, Dr. Vijay Gupta (2021) Labour Legislation In India: Revised Edition SBPD Publishing House, Agra.
4. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers
5. Commercial Labour Laws Edition 2022 Commercial Law Publishers House.
6. Srivastava S.C(2022) Industrial Relations and Labour Laws Sixth Edition Vikas Publishing House Pvt Ltd
7. Padhi P.K (2021) Labour and Industrial Laws Forth Edition PHI Learning
8. V.K. Kharbanda (2022) LPH's Labour Law Digest Edition Law Publishing House
9. Commercial's New Labour & Industrial Code along with Draft Rules 3rd Edition 2022
10. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers

Dr. Nagaraju Battu

LESSON -4

SOCIAL JUSTICE AND NATURAL JUSTICE

Learning Objectives

- ✓ To Study the Social Justice
- ✓ To Discuss the Natural Justice
- ✓ To Focus on Origin and rules of Natural Justice
- ✓ To know the John Rawl's theory of Justice
- ✓ To Understand the History and Evolution of Social Justice

Structure

- 4.1 Introduction
- 4.2 Equal Treatment for Equals
- 4.3 Recognition of Special Needs
- 4.4 Just Distribution
- 4.5 John Rawls' Theory Of Justice
- 4.6 Pursuing Social Justice
- 4.7 History and Evolution of Social Justice
 - 4.7.1 Social Justice and the Government
- 4.8 Five Principles of Social Justice
- 4.9 Origin of Natural Justice
- 4.10 Principles of Natural Justice
- 4.11 Purpose of the principles
- 4.12 Rules of Natural Justice
 - 4.12.1 NEMO JUDEX IN CAUSA SUA
 - 4.12.1(a) Personal bias
 - 4.12.1(b) Pecuniary bias
 - 4.12.1(c) Subject matter bias
 - 4.12.1(d) Departmental bias
 - 4.12.1(e) Policy notion bias
 - 4.12.1(f) Bias on the account of the obstinacy
 - 4.12.2 AUDI ALTERAM PARTEM
 - 4.12.3 REASONED DECISION
- 4.13 Summary
- 4.14 Key words
- 4.15 Self Assessment questions
- 4.16 Suggested Readings

4.1 Introduction

All cultures and traditions have grappled with questions of justice although they may have interpreted the concept in different ways. For instance, in ancient Indian society, justice was associated with dharma and maintaining dharma or a just social order, was considered to be a primary duty of kings. In China, Confucius, the famous philosopher argued that kings should maintain justice by punishing wrong doers and rewarding the virtuous. In fourth century B.C. Athens (Greece), Plato discussed issues of justice in his book *The Republic*. Through a long dialogue between Socrates and his young friends, Glaucon and Adeimantus, Plato examined why we should be concerned about justice. The young people ask Socrates why we should be just. They observe that people who were unjust seemed to be much better

off than those who were just. Those who twisted rules to serve their interests, avoided paying taxes and were willing to lie and be deceitful, were often more successful than those who were truthful and just. If one were smart enough to avoid being caught then it would seem that being unjust is better than being just. You may have heard people expressing similar sentiments even today.

Socrates reminds these young people that if everyone were to be unjust, if everyone manipulated rules to suit their own interests, no one could be sure of benefiting from injustice. Nobody would be secure and this was likely to harm all of them. Hence, it is in our own long-term interest to obey the laws and be just. Socrates clarified that we need to understand clearly what justice means in order to figure out why it is important to be just. He explained that justice does not only mean doing good to our friends and harm to our enemies, or pursuing our own interests. Justice involves the well-being of all people. Just as a doctor is concerned with the well-being of his/her patients, similarly the just ruler or the just government must be concerned with the well-being of the people. Ensuring the well-being of the people includes giving each person his due. The idea that justice involves giving each person his due continues to be an important part of our present day understanding of justice. However, our understanding of what is due to a person has changed from the time of Plato. Today, our understanding of what is just is closely linked to our understanding of what is due to each person as a human being. According to the German philosopher Immanuel Kant, human beings possess dignity. If all persons are granted dignity then what is due to each of them is that they have the opportunity to develop their talents and pursue their chosen goals. Justice requires that we give due and equal consideration to all individuals.

4.2 Equal Treatment for Equals

Although there might be broad agreement in modern society about the equal importance of all people, it is not a simple matter to decide how to give each person his/her due. A number of different principles have been put forward in this regard. One of the principles is the principle of treating equals equally. It is considered that all individuals share certain characteristics as human beings. Therefore they deserve equal rights and equal treatment. Some of the important rights which are granted in most liberal democracies today include civil rights such as the rights of life, liberty and property, political rights like the right to vote, which enable people to participate in political processes, and certain social rights which would include the right to enjoy equal opportunities with other members of the society.

Apart from equal rights, the principle of treating equals equally would require that people should not be discriminated against on grounds of class, caste, race or gender. They should be judged on the basis of their work and actions and not on the basis of the group to which they belong. Therefore, if two persons from different castes perform the same kind of work, whether it be breaking stones or delivering Pizzas, they should receive the same kind of reward. If a person gets one hundred rupees for some work and another receives only seventy five rupees for the same work because they belong to Justice Social Justice 56 Political Theory different castes, then it would be unfair or unjust. Similarly, if a male teacher in a school gets a higher salary than a female teacher, then this difference would also be unjustifiable and wrong. Proportionate Justice However, equal treatment is not the only principle of justice. There could be circumstances in which we might feel that treating everybody equally would be unjust. How, for instance, would you react if it was decided in your school that all those who did an exam should get equal marks because they are all students of the same school and did the same exam? Here you might think it would be more fair if students were awarded marks according to the quality of their answer papers and also,

possibly, the degree of effort they had put in. In other words, provided everybody starts from the same base line of equal rights, justice in such cases would mean rewarding people in proportion to the scale and quality of their effort. Most people would agree that although people should get the same reward for the same work, it would be fair and just to reward different kinds of work differently if we take into account factors such as the effort required, the skills required, the possible dangers involved in that work, and so on. If we use these criteria we may find that certain kinds of workers in our society are not paid a wage which takes such factors sufficiently into account. For instance, miners, skilled craftsmen, or people in sometimes dangerous but socially useful professions like policemen, may not always get a reward which is just if we compare it to what some others in society may be earning. For justice in society, the principle of equal treatment needs to be balanced with the principle of proportionality.

4.3 Recognition of Special Needs

A third principle of justice which we recognize is for a society to take into account special needs of people while distributing rewards or duties. This would be considered a way of promoting social justice. In terms of their basic status and rights as members of the society justice may require that people be treated equally. But even nondiscrimination between people and rewarding them proportionately to their efforts might not be enough to ensure that people enjoy equality in other aspects of their lives in society nor that the society as a whole is just. The principle of taking account of the special needs of people does not necessarily contradict the principle of equal treatment so much as extend it because the principle of treating equals equally could imply that people who are not equal in certain important respects could be treated differently.

People with special needs or disabilities could be considered unequal in some particular respect and deserving of special help. But it is not always easy to get agreement regarding which inequalities of people should be recognised for providing them special help. Physical disabilities, age or lack of access to good education or health care, are some of the factors which are considered grounds for special treatment in many countries. It is believed that if people who enjoy very different standard of living and opportunities are treated equally in all respects with those who have been deprived of even the basic minimum needs to live a healthy and productive life, the result is likely to be an unequal society, not an egalitarian and just one. In our country, lack of access to good education or health care and other such facilities is often found combined with People with special needs or disabilities could be considered unequal in some particular respect and deserving of special help. But it is not always easy to get agreement regarding which inequalities of people should be recognised for providing them special help. Physical disabilities, age or lack of access to good education or health care, are some of the factors which are considered grounds for special treatment in many countries. It is believed that if people who enjoy very different standard of living and opportunities are treated equally in all respects with those who have been deprived of even the basic minimum needs to live a healthy and productive life, the result is likely to be an unequal society, not an egalitarian and just one. In our country, lack of access to good education or health care and other such facilities is often found combined with Our discussion of different principles of justice has indicated that governments might sometimes find it difficult to harmonise the three principles of justice which have been discussed — equal treatment for equals, recognition of different efforts and skills while determining rewards and burdens, and provision of minimum standard of living and equal opportunities to the needy. Pursuing equality of treatment by itself might sometimes work against giving due reward to merit. Emphasizing rewarding merit as the main principle of justice might mean that

marginalized sections would be at a disadvantage in many areas because they have not had access to facilities such as good nourishment or education. Different groups in the country might favour different policies depending upon which principle of justice they emphasize. It then becomes a function of governments to harmonize the different principles to promote a just society.

4.4 Just Distribution

To achieve social justice in society, governments might have to do more than just ensure that laws and policies treat individuals in a fair manner. Social justice also concerns the just distribution of goods and services, whether it is between nations or between different groups and individuals within a society. If there are serious economic or social inequalities in a society, it might become necessary to try and redistribute some of the important resources of the society to provide something like a level playing field for citizens. Therefore, within a country social justice would require not only that people be treated equally in terms of the laws and policies of the society but also that they enjoy some basic equality of life conditions and opportunities. This is seen as necessary for each person to be able to pursue his/her objectives and express himself. In our country for instance, the Constitution abolished the practice of untouchability to promote social equality and ensure that people belonging to 'lower' castes have access to temples, jobs and basic necessities like water. Different state governments have also taken some measures to redistribute important resources like land in a more fair manner by instituting land reforms. Differences of opinion on matters such whether, and how, to distribute resources and ensure equal access to education and jobs arouse fierce passions in society and even sometimes provoke violence. People believe the future of themselves and their families may be at stake. We have only to remind ourselves about the anger and even violence which has sometimes been roused by proposals to reserve seats in educational institutions or in government employment in our country. As students of political theory however we should be able to calmly examine the issues involved in terms of our understanding of the principles of justice. Can schemes to help the disadvantaged be justified in terms of a theory of justice? In the next section, we will discuss the theory of just distribution put forward by the well-known political philosopher, John Rawls. Rawls has argued that there could indeed be a rational justification for acknowledging the need to provide help to the least privileged members of a society.

4.5 John Rawls' Theory Of Justice

If people are asked to chose the kind of society in which they would like to live, they are likely to chose one in which the rules and organization of society allot them a privileged position. We cannot expect everyone to put aside their personal interests and think of Justice Political Theory the good of society, especially if they believe that their decision is going to have an impact on the kind of life and opportunities their children will have in the future. Indeed, we often expect parents to think of and support what is best for their children. But such perspectives cannot form the basis of a theory of justice for a society. So how do we reach a decision that would be both fair and just?

John Rawls has tried to answer this question. He argues that the only way we can arrive at a fair and just rule is if we imagine ourselves to be in a situation in which we have to make decisions about how society should be organized although we do not know which position we would ourselves occupy in that society. That is, we do not know what kind of family we would be born in, whether we would be born into an 'upper' caste or 'lower' caste family, rich or poor, privileged or disadvantaged. Rawls argues that if we do not know, in this sense, who we will be and what options would be available to us in the future society, we will

be likely to support a decision about the rules and organization of that future society which would be fair for all the members.

Rawls describes this as thinking under a 'veil of ignorance'. He expects that in such a situation of complete ignorance about our possible position and status in society, each person would decide in the way they generally do, that is, in terms of their own interests. But since no one knows who he would be, and what is going to benefit him, each will envisage the future society from the point of view of the worst-off. It will be clear to a person who can reason and think for himself, that those who are born privileged will enjoy certain special opportunities. But, what if they have the misfortune of being born in a disadvantaged section of society where few opportunities would be available to them? Hence, it would make sense for each person, acting in his or her own interest, to try to think of rules of organization that will ensure reasonable opportunities to the weaker sections. The attempt will be to see that important resources, like education, health, shelter, etc., are available to all persons, even if they are not part of the upper class. It is of course not easy to erase our identities and to imagine oneself under a veil of ignorance. But then it is equally difficult for most people to be self sacrificing and share their good fortune with strangers. That is why we habitually associate self sacrifice with heroism. Given these human failings and limitations, it is better for us to think of a framework that does not require extraordinary actions. The merit of the 'veil of ignorance' position is that it expects people to just be their usual rational selves: they are expected to think for themselves and choose what they regard to be in their interest. The pertinent thing however is that when they choose under the 'veil of ignorance' they will find that it is in their interest to think from the position of the worst-off.

Wearing the imagined veil of ignorance is the first step in arriving at a system of fair laws and policies. It will be evident that rational persons will not only see things from the perspective of the worst-off, they will also try to ensure that the policies they frame benefit the society as a whole. Both things have to go hand-in-hand. Since no one knows what position they will occupy in the future society, each will seek rules that protect them in case they happen to be born among the worst-off. But it would make sense if they also try to ensure that their chosen policy does not also make those who are better-off weaker because it is also possible that they could be born into a privileged position in the future society. Therefore, it would be in the interests of all that society as a whole should benefit from the rules and policies that are decided and not just any particular section. Such fairness would be the outcome of rational action, not benevolence or generosity.

Rawls therefore argues that rational thinking, not morality, could lead us to be fair and judge impartially regarding how to distribute the benefits and burdens of a society. In his example, there are no goals or norms of morality that are given to us in advance and we remain free to determine what is best for ourselves. It is this belief which makes Rawls' theory an important and compelling way to approach the question of fairness and justice.

4.6 Pursuing Social Justice

If in a society deep and persistent divisions exist between those who enjoy greater wealth and property, and the power which goes with such ownership, and those who are excluded and deprived, we would say that social justice is lacking there. We are not talking here merely about the different standards of living which may be enjoyed by different individuals in a society. Justice does not require absolute equality and sameness in the way in which people live. But a society would be considered unjust if the differences between rich and poor are so great that they seem to be living in different worlds altogether, and if the

relatively deprived have no chance at all to improve their condition however hard they may work. In other words, a just society should provide people with the basic minimum conditions to enable them to live healthy and secure lives and develop their talents as well as equal opportunities to pursue their chosen goals in society.

How can we decide what are the basic minimum conditions of life needed by people? Various methods of calculating the basic needs of people have been devised by different governments and by international organizations like the World Health Organization. But in general it is agreed that the basic amount of nourishment needed to remain healthy, housing, supply of clean drinking water, education and a minimum wage would constitute an important part of these basic conditions. Providing people with their basic needs is considered to be one of the responsibilities of a democratic government. However, providing such basic conditions of life to all citizens may pose a heavy burden on governments, particularly in countries like India which have a large number of poor people.

Even if we all agree that states should try and help the most disadvantaged members of the society to enjoy some degree of equality with others, disagreements could still arise regarding the best methods of achieving this goal. A debate is currently going on in our society, as well as in other parts of the world, about whether promoting open competition through free markets would be the best way of helping the disadvantaged without harming the better off members of a society, or whether the government should take on the responsibility of providing a basic minimum to the poor, if necessary even through a redistribution of resources. In our country these different approaches are being supported by different political groups who debate the relative merits of different schemes for helping marginalized sections of the population such as the rural or urban poor

Free Markets versus State Intervention Supporters of free markets maintain that as far as possible, individuals should be free to own property and enter into contracts and agreements with others regarding prices and wages and profits. They should be free to compete with each other to gain the greatest amount of benefit. This is a simple description of a free market. Supporters of the free market believe that if markets are left free of state interference the sum of market transactions would ensure overall a just distribution of benefits and duties in society. Those with merit and talent would be rewarded accordingly while the incompetent would get a lesser reward. They would maintain that whatever be the outcome of market distribution it would be just.

However, not all free market supporters today would support absolutely unregulated markets. Many would now be willing to accept certain restrictions, for instance, states could step in to ensure a basic minimum standard of living to all people so that they are able to compete on equal terms. But they might argue that even here the most efficient way of providing people with basic services might be to allow markets in health care, education, and such services, to develop. In other words, private agencies should be encouraged to provide such services while state policies should try to empower people to buy those services. It might also be necessary for the state to give special help to the old and the sick who cannot compete. But apart from this, the role of the state should only be to maintain a framework of laws and regulations to ensure that competition between individuals remains free of coercion and other obstacles. They maintain that a free market is the basis of a fair and just society. The market, it is said, does not care about the caste or religion of the person; it does not see whether you are a man or a woman. It is neutral and concerned with the talents and skills that

you have. If you have the merit, then nothing else matters.

One of the arguments put forward in favour of market distribution is that it gives us more choices. There is no doubt that the market system gives us more choices as consumers. We can choose the rice we eat and the school we go to, provided that we have the means to pay for them. But regarding basic goods and services what is important is the availability of good quality goods and services at a cost people can afford. If private agencies do not find this profitable for them, they may prefer not to enter that particular market, or to provide cheap and substandard services. That is why there may be few private schools in remote rural areas and the few which have been set up may be of low quality. The same would be true of health care or housing. In such situations the government might have to step in.

Another argument often heard in defense of free markets and private enterprise is that the quality of services they provide is often superior to that provided in government institutions. But the cost of such services may put them out of the reach of the poor. Private business tends to go where business would be most profitable and hence free markets eventually tend to work in the interest of the strong, the wealthy and the powerful. The result may be to deny, rather than extend, opportunities for those who are relatively weak and disadvantaged. Arguments can be put forward on both sides of the debate but free markets often exhibit a tendency to work in favour of the already privileged. This is why many argue that to ensure social justice the state should step in to see that basic facilities are made available to all the members of a society.

In a democratic society disagreements about issues of distribution and justice are inevitable and even healthy because they force us to examine different points of view and rationally defend our own views. Politics is about the negotiation of such disagreements through debate. In our own country many kinds of social and economic inequalities exist and much remains to be done if they are to be reduced. Studying the different principles of justice should help us to discuss the issues involved and come to an agreement regarding the best way of pursuing justice.

Social justice refers to a political and philosophical theory that focuses on the concept of fairness in relations between individuals in society and equal access to wealth, opportunities, and social privileges.

4.7 History and Evolution of Social Justice

The concept of social justice first arose in the 19th century during the Industrial Revolution as attempts were made to promote more egalitarian societies and reduce the exploitation of certain marginalized groups due to the vast disparity between the rich and poor at the time. Social justice initially focused on issues such as the distribution of capital, property, and wealth due to the extreme levels of inequality and economic distress prevalent at the time, resulting from the European social class structure.

Today, social justice has shifted towards a stronger emphasis on human rights and improving the lives of disadvantaged and marginalized groups that have historically faced discrimination in society. Many of these groups have been discriminated against on the basis of factors such as sex, age, wealth, ethnicity, heritage, social status, religion, and others. Social justice often leads to efforts to redistribute wealth to some of the underprivileged groups through providing income, jobs, and education support and opportunities.

4.7.1 Social Justice and the Government

While activists and advocates significantly influence the widespread emphasis on social justice in the world today, the actual implementation of social justice policies is often left to administrators, such as the government, non-profit organizations, foundations, or agencies within the bureaucracy. Such organizations are responsible for shaping public policies to address social justice issues, and as a result, political factors influence the extent to which social justice plays a role in the policies shaped by the government and administrators of the day.

Social justice initiatives can be pursued through many different types of government programs via wealth and income redistribution, government subsidies, protected legal status in employment, and even legalized discrimination against privileged groups through fines and taxes or even through purges historically. Social justice initiatives are commonly seen in socialist and communist countries, which integrates them into their economic policies, as well as in the platforms of left-leaning political parties within democracies.

4.8 Five Principles of Social Justice

There are five main principles of social justice that are paramount to understanding the concept better. Namely, these are access to resources, equity, participation, diversity, and human rights.

1. Access to Resources

Access to resources is an important principle of social justice and refers to the extent to which different socioeconomic groups receive equal access to give everyone an equal start in life. Many societies offer a multitude of resources and services for their citizens, such as healthcare, food, shelter, education, and recreational opportunities. However, unequal access to such services often exists.

For example, individuals from wealthy households among the upper and upper-middle classes are often better able to afford to attend good schools and access post-secondary education, which leads to a greater chance of obtaining jobs with higher income in the future. In contrast, those from the lower classes face fewer opportunities. It, in turn, limits access to education for future generations and continues the cycle of facing disadvantages.

2. Equity

Equity refers to how individuals are given tools specific to their needs and socioeconomic status in order to move towards similar outcomes. It contrasts with equality, where everyone is offered the same tools to move towards the same outcome.

As such, often, things that are equal are not equitable due to the more advanced needs of some individuals and groups. Social justice, integrated with addressing equity issues, might include advancing policies that provide support to overcome systemic barriers.

3. Participation

Participation refers to how everyone in society is given a voice and opportunity to verbalize their opinions and concerns and have a role in any decision-making that affects their livelihood and standard of living. Social injustice occurs when a small group of individuals makes decisions for a large group, while some people are unable to voice their opinions.

4. Diversity

Understanding diversity and appreciating the value of cultural differences are especially important because policymakers are often better able to construct policies that take into consideration differences that exist among different societal groups. It is important to recognize that some groups face more barriers in society, and by considering the inequities, policymakers and civil servants will be in a stronger position to expand opportunities for marginalized or disadvantaged groups.

Discrimination in employment on the basis of factors such as race, gender, ethnicity, sex, age, and other characteristics are constant issues in society, and enforcing policies to countermand discriminatory practices are one way in which diversity is taken into consideration.

5. Human Rights

Human rights are one of the most important principles of social justice and form a foundational part of the concept. Human rights and social justice are certainly interrelated, and it is impossible for one to exist without the other.

Human rights are fundamental to societies that respect the civil, economic, political, cultural, and legal rights of individuals and governments, organizations, and individuals must be held responsible if they fail to ensure the upholding of these rights. They are extremely important in many societies and are recognized internationally through institutions such as the International Criminal Court and the United Nations Human Rights Council.

4.9 Origin of Natural Justice

The principle of natural justice is a very old concept and it originated at an early age. The people of Greek and Roman were also familiar with this concept. In the days of Kautilya, Arthashastra and Adam were acknowledged the concept of natural justice. According to the Bible, in the case of Eve and Adam, when they ate the fruit of knowledge, they were forbidden by the god. Before giving the sentence, Eve was given a fair chance to defend himself and the same process was followed in the case of Adam too.

Later on, the concept of natural justice was accepted by the English jurist. The word natural justice is derived from the Roman word 'jus-naturale' and 'lex-naturale' which planned the principles of natural justice, natural law and equity.

“Natural justice is a sense of what is wrong and what is right.”

In India, this concept was introduced at an early time. In the case of Mohinder Singh Gill vs. Chief Election Commissioner, the court held that the concept of fairness should be in every action whether it is judicial, quasi-judicial, administrative and or quasi-administrative work.

4.10 Principles of Natural Justice

Principle of Natural Justice is derived from the word 'Jus Natural' of the Roman law and it is closely related to Common law and moral principles but is not codified. It is a law of nature which is not derived from any statute or constitution. The principle of natural justice is adhered to by all the citizens of civilized State with Supreme importance. In the ancient days of fair practice, at the time when industrial areas ruled with a harsh and rigid law to hire and

fire, the Supreme court gave its command with the passage of duration and establishment of social, justice and economy statutory protection for the workmen.

Natural justice simply means to make a sensible and reasonable decision making procedure on a particular issue. Sometimes, it doesn't matter what is the reasonable decision but in the end, what matters is the procedure and who all are engaged in taking the reasonable decision. It is not restricted within the concept of 'fairness' it has different colours and shades which vary from the context.

Basically, natural justice consists of 3 rules.

The first one is "Hearing rule" which states that the person or party who is affected by the decision made by the panel of expert members should be given a fair opportunity to express his point of view to defend himself.

Secondly, "Bias rule" generally expresses that panel of expert should be biased free while taking the decision. The decision should be given in a free and fair manner which can fulfil the rule of natural justice.

And thirdly, "Reasoned Decision" which states that order, decision or judgement of the court given by the Presiding authorities with a valid and reasonable ground.

4.11 Purpose of the principles

1. To provide equal opportunity of being heard.
2. Concept of Fairness.
3. To fulfil the gaps and loopholes of the law.
4. To protect the Fundamental Rights.
5. Basic features of the Constitution.
6. No miscarriage of Justice.

The principles of natural justice should be free from bias and parties should be given fair opportunity to be heard and all the reasons and decision taken by the court should be informed by the court to the respective parties.

Supreme court said that arriving at a reasonable and justifiable judgement is the purpose of judicial and administrative bodies. The main purpose of natural justice is to prevent the act of miscarriage of justice.

A committee i.e. "Ministers Power" gave 3 essentials procedure related to the principles of natural justice.

1. No one should be a judge in his own matter.
2. No one can be condemned unheard.
3. The party is entitled to know each and every reason and the decision taken by the authority.

When it can be claimed?

Natural justice can be claimed when acting judicially or quasi-judicial like panchayat and tribunals etc. as well. It includes the concept of fairness, basic moral principles and various different kinds of biases and why the natural justice is required and what all special cases or situation it includes where the principles of natural justice will not be applicable.

In the case of the Province of Bombay vs. Khushaldas Advani, it was said that natural justice will be applicable on statutory as it is a basic principle of Natural justice which leads to fairness and justice.

1. Effect of function
2. Administrative action.
3. Civil consequences.
4. The doctrine of Legitimate exception.
5. Fairness in action.
6. Disciplinary proceeding.

In the case of Board of high school vs. Ghanshyam, a student was caught while cheating in the examination hall and he was debarred due to the act. Supreme Court held that student cannot file a Public Interest Litigation against the examination board.

High water mark case- Eurasian equipment and company limited vs. State of West Bengal: Under this case, all the executive engineers were blacklisted. Supreme Court held that without giving a valid and reasonable ground you cannot blacklist anyone and further he should be given a fair opportunity of being heard.

4.12 Rules of Natural Justice

NEMO JUDEX IN CAUSA SUA

AUDI ALTERAM PARTEM

REASONED DECISION

4.12.1 NEMO JUDEX IN CAUSA SUA

“No one should be a judge in his own case” because it leads to rule of biases. Bias means an act which leads to unfair activity whether in a conscious or unconscious stage in relation to the party or a particular case. Therefore, the necessity of this rule is to make the judge impartial and given judgement on the basis of evidence recorded as per the case.

Type of Bias

1. Personal Bias.
2. Pecuniary Bias.
3. Subject matter Bias.
4. Departmental Bias.
5. Policy notion Bias.
6. Bias on the account of obstinacy.

4.12.1(a) Personal bias

Personal bias arises from a relation between the party and deciding authority. Which lead the deciding authority in a doubtful situation to make an unfair activity and give judgement in favour of his person. Such equations arise due to various forms of personal and

professional relations.

In order to challenge the administrative action successfully on the ground of personal bias, it is necessary to give a reasonable reason for bias.

Supreme court held that one of the members of the panel of selection committee his brother was a candidate in the competition but due to this, the whole procedure of selection cannot be quashed.

Here, to avoid the act of biases at the turn of his brother respective panel member connected with the candidate can be requested to go out from the panel of the selection committee. So, a fair and reasonable decision can be made. Ramanand Prasad Singh vs. UOI.

4.12.1(b) Pecuniary bias

If any of the judicial body has any kind of financial benefit, how so ever small it may be will lead to administrative authority to biases.

4.12.1(c) Subject matter bias

When directly or indirectly the deciding authority is involved in the subject matter of a particular case.

Muralidhar vs. Kadam Singh The court refused to quash the decision of Election tribunal on the ground that the chairman's wife was a member of Congress party whom the petitioner defeated.

4.12.1(d) Departmental bias

The problem or issue of departmental bias is very common in every administrative process and it is not checked effectively and on every small interval period it will lead to negative concept of fairness will get vanished in the proceeding.

4.12.1(e) Policy notion bias

Issues arising out of preconceived policy notion is a very dedicated issue. The audience sitting over there does not expect judges to sit with a blank sheet of paper and give a fair trial and decision over the matter.

4.12.1(f) Bias on the account of the obstinacy

Supreme court has discovered new criteria of biases through the unreasonable condition. This new category emerged from a case where a judge of Calcutta High Court upheld his own judgement in appeal. A direct violation of the rules of bias is done because no judge can sit in appeal against in his own case.

4.12.2 AUDI ALTERAM PARTEM

It simply includes 3 Latin word which basically means that no person can be condemned or punished by the court without having a fair opportunity of being heard.

In many jurisdictions, a bulk of cases are left undecided without giving a fair opportunity of being heard.

The literal meaning of this rule is that both parties should be given a fair chance to

present themselves with their relevant points and a fair trial should be conducted.

This is an important rule of natural justice and its pure form is not to penalize anyone without any valid and reasonable ground. Prior notice should be given to a person so he can prepare to know what all charges are framed against him. It is also known as a rule of fair hearing. The components of fair hearing are not fixed or rigid in nature. It varies from case to case and authority to authority.

Components

Issuance of notice

Valid and proper notice should be given to the required parties of the matter to further proceed with the procedure of fair trial method. Even if the statute does not include the provision of issue of notice then it will be given prior to making decisions. This was held in the case of *Fazalbai vs. custodian*.

In the case of *Kanda vs. Government of Malaya*, the court held that notice must directly and clearly specify on the matter of bias, facts and circumstances against which needs to be taken. It's one of the rights of the individual to defend himself so he should be familiar with the relevant matter so he may contradict the statement and safeguard himself.

The notice should be with regard to the charges framed against the accused person and proceeding to be held. He can only be punished on the charges which are mentioned in the notice, not for any other charges.

Right to present the case and evidence

After receiving the notice he must be given a reasonable time period to prepare and present his case in a real and effective manner. The refusal should not be done on the unreasonable ground or due to arbitrary.

Right to Cross Examination

Right of fair hearing includes the right to cross-examination the statement made by the parties. If tribunals denied the right to cross-examination then it will violate the principles of natural justice. And all the necessary copies of documents should be given and failure of that will also encroach the principle. The department should make available officers who are involved in the procedure of investigating and do cross-examination. Cross-examination is defined under Section 137 of the Indian Evidence Act, 1872 (amended).

In certain exceptional cases, the right to cross-examination can be denied or rejected. *Hari Nath Mishra vs. Rajendra Medical College*, under this case a male student was charged off some indecent behaviour towards a female student. So, here the right to cross-examination was denied for the male student as it will lead to embracement for the female student and it will not also lead to violation of natural justice.

Sometimes it becomes very necessary to keep the identity confidential as there is a threat of life and property. And the same situation was faced in the case *Gurubachan Singh vs. the State of Bombay*.

In the case of *Ludhiana food product*, the court held that If the party itself refuse to cross-examine the witness then it will not fall under miscarriage of natural justice.

Right of Legal representative

In the process of enquiry, every party has the right to have a legal representative. Each party will be presented by the legally trained person and no one can deny (A.K.Roy). Similarly, the department has the same right to direct its officer even though there are investigating officer in conducting an adjudicating proceeding (Sanghi textile processor vs. Commissioner).

Exceptions

1. During the Emergency period
2. Public interest
3. Express statutory provision
4. Nature of the case is not of a serious kind
5. If it doesn't affect the status of the individual
6. Applicability
7. Natural justice is applicable to some of the following points:-
8. Court- except to ex-parte
9. Tribunals
10. Authority entrusted with discretion but subject to legal limitations

4.12.3 REASONED DECISION

Basically, it has 3 grounds on which it relies:-

1. The aggrieved party has the chance to demonstrate before the appellate and revisional court that what was the reason which makes the authority to reject it.
2. It is a satisfactory part of the party against whom the decision is made.
3. The responsibility to record reasons works as obstacles against arbitrary action by the judicial power vested in the executive authority.

4.13 Summary

The principles of natural justice have been adopted and followed by the judiciary to protect public rights against the arbitrary decision by the administrative authority. One can easily see that the rule of natural justice include the concept of fairness: they stay alive and support to safeguard the fair dealing. So at all the stages of the procedure if any authority is given off the judicial function is not purely accepted but the main motive of the principal is to prevent the miscarriage of justice. It is supreme to note that any decision or order which violates the natural justice will be declared as null and void in nature, hence one must carry in mind that the principles of natural justice are essential for any administrative settlement to be held valid. The principle of natural justice is not confined to restricted walls the applicability of the principle but depends upon the characteristics of jurisdiction, grant to the administrative authority and upon the nature of rights affected of the individual.

4.14 Key words

Social justice- It also concerns the just distribution of goods and services, whether it is between nations or between different groups and individuals within a society.

Rawls theory- describes this as thinking under a 'veil of ignorance'. He expects that in such a situation of complete ignorance about our possible position and status in society, each person would decide in the way they generally do, that is, in terms of their own interests

Natural justice- The word natural justice is derived from the Roman word 'jus-naturale' and

'lex-naturale' which planned the principles of natural justice, natural law and equity.

NEMO JUDEX IN CAUSA SUA- "No one should be a judge in his own case" because it leads to rule of biases. Bias means an act which leads to unfair activity whether in a conscious or unconscious stage in relation to the party or a particular case. Therefore, the necessity of this rule is to make the judge impartial and given judgement on the basis of evidence recorded as per the case.

AUDI ALTERAM PARTEM - This is an important rule of natural justice and its pure form is not to penalize anyone without any valid and reasonable ground. Prior notice should be given to a person so he can prepare to know what all charges are framed against him. It is also known as a rule of fair hearing. The components of fair hearing are not fixed or rigid in nature. It varies from case to case and authority to authority.

REASONED DECISION- The aggrieved party has the chance to demonstrate before the appellate and revisional court that what was the reason which makes the authority to reject it. It is a satisfactory part of the party against whom the decision is made. The responsibility to record reasons works as obstacles against arbitrary action by the judicial power vested in the executive authority.

4.15 Self Assessment Questions

1. Briefly Explain the Principles of social Justice?
2. Elaborate the Principles of Natural Justice?
3. Outline the Origin and Rules of Natural Justice?
4. Examine the John Rawl's theory of Justice?
5. Evaluate the History and Evolution of Social Justice?

4.16 Suggested Readings

1. Labor Laws (2011) I.A Saiyed Himalaya Publishing House
2. Taxmann(2020) Labour Laws with Code on Wages Book Taxman's Publications
3. Dr. O. P. Gupta, Dr. Vijay Gupta (2021) Labour Legislation In India: Revised Edition SBPD Publishing House, Agra.
4. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers
5. Commercial Labour Laws Edition 2022 Commercial Law Publishers House.
6. Srivastava S.C(2022) Industrial Relations and Labour Laws Sixth Edition Vikas Publishing House Pvt Ltd
7. Padhi P.K (2021) Labour and Industrial Laws Forth Edition PHI Learning
8. V.K. Kharbanda (2022) LPH's Labour Law Digest Edition Law Publishing House
9. Commercial's New Labour & Industrial Code along with Draft Rules 3rd Edition 2022
10. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers

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LESSON- 5

FACTORIES ACT 1948

Objectives of the Lesson

- ✓ To discuss the General Duties of Occupier
- ✓ To Understand the General Duties of Manufacturers
- ✓ To Know the Power of Inspectors
- ✓ To Learn the AP Factories Act 1950

Structure

- 5.1 Introduction
- 5.2. References to time of day
- 5.3 . Power to declare different departments
- 5.4. Power to exempt during public emergency
- 5.5. Approval, licensing and registration of factories
- 5.6. Notice by occupier
- 5.7 The Inspecting Staff
 - 5.7A. General duties of the occupier
 - 5.7B. General duties of manufacturers
- 5.8. Inspectors
- 5.9. Powers of Inspectors.
- 5.10. Certifying surgeons
- 5.11 Health
- 5.12. Disposal of wastes and effluents
- 5.13. Ventilation and temperature
- 5.14. Dust and fume
- 5.15. Artificial humidification
- 5.16. Overcrowding
- 5.17. Lighting
- 5.18. Drinking water
- 5.19. Latrines and urinals
- 5.20. Spittoons
- 5.21. Fencing of machinery
- 5.22. Work on or near machinery in motion
- 5.23. Employment of young persons on dangerous machines
- 5.24. Striking gear and devices for cutting off power
- 5.25. Self-acting machines
- 5.26. Casing of new machinery
- 5.27. Prohibition of employment of women and children near cotton-openers.
- 5.28. Hoists and lifts
- 5.29. Lifting machines, chains, ropes and lifting tackles.
- 5.30. Revolving machinery
- 5.31 AP Factories Rules 1950
- 5.32 Summary
- 5.33 Key words
- 5.34 Self Assessment Questions
- 5.35 Suggested Readings

5.1 Introduction

1. **Short title, extent and commencement.**(1) This Act may be called the Factories Act, 1948.

(2) It extends to the whole of India

(3) It shall come into force on the 1st day of April 1949.

2. Interpretation.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “**adult**” means a person who has completed his eighteenth year of age;

(b) “**adolescent**” means a person who has completed his fifteenth year of age but has not completed his eighteenth year;

[(bb) “**calendar year**” means the period of twelve months beginning with the first day of January in any year;]

(c) “**child**” means a person who has not completed his fifteenth year of age;

[(ca) “**competent person**”, in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to]

(i) the qualifications and experience of the person and facilities available at his disposal; or

(ii) the qualifications and experience of the persons employed in such institution and facilities available therein, with regard to the conduct of such tests, examinations and inspections, and more than one person or institution can be recognized as a competent person in relation to a factory;

(cb) “**hazardous process**” means 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

(i) cause material impairment to the health of the persons engaged in or connected therewith, or

(ii) result in the pollution or 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;

(d) “**young person**” means a person who is either a child or an adolescent;

(e) “**day**” means a period of twenty-four hours beginning at midnight;

(f) “**week**” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories;

(g) “**power**” means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;

(h) “**prime mover**” means any engine, motor or other appliance which generates or otherwise provides power;

(i) “**transmission machinery**” means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted or received by any machinery or appliance;

(j) “**machinery**” includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied;

(k) “**manufacturing process**” means any process for—

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

7 (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;

(vi) preserving or storing any article in cold storage;

(l) “**worker**” means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for 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];

(m) “**factory**” means any premises including the precincts thereof

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

(ii) 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, but does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952)], or a mobile mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant operating place

2 5.2. References to time of day

In this Act references to time of day are references to Indian Standard Time, being five and a half hours ahead of Greenwich Mean Time: Provided that for any area in which Indian Standard Time is not ordinarily observed the State Government may make rules

(a) specifying the area,

(b) defining the local mean time ordinarily observed therein, and

(c) permitting such time to be observed in all or any of the factories situated in the area.

5.3. Power to declare different departments

It has to be separate factories or two or more factories to be a single factory. The State Government may, [on its own or] on an application made in this behalf by an occupier, direct, by an order in [and subject to such conditions as it may deem fit that for all or any of the purposes of this Act different departments or branches of a factory of the occupier specified in the application shall be treated as separate factories or that two or more factories of the occupier specified in the application shall be treated as a single factory:

Provided that no order under this section shall be made by the State Government on its own motion unless an opportunity of being heard is given to the occupier.

5.4. Power to exempt during public emergency.

In any case of public emergency the State Government may, by notification in the Official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this Act 4[except section 67] for such period and subject to such conditions as it may think fit:

Provided that no such notification shall be made for a period exceeding three months at a time. For the purposes of this section “public emergency” means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.]

5.5. Approval, licensing and registration of factories

(1) The State Government may make rules—

(a) requiring, for the purposes of this Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;

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

(b) requiring for the purpose of considering applications for such permission the submission of plans and specifications;

(c) prescribing the nature of such plans and specifications and by whom they shall be certified;

(d) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licenses;

(e) requiring that no license shall be granted or renewed unless the notice specified in section 7 has been given.

(2) If on an application for permission referred to in 8[clause (aa)] of sub-section (1) accompanied by the plans and specifications required by the rules made under clause (b) of that sub-section, sent to the State Government or Chief Inspector by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted

3
5.6. Notice by occupier

(1) The occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing—

(a) the name and situation of the factory;

(b) the name and address of the occupier;

[(bb) the name and address of the owner of the premises or building (including the precincts there of referred to in section 93);]

(c) the address to which communications relating to the factory may be sent;

(d) the nature of the manufacturing process—

(i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act; and

(ii) to be carried on in the factory during the next twelve months in the case of all factories;

[(e) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand-by plant;]

(f) the name of the manager of the factory for the purposes of this Act;

(g) the number of workers likely to be employed in the factory;

(h) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act;

(i) such other particulars as may be prescribed.

(2) In respect of all establishments which come within the scope of the Act for the first time, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days from the date of the commencement of this Act.

(3) Before a factory engaged in a manufacturing process which is ordinarily carried on for less than one hundred and eighty working days in the year resumes working, the occupier

shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) [at least thirty days]before the date of the commencement of work.

(4) Whenever a new manager is appointed, the occupier shall send to the 5[Inspector a written notice and to the Chief Inspector a copy thereof] within seven days from the date on which such person takes over charge.

(5) During any period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act

5.7 Title Inspecting Staff

5.7A. General duties of the occupier.

(1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

(2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include—

(a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;

(b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;

(d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;

(e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

(3) Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manners may be prescribed.

5.7B. General duties of manufacturers

IT as regards articles and substances for use in factories.

(1) Every person who designs, manufactures, imports or supplies any article for use in any factory, shall—

(a) ensure, so far as is reasonably practicable, that the article is so designed and constructed as to

be safe and without risks to the health of the workers when properly used;

(b) carry out or arrange for the carrying out of such tests and examination as may be considered

necessary for the effective implementation of the provisions of clause (a);

(c) take such steps as may be necessary to ensure that adequate information will be available—

(i) in connection with the use of the article in any factory;

- (ii) about the use for which it is designed and tested; and
- (iii) about any conditions necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers: Provided that where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see—
- (a) that the article conforms to the same standards if such article is manufactured in India, or
- (b) if the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India, that the article conforms to such standards.
- (2) Every person, who undertakes to design or manufacture any article for use in any factory, may carry out or arrange for the carrying out of necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimization of any risks to the health or safety of the workers to which the design or article may give rise
- (3) Nothing contained in sub-sections (1) and (2) shall be construed to require a person to repeat the testing, examination or research which has been carried out otherwise than by him or at his instance in so far as it is reasonable for him to rely on the results thereof for the purposes of the said sub-sections.
- (4) Any duty imposed on any person by sub-sections (1) and (2) shall extend only to things done in the course of business carried on by him and to matters within his control.
- (5) Where a person designs, manufactures, imports or supplies an article on the basis of a written undertaking by the user of such article to take the steps specified in such undertaking to ensure, so far as is reasonably practicable, that the article will be safe and without risks to the health of the workers when properly used, the undertaking shall have the effect of relieving the person designing, manufacturing, importing or supplying the article from the duty imposed by clause (a) of sub-section (1) to such extent as is reasonable having regard to the terms of the undertaking.
- (6) For the purposes of this section, an article is not to be regarded as properly used if it is used without regard to any information or advice relating to its use which has been made available by the person who has designed, manufactured, imported or supplied the article.
- Explanation.—For the purposes of this section, “article” shall include plant and machinery.

53. Inspectors

- (1) The State Government may, by notification in the Official Gazette, appoint such persons as possess the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.
- (2) The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.
- [2A) The State Government may, by notification in the Official Gazette, appoint as many Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors and as many other officers as it thinks fit to assist the Chief Inspector and to exercise such of the powers of the Chief Inspector as may be specified in such notification.
- (2B) Every Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointed under sub-section (2A) shall, in addition to the powers of a Chief Inspector specified in the notification by which he is appointed, exercise the power of an Inspector throughout the State.]
- (3) No person shall be appointed under sub-section (1), sub-section (2), sub-section (2A) or sub-section (5) or, having been so appointed, shall continue to hold office, who is or becomes

directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) Every District Magistrate shall be an Inspector for his district.

(5) The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(6) In any area where there are more Inspectors than one the State Government may, by notification as aforesaid, declare the powers, which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

(7)[Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed under this section] shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority as the State Government may specify in this behalf.

5.9. Powers of Inspectors.

Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed

(a) enter, with such assistants, being persons in the service of the Government, or any local or other public authority, [or with an expert] as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;

(b) make examination of the premises, plant, machinery, article or substance;

(c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;

(d) require the production of any prescribed register or any other document relating to the factory;

(e) seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;

(f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);

(g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;

(h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of

the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination; exercise such other powers as may be prescribed.

50. Certifying surgeons

(1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.

(2) A certifying surgeon may, with the approval of the State Government, authorize any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorized.

(3) No person shall be appointed to be, or authorized to exercise the powers of, a certifying surgeon, or having been so appointed or authorized, continue to exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory:

[Provided that the State Government may, by order in writing and subject to such conditions as maybe specified in the order, exempt any person or class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.]

