

Labour Legislations

DMGT516

Edited by:
Amit Kumar Sharma



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LABOUR LEGISLATIONS

Edited By
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SYLLABUS

Labour Legislations

Objectives: This course is aimed at developing an understanding of the interaction pattern among labour, management and the State; impart basic knowledge of the Indian Labour Laws and its distinctive features and impart knowledge of the various enactments with focus on practice.

| Sr. No. | Topics |
|---------|--|
| 1. | Introduction to Labour Legislation: Social legislation and Labour Legislation , Forces influencing Labour Legislation in India, Principals of modern Labour Legislation, types of Labour Legislation |
| 2. | International Labour Organisation: Preamble to the constitution, Organisation structure, Major Activities of ILO, International standards of Labour and their influence on Indian Labour Legislation |
| 3. | The Factories Act, 1948: objective, coverage, welfare measures, administrative machinery, recommendations of Second National Commission on Labour. |
| 4. | Industrial Employment (standing order) Act, 1946: Objective, Coverage, Benefits and main provisions of the act. |
| 5. | Trade Union Act, 1926: Objective, Registration Process and miscellaneous provisions Industrial Disputes Act, 1947: Objective, Coverage, Benefits, strikes and lockout, Conciliation Officers, Board, Court of enquiry, Labour Court, tribunals, National tribunals, Amendments, Collective Bargaining: Importance, Levels, Collective agreements, Hurdles to Collective Bargaining in India |
| 6. | The Workmen's Compensation Act, 1923: Objective, Coverage, Benefits ,Main provisions. Employee's State Insurance Act, 1948: objective, scope, coverage, benefits, The role of ESI Corporation and ESI Hospitals, critical appraisal of the Act |
| 7. | The Employee's Provident Fund and Miscellaneous Provision Act, 1952: objective, coverage, employers' obligations, benefits, penalties, critical appraisal of the Act. |
| 8. | The Payment of Gratuity Act, 1972: Objective, Coverage, Employers' obligations, benefits, critical appraisal of the Act. |
| 9. | The Maternity Benefit Act, 1961: Objective, Coverage, Benefits, penalties, critical appraisal of the Act. |
| 10. | Child Labour (Prohibition and Regulation Act, 1986): Objective, Coverage, Benefits, Contract Labour (Regulation and Abolition Act, 1986): Objective, Coverage, main provisions |

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Unit 1: Labour Welfare and Concept

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Objectives

After studying this unit, you will be able to:

- Discuss factors influencing labour legislation
- Explain establishment of ILO
- Describe nature of labour legislations
- State the principles of modern legislation
- Explain objectives of labour legislations
- Discuss agencies for the welfare work
- Explain classification of labour legislation
- Describe labour welfare officer
- Analyse statutory and non-statutory welfare measures

Introduction

As we all know that Welfare includes anything that is done for the comfort and improvement of employees and is provided over and above the wages. Welfare helps in keeping the morale and motivation of the employees high so as to retain the employees for longer duration. The welfare measures need not be in monetary terms only but in any kind/forms.

The need for the labour laws and the labour welfare organizations arose because of the industrial revolution. The industrial society brought the excessive exploitation of the working classes by the employers who took the advantage of the individual dispensability of the workers and wanted maximum profit on their investments. Hire and fire rule was prevalent and the general law of contract used to contract the relation between the worker and the employer, its terms were verbal.

Employee welfare includes monitoring of working conditions, creation of industrial harmony through infrastructure for health, industrial relations and insurance against disease, accident and unemployment for the workers and their families. Labor welfare entails all those activities of employer, which are directed towards providing the employees with certain facilities and services in addition to wages or salaries.

1.1 Introduction to Labour Welfare

Labour sector addresses multi-dimensional socio-economic aspects affecting labour welfare, productivity, living standards of labour force and social security. A participatory planning process is an essential pre-condition for ensuring equity as well as accelerating the rate of growth of economy. To rise Living standards of the work force and achieve higher productivity; skill upgradation through suitable training is of utmost importance. Manpower development to provide adequate labour force of appropriate skills and quality to different sectors is essential for rapid socioeconomic development. In order to address the concerns of equity in a sustainable manner it is necessary to ensure significant improvements in the quality of labour, productivity, skill development and working conditions, and to provide welfare and social security measures particularly, to those in the unorganized sector. Employment generation in all the productive sectors is one of the basic objectives. In this context, efforts are being made for providing the environment for self-employment both in urban and rural areas. During the Ninth Plan period, elimination of undesirable practices such as child labour, bonded labour, and aspects such as

ensuring workers' safety and social security, looking after labour welfare and providing of the necessary support measures for sorting out problems relating to employment of both men and women workers in different sectors has received priority attention.

The improvement of labour welfare and increasing productivity with reasonable level of social security is one of the prime objectives concerning social and economic policy of the Government. The resources have been directed through the Plan programmes towards skill formation and development, monitoring of working conditions, creation of industrial harmony through infrastructure for health, industrial relations and insurance against disease, accident and unemployment for the workers and then families. The situation of surplus labour and workers in the unorganised segment of the economy give rise to unhealthy social practices such as bonded labour, child labour and adverse working conditions. In the year 1999, Workmen Compensation Act has been revised to benefit the workers and their families in the case of death/disability. The labour laws enforcement machinery in the States and at the Centre are working to amend the laws which require changes, revise rules, regulations orders and notifications.

1.2 Factors Influencing Labour Legislations

There are a number of factors that had direct or indirect influence on the labour legislations. They are:

1. **Early Exploitative Industrial Society:** The early phase of industrialization was an era of unbridled individualism, freedom of contract and the laissez-faire, and was characterized by excessive hours of work, employment of young children under very unhygienic and unhealthy conditions, payment of low-wages and other excesses. The conditions of life and labour in the early periods of industrialization in India were extremely rigorous – hours of work were excessive, and the industrial labour drawn from the rural areas was severely exploited.

The early factory and labour legislation in India resulted from the need for protecting the interests of the foreign industrialists and investors. In the tea plantations of Assam and Bengal, where life and work became extremely intolerable, workers started deserting their place of work for their village homes.

The earliest labour legislation, the Tea District Emigrant Labour Act, 1832 and Workmen's Breach of Contract Act, 1859 were designed more for the purpose of ensuring a steady supply of labour to the tea gardens in Assam than for protecting the interests of the laborers. The latter Act made the desertion of the tea gardens by the laborers, a criminal offence. This was despite that fact that the conditions of life and work in the tea gardens were extremely difficult and strenuous.

The first Factory Act of 1881 resulted from the complaints of the Lancashire textile magnates, against competition by the cotton textiles produced in the Indian mills because the labour employed by them was extremely cheap. The main idea behind this legislation was to increase the cost of production of Indian textiles by reducing the hours of work and improving other working conditions, but they were incidental to the main purpose of the protection of the interests of the Lancashire industrialists.

2. **Early Administrators and the Civil Servants in India were drawn from England:** They brought with them the pragmatism of the British society and were steeped in the English tradition. So, the pattern of Indian labour legislation has closely followed that of England with a big time lag. The cotton textile industry was the first to come under the purview of the Factories Acts in both the countries, though their scope at the early stages was very restricted.

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Other pieces of labour legislations enacted during the period such as the various amendments to the Factories Act, the Workmen's Compensation Act, 1923, the Indian Mines Act, 1923, the Indian Trade Unions Act, 1926, the Payment of Wages Act, 1936, the Employment of Children Act, 1938, among others, have followed the British pattern. Naturally, such excesses could not have continued for long without protest and without demand for reforms.

3. **Growth of Trade Unionism:** The Trade Union movement which springs from industrial revolution has been another factor that quickened the growth of labour legislations. On the one hand, their demands for protection of the interests of the working class led to legislations in the field of wages, hours of work, women's compensation, social security and other areas; on the other hand, their growth necessitated legislations for the regulation of industrial disputes, their prevention and settlement and trade union rights and privileges. Trade unions have been as much conditioned by labour legislations as they have conditioned them.
4. **Political Freedom End of Colonial Rule and Extension of Adult Franchise:** Gradual extension and adoption of universal adult suffrage placed in the hands of the working class, a powerful instrument to influence the cause of state policy. Their representatives started espousing the cause of labour and getting progressive legislations passed. The workers used their political powers for betterment and amelioration of their lots.
5. **Rise of Socialist and Other Revolutionary Ideas:** The exploitation of labour was inherent in the capitalist economic system, so, the revolutionists advocated overthrowing the capitalist system. The echo of the slogan, "the workers of the world unite, you have nothing to lose but your chains", reverberating throughout the capitalist world, sent a shudder among the conservative and capitalist circles to protective labour legislations came as safe alternatives. They readily grasped labour legislations as antidote to the spread of revolutionary ideas. The Fabian Society of England, the establishment of socialist and communist parties in many countries and first and second internationals strengthened the trend for progressive labour legislations.

1.3 Establishment of ILO

ILO, through Conventions and Recommendations, has undertaken the task of creating international minimum standards of labour which constitute the International Labour Code. They cover issues related to wages, hours of work, annual holidays with pay, minimum age of employment, medical examination, maternity protection, industrial health, safety and welfare, social security, freedom of association, right to organize and bargain collectively, employment conditions of seamen and employment.

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

1.4 Nature of Labour Legislations

1. 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.

2. Labour legislation regards individuals as workers, whereas the general legislation regards him a citizen. The principles governing labour legislations are more influenced by the postulates of social justice than general justice. Workers are the weaker class of industrial society and have suffered long at the hands of employers. Therefore, these sets of legislations go out of the 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.
3. Labour legislation seeks to deal with problems arising out of occupational status of the individual. Consequently, such problems as hours of work, wages, working conditions, trade unions, industrial disputes etc. come to be the main subject matter of labour legislations. Thus, the behaviour of the individual or his groups is the function of labour legislation as of any other legislation. But under labour legislation, the individual is affected in the capacity of a worker or an employer. Therefore, the persons who are neither the employers nor the workers are least affected directly by labour legislation. To make the point clear, a few examples are necessary. A legislation regarding working conditions such as the factory legislation or laws regarding payment of wages or compensation for work injury or employment of women or children impinges upon the individuals as workers and the employers. On the contrary, a law regarding ownership of property or a law relating to the marriage or sales tax affects him as a citizen.
4. 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 are (a) to provide subsistence, (b) to aim at abundance, (c) to encourage equality, and (d) to maintain security.
5. 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 society and the institution of labour legislation.
6. (a) Not only contractual obligations, but beyond it by creating new rights and obligations.
(b) Labour Law can operate along with General Law. A 'theft' can be dealt by Labour Law as well as IPC
(c) No jurisdiction of civil courts

1.5 Principles of Modern Labour Legislation

The principles of labour legislation have been categorized as social justice, social welfare, national economy and international solidarity.

1. The principle of social justice includes: abolition of servitude, freedom of association, collective bargaining and industrial conciliation.

Notes

2. The principle of social welfare covers: development of childhood, opportunity of education, conservation of womanhood and improvement of environment.
3. The principle of national economy is concerned with development of industry, control of working conditions, regulation of wage payment and social insurance.
4. The principle of international solidarity has been explained in terms of the compliance of the provisions of Conventions and Recommendations adopted by ILO.

On the basis of a study of the objectives behind the enactment of labour laws in a global perspective, certain generalizations may be drawn in respect of the principles. These principles of labour legislation may be classified and explained as follows:

1.5.1 Principle of Protection

The principle of protection suggests enactment of labour legislation to protect those workers who are to protect their interests on their own and also workers, in particular industries against the hazards of industrial process. The workers lacking organized strength were not in a position to raise an effective voice against their hardships and sufferings.

As industrialization spread, a large number of factories with varying processes and products came to be set up. These created new hazards for the workers. Some of the areas where legislative protection in factories and other industrial establishments was needed included: health hazards, unsanitary and strenuous physical working conditions, long hours of work, low wages, malpractices relating to mode and manner of wage-payment, insufficient leave and holidays, exploitation of children of tender ages and women, and others. The minimum wage and payment of wages legislations also seek to protect workers in matters concerning wages.



Example: Protective labour laws in India are:- Factories Act, 1948; Mines Act, 1952; Plantation Labour Act, 1951; Child Labour (Prohibition and Regulation) Act, 1986; Beedi and Cigar Workers, (Conditions of Employment) Act, 1966; Contract Labour (Regulation and Abolition) Act, 1970; Payment of Wages Act, 1936 and Minimum Wages Act, 1948.

1.5.2 Principle of Social Justice

The principle of social justice implies establishment of equality in social relationships. It aims at removing discrimination suffered by particular groups of labour. The disabilities and discrimination suffered by slaves, serfs, indentured and migrant labour, bonded labour, etc. is well-known. Discrimination against women workers when compared to their men counterpart, in matters relating to wages and other terms and conditions of employment, has continued till date. The preamble to the constitution of ILO recognises that "universal and lasting peace can be established only if it is based upon social justice" and its Philadelphia Charter of 1944 asserts, "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". The Indian Constitution has prohibited discrimination on the basis of caste, race, sex and religion. The Constitution also abolishes 'untouchability' in any form and prohibits beggars and forced labour. The Directive Principles of State Policy also direct the state to strive to promote the welfare of the people by securing and protecting a social order in which justice - social, economic and political, shall inform all institutions of the national life.



Example: Labour laws enacted keeping in view the principle of social justice are: Indian Slavery Act, 1843; Equal Remuneration Act, 1976; Bonded Labour System (Abolition) Act, 1976 and Contract Labour (Regulation and Abolition) Act, 1970.

1.5.3 Principle of Regulation

The principle of regulation seeks to regulate the relationships between the employers and their associations and workers and their organizations. As the relationships between the two groups have repercussions on the society, the law aims at safeguarding the interests of the society against the adverse consequences of collusion or combination between them. Thus, the principle of regulation seeks to regulate the balance of power in the relationships of the two dominant groups in industrial relations. When the employers were the stronger side, laws were enacted to confer upon workers' organizations, new rights and privileges. On the other hand, when the workers' organizations started misusing their strength, laws were enacted to curb their undesirable activities.

When industrial actions – strikes, lock-outs – started causing hardships to consumers and society at large, the state had to intervene and enact laws to provide for machineries for the settlement of industrial disputes. The specific areas in which state regulation through legislative measures have become necessary includes: workers' right to organize, registration of trade unions and rights of registered trade unions, recognition of representative unions, collective bargaining, settlement of industrial disputes, conciliation, adjudication and arbitration machineries, redressal of grievances and grievance procedure, industrial actions such as strikes, lock-outs, picketing, unfair labour practices, workers' participation in management and tripartite bodies.



Example: Laws enacted on this principles are: Trade Unions Act, 1926; Industrial Disputes Act, 1947 and Industrial Employment (Standing Orders) Act, 1946 in India; Industrial Courts Act, 1919; Industrial Relations Act, 1971 and Trade Union and Labour Relations (Consolidation) Act, 1992 of Great Britain; and National Labour Relations Act, 1935 (Wagner Act).

1.5.4 Principle of Welfare

The protective and social security laws have the effect of promoting labour welfare, special labour welfare or labour welfare fund laws have also been enacted, with a view to providing certain welfare amenities to the workers and to their family members. The main purpose behind the enactment of labour laws on this principle is to ensure the provision of certain basic amenities to workers at their place of work and to improve the living conditions of workers and their family members.



Example: Laws enacted with this principle in view are: Mica Mines Labour Welfare Funds Act, 1946; Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976; Beedi Workers Welfare Fund Act, 1976; Dock Workers (Safety, Health and Welfare) Act, 1986; State Labour Welfare Fund Acts and Welfare Provisions under the Factories Act, 1948; Mines Act, 1952 and Plantation Labour Act, 1951.

1.5.5 Principle of Social Security

In industrial societies, income insecurity resulting from various contingencies of life such as disablement, old age and death has become a serious problem. During such contingencies, the income of the earners either stops altogether or is reduced substantially or becomes intermittent causing hardships to the earners and their family members. Social security legislation may be kept under two broad categories – social insurance legislation and social assistance legislation. In social insurance, benefits are generally made available to the insured persons, under the condition of having paid the required contributions and fulfilling certain eligibility conditions. The fund for social insurance schemes usually comes from contributions of the beneficiaries and their employers, often supplemented by state grants.

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Under social insurance, the beneficiaries receive benefits as a matter of right. The benefits are not linked to the economic needs or financial conditions of the beneficiaries who receive these at the rates established by law. In social assistance also, the beneficiaries receive benefits as a matter of right, but they do not have to make any contributions. The finance is made available by the state or a source specified by the state. Social assistance benefits are generally paid to persons of insufficient means and on consideration of their minimum needs.



Example: Social security laws include: Workmen's Compensation Act, 1923; Maternity Benefit Act, 1961; Employees' State Insurance Act, 1948; Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948; Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

1.5.6 Principle of Economic Development

Labour laws are enacted for economic and industrial development of particular countries. Improvement of physical working conditions, establishment of industrial peace, provision of machineries for settlement of industrial disputes, formation of forums of workers' participation in management, prohibition of unfair labour practices, restrictions on strikes and lock-outs, provision of social security benefits and welfare facilities, certification of collective agreements and regulation of hours of work have direct or indirect bearing on the pace and extent of economic development.

1.6 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 sections 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.



Notes

Fundamental Rights

Fundamental Rights given in Indian constitution are:

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

Article 16 (1) and (2) of the Constitution guarantees Article 14, dealing with the right to equality and equal protection of law is subject to reasonable classification as absolute equality is impossibility. 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 or 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.

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, "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, the courts have given a very liberal and wide interpretation of the terms "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 Government is bound to ensure observance of social welfare and labour laws enacted to secure for workmen a life compatible with human dignity.

Articles 23 and 24 guarantee the right against exploitation. Clause (1) of Article 23 prohibits traffic of human beings and any form of forced labour and makes them punishable.

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 right without a remedy is a meaningless formality.

1.7 Agencies for Welfare Work

There are a number of agencies involved in the labour welfare work. Beside Central Government and State Governments, there are other agencies which help in providing the welfare amenities to the workers. They are:

1. **Central Government:** It laid down certain regulations in the forms of Acts extending to the health, safety and welfare of the workers. Factories Act, 1948, Mines Act, 1952, Motor Transport Workers Act, 1961, etc. provides for crèches, canteens, shelters, restrooms etc.

Notes

for the workers. Statutory welfare funds are created to provide housing, recreational facilities and medical facilities to the workers.

2. **State Government:** Different State Governments' offers different facilities to the workers in the state. In Gujarat and Punjab, there are Labour Welfare Centres for providing the welfare functions to the workers. In Assam, a statutory welfare fund is created for offering the medical, educational and recreational facilities.
3. **Employers:** Big corporate giant like TATA, TISCO, L&T, Bajaj, etc have undertaken the welfare activities for their workers. Ratan Tata has created a number of hospitals, and education institutes for the workers of his factory. In this way a number of corporates help in extending these basic welfare activities in factories.
4. **Trade Unions:** In some companies like Ahmedabad Textile Labour Association, Indian Federation of Labour are the organizations that have provided the welfare activities and facilities for the workers like running schools, sports centres, recreation facilities, cultural centres, legal cells, etc. Though poor finances and multiple unionisms create problems for the trade unions in establishing the welfare amenities for the workers, so much cannot be expected from them.

1.8 Classification of Labour Legislations

On the basis of specific objectives, 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. **Regulative Labour Legislation:** The main objective of the regulative legislation is to regulate the relations between employees and employers and to provide for methods and manners of settling industrial disputes. They 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.
 - (a) The Trade Unions Act, 1926
 - (b) The Industrial Disputes Act, 1947
 - (c) Industrial Relations Legislations enacted by States of Maharashtra, MP, Gujarat, etc.
 - (d) Industrial Employment (Standing Orders) Act, 1946.
 2. **Protective Labour Legislations:** These legislations have a primary purpose to protect labour standards and to 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:
 - (a) Factories Act, 1948
 - (b) The Mines Act, 1952
 - (c) The Plantations Labour Act, 1951

- (d) The Motor Transport Workers Act, 1961
 - (e) The Shops and Establishments Acts
 - (f) Beedi and Cigar Workers Act, 1966
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. They are:
- (a) The Payment of Wages Act, 1936
 - (b) The Minimum Wages Act, 1948
 - (c) The Payment of Bonus Act, 1965
 - (d) The Equal Remuneration Act, 1976
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.
- (a) The Workmen's Compensation Act, 1923
 - (b) The Employees' State Insurance Act, 1948
 - (c) The Coal Mines PF Act, 1948
 - (d) The Employees' PF and Miscellaneous Provisions Act, 1952
 - (e) The Maternity Benefit Act, 1961
 - (f) Payment of Gratuity Act, 1972
5. **Welfare Labour Legislations:** Legislations coming under this category aim at promoting the general welfare of the workers and improving their living conditions. All labour-laws can be said to be promoting the welfare of the workers and improving their living conditions and though many of the protective labour laws also contain unit on labour welfare; the laws coming under this category have the specific aim of providing for improvements in the living conditions of workers.
- (a) Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
 - (b) The Mica Mines Welfare Fund Act, 1946
 - (c) The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
 - (d) The Cine Workers Welfare Fund Act, 1981.
 - (e) Beedi Workers Welfare Fund Act, 1976
6. **Miscellaneous:** There are other kinds of labour laws, which are very important. Some of these are:
- (a) The Contract Labour (Regulation and Abolition) Act, 1970
 - (b) Child Labour (Prohibition and Regulation) Act, 1986
 - (c) Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
 - (d) Apprentices Act, 1961
 - (e) Emigration Act, 1983
 - (f) Employment Exchange (Compulsory Notification of Vacancies) Act, 1959

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- (g) Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979
 - (h) Sales Promotion Employees (Condition of Service) Act, 1976
 - (i) Working Journalists and other Newspapers Employees (Condition of Service and Miscellaneous Provision) Act, 1955.

1.9 Objectives of ILO

The Declaration of Philadelphia set forth 10 objectives, which the ILO was to further and promote among the nations of the world. The theme underlying these objectives is social justice. The objectives are as follows:

1. Full employment and the raising of standards of living,
2. The employment of workers in the occupation in which they can have the satisfaction of giving the fullest measure of their skill, and make their contribution to the common well being,
3. The provision, as a means to the attainment of this end, and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement,
4. Policies in regard to wages and earning, bonus and other conditions of work, calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of protection,
5. The effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency and the collaboration of workers and employers in social and economic measures,
6. The extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care,
7. Adequate protection for the life and health of workers in all occupations,
8. Provision for child welfare and maternity protection,
9. The provision of adequate nutrition, housing and facilities for creation and culture, and
10. The assurance of equality of educational and vocational opportunity.

1.10 International Labour Standards

The International Labour Standards, in the progress towards higher social and economic objectives, continues to be the principal means at the disposal of the ILO to achieve social justice throughout the world. The International Labour Conference, the legislative wing of the ILO provides a forum for discussion and deliberation of international labour problems and this formulates the standards in the form of conventions and recommendations. The conventions and recommendations are collectively known as the International Labour Code.

Conventions are obligation-creating instruments, Recommendations are guidance providing instruments. Once the Conventions are ratified by the member state, they become binding international obligations, whereas Recommendations are essentially guides to national action and do not create international obligations.

As the standards improve, the Conventions are revised and fresh amendments with higher labour standards are adopted.



Did u know? Countries with Higher Labour Standards

Countries having standards of labour higher than those envisaged under International Labour Conventions, experience a special problem of ratification. In such countries, acceptance of Conventions prescribing standards lower than the existing ones may involve considerable political effort, as there is obviously little interest in the subject. Besides, it is feared that the approval given to lower minimum standards will impair the authority of the higher national standard. In case where ratification of a Convention necessitates a change in the law of the land, legal difficulties are also encountered.



Caselet

Much Work Remains to be Done

–By: Bhanoji Rao

Internationally Recognised Core Labour Standards in India: Report for the WTO General Council Review of the Trade Policies of India." A principal contention of the ITUC report is that India has not still ratified four of the eight Conventions of which the most significant are that on workers' right to organise and to collective bargaining. The Report acknowledges that the workers do have the legal right to organise, but this has been in effect curtailed by unions not being recognised by the employers.

As per a 2001 amendment to the Trade Union Act of 1926, a trade union has to represent at least 100 workers or 10 per cent of the workforce, whichever is less, compared to a minimum of seven workers previously. The Report opines that the minimum requirement of 100 workers is very high by international standards. While the ITUC is welcome to have its view about a free country like ours, the amendment ought to be looked at in the light of how much more fragmentation and divisiveness will prevail if reasonable membership strength is not to be placed as a consideration in organising a union.

It is important to recognise the simple fact that on the basis of the 10 per cent stipulation, there can be as many as 10 unions in a firm, which is perhaps one way unionisation divides the workers and finally does disservice to them. It would have been great if ICTU were to insist on a small number of two or three unions in any establishment and also struggle to achieve de-politicisation of the unions. As long as politics and unions go together, the 'manifesto' might take control over all else.

The Report laments that, in practice, only a small group of workers, employed in the organised industrial sector, enjoys protection of its rights and that some 90 per cent of workers are employed in informal employment relationships or in agriculture, characterised by almost no union representation. The challenge is not one of enacting laws that look great on paper, but prioritising the various components of the country's development agenda. We need the transformation of the labour force in terms of education, skills, income levels and provision of social security. Unionisation per se will do little for all these.

The Report voices concern that 'new employment sectors, such as call centres, the BPO industry, the visual media and telecommunications, are not covered by any explicit employment regulations, and employers obstruct the formation of unions'. The new sectors have come up simply because of on-going (much delayed) international division of labour,

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Notes

and it has not been smooth sailing. If anything, it is important that such institutions as the ITUC work to promote these kinds of division of labour first and then look to the pros and cons of unionisation.

The Report makes the important point that despite efforts to address the problems of child and bonded labour, they still prevail due to lax enforcement. It also refers to the position of Dalits: "More than 1.3 million Dalits are estimated to be still employed as manual scavengers." Some of these stigmas are inescapable for us as a nation.

Source: thehindubusinessline.com

1.11 Labour Welfare Officers

Labour welfare is a generic concept, subsuming several fields of development that fall under economic development, industrial growth, social justice and democratic growth. Welfare of the labour is considered to be the key factor in the growth and development of any industry. For looking after the welfare of the workers, a welfare officer is appointed in a factory. This position is originated by the recommendation made by the Royal Commission on Labour which was later on reiterated by the Labour Investigation Committee. The factories Plantation Labour and Mines Act provides for the welfare officers as the statutory obligations for the employees, employing 500 or more workers. The State is also empowered to prescribe the duties, qualifications and conditions of the services. The Central Model Rules, 1957, laid down certain duties for the labour welfare officers which are confined to the welfare work.

In every factory here there are more than 500 workers employed, the occupier of the factory is required to appoint the welfare officers in the factory. If the numbers of the workers are less than 4000, then atleast two welfare officers are appointed, one with Grade-II and other with Grade-III. But if the numbers of workers are less than 6000, then atleast three welfare officers are appointed with Grade-I, Grade-II and Grade-III respectively. This is as prescribed by the State Government.

If the total number of workers includes 300 or more women workers, then, there should be one women welfare officer of Grade-III has to be appointed in addition to the number of welfare officers already prescribed in these rules.

If one occupier has more than one factories situated at different places and the total number of workers in such factories are 500 or above, all these factories shall be treated to be a single factory for the purpose of section 49 and in such case the occupier shall be deemed to have applied to the State Government for declaration of all such factories under his control to be a single factory under section 4 for the purpose of section 49 only.

1.11.1 Qualifications of Welfare Officer

A labour welfare officer should have a minimum of a Master Degree or an equivalent diploma from a recognized institute with the knowledge of the local language. According to the legislation, he is to have the status of the head of the department. If his services have to be terminated for the reasons other than those of the contract, Government permission is required.

1.11.2 Role and Responsibilities of Welfare Officer

Based on the regulations provided by the Central Model Rules, 1957, the role and responsibility of the welfare officer is clearly designed.

1. He supervises the provision of the welfare amenities in respect of law and in matters of safety, health, housing, recreation facilities, sanitary services, grant of leaves with wages, etc.

2. He acts a counselor in personal matters and problems of adjustment, rights and privileges.
3. He assists the management in formulating labour and welfare policies, development of fringe benefits, conducting workers education and training programmes, etc.
4. He helps different departmental heads to meet their obligations under the various acts.
5. He is the liaison between the establishments and outside agencies such as factory inspectors and medical officers.
6. He helps in the enforcement of the various acts.
7. He helps the workers to make better use of the community services.

1.11.3 Functions and Duties of Labour Welfare Officer

Some functions and duties prescribe under Factory Act, 1948 for the welfare officer are:

1. To establish contracts and hold consultations in order to maintain harmonious relations between the factory management and workers.
2. To bring to the notice of the factory management the grievances of workers, individual as well as collective, to securing their expeditious redress.
3. To Act as liaison officer between the management and labour.
4. To study and understand the labour view point so as to help the factory management to shape and formulate the labour policies.
5. To interpret the policies to the workers in a language they can understand so as to bring about the implications of the same to them.
6. To secure welfare provisions among workers and management by providing the basic welfare amenities at the workplace.
7. To watch industrial relations to have influence in the event of dispute between the management and workers and to bring about a settlement by persuasive effort.
8. To advise on fulfillment by the management and the concerned departments of the factory of obligations, statutory or otherwise, concerning regulation of working hours, maternity benefit, medical care, compensation for injuries and sickness and other welfare and social benefit measures.
9. To advise and assist the management in the fulfillment of its obligations, statutory and concerning prevention of personal injuries and maintaining a safe working environment.
10. To promote relations between the concerned departments of the factory and workers which will bring about productive efficiency and to help workers to adjust and adopt themselves to their working environment.
11. To encourage the formation of works and joint production Committees, Co-operative Societies and Welfare Committees and to supervise their work.
12. To encourage provision of amenities such as canteens, shelters for rest, crèches, adequate latrine facilities, drinking water, sickness and benevolent scheme payments, pension and superannuation funds, gratuity payments, granting of loans and legal advice to workers.
13. To help the factory management in regulating the grant of leave with wages and explain to the workers the pulsing relating to leave with wages and other leave privileges and to guide the workers in the matter of submission of application for grant of leave.

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14. To advise a provision of welfare facilities such as-housing facilities, food-stuffs, social and recreational facilities, sanitation, advice on individual personnel problems and education of children.
15. To advise the factory management on questions relating to training of new starters, apprentices, workers on transfer and promotion instructions and supervisors' supervision and control of notice board and information bulletin to further education of workers.
16. To suggest measures to raise the standard of living of workers and promote their well-being.
17. He can oversee the implementation of the labour laws for the benefit of the workers.

So, a Labour Welfare Officer is entrusted with the advisory, supervisory, policing, functional and service-oriented functions and responsibilities to establish a cordial environment in the factory premises.



Notes

International Labour Code

The international labour code covers an enormous range of important subjects in the labour and social fields, which have been classified as under:

No. Subject

1. Basic Human Rights
2. Labour Administration and Industrial Relations
3. Employment Policy and Human Resources Development
4. General Conditions of Employment
5. Employment of Children, Young Persons and Women
6. Industrial Safety, Health and Welfare
7. Social Security and Social Policy
8. Seafarers
9. Indigenous and Tribal Populations Migrants and Plantation Workers

1.12 Statutory Welfare Schemes

Various kind of statutory requirement and welfare schemes are:

1. To provide drinking water facilities at all the working places including dock areas. Safe hygienic drinking water points are provided.
2. Sufficient number of latrines and urinals are provided in the dock area and office premises. Same are maintained in a neat and clean condition & separately for male & female workers.
3. In every work place, such as ware houses, store places, in the dock area and office premises where employees/workers are deployed, spittoons are provided in convenient places and are maintained in a hygienic condition.
4. At all the working places in the dock area, sufficient lights are provided for working safely during the night shift.

5. For the circulation of fresh air, and maintaining the normal temperatures sufficient number of ventilators are provided in dock area, where workers are required to work in three shifts, such as ware houses, and office premises in dock area.
6. Adequate washing places such as bathrooms, wash basins with tap and tap on the stand pipe are provided in the port area in the vicinity of the work places.
7. Adequate first-aid boxes are provided on the working places in the dock area and port premises and same are accessible. First-aid treatments are readily available during the working hours to the workers at the working places and the ambulance is also provided with the full equipment and qualified nursing staff.
8. Adequate changing rooms are provided to the male and female workers separately to change their cloth in the dock area and office premises. Adequate lockers are also provided to the workers to keep their cloth and belongings, etc.
9. Adequate no. of rest rooms are provided in the dock area to the workers with provisions of drinking water, wash basins, toilets, bathrooms, etc. for those who are working in the night shift.
10. The canteens are provided in the dock area and other places of working for giving nutritious valued food to the dock workers.

Statutory Welfare Measures

Under different laws for the welfare & labour security in India, various statutory provisions are established by government for the workers & made it mandatory for the employers to provide them to their workers.