(4) The certifying surgeon shall carry out such duties as may be prescribed in connection with—

(a) the examination and certification of young persons under this Act;

b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;

(c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where—

(i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;

(ii) by reason of any change in the manufacturing process carried on or in the substances used there in or by reason of the adoption of any new manufacturing process or of any new substance

for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

(iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health

11 Health

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

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

(b) the floor of every workroom shall be cleaned at least once in every week by washing.

using disinfectant, where necessary, or by some other effective method;

(c) where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;

(d) all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall—

(i) where they are [painted otherwise than with washable water-paint] or varnished, be repainted or revarnished at least once in every period of five years;

[(ia) where they are painted with washable water-paint, be repainted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months;]

(ii) where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least once in every period of fourteen months by such method as may be prescribed;

(iii) in any other case, be kept whitewashed, or colour washed, and the whitewashing or colour washing shall be carried out at least once in every period of fourteen months;

[(dd) all doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years;]

(e) the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

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5.12. Disposal of wastes and effluents

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

(2) The State Government may make rules prescribing the arrangements to be made under sub-section (1) or requiring that the arrangements made in accordance with sub-section (1) shall be approved by such authority as may be prescribed.

5.13. Ventilation and temperature

(1) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom—

(a) adequate ventilation by the circulation of fresh air, and

(b) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health; and in particular,

(i) walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;

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

(2) The State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof and direct that 4 [proper measuring instruments, at such places and in such position as may be specified, shall be provided and such records, as may be prescribed, shall be maintained.

(3) If it appears to the Chief Inspector that excessively high temperatures in any factory can be reduced by the adoption of suitable measures, he may, without prejudice to the rules made under sub-section (2), serve on the occupier, 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.

5.14. Dust and fume

(1) In 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 workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to workers employed in the room.

5.15. Artificial humidification

(1) In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules,

- (a) prescribing standards of humidification;
- (b) regulating the methods used for artificially increasing the humidity of the air;
- (c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
- (d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

(2) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

(3) If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before specified date.

5.16. Overcrowding

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

(2) Without prejudice to the generality of sub-section (1) there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least 1[9.9 cubic meters] and of a factory built after the commencement of this Act at least 2[14.2 cubic meters] of space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more than 3[4.2 meters] above the level of the floor of the room.

(3) 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.

(4) The Chief Inspector may by order in writing exempt, subject to such conditions, if any, as he may think 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.

5.17. Lighting

- (1) In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.
- (2) In every factory all glazed windows and skylights used for the lighting of the workrooms shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made under sub-section (3) of section 13 will allow, free from obstruction.
- (3) In every factory effective provision shall, so far as is practicable, be made for the prevention of—
 - (a) glare, either directly from a source of light or by reflection from a smooth or polished surface;
 - (b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker.
- (4) The State Government may prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process.

5.18. Drinking water

- (1) 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
- (2) All such points shall be legibly marked "drinking water" in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within [six meters of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination] unless a shorter distance is approved in writing by the Chief Inspector.
- (3) In every factory wherein more than two hundred and fifty workers are ordinarily employed, provision shall be made for cool drinking water during hot weather by effective means and for distribution thereof.
- (4) In respect of all factories or any class or description of factories the State Government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

5.19. Latrines and urinals.

- (1) In every factory
 - (a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at factory;
 - (b) separate enclosed accommodation shall be provided for male and female workers;
 - (c) such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any work room except through an intervening open space or ventilated passage;
 - (d) all such accommodation shall be maintained in a clean and sanitary condition at all times;
 - (e) sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.
- (2) In every factory wherein more than two hundred and fifty workers are ordinarily employed

- (a) all latrine and urinal accommodation shall be of prescribed sanitary types;
 - (b) the floors and internal walls, up to a height of 2[ninety centimeters], of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface;
 - (c) without prejudice to the provisions of clauses (d) and (e) of sub-section (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.
- (3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

5.20. Spittoons

- (1) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.
- (2) The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.

5.21. Fencing of machinery

- (1) In every factory the following, namely:
- (i) every moving part of a prime mover and every flywheel connected to a prime mover, whether the prime mover or flywheel is in the engine house or not;
 - (ii) the headrace and tailrace of every water-wheel and water turbine;
 - (iii) any part of a stock-bar which projects beyond the head stock of a lathe; and
 - (iv) 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:—
- (a) every part of an electric generator, a motor or rotary converter;
 - (b) every part of transmission machinery; and
 - (c) every dangerous part of any other machinery; shall be securely fenced by safeguards of substantial construction which
1. [shall be constantly maintained and kept in position] while the parts of machinery the y are fencing are in motion or in use:
 2. [Provided that for the purpose of determining whether any part of machinery is in such position or is of such construction as to be safe as aforesaid, account shall not be taken of any occasion when—
- (i) it is necessary to make an examination of any part of the machinery aforesaid while it is in motion or, as a result of such examination, to carry out lubrication or other adjusting operation while the machinery is in motion, being an examination or operation which it is necessary to be carried out while that part of the machinery is in motion, or
 - (ii) in the case of any part of a transmission machinery used in such process as may be

prescribed (being a process of a continuous nature the carrying on of which shall be, or is likely to be, substantially interfered with by the stoppage of that part of the machinery), it is necessary to make an examination of such part of the machinery while it is in motion or, as a result of such examination, to carry out any mounting or shipping of belts or lubrication or other adjusting operation while the machinery is in motion, and such examination or operation is made or carried out in accordance with the provisions of sub-section (1) of section 22.]

(2) The State Government may by rules prescribe such further precautions as it may consider necessary in respect of any particular machinery or part thereof, or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the provisions of this section.

5.22. Work on or near machinery in motion

(1) [Where in any factory it becomes necessary to examine any part of machinery referred to in section 21, while the machinery is in motion, or, as a result of such examination, to carry out—

(a) in a case referred to in clause (i) of the proviso to sub-section (1) of section 21, lubrication or other adjusting operation; or

(b) in a case referred to in clause (ii) of the proviso aforesaid, any mounting or shipping of belts or lubrication or other adjusting operation,

while the machinery is in motion, 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) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of this appointment, and while he is so engaged,

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

(i) the belt is not more than fifteen centimeters in width;

(ii) the pulley is normally for the purpose of drive and not merely a fly-wheel or balance wheel (in which case a belt is not permissible);

(iii) the belt joint is either laced or flush with the belt;

(iv) the belt, including the joint and the pulley rim, are in good repair;

(v) there is reasonable clearance between the pulley and any fixed plant or structure;

(vi) secure foothold and, where necessary, secure handhold, are provided for the operator;

(vii) Any ladder in use for carrying out any examination or 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.

(2) No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.

(3) The State Government may, by notification in the Official Gazette, prohibit, in any specified factory or class or description of factories, the cleaning, lubricating or adjusting by

any person of specified parts of machinery when those parts are in motion.

5.23. Employment of young persons on dangerous machines

(1) No young person [shall be required or allowed to work] at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and—

(a) has received sufficient training in work at the machine, or
(b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

5.24. Striking gear and devices for cutting off power

(1) In every factory—

(a) suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley;

(b) driving belts when not in use shall not be allowed to rest or ride upon shafting in motion

(2) In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom:

Provided that in respect of factories in operation before the commencement of this Act, the provisions of this sub-section shall apply only to workrooms in which electricity is used as power.

[(3) When a device, which can inadvertently shift from “off” to “on” position, is provided in a factory to cut off power, arrangements shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted].

5.25. Self-acting machines

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

Provided that the Chief Inspector may permit the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

5.26. Casing of new machinery

(1) In all machinery driven by power and installed in any factory after the commencement of this Act,

(a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger;

(b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as could be if it were completely encased.

(2) Whoever sells or lets on hire or, as agent of a seller or hirer, causes 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 five hundred rupees or with both.

[(3) The State Government may make rules specifying further safeguards to be provided in respect of any other dangerous part of any particular machine or class or description of machines.]

5.27. 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.

5.28. Hoists and lifts

(1) In every factory

(a) every hoist and lift shall be

(i) of good mechanical construction, sound material and adequate strength;

(ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination;

(b) every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part;

(c) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon;

(d) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing;

(e) every gate referred to in clause (b) or clause (d) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(2) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely:

(a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;

(b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments;

(c) an efficient automatic device shall be provided and maintained to prevent the cage from

overrunning.

(3) The Chief Inspector may permit the continued, use of a hoist of lift installed in a factory before

the commencement of this Act which does not fully comply with the provisions of sub-section (1) upon such conditions for ensuring safely as he may think fit to impose.

(4) The State Government may, if in respect of any class or description of hoist or lift, it is of opinion that it would be unreasonable to enforce any requirement of sub-sections (1) and (2), by order direct that such requirement shall not apply to such class or description of hoist or lift.

[Explanation.—For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.]

5.29. Lifting machines, chains, ropes and lifting tackles

(1) In any factory the following provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:

(a) all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be

(i) of good construction, sound material and adequate strength and free from defects;

(ii) properly maintained; and

(iii) thoroughly examined by a competent person at least once in every period of twelvemonths, or at such intervals as the Chief Inspector may specify in writing; and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register; and where this is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain, rope or lifting tackle in use shall be displayed in prominent positions on the premises;

5.30. Revolving machinery

(1) In every factory] in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(2) The speeds indicated in notices under sub-section (1) shall not be exceeded.

(3) Effective measures shall be taken in every factory to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliance driven by power is not exceeded.

5.31 AP Factories Rules 1950

The following draft of an amendment to the Andhra Pradesh Factories Rules,1950 which it is proposed to be made in exercise of the powers conferred under section 112 of the Factories Act, 1948 (Act No.63 of 1948) is hereby published for general information as required under sub section (1) of section 115 of the said Act.

Notice is hereby given that the draft will be taken into consideration by the Government on or after forty five (45) days from the date of its publication in the Andhra Pradesh Gazette and that any objections or suggestions which may be received from any person with respect thereto within the aforesaid period will be considered by the Government of Andhra Pradesh.

The objections or suggestions if any should be addressed to the Secretary to Government, Labour, Employment, Training and Factories (Lab.II) Department, Government of Andhra Pradesh through Director of Factories, Andhra Pradesh ,Hyderabad.

A Safety Officer

(1) Qualification

(a) A person shall not be eligible for appointment as Safety Officer unless he

(i) Possesses a recognized degree in any branch of engineering or technology and has had practical experience of working in a factory in supervisory capacity for a period of not less than two years (or) A recognized diploma in any branch of engineering or technology and has had practical experience of Working in a factory in a supervisory capacity for a period of not less than five years (or) a recognized Degree in physics or chemistry and has had practical experience of working in a factory in supervisory capacity for a period of not less than three years. The practical experience for the purpose of this sub rule shall necessarily be in manufacturing or maintenance or Safety Department of a factory

(ii) Possesses a full time degree or diploma or certificate in industrial safety or equivalent of duration not less than one Year awarded by any university incorporated under the Central or State legislations or Department of Technical Education or Board of Technical education of any State Government of India duly following the guidelines as specified in the Annexure at the end of this Rule.

(iii) has adequate knowledge of Telugu and the language spoken by majority of the workers in the region in which the factory where he is to be appointed is situated.

(b) Notwithstanding the provisions contained in clause (a), any person who possesses recognized degree or diploma in engineering or technology and has had experience of not less than 5 years in a Department of the Central or State Government which deals with the administration of the Factories Act, 1948 or the Indian Dock Laborers Act, 1934; or Possesses a recognized degree or diploma in engineering or technology and has had experience not less than 5 years, full time, on training, education, or research in the field of industrial safety and occupational Health in any institution of central or state government shall also be eligible for appointment as a Safety Officer. Provided that the Chief Inspector may subject to such conditions as he may specify, grant exemption from the requirements of this sub-rule, if in his opinion, a suitable person possessing the necessary qualifications and experience is not available for appointment:

Provided further that every person who has been working as a Safety Officer after being appointed as per the prescribed procedure and after appointment was notified to and taken on record by the Chief Inspector as on date of commencement of this rule, shall continue to be a safety officer under this rule irrespective of whether he satisfies the above criteria prescribed in sub rule (a) or (b) above.

(3) Recruitment

(i) Selection for appointment to the post(s) of Safety Officer(s) shall be made from among the candidates applying for the post(s) by a committee appointed by the Occupier of the factory

(ii) The appointment when made shall be notified by the Occupier to the Chief Inspector of Factories giving the details of the qualifications, age, pay, previous experience and other relevant particulars of the officer appointed and the terms and conditions of his service. The Chief Inspector may call for further additional information if not satisfied with the information furnished by the occupier. The Chief Inspector ratify the appointment of the Safety Officer in the factory in writing within 30 days from the date of receipt of the information or the additional information, as the case may be, furnished by the occupier.

Provided that any person who has already been ratified once for the post of Safety Officer or Chief safety Officer in any factory situated in the state of Andhra Pradesh is eligible for appointment as Safety Officer / Chief Safety Officer in any other factory carrying out the similar manufacturing activity and in such cases, the occupier shall send an intimation in writing duly referring the same to the Chief Inspector of Factories for the purpose of this sub rule.

(4) Conditions of Service

(a) Wherever more than one safety officer is to be appointed in a factory as required by this rule, one of them shall be designated as the Chief Safety Officer by a committee appointed by the occupier and shall have a status higher than that of the others. The Chief Safety Officer shall be in overall charge of the safety functions as envisaged in sub-rule (5) and other safety officers working under his control.

(b) The Chief Safety Officer or the Safety Officer in the case of factories where only one Safety Officer is required to be appointed shall be given the status of a senior executive and he shall work directly under the control of the Chief Executive of the factory. All other Safety Officers shall be given appropriate status to enable them to discharge their functions effectively.

(c) The scale of pay and the allowance to be granted to the Safety Officer and the Chief Safety Officer, and the conditions of their service shall be the same as those of the officers of the corresponding status in the factory. In no case they shall be less than the total emoluments being paid by a State Government to an Inspector of Factories at the minimum of his scale of pay, in case of a safety officer and to that of a Deputy Chief Inspector of Factories in case of a Chief Safety Officer

(d) The conditions of service of Safety officer shall be the same as those of the other members of the executive staff of corresponding status in the factory.

(e) The services of a Safety Officer shall not be dispensed with, or he shall not be reverted, without the written concurrence of the Director of Factories, Hyderabad who shall record reasons therefore.

(f) No punishment such as withholding of increments, including stoppage at any efficiency bar, reduction to a lower state in the time scale, suspension dismissal or termination of service, except censure shall be imposed by the management on a Safety officer, except with

the previous concurrence of the Director of Factories.

(g) A Safety Officer, who has been dismissed from service or whose services have been terminated in any other manner than as provided in clause (iv) above may within 30 days from the date of receipt of the order by him, appeal to the State Government against the order of punishment made by the management with the concurrence of the

Director of Factories and the decision of the State Government thereon shall be final. Provided that when the management terminates the service or probation of a safety officer the reasons for such a termination of service or probation shall be reported to the State Government or such authority, as may be, empowered by them in this behalf.

(5) Duties

The duties of the Safety Officer shall be to advise and assist the factory management in the fulfillment of its obligation, statutory or otherwise, concerning prevention of personal injuries and maintaining a safe working environment. These duties shall include the following namely;

- (i) to advise the concerned department in a factory in planning and organizing measures necessary for the effective control of personal injuries.
- (ii) to check and evaluate the effectiveness of the action taken or proposed to be taken to prevent personal injuries;
- (iii) to advise on safety aspects in all job studies, and to carry out detailed job safety studies of selected jobs;
- (iv) to advise the purchasing and stores department in ensuring high quality and availability of personal protective equipment;
- (v) to provide advice on matters related to carrying out plant safety inspections;
- (vi) to carry out plant safety inspections in order to observe the physical conditions of work and the work practices and procedures followed by the workers and to render advice on measures to be adopted for removing unsafe physical conditions and preventing unsafe actions by workers;
- (vii) to render advice on matters related to reporting and investigation of industrial accidents and diseases;
- (viii) to investigate all reportable accidents;
- (ix) to investigate the case of industrial diseases contracted and dangerous occurrence under Rule 96;
- (x) to advise on the maintenance of such records as are necessary relating to accidents, dangerous occurrences and industrial diseases;
- (xi) to promote setting up of safety committees and act as adviser and catalyst to such committees;
- (xii) to be instrumental in designing and implementing the various creative initiatives in association with the concerned departments like campaigns, competitions, contests and other activities which will develop and maintain the interest of the workers and enhance the workers participation in occupational safety and health management.
- (xiii) to design and conduct either independently or in collaboration with the training department, suitable training and educational programmes towards occupational safety and health management.
- (xiv) to coordinate with qualitative and quantitative risk assessment studies with either internal or external resources and follow up the compliance of all the recommendations/suggestions;
- (xv) to coordinate all third party inspections/survey/investigations/testing and examinations

either statutory or otherwise aimed towards management of occupational safety and health; (xvi) to advise the management of the factory in fulfilling obligations under all occupations Safety and health related legislations applicable

(6) Facilities: An occupier of the factory all provide each Safety Officer with such facilities, equipment, staff, information etc., as are necessary to enable him to discharge his duties effectively but not less than those recommended if any by the Chief Inspector, from time to time.

(7) Prohibition of Performance of other duties: No Safety officer shall be required or permitted to do any work which is inconsistent with or detrimental to the performance of the duties prescribed in sub-rule (5)

(8) Safety Officer's Report

Every Chief Safety officer or Safety officer where there is no Chief safety officer, working in a factory as required under this rule, shall submit through the occupier of his factory, a report in writing with all relevant details to the Chief inspector of Factories, in the month of January every year, on the activities/initiatives taken up during the preceding calendar year and the progress achieved.

5.32 Summary

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 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

5.33 Key words

Inspectors-The State Government may, by notification in the Official Gazette, appoint such persons as possess the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit

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

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

Manufacturing process means any process for—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;

Competent person- in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purposes of carrying out tests, examinations

and inspections required to be done in a factory under the provisions of this Act having regard to—

- (i) the qualifications and experience of the person and facilities available at his disposal; or
- (ii) the qualifications and experience of the persons employed in such institution

5.34 Self Assessment Questions

1. Briefly Discuss the General Duties of Occupier
2. Explain the General Duties of Manufacturers
3. Examine the Power of Inspectors
4. Outline the A.P Factories Act 1950

5.35 Suggested Readings

1. Taxmann(2020) Labour Laws with Code on Wages Book Taxman's Publications
2. Dr. O. P. Gupta, Dr. Vijay Gupta (2021) Labour Legislation In India: Revised Edition SBPD Publishing House, Agra.
3. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers
4. Padhi P.K.(2021) Labour and Industrial Laws Forth Edition PHI Learning
5. Ayusawa Iwao (2022), Frederick, International Labor Legislations, Forgotten Books.
6. Dr.O.P.Gupta & Dr.Vijaya Gupta (2022), Labor Legislations, SBPD Publishing House.
7. Kumara, Venugopala G.S.(2022), Employee Relations and Legislations, Current Publications.
8. Kumara Venugopala G.S(2022), Business & Company Legislations, The Universal Law Publishing Limited.
9. V.K. Kharbanda (2022) LPH's Labour Law Digest Edition Law Publishing House

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LESSON-6

THE ANDHRA PRADESH FACTORIES AND ESTABLISHMENTS (NATIONAL, FESTIVAL AND OTHER HOLIDAYS) ACT, 1974 ACT No.32 of 1974

Learning objectives

- ✓ To study the Power of Inspectors
- ✓ To Know the Exemption of the Holidays
- ✓ To Learn the Rights and privileges under other laws
- ✓ To Understand the Payment of Wages Under the Act (1974)

Structure

- 6.1 Introduction
- 6.2. Short title, extent and commencement
- 6.3. Definitions
- 6.4. Grant of National, Festival and other holidays
- 6.5. Employer to send statement to Inspector
- 6.6. Wages
- 6.7. Inspectors
- 6.8. Powers of Inspectors
- 6.9. Recovery of wages for holidays
- 6.10. Penalties
- 6.11. Penalty for obstructing Inspector
- 6.12. Exemptions
- 6.13. Rights and privileges under other laws, etc., not affected
- 6.14. Power to make rules
- 6.15. Notification of Paid Holidays (1974 Calendar with Festivals Used)
- 6.16. Payment of Wages Under the Act (1974 Calendar with Festivals Used)
- 6.17. Key Takeaways
- 6.18. Summary
- 6.19. Key words
- 6.20. Self Assessment Questions
- 6.21. Suggested Readings

6.1 Introduction

An Act to provide for the grant of national, festival and other holidays to persons employed in factories and establishments in the State of Andhra Pradesh.

Be it enacted by the Legislature of the State of Andhra Pradesh in the Twenty fifth Year of the Republic of India, as follows:

6.2. Short title, extent and commencement :-

- (1) This Act may be called the Andhra Pradesh Factories and Establishments (National, Festival and other Holidays) Act, 1974

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(2) It extends to the whole of the State of Andhra Pradesh.

(3) It shall come into force on such date as the Government may, by notification appoint.

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6.3. Definitions :- In this Act, unless the context otherwise requires

- (a) "day" means a period of twenty four hours beginning at midnight.
- (b) "**employee**" means any person (including an apprentice) employed in any factory or establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied; and includes any other person employed in any factory or establishment whom the Government, may by notification, declare to be an employee for the purposes of this Act;
- (c) "**employer**" when used in relation to a factory or establishment means a person who has the ultimate control over the affairs of such factory or establishment and where the affairs of any such factory or establishment are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person.
- (d) "**establishment**" means any establishment as defined in Clause (10) of Section 2 of the Andhra Pradesh Shops and Establishments Act, 1966 (Andhra Pradesh Act 15 of 1966) and includes any other establishment which the Government may, by notification, declare to be an establishment for the purposes of this Act.
- (e) "**factory**" means any factory as defined in Clause (m) of Section 2 of the Factories Act, 1948 (Central Act 68 of 1948), or any place which is deemed to be a factory under sub clause (2) of Section 85 of the Act;
- (f) "Government" means the State Government
- (g) "Inspector" means an Inspector appointed under sub section (1) of Section 6;
- (h) "notification" means a notification published in the I Andhra Pradesh Gazette and the word "notified" shall be construed accordingly;
- (i) "prescribed" means prescribed by rules made under this Act;
- (j) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of the work done by him in such employment and includes
- (i) such allowances (including dearness allowance) as the employee is for the time being entitled to;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles, but does not include
- (a) any bonus;

- (b) any contribution paid or payable by the employer to any pension or provident funds, or for the benefit of the employee under any law for the time being in force;
- (c) any gratuity payable on the termination of his service;
- (d) any sum paid to the employee to defray special expenses entitled on him by the nature of his employment.
- (e) any travelling concession.

6.4 . Grant of National, Festival and other holidays

- (1) Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January *[the 1st May], the 15th August and the 2nd October and * [four other holidays]each of one whole day for such festivals as may be notified by the Government or by such other authority as may be prescribed:

[Provided that it shall be open for any employer to declare, with the consent of the employees in any factory or establishment and under intimation to the Government or prescribed authority, a substituted holiday in lieu of any of the festival holidays aforesaid.]

- (2) Notwithstanding anything in this Act, the Government may, having due regard to any emergency or special circumstances prevailing in the State or any part thereof, notify any other whole day as a holiday to be allowed in any calendar year, to such employees or class of employees as they may deem fit.

6.5. Employer to send statement to Inspector

Every employer shall send to the Inspector having jurisdiction over the area in which the factory or establishment is situated and display in the premises of such factory or establishment, a statement showing the holidays allowed in each calendar year under Section 3, in such form, within such time and in such manner as may be prescribed.

6.6. Wages

(1) Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to him under Section 3.

[Provided that no wages for any such holiday shall be allowed in respect of any employee, who has not put in atleast thirty days work within a continuous period of ninety days immediately preceding that holiday or who is on leave with wages during any period including any such holiday.

(2) (a) Notwithstanding anything contained in Section 3, any employee may be required by the employer to work on any holiday allowed under that section if the employer has, not less than twenty four hours before such holiday

(i) served in the prescribed manner on the employee a notice in writing requiring him to work as aforesaid; and

(ii) sent to the Inspector having jurisdiction over the area in which the factory or establishment is situated and displayed in the premises of the factory or establishment a copy

of such notice.

(b) Where an employee works on any holiday allowed under Section 3, he shall, at his option, be entitled to

(i) twice the wages; or

(ii) wages for such day and to avail himself of a substituted holiday with wages on one of the three days immediately before or after the day on which he so works.

Provided that an employee who is paid wages by the day or at piece rates shall be entitled to be paid wages for any holiday allowed under Section 3 only at a rate equivalent to the daily average of his wages to be calculated in the prescribed manner.

6.7. Inspectors

(1) The Government may, by notification, appoint such persons or such class of persons as they think fit to be Inspectors for the purposes of this Act for such local limits as the Government may specify.

(2) Every Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (Central Act 45 of 1860)

6.8. Powers of Inspectors

An Inspector, may, subject to any rules made by the Government in this behalf, within the local limits for which he is appointed -

(a) enter, at all reasonable times and with such assistants if any, who are persons in the service of the Government or any local authority as he thinks fit to take with him, any place which is, or which he has reason to believe, is a factory or an establishment;

(b) make such examination of the premises and of any prescribed registers, records and notices and take on the spot or otherwise, the evidence of such person as he may deem necessary for carrying out the purpose of this Act;

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act;

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

6.9. Recovery of wages for holidays

(1) Where any employer defaults in payment of the wages to the employee for each of the holidays allowed under this Act, the employee himself or any trade union of which he is a member or any Inspector under this Act, or any authorized representative of the employee, may apply to the authority specified in Section 15 of the Payment of Wages Act, 1936 (Central Act 4 of 1936)

(2) The provisions of Sections 15, 15 A, 16, 17, 17 A. * [and 18] of the Payment of Wages Act, 1936 shall, as far as may be, apply to all claims arising out of default in payment

of the wages of employees for the holidays allowed under this Act.

6.10. Penalties

Any employer who contravenes any of the provisions of Section 3 or Section 5 shall be punished with fine which, for the first offence, may extend to [one hundred and fifty rupees] and for a second and subsequent offences may extend to [seven hundred and fifty rupees].

6.11. Penalty for obstructing Inspector

Whoever willfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand in writing by an Inspector any register, record or notice in his custody which may be required to be kept in pursuance of this Act, or of any rule made there under, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

10-A. Cognizance of offences :- No Court shall take cognizance of any offence punishable under this Act, except on a complaint made by, or with the previous sanction in writing of, an Inspector, within six months from the date on which the offence comes to the knowledge of the Inspector.

6.12. Exemptions

(1) Nothing in this Act shall apply to

- (a) any employee in a position of management;
- (b) any employee whose work involves travelling;
- (c) any factory or establishment under the control of the Central or any State Government, local authority, Reserve Bank of India, a railway administration operating any railway as defined in clause (20) of article 366 of the Constitution, or a cantonment authority; or
- (d) any mine or oil field.

(2) The Government may, by notification and for reasons to be specified therein, exempt either permanently or for any specified period, any factory or establishment or class of factories or establishments or persons or class of persons from all or any of the provisions of this Act subject to such conditions as the Government may deem fit.

6.13. Rights and privileges under other laws, etc., not affected

Nothing contained in this Act shall affect any rights or privileges, which any employee is entitled to, on the date on which this Act came into force, under any other law, award, agreement or settlement, contract, custom or usage if such rights or privileges are more favorable to him than those to which he would be entitled under this Act.

6.14. Power to make rules

(1) The Government may, by notification make rules for carrying out all or any of the purposes of this Act.

(2) In making a rule under this Act, the Government may provide that a contravention thereof shall be punished with fine which may extend to fifty rupees.

(3) Every rule made under this Act shall, immediately after it is made, be laid before each House of the State Legislature if it is in session, and if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one session, or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, 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.

Andhra Pradesh Factories And Establishments National Festival And Other Holidays Rules 1974 Andhra Pradesh Factories and Establishments Act (Used The 1974 Calendar with Festivals) The Andhra Pradesh Factories and Establishments Act used the 1974 calendar with festivals as the basis to grant national and festival holidays to people employed in industries in the state of Andhra Pradesh. As per the Act, the minimum number of paid holidays is 8 days in a calendar year.

Some Definitions Covered by the Act (1974 Calendar with Festivals Used)

According to the Andhra Pradesh Factories Act of 1974 that used the 1974 calendar with festivals to determine paid holidays, a day refers to the period of twenty-four hours beginning at midnight

An employer is a person who controls the affairs of the factory or establishment. This act covers the cases where the affairs of the factory or establishment are entrusted to a managing agent, manager, or superintendent

As per the Act that used the 1974 calendar with festivals as the basis for deciding paid holidays, an employee is any person working in a factory or an establishment performing skilled or unskilled work, manual, supervisory, technical, or clerical work for wages, compensation and allowance.

According to the Act, even an apprentice is considered an employee

The term establishment is defined by the Andhra Pradesh Shops and Establishments Act of 1966. The term establishment also includes any other place which the Government declares to be an establishment for the purposes of this Act

The term factory is defined by the Factories Act of 1968. The term factory also refers to any place which is deemed to be a factory under the same Act

The government refers to the State Government

The term inspector is used for a person appointed under subsection (1) of Section

6 Notification refers to the notice published in the Andhra Pradesh Gazette

According to the Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals for determining paid holidays, wages refer to all the remuneration capable of being expressed in terms of money that is payable to the employees if the terms of employment are fulfilled. Wages include dearness allowance and the value of accommodation, electricity, water, medical facilities, food grains, and other facilities provided at a concessional rate. Wages don't include bonuses and contributions made by the employer to the pension fund, provident fund, or for the benefit of the employees. Any gratuity that is paid on the termination of service is also not a part of wages. Amount paid to the employees in lieu of special expenses that they are entitled to due to the nature of their employment and concessions for travel are also not included in wages.

Andhra Pradesh Factories And Establishments Rules (1974 Calendar with Festivals Used) The Governor of Andhra Pradesh made rules in accordance with the aforementioned Act. These rules were called the Andhra Pradesh Factories And Establishments Rules and they used the 1974 calendar with festivals as the basis to decide on paid holidays

The Andhra Pradesh Factories And Establishments Rules that used the 1974 calendar with festivals to decide paid holidays did not affect any rights or privileges than the employees were entitled to in case such rights or privileges were more favorable to the employees than those conferred by the Act

The said Act that used the 1974 calendar with festivals to determine holidays did not apply to employees who were working as managers and employees who traveled for the purpose of work. The rules didn't apply to factories or establishments under the control of the Central or State Government, local authority, Reserve Bank of India, and railway administration. People working in mines and oil fields too did not benefit as a result of this Act

The government could exempt either permanently or for any specified period, a factory or an establishment, a class of factories or establishments, and persons or class of persons from all or any of the provisions of the Andhra Pradesh Factories And Establishments Rules that used the 1974 calendar with festivals subject to the certain conditions

6.15 Notification of Paid Holidays (1974 Calendar with Festivals Used)

Under the Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals for determining holidays, the Deputy Commissioner of Labour could notify the organizations of employers and employees of five festival holidays other than 26th January, 15th August and 2nd October.

The Act that used the 1974 calendar with festivals as the basis to decide paid holidays stated that if most of the employees or the employees' union in any factory or establishment chose to have the 1st of May as one of five holidays, they had to submit their request in writing to the Deputy Commissioner of Labour of the area before the end of November each year.

The Deputy Commissioner of Labour would have to consider the request and notify the employees and employers of the five holidays by the 10th of December of each year in accordance with Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals to determine paid holidays.

6.16 Payment of Wages Under the Act (1974 Calendar with Festivals Used)

In accordance with the Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals for deciding paid holidays, every employee will be allowed in each calendar year a holiday on 26th January, 15th August, and 2nd October. 1st of May will be declared a holiday if the employees so desire. In addition to these holidays, four other holidays will be declared for other festivals.

The festival holidays can also be substituted by other holidays provided the employees agree and the employer informs the state government. Under the Act that used the 1974 calendar with festivals as the basis for deciding holidays, the government due to emergency or special circumstances in the state can declare a holiday in any calendar year.

Employers have to send a statement to the Inspector having jurisdiction over the area in which the factory or establishment is situated and display on the premises of such a factory or establishment a notice showing the holidays allowed in each calendar year in accordance with the Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals for deciding paid holidays.

All employees have to be paid wages for the holidays granted to them. However, employees have to be paid wages for holidays only if they have worked at least thirty days in a span of ninety days immediately preceding the holiday. Employees who are on paid leave for a period of time preceding the holiday are not entitled to a paid holiday.

Any employee may be required by the employer to work on a holiday that has been declared provided the employer has had less than twenty-four hours notice before such a holiday. The employees however have to be given the notice to work in writing. The notice has to be sent to the Inspector having jurisdiction over the area in which the factory or establishment is situated. It also has to be displayed on the premises of the factory or establishment.

When employees work on holidays, the Act that used the 1974 calendar with festivals as the basis for determining paid holidays, states that employees are entitled to twice the wages. They can also take a paid holiday on one of the three days immediately before or after the day on which they work. Employees who are paid daily wages are entitled to wages for any holiday at a rate that is equivalent to the daily average of their wages.

Any employer who violates Section 3 and Section 5 of the Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals to decide paid holidays will be punished with a fine which can amount to Rs 150 for the first offense. For second and subsequent offenses the fine may extend to seven hundred and fifty rupees.

Appointing Inspectors and Conferring Powers Under the Act (1974 Calendar with Festivals Used) Under Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals as the basis for determining paid holidays, the Government can appoint inspectors who are considered public servants for the purpose of implementing the Act. Inspectors are bound by the rules made by the Government and ensure that the holidays and wages in the local area within their jurisdiction are in accordance with the Act.

The inspectors have the authority to enter a factory or an establishment along with their assistants who are employees of the government or local authorities at all reasonable times. They can examine the premises, registers, records, and notices and gather evidence from people on the

spot to make sure that the employees are granted holidays and paid wages in accordance with the Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals to determine paid holidays.

Even though the inspectors can exercise their powers for implementing the Act that used the 1974 calendar with festivals to decide paid holidays, people cannot be compelled to answer any question or give any evidence that can incriminate them. If anybody obstructs the inspectors while they are trying to enforce the Act that used the 1974 calendar with festivals to determine paid holidays, they will be punished with a prison term of up to three months or with a fine of up to five hundred rupees or both. The inspectors can make a complaint to the court in writing within 6 months from the time an offense comes to their notice and the court will issue a verdict on the same.

Recovery of Wages in Case of Default Under the Act (1974 Calendar with Festivals Used) If any employer doesn't pay wages to the employees for each of the holidays allowed under the Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals to determine holidays, the employees or any trade union of which they are members can claim wages for the holidays allowed under this Act. It is even possible for an Inspector or any authorized representative to claim wages for the employees for the holidays allowed under the Act that used the 1974 calendar with festivals as the basis for determining holidays.

6.17 Key Takeaways

Andhra Pradesh Factories and Establishments Act used the 1974 calendar with festivals for deciding on paid holidays. The Act clearly stated the minimum number of holidays that the factory workers were entitled to in a calendar year. According to the Act, the workers were entitled to at least 8 holidays in a calendar year.

Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals as the basis for deciding paid holidays stated that every employee would be allowed in each calendar year a holiday the whole day on 26th January, 15th August, and 2nd October. 1st May would be declared as a holiday if the employees so desire. In addition to these holidays, four other holidays would be declared for other festivals.

The Act stated that the Deputy Commissioner of Labour could notify the organizations of employers and employees of the five festival holidays other than 26th January, 15th August, and 2nd October.

The Act that used the 1974 calendar with festivals to decide paid holidays declared that all employees had to be paid wages for all the holidays granted to them.

Andhra Pradesh Factories and Establishments National Festival and Other Holidays Act ordered the Government to appoint inspectors who were considered public servants for the purpose of implementing the Act.

Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals for deciding paid holidays allowed for the recovery of wages in case of default.

6.18 Summary

There have been several instances of factory workers being denied holidays by their employers even though the state governments declare holidays on certain days. There are also instances of the workers demanding holidays when they are not entitled to them. Many years ago there was a dispute between the owners of a well-known factory and the employees. The state government declared a paid holiday for the workers on election day. However, the factory owners decided that there was no need for all the shift workers to be granted a paid holiday since it was

possible for some of the workers to show up at work and still vote once their shift was over. The workers decided not to show up at work on election day. The management responded by informing the workers that they would not be paid since they had taken a holiday without the management's consent. When the matter went to court, the judge ruled in favor of the management. A case like this highlights the importance of the Andhra Pradesh Factories and Establishments Act that used the 1974 calendar with festivals to determine paid holidays that the workers are entitled to. If factories and establishments follow the rules, there will be no dispute between the workers and the management.

6.19 Key words

Employee- means any person (including an apprentice) employed in any factory or establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied

Establishment- means any establishment as defined in Clause (10) of Section 2 of the Andhra Pradesh Shops and Establishments Act, 1966 (Andhra Pradesh Act 15 of 1966) and includes any other establishment which the Government may, by notification, declare to be an establishment for the purposes of this Act.

Employer- when used in relation to a factory or establishment means a person who has the ultimate control over the affairs of such factory or establishment and where the affairs of any such factory or establishment are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person.

Factory- means any factory as defined in Clause (m) of Section 2 of the Factories Act, 1948 (Central Act 68 of 1948), or any place which is deemed to be a factory under sub clause (2) of Section 85 of the Act;

6.20 Self Assessment Questions

1. Briefly Discuss about the Power of inspectors
2. Explain about the Exemption of the Holidays
3. Describe the Rights and privileges under other laws
4. Explain the Payments of wages Under the Act (1974).

6.21 Suggested Readings

1. Taxmann(2020) Labour Laws with Code on Wages Book Taxman's Publications
2. Dr. O. P. Gupta, Dr. Vijay Gupta (2021) Labour Legislation In India: Revised Edition SBPD Publishing House, Agra.
3. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers
4. Padhi P.K(2021) Labour and Industrial Laws Forth Edition PHI Learning
5. Ayusawa Iwao (2022), Frederick, International Labor Legislations, Forgotten Books.
6. Dr.O.P.Gupta & Dr.Vijaya Gupta (2022), Labor Legislations, SBPD Publishing House.
7. Kumara, Venugopala G.S.(2022), Employee Relations and Legislations, Current Publications.
8. Kumara Venugopala G.S(2022), Business & Company Legislations, The Universal Law Publishing Limited.
9. V.K. Kharbanda (2022) LPH's Labour Law Digest Edition Law Publishing House

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LESSON – 7
MINES ACT 1952

Learning objectives

- ✓ To understand the Functions of the Inspectors
- ✓ To Learn the Power of special officer to enter, measures,
- ✓ To Discuss the functions of Committee
- ✓ To study the Powers of Committee
- ✓ To Focus on the Duties and responsibilities of owners, agents and managers

Structure

- 7.1 Section 1. Short title, extent and commencement
- 7.2 Section 2 -Definitions.
- 7.3 Section 3 -Act not to apply in certain cases
- 7.4 Section 4- References to time of day
- 7.5 Section 5 -Chief Inspector and Inspectors
- 7.6 Section 6 -Functions of Inspectors.
- 7.7 Section 7-Powers of Inspectors of Mines
- 7.8 Section 8 -Powers of special officer to enter, measure, etc.
- 7.9 Section 9- Facilities to be afforded to Inspectors
- 7.10 Section 10- Secrecy of information obtained
- 7.11 Section 11- Certifying surgeons
- 7.12 Section 12- Committees
- 7.13 Section 13-Functions of the Committee
- 7.14 Section 14-Powers, etc., of the Committees
- 7.15 Section 15- Recovery of expenses
- 7.16 Section 16-Notice to be given of mining operations
- 7.17 Section 17-Managers
- 7.18 Section 18-Duties and responsibilities of owners, agents and managers
- 7.19 Section 19-Drinking water

7.1 Section 1- Short title, extent and commencement

- (1) This Act may be called the Mines Act, 1952.
- (2) It extends to the whole of India
- (3) It shall come into force on such date² or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States but not later than 31st December, 1953.

7.2 Section 2-Definitions

- [(1)] In this Act, unless the context otherwise requires,--
- (b) "**adult**" means a person who has completed his eighteenth year;
- 3[(c) "**agent**", when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine or of any part thereof:]

(d) Chief Inspector means the Chief Inspector of Mines appointed under this Act;

4[(e) "**Committee**" means a committee constituted under section 12;]

(f) "**day**" means a period of twenty-four hours beginning at midnight;

(g) "**district magistrate**" means, in a presidency-town, the person appointed by the Central Government to perform the duties of a district magistrate under this Act in that town;

5[(h) a person is said to be "employed" in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager, whether for wages or not--

(i) in any mining operation (including the concomitant operations of handling and transport of minerals up to the point of dispatch and of gathering sand and transport thereof to the mine);

(ii) in operations or services relating to the development of the mine including construction of plan therein but excluding construction of buildings, roads, wells and any building work not directly connected with any existing or future mining operations;

(iii) in operating, servicing, maintaining or repairing any part of any machinery used in or about the mine;

(iv) in operations, within the premises of the mine, of loading for dispatch of minerals;

(v) in any office of the mine;

(vi) in any welfare, health, sanitary or conservancy, services required to be provided under this Act, or watch and ward, within the premises of the mine excluding residential area; or

(vii) in any kind of work whatsoever which is preparatory or incidental to, or connected with, mining operations;] "Inspector" means an Inspector of Mines appointed under this Act, and includes a district magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Act to exercise or perform;

[(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes--

(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;

(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;

(iii) all levels and inclined planes in the course of being driven;

(iv) all open cast workings;

(v) all conveyors or aerial rope ways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;

(vi) all admits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;

(vii) all protective works being carried out in or adjacent to a mine;

(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;

(ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;

(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;

(xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on;]

(j) "minerals" means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulic, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum);

(k) "office of the mine" means an office at the surface of the mine concerned;

[(kk) "open cast working" means a quarry, that is to say, an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground;]

(l) "owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but ¹¹[any contractor or sub-lessee] for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability; (m) "prescribed" means prescribed by rules, regulations or bye-laws, as the case may be;

[(n) "qualified medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and who is enrolled on a State medical register as defined in clause (k) of that section;]

(o) "regulations", "rules" and "bye-laws" mean respectively regulations, rules and bye-laws made under this Act;

(p) where work of the same kind is carried out by two or more sets of persons working during different periods of the day each of such sets is called a "relay" ¹³[and each of such periods is called a "shift"]; "reportable injury" means any injury other than a serious bodily injury which involves, or in all probability will involve, the enforced absence of the injured person

from work for a period of seventy-two hours or more;]

[(q) "serious bodily injury" means any injury which involves, or in all probability will involve, the permanent loss of any part or section of a body or the use of any part or section of a body, or the permanent loss of or injury to the sight or hearing or any permanent physical incapacity or the fracture of any bone or one or more joints or bones of any phalanges of hand or foot;

(r) "week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector or an Inspector.]

[(2) A person working or employed in or in connection with a mine is said to be working or employed--

(a) "below ground" if he is working or employed--

(i) in a shaft which has been or is in the course of being sunk; or

(ii) in any excavation which extends below superjacent ground; and

(b) "above ground" if he is working in an open cast working or in any other manner not specified in clause (a)

7.3 Section 3- Act not to apply in certain cases

3. Act not to apply in certain cases.--(1) The provisions of this Act, except those contained in 2[sections 7,8,9,40,45 and 46] shall not apply to--

(a) any mine or part thereof in which excavation is being made for prospecting purposes only and not for the purpose of obtaining minerals for use or sale:

Provided that--

(i) not more than twenty persons are employed on any one day in connection with any such excavation;

(ii) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six metres or, in the case of an excavation for coal, fifteen metres; and

(iii) no part of such excavation extends below superjacent ground; or

(b) any mine engaged in the extraction of kankar, murrum, laterite, boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, 3[slate], road metal, earth, fullers earth, 3[, marl, chalk] and lime stone:

Provided that--

(i) the workings do not extend below superjacent ground; or

(ii) where it is an open cast working--

(a) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six metres;

(b) the number of persons employed on any one day does not exceed fifty; and

(c) explosives are not used in connection with the excavation.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that, having regard to the circumstances obtaining in relation to a mine or part

thereof or group or class of mines, it is necessary or desirable so to do, by notification in the Official Gazette, declare that any of the provisions of this Act, not set out in sub-section (1), shall apply to any such mine or part thereof or group or class of mines or any class of persons employed therein.