Factories Act 1948

The factories have to provide the following facilities & services to its workers under factories Act, 1948

1. Separate washing facilities for its male & female workers & they should have sufficient number of latrines & urinals in clean & maintained conditions in the dock area & office premises.
2. For every 150 workers, the factory owner has to provide one the first aid box or cupboard as a safety measure.
3. If there are more than 250 workers, canteens have to be provided for the workers.
4. If there are over 150 workers employed, then shelters, rest-rooms & lunch rooms are mandatory.
5. If the factory has 30 or more female workers, then crèche facility has to be provided for their small kids.
6. If a factory employs 500 or more workers, then a welfare officer has to be appointed.
7. Apart from this, the facilities for storing & drying clothes for workers has to be provided
8. Facilities for the workers have to be provided for occasional rest for workers who work in a standing position for long hours.

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Plantation Labour Act, 1951

Under the Plantation Labour Act, 1951, following facilities are mandatory & they have to be provided by the owner-

1. A welfare officer has to be appointed if there are 300 or more workers.
2. A canteen has to be provided if 150 or more workers are employed.
3. Crèche facility if 50 or more women workers are employed.
4. Educational arrangements in the estate if there are 25 or more children of workers, between the age group of 6 and 12.
5. Recreational facilities for workers & their children
6. Housing facilities for every worker & his family residing in the estate.
7. Medical aid to workers & their families; sickness & maternity allowances.
8. Providing umbrellas, blankets, raincoats to workers as a protection against rain or cold.

Mines Act, 1951

Under the Mines Act, 1951, following facilities needs to be provided to the workers:

1. If 50 or more workers are employed, then, shelters for taking food & rest have to be provided.
2. First aid boxes & first aid rooms have to provide if there are 15 or more workers are employed.
3. Canteen facility for workers when there are 250 or more workers.
4. Crèche facilities where the establishment has 50 or more workers.
5. Pit-head baths equipped with showers, sanitary latrines & urinals have to provide for the workers.
6. Welfare officer has to appointed if there are 500 or more workers employed in the establishment.

Motor Transport Workers Act, 1961

Under the Motor Transport Workers Act, 1961, following statutory measures have to be provided:

1. Canteen facility if establishment has 100 or more workers.
2. First aid equipment in each transport vehicle.
3. Medical facilities at the operating & halting centres
4. Comfortable clean, ventilated & well-lighted rest rooms at every place where motor transport workers are required to halt at night.
5. Uniforms, rain coats to conductors, drivers & line checking staff for protection against cold & rain.
6. Prescribed amount of washing allowance to the above staff members.

1.13 Non-statutory Welfare Facilities

The non-statutory welfare facilities are:

1. Housing facilities should be provided to the workers if possible as the step taken by the big corporates like TATA, etc. Apart from providing official accommodation House Building Advance are also given to the eligible employees who desire to construct their new houses or acquire ready build flats/houses.
2. In-house training programs on various aspects of jobs, safety precautions, etc. through the faculties specialized in the field should be organized in order to increase the efficiency of the workers. Imparting training in computer and other administrative matters is an on going process.
3. Workers should be nominated and released for training under the workers education scheme of the Central Government on the various labour related topics wherein each employee should be given an opportunity to interact with the experienced faculty members and other participating employees. During the training period the trainee employees are treated as on duty.
4. The transport facility should be provided to employees and their dependents. The transport should be provided to the children studying in various Schools/Colleges in different locations.
5. The scholarships should be awarded through attractive Scholarship Schemes with a view to motivate the children of the employees for excellence in education. The Scholarship Scheme should be applicable from Std. I to Std. XII and recognized Degree/Diploma Courses of not less than 1 year duration including Post Graduate Degree/Diploma Course.
6. A significant amount of welfare fund should be created to provide financial assistance to sick employees suffering from chronic ailments, monthly reimbursements towards the tuition fees of mentally retarded children of employees, and to meet the expenses if employee/Officer dies as a result of any fatal accident while on duty.
7. The construction of schools, playgrounds, and all other maintenance are being carried out by the administration in order to promote the welfare for the workers.
8. Setting up ladies club for the women employees and for the wives of the employees for conducting various programs for the upliftment of the women workers.



Task

Taking the example of any Indian steel factory at Jamshedpur, explain how the welfare officer has met his responsibility for providing the welfare amenities to the workers. Analyse all the development and welfare measures taken by the company for its workers.

Notes



Case Study

Balbir: The Union Man**Chief Engineer Raju**

Raju has been with the company for the last 15 years. He is considered to be very competent in his job. Raju always greeted people with a smiling face and never lost his temper on the shop floor. Workers had considerable regard for him. In union circles Raju enjoyed a good reputation for his fairness. He had a unique style of his own when it came to personnel matters. He advocated patience and restraint while dealing with people. He would often say “gone are the days when one could deal with employees strictly. Now you have to be flexible, considerate and fair”.

Supervisor Madan

A young man of 25, Madan is always keen on meeting production targets. He took genuine interest in his job and handled all his assignments carefully. He is of the view that top management and specially the HR manager more often than not, might fail to back up supervisors in their efforts to bring about some discipline in the plant. He believed that complaints from supervisors are ignored by management and as a result, workers get encouraged to indulge in disruptive activities, adversely affecting production.

Balbir Singh

Balbir, a skilled worker, has recently been elected as the Joint Secretary of the Union. He holds leftist political views, though he is not a member of any political party. He is ambitious and wants to reach the top levels in union circles as quickly as possible.

On Monday, Raju has hardly entered his office when the supervisor Madan rushes in.

Madan: Sir there is a great commotion in the section. No one is working. Even after repeated requests, workers have not stopped the shouting and hooting. Sir, please come to the shop and see for yourself the extent of indiscipline that has become rampant.

Raju: Madan, take your seat. Tell me the truth. I will come to the shopfloor if you so desire. But first tell me why are you so much upset.

Madan: Sir, you know, Balbir, the joint secretary of the union, was loitering around and not attending to his machine. I called him and told him to go to his machine and start it.

Raju: Then what happened?

Madan: Balbir retorted quickly, “Do not shout at me. Your lung power does not work here. Even your bosses cannot order me about like that. What are you, after all?” Many workers gathered around and witnessed the scene.

Raju: O.K. Now please go to your section. I will ask Balbir to come immediately.

Balbir: Sir, you wanted to see me? What is the purpose?

Raju: Please sit down. What would you have? Tea or coffee? (Presses the buzzer). Bring two cups of tea. (After the tea has arrived) – Do you need more sugar? Balbir, tell me now why are you after Madan? He is a sincere and hardworking young supervisor and you should cooperate with him.

Contd...

Balbir: Sir, first listen to me and then decide. This Madan has run amok. Kal Ka Chokra, he thinks he is Hitler. This morning the security staff did not allow two workers of my section in. Somehow I came to know. I left the section and went to see the security officer. With great difficulty I managed to get the two workers punch their cards and join duty. On my return I saw Madan fuming and fretting. In a derogatory tone he started shouting at me. When I could stand it no longer I also raised my voice and told him to go and report against me.

Raju: Look! Balbir you are a responsible union official. You should not have created the scene. After all a supervisor has to ensure discipline. I am sorry you have set a bad example for other workers. How do you want me to proceed? Madan is very sore at being insulted in the presence of so many workers. I have to do something so that such incidents do not occur again.

Questions

1. Who is at fault and why?

Ans. Both, Balbir and Madan are at fault. They both should have understood that they are on floor and therefore they should not shout at each other and create a scene. This kind of a situation has bad impact on other workers too. They loose concentration and their minds divert to such incidents. If there was something wrong on the floor, Madan should have talked to Balbir politely and assertively. Even, Balbir could have controlled the situation and reported the matter to Raju, if Madan was really at fault first. They both should have discussed the situation before getting into any sorts of arguments.

2. Do you think unionised employees require a different kind of treatment on matters relating to discipline?

Ans. On ethical or moral grounds no, but the union employees have a different temperament so they should be dealt with smart tactics and assertiveness. They can create havoc in the organisation if they feel insulted. One should be tactful and watchful before getting into any arguments with them.

3. What should Raju do now to check both Madan and Balbir from going to the street in future?

Ans. Raju should call Balbir and Madan and sort out their differences. They should meet and discuss the situation in front of him. He is best person to advise them not to carry this forward in the interest of the organisation.

Source: VSP Rao, *Human Resource Management: Text and Cases*, Second Edition, Excel Books, New Delhi.

1.14 Summary

- ILO standards have influenced Indian Labour Legislation, directly and indirectly.
- The blueprint of our labour policy is based on ILO's Standards.
- The Indian Labour Conference and Standing Labour Committee – resemble the two main structures of ILO.
- Influence of ILO has been perceptible in Labour Legislations in India.
- Labour welfare is an important aspect of the factory life.
- Role and responsibility of welfare officers are clearly defined in Acts.

Notes

1.15 Keywords

Collective bargaining: It is the process of negotiation between representatives of a union and employers (represented by management, in some countries by employers' organization) in respect of the terms and conditions of employment of employees.

Fundamental Rights: They acts as a guarantee that all the Indian citizens can & will lead their life's in peace as long as they live in Indian democracy.

ILO: International Labour Organisation

Labour welfare: Services, facilities and amenities extended for the intellectual, physical, moral and economic betterment of the workers.

Laissez Faire System: Lets not interfere system

Law: It is an instrument for the control, restrain and guide the behaviour & course of action of the individuals.

Security: Protection of the employer facilities and employees protection while on work premises.

Trade Union: Any combination whether temporary or permanent formed primarily for the purpose of regulating the relations between workmen and employers.

1.16 Self Assessment

Fill in the blanks:

1. is an instruction to control restrains and guide the behaviour and courses of action of individuals & their groups looking on a society.
2. Law has a role that of an anchor providing stability as well as of accommodating changes.
3. ILO stands for
4. The person engaged in providing the welfare measures for the workers in the factory is called
5. The principle of seek to maintain the balance of powers in the relationships of employees & employers.
6. are the guidelines providing the instruments to the national actions.

Choose the appropriate answer:

7. They are the obligation-creating instruments binding by the international obligations. They are called:
(i) Principles (ii) Laws
(iii) Conventions (iv) Recommendations
8. Industrial revolutions led to the development of these measures for the welfare of the workers. They are:
(i) Labour legislations (ii) Labour laws
(iii) ILO (iv) All the above

9. Labour legislations regards individual as:
- | | |
|--------------|--------------------|
| (i) Worker | (ii) Citizen |
| (iii) Labour | (iv) All the above |
10. When the employers have to provide the welfare facilities to the workers under the law they are called:
- | | |
|----------------------------|--------------------------------|
| (i) Statutory requirements | (ii) Non-statutory requirement |
| (iii) Labour Acts | (iv) None of the above |
11. The requirement of the labour welfare officer is recommended by this committee:
- | | |
|------------------------|---------------------------------|
| (i) ILO | (ii) Royal Commission on Labour |
| (iii) State Government | (iv) Trade Unions |

1.17 Review Questions

- Discuss the objectives of the ILO. What are conventions and recommendations?
- As an incharge of the personnel division of a company, what are the various facilities you would like to provide to your workers for their social and general welfare?
- Do you think the role of welfare officer is essential in organizations? Elaborate.
- The Indian labour laws have been greatly influenced by ILO's conventions and recommendations. Do you agree? Justify.
- The government needs to play an active role in the labour welfare. Elaborate.
- "The labour legislations are the natural children of industrial revolution." Do you agree? Justify.
- "The principles of social security may be considered to be a part of the principle of welfare". Justify.
- Explain the qualifications, duties and responsibilities of a labour welfare officer.
- What do you mean by labour welfare? Bring out the need for providing welfare facilities to workers.
- Are the services offered by the various agencies, in your opinion, satisfactory or not? Justify.
- Taking the example of any Indian firm, analyse the statutory and non-statutory welfare measures provided by the companies to their workers.
- Analyse the various principles of labour legislation giving the examples of various laws and acts under them.
- Critically analyse the various statutory and non-statutory measures to be taken by the corporates now-a-days.
- Examine the need for the establishment of the labour legislations in India. Do you think are they successful? Justify.
- Being the welfare officer of the company, how will you classify various labour legislations on the basis of the objectives? Explain.

Notes

Answers: Self Assessment

- | | |
|---------------------------------------|---------------------------|
| 1. Law | 2. dual |
| 3. international labour organizations | 4. Labour Welfare Officer |
| 5. regulation | 6. Recommendations |
| 7. (iii) | 8. (iv) |
| 9. (i) | 10. (i) |
| 11. (ii) | |

1.18 Further Readings



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Unit 2: ILO and its Contribution in Labour Welfare and Social Security

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Objectives

After studying this unit, you will be able to:

- Discuss ILO – Aims and Purposes
- Explain structure of ILO
- State conventions and recommendations
- Explain major activities of ILO
- Describe influence on Indian labour legislation
- Discuss contribution of ILO in promoting welfare and social security in India
- State difficulties in adoption of conventions and recommendations
- Explain problem of ratification
- Discuss International labour standards and India

Introduction

The Peace Conference convened at the end of the World War I led to the creation of the International Labour Organisation in 1919. As an original signatory of the Treaty of Peace, India became a member of the organisation in 1919. Today, ILO is one of the specialized agencies of the United Nations Organisation (UNO). It has passed through critical periods in its long history. It faced difficulties following the world economic crisis during the period of the Great Depression. Then, came the crisis of World War II, when its very existence was at stake. In June 1944, the ILO convened a conference at Philadelphia to consider the programmes and policies to be pursued after the War. The aims and purposes of the ILO were redefined in the form of a declaration – the Declaration of Philadelphia.

2.1 ILO (International Labour Organisation) – Aim and Purpose

ILO through its conventions & recommendations has undertaken the task of creating international minimum standards of labour which constitutes the international labour code. They cover a wide range of subjects including wages, hours of work, annual holidays with pay, minimum age of employment, medical examination, maternity protection, industrial health, safety & welfare, social security, freedom of association, right to organize & bargain collectively, employment of seamen & employment. The main aims & objectives of the ILO were redefined in the form of Declaration of Philadelphia.

The Declaration is based on the following fundamental principles:

1. Labour is not a commodity.
2. Freedom of expression and of association is essential for sustained progress.
3. Poverty anywhere constitutes a danger to prosperity everywhere.
4. The war against want requires to be carried on with unrelenting vigour by each nation, and by a continued and concerted international effort in which representatives of workers and employers, enjoying equal status with those of government, join in a free discussion, and democratic decisions are arrived at with a view to promote the welfare of the common man.

The main aims of the organisation are:

1. To remove the hardships and privations of the toiling masses all over the world and to ensure economic justice for them;
2. To improve their living and working conditions, as a vital step towards the establishment of universal and lasting peace, based on social justice.

2.2 Structure

The ILO is a tripartite organisation, consisting of representatives of the governments, employers and workers of member-countries in the ratio of 2:1:1. It has helped in the formation of the organisations of employers and of workers in different countries. The first national trade union organisation – the AITUC – in our country was formed within one year of the setting up of the ILO, so that the representative of the Indian workers might attend the International Labour Conferences.



Caution The principal organs of the ILO are:

1. The International Labour Conference;
2. The Governing Body; and
3. The International Labour Office.

2.2.1 International Labour Conference

The conference is held once a year. Each member-country is represented by four delegates - two representing the Government, one representing the employers, and one representing the workers. The main task of the Conference is to set up minimum international, social and labour norms/standards in the form of conventions or recommendations. A convention is binding on the member-state which ratifies it, while a recommendation is intended as a guideline. Member-states must place before their national Parliaments all conventions ratified by the Conference for acceptance or rejection within 18 months of their adoption.

2.2.2 Governing Body

The Governing Body is the chief executive body of the organisation and meets four times a year. This body is also tripartite in character, with a membership of 40 - the representatives of governments are 20 and 10 each representing employers and workers. The Governing Body is responsible for effective programming of the work of the ILO.

2.2.3 International Labour Office

This office is responsible for the day-to-day activities of the organisation and has branches in 9 countries, including India.

Notes



Did u know? The ILO has 3 Regional Advisory committees - the Asian Advisory Committee, the African Advisory Committee and the Inter-American Advisory Committee. The International Institute of Labour studies were established in 1960 as a centre for advanced studies in the social and labour fields. The work of ILO may be divided into three parts:

1. **Legislative:** Arising out of the conventions and recommendations adopted by the International Labour Conference.
2. **Operational:** These activities pertain to technical assistance, including vocational training programmes, provided and undertaken by the ILO in various parts of the world.
3. **General:** The work of industrial committees, regional conferences, other committees and commissions and the publications of the ILO.

2.3 Conventions and Recommendations

One of the principal functions of the International Labour Organisation is to secure international minimum social and labour standards. These standards are embodied in resolutions in the form of Conventions and Recommendations, adopted by the International Labour Conference by at least 2/3rds of the delegates present at the conference and voting. The conference decides whether these resolutions will take the form of a Convention or a Recommendation. Thus, Conventions or Recommendations are instruments for creating and establishing international minimum social and labour standards.