(3) Without prejudice to the provisions contained in sub-section (2), if at any time any of the conditions specified in the proviso to clause (a) or clause (b) of sub-section (1) is not fulfilled in relation to any mine referred to in that sub-section, the provisions of this Act not set out in sub-section (1), shall become immediately applicable, and it shall be the duty of the owner, agent or manager of the mine to inform the prescribed authority in the prescribed manner and within the prescribed time about the non-fulfilment.]

7.4 Section 4- References to time of day

In this Act, references to time of day are references to Indian standard time, being five and a half hours ahead of Greenwich mean time:

Provided that, for any area in which Indian standard time is not ordinarily observed, the Central Government may make rules--

- (a) specifying the area;
- (b) defining the local mean time ordinarily observed therein; and
- (c) permitting such time to be observed in all or any of the mines situated in the area.

7.5 Section 5 -Chief Inspector and Inspectors

(1)The Central Government may, by notification in the Official Gazette, appoint such a person as possesses the prescribed qualifications to be Chief Inspector of Mines for all the territories to which this Act extends and such persons as possess the prescribed qualifications to be Inspectors of Mines subordinate to the Chief Inspector.

(2) No person shall be appointed to be Chief Inspector or an Inspector, or having been appointed shall continue to hold such office, who is or becomes directly or indirectly interested in any mine or mining rights in India.

(3) The district magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government:

Provided that nothing in this sub-section shall be deemed to empower a district magistrate to exercise any of the powers conferred by 1[section 22 or section 22A] or section 61.

(4)The Chief Inspector and all Inspectors shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860

7.6 Section 6- Functions of Inspectors.

6. Functions of Inspectors.--

(1) The Chief Inspector may, with the approval of the Central Government and subject to such restrictions or conditions as he may think fit to impose, by order in writing, authorise any Inspector named or any class of Inspectors specified in the order to exercise such of the powers of the Chief Inspector under this Act (other than those relating to appeals) as he may specify.

(2)The Chief Inspector may, by order in writing, prohibit or restrict the exercise by any Inspector named or any class of Inspectors specified in the order of any power conferred on

Inspectors under this Act.

(3) Subject to the other provisions contained in this section, the Chief Inspector shall declare the local area or areas within which or the group or class of mines with respect to which Inspectors shall exercise their respective powers.]

7.7 Section 7. Powers of Inspectors of Mines

(1) The Chief Inspector and any Inspector may--

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder are observed in the case of any mine;

(b) with such assistants, if any, as he thinks fit, enter, inspect and examine any mine or any part thereof at any time by day or night:

Provided that the power conferred by this clause shall not be exercised in such a manner as unreasonably to impede or obstruct the working of any mine;

(c) examine into, and make inquiry respecting, the state and condition of any mine or any part thereof, the ventilation of the mine, the sufficiency of the bye-laws for the time being in force relating to the mine, and all matters and things connected with or relating to the health, safety and welfare of the persons employed in the mine, and take whether on the precincts of the mine or elsewhere, statements of any person which he may consider necessary for carrying out the purposes of this Act;

(d) exercise such other powers as may be prescribed by regulations made by the Central Government in this behalf:

Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(2) The Chief Inspector and any Inspector may, if he has reason to believe, as a result of any inspection, examination or inquiry under this section, that an offence under this Act has been or is being committed, search any place and take possession 1[of any material or any plan, section, register or other record] appertaining to the mine, and the provisions of the 2[Code of Criminal Procedure, 1973 (2 of 1974)] shall so far as may be applicable, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under 3[section 94] of that Code.

7.8 Section 8- Powers of special officer to enter, measure, etc.

Any person in the service of the Government duly authorised in this behalf by a special order in writing of the Chief Inspector or of an Inspector may, for the purpose of surveying, leveling or measuring any mine 1[or any output therefrom], after giving not less than three days' notice to the manager of such mine, enter the mine and may survey, level or measure the mine or any part thereof 1[or any output therefrom] at any time by day or night:

Provided that, where in the opinion of the Chief Inspector or of an Inspector an emergency exists, he may, by order in writing, authorise any such person to enter the mine for any of the aforesaid purposes without giving any such notice.

7.9 Section 9- Facilities to be afforded to Inspectors

Every owner, agent and manager of a mine shall afford the Chief Inspector and every Inspector and every person authorised under section 8 all reasonable facilities for making any entry, inspection, survey, measurement, examination or inquiry under this Act.

Section 9A. Facilities to be provided for occupational health survey

[9A. Facilities to be provided for occupational health survey.—

(1) The Chief Inspector or an Inspector or other officer authorised by him in writing in this behalf may, at any time during the normal working hours of the mine or at any time by day or night as may be necessary, undertake safety and occupational health survey in a mine after giving notice in writing to the manager of the mine; and the owner, agent or manager of the mine shall afford all necessary facilities (including facilities for the examination and testing of plant and machinery, for the collection of samples and other data pertaining to the survey and for the transport and examination of any person employed in the mine chosen for the survey) to such Inspector or officer.

(2) Every person employed in a mine who is chosen for examination in any safety and occupational health survey under sub-section (1) shall present himself for such examination and at such place as may be necessary and shall furnish all information regarding his work and health in connection with the said survey.

(3) The time spent by any person employed in a mine who is chosen for examination in the safety and occupational health survey, shall be counted towards his working time, so however that any overtime shall be paid at the ordinary rate of wages.

Explanation.—For the purposes of this sub-section, "ordinary rate of wages" means the basic wages plus any dearness allowance and underground allowance and compensation in cash including such compensation, if any, accruing through the free issue of foodgrains and edible oils as persons employed in a mine may, for the time being, be entitled to, but does not include a bonus (other than a bonus given as incentive for production) or any compensation accruing through the provision of amenities such as free housing, free supply of coal, medical and educational facilities, sickness allowance, supply of kerosene oil, baskets, tools and uniforms.

(4) Any person who, on examination under sub-section (2), is found medically unfit to discharge the duty which he was discharging in a mine immediately before such presentation shall be entitled to undergo medical treatment at the cost of the owner, agent and manager with full wages during the period of such treatment.

(5) If, after the medical treatment, the person referred to in sub-section (4) is declared medically unfit to discharge the duty which he was discharging in a mine immediately before presenting himself for the said examination and such unfitness is directly ascribable to his employment in the mine before such presentation, the owner, agent and manager shall provide such person with an alternative employment in the mine for which he is medically fit: Provided that where no such alternative employment is immediately available, such person shall be paid by the owner, agent and manager disability allowance determined in accordance with the rates prescribed in this behalf:

Provided further that where such person decides to leave his employment in the mine, he

shall be paid by the owner, agent and manager a lump sum amount by way of disability compensation determined in accordance with the rates prescribed in this behalf.

(6) The rates under the provisos to sub-section (5) shall be determined having regard to the monthly wages of the employees, the nature of disabilities and other related factors.]

7.10 Section 10- Secrecy of information obtained

(1) All copies of, and extracts from, registers or other records appertaining to any mine and all other information acquired by the Chief Inspector or an Inspector or by any one assisting him, in the course of the inspection [or survey] of any mine under this Act or acquired by any person authorised under section 8 1[or section 9A] in the exercise of his duties thereunder, shall be regarded as confidential and shall not be disclosed to any person or authority unless the Chief Inspector or the Inspector considers disclosure necessary to ensure the health, safety or welfare of any person employed in the mine or in any other mine adjacent thereto.

(2) Nothing in sub-section (1) shall apply to the disclosure of any such information (if so required) to--

(a) any Court;

2[(b) a Committee or court of inquiry constituted or appointed under section 12 or section 24 as the case may be;]

(c) an official superior or the owner, agent or manager of the mine concerned;

(d) a Commissioner for workmen's compensation appointed under the Workmen's Compensation Act, 1923 (8 of 1923);

3[(e) the Controller, Indian Bureau of Mines;

(f) any registered or recognised trade union;

(g) such other officer, authority or organisation as may be specified in this behalf by the Central Government.]

(3) If the Chief Inspector, or an Inspector or any other person referred to in sub-section (1) discloses, contrary to the provisions of this section, any such information as aforesaid without the consent of the Central Government, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(4) No court shall proceed to the trial of any offence under this section except with the previous sanction of the Central Government.

7.11 Section 11- Certifying surgeons

(1) The Central Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such mine or class or description of mines as it may assign to them respectively.

(2) Subject to such conditions as the Central Government may think fit to impose, a certifying surgeon may, with the approval of the Central Government, authorise any qualified medical practitioner to exercise all or any of his powers under this Act for such period as the certifying surgeon may specify, and references to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorised.

(3) No person shall be appointed to be, or authorised to exercise the powers of, a certifying surgeon, or, having been so appointed or authorised, continue to exercise such powers, who is or becomes the owner, agent or manager of a mine, or is or becomes directly or indirectly interested therein, or in any process or business carried on therein or in any patent or machinery connected therewith, or is otherwise in the employment of the mine.

(4) The certifying surgeon shall carry out such duties as may be prescribed in connection with--

(b) the examination of persons engaged in a mine in such dangerous occupations or processes as may be prescribed;

(c) the exercise of such medical supervision as may be prescribed for any mine or class or description of mines where-

(i) cases of illness have occurred which it is reasonable to believe are due to the nature of any process carried on or other conditions of work prevailing in the mine

7.12 Section 12- Committees

(1) The Central Government shall, with effect from such date as that Government may, by notification in the Official Gazette, specify in this behalf, constitute for the purposes of this Act, a Committee consisting of--

(a) a person in the service of the Government, not being the Chief Inspector or an Inspector, appointed by the Central Government to act as Chairman;

(b) the Chief Inspector of Mines;

(c) two persons to represent the interests of miners appointed by the Central Government;

(d) two persons to represent the interests of owners of mines appointed by the Central Government;

(e) two qualified mining engineers not directly employed in the mining industry, appointed by the Central Government:

Provided that one at least of the persons appointed under clause (c) shall be for representing the interests of workers in coal mines and one at least of the persons appointed under clause (d) shall be for representing the interests of owners of coal mines.

(2) Without prejudice to the generality of sub-section (1), the Central Government may constitute one or more Committees to deal with specific matters relating to any part of the territories to which this Act extends or to a mine or a group of mines and may appoint members thereof and the provisions of sub-section

(1) (except the proviso thereto) shall apply for the constitution of any Committee under this sub-section as they apply for the constitution of a Committee under that sub-section.

(3) No act or proceeding of a Committee shall be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution thereof.

7.13 Section 13-Functions of the Committee

(1) The Committee constituted under sub-section (1) of section 12 shall--

(a) consider proposals, for making rules and regulations under this Act and make appropriate recommendations to the Central Government;

(b) enquire into such accidents or other matters as may be referred to it by the Central Government from time to time and make reports thereon; and

(c) subject to the provisions of sub-section (2), hear and decide such appeals or objections against notices or orders under this Act or the regulations, rules or bye-laws thereunder, as are required to be referred to it by this Act or as maybe prescribed.

(2) The Chief Inspector shall not take part in the proceedings of the Committee with respect to any appeal or objection against an order or notice made or issued by him or act in relation to any matter pertaining to such appeal or objection as a member of the Committee.

7.14 Section 14-Powers, etc., of the Committees

(1) A Committee constituted under section 12 may exercise such of the powers of an Inspector under this Act as it thinks necessary or expedient to exercise for the purposes of discharging its functions under this Act.

(2) A Committee constituted under section 12 shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:--

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) compelling the production of documents; and
- (d) such other matters as may be prescribed.

7.15 Section 15- Recovery of expenses

The Central Government may direct that the expenses of any inquiry conducted by 1[a Committee constituted under section 12] shall be borne in whole or in part by the owner or agent of the mine concerned, and the amount so directed to be paid may, on application by the Chief Inspector or an Inspector to a magistrate having jurisdiction at the place where the mine is situated or where such owner or agent is for the time being resident, be recovered by the distress and sale of any movable property within the limits of the magistrate's jurisdiction belonging to such owner or agent:

Provided that the owner or his agent has not paid the amount within six weeks from the date of receiving the notice from the Central Government or the Chief Inspector of Mines.

7.16 Section 16-Notice to be given of mining operations

(1) The owner, agent or manager of a mine shall, before the commencement of any mining operation, give to the Chief Inspector, the 1[Controller], Indian Bureau of Mines and the district magistrate of the district in which the mine is situate, notice in writing in such form and containing such particulars relating to the mine as may be prescribed.

(2) Any notice given under sub-section (1) shall be so given as to reach the persons concerned at least one month before the commencement of any mining operation.

7.17 Section -17 Managers

(1) Save as may be otherwise prescribed, every mine shall be under a sole manager who shall have the prescribed qualification and the owner or agent of every mine shall appoint a person having such qualification to be the manager:

Provided that the owner or agent may appoint himself as manager if he possesses the prescribed qualifications.

(2) Subject to any instructions given to him by or on behalf of the owner or agent of the mine, the manager shall be responsible for the overall management, control, supervision and direction of the mine and all such instructions when given by the owner or agent shall be confirmed in writing forthwith.

(3) Except in case of an emergency, the owner or agent of a mine or anyone on his behalf shall not give, otherwise than through the manager, instructions affecting the fulfilment of his statutory duties, to a person, employed in a mine, who is responsible to the manager.

7.18 Section 18-Duties and responsibilities of owners, agents and managers

1[18. Duties and responsibilities of owners, agents and managers.--(1) The owner and agent of every mine shall each be responsible for making financial and other provisions and for taking such other steps as may be necessary for compliance with the provisions of this Act and the regulations, rules, bye-laws and orders made thereunder.

(2) The responsibility in respect of matters provided for in the rules made under clauses (d), (e) and (p) of section 58 shall be exclusively carried out by the owner and agent of the mine and by such person (other than the manager) whom the owner or agent may appoint for securing compliance with the aforesaid provisions.

(3) If the carrying out of any instructions given under sub-section (2) or given otherwise than through the manager under sub-section (3) of section 17, results in the contravention of the provisions of this Act or of the regulations, rules, bye-laws or orders made thereunder, every person giving such instructions shall also be liable for the contravention of the provisions concerned.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the owner, agent and manager of every mine shall each be responsible to see that all operations carried on in connection with the mine are conducted in accordance with the provisions of this Act and of the regulations, rules, bye-laws and orders made thereunder.

(5) In the event of any contravention by any person whosoever of any of the provisions of this Act or of the regulations, rules, bye-laws or orders made thereunder except those which specifically require any person to do any act or thing or prohibit any person from doing an act or thing, besides the person who contravenes, each of the following persons shall also be deemed to be guilty of such contravention unless he proves that he had used due diligence to secure compliance with the provisions and had taken reasonable means to prevent such contravention:--

- (i) the official or officials appointed to perform duties of supervision in respect of the provisions contravened;
- (ii) the manager of the mine;
- (iii) the owner and agent of the mine;
- (iv) the person appointed, if any, to carry out the responsibility under sub-section (2):

Provided that any of the persons aforesaid may not be proceeded against if it appears on inquiry and investigation, that he is not prima facie liable.

(6) It shall not be a defense in any proceedings brought against the owner or agent of a mine under this section that the manager and other officials have been appointed in accordance with the provisions of this Act or that a person to carry the responsibility under sub-section (2) has been appointed.]

7.19 Section 19-Drinking water

1[(1) In every mine effective arrangements shall be made to provide and maintain at suitable points conveniently situated a sufficient supply of cool and wholesome drinking water for all

persons employed therein:

Provided that in the case of persons employed below ground the Chief Inspector may, in lieu of drinking water being provided and maintained at suitable points, permit any other effective arrangements to be made for such supply.]

(2) All such points shall be legibly marked 'DRINKING WATER' in a language understood by a majority of the persons employed in the mine and no such point shall be situated within 2[six meters] of any washing place urinal or latrine unless a shorter distance is approved in writing by the Chief Inspector.

(3) In respect of all mines or any class or description of mines, the Central Government may make rules for securing compliance with the provisions of sub-sections (1) and (2) and for the examination by prescribed authorities of the supply and distribution of drinking water.

7.20 Section -20 Conservancy

(1) There shall be provided, separately for males and females in every mine, a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to persons employed in the mine at all times.

(2) All latrines and urinals provided under sub-section (1) shall be adequately lighted, ventilated and at all times maintained in a clean and sanitary condition.

(3) The Central Government may specify the number of latrines and urinals to be provided in any mine, in proportion to the number of males and females employed in the mine and provide for such other matters in respect of sanitation in mines (including the obligations in this regard of persons employed in the mine) as it may consider necessary in the interests of the health of the persons so employed.

7.21 Summary

The act is administered by the ministry of Labour and employment. The mines act, 1952 contains provisions for measures relating to the health, safety and welfare of workers in the coal, metalliferous and oil mines. The act prescribes the duties of the owner to manage mines and mining operation and the health and safety in mines. It also prescribes the number of working hours in mines, the minimum wages rates, and other related matters.

7.21 Key words

Agent- when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine or of any part thereof;

District magistrate- means, in a presidency-town, the person appointed by the Central Government to perform the duties of a district magistrate under this Act in that town;

Qualified Medical Practitioner- means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and who is enrolled on a State medical register as defined in clause (k) of that section;

Owner- when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver

¹ week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector or an Inspector.

7.22 Self Assessment Questions

1. Briefly Discuss the Functions of Inspectors
2. Explain the Power of Special officer
3. Describe the Functions of Committee
4. Examine the Duties and responsibilities of owners, agents and managers

7.23 Suggested Readings

1. Taxmann(2020) Labour Laws with Code on Wages Book Taxman's Publications
2. Dr. O. P. Gupta, Dr. Vijay Gupta (2021) Labour Legislation In India: Revised Edition SBPD Publishing House, Agra.
3. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers
4. Padhi P.K.(2021) Labour and Industrial Laws Forth Edition PHI Learning
5. Ayusawa Iwao (2022), Frederick, International Labor Legislations, Forgotten Books.
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7. Kumara, Venugopala G.S.(2022), Employee Relations and Legislations, Current Publications.
8. Kumara Venugopala G.S.(2022), Business & Company Legislations, The Universal Law Publishing Limited.
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4
LESSON-8
PLANTATIONS LABOUR ACT, 1951

Learning Objectives

- ✓ To study welfare Activities
- ✓ To Understand the Hours and Limitations of Employment
- ✓ To Know the Penalties and Procedures

Structure

- 8.1 Introduction
- 8.2 Short title, extent, commencement and application
- 8.3 Definitions
- 8.4 Inspecting Staff
- 8.5 Provisions as To Health
- 8.6 Welfare
 - 8.6.1 Canteens
 - 8.6.2 Creches
 - 8.6.3 Recreational facilities
 - 8.6.4 Educational facilities
 - 8.6.5 Housing facilities
 - 4 8.6.6 Power to make rules relating to housing
- 8.7 Hours And Limitation Of Employment
 - 8.7.1 Weekly hours
 - 8.7.2 Weekly holidays
 - 8.7.3 Daily intervals for rest.
 - 8.7.4 Spread-over
 - 8.7.5 Notice of period of work
 - 8.7.6 Prohibition of employment of young children
 - 8.7.7 Night work for women and children
 - 8.7.8 Certificate of fitness.
- 8.8 Leave With Wages
 - 8.8.1 Wages during leave period
 - 8.8.2 Sickness and maternity benefits.
- 8.9 Penalties And Procedure
 - 8.9.1 Obstruction
 - 8.9.2 Use of false certificate of fitness
 - 8.9.3 Contravention of provisions regarding employment of labour
 - 8.9.4 Other offences
 - 8.9.5 Enhanced penalty after previous conviction
 - 8.9.6 Exemption of employer from liability in certain cases
 - 8.9.7 Cognizance of offences.
 - 8.9.8 Limitation of prosecutions
- 8.10 Summary
- 8.11 Key words
- 8.12 Self Assessment Questions
- 8.13 Suggested Readings

8.1 Introduction

An Act to provide for the welfare of labour, and to regulate the conditions of work, in plantations.

BE it enacted by Parliament as follows:--

8.2. Short title, extent, commencement and application.--(1) This Act may be called the Plantations Labour Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It applies in the first instance to tea, coffee, rubber and cinchona plantations, but any State Government may, subject to the previous approval of the Central Government, by notification in the Official Gazette, apply it to any other class of plantations within that State.

8.3. Definitions.-- In this Act, unless the context otherwise requires,--

(a) "adolescent" means a person who has completed his fifteenth year but has not completed his eighteenth year;

(b) "adult" means a person who has completed his eighteenth year;

(c) "child" means a person who has not completed his fifteenth years";

(d) "day" means a period of twenty-four hours beginning at midnight;

(e) "employer" when used in relation to a plantation means the person who has the ultimate control over the affairs of the plantations, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that plantation;

(f) "plantation" means any land used or intended to be used for growing tea, coffee, rubber or cinchona which admeasures twenty- five acres or more and whereon thirty or more persons are employed, or were employed on any day of the preceding twelve months, and in any State where the provisions of this Act have been applied by notification under sub-section (4) of section 1 to any other class of plantations, means also any land used or intended to be used for growing the plant mentioned in such notification and whereon thirty or more persons are employed, or were employed on any day of the preceding twelve months;

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

(h) "qualified medical practitioner" means a person having a certificate granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916), or in the Schedules to the Indian Medical Council Act, 1933 (XXVII of 1933) and also persons having certificates granted under the different State (Provincial)

Medical Council Acts;

(i) "wages" has the meaning assigned to it in clause (h) of section 2 of the Minimum Wages Act, 1948 (XI of 1948);

(j) "week" means period of seven days beginning at midnight on Saturday night or such other night as may be fixed

(j) "week" means period of seven days beginning at midnight on Saturday night or such other night as may be fixed by the State Government in relation to plantation in any area after such consultation as may be prescribed with reference to the plantations concerned in that area;

(k) "worker" means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical, but does not include--

(a) a medical officer at the plantations;

(b) any person whose monthly wages exceed three hundred rupees; or

(c) a person employed in a plantation primarily in a management capacity notwithstanding that his monthly wages do not exceed rupees three hundred;

(l) "young person" means a person who is either a child or an adolescent.

3. Reference to time of day. In this Act, reference to time of day are references to Indian Standard time being five and a half hours ahead of Greenwich Mean time:

Provided that for any area in which the Indian Standard time is not ordinarily observed, the State Government may

make rules --

(a) specifying the area;

(b) defining the local mean time ordinarily observed therein and

(c) permitting such time to be observed in all or any of the plantations situated in that area.

8.4 Inspecting Staff

Chief inspector and inspectors. (1) The State Government may, by notification in the Official Gazette, appoint for the State a duly qualified person to be the chief inspector or plantations and so many duly qualified persons to be inspectors or plantations subordinate to the chief inspector as it thinks fit.

(2) Subject to such rules as may be made in this behalf by the State Government, the chief inspector may declare the local area or areas within which, or the plantations with respect to which, inspectors shall exercise their powers under this Act, and may himself exercise the powers of an inspector within such limits as may be assigned to him by the State Government.

(3) The chief inspector and all inspectors shall be deemed to be public servants within the meaning of the Indian Penal Code (Act XLV of 1860).

Powers and functions of inspectors.--Subject to any rules made by the State Government in this behalf, an inspector may within the local limits for which he is appointed--

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the rules made thereunder are being observed in the case of any plantation;

(b) with such assistants, if any, as he thinks fit, enter, inspect and examine any plantation or part thereof at any reasonable time for purpose of carrying out the objects of this Act;

(c) examine the crops grown in any plantation or any worker employed therein or require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act;

(d) exercise such other powers as may be prescribed:

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(d) exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this section to answer any question or make any statement tending to incriminate himself.

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Facilities to be afforded to inspectors.

Every employer shall afford the inspector all reasonable facilities for making any entry, inspection, examination or inquiry under this Act.

Certifying surgeons

(1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such plantation or class of plantations as it may assign to them respectively.

(2) The certifying surgeon shall carry out such duties as may be prescribed in connection with--

(a) the examination and certification of workers;

(b) the exercise of such medical supervisions as may be prescribed where adolescents and children are, or are to be, employed in any work in any plantation which is likely to cause injury to their health.

8.5 Provisions As To Health

Drinking water

In every plantation effective arrangements shall be made by the employer to provide and maintain at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers.

Sanitary

(1) There shall be provided separately for males and females in every plantation a sufficient number of latrines and urinals of prescribed type so situated as to be convenient and accessible to workers employed therein.

(2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition.

Medical facilities

(1) In every plantation there shall be provided and maintained so as to be readily available such medical facilities for the workers as may be prescribed by the State Government.

(2) If in an plantation medical facilities are not provided and maintained as required by subsection (1) the chief inspector may cause to be provided and maintained therein such medical facilities, and recover the cost there of from the defaulting employer.

(3) For the purposes of such recovery the chief inspector may certify the costs to be recovered to the collector, who may recover the amount as an arrear of land-revenue.

8.6 Welfare

8.6.1 Canteens

(1) The State Government may make rules requiring that in every plantation wherein one hundred and fifty workers, are ordinary employed, one or more canteens shall be provided and maintained by the employer for the case of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules provide for--

(a) the date by which the canteen shall be provided;

(b) the number of canteens that shall be provided and the standards in respect of construction, accommodation, furniture and other equipment of the canteens :furniture and other equipment of the canteens;

(c) the food-stuffs which may be served therein and the charges which may be made there for;

(d) the constitution of a managing committee for the canteen and the representation of the workers in the management of the canteen;

(e) the delegation to the chief inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

8.6.2 Creches

(1) In every plantation wherein fifty or more women workers are employed or were employed on any day of the preceding twelve months, there shall be provided and maintained by the employer suitable rooms for the use of children of such women who are below the age of six years.

(2) Such rooms shall

(a) provide adequate accommodation;

(b) be adequately lighted and ventilated;

(c) be maintained in a clean and sanitary condition; and

(d) be under the charge of a woman trained in the care of children and infants.

(3) The State Government may make rules prescribing the location and the standards of such rooms in respect of their construction and accommodation and the equipment and amenities to be provided therein.

8.6.2 Recreational facilities

The State Government may make rules requiring every employer to make provisions in his plantation for such recreational facilities for the workers and children employed therein as may be prescribed.

8.6.3 Educational facilities

Where the children between the ages of six and twelve of workers employed in any plantation exceed twenty-five in number, the State Government may make rules requiring every employer to provide educational facilities for the children in such manner and of such standard as may be prescribed.

8.6.4 Housing facilities

It shall be the duty of every employer to provide and maintain for every worker and his family residing in the plantation necessary housing accommodation.

8.6.5 Power to make rules relating to housing

The State Government may make rules for the purpose of giving effect to the provisions of section 15 and, in particular providing for--

- (a) the standard and specification of the accommodation to be provided;
- (b) the selection and preparation of sites for the construction of houses and the size of such plot;
- (c) the constitution of advisory boards consisting of representatives of the State Government, the employer and the workers for consultation in regard to matters connected with housing and the exercise by them of such powers, functions and duties in relation thereto as may be specified;
- (d) the fixing of rent, if any, for the housing accommodation provided for workers;
- (e) the allotment to workers and their families of housing accommodation and of suitable strips of vacant land adjoining such accommodation for the purpose of maintaining kitchen gardens, the definition of what constitutes the family of a worker for the purposes of section 15, and for the eviction of workers and their families from such accommodation;
- (f) access to the public to those parts of the plantation wherein the workers are housed.

8.6.6 Other facilities

The State Government may make rules requiring that in every plantation the employer shall provide the workers with such number and type of umbrellas, blankets, rain coats or other like amenities for the protection of workers from rain or cold as may be prescribed.

8.6.7 Welfare officers

(1) In every plantation wherein three hundred or more workers are ordinarily employed the employer shall employ such number of welfare officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and conditions of service of welfare officers employed under sub-section (1).

8.7 Hours And Limitation Of Employment**8.7.1****8.7.1 Weekly holidays**

(1) The State Government may by rules made in this behalf--

- (a) provide for a day of rest in every period of seven days which shall be allowed to all workers;

(b) provide for payment for work done on a day of rest at a rate not less than the overtime rate prevailing in the area, and where there is no such rate as may be fixed by the State Government in this behalf.

(2) Notwithstanding anything contained in clause (a) of sub-section (1) Where a worker is willing to work on any day of rest which is not a closed holiday in the plantation, nothing contained in this section shall prevent him from doing so:

Provided that in so doing a worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

Explanation 1.-- Where on any day a worker has been prevented from working in any plantation by reason of tempest, fire, rain or other natural causes, that day, may, if he so desires, be treated as his day of rest for the relevant period of seven days within the meaning of sub-section (1).

Explanation 2.--Nothing contained in this section shall apply to any worker whose total period of employment including any day spent on leave is less than six days.

8.7.3 Daily intervals for rest.

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

8.7.4 Spread-over

The period of work of an adult worker in a plantation shall be so arranged that inclusive of this interval for rest under section 19 it shall not spread-over more than twelve hours including the time spent in waiting for work on any day.

8.7.5 Notice of period of work

(1) There shall be displayed and correctly maintained in every plantation a notice of periods of work in such form and manner as may be prescribed showing clearly for every day the periods during which the workers may be required to work.

(2) Subject to the other provisions contained in this Act, no worker shall be required or allowed to work in any plantation otherwise than in accordance with the notice of periods of work displayed in the plantation.

(3) An employer may refuse to employ a worker for any day if on that day he turns up for work more than half an hour after the time fixed for the commencement of the day's work.

8.7.6 Prohibition of employment of young children

No child who has not completed his twelfth years shall be required or allowed to work in any plantation.

8.7.7 Night work for women and children

Except with the permission of the State Government, no woman or child worker shall be employed in any plantation otherwise than between the hours of 6 A.M. And 7 P.M.:

Provided that nothing in this section shall be deemed to apply to midwives and nurses employed as such in any plantation.

.Non-adult workers to carry tokens.-- No child who has completed his twelfth year and no adolescent shall be required or allowed to work if any plantation unless-

(a) a certificate of fitness granted with reference to him under section 27 is in the custody of the employer; and

(b) such child or adolescent carries with him while he is at work a token giving a reference to such certificate.

8.7.8 Certificate of fitness

(1) A certifying surgeon, shall on the application of any young person or his parent or guardian accompanied by a document signed by the employer or any other person on his behalf that such person will be employed in the plantation if certified to be fit for work, or on the application of the employer or any other person on his behalf with reference to any young person intending to work, examine such person and ascertain his fitness for work either as a child or as an adolescent.

(2) A certificate of fitness granted under this section shall be valid for a period of twelve months from the date thereof, but may be renewed.

(3) Any fee payable for a certificate under this section shall be paid by the employer and shall not be recoverable from the young person, his parents or guardian.

Power to require medical examination.--An inspector may, if he thinks necessary so to do, cause any young person employed in a plantation to be examined by a certifying surgeon.

8.8 Leave With Wages

(1) The provisions of this Chapter shall not operate to the prejudice of any rights to which a worker may be entitled under any other law or under the terms of any award, agreement, or contract of service:

Provided that where such agreement or contract of service provides in section 30, include weekly holidays or holidays for festivals or other similar occasions.

Explanation.- For the purposes of this Chapter leave shall not, except as provided in section 30, include weekly holidays or holidays for festivals or other similar occasions.

Annual leave with wages.--(1) Every worker shall be allowed leave with wages for a number of days calculated

at the rate of--

(a) if an adult, one day for every twenty days of work performed by him, and

(b) if a young person, one day for every fifteen days of work performed by him:

Provided that a period of leave shall be inclusive of any holiday which may occur during such periods.

(2) If a worker does not in any one period of twelve months take the whole of the leave allowed to him under subsection (1), any leave not taken by him shall be added to the leave to be allowed to him under that sub-section in succeeding period of twelve months.

(3) A worker shall cease to earn any leave under this section when the earned leave due to him amounts to thirty days.

8.8.1 Wages during leave period

(1) For the leave allowed to a worker under section 30 he shall be paid at the rate equal to the daily average of his total full-time wages, exclusive of any overtime earnings and bonus, if any, but inclusive of dearness allowances and the cash equivalent of any advantages accruing by the concessional supply by the employer of food grains for the day on which he worked.

(2) A worker who has been allowed leave for any period less, than four days in the case of an adult and five days in the case of a young person under section 30 shall, before his leave begins, be paid his wages for the period of the leave allowed.

8.8.2 Sickness and maternity benefits.

(1) Subject to any rules that may be made in this behalf, every worker shall be entitled to obtained from his employer.--

(a) in the case of sickness certified by a qualified medical practitioner, sickness allowance, and

(b) if a woman, in the case of confinement or expected confinement, maternity allowance.

at such rate, for such period and at such intervals as may be prescribed.

(2) The State Government may make rules regulating the payment of sickness or maternity allowance and any such rules may specify the circumstances in which such allowance shall not be payable or shall cease to be payable, and in framing any rules under this section the State Government shall have due regard to the medical facilities that maybe provided by the employer in any plantation.

8.9 Penalties And Procedure

8.9.1 Obstruction

(1) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or willfully neglects to afford the inspector any reasonable facility or making any inspection, examination or inquiry authorized by or under this Act in relation to any plantation, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever willfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

8.9.2 Use of false certificate of fitness

Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 27 a certificate to another person under that section, or having been granted a certificate of fitness to himself, knowingly allows it to be used, or allows an attempt to use it to be made by another person, shall be punishable with imprisonment which may extend to one month, or with fine which may extent to fifty rupees, or with both.

8.9.3 Contravention of provisions regarding employment of labour

Whoever, except at otherwise permitted by or under this Act, contravenes any provision of this Act or of any rules made there under, prohibiting, restricting or regulating the employment of persons in a plantation, shall be punishable with imprisonment for a term

which may extend to three months or with the fine which may extend to five hundred rupees, or with both.

8.9.4 Other offences

Whoever contravenes any of the provisions of this Act or of any rules made there under for which no other penalty is elsewhere provided by or under this Act shall be punishable with imprisonment for a term which no other penalty is elsewhere provided by or under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

8.9.5 Enhanced penalty after previous conviction

If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both:

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

8.9.6 Exemption of employer from liability in certain cases

Where an employer charged with an offence under this Act, alleges that another person is the actual offender, he shall be entitled upon complaint made by him in this behalf, to have, on giving to the prosecutor in this behalf three clear days notice in writing of his intention so to do, that other person brought before the court on the day appointed for the hearing of the case and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that--

(a) he has used due diligence to enforce the execution of the relevant provisions of this Act; and

(b) that the other person committed the offence in question without his knowledge, consent or connivance: the said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be acquitted:

Provided that--

(a) the employer may be examined on oath his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges to be the actual offender and by the prosecutor, and

(b) if, in spite of due diligence, the person alleged as the actual offender cannot be brought before the court on the day appointed for the hearing of the case, the court shall adjourn the hearing thereof from time to time so, however,

that the total period of such adjournment does not exceed three months, and if, by the end of the said period, the person alleged as the actual offender cannot still be brought before the court, the court shall proceed to hear the case against the employer.

8.9.7 Cognizance of offences.

No court shall take cognizance of any offence under this Act except on complaint made by, or with the previous sanction in writing of, the chief inspector and no court inferior to that of a presidency magistrate or a magistrate of the second class shall try any offence punishable under this Act.

8.9.8 Limitation of prosecutions

No court shall take cognizance of an offence punishable under this Act unless the complaint thereof has been made or is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint there of may be made within six months of the date on which the offence is alleged to have been committed.

¹ Power to give directions.---The Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

⁴ Power to exempt.---The State Government may, by order in writing, exempt, subject to such conditions and restrictions as it may think fit to impose, any employer or class of employers from all or any of the provisions of this Act:

⁴ Provided that no such exemption shall be granted except with the previous approval ¹ of the Central Government.

¹ General power to make rules.---(1) The State Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Act:

Provided that the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897) shall not be less than six weeks from the date on which the draft of the proposed rules was published.

(2) In particular and without prejudice to the generality of the foregoing power, any such rules may provide for---

- ¹ (a) the qualifications required in respect of the chief inspector and inspector;
- ¹ (b) the powers which may be exercised by inspectors and the areas in which and the manner in which such powers may be exercised;
- (c) the medical supervision which may be exercised by certifying surgeons;
- ¹ (d) the examination by inspectors or other persons of the supply and distribution of drinking water in plantations;
- ¹ (e) appeals from any order of the chief inspector or inspector and the form in which, the time within which and the authorities to which, such appeals may be preferred;
- ¹ (f) the time within which housing, recreational, educational or other facilities required by this Act to be provided and maintained may be so provided;
- (g) the types of latrines and urinals that should be maintained in plantations;
- (h) the medical recreational and educational facilities that should be provided in plantations;
- ¹ (i) the form and manner in which notices of period or work shall be displayed and maintained.

(j) the registers which should be maintained by employers and the returns, whether occasional or periodical, as in the opinion of the state Government may be required for the purposes of this Act; and

(k) the hours of work for a normal working day for the purpose of wages and the overtime.

(3) All rules made under this Act shall, if made by any Government, other than the Central Government, be subject to the previous approval of the Central Government.

8.10 Summary

With the employment of over 1 million, the Plantation industry in India is among the largest private employers in India. It is spread across the States of Assam, Kerala, Tamil Nadu and West Bengal. The Plantation workforce, however, has been among the most exploited workforce in the organized sector. Their wages are amongst the lowest when compared to other workers and working and living conditions most dismal. Most of the plantations are located in remote and isolated areas. Workers are mainly dependent on the Plantations as there is hardly any other employment avenue. Workers are illiterate and migrants with no awareness or information about their rights. The fact that plantation areas do not come under the purview of rural development and antipoverty programmes has also prevented conditions from improving.

In 1951, the Parliament passed the Plantations Labour Act [PLA] which sought to provide for the welfare of labour and to regulate the conditions of workers in plantations. Under this law, the State Governments have been empowered to take all feasible steps to improve the lot of the plantation workers. The passing of PLA brought some improvements in the plantations sector. It also helped in creating conditions for organising the workers and the rise of trade unions. However, the potential benefits promised under the PLA remain unachieved mainly due to ignorance of workers about their rights under the law.

8.11 Key words

Plantation means any land used or intended to be used for growing tea, coffee, rubber or cinchona which admeasures twenty- five acres or more and whereon thirty or more persons are employed, or were employed on any day of the preceding twelve months, and in any State where the provisions of this Act.

Spread-over-The period of work of an adult worker in a plantation shall be so arranged that inclusive of this interval for rest under section 19 it shall not spread-over more than twelve hours including the time spent in waiting for work on any day.

Weekly hours- save as otherwise expressly provided in this Act, no adult worker shall be required or allowed to work on any plantation in excess of fifty-four hours a week and no adolescent or child for more than forty hours a week

Cognizance of offences- No court shall take cognizance of any offence under this Act except on complaint made by, or with the previous sanction in writing of, the chief inspector and no court inferior to that of a presidency magistrate or a magistrate of the second class shall try any offence punishable under this Act.

8.12 Self Assessment Questions

1. Briefly Explain the Welfare Activities in Plantation Labor Act 1951?
2. Examine the Hours and Limitations of Employment of Plantation Labor Act 1951?

3. Explain the Penalties and Procedures of Plantation Labor Act 1951?

8.13 Suggested Readings

1. Taxmann(2020) Labour Laws with Code on Wages Book Taxman's Publications
2. Dr. O. P. Gupta, Dr. Vijay Gupta (2021)Labour Legislation In India: Revised Edition SBPD Publishing House, Agra.
3. Hardbound, Justice M.R. Mallick (2021) Labour& Industrial Law Manual Professional Book Publishers
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7. Kumara, VenugopalaG.S.(2022), Employee Relations and Legislations, Current Publications.
8. Kumara Venugopala G.S(2022), Business & Company Legislations, The Universal Law Publishing Limited.
9. V.K. Kharbanda (2022) LPH's Labour Law Digest Edition Law Publishing House

Dr.V.Tulasi Das

LESSON - 9

WAGE LEGISLATIONS

Learning Objectives

- ✓ To know the wages
- ✓ To read the wage legislations
- ✓ To learn about the wage concepts
- ✓ To study the wage policy

Structure

- 9.1 Introduction
- 9.2 Wage Concepts
- 9.3 Wage Policy
- 9.4 Objectives of Sound Wage Policy
- 9.5 Factors Considered to Form a Sound Wage Policy
- 9.6 Agents that Affect Wages and Salary
- 9.7 Factors Influencing the Determination of Wage Rates
- 9.8 Factors to Consider for Determining Wage and Salary Structure of Workers
- 9.9 Summary
- 9.10 Keywords
- 9.11 Self - Assessment Questions
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9.1 Introduction

Sound wage theories address questions such as adequacy of wages, fairness and equity, hard working conditions and efforts, compensation against inflation, and additional employee commitment as he grows up in the growing family.

Minimum wages have been defined as “the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract”.

This definition refers to the binding nature of minimum wages, regardless of the method of fixing them. Minimum wages can be set by statute, decision of a competent authority, a wage

board, a wage council, or by industrial or labour courts or tribunals. Minimum wages can also be set by giving the force of law to provisions of collective agreements.

The purpose of minimum wages is to protect workers against unduly low pay. They help ensure a just and equitable share of the fruits of progress to all, and a minimum living wage to all who are employed and in need of such protection. Minimum wages can also be one element of a policy to overcome poverty and reduce inequality, including those between men and women, by promoting the right to equal remuneration for work of equal value.

The purpose of a minimum wage, which sets a floor, should also be distinguished from collective bargaining, which can be used to set wages above an existing floor.

The importance of the Minimum Wage Act 1948 is to prevent employee exploitation and ensure a decent living for a worker. The Act provides that the government will fix the minimum wage rate and revise it every five years. It appoints advisory committees to consider the proposals.

There are three kinds of wages minimum wage, fair wage & living wage.

9.2 Wage Concepts

Three concepts of wages are commonly used in discussions on wage policy, and the same concepts were also explained by the Fair Wages Committee, namely:

1. Minimum Wage

2. Living Wage and

3. Fair Wage

These are broadly based on the needs of the workers and the capacity of employers to pay, as also on the general economic conditions prevailing in a country.

1. Minimum Wage

A minimum wage is said to be a wage which is sufficient to satisfy at least the minimum needs, of at least a frugal and steady workers. According to the Committee on Fair Wages, the minimum wage is an irreducible or minimum amount regarded necessary for the bare sustenance of the worker and his family and for the preservation of his efficiency at work.

In most countries, like ours, Minimum Wages Legislation has fixed minimum wages for specified occupations, especially where sweating and exploitation of labour had been prevalent. In fixing a minimum wage both the need of the workers and the capacity of the industry to pay are taken into account. From the social point of view, an industry which cannot even afford to pay a basic minimum wage has no justification for existence in the long-run.

There is also a distinction between above subsistence or minimum wage and a statutory minimum wage. The former is a wage which would sufficient to cover the bare physical need of a worker and his family, that is a rate which has got to be paid to the worker irrespective of "the capacity of the industry to pay. If an industry is unable to pay to its workmen at least a

bare Minimum Wage, it has no right to exist. The statutory minimum wage, however, is the, minimum which is prescribed by the statute and it may be higher than the bare substance or minimum wage, providing for some measure of education, medical requirement and amenities above F.W. committee's report.

The passing of the Minimum Wage Act, 1948 is a landmark in the history of labour legislation in the country which, recognizes that the wages cannot be left to be determined entirely by market forces. The whole philosophy under lying the enactment of Minimum Wage Act is to prevent exploitation of labour through the payment of unduly low wages. The statutory minimum is the minimum which is prescribed by the relevant provision of the Minimum Wage Act 1948. The main object of the Act is to prevent 'sweated' labour as well as exploitation unorganized labour. If proceed on the basis that it is the duty of the state that at least Minimum Wages are paid to the employees irrespective of the capacity of the industry or the unit to pay the same.

In Kanta Devi and others V/S State of Haryana and others and Electric Construction and Employment Co. Ltd Vs State of Haryana and others the

S.C. held that even if an industry creates a different category of workers outside the recognized categories of workers in respect of whom minimum wages are fixed under the M.W. Act, such as the category of learners created in the present cases, it will not be permitted to pay less than the minimum for the lowest level employee in that industry namely in unskilled workman. The basic idea is to avoid exploitation by the management by creating different category outside the recognized categories of workers. In Sandeep Kumar and others V/s State of U.P, where five persons were working as junior engineers in a project place under the control of executive officer, city board Ghaziabad engaged in the work of slum clearance. The project financed by the state of UP and World Bank fund. They were working on daily rate basis and on an average-received Rs. 1000 per month. No other benefits were given even they did not get any payment for the holiday. However, similarly qualified engineers when employed for similar work on regular basis are paid a minimum grade pay of Rs. 1400. The Supreme Court held that there is no justification to discriminate between the two categories and directed pay Rs. 1400 per month instead of Rs. 1000.

In Mahatma Rhule Agricultural University, Vs Nasik Zilla Sheth Kamgar union and others. Supreme Court held that the status of permanency cannot be granted when there are not posts. There can be no justification in the state government not making available the required funds. The state administration cannot shrink its responsibility of ensuring proper education in schools and college on the plea of lack of resources. It is for the authorities running the administration to find out wages and means of securing funds for the purpose! There universities are imparting education; it is necessary for them, to maintain the agricultural field and to carry on experiments. To maintain agricultural fields, they required daily wagers. As the daily wagers were required the state Govt, cannot say that they would not pay the daily wagers what is due to them.

In Ahmad Nagar Zilla Sheth Mazdoor Union V/s Dinkar Rao Kalyan Rao Jagdale, (connected with the above mentioned case) it has been held by the Supreme court there continuance every year of seasonal work obviously during the period when work was available, does not constitute a permanent status unless there exists posts and regularization is done. Under these circumstances the tribunal and the high court are not right in holding, that the respondents are entitled to be absorbed on regular basis as regular employees. Therefore, their orders were set aside. However, the Supreme Court made it clear that the appellant shall take the services of all the workmen existing as on date as and when the work is available and during the period of seasonal operation. As and when the vacancies arise, regularization of the employees should be made in order of their seniority and till the employees are regularized, they are not to be retrenched.

I State of Haryana Vs Tilakraj and others - where daily wages filed petition in the high court claiming that they were entitled to regularization in view of their long period of service put in by them and also claimed same salary as paid to regular employees since the nature of work done by them was similar. The petition was allowed by the high court with the following observation:

"The petitioners would be entitled to the relief, but again not the regular pay scale which their regular counter parts are receiving. The petitioners would be entitled to the minimum of the pay scale with D.A. alone".

In appeal the Supreme Court observed that the principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comprising and evaluating the work done by different person indifferent or" organizations, or even in the same organization. This is a concept, which requires for its applicability complete and whole sale identity between group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

A scale of pay is attached to definite post and in case of a daily wagger he holds no posts. The respondent workers cannot be held to hold any post to claim even any comparison with the regular and permanent staff any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on par with the other group viz-a-viz an alleged discrimination. The impugned judgements of the high court is clearly indefensible hence set aside. However, the appellant state has to ensure that the minimum wages are prescribed for such workers and are paid to them.

As a matter of fact, minimum wage are fixed to provide necessities of life which include food, clothes, shelter, education and medical care the concept of 'necessaries' is depend upon the standard of living of persons concerned in a particular area or region. It is therefore left to the government to prescribe minimum wages keeping in view various factors as indicated above sec. 3,4,5 authorise the appropriate government to fix the minimum rate of wages. In

other words if the wages fixed by contract are found to be below, authority is conferred on the appropriate government to increase them so as to bring them to the level of what the said government regards as the M.W. in the particular scheduled employment in the particular area concerned.

2. Living Wage

The term living wage has not been defined under the provision of the Minimum Wages Act. However, "an instance of statutory definition of living wage is provided in South Australian Act 1912 which states the living wage" means a sum sufficient for the normal and reasonable needs of the average employee living in a locality where the worker under consideration is done or is to be done". In the famous Harvester case, The Commonwealth Arbitration Court has visualized a living wage as a sum which is adequate to satisfy the normal needs of the average employee regarded as human being in a civilized community.

The living wage, according to the Committee on Fair Wage represented the higher level of wage and, naturally, it would include all amenities which a citizen living in modern civilized society is entitled to when the economy of the country is sufficiently advanced and the employer is able to meet the expanding aspirations of his workers. As the traditional doctrine interprets it, living wages as is "a will" the wish which floats a little further ahead an arm's length out of reach. Its pursuit belongs to the same category as "sparing the circle".

In *Hindustan Time Ltd. V/S Their Workman K.C. Das Gupta J.* wistfully observed: "While the industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage, economic considerations make that only a dream for future, that is why the industrial tribunals in this country generally confine their horizon to the target of fixing a fair wage".

In a latter case viz, *All India Reserve Bank Employee Association V/S Reserve Bank of India*. In the same strain, Hidayatullah J. remarked. "Our political aim is living wage" though in actual practice living wage has been an ideal which has eluded our efforts like an ever receding horizon and will so remain for some time to come. Our general wage structure has at best reached the lower levels of fair wage though some employers are paying higher wage than the general average".

Chief Justice Subba Rao, in *Hindustan Antibiotic Ltd. V/S Their Workman*, has however struck an optimistic note their prosperity in the country would help to improve the conditions of labour and "the standard of life of the labour can be progressively raised from the state of minimum wage. Passing through need found wage fair to living wage".

Directive Principles enshrined in the constitution make it the duty of the state to strive and secure living wage for the working class. This however cannot be achieved at once for, the interests of the industry and its survival is as important as the betterment of the standard of living of the working class. All the same unless there is a continuous and progressive trend towards securing better living conditions for labour which would, necessarily in its turn call for a determination of progressive higher minimum wage. It is only likely that the goal may never be reached.

In short, the living wage is a political ideal to be achieved and it means and includes salary, pay or remuneration for the work done, which is quite essential for providing necessities of life, such as food cloth and shelter including maintenance of health, education, frugal comforts and certain means of recreation which are quite essential for the person to lead his life in society as human being. The concept of living wage may vary from country to country, place to place because it depends upon the price level of necessities of life and it is determined by the socioeconomic conditions of a particular country. Living wage, are without which working people cannot live and perform their duties as a citizen. It may be recalled that as regards living wage the committee observed that this concept has influenced the fixation of wages in all economically advanced countries and was very old and well established one.

2. Fair Wage

It is a wage which should offer an employee incentive to work and produce enough in quantity, without sacrificing quality, so that the payment of such a wage is justifiable by the industry. The living wage for a worker should be such as to include not merely the cost of maintenance for himself but also for supporting his family.

As such, living wage should include provision for the following:

- i. Bare necessities such as food, clothing and shelter.
- ii. A measure of frugal comfort includes –
 - (a) education for children,
 - (b) protection against ill-health,
 - (c) requirements of essential social needs, and
 - (d) a measure of insurance against the more important misfortunes including old age.
- iii. Some margin for self-development and recreation.

The concept of living wage, to be realistic, should be linked with economic conditions and the size of the family. While determining expenditure under various heads, attention should be paid to the changes in the cost of living as prices fluctuate from time to time.

Fair wage is a mean between the living wage & the minimum wage. Express Newspaper Ltd. V/S Union of India Das Gupta J. defined 'fair wage' "which may roughly be said to approximate to the need based minimum, in the sense of a wage which is adequate to cover the normal needs of the average employee regarded is a human being in a civilized society.

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In Express Newspaper (P) Ltd. V/S Union of India Bhagwati described fair wage as a mean between the living wage and minimum wage. Marshall would consider the rate of wage prevailing in an occupation as 'fair' if it is about on level with the average payment for tasks in other trades which are of equal difficulties and disagreeableness which require equally rare natural abilities and an equally expensive training.

In All India Reserve Bank of Employees 'Association V/S R.B.I. Ltd. The court said that the Fair wage is thus related to fair workload and the earning capacity. It is a step lower than the living wage.

The concept of fair wage therefore, involves a rate sufficiently high to enable the worker to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to his status in life but not at a rate exceeding the wage coming capacity of the class of establishment concerned.

A fair wage is thus related to the earning capacity and workload. It must however is realized that fair wage is only living wage by, which is meant a wage which, is sufficient to provide not only, the essentials above mentioned but a fair measure of frugal comfort wish an ability to provide for old age and evil days. Thus while the lower limit of fair wage must ability be minimum wage, the upper limit is equally set by what may broadly be called the capacity of industry to pay. This will not depend not only of the economic position of the industry but also on its future prospects. Between these two limits, the actual wage will depend on a consideration of certain factor viz:

- Productivity of labour
- The prevailing rate of wage
- The level of national income and its distribution and
- The place of industry in the economy of the country

In actual calculation of the fair wage, the Committee on Fair Wage observed that it was not possible to assign any definite weight to these factors.

The comm. on F.W. also recognized that the concepts of F.W. by it could not be viewed in any since they would from time to time depending on the economics and social development in the country.

9.3 Wage Policy

The term wage policy refers to legislation or government action undertaken to regulate the level or structure of wage, or both, for the purpose of achieving specific objectives of social and economic policy. It involves all systematic efforts of the government in relation to a national wage and salary system, legislations, and so on to regulate the levels or structures of wages and salaries with a view to achieving economic and social objectives of the government.

The first step towards the evolution of wage policy was the enactment of the payment of Wages Act, 1936. The main objective of the Act is to prohibit any delay or withholding of wages legitimately due to the employees. The next step was the passing of the Industrial

Disputes Act, 1947, authorizing all the State governments to set up industrial tribunals that would look into disputes relating to remuneration.

Another notable development that led to the evolution of wage policy was the enactment of the Minimum Wages Act, 1948. The purpose of the Act is the fixation of minimum rates of wages to workers in sweated industries such as woolen, carpet making, flour mills, tobacco manufacturing, oil mills, plantations, quarrying, mica, agriculture, and the like.

The Act was amended several times to make it applicable to more and more Industries. Then the Equal Remuneration Act, 1976, which prohibits discrimination in matters relating to remuneration on the basis of religion, region or sex was enacted. The Constitution of India committed the government to evolve a wage policy. Successive five-year plans have also devoted necessary attention to the need for a wage policy.

Following the recommendations of the First and Second Plans, the Government of India constituted wage boards for important industries in the country. A wage board is a tripartite body comprising representations from the government, owners, and employees. Technically speaking, a wage board can only make recommendations, and wage policies are normally implemented through persuasion.

In spite of legislations, tribunals, and boards, disparities in wages and salaries still persist.

Some of the disparities are:

- a) Employees of MNCs are paid much more than their counterparts in host countries for identical work.
- b) Different industries have different wage and salary structures resulting in disparities in remuneration for identical work.
- c) Wide gaps exist between wages and salaries of employees in the organized sector and of those in the unorganized sector, the latter earning much less than the former.
- d) Differences exist between earnings of employees in the government sector and those in the private sector.
- e) Within the government sector, salary differences exist among employees of different departments.

The disparities are glaring. If an illiterate supervisor in leather processing unit can earn Rs. 12,000 plus per month and a half-yearly bonus, how much can a university professor earn? Rs. 10,000 and no bonus? If an auto driver can earn Rs. 3000 per month, how much should a temporary lecturer in a college earn? Rs.5000 per month? And remain temporary forever. A sweeper in L&T is an Income tax assessed but a BE or an MBBS degree holder works for Rs. 800 per month in a small-scale unit or Rs. 1200 in a private nursing home, respectively.

In order to correct such disparities, the Government of India appointed a Committee headed by Mr Bhootalingam in 1979. The committee was to suggest regional and integrated wage policy covering all sectors of the economy. Soon after the committee submitted its report, it was criticized as anti-labor and impracticable.

Recent wage practices in India in the organized sector are such that dearness allowances are paid to neutralise at least partially, price increases, bonus paid as per the Bonus Act, and fringe benefits given under this Employees' State Insurance Act and the Employees' Provident Fund" Act. Wage Boards have attempted to settle wage disputes, taking into account the principle of fair wages first set forth by the Report of Committee on Fair Wages.

The Fair Wages Committee recommended that the "minimum wage should represent the lower limit of the fair wage, the upper limit being the capacity of industry to pay". Between these two limits, the Committee suggested that the fair wage should depend upon –

- i) Productivity of labour;
- ii) Prevailing rates of wages in the same and similar occupations in the same neighboring localities;
- iii) Level of the national income and its distribution, and
- iv) Place of the industry concerned in the economy of the country. The Committees' recommendations are similar to the requirements laid down above.

9.4 Objectives of Sound Wage Policy

The objectives of a sound/ideal wage and salary policy are manifold.

A sound wage policy promotes industrial relations, protects against price rise, and serves many more purposes:

1. Establish good labour relations
2. Decide on appropriate wages
3. Decide wages based on the individual's capability
4. Develop a pre-determined scheme for payment of wages
5. Establish linkages of wage payment with performances
6. Maintain parity of wages with other organizations
7. Provide for incentive payment
8. Guarantee minimum wages
9. Provide for neutralization of price rise
10. Develop wage structures that can attract talent.

9.5 Factors Considered to Form a Sound Wage Policy

A sound wage policy is to adopt a job evaluation programme in order to establish fair differentials in wages based upon differences in job contents.

Beside the basic factors provided by a job description and job evaluation, those that are usually taken into consideration for wage and salary administration are:

- i) The organizations ability to pay
- ii) Supply and demand of labour
- iii) The prevailing market rate
- iv) The cost of living
- v) Living wage
- vi) Psychological and sociological factors
- vii) Levels of skills available in the market

I. Organizations Ability to Pay

Wage increases should be given by those organizations which can afford them. Companies that have good sales and, therefore, high profits tend to pay higher those which running at a loss or earning low profits because of higher cost of production or low sales. In the short run, the economic influence on the ability to pay is practically nil.

All employers, irrespective of their profits or losses, must pay not less than their competitors. In the long run, the ability to pay is important. During the time of prosperity pay high wages to carry on profitable operations and because of their increased ability to pay. But during the period of depression, wages are cut because the funds are not available. Marginal firms and nonprofit organization pay relatively low wages because of low or non-profits.

II. Supply and Demand of Labor

The labour market conditions or supply and demand forces operate at the national, regional and local levels, and determine organizational wage structure and level. If the demand for certain skills is high and supply is low, the result is a rise in the price to be paid to these skills.

If the demand for manpower skill is minimal, the wages will be relatively low. The supply and demand compensation criterion is very closely related to the prevailing pay, comparable wage and on going wage concepts.

III. Prevailing Market Rate

This is known as the 'comparable wage' or 'going wage rate', and is the widely used criterion. An organization compensation policy generally tends to conform to the wage rate payable by the industry and the community. This is done for several reasons.

First, competition demand that competitors adhere to the same relative wage level. Second, various government laws and judicial decisions make the adoption of uniform wage rates an attractive proposition. Third, trade union encourages this practice so that their members can have equal pay, equal work and geographical differences may be eliminated.

Fourth, a functionally related firm in the same industry requires essentially the same quality of employees, with same skill and experience. This results in a considerable uniformity in wage and salary rates. Finally, if the same or about the same general rates of wages are not paid to the employees as are paid by the organizations competitors, it will not be able to attract and maintain the sufficient quantity and quality of manpower.

Some companies pay on a high side of the market in order to obtain goodwill or to ensure an adequate supply of labour, while other organizations pay lower wages because economically they have to or because by lowering hiring requirements they can keep jobs adequately manned.

IV. The Cost of Living

The cost of living pay criterion is usually regarded as an automatic minimum equity pay criterion. This criterion calls for pay adjustments based on increases or decreases in an acceptable cost of living index. In recognition of the influence of the cost of living, 'escalator clauses' is written into labour contracts.

When the cost of living increases, workers and trade unions demand adjusted wages to offset the erosion of real wages. However, when living costs are stable or decline, the management does not resort to this argument as a reason for wage reductions.

V. The Living Wage

This criterion means that wages paid should be adequate to enable an employee to maintain himself and his family at a reasonable level of existence. However, employers do not generally favour using the concepts of a living wage as a guide to wage determination because they prefer to base the wages of an employee on his contribution rather than on his need. Also, they feel that the level of living prescribed in a workers budget is open to argument since it is based on subjective opinion.

VI. Psychological and Social Factors

These determine in a significant measure how hard a person will work for the compensation received or what pressures he will exert to get his, compensation increased. Psychologically, persons perceive the level of wages as a measure of success in life; people may feel secure; have an inferiority complex, seem inadequate or feel the reverse of all these.

They may not take pride in their work, or in the wages they get. Therefore, these things should not be overlooked by the management in establishing wage rate. Sociologically and ethically, people feel that "equal work should carry equal that wages should be commensurate with their efforts, that they are not exploited, and that no distinction is made on the basis of caste, colour, sex or religion." To satisfy the conditions of equity, fairness and justice, a management should take these factors into consideration.

VII. Skill Levels Available in the Market

With the rapid growth of industries, business, trade, there is shortage of skilled resources. The technological development, automation has been affecting the skill levels at faster rates. Thus the wage levels of skilled employees are constantly changing and an organization has to keep its level up to suit the market needs.

9.6 Agents that Affect Wages and Salary

The agents which affect wages and salary can be divided into two parts as under:

1. External Agents

The external agents that influence the wages and salaries are as follows

(i) Skill Levels Available in the Market

Today skilled resources falling short due to the rapid growth of industries, business and trade. The technological development and automation has been affecting the skill levels at a faster rate. Thus, the wage levels of skilled employees are constantly changing and an organisation has to keep its level-up to suit the market needs.

(ii) Trade Union's Bargaining Power:

In general manner, can effective and more powerful the trade union, the higher the wages. A strike or a threat of a strike is the most powerful weapon used by it.

Sometimes trade unions force wages up faster than increases in productivity would allow and become responsible for unemployment or higher prices and inflation. However, for those left on the pay-roll, a real profit is often achieved as a consequence of a trade union's stronger bargaining power.

(iii) Psychological and Social Factors

These factors determine in a significant measure how hard a person will work for the compensation received or what pressures he will exert to get his compensation increased. Psychologically, persons perceive the level of wages as a measure of success in life; they feel that care brings in them.

Therefore, these things should not be overlooked by the management in establishing wage rates. Sociologically and ethically, people feel that "equal work should carry equal wages."

(iv) Supply and Demand of Labour

It is a main factor that greatly affects wages and salaries. Generally, the demand for certain skills is high and the supply is low, the result is a rise in the price to be paid for these skills. In case the labour supply is scarce; the wages will be higher likewise these will be lower wages when labour supply is beyond limit.

In the same way, if there is a great demand for labour expertise, wages rise; but if the demand for manpower skill is minimal, the wages will be relatively low.

(v) Prevailing Market Rate

An organisation's compensation policies generally tend to conform to the wage rates payable by the industry and the community. Some companies pay on the high side of the market for obtaining goodwill or for ensuring an adequate supply of labour, while other organisations pay lower wages due to economically they have to do so or because by lowering hiring requirements they can keep jobs adequately mannered. It is also referred to as the 'comparable wage' or 'gain wage rate'.

(vi) Cost of Living

The cost of living pay criterion is usually regarded as an auto minimum equity pay criterion. This criterion calls for pay adjustments based on increases or decreases in an acceptable cost of living index.

(vii) Living Wage

According to this criterion wages paid should be adequate to enable an employee to maintain himself and his family at reasonable level of existence. However, employers do not in accordance with the favour using the concept of a living wage as a guide to wage determination the reason is they prefer to base the wages of an employee on his contribution rather than on his requirement.

2. Internal Agents

The important internal agents that affect wage and salary are as follows:

(i) Organisation's Ability to Pay

Generally, the economic influence on the ability to pay is practically nil in the short-run. All employers, irrespective of their profits or losses must pay no less than their competitors and need to pay more if they wish to attract and keep workers.

Marginal firms and non-profit organisations (like hospitals and educational institutions) pay relatively low wages because of low or no profits. Wage increases should be given by those organisations which can afford to do so.

(ii) Job Requirements

In general aspect the more difficult a job is, higher are the wages. Measures of job difficulty are frequently used when the relative value of one job to another in an organisation is to be ascertained. Jobs are graded according to the relative skill, effort, responsibility and job conditions required.

(iii) Productivity

Output per man hour is the basis for the measurement of salary under this criterion. It is not due to labour efforts alone. The reason is various factors like technological improvements, better organisation and management, the development of better methods of production by labour and management, greater ingenuity and skill by labour are all responsible for the increase in productivity.

Thus, although theoretically it is a sound compensation criterion, operationally many problems and complications arise because of definitional measurement and conceptual issues.

(iv) Managerial Attitudes

This is the last but not the least effective factor that affects wages and salaries. The managerial attitudes have a decisive influence on the wage structure and wage level.

The reason of judgment is exercised in many areas of wage and salary administration including whether the firm should pay below average or above average rates, what job factors should be used to reflect job worth, the weight to be given for performance or length of

service and so forth, both the structure and level of wages are bound to be affected accordingly. These sort of matters are required the approval of the top executives in its sphere.

9.7 Factors Influencing the Determination of Wage Rates

The eight factors influencing the determination of wage rates are as follows:

1. Ability to Pay
2. Demand and Supply
3. Prevailing Market Rates
4. Cost of Living
5. Bargaining of Trade Unions
6. Productivity
7. Government Regulations
8. Cost of Training.

The wage payment is an important factor influencing labour and management relations. Workers are very much concerned with the rates of wages as their standard of living is connected with the amount of remuneration they get. Managements, generally, do not come forward to pay higher wages because cost of production will go up and profits will decrease to the extent.

Following factors influence the determination of wage rate

1. Ability to Pay

The ability of an industry to pay will influence wage rate to be paid, if the concern is running into losses, then it may not be able to pay higher wage rates. A profitable enterprise may pay more to attract good workers. During the period of prosperity, workers are paid higher wages because management wants to share the profits with labour.

2. Demand and Supply

The labour market conditions or demand and supply forces to operate at the national and local levels and determine the wage rates. When the demand for a particular type of skilled labour is more and supply is less than the wages will be more. One the other hand, if supply is more demand on the other hand, is less then persons will be available at lower wage rates also.

According to Mescon," the supply and demand compensation criterion is very closely related to the prevailing pay comparable wage and on-going wage concepts since, in essence to all these remuneration standards are determined by immediate market forces and factors.

3. Prevailing Market Rates

No enterprise can ignore prevailing wage rates. The wage rates paid in the industry or other concerns at the same place will form a base for fixing wage rates. If a unit or concern pays

low rates then workers leave their jobs whenever they get a job somewhere else. It will not be possible to retain good workers for long periods.

4. Cost of Living

In many industries wages are linked to enterprise cost of living which ensures a fair wages to workers. The wage rates are directly influenced by cost of living of a place. The workers will accept a wage which may ensure them a minimum standard of living.

Wages will also be adjusted according to price index number. The increase in price index will erode the purchasing power of workers and they will demand higher wages. When the prices are stable, then frequent wage increases may not be required

5. Bargaining of Trade Unions

The wage rates are also influenced by the bargaining power of trade unions. Stronger the trade union, higher will be the wage rates. The strength of a trade union is judged by its membership, financial position and type of leadership.

6. Productivity

Productivity is the contribution of the workers in order to increase output. It also measures the contribution of other factors of production like machines, materials, and management .Wage increase is sometimes associated with increase in productivity. Workers may also be offered additional bonus, etc., if productivity increases beyond a certain level. It is common practice to issue productivity bonus in industrial units.

7. Government Regulations

To improve the working conditions of workers, government may pass a legislation for fixing minimum wages of workers. This may ensure them, a minimum level of living. In under developed countries bargaining power of labour is weak and employers try to exploit workers by paying them low wages. In India, Minimum Wages Act, 1948 was passed empower government to fix minimum wages of workers. Similarly, many other important legislation passed by government help to improve the wage structure.

8. Cost of Training

In determining, the wages of the workers, in different occupations, allowances must be made for all the exercises incurred on training and time devoted for it.

9.8 Factors to Consider for Determining Wage and Salary Structure of Workers

The following factors should be taken into consideration in determining wage and salary structure of workers:

(i) Labour Unions:

The labour unions attempt to work and influence the wages primarily by regulating or affecting the supply of labour. The unions exert their influence for a higher wage and allowances through collective bargaining with the representatives of the management.

If they fail in their attempt to raise the wage and other allowances through collective bargaining, they resort to strike and other methods where by the supply of labour is restricted.

This exerts a kind of influence on the employees to concerned test partially the demands of the labour unions.

(ii) Personal perception of wage:

Whether the wage is adequate and equitable depends not only upon the amount that is paid but also upon the perceptions and the views of the recipients of the wage. Even though the wage is above the going wage rate in the community if it is lower than that of fellow worker deemed inferior, it will be regarded as inequitable in the eyes of the recipients of the wage. A man's perception of the equity of his wage will undoubtedly affect his behaviour in joining and continuing in the organisation.

(iii) Cost of living:

Another important factor affecting the wage is the cost of living adjustments of wages. This approach tends to vary money wage depending upon the variations in the cost of living index following rise or fall in the general price level and consumer price index. It is an essential ingredient of long term labour contracts unless provision is made to reopen the wage clause periodically.

There are measurement problems both in ascertaining productivity and cost of living increases. This problem may lead to lack of understanding and unanimity on the part of the management and the workers.

(iv) Government legislation

The laws passed and the labour policies formed by the Government have an important influence on wages and salaries paid by the employees. Wages and salaries can't be fixed below the level prescribed by the government. The laws on minimum wages, hours of work, equal pay for equal work, payment of dearness and other allowances, payment of bonus, etc. have been enacted and enforced to bring about a measure of fairness in compensating the working class.

(v) Ability to pay

Labour unions have often demanded an increase in wages on the basis that the firm is prosperous and able to pay. However, the fundamental determinants of the wage rate for the individual firm emanate for supply and demand. If the firm is marginal and cannot afford to pay competitive rates, its employees will generally leave it for better paying jobs. However, this adjustment is neither immediate nor perfect because of problems of labour immobility and lack of perfect knowledge of alternatives. If the firm is highly successful, there is little need to pay for more than the competitive rates to obtain personnel.

(vi) Supply and demand

As stated earlier, the wage is a price for the services rendered by a worker or employee. The firm desires these services, and it must pay a price that will bring forth the supply, which is controlled by the individual worker or by a group of workers acting together through their unions. The practical result of the operation of this law of supply and demand is the creation of "going- wage rate".

It is not practicable to draw demand and supply curves for each job in an organisation even though, theoretically, a separate curve exists for each job. But, in general, if anything works to decrease the supply of labour such as restriction by a particular labour union, there will be a tendency to increase the wage. The reverse of each situation is likely to result in a decrease in employee wage, provided other factors, such as those discussed below, do not intervene.

(vii) Productivity

Increasingly there is a trend towards gearing wage increases to productivity increases. Productivity is the key factor in the operations of a company. High wages and low costs are possible only when productivity increases appreciably. The above factors exercise a kind of general influence on wage rates. In addition, there are several factors which do affect the individual difference in wage rates.

The most important factors which affect the individual differences in wage rates are:

- (a) Worker's capacity and age;
- (b) Educational qualifications;
- (c) Worker experience;
- (d) Hazards involved in work;
- (e) Promotion possibilities;
- (f) The prevailing wage in the community;
- (g) Stability of employment;
- (h) Demand for the product; and
- (i) Profits or surplus earned by the organisation.

9.9 Summary

The Minimum Wages Act, 1948 was enacted to safeguard the rights and interests of the workers working in some scheduled class of employment which is laid down under the Act. The Act seeks to provide equal employment opportunities and adequate remuneration for maintaining a decent standard of livelihood for the workers. These laws specify the minimum amount that employers may pay their employees for doing a specified type of work.

Wage legislations are leading to the Code on Wages, Industrial Relations Code, Social Security Code and the Occupational Safety, Health and Working Conditions Code are set to replace 29 labour laws. Over 90% of India's 50 crore workers are in the unorganised sector. And through these codes the government wants to ensure that all of them enjoy the benefits of labour laws related to minimum wages and social security.

9.10 Keywords

1. Wage legislation - It means specify the minimum amount that employers may pay their employees for doing a specified type of work.

2. Wage - A wage is money that is paid by an employer to an employee in exchange for work.

3. Wage policy - It means wage policy refers to legislation or government action undertaken to regulate the level or structure of wage, or both, for the purpose of achieving specific objectives of social and economic policy.

9.11 Self - Assessment Questions

1. Discuss the development of wage legislation in India?
2. Converse the wage concepts?
3. Explain the wage determination factors in industry?
4. Elucidate the Factors Considered to form a Sound Wage Policy?

9.12 Suggested Readings

1. Code On Wages, 2019 With Code On Wages (Central Advisory) Rules, 2021, Bare Act Commercial Law Publishers, 2022 Edition, commercial ISBN: 978-93-89564-08-2.
2. Handbook on Labour Wage Code,30 June 2021 by Saurabh Munjal, Handbook on Labour Wage Code Vaibhav Munjal, Bloomsbury Professional India publishers, ISBN-10 - 9389714559, ISBN-13 - 978-9389714555.
3. Wealth on MinimalWage Living on Less, by James W Stemer, ISBN:9780793122400,
4. Labour Laws and Industrial Relations, ,by Dr. Ganesh Kumar Jha, 10 October 2022, Publisher Notion Press, ISBN-13 979-8888334607.
5. Industrial Relations and Labour Laws by S C Srivastava, Year 2022.

Dr.K.Madhu Babu

LESSON - 10

⁴PAYMENT OF WAGES ACT, 1936

Learning Objectives

- ✓ To Study ⁷the Objectives of Payment of Wages Act, 1936
- ✓ To Learn the Importance of Payment of Wages Act, 1936
- ✓ To Understand the Highlights of the Payment of Wages Act

Structure

- 10.1 Introduction
- 10.2 The objective ¹of the Payment of Wages Act, 1936
- 10.3 Importance ⁴of Payment of Wages Act, 1936
- 10.4 Payment of Wages Act, 1936
- 10.5 Salient Features of the Act
- 10.6 Highlights ⁴of the Payment of Wages Act
- 10.7 Summary
- 10.8 Keywords
- 10.9 Self - Assessment Questions
- 10.10 Suggested Readings

¹10.1 Introduction

The Payment of Wages Act, 1936 ⁵regulates the payment of wages of certain classes of employed persons. It extends to the ⁴whole of India and it came into force on 28th March 1937. The essential goal for the advent of the Payment of Wages Act, 1936, is to keep away from needless put off within side the charge of wages and to save you unauthorized deductions from the wages. There are three kinds of wages minimum wage, fair wage & living wage covered under this Act.

The essential goal for the advent of ¹the Payment of Wages Act, 1936, is to keep away from needless delay withinside the charge of wages and to save you unauthorized deductions from the wages. There are three kinds of wages minimum wage, fair wage & living wage covered under this Act.

This act applies to an employed person whose wage does not exceed twenty-four thousand rupees per month. A wage-period shall not exceed one month.

The total amount of fine imposed in a wage-period on any employed person shall not exceed an amount equal to three percent of the wages. A fine shall not be imposed on any employed person who is under the age of fifteen years.

The total amount of deductions from the wages of an employed person shall not exceed: seventy-five percent, if the deductions include payments to co-operative societies, fifty percent, in any other case.

10.2 The objective of the Payment of Wages Act, 1936

Wages and several other essential terms are defined in Section 2 of the Payment of Wages Act, 1936, as follows:

- Appropriate Administration
- Appropriate government, according to section 2(i) of the Act, means:
- Railways, air transportation, mines, and oilfields are all under the federal government's control.
- In all other circumstances, the State Government is in charge.

The Act's principal goal is to prohibit improper wage deductions and eliminate unnecessary wage delays. Everyone who works in a factory, on a railway, or as a subcontractor on a railway, and everyone who works in industrial or other facilities needs to follow the payment of wages Act. The State Government may extend the provisions to any class of employees in any establishment or class of establishments by issuing a notification. The Act provides for the regular and timely payment of wages (on or before the 7th day or the 10th day once the wage period has exceeded 1000 workers) and the prevention of improper deductions from wages and arbitrary fines.

10.3 Importance of Payment of Wages Act, 1936

The policy primarily targets individuals in the industry who earn less than INR 24000 per month. The Act further stipulates that a worker cannot contract out of any privilege or right conferred upon him by the Act. The major goal of the Act is to control the timely payment of a few types of employees who operate in the industry. If there is a problem or a grievance, prompt and effective action may be taken to resolve the claims and difficulties with the help of this act. There are provisions in the statute for a remedy for wages earned while working in the office. Still, it does not include any procedures for any form of investigation into the office if there is a dispute.

1. What does the legislation mean by wage period fixation

The Payment of Wages Act, 1936 is applicable to each individual who works in the industry. The act ensures the salary of the employees will be done within one month only. The salary term cannot exceed one month under any circumstances. As a result, it is obvious that payment of wages under the act can be chosen on a day-to-day, week-to-week, month-to-month, or fortnightly basis. It indicates that wages should be paid on time and without delay, and if they aren't, the employer or their representatives will be held responsible.

2. Wage deduction and advantage to the Employee

A deduction is made for the employee's loss, which would be applied to his salary. The government permits these deductions for acts performed by employees in various industries. Deductions are used to subtract a specified amount from an employee's salary. As a result, when the employer pays his employee's salary, he deducts only what is required by law, not what is convenient for him. The deductions are imperative based on the law and are beneficial to the employee. To get a better understanding of the notion, consider what cannot be referred to as a deduction under the Payment of Wages Act of 1936:

- If the company has halted the employee's increment,
- If the employee has been placed on leave,
- If the person was demoted because of poor performance.
- Only when the organisation has reasonable grounds, can the grounds mentioned above be used.

3. Different types of deductions

With the authorisation of the proper authority, fines can be imposed on both the employee and the employer. The employer may impose a fine on the employee following the act's rules and regulations, and is done for the benefit of both the employer and the employee.

Fines should not be imposed on the worker until he clarifies and explains the demonstration or omission he made. The total amount of the fine should not exceed 3% of his annual salary. This increases the importance of the Payment of Wages Act, 1936.

4.4 Payment of Wages Act, 1936

1. Short title, extent, commencement and application.— (1) This Act may be called the Payment of Wages Act, 1936.

It applies to the payment of wages to persons employed in any factory [industrial establishment or commercial establishment] and to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,

Sec 2(i) "commercial establishment" means a commercial establishment as defined in the West Pakistan Industrial and Commercial (Standing Orders) Ordinance, 1968 (W.P.Ordinance VI of 1968).

Sec (ia) "factory" means a factory as defined in clause (j) of section 2 of the Factories Act, 1934

Sec (ii) "industrial establishment" means any—

- (a) tramway or motor omnibus service;
- (b) dock, wharf or jetty;

(c) inland steam-vessel;

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(g) establishment of a contractor who, directly or indirectly, employs persons to do any skilled or unskilled, manual or clerical labour for hire or reward in connection with the execution of a contract to which he is a party, and includes the premises in which, or the site at which, any process connected with such execution is carried on;

(iii) "plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea, and on which twenty-five or more persons are employed for that purpose;

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

(v) "railway administration" has the meaning assigned to it in clause (6) of section 3

(vi) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment.

3. Responsibility for payment of wages.— Every employer²³ [including a contractor,] shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that, in the case of persons employed (otherwise than by a contractor)—

- a) in factories, if a person has been named as the manager of the factory under clause (e) of sub-section (1) of section 9 of the Factories Act, 1934 ,
- b) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment,
- c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned, the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall be responsible for such payment.

4. Fixation of wage-periods.— (1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable. (2) No wage-period shall exceed one month.

5. Time of payment of wages.— (1) The wages of every person employed upon or in

- a) any railway, factory or industrial establishment [or commercial 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 establishment [or commercial 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.

³ (2) Where the employment of any person is terminated by or on behalf of the employer, ¹ the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(3) The [Government] may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible ⁴ for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such persons or class of such persons.

(4) All payments of wages shall be made on a working day.

6. Wages to be paid in current coin or currency notes.— ⁶ All wages shall be paid in current coin or currency notes or in both.

7. Deductions which may be made from wages.— (1) ¹ Notwithstanding the provisions of sub-section (2) of section 47 of the Indian Railways Act, 1890, the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

³ (2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:

- a) fines;
- b) deductions for absence from duty;
- c) deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- d) deductions for house-accommodation supplied by the ⁶ employer;
- e) deductions for such amenities and services supplied by the employer as the [Government] may, by general or special order, authorize
- f) deductions for recovery of advances or for adjustment of over-payments of wages;
- g) deductions of income-tax payable by the employed person;
- h) deductions required to be made by order of a Court or other authority competent to make such order;

- i) deductions for subscriptions to, and for re-payment¹ of advances from any provident fund to which the Provident Funds Act, 1925³², applies or any recognised provident fund as defined in section 33[clause (37) of section 2 of the IncomeTax Ordinance, 1979], or any provident fund approved in this behalf by the [Government], during the continuance of such approval;
- j) deductions for payments to co-operative societies approved by the 37[Government] or to a scheme of insurance maintained by the concern office.

³
8. Fines.— (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the [Government] or of the prescribed authority, may have specified by notice under sub-section.

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in 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) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(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 imposed on any employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

¹
9. Deductions for absence from duty.— (1) 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.

³
(2) 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 [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.

10. Deductions for damage or loss.— (1) A deduction under clause (c) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deduction.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

11. Deductions for services rendered.— A deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions as the [Government] may impose.

12. Deductions for recovery of advances.— Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely:—

- a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advance given for travelling-expenses;
- b) recovery of advances of wages not already earned shall be subject to any rules made by the [Government] regulating the extent to which such advances may be given and the installments by which they may be recovered.

13. Deductions for payments to co-operative societies and insurance schemes.— Deductions under clause (j) [and clause (k)] of sub-section (2) of section 7 shall be subject to such conditions as the [Government] may impose.

14. Inspectors.— (1) An Inspector of Factories appointed under sub-section (1) of section 10 of the Factories Act, 1934, shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) The [Government] may appoint 55 Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) The [Government] may, by notification in the [Official Gazette], appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local

limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

(4) An Inspector may, at all reasonable hours, enter on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Penal Code, 1860.

15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.— (1) The [Government] may, by notification in the [Official Gazette] appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, [or non-payment of dues relating to provident fund or gratuity payable under any law,] or delay in the payment of wages, of persons employed or paid in that area.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages [or of any dues relating to provident fund or gratuity payable under any law.] has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, [or any Inspector under this Act,] or any of the heirs of an employed person who has died, [or any other person acting with the permission of the authority appointed under subsection (1),] may apply to such authority for a direction under sub-section (3):

Provided that every such application shall be presented within [three years] from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of [three years] when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under Section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person [or, if the applicant is one of the heirs of an employed person, the payment to such applicant,] of the amount deducted, or the payment of the [delayed] wages [or of any dues relating to provident fund or gratuity payable under any law], together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding [one thousand rupees] in the latter:

1 Provided that no direction for the payment of compensation shall be made In the case of delayed wages if the authority is satisfied that the delay was due to—

- a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or
- b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- c) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding [five hundred] rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application .

3 (5) Any amount directed to be paid under this section maybe recovered—

- a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and
- b) if the authority is not a Magistrate, [by the authority as an 1 officer of land-revenue, or, in the 2 prescribed manner, by the authority by distress and sale of 3 the moveable property belonging to the person by whom the amount is to be paid, or by attachment and sale of the immoveable property belonging to such person.

1 **16. Single application in respect of claims from unpaid group.**— (1) Employed persons 5 are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage period or periods have remained unpaid after the day fixed by section 5.

(2) A single application may be presented under section 15 on behalf or in respect of 3 any number of employed persons belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (3) of section 15 shall be 73 [one thousand] rupees per head.

3 (3) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly.

1 **17. Appeal.**— (1) An appeal against a direction made under [sub-section (3) or subsection (4)] of section 15 may be preferred, within thirty days of the date on which the direction was made, before the [Labour Court constituted under the [Punjab Industrial Relations Act, 2010 (XIX of 2010)], within whose jurisdiction the cause of action to which the appeal relates arose]

18. Powers of authorities appointed under section 15.— Every authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 .

19. Power to recover from employer in certain cases.— When the authority referred to in section 15 or the Court referred to in section 17 is unable to recover from any person (other than an employer) responsible under section 3 for the payment of wages any amount directed by such authority under section 15 or section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned.

20. Penalty for offences under the Act.— (1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, section 5 and sections 7 to 13, both inclusive, shall be punishable with fine which may extend to [ten thousand] rupees. (2) Whoever contravenes the provisions of section 4, section 6 or section 25 shall be punishable with fine which may extend to [five thousand] rupees.

21. Procedure in trial of offences.— (1) No Court shall take cognizance of a complaint against any person for an offence under sub-section (1) of section 20 unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of section 20, the authority empowered under section 15 or the appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to

- a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or
- b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- c) the failure of the employed person to apply for or accept payment.

22. Bar of suits.— No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed—

- a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the Authority appointed under that section or of an appeal under section 17; or
- b) has formed the subject of a direction under section 15 in favour of the plaintiff; or

- c) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff;
or
- d) could have been recovered by an application under section 15.

23. Contracting out.— Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

25. Publicity of the Act.— The person responsible for the payment of wages to persons employed in the factory, industrial establishment or commercial establishment shall, at a prominent place in the factory, industrial establishment or commercial establishment, display a notice containing the abstracts of this Act and the rules made under it in English and Urdu, as may be prescribed.

26. Rule-making power.— (1) The Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in sections 15 and 17.

(2) The Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may—

- a. require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act and prescribe the form thereof;
- b. require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;
- c. provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;
- d. prescribe the manner of giving notice of the days on which wages will be paid;
- e. prescribe the authority competent to approve under sub-section (1) of section 8 acts and omissions in respect of which fines may be imposed;
- f. prescribe the procedure for the imposition of fines under section 8 and for the making of the deductions referred to in section 10;
- g. prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of section 9;
- h. prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended;
- i. prescribe the extent to which advances may be made and the installments by which they may be recovered with reference to clause (b) of section 12;
- j. regulate the scales of costs which may be allowed in proceedings under this Act;
- k. prescribe the amount of court-fees payable in respect of any proceedings under this Act ;and
- l. prescribe the abstracts to be contained in the notices required by section 25.

1 (4) In making any rule under this section the [Government] may provide that a contravention of the rule shall be punishable with fine which may extend to [five thousand] rupees.

(5) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897, shall not be less than three months from the date on which the draft of the proposed rules was published.

10.5 Salient Features of the Act

1. Obligations of employers

Every employer is responsible for the payment of wages to all the employees that he employs. Additionally, apart from the Employer, all the person so named / person so responsible to the employer / the person so nominated shall also be responsible for such payment.

2. Wage Period

Every person responsible for Wage Payment shall fix periods in respect of which such wages shall be payable. No wage-period shall exceed one month.

3. Time and Mode of Payment of Wages

Every establishment having employees in excess of 1,000 person shall pay the wages before the expiry of the 10th day. All other employers shall make the Wage payment by the expiry of 07th day.

Employers shall make the payment of wages in current currency notes i.e. cash or via Bank transfer.

4. Deductions from Wages

Employers shall ensure that wages are paid to all employees without deduction of any kind except those authorized by or under this Act.

A. Deduction includes the reduction of wages for the following:

- Fines
- Absence from duty
- Damage to or loss of goods including loss of money where such damage or loss is directly attributable to employee's neglect or default
- Recovery of advances / loans and the interest due in respect thereof
- Adjustment of over-payments of wages
- Payments made by the employed person to the employer or his agent shall also be deemed to be a deduction from wages.

B. Deductions does not include following penalties (provided the rules w.r.t. penalty are in conformity with the requirements as specified by the State Government):

- Withholding of increment or promotion
- Reduction to a lower post
- Suspension

5. Compliance Requirements

- Maintenance¹ of Registers
- Employers shall maintain Registers and records giving the following details
 - Particulars of persons employed
 - Work performed by Employees
 - Wages paid to employees and deductions⁴ made from their wages
 - All these Registers are required to be preserved for a period of 03 Years.

6. Display of Notice of Abstracts

All Employers shall display Notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory. It includes the following:

- List of acts and omissions approved under Rule 12
- Rates of wages payable to employees (excluding those in supervisor / manager positions).