2.3.1 Conventions

A Convention imposes certain obligations. The member state is of an obligation under the Constitution ILO to bring, within a period of one year at the most, or within 18 months in exceptional cases, from the closing of the session of the conference, a Convention before the authority, within whose competence the matter lies, for ratification. If so ratified, the Convention acquires a binding character on the Member State, although a Member is free to ratify or not to ratify a Convention, once it has been ratified by the appropriate authority of the Member State concerned. It becomes obligatory on the part of the Member State to implement the Convention by legislative or other appropriate measures and to communicate the formal ratification to the Director General.

Further, after ratification, a Member State has to implement the Convention in toto, without varying the provisions of the Convention in any respect, except when and where the Convention itself makes provisions for variations. In case a Member State does not ratify a Convention, it is under the obligation to report periodically, the position of law and practice in regard to the matters dealt within the Convention, indicating the difficulties that prevent or delay the ratification of such a Convention.

However, a Convention, even if ratified by a Member State, does not automatically become binding unless it has secured a minimum number of ratifications. The number of ratifications required to bring a Convention into force is fixed in each case by the terms of the Convention; any two ratifications being sufficient in the great majority of cases.

2.3.2 Recommendations

A Recommendation is not an obligation creating instrument. It is intended to serve as a guide to the Member States in respect of the minimum labour standards, concerning the subject matter of

the Recommendation. A Member State has to bring the Recommendation to the notice of the appropriate authority within one year at the most or 18 months under exceptional conditions, after the closing of the session of conference.

Apart from bringing the Recommendation before the competent authority, no further obligation rests upon the Member States except that they have to report as and when requested by the Governing Body, showing the extent to which effect has been given or is proposed to be given to the provisions of the Recommendation. Thus, a Member State is free to modify the provisions of the Recommendation for the purpose of legislation or implementation, which is not the case with a Convention.



Caselet

ILO Urges India

The International Labour Organisation (ILO) has suggested that India evolve a fresh national labour policy aligning the interests of workers engaged in outsourcing activities with the social security net to adequately safeguard their interests.

Making this recommendation at an Assocham conference on "Knowledge Management of Contract Labour and Handling Outsourcing" on Friday, ILO Director Ms Leyla Tegmo Reddy said management of contract labour and handling outsourcing will yield better results if the labour force that is engaged in enterprises for outsourcing activities along the supply chain is decently protected.

"While there may well be business reasons for this, viewing the enterprise as a 'community of people' is a growing need for enterprises to demonstrate that they stand for the enhancement of the quality of life of the people who help their enterprise to grow."

Source: thehindubusinessline.com

2.4 Major Activities of ILO

The ILO has made relentless efforts to achieve the objectives set forth in the Constitution. The major activities of ILO relate to:

1. Improvement of work and life conditions,
2. Development of human resources and social institutions,
3. Research and planning.

The principal aim behind the improvement of conditions of work and life is "to promote national, regional and international action designed to adjust these conditions to the requirements of social progress at all stages of economic development, bearing in mind the interdependence of social progress and economic growth. Five programmes in the field of human resources are intended "to determine principles and policies which should govern the development and utilisation of human resources, and to encourage their application through technical programmes in the fields of employment policy and employment promotion, vocational guidance and training, basic and advanced management training, manpower planning and organisation, and classification of occupations".

The main purpose behind the development of social institutions is "to identify and advance solutions to the problems connected with the framing and implementation of policies of economic and social development, such as the role of workers' and employers' organisations,

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co-operatives, rural organisations, and different forms of enterprise, and the improvement of labour relations at various levels – undertaking, industry, regional and national."

1. **Creation of international standards of labour:** An important activity of ILO is the creation of international standards of labour on various labour and social matters. This is done primarily by the adoption of Conventions and Recommendations. These Conventions and Recommendations have covered a wide variety of areas such as basic human rights, employment, conditions of work, industrial relations, social security, employment of children and women, labour administration, social policy and matters affecting special categories of workers. These Conventions and Recommendations have contributed much towards the establishment of uniformity in labour standards on a global basis and have influenced labour legislation and collective bargaining in member countries.
2. **Employment promotion:** ILO assists countries in the pursuit of higher levels of productive employment. The efforts of ILO in this regard comprise:
 - (a) exploring the short and long-term employment effects of alternative development strategies;
 - (b) aiding the functioning of labour markets through appropriate policies and measures;
 - (c) addressing the employment, income and organisational requirements of unprotected and unorganised labour who form the majority of workforce in the developing countries;
 - (d) assisting in managing the transition from State-run to market oriented economies;
 - (e) responding to the increased migratory pressure resulting from demographic changes, structural adjustment and imbalances in world development;
 - (f) encouraging productivity in formal and informal sectors;
 - (g) protecting especially vulnerable groups and the elimination of discrimination against specific groups.
3. **Collection and distribution of information and publication:** ILO has been a world repository of information on labour and social questions and a publishing house. The ILO collects information on a global basis, on a wide variety of social and labour subjects and makes them available to the member countries. Statistics collected by ILO are universally regarded as an authoritative source of statistical information. Research accompanies and reinforces the activities relating to collection of information. The ILO operates the International Labour Information Service on social and labour questions which is drawn extensively on its rich library containing more than two lakhs titles. The library of ILO publishes LABORDOC, a database of major literature on ILO interests, and provides information, documents, and so on to ILO's staff and a vast range of ILO related institutions, using a variety of modern information technologies.



Notes The ILO brings out a number of authentic publications on major international labour and social issues, standard reference works, technical guides on specialized topics, codes of practice on occupational safety and health, workers' education materials, and text-books on management. The periodical publications of the organisation include: (i) International Labour Review (quarterly journal); (ii) Official Bulletin; (iii) Labour Law Documents; (iv) Conditions of Work Digest; (v) Labour Education; (vi) Year Book of Labour Statistics and Bulletin of Labour Statistics; (vii) International Labour Documentation;

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and (viii) World of Work, Magazine of ILO. The Encyclopedia of Occupational Health and Safety, International Labour Conventions and Recommendations and Modular Programme for Supervisory Development, are a few notable among numerous titles published by ILO.

4. **Research and studies:** Researches and studies relating to specific labour and social issues have been completed under the auspices of ILO and their results published. Some of the more notable areas covered have been industrial relations, social security, working conditions, industrial safety and health and manpower development.

The role of the International Institute of Labour Studies founded in 1960 and functioning under the auspices of ILO has increasingly become prominent. The Institute aims at raising awareness of labour-related problems and of methods appropriate for their solution. The core theme of the Institute's work is to examine the possible contribution of labour institutions to economic development and social progress. Labour or social institutions include: "formal organisations such as trade unions and employers' organisations, as well as the rules governing their interactions, including industrial relations systems, their regulations and laws, and the informal social mechanisms regulate labour markets.

5. **Training:** The ILO has attributed great importance to training. The Human Resources Development Convention, 1975 requires the ratifying country to adopt and develop policies and programmes in collaboration with employers' and workers' organisations, and to assist all persons on an equal footing to develop and utilize their vocational proficiency in their own interest and according to their aspirations. The Recommendation adopted the same year gives details of the principles of training. It deals with vocational guidance and training as well as training in management functions and self-employment, and programmes intended for specific regions and specific categories of target groups. The training activities of ILO are essentially based on the guidelines contained in the Recommendation.

The principal role of ILO in the field of training is that of an adviser. It makes available to the governments, social partners and public and private trainers, the services of its experts, training designs and aids in a variety of training programmes such as vocational training, apprenticeship training, and those for the unemployed, women and special target groups.

The ILO has also established the International Training Centre at Turin in Italy. The Centre is committed to the development of human resources based on the principle that "such an investment in human capacity is the most efficient means of social advancement and assuring the future of developing countries or those in transition." The subjects determined jointly by ILO and the Centre include: management training, workers' education, industrial relations, programmes for women, health and safety, social security, and so on. "Within the United Nations system, the Turin Centre is now recognised as an effective means of improving the co-ordination between the different actors involved in technical co-operation."

6. **Improvement of working conditions and working environment:** For improving working conditions and environment ILO adopts in a co-coordinated manner various means of action including international standards of labour, studies and research, collection and diffusing of information and technical co-operation. An appreciable number of Conventions and Recommendations aim at achieving the objective. Apart from persuading the member countries to apply these standards, ILO makes available consultancy services to countries making request, and develops training activities to facilitate the actions of all involved.
7. **Development of social institutions:** ILO's programmes in this sphere relate to: development of workers' and employers' organisations, improvement in labour legislation and

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industrial relations, workers' education, labour administration, co-operatives and rural institutions.

The International Training Centre also organises special courses for members of workers organisations from different parts of the world.

The ILO assists countries in formulating and developing their labour policies and labour administration and to improve labour inspection and employment services. It also meets requests from the governments for advice or technical assistance in drafting labour laws, undertaking their reviews and adapting laws consistent with its established principles.

ILO supports and promotes co-operatives as a means of relieving poverty, creating employment and generating income. In its programme relating to co-operatives, it encourages voluntary membership, autonomous decision-making, democratic control, and equitable distribution of benefits and risks. The organisation collaborates with national co-operative movements, nongovernmental organisations, governments, and organisations of employers and workers in formulating and promoting these objectives. It provides advisory and information services in regard to legislation concerning co-operatives and human resource development, and extends technical cooperation.

During more recent years, the development of rural institutions has received special attention of ILO. Many activities of the organisation such as establishment of international standards of labour, employment promotion, training and technical cooperation have given particular attention to the development of rural institutions and informal sectors.

8. **Other activities:** Some other activities of ILO relate to such areas as:
- (a) Promotion of universal respect for the observance of human rights and rights at work;
 - (b) Undertaking regional programmes;
 - (c) Establishment of Industrial Committees;
 - (d) Undertaking special programmes for specially handicapped groups of workers such as children, women, migrants and disabled;
 - (e) Establishing collaboration with other international organisations having an effect on its policies and programmes.



Task

Critically analyse the success of the ILO in promoting the major activities to achieve social security & labour welfare in India. Support your report with facts & figures.

2.5 Influences on Indian Labour Legislation

So far, India has ratified 39 out of 185 Conventions adopted by ILO. The ratification of the Conventions has put the nation under the obligation of implementing their provisions through their incorporation in labour laws and collective agreements or in other effective ways. In India, the provisions of most of the ratified Conventions have been given effect to mainly through their incorporation in labour laws, a reference of which has been made in the relevant sections of particular labour enactments in the preceding chapters. Labour laws in the country have also been influenced extensively by the provisions of even unratified Conventions and a number of Recommendations. The assistance of ILO's experts in the drafting of certain labour enactments,

technical assistance, and studies, reports and publications of the organisation have also been influencing factors. Of the Conventions not ratified by India, some have been denounced, some do not concern India and some relate to seamen whose ratification depends on the arrangements established in other countries.

2.6 Contribution of ILO towards Labour Welfare and Social Security in India

As on March 31, 2002, ILO had adopted 185 Conventions and 193 Recommendations. The details of the Conventions and Recommendations have been discussed below under suitable heads.

1. Conditions of work, including hours of work, weekly rest, holidays with pay and wages;
2. Employment of children and young persons;
3. Employment of women;
4. Industrial health, safety and welfare;
5. Social security;
6. Industrial relations;
7. Employment and unemployment; and
8. Other special categories.

2.6.1 Conditions of Work

The International Labour Organisation has devoted continued attention to the working conditions of the labour at work places including hours of work, weekly rest, and holidays with pay, principles and methods of wage regulation, and labour administration and inspection. A large number of Conventions and Recommendations covering these work conditions have been adopted by the International Labour Conference.

Hours of Work

The Hours of Work (Industry) Convention, 1919 adopted in the first session of the International Labour Conference limits the hours of work in industrial undertakings to 8 in the day and 48 in the week. It provides certain exceptions in respect of persons holding supervisory or managerial positions and those employed in confidential capacity. The limits of hours of work may be exceeded in certain cases, for instance, in the events of accident, urgent work, in continuous processes, and so on. It contains special provisions for countries where the 48-hours work might be inapplicable.

The time spent in the mine by the workers employed in underground and hard coal mines is not to exceed 7 and 3/4 hours in a day. However, in case of underground lignite mines the time spent in the mine may be prolonged under certain conditions by a collective break of not more than 30 minutes. Hours of work in open hard or lignite mines are not to exceed 8 in the day or 48 in the week.

The hours of work of professional drivers of road transport vehicles to 8 in a day and 48 in a week. Time spent in work done during running time of the vehicle, time spent in subsidiary work, periods of mere attendance and breaks of rest and interruptions of work are to be included in calculating hours of work.

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India ratified the Convention in 1921 on getting a special relaxation. The existing labour laws incorporating the provisions of the Convention include: Factories Act, 1948, Mines Act, 1952, Beedi and Cigar Workers (Conditions of Employment) Act, 1966, and Plantation Labour Act, 1951.

Similar Conventions like Hours of Work and Rest Periods (Road Transport) (No.67), 1939, and (No.153), 1979, and Night Work (Road Transport) Rec.(No.63), 1939 have been adopted in respect of road transport. Although India has not ratified them, many of their provisions have been incorporated in the Motor Transport Workers Act, 1961.

Weekly Rest

The Weekly Rest (Industry) Convention (No. 14),1921 was ratified by India in 1923. The Convention provides that the entire personnel employed in any industrial undertaking is to enjoy in every period of 7 days, a period of rest amounting to at least 24 consecutive hours. Most of the protective labour laws in the country such as Factories Act, 1948, Mines Act, 1952, Plantation Labour Act, 1951, Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Child Labour (Prohibition and Regulation) Act, 1986, Motor Transport Workers' Act, 1961, Contract Labour (Regulation and Abolition) Act, 1970 and even, Shops and Establishments Acts contain provisions under this or similar other Conventions.

Holidays with Pay

The Holidays with Pay Convention (No.52), 1936 fixes the length of holidays at not less than 6 working days after a year's service, and for persons under 16, the annual holidays are not to be less than 12 working days. Public and customary holidays and interruptions of work due to sickness are not to be included in the annual holidays with pay. The Convention applies to industrial and commercial establishments including newspaper undertakings, establishments for the treatment and care of the sick, infirm, destitute or mentally unfit; hotels, restaurants, boarding houses, clubs, cafes and other refreshment houses; theatres and places of public amusements; and 'mixed commercial and industrial establishments.'

Recommendation No.93 lays down that, the minimum length of the holidays with pay should be one working week for adults and two working weeks for persons under sixteen after a period of one Year's, continuous service. Recommendation No.98, which applies to all employed persons except seafarers, agricultural workers or persons in family undertakings, prescribes minimum annual holidays with pay of two normal working weeks after one year's employment with the same employer.

India has not ratified ILO's Holidays with Pay Conventions as the standards laid down under the protective labour laws in the country have been higher than those prescribed under the Conventions.

Protection of Wages

The Protection of Wages Convention (No.95), 1949 provides that wages payable in money must be paid regularly in legal tender and deductions may be permitted only under conditions and to the extent prescribed by national enactments, collective agreements or arbitration awards. Protection of Wages Recommendation (No.85) adopted the same year, contains detailed rules relating to deductions from wages, fixation of wage periods, and so forth.

Although India has not ratified the Convention, its provisions have been contained in the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Shops and Establishments Acts, Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and a few other protective labour laws.

Minimum Wages

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The Minimum Wage Fixing Machinery Convention (No.26),1928, (No.131), 1970 and Recommendation (No.30),1928, deal with the provision of wage-fixing machinery and consultation with employers and workers in minimum wage fixation.

India has ratified Convention (No.26),1928 and incorporated its provisions in the Minimum Wages Act, 1948. The Minimum Wage Fixing Machinery (Agriculture) Con.(No.99) and Rec.(No.89) have also influenced the contents of the Minimum Wages Act, 1948.

Labour Administration

The Labour Inspection Convention (No. 81), 1947 requires the governments to maintain a system of labour inspection for the purpose of securing the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work, supplying technical information and advice to workers and employers and bringing to the notice of the competent authorities, defects or abuses not covered by law. The Labour Inspection (Agriculture) Con. (No. 129), 1969 deals with labour inspection in agriculture. The Labour Administration Con. (No. 150) was later adopted in 1978.

India has ratified the Labour Inspection Convention (No.81), 1947. The existing protective labour laws, such as those relating to factories, mines, plantations, shops and establishments, motor transport, beedi and cigar establishments, payment of wages, minimum wages, child labour, maternity benefit and others contain the provisions of the Convention. Conventions not ratified by India such as (No. 129),1969 and (No.150),1978 and Recommendations (Nos.20,80 and 81) have also influenced legislative clauses relating to labour administration and inspection.

2.6.2 Employment of Children and Young Persons

The International Labour Conference has adopted a number of Conventions and Recommendations dealing exclusively with the employment problems of children and young persons. Standards affecting the employment conditions of children and young persons relate to minimum age of employment, prohibition of employment of children and young persons in certain hazardous occupations, medical examination, night work, and preparation for employment.