10.6 Highlights of the Payment of Wages Act

- 1) This act applies to an employed person whose wage does not exceed twenty-four thousand rupees per month.⁴
- 2) A wage-period shall not exceed one month.
- 3) The total amount of fine imposed in a wage-period on any employed person shall not exceed an amount equal to three percent of the wages.⁵
- 4) A fine shall not be imposed on any employed person who is under the age of fifteen years.³
- 5) If the authority is satisfied that the application is either malicious or vexatious, it may direct the person who presented the application to pay a penalty not exceeding three hundred seventy-five rupees to the employer.¹
- 6) If a person who is required to nominate or designate a person under section 3 (responsibility for payment of wages) fails to do so, such person shall be punishable with a maximum fine of three thousand rupees.³
- 7) If a person willfully obstructs an inspector or refuses to produce any register or document demanded by the inspector or refuses to afford an inspector any reasonable facility for making the inspection shall be punishable with a fine which shall not be less than one thousand five hundred rupees but may extend to seven thousand five hundred rupees.¹
- 8) If any person is convicted again of an offence involving contravention of the same provision, then he shall be punishable with imprisonment for a term or with fine which shall not be less than three thousand seven hundred fifty rupees but may extend to twenty-two thousand five hundred rupees.¹

9) If any person fails or willfully neglects to pay the wages by the date fixed by the authority, he shall be punishable with an additional fine which may extend to seven hundred fifty rupees for each day for which such neglect continues.

10) Industrial or other establishment includes the following:

- Tramway or motor transport service engaged in carrying passengers or goods or both for hire or reward.
- Air transport service other than such service which is exclusively employed in the military, naval or air forces or the civil aviation department.
- Dock, wharf, or jetty.
- Inland vessel, mechanically propelled.
- Mine, quarry, or oilfield.
- Plantation
- Any workshop or establishment is included if it involves the production, adaption, or manufacturing of articles for use, transport, or sale.
- Any establishment in which work relating to the construction, development, or maintenance of buildings, roads, bridges or canals, navigation, irrigation, or distribution of electricity or any other form of power is being carried on.
- Any other establishment notified by the appropriate government.

11) Wages shall be paid before the expiry of the seventh day and tenth day if the person is employed in an establishment in which less than one thousand persons and more than one thousand are employed respectively.

- If a person is employed on a dock, wharf or jetty or in a mine, the balance of wages shall be paid before the expiry of the seventh day from the day of such completion.
- If the employment of any person is terminated by the employer, the wages shall be paid before the expiry of the second working day.
- If the employment of any person is terminated due to the closure of the establishment, the wages shall be paid before the expiry of the second day.

12) The total amount of deductions from the wages of an employed person shall not exceed:

- seventy-five percent, if the deductions include payments to co-operative societies.
- fifty percent, in any other case.

13) The appropriate government may appoint the following as the authority to hear and decide the claims related to the deductions or delay in wages:

- Any commissioner for Workmen's Compensation or Regional Labour Commissioner (central) or
- Assistant Labour Commissioner (central) with at least two years' experience or
- Assistant Labour Commissioner (state) with at least two years' experience or
- A presiding officer of any Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act, 1947 or under any corresponding law or
- Judge of a Civil Court or a Judicial Magistrate.

14) The authority may direct the employer:

- To refund the deducted amount together with the compensation not exceeding ten times the amount deducted.
- To pay the delayed wages together with the compensation not exceeding three thousand rupees but not less than one thousand five hundred rupees.
- The authority may direct the employer to pay the maximum compensation of two thousand rupees, even if the amount deducted or delayed wages are paid before the disposal of the application.

15) If a person who is required to maintain records or registers or to furnish any information or return, does the following, then he shall be punishable with fine which shall not be less than one thousand five hundred rupees but may extend to seven thousand five hundred rupees:

- Fails to maintain such a register or record.
- Willfully refuses to furnish such information, furnishes false information or return or refuses to answer some information that is required to be furnished under this act.

10.7 Summary

The act has established various rules and regulations for the betterment and effective operation of the industry. The legislation allows workers to work freely without fear of being hampered by pay or salary delays. The code has paved the road for employees to work with dignity, and the necessary mechanisms have been established. The act's provisions aid in the development of trust between the employer and the employee, allowing for optimum production to be attained through employee motivation. The notion of wage payment and deductions under the code is critical to the industry's operating and producing intended output and ensuring that the benefit is supplied to the employee.

10.8 Keywords

1. Employed Person - Includes the legal representative of a deceased employed person.
2. Employer - Includes the legal representative of a deceased employer.
3. Appeal - In the following situation the parties whoever dissatisfied can appeal to the district court.

10.9 Self - Assessment Questions

1. Define the wage, discuss the importance of payment of wages Act, 1938?
2. Explain the main features of payment of wages Act, 1938?
3. Discuss the highlights of the payment of wages Act, 1938?
4. What are the objectives and deductions of payment of wages Act, 1938?

10.10 Suggested Readings

1. The Payment of Wages Act, 1936, by Lexis, Publisher Universal LexisNexis, January 2021.
2. Industrial Relations and Labour Laws, by S.C. Srivastava, Publisher: S Chand And Company Ltd, ISBN: 9789354539961, 9354539963, Year 2022.
3. New Labour & Industrial Laws – Complete coverage of the new Codes (Code on Wages, IR Code, Social Security), by Taxmann, Publisher Taxmann Publications Private Limited, ISBN-13 978-9356226487, Year 2023.
4. Industrial Relations and Labour Laws, by Piyali Ghosh and Shefali Nandan, Publisher McGraw Hill Education, ISBN-13 - 978-9339203047

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LESSON - 11

THE MINIMUM WAGES ACT, 1948

Learning Objectives

- ✓ To know the minimum wage
- ✓ To learn about the main provisions of minimum wage
- ✓ To read the importance of minimum wage
- ✓ To study the wage determination factors

Structure

- 11.1 Introduction
- 11.2 Currently Applicable Provisions
- 11.3 Purpose of Minimum Wage Act, 1948
- 11.4 The Objective of the Minimum Wages Act
- 11.5 Fixation and Revision of Minimum rates
- 11.6 Non - Standard Workers' Right on Minimum Wage - Platform Workers
- 11.7 Minimum Wage Regulations under State Law
- 11.8 Regular Pay
- 11.9 Non - Standard Workers' Rights on Regular Pay - Platform Workers
- 11.10 Regular Pay Under State Laws
- 11.11 The Minimum Wages Act, 1948 - An evolutionary panorama
- 11.12 The Minimum Wage Fixing Convention, 1970
- 11.13 Reasons for the Need of Enactment of the Minimum Wages Act 1948
- 11.14 Important Sections in this Act
- 11.15 Summary
- 11.16 Keywords
- 11.17 Self - Assessment Questions
- 11.18 Suggested Readings

11.1 Introduction

Last year (2020), the Indian Parliament combined 25 labour laws into three codes, i.e., the Social Security Code, the Code on Industrial Relations and the Code on Occupational Safety,

Health and Working Conditions. The Code on Wages, enacted in 2019, also amalgamated four relevant labour laws.

The Four new Labour Codes were supposed to be effective from 01 April 2021 however considering the rise in COVID cases and the potential impact of the new Codes on per employee cost for enterprises, the Government has delayed implementation of new Codes to a future date. The Central and State Governments have yet to notify the rules. The new legal provisions will be effective only, once notified.

11.2 Currently Applicable Provisions

Minimum wage rates in India are fixed under the Minimum Wages Act, 1948. Since labour is concurrent subject under the Indian Constitution, minimum wage rates are determined both by the Central Government and the Provincial Governments. Minimum wage rates in India are declared at the national, state, sectoral and skill/occupational levels. Minimum wage rates may be established for any region, occupation and sector. Also, the minimum wage is established for trainees, youth and piece-rate workers. The minimum wage is determined by considering the cost of living.

The minimum rate of wages may consist of a basic rate of wages and a cost of living allowance; or a basic rate of wages, with or without the cost of living allowance, and the cash value of concessions in respect of the supply of essential commodities at concession rates (if authorized); or an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions (if any).

While fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for different scheduled employments; different classes of work in the same scheduled employment; adults, adolescents, children and apprentices; and different localities. The minimum wage rates may be fixed by hour, day, month or any such other larger wage period as may be prescribed.

Under the Minimum Wages Act, both the Central and State Governments may notify the scheduled employments and fix/revise minimum wage rates for these scheduled employments. The scheduled employments include both the agricultural and non-agricultural employments. Both the Central and State Governments are empowered to notify any employment (industry/sector) in the schedule where the number of employees is 1000 or more and fix the rates of minimum wages in respect of the employees employed therein.

Minimum wage is announced for 45 scheduled employments in the Central Sphere while the State level minimum wage is determined by every state keeping in view the sectors more dominant in the State. Minimum wage is revised while considering the following five elements: three consumption units per earner; minimum food requirement of 2700 calories per average adult; cloth requirement of 72 yards per annum per family; house rent corresponding to the minimum area provided under the Government's Industrial Housing Scheme; fuel, lighting and other miscellaneous items of expenditure to constitute 20% of the total minimum wage; and children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage etc. should further

constitute 25% of the total minimum wage (the last component added by the Supreme Court in Reptakos Brett Vs Workmen case in 1991). Minimum wages may be reviewed at different intervals however such intervals cannot exceed five years.

The Minimum Wages Act provides for two methods of fixation/revision of minimum wages. Under the Committee Method, committees and sub-committees set up by the Government to hold inquiries and make recommendations with regard to the fixation and revision of minimum wages. Under the Notification method, government proposals are published in the Official Gazette for information of the persons likely to be affected and specify a date (not less than two months from the date of the notification) on which the proposals will be taken into consideration.

After considering the advice of the Committees/Sub-committees (Committee method) and all the representations received by the specified date (Notification method), the appropriate Government, by notification in the Official Gazette, fixes/revises the minimum wage in respect of the concerned scheduled employment which come into force on expiry of three months from the date of its issue.

In protecting the real wages against inflationary effects, the Central government provides for linking of Variable Dearness Allowance to the Consumer Price Index for industrial workers (CPI-IW). Most states provide for variable dearness allowance in revising the minimum wage. VDA is revised periodically twice a year effective from 1st April and 1st October.

Compliance with labour legislation including payment of minimum wages to workers is ensured by the labour inspectors, as are appointed under section 19 of the Minimum Wages Act 1948. In the event of non-compliance, fines, imprisonment and payment of arrears can be applied as per law. Section 22 of the Minimum Wages Act stipulates that violators may be punished to pay a fine (which may be extended to 500 rupees) or imprisonment, which may extend to a period of six months or both. The Authority (magistrate) may also require payment of arrears to the worker along with compensation for delay in payment of due wages. However, such extra compensation should not exceed 10 times the due amount. Similarly, an employer who fails to maintain a register or record as required under the law is liable for a fine of up to 500 rupees.

If a worker receives wages, which are less than the government declared minimum wages, he/she may file a complaint with the labour inspectorate. The complaint can be filed by the worker or through a legal practitioner, or an official of the registered trade union. The claims for any unpaid/due wages must be filed within 6 months of their becoming due.

The Code proposes that the central government fixes a floor wage, taking into account the living standards of workers. The central government may set different floor level wages for different geographical areas. The central government may also obtain the advice of the Central Advisory Board (tripartite plus advisory body with representation from the worker, employer and government groups as well independent persons) and may consult with state governments. Moreover, 33% of the total members of both the central and state Boards must be women. The Boards have the mandate to advise the respective governments on various

issues including (i) fixation of minimum wages, and (ii) increasing employment opportunities for women.

The minimum wages notified by the central or state governments must be higher than the floor level wage. Where the existing minimum wages are higher than the floor wage, these cannot be reduced.

The Wage Code prohibits employers from paying workers less than the minimum wages. Minimum wages notified by the government are either time based (number of hours of work) or per piece. The minimum wages must be revised and reviewed by the central or state governments at an interval of not more than 5 years. While fixing minimum wages, the central or state governments may take into account various factors such as (i) skill of workers, and (ii) arduous nature of work.

The Code on Wages Bill, 2019 was passed by the Lok Sabha on July 30, 2019, and Rajya Sabha on 02 August 2019.

The Wage Code regulates wage and bonus payments in all employment. The Code combines the provision of the following four laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976. The Wage Code repeals the above 4 laws.

11.3 Purpose of Minimum Wage Act, 1948

The importance of the Minimum wage act 1948 is to prevent employee exploitation and ensure a decent living for a worker. The Act provides that the government will fix the minimum wage rate and revise it every five years. It appoints advisory committees to consider the proposals. The government must follow the guidelines and implement them as soon as possible. In many cases, this means announcing the changes to the law before the public.

- The Act was introduced in 1948, and it was amended in 2000
- The changes included a change in the floor level for minimum wages
- Currently, the minimum wage floor in India is 115, but the law also gives exceptions for certain employees
- The lowest floors are in Andhra Pradesh, Kerala, and Gujarat
- In addition to this, the new law provides for higher minimum wages for workers with disabilities

The act requires the government to consult with the committee and the representatives of the people affected by the minimum wage.

- The committee determines the minimum rate of the act
- The government must publish it in the official newspapers and enforce it within three months
- The government must inform the affected parties of the proposed minimum wage by publishing the decision in a national daily
- In case of non-payment of wages, the authority must pay ten times the difference

11.4 The Objective of the Minimum Wages Act

The Minimum wage Act 1948 accommodates fixing wage rates (time, piece, ensured time, additional time) for any industry.

1. While fixing hours for an ordinary working day according to the demonstration, ought to ensure the accompanying:

- The number of hours to be fixed for an ordinary working day should have at least one stretch/break
- One three-day weekend from a whole week ought to be given to the representative for rest
- Installation for the day chosen to be given for rest ought to be paid at a rate at the very least the additional time rate

2) If a representative is engaged with work that classifies his service in at least two booked vocations, the worker's pay will incorporate a particular compensation pace of all work for the number of hours devoted at each undertaking.

3) The business must keep records of all workers' work, wages, and receipts.

4) Appropriate legislatures will characterize and dole out the errand of review and choose examiners for the equivalent.

11.5 Fixation and Revision of Minimum rates

The Minimum Wages Act, 1948, for the most part, indicates the lowest pay permitted by law rates on an everyday basis and stretches out to the whole nation. It is overhauled every five years, but there is an arrangement to increment the dearness allowance every two years. ILC first suggested the standards for fixing and amending minimum wages.

Update of the lowest pay permitted by law rates depends on a 'typical cost for many everyday items list', and wages can be fixed for a whole state, some portion of the state, class or classes, and occupations relating to these classifications. The obsession with wages depends on the standards referenced and a compensation board (different for various industries).

Under the Minimum Wages Act, State and Central Governments can fix and reexamine the least wages.

- The demonstration determines that the "suitable" government ought to improve the wages; for example, if the wages to be fixed are according to any power of the Central Government or Railway organisation, then the Central government fixes it
- Assuming that the compensation rate is to be fixed or amended for planned work, the separate state legislatures set it
- The Centre fixes the National floor level Minimum Wage that is lower than most states' individual least wages
- The vagueness and cross-over in the locale of government levels have caused discussions and contentions

- One of such discussions spins around fixing wage paces of MGNREGA plot and a business ensure drive by the Central Government.

11.6 Non - Standard Workers' Right on Minimum Wage - Platform Workers

Minimum wages are applicable only to employees. However, the law allows the appropriate (central or state government) to include in the list of employees any "person declared to be an employee by the appropriate Government". Hence, the wages can be announced by the central and state governments for platform workers.

The Code on Wages, 2019 (enacted in August 2019) provides for the procedure to set minimum wages. The law also requires employers to pay minimum wages to employees. Employee is defined as "any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of India".

The Code on Wages entitles only employees to the bonus payment. Service agreement may also provide for a bonus payment to incentivize service delivery.

Under the Wage Code, it is the responsibility of Inspector-cum-Facilitator to inspect all such establishments where workers are employed. On inspection of record or filing of a complaint by a worker, proceedings can be initiated against an employer. However, since platform workers are regarded as independent contractors, these are not covered under the Wage Code.

Wage Codes provides for penalties where compliance with the law is lacking. The fine ranges between 20,000 to 100,000 Indian rupees. Since platform economy workers are considered independent contractors, their contracts/service agreements are governed under the Indian Contract Act, 1872.

11.7 Minimum Wage Regulations under State Law MINIMUM WAGES REGULATIONS IN ANDHRA PRADESH

Employees of establishments under the Shops and Establishments Act are entitled to payments without any deductions other than those authorized. No fine can be imposed on any employee unless they have made certain acts or omissions that were specified by the employer with previous approval from the government. These acts and omissions should be mentioned to a worker by notice.

Similarly, no fine can be imposed on any employee without giving them an opportunity of explaining against the fines unless specified by law. The total amount of fine which may be imposed in any one wage period on any employee cannot exceed 3% of the wage payable. A fine cannot be imposed on a worker under 15. Law also states that the fines imposed on an employee cannot be recovered after the expiry of sixty days from the day on which it was imposed.

Deductions on account of absence are allowed however the deduction should match the days of absence during a wage period. The deduction for damage of goods cannot exceed 50 per cent of the amount of damaged goods. A notice must be served to the workers, with an

opportunity to explain, prior to any such deduction. Deductions for recovery of an advance of money given before employment began can be made from the first payment of wages. However, no recovery can be made of such advance given for travelling expenses.

1.8 Regular Pay

Wages means all remuneration capable of being expressed in terms of money, which would, if the terms of the contract 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. It, however, does not include the value of any house-accommodation, supply of light, water, medical attendance, or any other prescribed amenity or service; any pension or provident fund, or social insurance scheme, contributions paid by the employer; travelling allowances or concessions; reimbursement for special expenses incurred by the employee; or gratuity payable on discharge.

In accordance with the Minimum Wage Act, the employer is obliged to pay wages on regular and timely basis at least once a month. Wage period may be fixed on hourly, daily, weekly or monthly basis. The employer is under obligation to pay wages in cash on a working day before the expiry of the 7th day after the last day of the wage period (in establishments with less than 1000 workers). In other establishments, i.e., those hiring more than 1,000 workers, wages must be paid before expiry of 10th day after the last day of the wage period. If the employment of a worker is terminated by or on behalf of the employer, the outstanding wages are paid within two days of employment termination. Wage periods can't be fixed for duration longer than one month.

Minimum wages are generally payable in cash however if it is customary to pay wages wholly or partly in kind, the appropriate Government may authorize the payment of minimum wages either wholly or partly in kind.

Payment of Wages Act 1936 required that all wages be paid in current coin or currency notes or in both (in legal tender). An employer may, after obtaining the written authorization by the worker, pay worker the wages either by cheque or by crediting the wages in bank account. A 2017 amendment in the 1936 Act, applicable from 28 December 2016, now allows the employer to pay wages in coins or currency notes; or by check; or by crediting the wages in worker's account. The amended Act has withdrawn the requirement of taking prior authorization from worker about mode of wage payment. The relevant (central or state) government may however specify certain industrial or other establishments requiring those to pay either by check or bank transfer.

Workers are entitled to the wages without any kind of deduction except in cases prescribed by the Payment of Wages Act 1936. It may include deductions as fine; for absence; for damage or loss of goods or money; for house accommodation supplied by employer; for recovery of advances or loans; for income-tax; and any other kind of deduction that is made by order of a Court or other authority competent to make such order.

The Wage Code proposed that wages are paid in (i) coins, (ii) currency notes, (iii) by cheque, (iv) by crediting to the bank account, or (v) through electronic mode.

The wages can be paid by the employer on (i) daily, (ii) weekly, (iii) fortnightly, or (iv) monthly basis. The industrial or commercial establishments may be required by notification to pay wages through cheque or by crediting the wages directly in the worker's bank account.

The Wage Code also specifies the time limit for payment of wages. For daily wagers, the wages must be paid at the end of daily shift. In the weekly wage period, the wages must be paid on the last working day of the week; for fortnightly wage period, the wages must be paid within 2 days at the end of fortnight. For monthly wage period, the wages must be paid within 7 days of the end of working month.

Under the Wage Code, workers' wages may be deducted on certain grounds including: (i) fines, deductions for loss of goods or money due to the worker's neglect (ii) absence from duty, (iii) accommodation given by the employer or other amenities, (iv) recovery of loans and advances given to the employee, among others, (v) deductions for payment of trade union fees or contribution to social security schemes, or (vi) deductions of income tax. The total deductions should not exceed 50% of the worker's total wage.

The Wage Code also has provision on determination and payment of bonus. All such worker who have worked at least 30 working days in a year with an establishment and whose wages do not exceed a specific monthly amount, as notified by the central or state government, will be entitled to an annual bonus. The bonus will be at least: (i) 8.33% of his/her wages, or (ii) Rs 100, whichever is higher. In addition to the minimum bonus (where the allocable surplus exceeds the minimum bonus), the employer is required to distribute a part of the gross profits amongst the workers. It is distributed in proportion to the annual wages of a worker. The worker can receive a maximum bonus of 20% of his annual wages.

The Code on Wages Bill, 2019 was passed by the Lok Sabha on July 30, 2019 and Rajya Sabha on 02 August 2019.

The Wage Code regulates wage and bonus payments in all employment. The Code combines the provision of the following four laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976. The Wage Code repeals the above 4 laws.

11.9 Non - Standard Workers' Rights on Regular Pay - Platform Workers

The payment system in the platform economy is quite varied. Some platforms apply an hourly rate, others offer a specific amount per delivery, ride or task. The platforms do not ask for a service fee. However, it is often required that workers use their own equipment or means of transport to perform their worker duties.

This varies per platform. For independent contractors, offering bonuses is legally allowed in any way, shape or form. Uber offers Quest and Boost incentives/bonuses. Quest promotions allow drivers/partners to earn extra money for reaching certain trip goals in a set amount of time (a week). Select drivers/partners receive weekday and weekend boosts as well.

For independent contractors, applying deductions is legally allowed in any way, shape or form. Deductions from payment on account of service fees are covered under the Indian Contracts Act 1872.

11.10 Regular Pay Under State Laws

REGULAR PAY IN ANDHRA PRADESH

Every employer is responsible for the payment by him to employees of all wages and sums, required to be paid under this Act. Every employer must fix periods in which wages are payable. No wage period can be more than one month. The wages of every employee must be paid before the end of the fifth day after the last day of the wage period. Where the service of any employee is terminated by the employer, the employee should receive their wage before the expiration of two days from termination.

In organizations with less than 1000 workers, contract labourers should be paid their wages within 7 days after their wage cycle. In other organizations, this payment should be paid before the 10th day. All payments of wages must be made on a working day at the work premises and during the working time. This date and time should be notified to the workers in advance. In case the work ends before the average wage period, contract workers should be paid within 48 hours of the last working day.

Wages due to every worker must be paid to such workers directly or to another person authorized by the worker. Wages must be paid without any deductions of any kind except those specified by the State Government by general or special order. Employers are supposed to display a notice with all the payable wages at a visible place at the establishment. A representative of the principal employer should be present every time the contractor is giving out the wages. The contractor should ensure that such an authorized representative is present. The principal employer may also ensure written slips of all disbursed wages.

11.11 The Minimum Wages Act, 1948 - An evolutionary panorama

The evolution of Indian labour legislation is obviously interlaced with the history of British colonialism. British political economy was considered natural paramount in modelling some of the early laws. In the initial phases it was very difficult to get adequate regular Indian workers to run British organizations and hence labour laws became essential. These were obviously in order to protect the interests of British bosses. Although this was a case, attitude of Indian legislators, as it turned towards being independent from the clutches of British empire, has been very constructive and pro-welfare state. The importance of the minimum wages as an instrument of social protection was already high lightened in the ILO constitution adopted in the year 1919 as a part of treaty of Versailles after the end of World War I. The preamble of this constitution recalls, "the High Contracting parties, moved by sentiments of justice and humanity as well as by the desire to secure permanent peace has called for the provision of an adequate living wage alongside other measures to improve the condition of labour.

The concept of minimum wages first evolved with reference to remuneration of workers in those industries where the level of wages was substantially low as compared to the wages for similar types of labour in other industries.

First of all, at the International Labour Conference in 1928, a Draft Convention was adopted on the subject of minimum wages. In India in 1929 Royal Commission on Labour was adopted which considered the subject of minimum wages.

The Minimum wages Act was enacted to fulfill the aspiration of the workers as contained in the resolution based on the Geneva Convention held in 1928, which reads:

“If the labourers are to be secured the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraint should be imposed upon their freedom of contract and such restrictions cannot be in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers on account of their poverty and helplessness are willing to work on lesser wages”.

The fact that an employer might find it difficult to carry on the business on the basis of minimum wages is an irrelevant consideration. (Held in U.Uchinoyi / vs/ State of Kerala. 1961, LLLJ 631.)

The question of establishing statutory wage fixing machinery in India was first discussed in 1929 by the Royal Commission on Labour which was appointed and this commission considered the subject of minimum wages. The question of establishing statutory wage fixing machinery in India was again discussed at the third and fourth meetings of the Standing Labour Committee held in May 1943 and January 1944 respectively, and at successive sessions of the tripartite labour conference in September 1943, October 1944, and November 1945. The last of these, approved in principle, the enactment of the minimum wages legislation. On 11 April 1946, a minimum wages Bill, was introduced, but the passage of bill was considerably delayed by the constitutional changes in India. It reached the statute book only in March 1948.

11.12 The Minimum Wage Fixing Convention, 1970

“Minimum wages should be established for groups of wage earners where, in consultation with employers’ and workers’ organizations, the competent national authority finds it appropriate. Minimum wages, where they exist, should have the force of law and should not be subject to abatement; failure to pay minimum wages should be subject to penal or other sanctions.”

The purpose of seeking employment is to sell labour to earn wages so as to attain a ‘decent’ or ‘dignified’ standard of living. The wage or income that a worker obtains from his/her work is therefore, what enables him/her to achieve a fair standard of living. One seeks a fair wage both to fulfill one’s basic needs and to feel reassured that one receives a fair portion of the wealth in return for one’s work to generate for the society. Society has a duty to ensure a fair wage for every worker, to ward off starvation and poverty, to promote the growth of human

resource, to ensure social justice without which likely threats to law and order may undermine economic progress.

If 'labour' is to be defined, which is the central issue in focus, for which an amount is fixed; labour is defined by prominent persons such as:- S.E.Thomas , who says that , "Labour consists of all human effort of the body or of mind, which is undertaken in the expectation of reward". Mr.Jevons states that," Labour is any exertion of mind or of body or both, undertaken partly or wholly with a view to some good than the pleasure derived directly from work".

Thus, labour in broad sense of the term may be defined as any hand or brain work which is undertaken for a monetary consideration.

11.13 Reasons for the Need of Enactment of the Minimum Wages Act 1948

(i) In a free competitive market, the level of wages payable to workers is determined by the forces of demand and supply. In a welfare state the protection of the interests of the workers is one of the aims of legislation which is enacted in the labour field. The same is true with regard to the Minimum Wages Act enacted by the Indian parliament.

In the case of, 'People's Union for Democratic rights/vs/ Union of India', it was stated that, "The Minimum Wages Act is, as is all other legislation, a welfare measure to alleviate the suffering of sections of the society labouring under economic distress. However, knowledge of one's rights or the capacity or strength to enforce it often doesnot exist among the relevant classes. It is through public interest litigation, a strategic aim of legal aid movement, that the problems of the poor are now coming forefront and the entire theatre of law is changing."

(ii) The Indian labour class besides being illiterate is by an large not organized to protect its interests in a competitive market where supply of labour is always excess of demand. Under such conditions the labour class is left to itself and is unable to protect its legitimate interests.

In a country which is still underdeveloped, the exploitation of labour in certain industries can become a common feature due to reasons that unemployment and few avenues for gainful employment which forces the labourers to accept the employment even on starvation wages.

Therefore, the Act was enacted to secure the welfare of workers in a competitive market by providing for a minimum limit of wages in certain employments.

(iii) The object of this Act is to "prevent exploitation of the workers" and for this purpose, it aims at fixation of minimum wages which the employer must pay. What the act purports to achieve is to prevent exploitation of labour and for that purpose, authorises appropriate government to take steps to prescribe minimum rates of wages in Scheduled industries. What is being prescribed is minimum rates of wages which a welfare state assumes every employer should pay before employment of any labourer. It is only with regard to certain specified industries that the provisions for the payment of statutory minimum wages have been laid down. The legislature undoubtedly intended to apply the Act to those industries or localities, in which, by reason of causes such as unorganized labour or absence of machinery for the regulation of wages which are paid to workers, were in the light of the general level of wages

and they were subsistence inadequate. The provisions of the Act were intended to achieve the object of doing social justice of workers employed in the scheduled employment by prescribing minimum rates of wages to them.

(iv) As pronounced in judgement of the case of , 'Hydro(Engineers) P. Ltd /vs/ Workmen. AIR 1969 SC182. "The Act contemplates that minimum wage rates must ensure not the mere physical need of the worker which would keep the worker just above starvation but ensure for the worker not only subsistence and that of his family but to preserve the worker's efficiency as of a workman. It should, therefore, provide not merely the bare subsistence of life but the preservation of workers' health and for some measure of education, medical requirements and amenities".

(v) In the case of "Edward Mills co .Ltd, Beawer vs State of Ajmer(1954) II L.L.J 686, it is decided that the object of the Minimum wages Act as, " The object of this Act is to prevent exploitation of the workers and for this purpose, it aims at fixation of minimum wages which the employer must pay".

(vi) In the case of, " M/S Bhikua Yamasa Kshatriaya vs Sangamner Akola taluka beedi Kamgar Union , AIR 1963, S.C. 806, it was decided that , "The legislature undoubtedly intended to apply the Act to those industries or localities in which, by reason of causes such as unorganized labour or absence of machinery for regulation of wages, the wages paid to workers were in light of general level of wages and subsistence level inadequate".

Like other branches of labour legislation, the security of industrial peace and efficiency may be kept in view when giving effect to the provisions of this Act.

In the view of the fulfillment of the purpose of welfare state, it was upheld in the case of ' Patel Ishwarbhai Prahladbhai /vs/ Taluka Development Officer (1983) I Lab 7C 237 S.C. , that , " Every person who provides labour or service to another is entitled at least to a minimum wages."

(vii) The judgment in the case of " Crown Aluminium Works vs Their workmen AIR 1958 SC 30" , states the motivation of the legislature for enactment of the minimum wages Act, 1948, in the following words, " In developing country like ours which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act, therefore, is to prevent employment of sweated labour in general interest and , so in prescribing the minimum wage rates, the capacity of the employer need not be considered as the state assumes that every employer must pay minimum wages for the employee's labour".

Therefore, the entire scheme of the Act is a pointer towards the direction of ensuring minimum wages to workers engaged in certain specific industries.

11.14 Important Sections in this Act

1. Object of the Act

To provide for fixing minimum rates of wages in certain employments.

2. Fixation of Minimum Rates of Wages

The appropriate government to fix minimum rates of wages. The employees employed in para 1 or B of Schedule either at 2 or either part of notification u/s 27.

To make review at such intervals not exceeding five years the minimum rates or so fixed and revised the minimum rates.

3. Government can also fix Minimum Wages for Section - 3

- Time work
- Piece work at piece rate
- Piece work for the purpose of securing to such employees on a time work basis
- Overtime work done by employees for piece work or time rate workers.

4. Minimum Rates of Wages under Section - 4

Such as Basic rates of wages etc. Variable DA and Value of other concessions etc.

5. Procedure for fixing and revising Minimum Rates of Wages Section - 5

Appointing Committee issue of Notification etc.

a. Overtime

To be fixed by the hour, by the day or by such a longer wage-period works on any day in excess of the number of hours constituting normal working day. Payment for every hour or for part of an hour so worked in excess at the overtime rate double of the ordinary rate of (1½ times or for agriculture labour).

6. Composition of Committee Section - 9

Representation of employer and employee in schedule employer in equal number and independent persons not exceeding 1/3rd or its total number one such person to be appointed by the Chairman.

7. Payment of Minimum Rates of Wages Section - 12

Employer to pay to every employee engaged in schedule employment at a rate not less than minimum rates of wages as fixed by Notification by not making deduction other than prescribed.

8. Fixing Hours for Normal Working Section - 13

- Shall constitute a normal working day inclusive of one or more specified intervals.
- To provide for a day of rest in every period of seven days with remuneration.
- To provide for payment for work on a day of rest at a rate not less than the overtime rate.

9. Wages of workers who works for less than normal working days Section - 15

Save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day.

10. Wages for two class of work Section - 16

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, wages at not less than the minimum rate in respect of each such class. Claims by employees To be filed by before authority constituted under the Act within 6 months. Compensation upto 10 times on under or non-payment of wages

11. Minimum time rate wages for piece work Section - 17

Not less than minimum rates wages as fixed .

12. Maintenance of registers and records under Section - 18

- Register of Fines – Form I Rule 21(4)
- Annual Returns – Form III Rule 21 (4-A)
- Register for Overtime – Form IV Rule 25
- Register of Wages–Form X, Wages slip–Form XI, Muster Roll–Form V Rule 26
- Representation of register – for three year Rule 26-A

13. Penalties under Section - 20

Offence - For paying less than minimum rates of wages.

Punishment - Imprisonment upto 6 months or with fine upto Rs.500/-

Offence - For contravention of any provisions pertaining to fixing hours for normal working day etc.

Punishment - Imprisonment upto 6 months or with fine upto Rs.500/-

11.15 Summary

The minimum wage act 1948 is significant for employers and employees. It will help reduce the chances of exploitation and help the worker provide for his family. In addition to this, the act specifies that the government has the power to fix the minimum rate. Its regulations also require the government to review the rates every five years. This process is very complicated, but the legislation outlines the critical points. The law is necessary to reduce the risk of exploitation, and each citizen must know about this act to have the perfect position in the company.

11.16 Keywords

1. Minimum wages means legally enforceable lowest limit of wage in a given industry in a given State fixed by a process invoking the authority of the State.
2. Formulation of wage policy - In India as it gave the definition for three levels of wages viz; a minimum wage, a fair wage and a living wage.
- 3.NFLMW- National Floor level Minimum Wages influenced the trend of minimum wage fixation in general as well as the actual wages.

11.17 Self - Assessment Questions

1. Define minimum wage and discuss about its importance?

2. Explain the main provisions of minimum wages act, 1948?
3. Discuss about wage determination factors of minimum wages?
4. Elucidate the minimum wage regulatory system as per state law?

11.18 Suggested Readings

1. The Minimum Wages Act, 1948, by Universal New India, 1 January 2020.
2. New Industrial & Labour Codes by Law, by Kharbanda & Kharbanda, Publisher: Law Publishing House, Year 2021.
3. Law & Practice on Minimum Wages Commentaries on Minimum Wages Act, 1948, by S. B. Rao & V. Kharbanda, Publisher: Law Publishing House, Book Code: 9788189639204, Year 2022.
4. Labour and Industrial Law, by P L Malik, 20th Edition 2023.
5. Source: Section 40, 41, 42, 45, Andhra Pradesh Shops and Establishments Act, 1988
6. Source: 3-6 & 11 of the Minimum Wages Act 1948; §3-7 of the Payment of Wages Act 1936, amended in 2017
7. Source: Section 63-73 of Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971;
8. Section 35, 36, 38, Andhra Pradesh Shops and Establishments Act, 1988

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LESSON - 12

PAYMENT OF BONUS ACT, 1965

Learning Objectives

- ✓ To study the Payment of Bonus Act 1965
- ✓ To learn the Scope And Coverage Of The Payment Of Bonus Act, 1965
- ✓ To understand the Calculation for Bonus Payable
- ✓ To Know the Types of Bonus Payments

Structure

- 12.1 Introduction
- 12.2 History of Payment Of Bonus Act, 1965
- 12.3 Scope and Coverage of The Payment Of Bonus Act, 1965
- 12.4 Understanding the Act
- 12.5 Why Do Companies Give Bonuses
- 12.6 Calculation for Bonus Payable
- 12.7 Types of Bonus Payments
- 12.8 Eligibility for Bonus Under The Act
- 12.9 Disqualification from Bonus Under The Act
- 12.10 Rights of Employer And Employee
- 12.11 Payment of Bonus Rules
- 12.12 Summary
- 12.13 Keywords
- 12.14 Self -Assessment Questions
- 12.15 Suggested Readings

12.1 Introduction

A bonus is a financial reward that is given to an employee beyond their normal salary or wages. It can be given as an incentive to encourage certain behavior or to reward good performance.

A bonus is a financial reward that is given to an employee beyond their normal salary or wages. It can be given as an incentive to encourage certain behavior or to reward good performance. Bonuses can take various forms, including cash, stock, or stock options, and can be given to individuals, teams, or the entire company. Incentive bonuses include signing bonuses for new hires, referral bonuses for employees who refer successful candidates, and retention bonuses to encourage employee loyalty. Performance bonuses are given for exceptional work and can be given as annual bonuses, spot bonuses, or milestone bonuses. The Internal Revenue Service (IRS) considers bonuses as taxable income, so employees need to report them when filing their taxes.

A bonus is a financial compensation that is above and beyond the normal payment expectations of its recipient. Companies may award bonuses to both entry-level employees and to senior-level executives. While bonuses are traditionally given to exceptional workers, employers sometimes dole out bonuses company-wide to stave off jealousy among staffers.

Bonuses may be dangled as incentives to prospective employees and they can be given to current employees to reward performance and increase employee retention. Companies can distribute bonuses to its existing shareholders through a bonus issue, which is an offer of free additional shares of the company's stock.

12.2 History Of Payment Of Bonus Act, 1965

The tradition of paying bonuses in India seems to have started during World War I, when some textile mills gave their employees a 10% wage increase as a war bonus in 1917. In certain cases of labour disputes, the claim for bonus payment was also included. The Full Bench of the Labour Appellate Tribunal established a bonus calculation formula in 1950. In 1959, a demand was made to change the formula.

It was decided at the second and third meetings of the eighteenth Session of the Standing Labour Committee (G.O.I) in New Delhi in March/April 1960 to appoint a Commission to look into the issue of bonuses and develop appropriate norms. The Government of India established a Tripartite Commission to examine the issue of bonus payments based on earnings to employees working in establishments in a detailed manner and make recommendations to the Government.

The Commission's recommendations were adopted by the Indian government with some modifications. The Payment of Bonus Act of 1965 was enacted to carry out these recommendations, and it went into effect on September 25, 1965.

12.3 Scope And Coverage Of The Payment Of Bonus Act, 1965

The Bonus Payment Act covers the entire India. It covers any establishment with twenty or more employees on any given day during the accounting year, as well as any factory as specified by the factories act of 1948. Employee is defined in Section 2 (13) of the Act as any person (other than an apprentice) employed on a salary or wage of not more than twenty one thousand rupees per mensem in any industry to perform any skilled or unskilled manual, supervisory, managerial, administrative, scientific, or clerical work for hire or compensation, regardless of whether the terms of employment are express or implied.

A. The Act does not apply to the following classes of employees:**1. Employees employed in:**

- a) Life Insurance Corporation of India
- b) Industry carried on or under the authority of any department of Central Government or a State Government or a Local Authority.
- c) Indian Red Cross Society or any other institution of like nature including its branches;
- d) Universities and other educational institutions;
- e) Hospital, Chambers of Commerce and Social Welfare Institutions established not for purposes of profits;
- f) employed through contractors on building operations;
- g) Reserve Bank of India;
- h) Industrial Finance Corporation of India, Deposit Insurance Corporation and other financial corporations being set up financially assisted by the Government, and Unit Trust of India, Agricultural Refinance Corporation, and Industrial Bank of India,
- i) Seamen as defined in Sec. 3(42) of the Merchant Shipping Act, 1958;
- j) Inland Water Transport establishment. (Section 32).

12.4 Understanding the Act**1. Objective Behind The Act**

The objective of the Payment of Bonus Act, 1965 is to provide for the payment of bonus to the persons employed in certain establishments on the basis of profits or production. The object of the Payment of Bonus Act was very clearly described in *Jalan Trading v Mill Mazdoor Sabha I*, the Supreme Court observed that the purpose of the Bonus Act was to maintain peace and harmony between labour and capital by allowing workers to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus, as well as the scheme of "set-off" and set - on to not only secure the labour's right in the share of profits but also to ensure a reasonable degree of uniformity.

2. Understanding Bonus

In workplace settings, a bonus is a type of additional compensation an employer gives to an employee that complements their base pay or salary. A company may use bonuses to reward achievements, to show gratitude to employees who meet longevity milestones, or to entice not-yet employees to join a company's ranks.

Bonuses can take various forms, including cash, stock, or stock options. They can be given to individuals, teams, or the entire company. Companies may also offer incentive bonuses, such as signing bonuses for new hires, referral bonuses for employees who refer successful candidates, and retention bonuses to encourage employee loyalty. Performance bonuses are given for exceptional work and can be given as annual bonuses, spot bonuses, or milestone bonuses.

In the United States, bonuses are considered taxable income by the Internal Revenue Service (IRS). This means that employees are required to report their bonuses as part of their taxable income when they file their taxes. The employer is also required to report the bonus to the

IRS and to withhold taxes from the employee's bonus payment at the time it is paid. The amount of tax withheld from a bonus payment is based on the employee's tax bracket and the tax laws in effect at the time the bonus is paid.

It's important for employees to be aware of the tax implications of bonuses, as failing to report them can result in penalties and interest charges from the IRS. Employees should keep good records of their bonus payments and consult with a tax professional if they have any questions about how to report their bonuses on their tax return.

3. Incentive Bonus

Incentive bonuses include signing bonuses, referral bonuses, and retention bonuses. A signing bonus is a monetary offer that companies extend to top-talent candidates to entice them to accept a position—especially if they are being aggressively pursued by rival firms. In theory, paying an initial bonus payment will result in greater company profits down the line. Signing bonuses are routinely offered by professional sports teams attempting to lure top-tier athletes away from competitive clubs.

Referral bonuses are presented to employees who recommend candidates for open positions, which ultimately leads to the hiring of said candidates. Referral bonuses incentivize employees to refer prospects with strong work ethics, sharp skills, and positive attitudes.

Companies offer retention bonuses to key employees, in an effort to encourage loyalty, especially in downward economies or periods of organizational changes. This financial incentive is an expression of gratitude that lets employees know their jobs are secure over the long haul.

4 Holiday Bonuses

Some companies hand out bonuses specifically during the December holidays season. Holiday bonuses can take various forms, such as cash, gift cards, or other types of gifts. They can be given to individual employees or to the entire company. Some companies give holiday bonuses to all of their employees, while others only give them to certain employees, such as those who have been with the company for a certain length of time or who have achieved certain performance goals.

Some countries have codified holidays bonuses as part of the labor law. Aguinaldo, for example, is an annual Christmas bonus that businesses in Mexico are required by law to pay to their employees. The payment, sometimes called the "thirteenth salary", must be made by Dec. 20 of each year. It is usually equivalent to 15 days of the employee's salary. It is typically given to all employees, regardless of their job title or length of service. Companies that fail to make an aguinaldo payment may be fined as much as 5,000 times the legal daily minimum wage.

Some other Latin American nations, such as Costa Rica and El Salvador, also require employers to pay their employees an aguinaldo.

5 Performance Bonuses

Performance bonuses reward employees for exceptional work. They are customarily offered after the completion of projects or at the end of fiscal quarters or years. Performance bonuses may be doled out to individuals, teams, departments, or to the company-wide staff. A reward bonus may be either a one-time offer or a periodic payment. While reward bonuses are usually given in cash, they sometimes take the form of stock compensation, gift cards, time off, holiday turkeys, or simple verbal expressions of appreciation.

Examples of reward bonuses include annual bonuses, spot bonus awards, and milestone bonuses. Spot bonuses, which reward employees who deserve special recognition, are micro-bonus payments, typically valued at around \$50. Workers who reach longevity milestone for example, 10 years of employment with a given firm—may be recognized with additional compensation.

Some businesses build bonus structures into employee contracts, where any profits earned during a fiscal year will be shared amongst the employees. In most cases, C-suite executives are awarded larger bonuses than lower-level employees.

6. Bonus Inflation

While bonuses are traditionally issued to high-performing, profit-generating employees, some companies opt to issue bonuses to lower-performing employees as well, even though businesses that do this tend to grow more slowly and generate less money. Some businesses resort to distributing across-the-board bonuses in an effort to quell jealousies and employee backlash. After all, it's easier for management to pay bonuses to everyone than to explain to inadequate performers why they were denied.

Furthermore, it can be difficult for an employer to accurately assess their employee's performance success. For example, employees who fail to make their activity quotas may be very hard workers. However, their performance may be hampered by any number of conditions out of their control, such as unavoidable production delays or an economic downturn.

7. Special Considerations**A. Bonuses in Lieu of Pay**

Companies are increasingly replacing raises with bonuses—a trend that vexes many employees. While employers can keep wage increases low by pledging to fill pay gaps with bonuses, they are under no obligation to follow through. Because employers pay bonuses on a discretionary basis, they may keep their fixed costs low by withholding bonuses during slow years or recessionary periods. This approach is much more viable than increasing salaries annually, only to cut wages during a recession.

B. Dividends and Bonus Shares

In addition to employees, shareholders may receive bonuses in the shape of dividends, which are carved from the profits realized by the company. In lieu of cash dividends, a company can issue bonus shares to investors. If the company is short on cash, the bonus shares of company stock provide a way for it to reward shareholders who expect a regular

income from owning the company's stock. The shareholders may then sell the bonus shares to meet their cash needs or they can opt to hold onto the shares.

12.5 Why Do Companies Give Bonuses

Companies give bonuses to employees for a variety of reasons, such as to:

Encourage certain behavior: Bonuses can be used as an incentive to encourage employees to perform at their best or to achieve certain goals.

- a) Reward good performance: Bonuses can be given to recognize and reward employees for exceptional performance or for meeting certain performance targets.
- b) Show appreciation/Boost morale: Bonuses can be given as a way for companies to show appreciation to their employees and boost morale.
- c) Retain key employees: Companies may offer retention bonuses to key employees to encourage them to stay with the company, especially during times of economic uncertainty or organizational change.
- d) Attract top talent: Companies may offer signing bonuses to top-talent candidates as an incentive to accept a job offer, especially if they are being aggressively pursued by rival firms.
- e) Share company success: In addition to rewarding employees, companies may distribute bonuses to shareholders through a special dividend or a bonus issue, which is an offer of free additional shares of the company's stock.

Details of Payment of Bonus Act, 1965

Objective	To reward the employee of the organization by sharing the profits earned and is linked to productivity
Applicable To	Any establishment with 20 or more employees
Eligibility	Employees getting Rs. 21,000 per month or less (basis + DA, excluding other allowances) and have completed 30 working days in that financial year
Components of Bonus	Salary / Wages only include basic and DA for bonus payment and the rest of allowances (eg, HRA, overtime, etc.) are excluded
Min / Max and time limits on bonus payments	Should be paid at the minimum rate of 8.33% and maximum rate of 20%. It needs to be paid within 8 months from the close of the accounting year

Disqualification of bonus	Employees can be disqualified if they are dismissed on the basis of fraud, misconduct, or any similar situation
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12.6 Calculation for Bonus Payable

With a min rate of 8.33% and max rate of 20%, when wages or salary exceeds Rs. 7,000 or the minimum wages fixed by the government, the bonus will be payable on Rs. 7,000 or the minimum wages as fixed by govt., whichever is higher.

As per the amendment on the Payment of Bonus Bill passed in 2015, if the gross earning of the employee is below Rs. 21,000, employers are liable to pay bonuses. The bonus will be calculated as follows:

- If salary is equal to or less than Rs. 7,000, then the bonus will be calculated on the actual amount by using the formula: $\text{Bonus} = \text{Salary} \times 8.33 / 100$
- If salary is more than Rs. 7,000, then the bonus will be calculated on Rs. 7,000 by using the formula: $\text{Bonus} = 7,000 \times 8.33 / 100$

Examples:

1. If A's Salary (Basic + DA) is Rs. 6,000, then bonus payable will be: $6,000 \times 8.33 / 100 =$ Rs. 500 per month (Rs. 6,000 per year)

2. If B's Salary (Basic + DA) is Rs. 7,500, then bonus payable will be: $7,000 \times 8.33 / 100 =$ Rs. 583 per month (Rs. 6,996 per year)

12.7 Types of Bonus Payments

Some bonuses are distributed quarterly, others yearly. Some are a one-time thing, others are recurring. It all depends on what role you are in, what level you are at, what you contribute, what your leadership is like, and what kind of company you work for (among many other factors). Some of the common types of bonuses are given below-

Annual Bonus	Spot Bonus
It is usually based on overall company performance. So you may get a large or small bonus depending on how successful your organization was that year as well as how big a part of that success you are. This can also be considered as 'profit sharing'.	A spot bonus is for people who go above and beyond their normal duty and is usually tied to a task that was outside the scope of your role. It's generally a one-time thing, if not an occasional occurrence depending on budget, priorities, and work efficiency.
Signing Bonus	Retention Bonus
It is a one-time bonus provided when you sign on to a new role. Companies usually offer signing bonuses when an employee is moving to a new city for a job and the	A retention bonus is somewhat similar to a signing bonus and is given for retaining valuable employees. It's generally given during an acquisition, merger or to make

company wants to cover some of the cost. It is also a way for employers to make up for salary demands they can't meet.	someone stick around for an extra period of time if they were looking to leave.
Referral Bonus	Holiday Bonus
A referral bonus is given to current employees on referring great candidates for jobs at their company. It's generally given when the candidate is hired and has stayed on for several months (usually 3-6 months).	A holiday bonus is another way to recognize employees for their hard work and to give them an extra boost during an especially expensive time of the year. It's often but not always a set percentage of your annual salary (say anywhere from 5% to 10%)

12.8 Eligibility For Bonus Under The Act

The payment of bonus is a statutory right under the act and According to the Section 8 of the act, any employer who has worked for a minimum of 30 days in an accounting year, shall be eligible for a bonus.

In East Asiatic Co. Ltd. Vs Industrial Tribunal 3, it was held that a retrenched employee is eligible for bonus if they worked for a min of 30 days and have a salary of 10,000 pm in a year.

In the case of J. K. Ginning & Pressing Factory v. Second Labour Court, Akola & Others 4, a factory employed ten seasonal employees, and the issue of their bonus eligibility arose. The Bombay High Court ruled that the Act does not exclude such seasonal workers from employment; the only criterion for eligibility is that they meet the Section 8 requirements. As a result, even seasonal employees were deemed to be entitled to bonus payments under the Act.

12.9 Disqualification From Bonus Under The Act

According to the sec 9 of the act an employee shall be disqualified from receiving bonus under the Payment of Bonus Act, 1965, if he is dismissed from service for:

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

This provision is based on the recommendation of Bonus Commission, which stated that:

After all, bonus can only be shared by those workers who promote the stability and well-being of the industry, not by those who positively exhibit disruptive tendencies. Bonuses, without a doubt, impose a duty of good behaviour.

The appellant, a bus conductor working for a government of Tamil Nadu undertaking, was dismissed from service in Pandian Roadways Corporation Ltd. vs. Presiding Officer 5. Following that, the petitioner and management reached an agreement, and the petitioner as

appointed as a new entrant. Following that, the petitioner claimed an bonus of rs 1,842 for the duration after his re-appointment. the court ruled in the case that " If an employee is dismissed from service, he is disqualified from receiving any bonus under the said Act, not just the bonus for the accounting year," the court ruled.

In Gammon India Ltd Vs Niranjn Das 6, the court held that an employee who is dismissed from service for fraud, riotous or aggressive behaviour on the premises of the company, or who is guilty of theft, misappropriation, or sabotage of any establishment's property is disqualified from receiving bonus for the accounting year under section 9 of the Payment of Bonus Act, 1965. A dismissed employee who has been reinstated with back pay has evidently not committed the above crimes and has not been fired. As a result, he is entitled to a bonus.

12.10 Rights Of Employer And Employee

A. The Said act defines the rights available to the employees as defined below:

- Right to claim bonus due under the Act, which allows them to make a request to the government for payment and recovery of bonus amounts that are not paid to them within one year of their due date
- The right to take any dispute to a Labour Court or Tribunal; however, it is necessary to remember that employees who are not entitled to bonuses are unable to take their case to a Labour Court or Tribunal.
- Right to seek clarity to obtain details about whatever products are in the name of the business so that they can determine whether or not they are being fairly compensated for their services.

B. The rights available to the Employer against any exploitation or the protection of their business are given as below:

- Rights to bring any dispute to the Labour Court or the Tribunal over a request for an interpretation of any clause of the Act.
- Right to deduct a fair amount from an employee's bonus on account of a bonus already paid as a festival bonus or in the event of a monetary loss caused by the employee's misbehaviour.
- Right to deduct the value of a bonus paid to an employee who has been fired for misbehaviour, offensive behaviour, or obstructing the establishment's land.

1. Payment Of Minimum Bonus

Section 10 of the Act states that, regardless of whether the employer has some allocable surplus in the accounting year, each employer must pay each employee a minimum bonus equivalent to 8.33 percent of the employee's salary or wage earned during the accounting year, or one hundred rupees, whichever is greater. However, if an employee is under the age of fifteen at the start of the accounting year, the terms of this Section refer to that employee as if the words "one hundred rupees" were replaced with "sixty rupees." Section 10 of the Act does not contradict Articles 19 and 301 of the Constitution. Even if the employer loses money during the fiscal year, he must pay the minimum bonus as according to section 10 of the act.

In *J.K. Chemicals Ltd. vs. Govt. of Maharashtra*⁷ the court held that the company would not be relieved from its liability to pay minimum bonus, if the bonus liability is negligible in comparison to the loss incurred. If the employer's damages were not caused by employee wrongdoing, the employer must pay the statutory minimum bonus.

2. Payment Of Maximum Bonus

If the allocable surplus for any accounting year referred to in Section 10 exceeds the amount of the minimum bonus available to workers under that Section, the employer is allowed to pay a bonus equal to each employee's salary or wage received during that accounting year. In determining the allocable surplus under this Section, the amount set on or set off under the provisions of Section 15 must be taken into account in accordance with those provisions.

3. Provisions Related To Bonus Under The Code On Wages, 2019

The chapter relating to bonus payments under the code on wages applies only to establishments employing at least 20 workers on any day during the accounting year, similar to the provisions of the Payment of Bonus Act, 1965.

An annual bonus would be paid to all workers whose salaries do not exceed a certain monthly sum (to be determined by the federal or state governments). Bonuses are paid on the higher of the minimum wage or the wage limit set by the relevant government. Along the lines of the Payment of Bonus Act, the Code on wages lists disqualifications for receiving bonuses. It should be noted, however, that the Code also states that removal from service due to a conviction for sexual assault would be provided a ground for disqualification of bonus under the Code.

4. Offences and penalties Under Payment of Bonus Act

In the event of a breach of the provisions of the Act or rules, the punishment is six months imprisonment or Rs.1000 fine, or both.

If failure to comply with the directives or requisitions issued, the punishment is imprisonment for six months or a fine of Rs.1000, or both.

Let's say a company, firm, corporation, or group of individuals commits a crime.

In that instance, the company's director, partner, principal, or officer in charge of the company's operations should get presumed guilty unless the individual can show that the crime was committed without his knowledge or that he exercised all due diligence.

5. Classes of employees not entitled under the Act

The payment of Bonus Act does not apply to certain classes of employees, which include:

- Life Insurance Corporation,
- Universities and other educational institutions,
- The Unit Trust of India,

- Employees employed through contractors on building operations, to months employed by the Reserve Bank of India,
- The Indian Red Cross Society institution of a like nature,
- The Industrial Finance Corporation of India,
- the National Bank for Agriculture and Rural Development,
- Institutions (including hospitals, commerce and social welfare institutions' chambers) were established not for purposes of profit,
- Financial Corporations,
- the Industrial Development Bank of India,
- Employees of inland water transport establishments passing through another country

6. Amendment to the Payment of Bonus Act, 1965

S.No	Year Of Amendment	Eligibility Limit (Rs. Per Month)	Calculation Ceiling (Rs. Per month)
1.	1965	Rs. 1600	Rs.750
2.	1985	Rs.2500	Rs. 1600
3.	1995	Rs. 3500	Rs. 2500
4.	2007	Rs. 10000	Rs. 3500
5.	2015	Rs. 21000	7000 rupees Or, whichever is higher, the minimum salary for scheduled work as set by the competent government.

12.11 Payment of Bonus Rules

In exercise of the powers conferred by section 38 of the Payment of Bonus Act, 1965 (31 of 1965), and in super session of the Payment of Bonus Rules, 1965, the Central Government hereby makes the following rules, namely:

- 1. Short title and commencement.** – (1) These rules may be called the Payment of Bonus Rules, 1965.
(2) They shall come into force on the date of their publication in Official Gazette.
- 2. Definitions.** – In these rules -
 - a) “form” means a form appended to these rules;
 - b) “act” means the Payment of Bonus Act, 1965 (21 of 1965).
 - c) “section” means a section of the Act.
- 3. Authority for granting permission for change of accounting year.** – The prescribed authority for the purposes of the proviso to paragraph (b) of sub-clause (iii) of clause (1) of section 2 shall be -

- a) in case of an establishment in relation to which the Central Government is the appropriate Government under the Act, the Chief Labour Commissioner (Central);
- b) in any other case, the Labour Commissioner of the State in which the establishment is situated.

4. Maintenance of registers.- Every employer shall prepare and maintain the following registers, namely:-

- a) a register showing the computation of the allocable surplus referred to in clause (4) of section 2, in form A:
- b) a register showing the set-on and set-off of the allocable surplus, under section 15, in form B.
- c) a register showing the details of the amount of bonus due to each of the employees, the deductions under sections 17 and 18 and the amount actually disbursed, in Form C.

5. Annual returns. – Every employer shall send a return in Form D to the Inspector so as to reach him within 30 days after the expiry of the time limit specified in section 19 for payment of bonus.

12.12 Summary

The Payment of Bonus Act of 1965 aims to legalise the practice of various establishments paying bonuses. It provides a mechanism for calculating bonus based on profit and performance. It allows workers to make more money than the minimum wage or salary. This Act establishes various procedures for different types of businesses, such as banks and government agencies, as well as businesses that are not corporations or firms. This Act also establishes a rigorous redress process in addition to the procedure.

12.13 Keywords

1. A bonus is a financial compensation that is above and beyond the normal payment expectations of its recipient.
2. Bonuses may be awarded by a company as an incentive or to reward good performance.
3. Typical incentive bonuses a company can give employees include signing, referral, and retention bonuses.
4. Companies have various ways they can award employee bonuses, including cash, stock, and stock options.

12.14 Self -Assessment Questions

1. Discuss the meaning and definition of bonus Act,1965?
2. Explain the scope and coverage of bonus Act?
3. Elucidate the main provisions of bonus Act?
4. Converse the employee and employer rights and deductions of bonus Act?

12.15 Suggested Readings

1. Labour Laws and Industrial Relations, by Dr. Ganesh Kumar Jha, 10 October 2022, Publisher Notion Press, ISBN-13 979-8888334607.
2. Code On Wages, 2019 With Code On Wages (Central Advisory) Rules, 2021, Bare Act Commercial Law Publishers, 2022 Edition, commercial ISBN: 978-93-89564-08-2.
3. Industrial Relations and Labour Laws, by S.C. Srivastava, Publisher: S Chand And Company Ltd, ISBN: 9789354539961, 9354539963, Year 2022.
4. Labour and Industrial Law, by P L Malik, 20th Edition 2023.

LESSON -13

WORKMEN COMPENSATION ACT 1923

Learning Objectives

- ✓ To Understand the Inquiry procedure
- ✓ To Know the Amount of Compensation
- ✓ To Study the appointment of Commissioner
- ✓ To identify the power and Procedure of Commissioners
- ✓ To examine the appeals and recovery

Structure

- 13.1 Introduction
- 13.2 Short title, extent and commencement
- 13.3 Definitions
- 13.4 Employer's liability for compensation
- 13.5 Court of law in respect of any injury
- 13.6 Amount of compensation
- 13.7 Compensation to be paid when due and penalty for default
- 13.8 Method of calculating wages
- 13.9 Commutation of half-monthly payments
- 13.10 Distribution of compensation
- 13.11 Compensation not to be assigned, attached or charged
- 13.12. Notice and claim
- 13.13. Power to require from employers statements regarding fatal accidents
- 13.14 Reports of fatal accidents and serious bodily injuries
- 13.15 Medical Examination
- 13.16. Contracting
- 13.17. Remedies of employer against stranger
- 13.17.1 Insolvency of employer
- 13.17.2 Compensation to be first charge on assets transferred by employer
- 13.18 Special provisions relating to captains and other members of crew of aircrafts
- 13.19 Returns as to compensation
- 13.20 Contracting out
- 13.21 Penalties
- 13.22 Reference to Commissioners
- 13.23 Appointment of Commissioners
- 13.24 Power of Commissioner to require further deposit in cases of fatal accident
- 13.25 Powers and procedure of Commissioners
- 13.26 Appearance of parties
- 13.27 Method of recording evidence
- 13.28. Power to submit cases
- 13.29 Registration of agreements
- 13.30 Effect of failure to register agreement
- 13.31 Appeals
- 13.32. Recovery
- 13.33 Summary
- 13.34 Key words

13.35 Self Assessment questions

13.36 Suggested Readings

13.1 Introduction

An Act to provide for the payment by certain classes of employers to their *[Employees] of compensation for injury by accident.

Whereas it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident;
It is hereby enacted as follow

13.2 Short title, extent and commencement

- (1) This Act may be called the *[Employee's] Compensation Act, 1923.
- (2) It extends to the whole of India .
- (3) It shall come into force on the first day of July, 1924.

13.3 Definitions

- (1) In this Act, unless there is anything repugnant in the subject or context,--
- (a) Omitted by Act 8 of 1959
 - (b) "Commissioner" means a Commissioner for *[employee]'s Compensation appointed under section 20;
 - (c) "compensation" means compensation as provided for by this Act;
 - (d) "dependant" means any of the following relatives of deceased *[employee], namely:--
 - (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother; and
 - (ii) if wholly dependant on the earnings of the *[employee] at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;
 - (iii) if wholly or in part dependant on the earnings of the *[employee] at the time of his death,--
 - (a) a widower,
 - (b) a parent other than a widowed mother,
 - (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,
 - (d) a minor brother or an unmarried sister or a widowed sister if a minor,
 - (e) a widowed daughter-in-law,
 - (f) a minor child of a pre-deceased son,
 - (g) a minor child of a pre-deceased daughter where no parent of the child is alive, or
 - (h) a paternal grandparent if no parent of the *[employee] is alive;

Explanation.--For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively.

*[(dd) "employee" means a person, who is--

- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or
- (ii) (a) a master, seaman or other members of the crew of a ship,
- (b) a captain or other member of the crew of an aircraft,
- (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
- (d) 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

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;

(e) "employer" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a *[employee] are temporarily lent or let on hire to another person by the person with whom the *[employee] has entered into a contract of service or apprenticeship, means such other person while the *[employee] is working for him;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

(ff) "minor" means a person who has not attained the age of eighteen years;

(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a *[employee] in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified [in Part II of Schedule I] shall be deemed to result in permanent partial disablement;

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

(i) "qualified medical practitioner" means any person registered under any Central Act, Provincial Act, or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

(j) Omitted by Act 15 of 1933

(k) "seaman" means any person forming part of the crew of any ship, but does not include the master of the ship;

(l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a *[employee] for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be 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 the said Part II against those injuries, amounts to one hundred per cent. or more;

(m) "wages", includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a*[employee] towards any pension or provident fund or a sum paid to a *[employee] to cover any special expenses entailed on him by the nature of his employment;(n) Omitted by Act 45 of 2009

(2) The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or

department.

(3) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons:

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.

13.4. Employer's liability for compensation

(1) If personal injury is caused to a *[employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable --

(a) in respect of any injury which does not result in the total or partial disablement of the *[employee] for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

(i) the *[employee] having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the *[employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of *[employees], or

(iii) the willful removal or disregard by the *[employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of *[employee],

(c) Omitted by Act 5 of 1929.

(2) If an *[employee] employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a *[employee], whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a *[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved,--

(a) that an *[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that a *[employee] who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this subsection for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If a *[employee] employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section(2) shall apply, in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A)] and (3) no compensation shall be payable to a *[employee] in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a *[employee] in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a *[employee] in any

13.5 Court of law in respect of any injury

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the *[employee] and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

13.6 Amount of compensation

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--

(a) where death results an from the injury: an amount equal to fifty per cent. of the monthly wages of the deceased *[employee] multiplied by the relevant factor; or an amount of *[one lakh and twenty thousand rupees], whichever is more;

(b) where permanent total disablement results from the injury : an amount equal to sixty per cent. of the monthly wages of the injured *[employee] multiplied by the relevant factor;

*[one lakh and twenty thousand rupees], whichever is more;

*[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).]

Explanation I.--For the purposes of clause (a) and clause (b), "relevant factor", in relation to a *[employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the *[employee] on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II .- Omitted by Act 45 of 2009.

(c) where permanent partial disablement result from the injury:

(i) 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 that injury; and

(ii) 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;

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

Explanation II.--In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) where temporary disablement, whether total or partial, results from the injury : a half monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the *[employee], to be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a *[employee] in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such *[employee] in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the *[employee] in accordance with the law of that country.

*[(1B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.]

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day --

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

(a) there shall be deducted from any lump sum or half-monthly payments to which the *[employee] is entitled the amount of any payment or allowance which the *[employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the *[employee] before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation.--Any payment or allowance which the *[employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

*[(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during course of employment.]

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the *[employee] results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of *[not less than five thousand rupees] for payment of the same to the eldest surviving dependant of the *[employee] towards the expenditure of the funeral of such *[employee] or where the *[employee] did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.]

*[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount specified in this sub-section.]

13.7 Compensation to be paid when due and penalty for default

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) 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 *[employee], as the case may be, without prejudice to the right of the *[employee] to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall--

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the

Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

13.8 Method of calculating wages

In this Act and for the purposes thereof the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows, namely:--

(a) where the *[employee] has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the *[employee] shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

(b) where the whole of the continuous period of service immediately preceding the accident during which the *[employee] was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the *[employee] shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a *[employee] employed on the same work by the same employer, or, if there was no *[employee] so employed, by a *[employee] employed on similar work in the same locality;

(c) in other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)], the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

Explanation.--A period of service shall, for the purposes of this section be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

(2)- omitted by Act 15 of 1933

Review

(1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the *[employee] accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

13.9 Commutation of half-monthly payments

Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

13.10 Distribution of compensation

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

Provided that, in the case of a deceased *[employee], an employer may make to any dependant advances on account of compensation of an amount equal to three months' wages of such *[employee] and so much of such amount] as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

13.11 Compensation not to be assigned, attached or charged

Save as provided by this Act no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the *[employee] by operation of law nor shall any claim be set off against the same.

13.12. Notice and claim

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

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the *[employee] was continuously absent from work in consequence of the disablement caused by the disease:

13.13. Power to require from employers statements regarding fatal accidents

(1) Where a Commissioner receives information from any source that a *[employee] has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the *[employee]'s employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the *[employee], and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased *[employee] that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

13.14 Reports of fatal accidents and serious bodily injuries

(1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the Commissioner giving the circumstances attending the death or serious bodily injury: Provided that where the State Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice. Explanation.--"Serious bodily injury" means an injury which involves, or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days.

(2) The State Government may, by notification in the Official Gazette, extend the provisions of subsection (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.

(3) Nothing in this section shall apply to factories to which the Employees' State Insurance Act, 1948 (34 of 1948), applies.

13.15 Medical Examination

(1) Where a *[employee] has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any *[employees] who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time: Provided that a *[employee] shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If a *[employee], on being required to do so by the employer under subsection (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a *[employee], before the expiry of the period within which he is liable under subsection (1) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a *[employee], whose right to compensation has been suspended under subsection (2) or subsection (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased*[employee].

(5) Where under subsection (2) or subsection (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of

suspension commences before the expiry of the waiting period referred to in clause (d) of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

13.16. Contracting

Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any *[employee] employed in the execution of the work any compensation which he would have been liable to pay if that *[employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the *[employee] under the employer by whom he is immediately employed.

13.17. Remedies of employer against stranger

Where a *[employee] has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

13.16.1 Insolvency of employer

Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any *[employee], then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the *[employee], and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the *[employee] than they would have been under the employer.

(2) If the liability of the insurers to the *[employee] is less than the liability of the employer to the *[employee], the *[employee] may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that subsection shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the *[employee]:

13.17.2. Compensation to be first charge on assets transferred by employer

Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefor accrued before the date of the transfer, has been paid,

such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property. 15. Special provisions relating to masters and seamen.- This Act shall apply in the case of *[employees] who are masters of ships or seamen subject to the following modifications, namely:-- (1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost: Provided that the Commissioner may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured master or seaman is discharged or left behind in any part of India or in any foreign country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused, and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(4) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

13.18 Special provisions relating to captains and other members of crew of aircrafts

This Act shall apply in the case of *[employees] who are captains or other members of the crew of aircrafts subject to the following modifications, namely:--

(1) The notice of the accident and the claim for compensation may, except where the person injured is the captain of the aircraft, be served on the captain of the aircraft and if he were the employer, but where the accident happened and the disablement commenced on board the aircraft it shall not be necessary for any member of the crew to give notice of the accident.

(2) In the case of the death of the captain or other member of the crew, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the aircraft has been or is deemed to have been lost with all hands,

within eighteen months of the date on which the aircraft was, or is deemed to have been, so lost: Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim had not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

13.19 Returns as to compensation

The State Government may, by notification in the Official Gazette, direct that every person employing *[employees], 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.

13.20 Contracting out

Any contract or agreement whether made before or after the commencement of this Act, whereby a *[employee] relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

**17A. Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.

13.21 Penalties

- (1) Whoever (a) fails to maintain a notice-book which he is required to maintain under sub-section (3) of section 10, or (b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10 A, or (c) fails to send a report which he is required to send under section 10 B, or (d) fails to make a return which he is required to make under section 16 or fails to inform the employee of his rights to compensation as required under section 17 A, shall be punishable with fine which **shall not be less than fifty thousand rupees but which may extend to one lakh rupees.
- (2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence under this section, unless complaint thereof is made within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner.

13.22 Reference to Commissioners

- (1) 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 *[employee]) 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.
- (2) 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.

13.23 Appointment of Commissioners

(1) The State Government may, by notification in the Official Gazette, appoint any person *[who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted officer for not less than five years having educational qualifications and experience in personnel management, human resource development and industrial relations] to be a Commissioner for *[employees'] Compensation for such area as may be specified in the notification.

(2) 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.

(3) 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.

13.24 Power of Commissioner to require further deposit in cases of fatal accident

(1) Where any sum has been deposited by an employer as compensation payable in respect of a *[employee] 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.

(2) 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.

13.25 Powers and procedure of Commissioners

The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 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 (2 of 1974).

13.26 Appearance of parties

Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company or a registered Trade Union or by an Inspector appointed under sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), or under sub-section (1) of section 5 of the Mines Act, 1952 (35 of 1952), or by any other officer specified by the State Government in this behalf, authorized in writing by such person, or, with the permission of the Commissioner, by any other person so authorized.

13.27 Method of recording evidence

The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record:

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record: Provided further that the evidence of any medical witness shall be taken down as nearly as may be word for word. *[25A. Time limit for disposal of cases relating to compensation.

The Commissioner shall dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.] 26. Costs.- All costs, incidental to any proceedings before a Commissioner, shall, subject to rules made under this Act, be in the discretion of the Commissioner.

13.28. Power to submit cases

A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

13.29 Registration of agreements

- (1) Where the amount of any lump sum payable as compensation has been settled by agreement whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal disability a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner.

13.30 Effect of failure to register agreement

Where a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the *[employee] by way of compensation whether under the agreement or otherwise.

13.31 Appeals

- (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:-
- - (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum; (aa) an order awarding interest or penalty under section 4A;
 - (b) an order refusing to allow redemption of a half-monthly payment;
 - (c) an order providing for the distribution of compensation among the dependants of a deceased *[employee], or disallowing any claim of a person alleging himself to be such dependant;
 - (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

13.32. Recovery

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, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890 (1 of 1890).

13.33 Summary

The Workmen's Compensation Act 1923 is a social security scheme for workers. The act came into force after the dangers labourers were exposed to came to the fore. Earlier, there was the Compensation Act of 1884, where it was the employer's responsibility to pay compensation to workers only for accidents or injuries on roads. However, post realization that it was not enough came the Workmen's Compensation Act 1923. The Workmen's Compensation Act, 1923 says that the employer must look after the welfare of employees and provide adequate compensation in case an employee meets with an accident and sustains injuries at work premises during working hours. The foremost aim is to ensure that a worker enjoys a sustainable life after an employment-related injury.

13.35 Key words

Total disablement means such disablement, whether of a temporary or permanent nature, as incapacitates a *[employee] for all work which he was capable of performing at the time of the accident resulting in such disablement

Partial disablement means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a *[employee] in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified [in Part II of Schedule I] shall be deemed to result in permanent partial disablement;

Qualified medical practitioner means any person registered under any Central Act, Provincial Act, or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

Method of calculating wages- where the *[employee] has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the *[employee] shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

13.36 Self Assessment Questions

1. Briefly explain the Inquiry Procedure of Workmen compensation Act
2. Discuss the Amount of compensation procedure
3. Explain the procedure of appointment of Commissioner
4. Describe the power and Procedure of Commissioners
5. Elaborate the appeals and recovery Workmen compensation Act

13.37 Suggested Readings

1. The Employees Compensation Act, 1923- Bare Act with Short Notes [2021 Edn.] December 2020 by [Lexis](#) (Author), Universal's publication, New Delhi, India.
2. Employees' compensation Act 1923 edition 2023 By [commercial's](#) (author), Commercial law publishers' (India) private limited.
3. Employees Compensation Act, 1923 (Bare Act) Paperback – 1 January 2022 by Editorial Board of Professional Book Publishers.
4. Handbook of Employee's Compensation Act, 1923 - 2020 Edition [Paperback] Kharbanda and Kharbanda.
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6. Employees Compensation Act, 2009 Paperback – 1 January 2022 by Professional book publishers.
7. Agarwal, S.L : Labour Relations Law in India, Macmillan Company of India Ltd., New Delhi , 1990.
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LESSON -14

EMPLOYEE STATE INSURANCE ACT 1948

Learning objectives

- ✓ To study the Establishment of ESI
- ✓ To Know the Powers of the standing committee
- ✓ To Identify the Duties of Medical Benefit Council
- ✓ To Examine the General provisions as to payment of contributions

Structure

- 14.0 Introduction
- 14.1 Definitions
- 14.2. Establishment of Employees' State Insurance Corporation
- 14.3 Term of office of the members of the Corporation
- 14.4 Eligibility for re-appointment or re-election
- 14.5 Authentication of orders, decisions, etc
- 14.6 Constitution of Standing Committee
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- 14.8. Medical Benefit Council
- 14.9 Resignation of membership
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- 14.11. Disqualification
- 14.12 Filling of vacancies
- 14.13 Fees and allowances
- 14.14 Principal officers
- 14.15 Staff
- 14.16 Powers of the Standing Committee
- 14.17 Corporation's power to promote measures for health, etc., of insured persons
- 14.18 Meetings of Corporation, Standing Committee and Medical Benefit Council.
- 14.19 Supersession of the Corporation and Standing Committee
- 14.20 Duties of Medical Benefit Council
- 14.21 Duties of [Director-General and the Financial Commissioner
- 14.22 Acts of Corporation, etc., not invalid by reason of defect in constitution, etc.
- 14.23 Regional Board, Local Committees, Regional and Local Medical Benefit Councils
- 14.24 Employees' State Insurance Fund
- 14.25 Contributions
- 14.26 Principal employer to pay contributions in the first instance
- 14.27 Recovery of contributions from immediate employer
- 14.28 General provisions as to payment of contributions.
- 14.29 Method of payment of contribution
- 14.30 Recovery of contributions from immediate employer
- 14.31 General provisions as to payment of contributions
- 14.32 Method of payment of contribution
- 14.33 Issue of certificate to the Recovery Officer
- 14.34 Benefits
 - 14.34.1 Sickness benefit
 - 14.34.2 Maternity Benefit

14.34.3 Disablement benefit.

14.34.4 Dependants' benefit

14.34.5 . Occupational disease

14.34.6 Medical Benefit

14.35 Summary

14.36 Key words

14.37 Self Assessment questions

14.38 Suggested Readings

14.0 Introduction

(1) This Act may be called the Employees' State Insurance Act, 1948.

(2) It extends to [the whole of India

(3) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof.

(4) It shall apply, in the first instance, to all factories (including factories belonging to the [Government]) other than seasonal factories.

Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

(5) The appropriate Government may, in consultation with the Corporation and [where the appropriate Government is a State Government, with the approval of the Central Government], after giving [one month's] notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment, or class of establishments, industrial, commercial, agricultural or otherwise.

Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.

(6) A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.

14.1 Definitions

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

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

confinement " means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead ;

“contribution ” means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act ;

“ Corporation ” means the Employees’ State Insurance Corporation set up under this Act ;

[(6-A) “ dependant ” means any of the following relatives of a deceased insured person, namely (i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter ;

(ia) a widowed mother ;]

(ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of [twenty-five] and who is infirm ;

(iii) if wholly or in part dependent on the earnings of the insured person at the time of his death,

(a) a parent other than a widowed mother,

(b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,

(c) a minor brother or an unmarried sister or a widowed sister if a minor,

(d) a widowed daughter-in-law,

(e) a minor child of a pre-deceased son,

(f) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(g) a paternal grand-parent if no parent of the insured person is alive ;]

14.2. Establishment of Employees’ State Insurance Corporation

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the administration of the scheme of Employees’ State Insurance in accordance with the provisions of this Act a Corporation to be known as the Employees’ State Insurance Corporation.

(2) The Corporation shall be a body corporate by the name of Employees’ State Insurance Corporation having perpetual succession and a common seal and shall by the said name sue and be sued.

4. Constitution of Corporation. The Corporation shall consist of the following members, namely :

(a) a Chairman to be [appointed] by the Central Government ;

(b) a Vice-Chairman to be [appointed] by the Central Government

(c) not more than five persons to be [appointed] by the Central Government

(d) one person each representing each of the n[States] in which this Act is in force] to be [appointed] by the State Government concerned ;

(e) one person to be [appointed] by the Central Government to represent the [Union territories] ;

(f) [ten] persons representing employers to be [appointed] by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government ;

(g) [ten] persons representing employees to be [appointed] by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government ;

(h) two persons representing the medical profession to be [appointed] by the Central Government in consultation with such organisations of medical practitioners as may be

recognised for the purpose by the Central Government ;

[(i) three members of Parliament of whom two shall be members of the House of the People (Lok Sabha) and one shall be a member of the Council of States (Rajya Sabha) elected respectively by the members of the House of the People and the members of the Council of States ; and

(j) the Director-General of the Corporation, ex-officio.]

14.3 Term of office of the members of the Corporation

(1) Save as otherwise expressly provided in this Act, the term of office of members of the Corporation, other than [the members referred to in clauses (a), (b), (c), (d) and (e) of section 4 and the ex-officio member.] shall be four years commencing from the date on which their [appointment] or election is notified.

Provided that a member of the Corporation shall notwithstanding the expiry of the said period of four years, continue to hold office until the [appointment] or election of his successor is notified.

14.4 Eligibility for [re-appointment] or re-election

An outgoing member of the Corporation, the Standing Committee, or the Medical Benefit Council shall be eligible for [reappointment] or re-election as the case may be.

14.5 Authentication of orders, decisions, etc.

All orders and decisions of the Corporation shall be authenticated by the signature of the Director-General of the Corporation and all other instruments issued by the Corporation shall be authenticated by the signature of the Director-general or such other officer of the Corporation as may be authorised by him.

14.6 Constitution of Standing Committee

A Standing Committee of the Corporation shall be constituted from among its members, consisting of (a) a Chairman [appointed] by the Central Government ; (b) three members of the Corporation, [appointed] by the Central Government ; [(bb) three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification in the Official Gazette, specify from time to time ;]

(c) [eight] members elected by the Corporation as follows : —

(ii) [three] members from among the members of the Corporation representing employers ;

(iii) [three] members from among the members of the Corporation representing employees ;

(iv) one member from among the members of the Corporation representing the medical profession ; and

(v) one member from among the members of the Corporation elected by [Parliament]

[(d) the Director-General of the Corporation, ex-officio.

14.7 Term of office of members of Standing Committee

(1) Save as otherwise expressly provided in this Act, the term of office of a member of the Standing Committee, other than a member referred to in clause (a) or 3 [clause (b) or clause (bb)] of section 8, shall be two years from the date on which his election is notified :

Provided that a member of the Standing Committee shall, notwithstanding the expiry of the said period of two years, continue to hold office until the election of his successor is notified :

Provided further that a member of the Standing Committee shall cease to hold office when he ceases to be a member of the Corporation. (2) A member of the Standing Committee referred to in clause (a) or 3 [clause (b) or clause (bb)] of section 8 shall hold office during the pleasure of the Central Government.

14.8. Medical Benefit Council

(1) The Central Government shall constitute a Medical Benefit Council consisting of —

[(a) the Director General, the Employees' State Insurance Corporation, ex-officio as Chairman ;

(b) the Director General, Health Services, ex-officio as Co-Chairman

(c) the Medical Commissioner of the Corporation, ex-officio ;

(d) one member each representing each of the 1

[States (other than Union territories)] in which this Act is in force to be 2 [appointed] by the State Government concerned ;

(e) three members representing employers to be [appointed] by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government ;

(f) three members representing employees to be [appointed] by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government ; and

(g) three members, of whom not less than one shall be a woman, representing the medical profession, to be [appointed] by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government.

(2) Save as otherwise expressly provided in this Act, the term of office of a member of the Medical Benefit Council, other than a member referred to in any of the clauses (a) to (d) of sub-section (1), shall be four years from the date on which his [appointment] is notified:

[Provided that a member of the Medical Benefit Council shall, notwithstanding the expiry of the said period of four years continue to hold office until the [appointment] of his successor is notified.

(3) A member of the Medical Benefit Council referred to in clauses (b) and (d) of subsection (1) shall hold office during the pleasure of the Government [appointing] him.

14.9 Resignation of membership.

A member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to the Central Government and his seat shall fall vacant on the acceptance of the resignation by that Government.

14.10 Cessation of membership

[(1)] A member of the Corporation, the Standing Committee or the Medical Benefit Council shall cease to be a member of that body if he fails to attend three consecutive meetings thereof

Provided that the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, may, subject to rules made by the Central Government in this behalf, restore him to membership.

(2) Where in the opinion of the Central Government any person [appointed] or elected to

represent employers, employees or the medical profession on (sic.) the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, has ceased to represent

such employers, employees or the medical profession, the Central Government may, by notification in the Official Gazette, declare that with effect from such date as may be specified

therein such person shall cease to be a member of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be.

(3) A person referred to in clause (i) of section 4 shall cease to be a member of the Corporation when he ceases to be a Member of Parliament.

14.11. Disqualification

A person shall be disqualified for being chosen as or for being a member of the Corporation, the Standing Committee or the Medical Benefit Council

- (a) if he is declared to be of unsound mind by a competent Court ; or
- (b) if he is an undischarged insolvent ; or
- (c) if he has directly or indirectly by himself or by his partner any interest in subsisting contract with, or any work being done for, the Corporation except as a medical practitioner or as a share-holder (not being a Director) of a com-pany ; or
- (d) if before or after the commencement of this Act, he has been convicted of an offence involving moral turpitude.

14.12 Filling of vacancies

(1) Vacancies in the office of [appointed] or elected members of the Corporation, the Standing Committee Medical Benefit Council shall be filled by [appointment] or election, as the case may be.

(2) A member of the Corporation, the Standing Committee or the Medical Benefit Council [appointed] or elected to fill a casual vacancy shall hold office only so long as the member in whose place he is [appointed] or elected would have been entitled to hold office if the vacancy had not occurred.

14.13 Fees and allowances

Members of the Corporation, the Standing Committee and the Medical Benefit Council shall receive such fees and allowances as may from time to time be prescribed by the Central Government.

14.14 Principal officers

[(1) The Central Government may, in consultation with the Corporation, appoint a Director-General and a Financial Commissioner.

(2) The Director-General shall be the Chief Executive Officer of the Corporation.

(3) The Director-General and the Financial Commissioner] shall be whole-time officers of the Corporation and shall not undertake any work unconnected with their office without the sanction of the Central Government [and of the Corporation

(4) The Director-General or the Financial Commissioner] shall hold office for such period, not exceeding five years, as may be specified in the order appointing him. An outgoing [Director-General or Financial Commissioner] shall be eligible for re-appointment if he is otherwise qualified.

(5) The Director-General or the Financial Commissioner shall receive such salary and allowances as may be prescribed by the Central Government.

(6) A person shall be disqualified from being appointed as or for being [the Director-General or the Financial Commissioner] if he is subject to any of the disqualifications specified in section 13.

(7) The Central Government may at any time remove the Director-General or the Financial Commissioner] from office and shall do so if such removal is recommended by a resolution of the Corporation passed at a special meeting called for the purpose and supported by the votes of not less than two-third is of the total strength of the Corporation.

14.15 Staff

(1) The Corporation may employ such other staff of officers and servants as may be necessary for the efficient transaction of its business provided that the sanction of the Central Government shall be obtained for the creation of any post [the maximum monthly salary of which [exceeds such salary as may be prescribed by the Central Government.

[(2) (a) The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay

Provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

14.16 Powers of the Standing Committee

(1) Subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.

(2) The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf.

(3) The Standing Committee may, in its discretion, submit any other case or matter for the decision of the Corporation.

14.17 Corporation's power to promote measures for health, etc., of insured persons

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

14.18 Meetings of Corporation, Standing Committee and Medical Benefit Council.

Subject to any rules made under this Act, the Corporation, the Standing Committee and the Medical Benefit Council shall meet at such times and places and shall observe such rules of

procedure in regard to transaction of business at their meetings as may be specified in the regulations made in this behalf.

14.19 Supersession of the Corporation and Standing Committee.

(1) If in the opinion of the Central Government, the Corporation or the Standing Committee persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers, that Government may, by notification in the official Gazette, supersede the Corporation, or in the case of the Standing Committee, supersede in consultation with the Corporation, the Standing Committee :Provided that therefore issuing a notification under this sub-section the Central Government shall give a reasonable opportunity to the Corporation or the Standing Committee, as the case may be, to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Corporation or the Standing Committee, as the case may be.

(2) Upon the publication of a notification under sub-section (1) superseding the Corporation or the Standing Committee, all the members of the Corporation or the Standing Committee, as the case

14.20 Duties of Medical Benefit Council

The Medical Benefit Council shall —

- (a) advise [the Corporation and the Standing Committee] on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters ;
- (b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance ; and
- (c) perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

14.21 Duties of Director-General and the Financial Commissioner

The [Director-general and the Financial Commissioner] shall exercise such powers and discharge such duties as may be prescribed. They shall also perform such other functions as may be specified in the regulations.

14.22 Acts of Corporation, etc., not invalid by reason of defect in constitution, etc.

No act of the Corporation, the Standing Committee or the Medical Benefit Council shall be deemed to be invalid by reason of any defect in the constitution of the Corporation, the Standing Committee or the Medical Benefit Council, or on the ground that any member thereof was not entitled to hold or continue in office by reason of any disqualification or of any irregularity in his [appointment] or election, or by reason of such act having been done during the period of any vacancy in the office of any member of the Corporation, the Standing Committee or the Medical Benefit Council.

14.23 Regional Board, Local Committees, Regional and Local Medical Benefit Councils

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

14.24 Employees' State Insurance Fund

- (1) All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act.
- (2) The Corporation may accept grants, donations and gifts from the Central or any

[State]Government, Local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.

[(3) Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central Government to the credit of an account styled the Account of the Employees' State Insurance Fund.

All employees to be insured. — Subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act.

14.25 Contributions

(1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

[(2) The contributions shall be paid at such rates as may be prescribed by the Central Government :

Provided that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989 (29 of 1989).]

[(3) The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act.]

(4) The contributions payable in respect of each [wage period] shall ordinarily fall due on the last day of the [wage period], and where an employee is employed for part of the [wage period], or is employed under two or more employers during the same [wage period] the contributions shall fall due on such days as may be specified in the regulations.

[(5) (a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the regulations till the date of its actual payment :

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45-C to section 45-I.

Explanation. — In this sub-section " scheduled bank " means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).]

14.26 Principal employer to pay contributions in the first instance

(1) The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.

(2) Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulations, if any, made thereunder, the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by reduction from his wages and

not otherwise :

Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable] or in excess of the sum representing the employee's contribution for the period.