1. The Minimum Age Convention, 1921, prohibits the employment of young persons less than 18 years in the hazardous occupation of Trimmer and Stocker at sea. The Minimum Age (Underground Work) Conn., 1965 regulates minimum age of employment in underground operations.
2. The Medical Examination Conventions mainly provide that young persons upto 18 years shall be employed only after they are declared physically fit on examination by a medical practitioner. The cost of the medical examination is to be borne by the employer.
3. The Night Work of Young Persons (Industry) Convention prescribes restrictions on night work of young persons in industrial undertakings. The Convention provides that children and young persons under 18 years of age are not to be employed for work at night for a period of 11-12 consecutive hours including the interval between 10 p.m. and 6 a.m.

India has ratified quite a few Conventions relating to the employment of children and young persons. These include: (a) Minimum Age (Industry) Con.(No.5),1919; (b) Minimum Age (Trimmers and Stockers) Con.(No.15),1921; (c) Minimum Age (Underground Work) Con. (No.123),1965; (d) Medical Examination of Young Persons (Sea) Con.(No.16),1921; and (e) Night Work of Young Persons (Industry) Con.(No.6),1919 and (No.90),1948.

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The existing labour laws incorporating the provisions of the above ratified Conventions include: the Factories Act, 1948, Mines Act, 1952, Plantation Labour Act, 1951, Child Labour (prohibition and Regulation) Act, 1986, Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Merchant Shipping Act, 1958 and similar other protective labour laws. These laws have also embodied many provisions of other Conventions and Recommendations relating to the employment of children and young persons, particularly, Minimum Age (Non-Industrial Employment) Con.(No.33),1932, Medical Examination of Young Persons (Industry) Con.(No.77),1946, and Night Work of Young Persons (Non-Industrial Occupations) Con.(No.79),1946. Efforts are also being made to implement the provisions of the Worst Forms of Child Labour Convention (No. 182),1999.



Notes The worst forms of child labour comprise:

1. all forms of slavery or practices similar to slavery;
2. procuring or offering a child for prostitution or pornography;
3. using, procuring or offering a child for illicit activities such as trafficking;
4. work likely to harm the health, safety or morals of children.

2.6.3 Employment of Women

The Conventions and Recommendations adopted to regulate conditions of employment exclusively of women workers deal with maternity protection, night work, employment in unhealthy processes and equal pay.

The Maternity Protection Con. (Revised),1952 deals with maternity protection immediately before and after child birth. It provides that no woman worker should be required to work for at least twelve weeks at the time of her confinement and at least six weeks of this period should follow the birth of the child. She should be entitled to receive cash and medical benefits as a matter of right by social insurance or public funds, and is not to be discharged during the period of her maternity leave.

A woman is entitled to maternity leave for a period not less than 14 weeks which will include a period of 6 weeks' compulsory leave after childbirth. She is also entitled to a further period of leave in the case of illness or complications arising out of pregnancy or childbirth, the duration of which will be in accordance with the national law and practice. The cash benefit is not to be less than 2/3rds of the woman's previous earnings. The breaks for nursing should be at least an hour and a half daily and the pregnant woman should not be allowed to work overtime or during night.

The first Convention dealing with prohibition of employment of women during night was the Night Work (Women) Con. (No. 4),1919. It was superseded by the Night Work (Women) (Revised) Con.(No. 41),1934, which was revised by the Night Work (Women) (Revised) Convention (No. 89), 1948. Conventions place a restriction on the employment of women during night in any public or private industrial undertaking. The Convention defines "night" to signify a period of "consecutive hours including the interval between 10 p.m. and 5 a.m."

The Equal Remuneration Convention (No.100), 1951 calls for equal remuneration for men and women, for work of equal value.

The relevant Conventions relating to women workers ratified by India are: (a) Night Work (Women) Con.(No.4), 1919; (b) Night Work (Women) (Revised) Con.(No.41), 1934; (c) Night

Work (Women) (Revised) Con.(No.89), 1948; (d) Equal Remuneration Con.(No.100), 1951; (e) Discrimination (Employment and Occupation) Con.(No. 111), 1958; and Underground Work (Women) Con.(No.45), 1935.

Provisions of Conventions relating to night work, that is, Nos, 41 and 89 have been incorporated in the protective labour laws like Factories Act, 1948, Mines Act, 1952, Plantation Labour Act, 1951, Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and other similar laws. The provisions of the Equal Remuneration Con. (No.100), 1951 and those of the Discrimination (Employment and Occupation) Con. (No.111),1958 have been given effect to by the Equal Remuneration Act, 1976. The provisions of the Underground Work (Women) Con. (No.45), 1935 have been incorporated in the Mines Act, 1952.

Although India has not ratified Maternity Protection Conventions (No.3),1919, (No. 103),1952, and (No. 183), 2000, the Maternity Benefit Act, 1961 and the Employees' State Insurance Act, 1948, incorporate many of their provisions.

2.6.4 Health, Safety and Welfare

The Prevention of Industrial Accidents Recommendation (No.31),1929, the Power-driven Machinery Rec.(No.32),1929, and the Labour Inspection Rec.(No.20),1923 deal with general problems of safety. Recommendation No.31 provides in detail, the methods of co-operation between State inspectorates, employers and workers' organisations and other bodies in the prevention of accidents. It also prescribes the general principles to be embodied in safety legislation. Recommendation No.32 lays down that power-driven machinery should not be installed unless it is furnished with the safety appliances required by law.

Recommendation No.20 provides that the principal function of the inspection system should be to secure the enforcement of laws and regulations relating to conditions of work and protection of workers, including matters of safety and health. The Marking of Weight (Packages Transported by Vessels) Con.(No.27),1929, which has been ratified by India, requires every package of one tonne or more gross weight consigned for transport by sea or inland water to have its gross weight plainly or durably marked on the outside, before it is loaded on a ship or other vessel.

The policy should aim at preventing accidents and injury to health arising out of, linked with, or occurring in the course of, works by eliminating, minimizing or controlling hazards in the agricultural working environment.

Recommendation No.3 suggests making arrangements for the disinfection of wool infected with anthrax spores either, in the country exporting such wool, or at the port of the entry. Recommendation No.4 deals with the protection of workers against lead poisoning and provides that the employment of women and young persons in processes involving the use of lead compounds be permitted only on the adoption of certain health precautions. Recommendation No.6 prohibits the use of white phosphorus in the manufacture of matches. The White Lead (Painting) Con.(No.13),1921, forbids the use of white lead and sulphate of lead and all products containing these pigments in the internal painting of buildings.

The ILO has taken recourse to a number of activities in promoting the welfare of workers. Two Recommendations deal with various aspects of workers' welfare. The Utilization of Spare Time Rec., 1924 deals with the principles and methods for securing the best use of the spare time of workers. The Living-in Conditions (Agriculture) Rec.,1921 recommends that measures should be adopted to regulate the living-in conditions of agricultural workers with due regard to the climatic or other conditions affecting agricultural work.

India has ratified Marking of Weight (Packages Transported by Vessels) Convention (No.27),1929, Radiation Protection Con.(No.115),1960 and Benzene Con.(No.136),1971. The provisions of Con.No.27 have been incorporated in the Marking of Heavy Packages Act, 1951, and those of

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Con.Nos.115 and 136, in safety provisions of Factories Act, 1948 and laws dealing with pollution. The provisions of the Protection against Accidents (Dockers) Con.(No.32),1934, which has also been ratified by India have been covered by the Indian Dock Laborers Act, 1934.

Existing safety and health provisions of labour laws relating to factories, mines, docks, and others also contain many provisions of a few other Conventions and Recommendations. Some of these are, Prevention of Industrial Accidents Rec.(No.31),1929, Power-driven Machinery Rec.(No.32),1929, Labour Inspection Rec. (No.20), 1923, Guarding of Machinery Con.(No.119),1963, Occupational Safety and Health Con.(No.155),1981 and Industrial Accidents Con. (No.174),1993. A few protective labour laws, also contain certain provisions of Welfare Facilities Rec.(No.102),1956 and Workers' Housing Rec. (No.115),1961.

2.6.5 Social Security

The International Labour Conference has given serious attention to the problems of social security against various risks to which workers are exposed. A number of Conventions and Recommendations deal with workmen's compensation, sickness insurance, invalidity, old age and survivors' insurance, unemployment provisions, maternity protection and general aspects of social security.

Convention No.17 provides that workmen should receive compensation for personal injury caused due to industrial accident. Compensation for death or permanent disablement should be in the form of periodical payments and injured workmen should be entitled to receive necessary medical aid. Recommendation No. 22 suggests certain scales of compensation.

Convention No.18, subsequently revised by Con. No.42, provides for the payment of compensation to workmen incapacitated by certain occupational diseases. In the event of death resulting from such occupational diseases, compensation should be paid to the dependants of the deceased workmen.

The Sickness Insurance (Industry) Convention and Sickness Insurance (Agriculture) Con. (No.25), both adopted in 1927, deal with sickness insurance of workers employed respectively in industry and agriculture. Both the Conventions recommend the establishment of a system of compulsory sickness insurance and provide for the payment of cash benefit for at least the first 26 weeks of incapacity to insured persons who are unable to work owing to sickness. Insured persons should also be made entitled to receive free medical aid from the commencement of illness until the expiry of the benefit period.

In 1933, the International Labour Conference adopted a series of Conventions dealing with the minimum conditions that ought to be complied with by every scheme of compulsory invalidity, old age and survivors' insurance. All these Conventions provide that the right to pension may be conditional upon successful completion of a qualifying period which may also involve payment of a minimum number of contributions. The expenses of the schemes are to be met by insured workers, employers and public authorities. The Invalidity, Old-Age and Survivors' Insurance Rec., 1933 lays down the details of the scheme. Conventions Nos.35--40 were subsequently revised by the Invalidity, Old-Age and Survivors' Benefits Con.(No.128), 1967.

The Unemployment Provisions Convention, 1934 deals with unemployment insurance, the scheme of which may be compulsory, voluntary or a combination of both. The scheme provides for the payment of unemployment benefit on the satisfaction of certain conditions, if necessary. The duration of benefit may be limited to a period which is not normally to be less than 156 working days per year. The Unemployment Provisions Rec.(No.47),1934 deals with the scheme of unemployment insurance.

The Conventions relating to social security ratified by India are: Workmen's Compensation (Occupational Diseases) Con.(No.18),1925, and Con.(No.42),1934, Equality of Treatment (Accident Compensation) Con.(No.19), 1925 and Equality of Treatment (Social Security) Con.(No.111), 1962. The provisions of Conventions Nos. 18 and 19 have been incorporated in the Workmen's Compensation Act, 1923 and Employees' State Insurance Act, 1948. The social security laws in the country, for instance, Workmen's Compensation Act, 1923, Employees' State Insurance Act, 1948, Employees' Provident Funds and Miscellaneous Provisions Act. 1952 and the Payment of Gratuity Act, 1972 embody the provisions of Con.(No. 111) of 1962. These laws do not make any discrimination between nationals and foreigners relating to entitlement to social security benefits.

2.6.6 Industrial Relations

The relevant Conventions are: Right of Association (Agriculture) (No.11),1921, Freedom of Association and Protection of the Right to Organize (No.87),1948, Right to Organize and Collective Bargaining (No.98),1949, Collective Bargaining (No.154),1981, Rural Workers' Organisations (No.141),1975 and Tripartite Consultations (International Labour Standards) (No.144),1975. The Recommendations include: Collective Agreements (No.91), 1951, Voluntary Conciliation and Arbitration (No.92), 1951, Collective Bargaining (No.163),1981, Consultation (Industrial and National Levels) (No.113),1960, and Co-operation at the Level of the Undertaking (No.94),1952.

Convention No.11 deals with the right of association of agricultural workers and requires the ratifying countries to secure to all agricultural workers, the same right of association and combination, as available to industrial workers. Convention No.87 lays down that workers and employers shall have the right to establish and to join organisations of their own choosing without any previous authorization. The organisations are to be left free to frame their constitutions and rules, to form a scheme of administration and to formulate their programmes and the public authorities are required to refrain from making any interference. It also affirms their right to establish joint confederation and to affiliate with international organisations.

Convention No.98 deals with the principles of right to organize and bargain collectively. It provides that workers should enjoy adequate protection against acts of anti-union discrimination with respect to their employment and recommends the adoption of measures to encourage and promote voluntary negotiations between employers and workers' organisations for regulating terms and conditions of employment by means of collective agreements.

Recommendation Nos.91 and 92 deal with the creation of machinery for negotiating, conducting, revising and renewing collective agreements, and provide for the establishment of machinery to help in voluntary conciliation of industrial disputes. Recommendation No. 94 relates to consultation and cooperation between employers and workers at the level of the undertaking, primarily on matters of mutual interests which are not otherwise covered under collective bargaining or dealt with the machinery created for the determination of terms and conditions of employment.

Conventions relating to industrial relations ratified by India are: Right of Association (Agriculture), 1921. Rural Workers Organisation Con., 1975, and Tripartite Consultation Con.(No.144),1976. The provisions of Conventions Nos. 11 and 141 are included in the Trade Unions Act., 1926. The contents of Con.(No.144),1976 have been included in the provisions of labour laws providing for the constitution of tripartite bodies such as Wages Act, 1948, ESI Act, 1948, and also by non-statutory measures.

The Industrial Disputes Act, 1947 contains some provisions of a few unratified Conventions includes: Collective Bargaining Con. (No.154),1981, Collective Agreements, Voluntary Conciliation and Arbitration Rec.,1951, and Collective Bargaining.

2.6.7 Employment and Unemployment

The employment Convention (No. 2), 1919 provides for the establishment of a system of free public employment agencies, as one of the measures against unemployment. The Employment Service Con.(No.88),1948 deals with the maintenance of free public employment service consisting of a national system of local and regional employment offices under the direction of a national authority.

The Forced Labour Convention (No.29), 1930 provides for the abolition of forced labour in all its forms. The Unemployment Recommendation, 1919, the Public Works (National Planning) Recs. (No.51), 1937 and (No.73), 1944 deal with the problems of public works policy adopted as a measure for the creation of employment opportunities. Recommendation No.1 suggests co-ordination in the execution of all work undertaken under a public authority with the purpose of reserving such work for periods of unemployment and for areas mostly affected by it.

Conventions concerning employment and unemployment ratified by India include: Unemployment recommendation, 1919 (later denounced), Employment Services Con. (No.88), 1948, Employment Policy Con. (No. 122),1964, Forced Labour Con.(No.29),1930 and Abolition of Forced labour (I\111.t.;0.IO5).1957.

The provisions of the Conventions relating to unemployment and employment have been given effect to by administrative orders and practices, supplemented by a few labour laws such as Employment Exchanges (Compulsory Notification of Vacancies) Act, 1976. Forced labour has been prohibited by fundamental right against exploitation under the Indian Constitution.

2.6.8 Other Special Categories

The ILO has given special attention to the employment conditions of seamen. A number of Conventions and Recommendations deal exclusively with various aspects of the working conditions of seamen. These relate to hours of work, wages, facilities for finding employment, seamen's articles, employment of young persons, officers' competency certificates, annual holidays with pay, sickness and unemployment insurance, ship-owners' liability, repatriation of seamen and social security. Similarly, a few Conventions and Recommendations deal with fishermen, workers in inland navigation, dock-workers, nursing personnel, employees of hotels and restaurants, indigenous and tribal people, migrant workers and older workers.



Notes Other special categories of Conventions ratified by India include: Inspection of Emigrants Con. (No. 21).1926, Seamen's Articles of Agreement Con.(No.22), 1928, Marking of Weight (Packages Transported by Vessels) Con.(No.27), 1929, Final Articles Revision Con.(No.80),1947 (excluding Part II), Indigenous and Tribal Population Con. (No. 107),1957 and certain Articles of Labour Statistics Con.(No.160),1985.

Provisions of Con.(No.21),1926 have been incorporated in the Emigration Act, 1983 and partly in the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The Marking of Heavy Packages Act, 1951 embodies the provisions of Con.(No.27),1929. The Collection of Statistics Act, 1953 deals with the provisions of Con.(160),1985.

2.7 Difficulties in the Adoption of Conventions and Recommendations

Notes

Conventions and Recommendations of ILO seek to prescribe and indicate internationally uniform minimum labour standards. The purpose is to see that the labour standards in the Member countries are not below the ones prescribed by ILO. As the Member countries of ILO are at different stages of economic growth and industrial advancement, the capacity to maintain and preserve labour standards differs from country to country, depending upon their relative economic prosperity. Some of the countries are extremely poor, economically and technologically backward, therefore having, very poor labour standards, and are incapable of securing any immediate improvement in the same. On the other hand, there are highly industrially advanced countries with national income sufficiently large enough to ensure equally high labour standards. There are many countries at the intermediate stage of economic development.