(3) Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

(4) Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(5) The principal employer shall bear the expenses of remitting the contributions to the Corporation.

14.27 Recovery of contributions from immediate employer

(1) A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any,) from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

[(1-A) The immediate employer shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the principal employer before the settlement of any amount payable under sub-section (1).]

(2) In the case referred to in sub-section (1), the immediate employer shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to the conditions specified in the proviso to subsection (2) of section 40.

14.28 General provisions as to payment of contributions.

(1) No employee's contribution shall be payable by or on behalf of an employee whose average daily wages [during a wage period are below 4[such wages as may be prescribed by the Central Government.

Explanation. — The average daily wages of an employee shall be calculated [in such manner as may be prescribed by the Central Government].

(2) Contribution (both the employer's contribution and the employee's contribution) shall be payable by the principal employer for each [wage period] [in respect of the whole or part of which wages are payable to the employee and not otherwise

14.29 Method of payment of contribution

Subject to the provisions of this Act, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Act and without prejudice to the generality of the foregoing power such regulations may provide for —

- (a) the manner and time of payment of contributions ;

- (b) in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by reduction from his wages and not otherwise :
- (c) Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable] or in excess of the sum representing the employee's contribution for the period.
- (d) (3) Notwithstanding any contract to the contrary, neither the principal employer nor the
- (e) immediate employer shall be entitled to deduct the employer's contribution from any wages
- (f) payable to an employee or otherwise to recover it from him.
- (g) (4) Any sum deducted by the principal employer from wages under this Act shall be
- (h) deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.
- (i) (5) The principal employer shall bear the expenses of remitting the contributions to the Corporation.

14.30 Recovery of contributions from immediate employer

(1) A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any,) from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

[(1-A) The immediate employer shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the principal employer before the settlement of any amount payable under sub-section (1).]

(2) In the case referred to in sub-section (1), the immediate employer shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to the conditions specified in the proviso to subsection (2) of section 40.

14.31 General provisions as to payment of contributions

(1) No employee's contribution shall be payable by or on behalf of an employee whose average daily wages [during a wage period are below 4[such wages as may be prescribed by the Central Government.

Explanation. — The average daily wages of an employee shall be calculated [in such manner as may be prescribed by the Central Government].

(2) Contribution (both the employer's contribution and the employee's contribution) shall be payable by the principal employer for each [wage period] [in respect of the whole or part of which wages are payable to the employee and not otherwise].

14.32 Method of payment of contribution

Subject to the provisions of this Act, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Act and without prejudice to the generality of the foregoing power such regulations may provide for —

- (a) the manner and time of payment of contributions ;

14.33 Issue of certificate to the Recovery Officer

(1) Where any amount is in arrear under this Act, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the factory or establishment or, as the case may be, the principal or immediate employer by one or more of the modes mentioned below : —

- (a) attachment and sale of the movable or immovable property of the factory or establishment or, as the case may be, the principal or immediate employer ;
(b) arrest of the employer and his detention in prison ;
(c) appointing a receiver for the management of the movable or immovable properties of the factory or establishment, or, as the case may be, the employer :

14.34 Benefits

(1) Subject to the provisions of this Act, the insured persons, [their dependants or the persons hereinafter mentioned, as the case may be,] shall be entitled to the following benefits, namely : —

(a) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner [or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf] (hereinafter referred to as sickness benefit) ;

[(b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit) ;]

(c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit) ;

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit) ;

(e) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit) ; [and]

[(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person, or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as [funeral expenses].

Provided that the amount of such payment shall not exceed [such amount as may be prescribed by the Central Government] and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.]

(2) The Corporation may, at the request of the appropriate Government, and subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person

When person eligible for sickness benefit

When person deemed available for sickness benefit.

14.34.1 Sickness benefit

The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rate and period thereof shall be such as may be prescribed by the Central Government.

14.34.2 Maternity Benefit

The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.

14.34.3 Disablement benefit.

Subject to the provisions of this Act 4

(a) a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment [at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government] ;

(b) a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment 6[at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government].

Presumption as to accident arising in course of employment.

For the purposes of this Act, an accident arising in the course of [an employee's] employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

Accidents happening while acting in breach of regulations, etc.

An accident shall be deemed to arise out of and in the course of [an employee's] employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if —

(a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be ; and

(b) the act is done for the purpose of and in connection with the employer's trade or business.

Accidents happening while travelling in employer's transport.

(1) An accident happening while an [employee] is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if —

(a) the accident would have been deemed so to have arisen had he been under such obligation ; and

- (b) at the time of the accident, the vehicle —
- (i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer ; and
 - (ii) is not being operated in the ordinary course of public transport service.
- (2) In this section “ vehicle ” includes a vessel and an aircraft.

Accidents happening while meeting emergency

An accident happening to an employee] in or about any premises at which he is for the time being employed for the purpose of his employer’s trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperiled, or to avert or minimize serious damage to property.]

Accidents happening while commuting to the place of work and vice versa.

An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established.]

14.34.4 Dependants’ benefit

(1) If an insured person dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependants’ benefit shall be payable [at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government] to his dependants specified in [sub-clause (i), sub-clause (i-a) and] subclause (ii) of clause (6-A) of section 2.

(2) In case the insured person dies without leaving behind him the dependants as aforesaid, the dependants’ benefit shall be paid to the other dependants of the deceased [at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.]

14.34.5 . Occupational disease

(1) If an employee employed in any establishment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an “ employment injury ” arising out of and in the course of employment.

(2) (i) Where the Central Government or a State Government, as the case may be, adds any description of employment to the employment specified in Schedule III to the Workmen’s Compensation Act, 1923* (8 of 1923) by virtue of the powers vested in it under sub-section

(3) of Sec. 3 of the said Act, the said description of employment and the occupational diseases specified under that sub-section as peculiar to that description of employment shall be deemed to form part of the Third Schedule.

(ii) Without prejudice to the provisions of clause (i), the Corporation after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in the Third Schedule and shall specify in the case of employments so added the diseases which

shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively and thereupon the provisions of this Act shall apply, as if such diseases

had been declared by this Act to be occupational diseases peculiar to those employments.

(3) Save as provided by sub-sections (1) and (2), no benefit shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(4) The provisions of section 51-A shall not apply to the cases to which this section apply.]

Bar against receiving or recovery of compensation or damages under any other law

An insured person or his dependants 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* (8 of 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.]

Determination of question of disablement

Any question

- (a) whether the relevant accident has resulted in permanent disablement ; or
- (b) whether the extent of loss of earning capacity can be assessed provisionally or finally ; or
- (c) whether the assessment of the proportion of the loss of earning capacity is provisional or final ; or
- (d) in the case of provisional assessment, as to the period for which such assessment shall hold good, shall be determined by a medical board constituted in accordance with the provisions of the regulations and any such question shall hereafter be referred to as the "disablement question

References to medical boards and appeals to medical appeal tribunals and Employees' Insurance Courts.

(1) The case of any insured person for permanent disablement benefit shall be referred by the Corporation to a medical board for determination of the disablement question and if, on that or any subsequent reference, the extent of loss of earning capacity of the insured person is provisionally assessed, it shall again be so referred to the medical board not later than the end of the period taken into account by the provisional assessment.

(2) If the insured person or the Corporation is not satisfied with the decision of the medical board, the insured person or the Corporation may appeal in the prescribed manner and within the prescribed time to

- (i) the medical appeal tribunal constituted in accordance with the provisions of the

regulations with a further right of appeal in the prescribed manner and within the prescribed time to the Employees' Insurance Court, or

(ii) the Employees' Insurance Court directly Provided that no appeal by an insured person shall lie under this sub-section if such person has applied for commutation of disablement benefit on the basis of the decision of the medical board and received the commuted value of such benefit :

Provided further that no appeal by the Corporation shall lie under this sub-section if the Corporation paid the commuted value of the disablement benefit on the basis of the decision of the medical board.

Review of decisions by medical board or medical appeal tribunal

(1) Any decision under this Act of a medical board or a medical appeal tribunal may be reviewed at any time by the medical board or the medical appeal tribunal, as the case may be, if it is satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or misrepresentation by the employee or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent).

(2) Any assessment of the extent of the disablement resulting from the relevant employment injury may also be reviewed by a medical board if it is satisfied that since the making of the assessment there has been a substantial and unforeseen aggravation of the result of the relevant injury :

Review of dependants' benefit.

(1) Any decision awarding dependants' benefit under this Act may be reviewed at any time by the Corporation if it is satisfied by fresh evidence that the decision was given in consequence of non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) or that the decision is no longer in accordance with this Act due to any birth or death or due to the marriage, re-marriage, or cessor or infirmity of, or attainment of the age of eighteen years by, a claimant.

(2) Subject to the provisions of this Act, the Corporation may, on such review as aforesaid, direct that the dependants' benefit be continued, increased, reduced or discontinued.

14.34.6 Medical Benefit.

(1) An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.

(2) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

(3) A person shall be entitled to medical benefit during any [period] for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit [or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations] :

Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under

the
regulations :

[Provided further that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement

[Provided also that an insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be prescribed by the Central Government.

Provision of medical treatment by [State] Government.

(1) The [State]Government shall provide for insured persons and (where such benefit is extended to their families) their families in the [State], reasonable medical, surgical and obstetric treatment :

Provided that the [State] Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.

(2) Where the incidence of sickness benefit payment to insured persons in any 2[State] is found to exceed the all-India average, the amount of such excess shall be shared between the Corporation and the 1[State] Government in such proportion as may be fixed by agreement between them :

Provided that the Corporation may in any case waive the recovery of the whole or any part of the share which is to be borne by the [State] Government.

(3) The Corporation may enter into an agreement with a [State] Government in regard to the nature and scale of the medical treatment that should be provided to insured persons and (where such medical benefit is extended to the families) their families (including provision of buildings, equipment, medicines, and staff) and for the sharing of the cost thereof and of any excess in the incidence of sickness benefit to insured persons between the Corporation and the[State] Government.

(4) In default of agreement between the Corporation and any [State] Government as aforesaid, the nature and extent of the medical treatment to be provided by the [State]Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that Government, shall be determined by an arbitrator (who shall be or shall have been a Judge of the [High Court [of a State]) appointed by the Chief Justice of India and the award of the arbitrator shall be binding on the Corporation and the [State] Government.

Punishment for false statement.

Whoever, for the purpose of causing any increase in payment or benefit under this Act, or for the purpose of causing any payment or benefit to be made where no payment or benefit is authorised by or under this Act, or for the purpose of avoiding any payment to be made by

himself under this Act or enabling any other person to avoid any 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 not exceeding [two thousand] rupees, or with both.

[Provided that where an insured person is convicted under this section, he shall not be entitled for any cash benefit under this Act for such period as may be prescribed by the Central Government.]

Punishment for failure to pay contributions, etc.

If any person —

- (a) fails to pay any contribution which under this Act he is liable to pay, or
- (b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution, or
- (c) in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee, or
- (d) in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee, or
- (e) fails or refuses to submit any return required by the regulations or makes a false return, or
- (f) obstructs any Inspector or other official of the corporation in the discharge of his duties, or
- (g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided, [he shall be punishable

[(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees ;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of 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 ;

(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both]

Enhanced punishment in certain cases after previous conviction.

Whoever, having been convicted by a Court of an offence punishable under this Act, commits the same offence shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to [two years and with fine of five thousand rupees]:

Provided that where such subsequent offence is for failure by the employer to pay any contribution which under this Act, he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to [five years but which shall not be less than two years and shall also be liable to fine of twenty-five thousand rupees].

Power to recover damages.

(1) Where an employer fails to pay the amount due in respect of any contribution or any

other amount payable under this Act, the Corporation may recover [from the employer by way of penalty such damages, not exceeding the amount of arrears as may be specified in the regulations]

Power of Court to make orders.

(1) Where an employer is convicted of an offence for failure to pay any contribution payable under this Act, the Court may, in addition to awarding any punishment, by order, in writing, require him within a period specified in the order (which the Court may if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount of contribution in respect of which the offence was committed [and to furnish the return relating to such contributions].

(2) Where an order is made under sub-section (1), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the Court, but if, on the expiry of such period or extended period, as the case may be,

the order of the Court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punishable with imprisonment in respect thereof under section 85 and shall also be liable to pay fine which may extend to [one thousand] rupees for every day after such expiry on which the order has not been complied with.]

Prosecutions.

(1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner [or of such other officer of the Corporation as may be authorised in this behalf by the [Director-General of the Corporation]].

(2) No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence under this Act.

(3) No Court shall take cognizance of any offence under this Act, except on a complaint made in writing in respect thereof .

Offences by companies

(1) If the person committing an offence under this Act is a company, every person, who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any 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.

Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

14.35 Summary

The Employees' State Insurance Scheme is an integrated measure of Social Insurance embodied in the Employees' State Insurance Act and it is designed to accomplish the task of protecting 'employees' as defined in the Employees' State Insurance Act, 1948 against the impact of incidences of sickness, maternity, disablement and death due to employment injury and to provide medical care to insured persons and their families. The ESI Scheme applies to factories and other establishments viz. Road Transport, Hotels, Restaurants, Cinemas, Newspaper, Shops, and Educational/Medical Institutions wherein 10 or more persons are employed. However, in some States threshold limit for coverage of establishments is still 20. Employees of the aforesaid categories of factories and establishments, drawing wages upto Rs.15,000/- a month, are entitled to social security cover under the ESI Act.

14.36 Key words

Contributions- The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

Cessation of membership- A member of the Corporation, the Standing Committee or the Medical Benefit Council shall cease to be a member of that body if he fails to attend three consecutive meetings thereof

Provided that the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, may, subject to rules made by the Central Government in this behalf, restore him to membership.

Establishment of Employees' State Insurance Corporation-With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the administration of the scheme of Employees' State Insurance in accordance with the provisions of this Act a Corporation to be known as the Employees' State Insurance Corporation.

14.37 Self Assessment questions

1. Briefly Explain the Establishment of ESI Act
2. Discuss the Power of Standing Committee in ESI Act
3. Describe the Duties of Medical Benefit Council
4. Examine the General provisions as to payment of contributions

14.38 Suggested Readings

1. The Employees State Insurance Act 1948 Bare Act with Amendments 2023 Edition November 2022 by Government of India (Author).
2. Employees' State Insurance Act, 1948 along with Rules and Regulations 2020 by Lexis (Author), Universal's publication, New Delhi, India.
3. Sinha, G.P. & Sinha., P.R.N : Industrial Relations and Labour Legislations, Oxford and IBH Publishing Co., New Delhi , 1980.
4. Goswamy, V.G : Labour and Industrial Relations Law, Central Law Agency, Allahabad , 2004.

5. Employees State Insurance Act, 1948 Paperback – 1 January 2019 by S.A.

Chari (Author), Asia law house, Hyderabad.

LESSON -15

EMPLOYEES PROVIDENT FUND

Learning objectives

- ✓ To Understand the Procedure of Employees Fund Scheme
- ✓ To Know the Central board and Appointment of Officers
- ✓ To Learn the Appeals and Procedure of Tribunal
- ✓ To Examine the offences and Penalties of Employees Fund Scheme

Structure

- 15.1 Introduction
- 15.2. Definitions
- 15.3 Establishment to include all departments and branches
- 15.4. Power to add to Schedule I
- 15.5 Employees' Provident Fund Schemes
- 15.6. Central Board
- 15.7 Executive Committee
- 15.8 Board of Trustees to body corporate
- 15.9 Appointment of officers
- 15.10 Delegation
- 15.11 Contributions and matters which may be provided for in Schemes
- 15.12. Employees' Pension Scheme
- 15.13 Employees' Deposit linked Insurance Scheme
- 15.14 Laying of schemes before Parliament
- 15.14 Laying of schemes before Parliament
- 15.15 Modification of scheme.
- 15.16. Determination of money due from employers
- 15.17 Review of orders passed under section 7A
- 15.18 Determination of escaped amount
- 15.19 Tribunal
- 15.20 Appeals to Tribunal
- 15.21 Procedure of Tribunals
- 15.22 Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers.
- 15.23 Orders of Tribunal
- 15.24 Mode of recovery of moneys due from employers
- 15.25 Recovery of moneys by employers and contractors
- 15.26 Issue of certificate to the Recovery Officer
- 15.27 Recovery Officer to whom certificate is to be forwarded.
- 15.28 Validity of certificate and amendment thereof
- 15.29 Stay of proceedings under certificate and amendment or withdrawal thereof
- 15.30 Application of certain provisions of Income-tax Act
- 15.31 Fund to be recognised under Act 11 of 1922.
- 15.32 Inspectors
- 15.33 Penalties
- 15.34 Offences by companies
- 15.35 Power of court to make orders

- 15.36 Special provisions relating to existing provident funds.
- 15.37 Act not to apply to certain establishments
- 15.38. Authorizing certain employers to maintain provident fund accounts
- 15.39. Power to exempt
- 15.40. Transfer of accounts
- 15.41 Protection of action taken in good faith.
- 15.42 Power of Central Government to give directions
- 15.43 Summary
- 15.44 Key words
- 15.45 Self Assessment questions
- 15.46 Suggested Readings

15.1 Introduction

1. Short title, extent and application

(1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.]

(2) It extends to the whole of India

(3) Subject to the provisions contained in section 16, it applies

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and

in which [twenty] or more persons are employed, and

(b) to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in his behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification.

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.]

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

15.2. Definitions

In this Act, unless the context otherwise requires,

[(a) "appropriate Government" means i) in relation to an establishment belonging to, or under the control of, the Central Government or in relation to an establishment connected with a railway company, a major port, mine or an oilfield or a controlled industry, [or in relation to an establishment having departments or branches in more than one State.] the Central Government; and

(ii) in relation to any other establishment, the State Government

(aa) “authorized officer” means the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund

Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette

(b) “basic wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;

(c) “contribution” means a contribution payable in respect of a member under a Scheme 4or the contribution payable in respect of an employee to whom the Insurance Scheme applies];

(d) “controlled industry” means any industry the control of which by the Union has been declared by a Central Act to be expedient in the public interest;

(e) “employer” means

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to manager, managing director or managing agent, such manager, managing director or managing agent;]

(f) “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

15.3 Establishment to include all departments and branches

For the removal of doubts, it is here by declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

3. Power to apply Act to an establishment which has a common provident fund with another establishment.

Where immediately before this Act becomes applicable to an establishment there is

inexistence a provident fund which is common to the employees employed in that establishment and employees in any other establishment, the Central Government may, by notification in Official Gazette, direct that the provisions of this Act shall also apply to such other establishment.

15.4. Power to add to Schedule I

(1) The Central Government may, by notification in the Official Gazette, add to Schedule I any other industry in respect of the employees whereof it is of opinion that provident fund scheme should be framed under this Act, and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purposes of this Act.

(2) All notifications under sub-section (1) shall be laid before Parliament, as soon as may be, after they are issued.

15.5 Employees' Provident Fund Schemes.

(1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme. The Fund shall vest in, and be administered by, the Central Board constituted under section 5A.(1B) Subject to the provisions of this Act, a Scheme framed under sub-section (1) may provide for allow any of the matters specified in Schedule II.]

[(2) A Scheme framed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme.]

15.6. Central Board

(1) The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, a Board of Trustees for the territories to which this Act extends (hereinafter in this Act referred to as the Central Board) consisting of the following

[persons as members] namely

(a) [a Chairman and a Vice-Chairman] to be appointed by the Central Government;

[(aa) the Central Provident Fund Commissioner, ex officio;]

(b) not more than five persons appointed by the Central Government from amongst its officials;

(c) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, appointed by the Central Government;

(d) ten persons representing employers of the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employers as maybe recognized by the Central Government in this behalf; and

(e) ten persons representing employees in the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organizations of employees as maybe recognized by the Central Government in this behalf.

(2) The terms and conditions subject to which a member of the Central Board may be appointed and the time, place and procedure of the meetings of the Central Board shall be such as may be provided for in the Scheme.

(3) The Central Board shall subject to the provisions of section 6A and section 6C administer the Fund vested in it in such manner as may be specified in the Scheme.

(4) The Central Board shall perform such other functions as it may be required to perform by or under any provisions of the Scheme 8, the 9[Pension] Scheme and the Insurance Scheme].

[(5) The Central Board shall maintain proper accounts of its income and expenditure in such form and in such manner as the Central Government may, after consultation with the Comptroller and Auditor General of India, specify in the Scheme.

(6) The accounts of the Central Board shall be audited annually by the Comptroller and Auditor General of India and any expenditure incurred by him in connection with such audit shall be payable by the Central Board to the Comptroller and Auditor-General of India.

(7) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Central Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers, documents and papers and inspect any of the offices of the Central Board.

(8) The accounts of the Central Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Central Board which shall forward the same to the Central Government along with its comments on the report of the Comptroller and Auditor-General.

(9) It shall be the duty of the Central Board to submit also to the Central Government an annual report of its work and activities and the Central Government shall cause a copy of the annual report, the audited accounts together with the report of the Comptroller and Auditor-General of India and the comments of the Central Board thereon to be laid before each House of Parliament.

15.7 Executive Committee

(1) The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, an Executive Committee to assist the Central Board in the performance of its functions.

(2) The Executive Committee shall consist of the following persons as members, namely:—

(a) a Chairman appointed by the Central Government from amongst the members of the Central Board;

(b) two persons appointed by the Central Government from amongst the persons referred to in clause (b) of sub-section (1) of section 5A;

(c) three persons appointed by the Central Government from amongst the persons referred to in

clause (c) of sub-section (1) of section 5A;

(d) three persons representing the employers elected by the Central Board from amongst the persons referred to in clause (d) of sub-section (1) of section 5A;

(e) three persons representing the employees elected by the Central Board from amongst the persons referred to in clause (e) of sub-section (1) of section 5A;

(f) the Central Provident Fund Commissioner, ex officio.

(3) The terms and conditions subject to which a member of the Central Board may be appointed or elected to the Executive Committee and the time, place and procedure of the meetings of the Executive Committee shall be such as may be provided for in the Scheme].

State Board

(1) The Central Government may, after consultation with the Government of any State, by notification in the Official Gazette, constitute for that State a Board of Trustees (hereinafter in this Act referred to as the State Board) in such manner as may be provided for in the Scheme.

(2) A State Board shall exercise such powers and perform such duties as the Central Government may assign to it from time to time.

(3) The terms and conditions subject to which a member of a State Board may be appointed and the time, place and procedure of the meetings of a State Board shall be such as may be provided for in the Scheme.

15.8 Board of Trustees to body corporate

Every Board of Trustees constituted under section 5A or section 5B shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued.

15.9 Appointment of officers

(1) The Central Government shall appoint a Central Provident Fund Commissioner who shall be the chief executive officer of the Central Board and shall be subject to the general control and superintendence of that Board.

(2) The Central Government may also appoint [a Financial Adviser and Chief Accounts Officers] to assist the Central Provident Fund Commissioner in the discharge of his duties.

Acts and proceedings of the Central Board or its Executive Committee or the State Board not to be invalidated on certain grounds.—No act done or proceeding taken by the Central Board or the Executive Committee constituted under section 5AA or the State Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Central Board or the Executive Committee or the State Board, as the case may be.

15.10 Delegation

The Central Board may delegate to the Executive Committee or to the Chairman of the Board or to any of its officers and a State Board may delegate to its Chairman or to any of its officers]subject to such conditions and limitations, if any, as it may specify, such of its powers and functions under this Act as it may deem necessary for the efficient administration of the Scheme The Pension] Scheme and the Insurance Scheme

15.11 Contributions and matters which may be provided for in Schemes

The contribution which shall be paid by the employer to the Fund shall be [ten per cent. of the basic wages, [dearness allowance and retaining allowance (if any)] for the time being payable to each of the employees[(whether employed by him directly or by or through a contractor)], and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, [if any employees of desires, be an amount exceeding [ten per cent.]of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section]:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words

ten per cent. at both the places where they occur, the words 10[twelve per cent.]shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee

15.12. Employees' Pension Scheme

(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for—

- (a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and
- (b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—

- (a) such sums from the employer's contribution under section 6, not exceeding eight and one-third per cent. of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;
- (b) such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17;
- (c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;
- (d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

(7) A Pension Scheme, framed under sub-section (1), 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 or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such

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

15.13 Employees' Deposit linked Insurance Scheme

(1) 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

(2) There shall be established, as soon as may be after the framing of the Insurance Scheme, a

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 percent. 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.

Explanation.—For the purposes of this sub-section, the expressions “dearness allowance” and “retaining allowance” have the same meanings as in section 6.

(4) (a) 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 the administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that scheme.

(5) The Insurance Fund shall vest in the Central Board and be administered by it in such manner as may be specified in the Insurance Scheme.

(6) The Insurance Scheme may provide for all or any of the matters specified in Schedule IV.

(7) The Insurance Scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme.]

15.14 Laying of schemes before Parliament

Every scheme framed under section 5, section 6A and section 6C shall be laid, as soon as may be after it is framed, 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 or the successive sessions aforesaid, both Houses agree in making any modification in the scheme, or both Houses agree that the scheme should not be framed, the scheme 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 scheme.

15.15 Modification of scheme.

(1) The Central Government may, by notification in the Official Gazette, add to, amend or vary, either prospectively or retrospectively, the Scheme, the Family Pension Scheme or the Insurance Scheme, as the case may be.

2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, 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 or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification 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 any thing previously done under that notification.

15.16. Determination of moneys due from employers

[(1) 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];

(2) 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).

(3) No order shall be made under sub-section (1), unless 5 [the employer concerned] is given reasonable opportunity of representing his case.

(3A) 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.

(4) 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.

Explanation.—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.

15.17 Review of orders passed under section 7A

(1) Any person aggrieved by an order made under sub-section (1) of section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under sub-section (1) shall be filed in such form and manner and

within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application. (4) Where the officer is of opinion that the application for review should be granted, he shall grant the same:

Provided that,—

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A.

15.18 Determination of escaped amount

Where an order determining the amount due from an employer under section 7A or section 7B has been passed and if the officer who passed the order has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

15.19 Tribunal

The Industrial Tribunal constituted by the Central Government under sub-section (1) of section 7A of the Industrial Disputes Act, 1947 shall, on and from the commencement

of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.

15.20 Appeals to Tribunal

(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

15.21 Procedure of Tribunals

(1) A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Tribunal shall have its sittings.

(2) A Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the officers referred to in section 7A and any proceeding before the Tribunal 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) and the Tribunal shall be deemed to be a civil court for the all purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

15.22 Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers.

(1) A person preferring an appeal to a Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.

(2) The Central Government or a State Government or any other authority under this Act may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before a Tribunal.

15.23 Orders of Tribunal

(1) A Tribunal may after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.

(2) A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal:

Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this sub-section, unless the Tribunal has given notice to him of its intention to do so and has allowed him a

reasonable opportunity of being heard.

(3) A Tribunal shall send a copy of every order passed under this section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law.

15.24 Mode of recovery of moneys due from employers

Any amount due(a)from the employer in relation to [an establishment] to which any Scheme or the Insurance Scheme] applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund], damages recoverable under section 14B, accumulations required to be transfer under sub-section (2) of section 15 5or 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 to 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 10[in the manner specified in sections 8B to 8G]

15.25 Recovery of moneys by employers and contractors

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.

(2) 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.

(3) 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 .Explanation.—In this section, the expressions, "dearness allowance" and "retaining allowance" shall have the same meanings as in section 6.

15.26 Issue of certificate to the Recovery Officer.

(1) Where any amount is in arrear undersection8, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:—

(a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;

(b) arrest of the employer and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer:

Provided that the attachment and sale of any property under this section shall first be effected against the proportion of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorized officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

15.27 Recovery Officer to whom certificate is to be forwarded.

(1) The authorised officer may forward the certificate referred to in section 8B to the Recovery Officer within whose jurisdiction the employer—

(a) carries on his business or profession or within whose jurisdiction the principal place of his establishment is situate; or

(b) resides or any movable or immovable property of the establishment or the employer is situate.

(2) Where an establishment or the employer has property within the jurisdiction of more than one

Recovery Officers and the Recovery Officer to whom a certificate is sent by the authorized officer—

(a) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction; or

(b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or

any part of the amount, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to the Recovery Officer within whose jurisdiction the establishment or the employer has property or the employer resides, and thereupon that Recovery Officer shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the authorised officer.

15.28 Validity of certificate and amendment thereof

(1) When the authorized officer issues certificate to a Recovery Officer under section 8B, it shall not be open to the employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the authorized officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) The authorised officer shall intimate to the Recovery Officer any order withdrawing or cancelling certificate or any correction made by him under sub-section (2) or any amendment made under sub-section (4) of section 8E.

15.29 Stay of proceedings under certificate and amendment or withdrawal thereof.

Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorised officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the authorised officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of a further proceeding under this Act, the authorised officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the authorized officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

15.30 Application of certain provisions of Income-tax Act.

The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount mentioned in section 8 of this Act instead of to the income-tax:

Provided that any reference in the said provisions and the rules to the "assessed" shall be construed as a reference to an employer as defined in this Act.]

15.31 Fund to be recognised under Act 11 of 1922.

For the purposes of the Indian Income-tax Act, 1922, the Fund shall be deemed to be a recognized provident fund within the meaning of Chapter IXA of that Act:

[Provided that nothing contained in the said Chapter shall operate to render ineffective any provision of the Scheme (under which the Fund is established) which is repugnant to any of the provisions of that Chapter or of the rules made there under.]

Protection against attachment.

(1) The amount standing to the credit of any member in the Fund [or of any exempted employee in a provident fund] shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member [or the exempted employee], and neither the official assignee appointed under the Presidency-towns Insolvency Act, 1909 (3 of 1909), nor any receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), shall be entitled to, or have any claim on, any such amount.

(2) Any amount standing to the credit of a member in the Fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the provident fund shall, subject to any deduction authorized by the said Scheme

or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member of the exempted employee [and shall also not be liable to attachment under any decree or order of any court].

[3] The provisions of sub-section (1) and sub-section (2) shall, so far as may be, apply in relation to the family pension or any other amount payable under the 6[Pension] Scheme 7[and also in relation to any amount payable under the Insurance Scheme] as they apply in relation to any amount payable out of the Fund.

15.32 Inspectors

(1) 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 the Scheme the Pension Scheme or the Insurance Scheme], and may define their jurisdiction.

(2) Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with any 1Scheme or the

Insurance Scheme] or for the purpose of ascertaining whether any of the provisions of this Act or of any Scheme or the Insurance Scheme have been complied with in respect of an establishment to which any Scheme or the Insurance Scheme] applies or for the purpose of ascertaining whether the provisions of this Act or any Scheme or the Insurance Scheme] are applicable to any establishment] to which the Scheme or the Insurance Scheme has not been applied or for the purpose of determining whether the conditions subject to which exemption was granted under section 17 are being complied with by the employer in relation to an exempted establishment

(a) require an employer or any contractor from whom any amount is recoverable under section to furnish such information as he may consider necessary

(b) at any reasonable time [and with such assistance, if any, as he may think fit, enter and search any [establishment] or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment

(c) examine, with respect to any matter relevant to any of the purposes aforesaid, the employer or any contractor from whom any amount is recoverable under section 8A], his agent or servant or any other person found in charge of the establishment of any premises connected therewith or whom the Inspector has reasonable cause to believe to be or to have been, an employee in the establishment

[(d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;]

(e) exercise such other powers as the [Scheme or the Insurance Scheme] may provide.

(2A) Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with the 10[Pension] Scheme or for

the purpose of ascertaining whether any of the provisions of this Act or of the 10[Pension] Scheme have been complied with in respect of an establishment to which the 10[Pension] Scheme applies, exercise all or any of the powers conferred, on him under clause (a), clause (b), clause (c) or clause (d) of sub-section (2).11[(2B)] The provisions of the Code of Criminal Procedure, 1898 (5 of 1898) shall, so far as may be, apply to any search or seizure under sub-section (2), or under sub-section (2A), as the case may be,] as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code (45 of 1960).]

15.33 Penalties

(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 6 [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;

(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) 16[Subject to the provisions of this Act, the Scheme] 17[, the 3 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 one year, or with fine which may extend to four thousand rupees, or with both].

18[(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

15.34 Offences by companies

(1) If the person committing an offence under this Act 4theScheme or there is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act 4, the Scheme or the Pension] Scheme or the Insurance Scheme has been committed by a company and it improved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Enhanced punishment in certain cases after previous conviction

Whoever, having been convicted by a Court of an offence punishable under this Act, the Scheme or 5 the Scheme or the Insurance Scheme], commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to five years, but which shall not be less than two years, and shall also be liable to a fine of twenty-five thousand rupees].

Certain offences to be cognizable

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898.) an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable.

Cognizance and trial of offences.

(1) No court shall take cognizance of any offence punishable under this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme] except on report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette, in this behalf, by an Inspector appointed under section 13.

15.35 Power of court to make orders

(1) Where an employer is convicted of an offence of making default in the payment of any contribution to the Fund 11,the [Pension]Fund or the Insurance Fund]] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17, the court may, in addition to awarding any punishment, by order in writing require him within a period specified in the order (which the court may, if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount of contribution or transfer the accumulations, as the case may be, in respect of which the offence was committed.

(2) Where an order is made under sub-section (1), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the court, but if, on the expiry of such period or extended period, as the case may be, the order of the court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punished with imprisonment in respect thereof under section 14 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with.]

15.36 Special provisions relating to existing provident funds.

(1) Subject to the provisions of section 17, every employee who is a subscriber to any provident fund of an establishment to which this act applies shall, pending the application of a Scheme to] the establishment in which he is employed, continue to be entitled to the benefits accruing to him under the provident fund, and the provident fund shall continue to be maintained in the same manner and subject to the same conditions as it would have been if this Act had not been passed.

On the application of any Scheme to [an establishment], the accumulations in any provident fund of the establishment standing to the credit of the employees who become members of the Fund established under the Scheme] shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or other instrument establishing the provident fund but subject to the provisions, if any, contained in the Scheme, be transferred to the Fund established under the Scheme, and shall be credited to the accounts of the employees entitled thereto in the Fund.

15.37 Act not to apply to certain establishments.

[(1) This Act shall not apply

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a

State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits

[(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification ,exempt [whether prospectively or retrospectively] that class of establishments from the operation of this Act for such period as may be specified in the notification.

15.38. Authorising certain employers to maintain provident fund accounts

(1) The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer, by an order in writing, to maintain a provident fund account in relation to the establishment, subject to such terms and conditions as may be specified in

the Scheme

15.39. Power to exempt.

(1) The appropriate Government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively, from the operation] of all or any of the provisions of any Scheme

(a) any establishment] to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other establishment] of similar character; or

(b) and establishment if the employees of such establishment are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favorable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other establishment of a similar character:

Provided that no such exemption shall be made except after consultation with the Central Board which on such consultation shall forward its views on exemption to the appropriate Government within such time limit as may be specified in the Scheme.

15.40. Transfer of accounts.

(1) Where an employee employed in an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the provident fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.

(2) Where an employee employed in an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him may, If the employee so desires and the rules in relation to such provident fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the provident fund of the establishment in which he is re-employed.]

Act to have effect notwithstanding anything contained in Act 31 of 1956

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Life Insurance Corporation Act, 1956.

Liability in case of transfer of establishment

Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme or the Insurance Scheme], as the

case may be, in respect of the period up to the date of such transfer: Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

15.41 Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against the Central Government, a State Government, the Presiding Officer of a Tribunal, any authority referred to in section 7A, an Inspector or any other person for anything which is in good faith done or intended to be done in pursuance of this Act, the Scheme, or the Insurance Scheme.

Authorities and inspector to be public servant

The authorities referred to in section 7A and every inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code

Delegation of powers.

The appropriate Government may direct that any power or authority or jurisdiction exercisable by it under this Act 6th Scheme 7th Pension Scheme or the Insurance Scheme shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

15.42 Power of Central Government to give directions.

The Central Government may, from time to time, give such directions to the Central Board as it may think fit for the efficient administration of this Act and when any such direction is given, the Central Board shall comply with such direction.

Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely

(b) the form and the manner in which, and the time within which, an appeal shall be filed before a Tribunal and the fees payable for filing such appeal;

(c) the manner of certifying the copy of the certificate, to be forwarded to the Recovery Officer

under sub-section (2) of section 8C; and

(d) any other matter, which has to be, or may be, prescribed by rules under this Act.

(3) Every rule made under this Act 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 or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act, as amended by the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988 (33 of 1988), the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date on which the said amendment Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

15.43 Summary

The Employees' Provident Fund came into existence with the promulgation of the Employees' Provident Funds Ordinance on the 15th November, 1951. It was replaced by the Employees' Provident Funds Act, 1952. The Employees' Provident Funds Bill was introduced in the Parliament as Bill Number 15 of the year 1952 as a Bill to provide for the institution of provident funds for employees in factories and other establishments. The Act is now referred as the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 which extends to the whole of India. The Act and Schemes framed there under are administered by a tri-partite Board known as the Central Board of Trustees, Employees' Provident Fund, consisting of representatives of Government (Both Central and State), Employers, and Employees.

15.44 Key words

Authorized officer means the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund

Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette.

Basic Wages means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include

Employer means (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

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—

3 **Employees' Provident Fund Schemes** The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme

4
15.45 Self Assessment Questions

1. Briefly explain the Procedure of Employee Fund scheme
2. Outline the Central Board and Appointment of officer in EPF
3. Discuss the Appeals and Procedure of Tribunal in EPF
4. Describe the offences and Penalties of Employees Fund Scheme

15.46 Suggested Readings

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LESSON -16

⁴ PAYMENT OF GRATUITY ACT, 1972

Learning outcomes

- ✓ To study the Gratuity Payable to the employee on the termination of his employment¹²
- ✓ To Know the Powers of Inspectors
- ✓ To evaluate the Penalties and recovery of Gratuity⁴
- ✓ To identify the Cognizance offences, gratuity and protection of action in good faith

Structure

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16.1 Introduction

An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Twenty-third Year of Republic of India as follows :

Section: 1 Short title, extent, application and commencement.¹

(1) This Act may be called the Payment of Gratuity Act, 1972.

(2) It extends to the whole of India:

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) It shall apply to

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) 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 ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, or, any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

(3A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

(4) It shall come into force on such date as the Central Government may, by notification, appoint.

16 Section: 2 Definitions.

In this Act, unless the context otherwise requires, -

(a) "appropriate Government" means, -

(i) in relation to an establishment

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of, the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government,

(ii) in any other case, the State Government;

(b) "completed year of service" means continuous service for one year;

(c) "continuous service" means continuous service as defined in section 2A;

(d) "controlling authority" means an authority appointed by the appropriate

Government under section 3 ;

(e) "employee" means any person (other than an apprentice) employed on wages, [in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity

Explanation :

(f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop -

(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over

the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

(g) "factory" has the meaning assigned to it in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(h) "family", in relation to an employee, shall be deemed to consist of -

(i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any;

(ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any;

Explanation : Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee;

(i) "major port" has the meaning assigned to it in clause (8) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

(j) "mine" has the meaning assigned to it in clause (J) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

(k) "notification" means a notification published in the Official Gazette;

(l) "oilfield" has the meaning assigned to it in clause (e) of section 3 of the Oilfields (Regulation and Development) Act, 1948 (53 of 1948);

(m) "plantation" has the meaning assigned to it in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951) ;

(n) "port" has the meaning assigned to it in clause (4) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

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

(p) "railway company" has the meaning assigned to it in clause (5) of section 3 of the Indian Railways Act, 1890 (9 of 1890);

(q) "retirement" means termination of the service of an employee otherwise than on superannuation;

[8] [(r) "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service at the age on the attainment of which the employee shall vacate the employment;

(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

16.3 Section: 2A- Continuous service

For the purposes of this Act, -

(1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment), lay

off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

(2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer -

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

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

(ii) two hundred and forty days, in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than -

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

(ii) one hundred and twenty days, in any other case;

Explanation: For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which -

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

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

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

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

(3) where an employee employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy five per cent of the number of days on which the establishment was in operation during such period.

16.4 Section: 3 Controlling authority

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.

16.5 Section: 4 Gratuity payable to an employee on the termination of his employment

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

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

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

Explanation. : For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he, was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days wages for each season.

Explanation: In the case of a monthly rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed 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 wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited]

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act 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.

16.6 Section: 4A Compulsory insurance

(1) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2), obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India established under the Life Insurance Corporation of India Act, 1956 (31 of 1956) or any other prescribed insurer:

Provided that different dates may be appointed for different establishments or class of establishments or for different areas.

(2) The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed from the provisions of sub-section (1).

(3) For the purpose of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed get his establishment registered with the controlling authority in the prescribed manner and no employer shall be registered under the provisions of this section unless he has taken an insurance referred to in sub-section (1) or has established an approved gratuity fund referred to in sub-section (2).

(4) The appropriate Government may, by notification, make rules to give effect to the provisions of this section and such rules may provide for the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the controlling authority of the amount of the gratuity payable to an employee from the Life Insurance Corporation of India or any other insurer with whom an insurance has been taken under sub-section (1), or as the case may be, the Board of Trustees of the approved gratuity fund.

(5) Where an employer fails to make any payment by way of premium to the insurance referred to in sub-section (1) or by way of contribution to all approved gratuity fund referred to in sub-section (2), he shall be liable to pay the amount of gratuity due under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

(6) Whoever contravenes the provisions of sub-section (5) shall be punishable with fine which may extend to ten thousand rupees and in the case of a continuing offence with a further fine which may extend to one thousand rupees for each day during which the offence continues.

Explanation : In this section "approved gratuity fund" shall have the same meaning as in clause (5) of section 2 of the Income-tax Act, 1961 (43 of 1961)].

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16.7 Section: 5 Power to exempt

(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such

establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate

Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favorable than the benefits conferred under this Act.

(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person.

16.8 Section: 6 Nomination

(1) Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the Purpose of the second proviso to sub-section (1) of section 4.

(2) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.

(3) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family, shall be void.

(4) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, afresh nomination in favour of one or more members of his family.

(5) A nomination may, subject to the provisions of sub-sections (3) and (4), be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so.

(6) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.

(7) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

16.9 Section: 7 Determination of the amount of gratuity

(1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(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 such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

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.

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit -

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such 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.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), 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 affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of

sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, 1860 (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

³ Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

³
16.10 Section: 7A Inspectors

(1) The appropriate Government may, by notification, appoint as many Inspectors, as it deems fit, for the purposes of this Act.

(2) The appropriate Government may, by general or special order, define the area to which the authority of an Inspector so appointed shall extend and where two or more Inspectors are appointed for the same area, also provide, by such order, for the distribution or allocation of work to be performed by them under this Act.

(3) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

16.11 Section: 7B Powers of Inspectors

(1) Subject to any rules made by the appropriate Government in this behalf, an Inspector may, for the purpose of ascertaining whether any of the provisions of this Act or the conditions, if any, of any exemption granted there under, have been complied with, exercise all or any of the following powers, namely:

- (a) require an employer to furnish such information as he may consider necessary
- (b) enter and inspect, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or local or any public authority, as he thinks fit, any premises of or place in any factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, for the purpose of examining any register, record or notice or other document required to be kept or exhibited under this Act or the rules made there under, or otherwise kept or exhibited in relation to the employment of any person or the payment of gratuity to the employees, and require the production thereof for inspection;
- (c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer or any person whom he finds in such premises or place and who, he has reasonable cause to believe, is an employee employed therein;
- (d) make copies of, or take extracts from, any register, record, notice or other document, as he

may consider relevant, and where he has reason to believe that any offence under this Act has been committed by an employer, search and seize with such assistance as he may think fit, such register, record, notice or other document as he may consider relevant in respect of that offence;

(e) exercise such other powers as may be prescribed.

(2) Any person required to produce any register, record, notice or other document or to give any information by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code 1860 (45 of 1860).

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of that Code.]

16.12 Section: 8 Recovery of gratuity

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 :

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.

16.13 Section: 9 Penalties

(1) 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.

(2) An employer who contravenes, or makes default in complying with, any of the provisions of this Act or any rule or order made there under shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, or with both:

Provided that where the offence relates to non-payment of any gratuity payable under this Act, the employer shall be punishable with imprisonment for a term which shall not be less than [36] [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.