This uneven economic development on the world scale presents the main hindrance to the adoption of a Convention or Recommendation, laying down a minimum labour standard. What may be too high for economically backward and poor countries may, perhaps, be too low for the rich countries. A Convention or Recommendation seeking to bring about a significant improvement in the labour standards runs the risk of being unrelated to the prevailing labour standards and beyond the economic, and administrative capacity of many countries. A Convention or Recommendation has to gain acceptance from the member countries if it is to be effective in achieving its purpose. The Convention which seeks to provide really high labour standards will fail to secure acceptance and what may succeed in securing acceptance, may not, in reality, be able to prescribe high labour standards. It is a dilemma which has confronted ILO since its very inception.

Thus, Conventions and Recommendations, if they are to be of real weight in the establishment of internationally uniform labour standards, "must strike an appropriate balance between the ideal and the immediately practicable and between precision and flexibility." It is creditable that ILO has been able to adopt 185 Conventions and 193 Recommendations, dealing with diverse aspects of labour in spite of contradictory pressures pulling in different directions.

2.8 Problems of Ratification

The process of evolving internationally uniform minimum labour standards does not end with the adoption of a Convention or Recommendation. A Convention has to secure ratification from the appropriate authorities in the member states. A country ratifying a Convention undertakes an international obligation with other member states, to put into effect the provisions of the Convention by legislative or other appropriate measures. It is, therefore, pertinent here to examine the difficulties which are faced by some of the Member countries in ratifying ILO Conventions.

As on January 1, 2002, there were 174 member states and 185 Conventions adopted by ILO. The average ratifications per country come to merely 35. Many countries have ratifications below the average of 35. There are a few countries each having less than 10 ratifications. France and Spain have ratified the maximum number of Conventions. None of the Conventions has succeeded in securing cent per cent ratification. The highest number of ratifications has been secured by Forced Labour Cons.(No.29) (No. 105), Freedom of Association and Protection of Right to Organise (No.87), Right to Organise and Collective Bargaining Con.(No.98) and Equal Remuneration Con.(No.100).

The impact of ILO on international labour standards in a particular country should not be judged only by the number of ratifications that a country has secured. There are many countries which are in agreement with the principles incorporated in many of the Conventions and have sought

Notes

to implement them either wholly or partly, through legislative or other appropriate administrative measures, and still have not ratified those Conventions. Therefore, it is appropriate to examine the difficulties which some of the Member states experience in formally ratifying these Conventions. These Member countries may, for the sake of convenience, be grouped under the following heads:

1. Countries with higher labour standards;
2. Countries having a federal set-up;
3. Countries where the subject matters of the Conventions are regulated by collective agreements;
4. Industrially backward countries.

2.8.1 Countries with Higher Labour Standards

Countries having standards of labour higher than those envisaged under International Labour Conventions, experience a special problem of ratification. In such countries, acceptance of Conventions prescribing standards lower than the existing ones may involve considerable political effort. It is feared that the approval given to lower minimum standards will impair the authority of the higher national standard. In cases where ratification of a Convention necessitates a change in the law of the land, legal difficulties are also encountered.

Although the ratification of an International Labour Convention does not imply undermining of the higher national standards, many countries have experienced the above-mentioned difficulties in accordance with formal ratification to many of the Conventions. Attempts have, however, been made to remove these difficulties by providing "no prejudice" clause in the Conventions and other measures. Nevertheless, the number of ratifications of the Conventions in many countries (with a few exceptions) having comparatively higher labour standards, still continues to be small.

2.8.2 Countries having a Federal Set-up

The application of Conventions by countries having a federal set-up also involves difficulties owing to the division of the legislative and executive authorities between the federal government and the constituent units. The national authority, which is immediately expected to pursue the implementation of the provisions of a Convention, finds itself constitutionally handicapped, as in many cases, the subject falls under the jurisdiction of the constituent units.

The extent of such a difficulty, however, varies from country to country depending upon variations in the distribution of the authority between the federal government and the federating units. Where constituent units have been given comparatively greater autonomy, ratification of Conventions becomes more difficult. On the whole, the number of ratifications of Conventions by federal states has been small. It is on account of these reasons that the Constitution of ILO imposes certain additional obligations on the federal states in regard to ratification of Conventions.

2.8.3 Countries where Subject-matters of Conventions are Regulated by Collective Agreements

In some countries having highly developed industrial organisations, many issues forming the subject matters of International Labour Conventions are traditionally decided by collective agreements between the employers and trade unions and the State deliberately refrains from

making interference. It is presumably due to this reason that the Constitution of ILO makes room for the application of Conventions by collective agreements. However, in many cases, it is very difficult for the competent national authority to enforce the provisions of a Convention on the parties without destroying their freedom to bargain collectively, which ultimately means involving still wider problems of industrial relations.

This is particularly true in cases where collective agreements provide for standards higher than those established by the Conventions. Moreover, even when the competent national authority succeeds in persuading the parties to enter into agreement in accordance with the provisions of a Convention, there is still the problem of ensuring the acceptance of obligation for a substantial period of time as many terms of collective agreements are changed at frequent intervals. Besides, the levels at which collective agreements are reached (for example, plant, industry, region, and others) also create further difficulties.

2.8.4 Industrially Backward Countries

Economically and industrially backward countries have generally very poor labour standards and they often find it very difficult to bring about any immediate improvement in the same. Although the International Labour Conventions which create only minimum standards, are adopted after a thorough investigation and with due regard to the stages of economic and industrial development of different member states. The standards so established often seem burdensome to many extremely poor and economically backward countries. These countries find it very difficult to ratify Conventions prescribing high labour standards. The ratification of Conventions which are in keeping with the prevailing labour standards does not involve many difficulties.

ILO has started giving more attention to the labour matters in the developing countries and special target groups of workers, such as child and woman labour and workers in unorganised and rural sectors. Its role in providing technical co-operation, encouragement to workers and employers' organisations in the formulation and implementation of labour policy and provision of training, has considerably expanded.

2.9 International Labour Standards and India

Core-Conventions

1. Freedom of Association (No. 87) and Right of Collective Bargaining (98)
2. Elimination of all forms of forced or compulsory labour (29,105)
3. Effective abolition of child-labour (138)
4. The elimination of discrimination in respect of employment and occupation (100, 111)
5. It does not link ILS with trade
 - (a) There is sound justification for international labour standards. Normatively, their desirability is never in doubt. The controversy is about the means of their enforcement, particularly the arguments concerning the attempted linkage between certain core labour standards and international standards.
 - (b) Thus, the question is not whether international labour standards should be implemented. The question is whether the countries and companies that continue to pursue competitive advantage through the violation of Fundamental Rights should be punished through some sort of linkage with trade. Employers in several developed

Notes

- countries and unions, governments and employers in several developing countries have been resisting any formal linkage between labour standards and trade.
- (c) Therefore, social clause linkage to trade is considered by the social partners in developing countries as an effort of governments and workers in developed countries to deprive the developing countries of their comparative advantage of cheap labour.
 - (d) The developed countries' arguments are based on the realization that "poverty anywhere is a danger to prosperity everywhere." There is also concern about the race to the bottom spurred by the notion that, "if you don't raise your standards, we may have to follow suit."
 - (e) Developing countries adopted a dual strategy - oppose linkage of trade with Labour Standards at international level: Nationally, continue to put pressure on government to improve Labour Standards.
 - (f) Future of ILS is caught in the following opposing forces - Globalization and Regionalization, North and South divide, supremacy of ILO and W.T.O., and diverse pressures among the social partners about desirability of harmonizing labour standards with deregulated labour market.
 - (g) Developed countries want Social Labeling, Guarantee for manufactured without child labour, Fair Trade, etc.
 - (h) Developed countries arguments are as follows:-
 - i. Poverty anywhere is a danger to prosperity everywhere.
 - ii. If you do not raise your standard, we may have to lower ours.
 - iii. Social dumping could cause job losses in developed countries. Hence, VISA restrictions for Indian software professionals.
 - iv. Competitive cost is the main issue.
 - (i) Bonded Labour (Abolition) Act, 76
 - (j) India advocates ILS within the framework of ILO, but opposes linkages with WTO - All social partners - Govt., employees - TUs.



Case Study

The Case of India

The Government of India is pursuing, rather half-heartedly, changes to some of the labour legislations. The employing ministries have apparently been pressing for some of these changes. They include changes in the Factories Act to permit employment of women in night shift, particularly in electronic units and export zones.

India has ratified 38 out of 182 conventions. ILO has influenced India in a big way. Our legal framework on wages, working conditions, welfare, social security, protection of vulnerable sections of society, HRD, equality, non-discrimination - influenced by ILO. The Indian Constitution upholds all the fundamental principles of core ILS. India has ratified 3 out of 7 core Conventions.

India was actively pursuing 14 projects to eradicate child labour in hazardous industries by 2002. The All India Organisation of Employers have undertaken a project in Jalandhar

Contd...

(Punjab) to have an agreement similar to the one in Sialkot, Pakistan, concerning the abolition of child labour in the manufacture of sports goods.

| | Social Clauses | Indian Constitutional/Legislations |
|----|---|--|
| 1. | <ul style="list-style-type: none"> • Freedom of Association (87) • Right to C.B. - (98) | <ul style="list-style-type: none"> • Not ratified • Fundamental Rights • Trade Unions Act, 193 |
| 2. | Forced Labour Convention and its gradual abolition 29 and 105 | <ul style="list-style-type: none"> • India has ratified 29 but not 105. • Art, 23 of the Constitution • Bonded Labour System (Abolition) Act 1976 |
| 3. | Equal Remuneration Convention (100). No discrimination on the basis of sex. Has to be only on skill, efforts, responsibility and working conditions | <ul style="list-style-type: none"> • Indian Constitution • Equal Remuneration Act - 1976 |
| 4. | Discrimination (Employment and Occupation) Convention - 1958 (iii) - Social Justice | <ul style="list-style-type: none"> • Indian Constitution denounces discrimination and encourages preferential treatment to certain class |
| 5. | Minimum Age Convention 1973 - (138) - 15 years - 18 years | <ul style="list-style-type: none"> • Child Labour (Panda) Act - 1986 prohibits - 14 years - Factory Act - 18 Years |
| 6. | Convention 182 - Immediate action on worst forms of Child Labour | |

India has advocated the promotion of labour standards within the framework of the ILO Constitution. It has consistently opposed the proposals to link labour standards and trade through 'social labelling,' etc. The Non-aligned Countries Summit organised by the Labour Minister of India at New Delhi adopted a resolution to this effect. All the three social partners - Government, employers' organisations and national trade union centres belonging to different persuasions - are all united against the linkage of international standards with trade (for statements of different social partners see: IIRA/FES, 1996) for familiar reasons that are articulated in most developing countries throughout the world: commitment to ILO's pillars of voluntarism, tripartitism and free choice of social partners. Mandatory imposition of labour standards, by whatever name they may be called, contravenes Article 19(3) of the ILO Convention. All the social partners in India stand for upgrading labour standards. But they are against linkages which put artificial and patently motivated barriers against (competition from) India and other developing countries.

A national consultation on international labour standards where several non-governmental organisations and national trade union centres participated made a proposal with the following four components (CEC, 1996):

1. Reject the labour rights-WTO linkage.
2. Uphold the principles of universal labour rights and the need for evolving structures to monitor the enforcement of labour rights.
3. Set up a UN Labour Rights Commission as an alternative.
4. Establish, at the national level, a powerful National Labour Rights Commission to monitor and enforce labour rights.

Question

Analyse the case.

Notes

2.10 Summary

- The Peace Conference convened at the end of the World War I led to the creation of the International Labour Organisation in 1919.
- The ILO is a tripartite organisation, consisting of representatives of the governments, employers and workers of member-countries in the ratio of 2:1:1.
- The first national trade union organisation - the AITUC - in our country was formed within one year of the setting up of the ILO.
- Principal function of International Labour Organisation is to secure international minimum social & labour standards.
- Labour standards are embodied in the form of conventions & recommendations.
- There is a basic difference in the nature of obligations created by Convention and Recommendations.
- The main purpose behind the development of social institutions is "to identify and advance solutions to the problems connected with the framing and implementation of policies of economic and social development

2.11 Keywords

Conventions: obligation creating instruments

Governing body: It is the chief executive body of ILO.

Health: It is the general state of physical, mental & social well-being.

ILO: International Labour Organisation

Recommendations: guidance providing instruments

Social security: It is the social insurance program providing social protection, or protection against socially recognized conditions, including poverty, old age, disability, unemployment and others.

Wages: The remunerations received by the workers in lieu of its labour.

Welfare: Services & facilities provided by ILO to raise the labour standards.

Safety: Protection of a persons health physically.

2.12 Self Assessment

State whether the following statements are true or false:

1. Recommendations are the obligation carrying instruments provided by ILO.
2. Labour legislations in India are influenced directly or indirectly by ILO.
3. Due to division of legislative & executive authorities between federal governments, there is difficulty in adoption of conventions by such countries.
4. The Industrial Dispute Act, 1947 contains certain provisions of unratified Conventions & recommendations.
5. India received a great help from ILO for the establishment of the institutions for labour legislation in India.

6. India has adopted all the conventions & recommendations of ILO.
7. International labour conference provides for the discussion & deliberation of international labour problems.
8. In general sense, recommendations lay down higher labourer standards than conventions.
9. ILO is a tripartite organisation.
10. Conventions are the guiding principles for the establishment of labour legislations.
11. In countries with higher labour standard than those prescribed by ILO, there is no problem in ratification adoption.
12. The governing body of ILO is the chief executive body of the organisation responsible for effective programming of the ILO working.
13. ILO has regional advisory committee as well.
14. India is a founder member of ILO & has played a role in the adopting the international standards for laborers.

2.13 Review Questions

1. "ILO has given attention to the question of 'freedom of association' and 'harmonious industrial relations'." Comment.
2. "Indian labour legislation has been influenced by ILO in many ways." Do you agree? Justify giving relevant examples.
3. Analyse the labour conditions in India in comparison with the standard set by ILO.
4. Do you think the labour & welfare measures as prescribed by ILO are sufficient enough to prevent the Indian labour from social & economic exploitation? Justify.
5. "Conventions and Recommendations of ILO seek to prescribe and indicate internationally uniform minimum labour standards." Comment.
6. What extra efforts India has take to provide the social security & labour welfare of its workers & laborers?
7. Critically analyse the major activities performed by ILO for the welfare & social security of labourer conditions.
8. India has ratified 39 out of 185 conventions adopted by ILO. Comment on the conventions ratified & adopted by India.
9. Analyse the conditions that has led to the development of ILO.
10. India has difficulty in adoption of conventions & recommendations. Analyse the difficulties faced by India for adoption of these conventions & recommendations. Suggest the measures to overcome the difficulties by India in adoption of those principles.
11. Due to the difference in the nature of government legislations & labour standards, there is great difficulty in implementation of conventions & recommendations. Do you agree? Justify.
12. Analyse the working of ILO. How far ILO is successful is achieving its mission.

Notes

Answers: Self Assessment

- | | |
|-----------|-----------|
| 1. False | 2. True |
| 3. True | 4. True |
| 5. True | 6. False |
| 7. True | 8. True |
| 9. True | 10. False |
| 11. False | 12. True |
| 13. True | 14. True |

2.14 Further Readings



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En.wikipedia.org

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Unit 3: The Factories Act, 1948

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Objectives

After studying this unit, you will be able to:

- Explain objectives of the Act
- Discuss scope and applicability of the Act
- Understand welfare measures
- Explain administrative machinery
- Discuss national recommendation of second national commission on labour

Introduction

With the establishment of the Cotton Mill in 1851 and Jute Mill in Bengal in 1855, modern factory system was founded in India. Women and children were employed. There were excessive and long hours of work with little recreation. In 1881, Indian Factories Act was passed which gave protection to the employees especially to the children. The factory commission was appointed in 1890 by the Government of India. On the basis of the recommendation passed by the commission, an Act was passed in 1891 whereby the factory was amended to include premises in which fifty persons or more were employed. The acts were amended from time to time. The Act 1911 was amended in 1922 to implement the inventions on the hours of the work.

In year 1948, the Factories Act, 1934 was revised and its scope extended to include welfare, health, cleanliness, overtime payment and similar measures. The Factories Act was to ensure proper, safe and healthy working conditions in the factories, so the workers may feel interest and while in factories devote their time and labour in the working process of the factory without the fear of accidents and bodily strain. All the provisions of the Factories Act came into force with the effect from 1st December 1948.

3.1 The Factories Act, 1948

The object of the Act is to protect human beings from being subject to unduly long hours of bodily strain or manual labour. It also seeks to provide that employees should work in healthy and sanitary conditions, so far as the manufacturing process will allow and that precautions should be taken for their safety and for the prevention of accidents.