16.14 Section: 10 Exemption of employer from liability in certain cases

Where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court -

- (a) that he has used due diligence to enforce the execution of this Act, and
- (b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;

Provided that in seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross examination on behalf of the person he charges as the actual offender and by the prosecutor:

Provided further that, if the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

16.15 Section: 11 Cognizance of offences

(1) No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government:

Provided that where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorise the controlling authority to make a complaint against the employer, whereupon the controlling authority shall, within fifteen days from the date of such authorisation, make such complaint to a Magistrate having jurisdiction to try the offence.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

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16.16 Section: 12 Protection of action taken in good faith

No suitor other legal proceeding shall lie against the controlling authority or any other person in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made there under.

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16.17 Section: 13 Protection of gratuity

No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

16.18 Section: 14 Act to override other enactments, etc

The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

16.19 Section: 15 Power to make rules.

(1) The appropriate Government may, by notification make rules for the purpose of carrying out the provisions of this Act.

(2) Every rule made by the Central Government under this Act 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 ii-immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

16.20 Summary

Under Section 4, payment of gratuity is mandatory. Gratuity shall be payable to an employee on termination of employment after he has rendered continuous service for not less than five years in a single organisation. The termination can be due to: Superannuation, Retirement or resignation, and Death or disablement due to accident or disease. As per Section 4(1), the completion of continuous service of 5 years is not required where termination of employment is due to death or disablement. In such case mandatory gratuity is payable. The unpaid gratuity amount is seized by government which is further used in holiday, vacations, parties and other fun related activities. Gratuity is paid at a rate of 15 days' wages for every completed year of service or part thereof in excess of six months. The wages here means wages last drawn by the employee. The "15 days' wages" will be calculated by dividing the last drawn wages by 12 and multiplying the result with 15. But under Section 4(3), the maximum gratuity that is payable is fixed at ₹20,00,000. Any gratuity amount paid in excess of ₹20,00,000 is taxable in the employee's hands.

16.21 Key words

Employee- means any person (other than an apprentice) employed on wages, [in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity]

Superannuation- in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service at the age on the attainment of which the employee shall vacate the employment

Wages- means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus,

commission, house rent allowance, overtime wages and any other allowance

Controlling authority- 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.

16.22 Self Assessment Questions

1. Briefly Explain the Procedure of Payment of Gratuity Act 1952
2. Explain the Power of Inspectors
3. Discuss the Penalties and Recovery of Gratuity
4. Describe the Cognizance offences, gratuity and protection of action in good faith

16.23 Suggested Readings

1. Commentaries on Payment of GRATUITY ACT,1972, Tenth edition, January 2022, by Kharbanda & Kharbanda (Author), Law publishing house.
2. The Payment of Gratuity Act, 1972 Paperback – 1 January 2019 by Asia Law House (Author), Asia law house, Hyderabad.
3. The Payment of Gratuity Act,1972 January 2020 by sathpal puliani (Author, Editor) karnataka law journal publication, Bangalore.
4. Labour Law Agency's Bare Act on The Payment Of Gratuity Act, 1972 | 2017 Edition, January 2022 by Labour Law Agency (Author), Mumbai.
5. Malik, P.L : Industrial Law, Eastern Book Company, Lucknow , 1999.
6. Sharma, A.M : Aspects of Labour Welfare and Social Security, Himalaya Publishing House, Mumbai, 2002.

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LESSON-17

AP SHOPS AND ESTABLISHMENT ACT

Learning Objectives

- ✓ To study the Registration and Renewal of Establishment
- ✓ To Understand the employment of women, children and young persons in the shops
- ✓ To Know the Health and safety in the shops
- ✓ To learn the wages shops and establishment of the shops
- ✓ To know the penalties and offences of shops
- ✓ To outline the issues of Bar suits

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 - 17.18.2 Deductions for services rendered
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 - 17.19.3 Procedure in trial of offences
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 - 17.20.2 Offences to be tried by magistrate of second class or above
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- 17.22 Self assessment Questions
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17.1 Introduction**Short title, extent Commencement and application**

- (1) This Act may be called the Andhra Pradesh Shops and Establishments Act, 1988.
- (2) It extends to the whole of the State of Andhra Pradesh.
- (3) It shall come into force on such date as the Government may, by notification, appoint.
- (4) It shall apply-
 - (i) in the first instance all areas in which the Andhra Pradesh Shops and Establishments Act, 1966 was in force immediately before the commencement of this Act;
 - (ii) to such other areas in the State on such date as the Government may, by notification, specify.

17.2 Definitions

this Act, unless the context otherwise requires,-

- (1) 'apprentice' means a person who is employed whether on payment of wages or not, for the purpose of being trained in any trade, craft or employment in any establishment;
- (2) 'Chief Inspector' means the Chief Inspector appointed under section 57;
- (3) 'child' means a person who has not completed fourteen years of age;
- (4) 'closed' means not open for the service of any customer, or for any trade or business or for any other purpose connected with the establishment except loading, unloading and annual stock taking;
- (5) 'commercial establishment' means an establishment which carries on any trade, business, profession or any work in connection with or incidental or ancillary to any such trade, business or profession or which is a clerical department of a factory or an industrial undertaking or which is a commercial or trading or banking or insurance establishment and includes an establishment under the management and control of a co-operative society, an establishment of a factory or an industrial undertaking which falls outside the scope of the Factories Act, 1948, (Central Act 63 of 1948) and such other establishment as the Government may, by notification, declare to be a commercial establishment for the purposes of this Act but does not include a shop;
- (6) 'day' means the period of twenty-four hours beginning at mid-night: Provided that, in the case of an employee, whose hours of work extend beyond mid-night, day means the period of twenty-four hours beginning from the time when such employment commences.

(7) 'dependent' means, in relation to a deceased employee, his nominee or in the absence of such nominee, the heir or legal representative;

(8) 'employee' means a person wholly or principally employed in, and in connection with, any establishment and includes an apprentice and any clerical or other staff of a factory or industrial establishment who fall outside the scope of the Factories Act, 1948 (Central Act 63 of 1948); but does not include the husband, wife, son, daughter, father, mother, brother or sister of an employer or his partner, who is living with and depending upon such employer or partner and is not in receipt of any wages;

(9) 'employer' means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes the manager, agent or other person acting in the general management or control of an establishment;

(10) 'establishment' means a shop, restaurant, eating-house, residential hotel, lodging house, theatre or any place of public amusement or entertainment and includes a commercial establishment and such other establishment as the Government may, by notification, declare to be an establishment for the purposes of this Act;

(11) 'factory' means factory within the meaning of the Factories Act, 1948;

(12) 'Government' means the State Government;

(13) 'Inspector' means an Inspector appointed under section 57;

(14) 'notification' means a notification published in the Andhra Pradesh Gazette and the word "notified" shall be construed accordingly;

(15) 'opened' means opened for the service of any customer or for any trade or business connected with the establishment;

(16) 'periods of work' means the time during which an employee is at the disposal of the employer;

(17) 'prescribed' means prescribed rules made by the Government under this Act;

(18) 'register of establishment' means a register maintained for the registration of establishments under this Act;

(19) 'registration certificate' means a certificate issued under this Act;

(20) 'service compensation' means the service compensation payable under section 47;

(21) 'shop' means any premises where any trade or business is carried on where services are rendered to customers and includes a shop run by a cooperative society, an office, a store room, go down, warehouse or work place, whether in the same premises or otherwise, used in connection with such trade or business and such other establishments as the Government may, by notification, declare to be a shop for the purposes of this Act, but does not include a commercial establishment;

(22) 'theatre' includes any premises intended principally or wholly for the exhibition of pictures or other optical effects by means of a cinematograph or other suitable apparatus or for dramatic or circus performances or for any other public amusement or entertainment;

(23) 'wages' means every remuneration, 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 an employee in respect of his employment or of work done in such employment, and includes-

(a) any remuneration payable under any settlement between the parties or order of a tribunal or court;

(b) any remuneration to which the employee is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment, whether called a bonus or by any other name;

(d) any sum which by reason of the termination of employment of the employee 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;

(e) any sum to which the employee is entitled under any scheme framed under any law for the time being in force; but does not include,-

(i) any bonus, whether under a scheme of profit sharing or otherwise, which does not form part of the remuneration payable under the terms of employment, or which is not payable under any award or settlement between the parties or order of a court;

(ii) 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 Government;

(iii) any contribution paid by the employer to any person or provident fund, and the interest which may have accrued thereon;

(iv) any travelling allowance or the value of any travelling concession;

(v) any sum paid to the employee to defray special expenses entailed on him by the nature of his employment;

(vi) any service compensation payable on the termination of employment in cases other than those specified in subclause (d);

(vii) the subscription paid by the employee to life insurance and the contribution paid by the employer to the life insurance of the employee under the provisions of this Act and the bonus which may have accrued thereon; or

(viii) house rent allowance payable by the employer;

(24) 'week' means a period of seven days beginning at mid-night on Saturday;

(25) 'young person' means a person who is not a child and has not completed eighteen years of age.

17.3 Registration of Establishments

(1) Every employer of an establishment shall

(i) in the case of an establishment existing on the date of commencement of this Act, within thirty days from that date; and

(ii) in the case of a new establishment, within thirty days from the date on which the establishment commences its work, send to the Inspector concerned a statement containing such particulars, together with such fees, as may be prescribed.

(2) On receipt of such statement, the Inspector shall register the establishment in the register of establishments in such manner as may be prescribed and shall issue in the prescribed form a registration certificate to the employer who shall display it at a prominent place of the establishment.

(3) Every registration certificate issued under sub-section (2), shall be valid with effect from the date on which it is issued upto the 31st day of December following.

(4) Every employer shall give intimation to the Inspector, in the prescribed form, any change in any of the particulars in the statement made under sub-section (1) within fifteen days after the change has taken place. The Inspector shall, on receipt of such intimation and the fees prescribed therefor make the change in the register of establishments in accordance with such intimation and shall amend the registration certificate or issue a fresh registration certificate, if necessary.

(5) The employer shall, within fifteen days of the closure of the establishment, give intimation thereof in writing to the Inspector, who shall, on receipt of such intimation, remove the name of the establishment from the register of establishments and cancel the registration certificate. Provided that, where the Inspector is satisfied otherwise than on receipt of such intimation, that the establishment has been closed, he shall remove the name of such establishment from the register and cancel the registration certificate.

17.4 Renewal of Registration Certificate

- (1) The Inspector may, on an application made by the employer accompanied by the fees prescribed therefor, renew the registration certificate for a period of one year or for such number of years as may be prescribed, commencing from the date of its expiry.
- (2) Every application for the renewal of the registration certificate shall be made in such form and in such manner as may be prescribed so as to reach the Inspector not later than thirty days before the date of its expiry:

Provided that, an application for the renewal of a registration certificate received not later than thirty days after its expiry may be entertained by the Inspector on the applicant paying such penalty as may be prescribed, by the Government from time to time.

- (3) An applicant for the renewal of a registration certificate under subsection (2) shall, until communication of orders on his application, be entitled to act as if the registration certificate had been renewed.

17.5. Revocation or Suspension of the Registration Certificate

If the Inspector is satisfied, either on a reference made to him in this behalf or otherwise, that-

- (a) the Registration Certificate granted under section 3 or renewed under section 4 has been obtained by mis-representation, fraud or suppression of any material fact; or
- (b) the employer has willfully contravened any of the provisions of this Act or the Rules made thereunder, the Inspector may, without prejudice to any other penalty to which the employer may be liable under this Act, revoke or suspend the Registration Certificate, after giving the employer an opportunity of showing cause

17.6. Appeal against revocation or suspension of the Registration certificate

(1) Any person aggrieved by an order made under section 5 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed: Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal within two months.

17.7. Opening and closing hours of shops

(1) No shop shall on any day be opened earlier or closed later than such hour as may, after previous publication, be fixed by the Government by a general or special order in that behalf:

Provided that, any customer who was being served or was waiting to be served in any shop at the hour fixed for its closing may be served during the quarter of an hour immediately

following such hour.

(2) The Government may, for the purposes of this section, fix different hours for different classes of shops or for different areas or for different time of the year.

17.8. Selling outside prohibited, before opening and after closing hours of shops

No person shall carry on, in or adjacent to, a street or public place, the sale of any goods, before the opening and after the closing hours fixed under section 7 for the shops dealing in any kind of goods in the locality in which such street or public place is situated: Provided that, nothing in this section shall apply to the sale of-

- (i) News papers;
- (ii) flowers;
- (iii) pan;
- (iv) vegetables and fruits; and
- (v) such other goods as the Government may, by notification, specify from time to time.

17.9. Daily and weekly hours of work in shops

(1) Subject to other provisions of this Act, no employee in any shop shall be required or allowed to work therein for more than eight hours in any day and forty-eight hours in any week.

(2) Any employee may be required or allowed to work in a shop for any period in excess of the limit fixed under sub-section (1), on payment of overtime wages, subject to the following limitations:

- (i) The total number of hours of work, including overtime, in any day shall not exceed twelve;
- (ii) The spread over, inclusive of intervals of rest, shall not exceed thirteen hours in any one day;
- (iii) The total number of hours of work in any week, including overtime, shall not exceed sixty two;
- (iv) No employee shall be allowed to work overtime, for more than seven days at a stretch; fifty.

Explanation: for the purpose of this sub-section 'Month' means Calendar month.]

17.10. Interval for rest

No employee in any shop shall be required or allowed to work therein for more than five hours in any day unless he has had an interval for rest of at least one hour:

Provided that, an employee who was serving a customer at the commencement of the interval may be required to serve him during the quarter of an hour immediately following such commencement.

17.11. Spread over periods of work

The periods of work of an employee in a shop shall be so arranged that along with his intervals for rest, they shall not spread over for more than twelve hours in any day: Provided that, where an employee works on any day for the purpose of stock-taking and preparation of accounts, the spread over shall not exceed fourteen hours in any such day on payment of over-time wages.

17.12. Closing of shops and grant of holidays

(1) Every shop, whether with or without employees, shall remain closed on every Sunday which shall be a holiday for every employee in the shop: Provided that the Chief Inspector may, by notification, specify in respect of any shop or class of shops or in respect of shops or class of shops in any area any day in the week instead of Sunday on which day such shop or class of shops shall remain closed.

(2)(a) The Chief Inspector may, by notification, require in respect of any specified class of shops that they shall in addition to the weekly holiday mentioned in sub-section (1), be closed for one half day in a week, as may be fixed by the Government;

(b) Every employee in any shop to which a notification under clause (a) applies, shall be allowed in each week an additional holiday of one half day fixed for the closing of the shop under clause (a).

(3) The Chief Inspector may, for the purposes of sub-section (2), fix different hours for different classes of shops or for different areas or for different times of the year.

(4) The weekly day on which a shop is closed in pursuance of a requirement under sub-section (2) shall be specified by the employer in a notice prominently exhibited in a conspicuous place in the shop.

(5) It shall not be lawful for the employer to call an employee at or for the employee to go to his shop or any place for any work in connection with the business of his shop on any day or part of the day on which it has remained closed.

(6) No deduction shall be made from the wages of any employee in a shop on account of any day or part of a day on which it has remained closed; and if such employee is employed on the basis that he would not ordinarily receive wages for such day or part of a day he shall nonetheless be paid for such day or part of a day the wages he would have drawn had the shop not remained closed, or had the holiday not been allowed, on that day or part of a day.

17.13. Closing of shops in public interest during special occasions

In addition to the holidays mentioned in section 12, the Chief Inspector may, by notification and with the previous approval of the Government, require in . Omitted by the Act No. 36 of 2018, S.2. respect of any specified class of shops that they shall be closed on any specified day or days in the public interest

17.14 Establishment Other Than Shops

17.14.1 Application of this chapter to establishments to other than shops

The provisions of this Chapter shall apply only to establishments other than shops.

17.14.2 Opening and closing hours

(1) No establishment shall on any day be opened earlier, or closed later, than such hour as may, after previous publication, be fixed by the Government by general or special order in that behalf Provided that, in the case of a restaurant or eating-house, any customer who was being served or was waiting to be served therein at the hour fixed for its closing may be served during the quarter of an hour immediately following such hour.

(2) The Government may, for the purposes of this section, fix different hours for different classes of establishments or for different areas or for different times of the year.

17.14.3 Daily and weekly hours of work

- (1) Subject to the provisions of this Act, no employee in any establishment shall be required or allowed to work therein for more than eight hours in any day and fortyeight hours in any week.
- (2) Any employee may be required or allowed to work in an establishment for any period in excess of the limit fixed under sub-section (1), on payment of over-time wages, subject to the following limitations:
 - (i) The total number of hours of work (including overtime), in any day shall not exceed twelve;
 - (ii) The spread over, inclusive of intervals of rest, shall not exceed thirteen hours in any one day;
 - (iii) The total number of hours of work in any week, including overtime, shall not exceed sixty two;
 - (iv) No employee shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any month shall not exceed fifty hours.

Explanation: for the purpose of this sub-section 'Month' means Calendar

17.14.4 Interval for rest

No employee in any establishment shall be required or allowed to work in such establishment for more than five hours in any day unless he has had an interval for rest of at least one hour: Provided that the Chief Inspector may, in the case of an establishment whose daily hours of work are less than eight hours, reduce interval for rest to half-an-hour on an application made by the employer, with the consent of the employees.

17.14.5 Spread over of periods of work

The periods of work of an employee in an establishment shall be so arranged that, along with his interval for rest, they shall not spread over for more than twelve hours on any day: Provided that, where an employee works on any day for the purpose of stock taking and preparation of accounts the spread over shall not exceed fourteen hours on any such day on payment of over-time wages

17.14.6 Holidays

- (1) Every employee in any establishment shall be allowed in each week a holiday of one whole day: Provided that, nothing in this sub-section shall apply to any employee whose total period of employment in the week, including any days spent on authorised leave is less than six days.
- (2) The Government may, by notification, require in respect of any specified class of establishments that every employee therein shall be allowed in each week an additional holiday of one half-day commencing at such hour in the afternoon as may be fixed by the Government.
- (3) The Government may, for the purposes of sub-section (2), fix different hours for different classes of establishments or for different areas or for different times of the year.
- (4) No deduction shall be made from the wages of any employee in an establishment on

account of any day or part of a day on which a holiday has been allowed in accordance with this section and if such employee is employed on the basis that he would not ordinarily receive wages for such day or part of a day, he shall not be paid for such day or part of a day the wages he would have drawn, had the holiday not been allowed on that day or part of a day.

(5) It shall not be lawful for the employer to call an employee at or for the employee to go to, his establishment or any other place for any work in connection with the business of his establishment on any day or part of a day on which a holiday has been allowed in accordance with this section.

17.15 Employment Of Women, Children And Young Persons

17.15.1 Children not to work in establishment

No Child shall be required or allowed to work in any establishment.

17.15.2 Special provision for young persons

No young person shall be required or allowed to work in any establishment before 6 a.m. and after 7 p.m.

17.15.3 Daily and weekly hours of work for young persons

Notwithstanding anything in this Act, no young person shall be required or allowed to work in any establishment for more than 7 hours in any day and forty-two hours in any week nor shall such person be allowed to work overtime.

17.15.4 Special provision for women

No Woman employee shall be required or allowed to work in any establishment before 6-00 a.m. and after 8-30 p.m.: Provided that the women employees may be required or allowed to work between 8.30 p.m. and 6.00 a.m. in any establishment in which adequate safety security measures and other safeguards as may be prescribed by the State Government are provided. The safety and security measures shall include provision of shelter, rest rooms, lunch rooms, night crèches and ladies, toilets, adequate protection of their privacy, dignity, honor and safety, protection from sexual harassment, employment of at least five (5) women employees together and their transportation between factory premises and the doorstep of their residence:

Provided further that the above relaxation shall not be allowed to a woman employee during a period of sixteen (16) weeks before and after her childbirth, of which at least eight (8) weeks shall be before the expected childbirth, and for such additional period, if any, as specified in the medical certificate stating that it is necessary for the health of the woman employee or her child].

17.15.5 Maternity leave

The periods of absence from duty in respect of which a woman employee is entitled to maternity benefit under section 25, shall be treated as authorised absence from duty, and the woman employee shall be entitled to maternity benefit, but not to any wages for any of those periods.

17.15.6 Maternity benefit

Every woman who has been for a period of not less than six months preceding the date of her delivery in continuous employment of the same employer whether in the same or

different shops or commercial establishments, shall be entitled to receive from her employer for the period of-

- (a) six weeks immediately preceding the day of delivery; and
- (b) six weeks following the day of delivery; such maternity benefit and in such manner as may be prescribed:

Provided that, no woman employee shall be entitled to receive such benefit for any day during any of the aforesaid periods, on which she attends work and receive wages thereof.

17.16 Health And Safety

17.16.1 Clean lines

The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed.

17.16.2 Ventilation

The premises of every establishment shall be ventilated as provided for in the laws relating to the municipalities, gram-panchayats or other local authorities for the time being in force.

17.16.3 Precautions for the safety of employees in establishments

(1) In every establishment other than such establishment or class of establishments as the Government, may, by notification, specify, such precautions against fire shall be taken as may be prescribed.

(2) Nothing in sub-section (1) shall apply in respect of any establishment where the number of holidays with wages allowed by the employer is more than the holidays notified by the Government under that sub-section: Provided that, every such employer shall send a list of holidays with wages allowed by him, which shall include the five holidays specified in subsection (1), to the inspector and to the Chief Inspector and shall also display the list at a prominent place of the establishment.

17.16.4 Pay during leave and holidays

Every employee shall, for the period of the leave allowed under sub-sections (1) and (5) of section 30 or the holidays allowed under section 31, be paid at a rate equivalent to the daily average of his wages for the days on which he actually worked during the preceding month exclusive of any earning in respect of overtime.

17.16.5 Power to increase the period of leave allowable under section 30

Notwithstanding anything in section 30, the Government may, by notification, increase the total number of days of leave allowable under subsection (1) of that section and the maximum number of days upto which such leave may be accumulated in respect of any establishment or class of establishments.

17.16.6 Compulsory enrolment of employees to Insurance-cum-Savings Scheme

(1) Every employee who has served in an establishment for a period of not less than one year shall subscribe to the insurance scheme or Insurance-cum-Saving scheme as may be notified by the Government to be applicable to the establishment in which the employee is working, at the rates, stipulated by the Government in the notification either in lumpsum

every year or in monthly installments as may be prescribed by the Government in the notification. For this purpose the employer shall make the payment to the authority notified by the Government on behalf of the employee on or before the stipulated date and recover the same from the wages payable to the employee.

(2) In addition to the subscription of the employee mentioned in subsection (1), every employer of the establishment to which the scheme of insurance or Insurance-cum-Savings is made applicable by the Government, shall also pay such percentage of annual wages of employee as may be notified by the Government, from time to time to the authority notified for the purpose as employer's contribution on or before the specified date every year.

17.17 Wages, Conditions For Termination Of Services, Appeals, Suspension And Terminal Benefits

17.17.1 Responsibility for payment of wages

Every employer shall be responsible for the payment by him to employees of all wages and sums, required to be paid under this Act.

Fixation of wage period-

(1) Every employer shall fix periods (hereinafter referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

17.17.2 Wages for over time work

Where any employee in any establishment is required to work over-time he shall be entitled, in respect of such over-time work, to wages at twice the ordinary rate of wages:

Provided that, where the normal hours of work in an establishment are ordinarily less than eight hours a day and 48 hours a week, he shall be entitled in respect of work in excess of such normal hours upto eight hours a day and forty eight hours a week to wages at the ordinary rate of wages and in respect of work in excess of eight hours a day and forty eight hours a week at twice the ordinary rate of wages, in addition to the wages for the normal hours of work. Explanation:- For the purpose of this section, the expression 'ordinary rates of wages' shall mean such rate of wages as may be calculated in the manner prescribed.

17.17.3 Time of payment of wages

(1) The wages of every employee shall be paid before the expiry of the fifth day after the last day of the wage-period in respect of which the wages are payable.

(2) Where the service of any employee is terminated by or on behalf of the employer the wages earned by such employee shall be paid before the expiration of the second working day from, the day on which his employment is terminated.

(3) The Government may, by general or special order and for reasons stated therein exempt an employer from the operation of this section in respect of the wages of any employee or class of employees to such extent and subject to such conditions as may be specified in the order.

(4) All payments of wages shall be made on a working day.

Wages to be paid in current coin or currency notes

All wages shall be paid in current coin or currency notes or in both.

Deductions which may be made from wages

(1) The wages of an employee shall be paid to him without deduction of any kind except those authorised by or under this Act.

Explanation:-Every payment made by an employee to the employer shall, for the purposes of this Act, be deemed to be a deduction from wages (2) Deductions from the wages of an employee shall be made only in accordance with the provisions of this Act and may be of the following kinds only, namely:-

(a) fines and other penalties lawfully imposed;

(b) deductions for absence from duty;

(c) deductions for damages to, or loss of goods expressly entrusted to the employee for custody or for loss of money for which he is required to account, where such damage or loss is directly

attributable to his neglect or default;

(d) deductions for house accommodation provided by the employer;

(e) deductions for such amenities and services supplied by the employer as the Government may, by general or special order, authorise;

(f) deductions for recovery of advances or for adjustment of overpayments of wages;

(g) deductions of income-tax or profession-tax payable by the employee;

(h) deductions required to be made by order of a court or other authority competent to make such order;

(i) deductions for subscriptions to and for repayment of advances from, any provident fund to which the Provident Funds Act, 1925 (Central Act 19 of 1925) applies or any recognised provident fund as defined in section 2(38) of the Income Tax Act, 1961, (Central Act 43 of 1961) or any provident fund approved in this behalf by the Government during the continuance of such approval;

(j) deductions for payments to co-operative societies approved in this behalf by the Government or any officer authorised by them in this behalf or to a scheme of insurance maintained by the Indian Post Office or the Life Insurance Corporation of India established under Life Insurance Corporation Act, 1956 (Central Act 31 of 1956):

(k) deductions made with the written authorisation of the employee in furtherance of any savings scheme approved by the Government or the purchase of securities of the Central or State Government.

Fines

(1) No fine shall be imposed on any employee save in respect of such acts and omissions on his part as the employer, with previous approval of the Government or of the prescribed authority may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner

4 on the premises in which the employment is carried on.

(3) No fine shall be imposed on any employee until he has been given all opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage period on any employee shall not exceed an amount equal to three paise in the rupee of the wages payable to him in respect of that wage period.

(5) No fine shall be imposed on any employee who has not completed the age of fifteen years.

(6) No fine imposed on any employee shall be recovered from him after the expiration of sixty day 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 realizations thereof shall be recorded in a register to be kept by the employer in such form as may be prescribed; and all such realizations shall be applied only to such purposes beneficial to the employees in the establishment as are approved by the prescribed authority.

7 Explanation :- When the employees are only part of a staff employed under the same management all such realizations may be credited to a common fund maintained for staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

5 **17.18 Deductions for absence from duty**

(1) Deductions may be made under clause (b) of sub-section (2) of section 40 only on account of the absence of an employee 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.

(2) The amount of such deduction shall in no case bear to the wages payable to the employee 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 Government, if ten or more employees acting in concert absent themselves without due notice, that is to say, without giving the notice which is required under the terms of their contract of employment and without reasonable cause, such deduction from any such employee may include such amount not exceeding his wages for four days as may by any such terms be due to the employer in lieu of due notice.

Explanation:-For the purpose of this section, an employee shall be deemed to be absent from the place where he is required to work, if, although present in such place he refuses, in

pursuance of a stay in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

17.18.1 Deductions for damage or less

A deduction under clause (c) of subsection (2) of section 40 shall not exceed in respect of the damage of goods, one half of the amount of such damage and in respect of loss of goods or money, the amount of such loss caused to the employer by negligence or default of the employee and shall not be made until the employee has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the employer in such form as may be prescribed.

17.18.2 Deductions for services rendered

A deduction under clause (d) or clause (e) of sub-section (2) of section 40 shall not be made from the wages of an employee unless the house accommodation, amenity or service has been accepted by him as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and in the case of a deduction under the said clause (e), it shall be subject to such conditions, as the Government may impose.

Deductions for recovery of advances

Deductions under clause (f) of sub-section (2) of section 40 shall be subject to the following conditions, namely:-

(a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period but no recovery shall be made of such

advance given for travelling, expenses;

(b) recovery of advances

17.19 Penalties For Offences

Penalties

(1) Any employer who makes any false or incorrect statement under section 3 shall be punishable with fine which may extend to one hundred rupees.

(2) Any employer who contravenes any of the provisions of the sections 3, 4, 5, 7, 9 to 12, 13, 15 to 32, 34 to 47, 49, 68 and 69 shall be punishable for a first offence with fine which may extend to rupees one hundred, for a second offence with fine which shall not be less than rupees two hundred and fifty but which may extend to rupees five hundred and for the third or subsequent offences with imprisonment for a term which may extend to three months and with a fine which shall not be less than rupees five hundred but which may extend to rupees one thousand :

Provided that where any employer fails to possess a valid certificate of registration in contravention of the provisions of sections 3, 4 and 5 he shall, on conviction be punishable, in the case of a continuing offence with a further fine which may extend to rupees two hundred

and fifty for each day during which the offence continues.

(3) Whoever contravenes the provisions of section 8 shall be punishable for a first offence with fine which may extend to one hundred rupees, and for a second or subsequent offence with fine which may extend to two hundred and fifty rupees.

(4) Whoever contravenes the provisions of sub-section (2) of section 48 shall on conviction be punishable with fine which may extend to rupees fifty for each day during which the offence continues.

(5) Whoever contravenes the provisions of sub-section (3) of section 48 shall on conviction be punishable with a fine which may extend to rupees fifty for each day during which the offence continues.

17.19.1 Power to Compound offence

The Chief Inspector may authorise by notification any officer to accept from any person who is reasonably believed to have committed an offence under sections 3, 4, 7, 8, 10, 12, 15, 16, 17, 19, 20, 31 and 63 of this Act or the rules made thereunder a sum of money not exceeding rupees one hundred in case of each violation by way of compounding such offence. Any proceedings taken against such person in respect of such offence shall on payment of such money be withdrawn and no further proceedings shall be taken in respect of such offence.

17.19.2 Penalty for obstructing Inspector, etc.,

Any person who wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act or any person lawfully assisting such Inspector in the exercise of such power, or who fails to comply with any lawful direction made by such Inspector, shall be punishable with imprisonment for a term which may extend to three months or with both.

17.19.3 Procedure in trial of offences

(1) No Court shall take cognizance of a complaint against an employer under sub-section (2) of section 61 relating to deductions from the wages or delay in payment of wages or service compensation payable under this Act to an employee, unless an application in respect of facts constituting the offence has been presented under section 51 and has been granted wholly or in part and the authority empowered under the latter section or the appellate authority granting such applications has sanctioned the making of the complaint.

Before sanctioning the making of a complaint against the employer for such an offence, the authority empowered under section 50 or the Appellate Authority, as the case may be, shall give such employer an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such employer satisfies the authority or Court that his default was due to-

- (a) a bonafide error or bonafide dispute as to amount payable to the employee; or
- (b) the existence of exceptional circumstances, such that the employer was unable, though exercising diligence, to make prompt payment; or
- (c) the failure of the employee to accept payment.

(3) No Court shall take cognizance of a complaint against any person for an offence under section 61 other than the offence referred to in sub-section (1) or for a contravention of any

rule made under section 71 except on complaint made by or with the previous sanction in writing of an Inspector under this Act within six months from the date on which the offence or contravention is alleged to have been committed.

(4) In imposing any fine for an offence referred to in sub-section (1), the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 51.

17.20 Bar of suits

No Court shall entertain any suit for the recovery of wages or service compensation or of any deduction therefrom in so far as the sum so claimed-

- (a) forms the subject of an application under section 51 which has been presented by the plaintiff and which is pending before the authority appointed under section 50 or of an appeal under section 53; or
- (b) has formed the subject of a direction under section 51 in favour of the plaintiff; or
- (c) has been adjudged, in any proceeding under section 51 not to be owned to the plaintiff; or
- (d) could have been recorded by an application under section 51.

17.20.1 Contracting Out

Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

17.20.2 Offences to be tried by magistrate of second class or above

No Court, inferior to that of a Magistrate of the Second Class shall try any offence punishable under this Act, or any rule or order made there under.

17.21 Key words

Renewal of Registration Certificate - The Inspector may, on an application made by the employer accompanied by the fees prescribed there for, renew the registration certificate for a period of one year or for such number of years as may be prescribed, commencing from the date of its expiry.

Registration of Establishment- Every employer of an establishment shall in the case of an establishment existing on the date of commencement of this Act, within thirty days from that date;

Revocation or Suspension of the Registration Certificate - If the Inspector is satisfied, either on a reference made to him in his behalf or otherwise, that the Registration Certificate granted under section 3 or renewed under section 4 has been obtained by mis-representation, fraud or suppression of any material fact;

Appeal against revocation or suspension of the Registration certificate - Any person aggrieved by an order made under section 5 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed: Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

17.22 Self Assessment questions

1. Briefly explain the Registration and Renewal of Establishment
2. Identify Health and Safety issues in the shops
3. Discuss the Penalties and offences of shops
4. Outline the Issues of Barsuits

17.23 Suggested Readings

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2. Taxmann(2020) Labour Laws with Code on Wages Book Taxman's Publications
3. Dr. O. P. Gupta, Dr. Vijay Gupta (2021) Labour Legislation In India: Revised Edition SBPD Publishing House, Agra.
4. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers
5. Commercial Labour Laws Edition 2022 Commercial Law Publishers House.
6. Srivastava S.C.(2022) Industrial Relations and Labour Laws Sixth Edition Vikas Publishing House Pvt Ltd
7. Padhi P.K (2021) Labour and Industrial Laws Forth Edition PHI Learning
8. V.K. Kharbanda (2022) LPH's Labour Law Digest Edition Law Publishing House
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LESSON -18

EMPLOYMENT EXCHANGE ACT 1959

Learning Objectives

- ✓ To Understand the Notifications of Vacancies in employment exchanges
- ✓ To learn the Cognizance of offences in Employment Exchange
- ✓ To study the Power to make rules of Employment exchange

Structure

- 18.1 Introduction
- 18.2 Definitions
- 18.3 Notification of vacancies in employment exchanges
- 18.4 Right of access to records or documents
- 18.5 Cognizance of offence
- 18.6 Power to make rules
- 18.6.1 Employers to furnish information and returns in prescribed form.
- 18.6.2 Right of access to records or documents
- 18.6.3 Penalties
- 18.7 Cognizance of Offences
- 18.8 Power to make rules.
- 18.7 Summary
- 18.8 key words
- 18.9 Self Assessment Questions
- 18.10 Suggested Readings

18.1 Introduction

Short title, extend and commencement:

- a. The Act may be called the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.
- b. It extends to the whole of India except the State of Jammu and Kashmir.
- c. It shall come into force in a State on such a date as the Central Government may, by notification in the Official Gazette, appoint in this behalf for such State and different dates may be appointed for different States or for different areas of a State.

18.2 Definitions

2. In this Act, unless the context otherwise requires:

- (a) "appropriate Government" means- (I) in relation to:
 - (a) any establishment of any railway, major port, mine or oil-field, or
 - (b) any establishment owned, controlled or managed by-
 - (i) the Central Government or a department of the Central Government,
 - (ii) a company in which not less than fifty-one per cent of the shares capital is held by the Central Government or partly by the Central Government and partly by one or more State Governments,
 - (iii) a corporation (including a co-operative society) established by or under a Central Act which is owned, controlled or managed by the Central Government;

(II) in relation to any other establishment, the Government of the State in which that other establishment is situated;

(b) "employee" means any person who is employed in an establishment to do any work for remuneration;

(c) "employer" means any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment;

(d) "employment exchange" means any office of place established and maintained by the Government for the collection and furnishing of information, either by the keeping of registers or otherwise, respecting

1. persons who seek to engage employees,
2. persons who seek employment, and
3. vacancies to which persons seeking employment may be appointed;

(e) "establishment" means

(a) any office, or

(b) any place where any industry, trade business or occupation is carried on;

(f) "establishment in public sector" means an establishment owned, controlled or managed by-

(i) the Government or a Department of the Government;

(ii) a Government company as defined in Section 617 of the Companies Act, 1956,

(iii) a corporation (including a co-operative society) established by or under a Central provincial or State Act, which is owned, controlled or managed by the Government,

(iv) a local authority;

(g) "establishment in private sector" an establishment which is not an establishment in public sector and where ordinarily twenty-five or more persons are employed to work for remuneration; (h) "prescribed" means prescribed by rules made under this Act;

(i) "unskilled office work" means work done in an establishment by any of the following categories of employees, namely

1. daftari,
2. jamadar, or orderly and peon,
3. dusting man or farash,
4. bundle or record lifter,
5. process server,
6. watchman,
7. sweeper,
8. any other employee doing any routine or unskilled work which the Central Government may, by notification in the Official Gazette, declare to be unskilled office work. Act not to apply in relation to certain vacancies:

1. This Act shall not apply in relation to vacancies a. in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;

b. in any employment in domestic service;

c. in any employment the total duration of which is less than three months;

d. in any employment to do unskilled office work;

e. in any employment connected with the staff of Parliament.

Unless the Central Government otherwise directs by notification in the

¹ Official Gazette in this behalf this Act shall not also apply relation to:

a. Vacancies which are proposed to filled through promotion or by absorption or surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Commission and the like;

b. Vacancies in an employment which carries a remuneration of less than sixty rupees in ¹ month.

Act not to apply in relation to certain vacancies:

I. This Act shall not apply in relation to vacancies

a. in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;

b. in any employment in domestic service;

c. in any employment the total duration of which is less than three months;

d. in any employment to do unskilled office work;

e. in any employment connected with the staff of Parliament.

Unless the Central Government otherwise directs by notification in the

Official Gazette in this behalf this Act shall not also apply relation to:

a. Vacancies which are proposed to filled through promotion or by absorption or surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Commission and the like;

b. Vacancies in an employment which carries a remuneration of less than sixty rupees in month.

¹ 18.3 Notification of vacancies in employment exchanges

I. After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall, before filling up any vacancy in any employment in that establishment notify that vacancy to such employment exchanges as may be prescribed.

II. The appropriate Government, may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment ¹ private sector or every establishment pertaining to any class or category of establishments in private sector shall before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment may be prescribed, exchanges as and the employer shall thereupon comply with such requisition.

III. The manner in which the vacancies referred to in sub-section (I) or sub-section (II) shall be notified the employment exchanges and the particulars or employments in which such vacancies have occurred about to occur shall be such as may be prescribed.

IV. Nothing in sub-section (I) and (II) shall be deemed to impose any obligation upon any employer to recruit any person through the employment exchange to fill ¹ any vacancy merely because that vacancy has been notified under any of those subsections. Employers to furnish information and returns in prescribed form 5.

I. After the commencement of this Act any State or area thereof, the employer in every

establishment in the public sector in that State or area shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment, to such employment exchanges as may be prescribed.

II. The appropriate Government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category or establishments in private sector shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment to such employment exchanges as may be prescribed, and the employer shall thereupon comply with such requisition.

III. The form in which, and the intervals of time at which, such information or return shall be furnished and the particulars which they shall contain shall be such as may be prescribed.

18.4 Right of access to records or documents

Such officer of Government as may be prescribed in this behalf, or any person authorized by him in writing, shall have access to any relevant record or document in the possession of any employer required to furnish any information or returns under section 5 and may enter at any reasonable time any premises where he believes such record or document to be and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any information required under this section. Penalties

I. If any employer fails to notify to the employment exchanges prescribed for the purpose any vacancy in contravention of sub-section (I) or sub-section (II) of section 4, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees.

II. If any person, required to furnish any information or return-

- (i) refuses or neglects to furnish such information or return, or
- (ii) furnishes or causes to be furnished any information or return which he knows to be false, or
- (iii) refuses to answer, or gives a false answer to, any question necessary for obtaining any information required to be furnished under section 5; or

b. impedes the right of access to relevant records or documents or the right of entry conferred by section 6, he shall be punishable for the first offence with fine which may extend to two hundred and fifty rupees and for every subsequent offence with fine which may extend to five hundred rupees.

18.5 Cognizance of offence

No prosecution for an offence under this Act shall be instituted except by or with the sanction of such officer of Government as may be prescribed in this behalf of or any person authorized by that officer in writing.

No suit, prosecution, or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

18.6 Power to make rules

I. The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication make rules for carrying out the purposes of this Act.

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

a. the employment exchange or exchanges to which, the form and manner in which and the time within which, vacancies shall be notified, and the particulars of employment in which such vacancies have occurred or are about to occur;

b. the form and manner in which and the intervals at which information and returns required under section 5 shall be furnished, and the particulars which they shall contain;

c. the officers by whom and the manner in which the right of access to documents and the right of entry conferred by section 6 may be exercised;

d. any other matter which is to be, or may be prescribed under this Act.

All rules made under this Act shall be laid for not less than thirty days before each House of Parliament as soon as may be after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

18.6.1 Employers to furnish information and returns in prescribed form.

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

(2) The appropriate Government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment to such employment exchanges as may be prescribed, and the employer shall thereupon comply with such requisition.

(3) The form in which, and the intervals of time at which, such information or return shall be furnished and the particulars which they shall contain shall be such as may be prescribed.

18.6.2 Right of access to records or documents

Such officer of Government as may be prescribed in this behalf, or any person authorized by him in writing, shall have access to any relevant record or document in the possession of any employer required to furnish any information or returns under section 5 and may enter at any reasonable time any premises where he believes such record or document to be and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any information required under that section.

18.6.3 Penalties

(1) If any employer fails to notify to the employment exchanges prescribed for the purpose any vacancy in contravention of sub-section (1) or sub-section (2) of section 4, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees.

(2) If any person--

(a) required to furnish any information or return--

(i) refuses or neglects to furnish such information or return, or

(ii) furnishes or causes to be furnished any information or return which he knows to be false, or

(iii) refuses to answer, or gives a false answer to, any question necessary for obtaining any information required to be furnished under section 5; or

(b) impedes the right of access to relevant records or documents or the right of entry conferred by section 6,

he shall be punishable for the first offence with fine which may extend to two hundred and fifty rupees and for every subsequent offence with fine which may extend to five hundred rupees.

18.7 Cognizance Of Offences

No prosecution for an offence under this Act shall be instituted except by, or with the sanction of, such officer of Government as may be prescribed in this behalf or any person authorised by that officer in writing.

Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

18.8 Power to make rules.

(1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes 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) the employment exchange or exchanges to which, the form and manner in which, and the time within which vacancies shall be notified, and the particulars of employments in which such vacancies have occurred or are about to occur;

(b) the form and manner in which, and the intervals at which, information and returns required under section 5 shall be furnished, and the particulars which they shall contain;

(c) the officers by whom and the manner in which the right of access to documents and the right of entry conferred by section 6 may be exercised;

(d) any other matter which is to be, or may be, prescribed under this Act.

18.9 Summary

Every rule made under this Act 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 or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

18.10 Key words

“appropriate Government” means- (I) in relation to any establishment of any railway, major port, mine or oil-field, or any establishment owned, controlled or managed by

employment exchange” means any office of place established and maintained by the Government for the collection and furnishing of information, either by the keeping of registers or otherwise, respecting

“unskilled office work” means work done in an establishment by any of the following categories of employees, namely daftari, jamadar, or orderly and peon, dusting man or farash, bundle or record lifter, process server, watchman, sweeper,

18.11 Self Assessment questions

1. Briefly Discuss the Notification of vacancies in employment Exchanges
2. Describe the right to information about books regarding the employment Exchanges
3. Explain the procedure the Cognizance of offences in Employment exchange

18.12 Suggested Readings

1. Labor Laws (2011) I.A Saiyed Himalaya Publishing House
2. Taxmann(2020) Labour Laws with Code on Wages Book Taxman’s Publications
3. Dr. O. P. Gupta, Dr. Vijay Gupta (2021) Labour Legislation In India: Revised Edition SBPD Publishing House, Agra.
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5. Commercial Labour Laws Edition 2022 Commercial Law Publishers House.
6. Srivastava S.C(2022) Industrial Relations and Labour Laws Sixth Edition Vikas Publishing House Pvt Ltd
7. Hardbound, Justice M.R. Mallick (2021) Labour & Industrial Law Manual Professional Book Publishers
8. Padhi P.K(2021) Labour and Industrial Laws Forth Edition PHI Learning
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10. Commercial’s New Labour & Industrial Code along with Draft Rules 3rd Edition 2022

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