3.1.1 Scope and Applicability of the Act

The Act extends to whole of India. It applies to all factories, including factories belonging to Central or any State Government unless otherwise excluded. The benefits of this Act are available to persons who are employed in the factory and be covered within the meaning of the term "worker" as defined in the Act. It would be desirable to discuss the meaning and definition of the term "factory" and "worker". Since the term "factory" refers to manufacturing process, it would be helpful to know the meaning of the term "manufacturing process" as defined by the Act.

Applicability of the Factories Act, 1948: The Act is applicable to the premises wherein:

- (i) 10 or more workers are employed with use of power
- (ii) 20 or more workers are employed without the use of power
- (iii) Less than 10 workers, if activity is notified by the State Government.

Engaged in manufacturing activities

1. Factories Act, 1948, is a central act, enforced by the state governments making the relevant rules to extend scope and objectives of the Act.
2. Karnataka State has formulated its rules as envisaged under the Act, and they are called "The Karnataka Factories Rules, 1969".
3. The Act is applicable to all the factories including state, and Central Government.
4. Onus is on the part of the factory management to comply with the provisions of the Act and Rules made there under.

3.1.2 Definitions

1. **Factory:** Section 2(m) of the Factories Act, 1948 defines "factory" to mean-

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.
- (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.

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

2. **Manufacturing Process:** The expression "manufacturing process" has been defined in Section 2 (k) to mean any process-

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) pumping oil, water, sewage, or any other substance; or
- (iii) generating, transforming or transmitting power; or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

3. **Worker:** Section 2 (l) of the Factories Act, 1948 defines a "worker" to mean-

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

Therefore, worker is a person -

- (i) who is employed;
- (ii) who is employed either directly or through any agency;
- (iii) who is employed in any manufacturing process, or in clearing any part of the machinery or premises used for a manufacturing process or in any other kind of work, incidental to or connected with the manufacturing process or the subject of the manufacturing process.

4. **Occupier:** Section 2 (n) of the Act defines "occupier" of a factory to mean: The person who has ultimate control over the affairs of the factory.

Provided that:

- (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- (ii) in the case of a company, any one of the directors shall be deemed to be the occupier;

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

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

1. The owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under:
 - (a) Section 6, Section 7, Section 7-A, Section 7-8, Section 11 or Section 12;
 - (b) Section 17, in so far as it relates to the providing and maintenance of sufficient suitable lighting in or around the dock;
2. The owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purpose of any matter provided for by or under Section 13, Section 14, Section 16. In relation to:
 - (a) The workers employed directly by him or by or through any agency; and
 - (b) The machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

3.2 Approval, Licencing and Registration of Factories

The factory has got to be approved and registered, after obtaining a licence by the occupier in accordance with the rules framed by the State Government. The State Governments are empowered to frame rules requiring the occupier of a factory for the purposes of this Act for the submission of plans of any class or description of factories to the Chief Inspector or State Government and to obtain previous permission of the Chief Inspector of Factories with regard to site where factory is proposed to be constructed, or extension, in case the factory already exists.

A factory shall not be deemed to be extended by reason only of the replacement of any plant or machinery, if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health. The occupier is required to submit full building plans, along with necessary particulars of specifications according to which the building has got to be approved in accordance with the rules. The registration, obtaining of licence or renewal of licence, as the case may be, is to be done by the occupier, in accordance with the rule by paying the prescribed fees.

The permission relating to site on which the factory is proposed to be constructed or extension to be executed in the existing factory in accordance with the plan is to be given within 3 months by the authority to which the request is made. If no reply is received within the aforesaid period, the permission is presumed. In case permission is refused, then in that case, the applicant may appeal to the State Government if the permission is refused by the Chief Inspector or to the Central Government if the permission is refused by the State Government, within 30 days. No license or renewal of license shall be granted unless the occupier gives at least 15 days notice in writing to the Chief Inspector of factories before he proposes to occupy or use any premises as factory.

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

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

The occupier is required to give notice to the Chief Inspector of Factories containing the above particulars with regard to those factories which were already functioning before this Act, within 30 days from the commencement of the Act [Section 7 (2)]. Before a factory is engaged in a manufacturing process which is ordinarily carried on for less than 180 working days in a year resumes working, the occupier is required to send full particulars of the factory to the Chief Inspector within 30 days of such resumption of work [Section 7 (3)]. Any change in the appointment of a manager or the factory is to be intimated within 7 days by the occupier to the Chief Inspector, [Section 7 (4)]. During the time no manager functions in the factory, the occupier is deemed as manager for the purpose of the Act. Non compliance with the provisions of Sections 6 and 7 is an offence for which the occupier can be punished.

3.3 The Inspecting Staff

Appointment

For the enforcement of the provisions of the Act, the State Government is empowered to appoint Inspectors having prescribed qualifications. They are of six types: (i) Chief Inspector (ii) Additional Chief Inspectors (iii) Joint Chief Inspectors (iv) Deputy Chief Inspectors (v) Inspectors and Additional Inspectors.

A Chief Inspector shall be appointed by the State Government. Chief Inspector in addition to the powers conferred on him may exercise the powers of an Inspector throughout the State. Likewise, every Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer so appointed shall, in addition to the powers of a Chief Inspector, exercise the powers of an Inspector throughout the State.

No person shall be appointed or having been so appointed, shall continue to hold office, which 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.

Every District Magistrate shall be an Inspector for his district.

The State Government may also appoint such public officers that it thinks fit to be Additional Inspector for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

In any area where there are more Inspectors than one, the State Government may declare the powers which such Inspectors shall respectively exercise.

Power of Inspectors

According to Section 9, an Inspector is vested with the following powers, which he may exercise within the local limits under his control. The powers are to be exercised in accordance with the roles framed for this purpose.

- (a) he may enter any premises which is used or which he has reason to believe is used, as a factory. He may be accompanied by such assistants, who are in the service of the Government or any local or public authority or with an expert as he thinks fit;
- (b) 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 an 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 any thing lying therein shall be left undisturbed (whether generally or in particular aspects) for so long as is necessary for the purpose of any examination under clause (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.

Duties of the Inspectors

The Inspectors are required:

- (i) to carry out duties as laid down under Section 9 (b) and (c);
- (ii) to ensure that statutory provisions and rules framed are carried out properly; and
- (iii) to launch prosecutions against factory-owners under the provision of Chapter X of the Act.

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, and if the contravention is continued after conviction, with a further fine which may extend to one thousand rupees for each day on which the contravention is so continued :

Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury,

the fine shall not be less than twenty-five thousand rupees in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.

Explanation: In this section and in section 94 "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, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.

Liability of Owner of Premises in Certain Circumstances

1. Where in any premises separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting and sanitation.
2. The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of sub-section (1).
3. Where in any premises, independent or self-contained, floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of -
 - (i) latrines, urinals and washing facilities in so far as the maintenance of the common supply of water for these purposes is concerned;
 - (ii) fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an occupier;
 - (iii) safe means of access to the floors or flats and maintenance and cleanliness of staircases and common passages;
 - (iv) precautions in case of fire;
 - (v) maintenance of hoists and lifts; and
 - (vi) maintenance of any other common facilities provided in the premises.
4. The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub-section (3).
5. The provisions of sub-section (3) relating to the liability of the owner shall apply where in any premises independent rooms with common latrines, urinals and washing facilities are leased to different occupiers for use as separate factories :

Provided that the owner shall be responsible also for complying with the requirements relating to the provisions and maintenance of latrines, urinals and washing facilities.
6. The Chief Inspector shall have, subject to the control of the State Government, the power to issue orders to the owner of the premises referred to in sub-section (5) in respect of the carrying out of the provisions of section 46 or section 48.
7. Where in any premises portions of a room or a shed are leased to different occupiers for use as separate factories, the owner of the premises shall be liable for any contravention of

the provisions of - (i) Chapter III, except sections 14 and 15; (ii) Chapter IV, except sections 22, 23, 27, 34, 35 and 36:

Provided that in respect of the provisions of sections 21, 24 and 32 the owners liability shall be only in so far as such provisions relate to things under his control:

Provided further that the occupier shall be responsible for complying with the provisions of Chapter IV in respect of plant and machinery belonging to or supplied by him; (iii) section 42.

8. The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of sub-section (7).
9. In respect of sub-sections (5) and (7), while computing for the purposes of any of the provisions of this Act the total number of workers employed, the whole of the premises shall be deemed to be a single factory.

Enhanced Penalty After Previous Conviction

1. If any person who has been convicted of any offence punishable under section 92 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine which shall not less than ten thousand rupees but which may extend to two lakh rupees or with both:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than ten thousand rupees:

Provided further that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than thirty five thousand rupees in the case of an accident causing death and ten thousand rupees in the case of an accident causing serious bodily injury.

2. For the purposes of sub-section (1), no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted.

Penalty for Obstructing Inspector

Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents any worker in a factory from appearing before, or being examined by, an Inspector, 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.

Penalty for Wrongfully Disclosing Results of Analysis under Section 91

Whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under section 91, 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

Penalty for Contravention of the Provisions of Sections 41B, 41C and 41H

1. Whoever fails to comply with or contravenes any of the provisions of section 41B, 41C or 41H or the rules made thereunder, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.
2. If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.

Offences by Workers

1. Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred rupees.
2. Where a worker is convicted of an offence punishable under sub-section (1), the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use to be made, by another person, shall be punishable with imprisonment for a term which may extend to two months or with fine which may extend to one thousand rupees or with both.

If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to one thousand rupees unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.

Omitted by the Factories (Amendment) Act, 1987, w.e.f. 1-12-1987 Earlier section 100 was amended by the Factories (Amendment) Act, 1976, w.e.f. 26-10-1976

3.4 Welfare Measures for Workers

This Act provides the general welfare measures for the laborers working in the factory premises. It is a statutory requirement on the part of the employers to provide these basic necessities for the health and safety of the workers. They are of two types - health measures and welfare measures.

3.4.1 Health Measures

Cleanliness

Section 11 of the Factories Act, 1948 provides for general cleanliness of the factory. It lays down that dust, fumes and refuse should be removed daily; floors, stair-cases and passages should be

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

Disposal of Wastes and Effluents

Section 12 of the Factories Act makes it obligatory on the owner of every factory to make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.

Ventilation and Temperature

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

Dust and Fume

Section 14 (I) deals with the measures, which should be adopted to keep the workrooms free from dust and fume. Every factory in which by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any work-room. If any exhaust appliance is necessary for the above purposes, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity and such point shall be enclosed as far as possible.

Artificial Humidification

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

1. Prescribing standard of humidification;
2. Regulating the methods used for artificially increasing the humidity of the air;
3. Directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
4. Prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workroom.

Overcrowding

The Factories Act, 1948 prescribes that no room of any factory shall be overcrowded to the extent that it is injurious to the health of the workers. In every work-room, each worker should be provided with a minimum space of 9.9 cubic meters.

Lighting

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

Drinking Water

Section 18 deals with the provisions relating to arrangements for drinking water in factories. 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.

Conservancy Arrangements

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

Spittoons

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

3.4.2 Welfare Measures

- (A) **Washing and Sitting Facilities:** In every factory, adequate and suitable separate facilities for washing, conveniently situated, should be provided and maintained for the use of both male and female workers. The above facilities provided for the use of female workers, should be adequately screened in order to provide privacy to female workers.
- (B) **The Facilities of First Aid Appliances and Ambulance Room:** The occupier of factory is required to provide the facility of first aid boxes to be made use of by the workers in an emergency. The first aid boxes or cupboards should be readily accessible and equipped with the prescribed contents. The number of boxes and cupboards should not be less than one for every 150 workers ordinarily employed at any time in a factory. Each first aid box or cupboard should be kept in the charge of a separate responsible person who holds a certificate in first aid treatment recognized by the State Government and readily available to workers during the working hours of the factory.

In every factory where more than 500 workers are ordinarily employed, there should be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of qualified medical and nursing staff as prescribed and the above facilities should be made available during the working hours of the factories.

- (C) **Canteen, Rest Room and Lunch Rooms Facilities:** Where 250 workers or more are ordinarily employed, canteen facilities are required to be provided. In every factory where more than 150 workers are employed, adequate and suitable shifters or rest rooms or lunch rooms with provision for drinking water where workers can eat meals should be provided and maintained for the use of workers. These rooms should be well ventilated, sufficiently lighted and maintained in cool and clean condition.
- (D) **Crèches Facility:** In every factory where more than thirty women workers are employed, rooms of adequate size, well lighted and ventilated, maintained in clean and sanitary condition are to be provided for the use of children below 6 years of age of women workers.
- (E) **Appointment of Welfare Officers:** The main duty to look after the welfare of the workers lies on the welfare officer of a factory. Therefore, in every factory where more than 500 workers are ordinarily employed, the occupier of a factory is required to appoint such number of welfare officers as may be prescribed by the State Government in this respect.

(F) ***Working Hours of Adult Workers***

1. Section 51 and 54 contain general provisions regarding weekly and daily working hours. According to Section 51, no adult worker shall be required or allowed to work in a factory for more than 48 hours in a week. As regards daily working hours under Section 54, no adult worker shall be required or allowed to work in a factory for more than 9 hours in a day.
2. Section 52 speaks of weekly holiday to the workers of a factory. An adult worker shall not be allowed or required to work in a factory on the first day of the week, i.e. Sunday. But if it becomes necessary to make Sunday a working day, a substituted holiday is made compulsory.
3. Compensatory Holidays to be allowed for the worker who has been deprived of weekly holidays with equal number so lost within the month in which the holidays were due to him or within a month immediately following that month.
4. Every adult worker working in a factory are to be allowed rest during working hours of at least half an hour. This interval is to be so placed as to break the working hours for a maximum of 5 hours at a stretch. This period of 5 hours work can be extended to six hours by the permission of the State Government or subject to the control of State Government by the Chief Inspector on sufficient grounds to be recorded in the permission order.
5. A worker of a factory required to work in excess of the maximum hours of work prescribed under Section 51 and Section 54 is to be paid extra wages for overtime work done by him. Therefore, a worker required working for more than 9 hours in any day or 48 hours in any week shall be paid at twice the ordinary rate of wages for the extra hours of work done by him. Ordinary rate of wages for this purpose shall be the basic wages plus such allowances including the cash equivalent or the advantage accruing through the concessional sale of food grains and other articles made available to workers excluding bonus.

(G) ***Restrictions on Employment of Women:*** No exemption from the provisions of Sec. 54 relative to daily hours of work may be granted in respect of any woman. No woman shall be required or allowed to work in any factory, except between the hours of 6 am and 7 pm. However, there is absolute prohibition on employment of woman between the hours of 10 pm and 5 am.

(H) ***Employment of Young Persons:*** No factory can employ any person unless he has completed fourteen years of age. (Section 67). There is total prohibition in employing children below 14 years of age.

For adolescents, i.e., above the age of 15 years but below 18 years, they also cannot be employed in a factory unless

- (i) He as well as the manager of a factory are in possession of certificates of fitness granted by the Certifying Surgeon and
- (ii) The adolescent carries with him while at work a token giving a reference to such certificate issued to him.

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

(I) ***Working Hours for Children:*** The Act regulates the working hours for children above age of 14 years as eligible for employment in a factory. They can be employed for maximum

hours of work lasting 4-1/2 hours in a day. The other prohibitions relating to their employment are:

- (a) the period of work is to be limited to two shifts only;
- (b) the shifts are not to overlap;
- (c) the spread-over is not to exceed 5 hours;
- (d) the child is to be employed only in one relay;
- (e) the spread-over is not to change except once in 30 days;
- (f) employment during night, i.e. between 10 p.m. and 6 a.m. is prohibited.

(J) **Annual leave with wages:** Section 79 of Act deal with the provisions of annual leave with wages. The basis of calculation of the annual leave to which a worker would be entitled in a year is the earlier calendar year, during which he had worked in a factory.

1. **Qualifying Period:** The minimum number of days which entitles a worker to earn leave is 240 during a calendar year, this period should include:
 - (i) the days of layoff which may be as a result of contract or agreement or as permissible under Standing Orders;
 - (ii) the leave earned in the year prior to that in which leave is applied for,
 - (iii) in the case of female workers, maternity leave for any number of days not exceeding 12 weeks.

If the total period comes to 240 days or more, then the worker in a factory would be entitled to leave with wages in the subsequent calendar year for a number of days calculated at the rate of:--

- (i) In the case of an adult, one day for every twenty days of work performed by him during the previous calendar year.
- (ii) In the case of a child, one day for every fifteen days of work performed by him during the previous calendar year.
- (iii) Unavailed Leave.

If a worker has not availed of a portion of his leave in one calendar year, such remaining portion of leave shall be carried over and added to the leave to be allowed to him in the succeeding calendar year, subject to the condition that the total number of days to be carried forward would not exceed:

- (a) in the case of adult, 30 days;
- (b) in the case of child, 40 days;

However, if the worker applied for leave with wages but such leave was not granted to him in accordance with any scheme drawn up under the provisions of this section, then in that case, leave refused shall be carried forward without any limit.

2. **Procedure for Availing of Leave:** A worker who wants to avail of leave is required to make an application to the manager of the factory at least 15 days in advance, except in the case of public utility concern where the application for leave is to be made 30 days in advance. The leave can be availed in 3 installments in a year at the most.

If the worker wants leave with wages due to him to cover a period of illness, in that case, he need not apply in advance. The wages, in such cases, admissible to him are required to be paid in advance within 15 days and in case of public utility concern, within 30 days from the date of application requesting for grant of leave.



Caselet

States and Worker's Welfare

State Governments have spent less than one-fourth of the ₹ 1,354 crores collected by them from developers and builders over the last six years for welfare measures of construction workers, a study claimed.

"Of the ₹ 1,353.92 crores collected for welfare measures of construction workers by levying one per cent cess on construction activities undertaken by various builders and developers in last six year, a meagre ₹ 305 crores has been utilised for intended purposes. Kerala is the only State which spent 90 per cent of cess amount for its construction workers welfare during the period," the Assocham report said.

According to information compiled by Assocham, Kerala collected a cess of ₹ 254 crores from 2002-08, of which ₹ 227 crores has already been spent towards welfare of its construction workers.

Until 2008, 15 States collected ₹ 1,353.92 crores as cess from the cost of construction activities in their areas but spend only ₹ 305 crores for welfare activities of workers.

The remaining States have not yet collected any cess.

Those which have collected cess include Delhi, Haryana, Rajasthan, Kerala, Gujarat, Bihar, Karnataka, Andhra Pradesh, Tamil Nadu, Himachal Pradesh, Punjab, Orissa, Mizoram, Maharashtra and Uttarakhand.

Source: thehindubusinessline.com

3.5 Administrative Machinery and Safety Measures

These are the basic safety measures to be taken care of when the workers are working near the machinery. These safety rules are designed to make the workplace area safer and to reduce the fear of accidents from the mind of the workers.

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

- (i) every moving part of a prime mover and fly wheel connected to prime mover, whether the prime mover or fly-wheel is in the engine house or not;
- (ii) the headrace and tailrace of every water-wheel and water turbine;
- (iii) any part of stock-bar which projects beyond the head stock of a lathe; and
- (iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely,
 - (a) Every part of 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 shall be consistently maintained and kept in position while the parts of machinery they are fencing are in motion or in use.

(B) **Work on or Near Machinery in Motion:** Section 22 (I) requires that, where in the factory it is essential to examine any part of the machinery (referred to in Section 21) while it is in motion or as a result of such examination, it is necessary to carry out:

- (a) lubrication or other adjusting operation; or
- (b) any mounting or shipping of belts or lubrication or other adjusting operation.

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

- (a) Such worker shall not handle a belt at a moving pulley unless:
 - (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 flywheel 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; and
 - (vii) any ladder in use for carrying out any examination to operation aforesaid is securely fixed or lashed or is firmly held by a second person.
- (b) Without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel, or pinion, and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.
- (c) Employment of Young Person on Dangerous Machine Section 23 prohibits the employment of a young person on dangerous machine unless he has been fully instructed as to the dangers arising from machine and the precautions to be observed and (i) has received sufficient training in work at the machine, or (ii) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.
- (d) Striking Gear and Devices for cutting off power in order to move the driving belt to and from fast and loose pulleys in transmission machine and prevent the belt from creeping back onto the fast pulley, suitable striking gear or other efficient mechanical appliance shall be provided, maintained and used. No driving belt when unused shall be allowed to rest or ride upon shafting in motion. Suitable devices are also maintained in every workroom for cutting off power emergencies.
- (e) Self-acting Machines: Section 25 of the Factories Act provides further safeguards to the workers injured by self-acting machines. It provides:

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

- (C) **Casing of New Machinery:** Section 26 (1) provides that in all machinery driven by power, every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be sunk, encased or effectively guarded as to prevent danger. Further, all spur, worm and other toothed or friction gearing not requiring frequent adjustment while in motion shall be completely encased, unless they are safely situated.

Section 26 (2) provides that, whoever sells or lets on hire or, as agent of the seller or hirer, cares or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of sub-section (1), or any rules made under sub-section (3), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ₹ 500 or with both. Under the Act, the State Government is empowered to make rules for the safeguards to be provided from dangerous part of the machinery.

- (D) **Hoists and Lifts:** Section 28 (1) requires that hoists and lifts must be of good mechanical construction, sound material and adequate strength. They should be properly maintained & thoroughly examined at least twice a year by competent persons.
- (E) **Revolving Machinery:** Section 30 (1) provides that a notice indicating the maximum safe working peripheral speed of the grindstone or abrasive wheel, the speed of the shaft, or spindle, must be permanently affixed on all rooms in a factory where grinding is carried on the speeds indicated in notices under sub-section (1) shall not be exceeded.

Care shall be taken not to exceed the safe working peripheral speed of every revolving machine like revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliances run by power.

- (F) **Pressure Plant:** Section 31 (1) provides that effective measures should be taken to ensure safe working pressure of any part of the plant or machinery used in the manufacturing process operating at a pressure above the atmospheric pressure.
- (G) **Pits, Sump and Opening in Floors:** Section 33 (1) requires that every fixed vessel, sump, tank, pit or opening in the ground or in the floor in every factory should be covered or securely fenced, if by reason of its depth, situation, construction or contents, they are or can be a source of danger.

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

- (H) **Precautions against Dangerous Fumes and Gases:** In order to prevent the factory workers against dangerous fumes, special measures have been taken under the Factories Act. The Act prohibits entry in any chamber, tank, vat, pit, pipe, flue, or other confined space in any factory in which any gas, fume, vapor or dust is likely to be present, to such an extent as to involve risk to persons being overcome thereby, except in cases where there is a provision of a manhole of adequate size or other effective means of egress.

No person shall be required or allowed to enter any confined space such as is referred to in sub-section (1), until all practicable measures have been taken to actually remove the gas, fume or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapor or dust unless.

- (I) **Precaution against using Portable Electric Light:** The Act prohibits any factory to use portable electric light or any other electric appliance of voltage exceeding 24 volts in any chamber, tank, vat, pipe, flue or other confined space, unless adequate safety devices are

provided. The Act further prohibits the factory to use any lamp or light (other than that of flame-proof construction) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pet, pipe, flue or other confined space.

- (J) **Explosive or Inflammable Materials:** These measures include: (i) effective enclosures of the plant or machinery used in the process; (ii) removal or prevention of the accumulation of such dust, gas or vapor; (iii) exclusion or effective enclosure of all possible sources of ignition.
- (K) **Precaution in Case of Fire:** In every factory, all practical measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain (i) safe means of escape for all persons in the event of fire, and (ii) tile necessary equipment and facilities for extinguishing fire. Further effective measures should be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been trained in the routine to be followed in such cases.
- (L) **Safety of Building and Machinery:** If it appears to the Inspector that any building or part of building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.
- (M) **Maintenance of Buildings:** In order to ensure safety, the inspector is empowered to serve on tile occupier or Manager (or both) of the factory an order specifying the measures to be taken and requiring the same to be carried out, if it appears to him that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers.
- (N) **Safety Officers:** In order to prevent accidents, the Act provides for the appointment of Safety Officers in factories employing 1,000 or more workers or where any manufacturing process or operations carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory.



Task

Assuming that you are the owner of the big chemical factory where more than 500 workers are working. List down all the welfare measures you will take, in your opinion, which are necessary as per the Factories Act, 1948.

3.6 Provisions relating to Hazardous Processes

Section 2 (cb) of the Factories (Amendment) Act, 1987 defines the term "hazardous process" as any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, by-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 of the general environment.

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

The State Government has set up a committee for the critical analysis of the factory location before granting the permission to set up the hazardous process or expansion of such factories.



Notes

Constitution of Site Appraisal Committee

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

- (a) the Chief Inspector of the State who shall be its Chairman;
- (b) a representative of the Central Board for the prevention and control of water pollution appointed by the Central Government under Section 3 of the Water (Prevention and Control of Pollution) Act, 1974;
- (c) a representative of the Central Board for the prevention and control of air pollution referred to in Section 3 of the Air (Prevention and Control of Pollution) Act, 1981;
- (d) a representative of the State Board appointed under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974;
- (e) a representative of the Central Board for the prevention and control of air pollution referred to in Section 5 of the Air (Prevention and Control of Pollution) Act, 1981;
- (f) a representative of the Department of Environment in the State;
- (g) a representative of the Meteorological Department of the Government of India;
- (h) an expert in the field of occupational health; and
- (i) a representative of the Town Planning Department of the State Government, and not more than five other members who may be co-opted by the State Government who shall be:
 - (i) A scientist having specialized knowledge of the hazardous process which will be involved in the factory,
 - (ii) A representative of the local authority within whose jurisdiction the factory is to be established, and
 - (iii) Not more than three other persons as deemed fit by the State Government.

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

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

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

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

3.6.1 Compulsory Disclosure of Information by the Occupier

1. The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, health hazards and the measures to overcome them arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to: (i) Workers employed in the factory (ii) the Chief Inspector, (iii) the local authority within whose jurisdiction the factory is situated and (iv) general public in the vicinity.
2. Section 41-B (2) provided that at the time of registering the factory involving a hazardous process, the occupier shall lay down a detailed policy with respect to the health and safety of the workers and intimate such policy to the Chief Inspector and the local authority.
3. Such information shall include accurate information as to the quantity, specifications and other characteristics of wastes and manner of their disposal (Sub-section 3).
4. Every occupier, with the approval of the Chief Inspector, shall draw up an on site emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place. [Sub-section 4]
5. Every occupier of the factory is under an obligation to inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed. [Sub-section 5].
6. On contravention of the provisions of sub-section (5), the licence issued under Section 6 to such factory shall, be cancelled and the occupier shall be liable to penalty. (Sub-section 6).
7. The occupier of the factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them in the prescribed manner among the workers and the general public living in the vicinity. (Sub-section 7).

3.6.2 Powers of Central Government to Appoint Inquiry Committee

1. The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure of neglect in the adoption of any measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to such failure or neglect and for the prevention and recurrence of such extraordinary situations in future in such factory or elsewhere.
2. The Committee appointed under sub-section (1) shall consist of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation.
3. The recommendation of the Committee shall be advisory in nature.

3.6.3 Emergency Standards

1. Where the Central Government is satisfied that no standards of safety have been prescribed in respect to a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate, it may direct the Director-General of Factory Advice Service

and Labour Institutes (DGFASLI) or any institution specialized in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.

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

3.6.4 Worker's Participation in Safety Management

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

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

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

3.6.5 Right of Workers to Warn about Imminent Danger

1. Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.
2. It shall be the duty of such occupier, agent, manager or the person in charge of the factory or process to take immediate remedial action, if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the nearest Inspector.
3. If the occupier, agent, manager or the person in charge referred to in Sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the worker, he shall, nevertheless, refer the matter forthwith to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

3.7 Recommendation of the National Commission on Labour

The Government of India has set up the second national labour on 15th October, 1999. The commission has made valuable suggestions to improve the harmonious relations among the laborers working in the factory premises. It is an umbrella of the legislation to ensure a minimum level of protection to the workers in the unorganized sector. It has recommended that-

1. Existence of child labour in hazardous industries is a major obstacle for Indian government and steps should be taken to eradicate it from the country. For this, a special scheme of establishing the special schools to provide the non-formal education, vocational training, supplementary nutrition, stipends, health care, etc. should be provided to children withdrawn from employment in hazardous industries.

2. Ministry of labour in 1978 formulated a scheme for the rehabilitation of the bonded laborers. The responsibility for the identification, release and rehabilitation of the free bonded laborer rest entirely with the state government. Bonded laborers on release is paid immediately ₹ 1000/- as subsistence allowance and is rehabilitated as per the situation with a rehabilitation packages of ₹ 10,000 keeping in view the price escalation and increase in the cost of the rehabilitation packages.
3. With the intention to focus on the health of the women workers & to improve their conditions, a women cell has been set up which provides the opportunities for increasing the employment opportunities for women & providing grants & aids to the voluntary organizations for carrying out the research on the problems faced by the women workers. It also helps the women to be aware of their rights and opportunities so as to become economically independent.
4. To achieve for the occupational safety and health of the workers, the Directorate General of Mines Safety (DGMS) and Directorate General of Factory Advice Services and labour Institutes (DGFASLI) have been set-up in mines, ports and factories. It monitors the working environment, man-machinery interface training and safety requirements of the workers.
5. It also recommended that the formation of the craft and occupation trade unions should be discouraged and formation of the industrial trade unions and industrial federations should be encouraged.
6. Penalties may be legally provided to curb a management policy of victimization and similar unfair labour practices which prevent the emergencies of internal leadership.
7. It also entrusts the labour bureau to be responsible for collection, compilation and publication of the labour statistics and other information regarding employment, wages, earnings, industrial relations, working conditions, etc. It also compiles and publishes the data related to consumer price index numbers for industrial and agriculture workers.
8. It also recommends educating the workers to help them avoid the wasteful expenditure, adopting cost effectiveness and by enhancing productivity of the qualitative nature. It includes rural awareness programmes, adult literacy classes, participative management, etc.
9. It is also responsible for the social security and welfare of the working laborers through certain Acts like the Workmen's Compensation Act, 1923, the Employees State Insurance Act, 1948, etc.



Case Study

Variable Pay

Nitin Arora was wrapping up for the day, when his phone rang.

"Hi, Nitin, Anil here. Can I pop in for a few minutes?"

"Yes, if you can be here in two minutes flat" Arora said.

"You got it," the other man said and hung up.

Anil Mathur was a Brand Manager at Care Soft, a large fast-moving consumer products company. In fact, it was Arora who had, as the Chief of HR at Care Soft, recruited Mathur

Contd...

from a medium-sized company in Mumbai. Over the years, they had built up a good rapport. In any case, Arora was known to be one of the more friendly top executives in the company. He had to be; he was after all the HR guy.

Arora had a vague idea of what Mathur might want to discuss, but he decided to frame his replies as he went along.

As promised, the 36-year-old brand manager was in Arora's room in less than two minutes.

"When was the last time we had a semi-formal meeting like this one?" Arora asked his guest.

"I don't remember, may be six months ago," Mathur replied.

"8:30 on a Friday evening, you've made me stay back. So this had better be important," Arora pretended to threaten his colleague.

"You are darn right, this is important," said Mathur. "I am unhappy with my pay hike for last fiscal."

"But you got your letter a month ago, why are you bringing it up only now?" Arora asked.

"I have been thinking about it, and trying to find out if I am the only one feeling let down by the new variable pay scheme," said Mathur.

A little over a year ago, Care Soft had decided to replace its fixed compensation system with variable pay. In fact, the whole exercise was done in three months flat, and implemented with little advance notice to the employees, who were not altogether surprised since the word had gotten around as soon as the HR consultancy was hired to draw up the new compensation structure. An article in the in-house magazine and an e-mail from the CEO announced the scheme.

The company, which had a turnover of ₹ 1,200 crore the previous fiscal, hadn't yet moved to stock options, but it had introduced a profit-sharing plan. The variable component, usually paid out annually, was linked to the performance of both the individual and his team. Understandably, individual performance had a higher weightage than team performance. That apart, there were peer incentives for team and individual performances. These rewarded performance in kind – a paid holiday, gift vouchers, or gifts.

Since the concept of variable pay was new to Care Soft, it had decided to implement it at only the senior and middle management levels, apart from shopfloor workers, leaving out the junior management. The senior management – starting from a general manager to the CEO – had a variable component ranging from 15-40 per cent. Those below had just 5-15 per cent in variable pay.

Mathur, as a brand manager, came in at the general manager level. And last year had been particularly bad for the toothbrush division he headed. Volume sales had dropped by 5 per cent, and rupee sales by 15 per cent because of price cuts, promotions, and discounts. Besides, a new toothbrush that had been slated for launch in the second half of last year hadn't been launched. This was a low-end brush that was expected to rake in ₹ 1 crore in sales.

Fiscal 2001-02 was the first full year of variable pay, and Arora could tell that the executives weren't happy with it. Already, a VP and another general manager had made their displeasure known to Arora. Mathur leaving would not only encourage the other two to follow suit, but also impact the new pay plan.

Contd...

"My performance targets were unreal," continued Mathur. "Show me one company that has increased its toothbrush sales and I'll walk out of this room and never complain."

"True," said Arora. "But look at it from the organisation's point of view. There are other units that have taken a hit, with the result that our sales for last year were down. We've tried to do the best under the circumstances."

"Probably, but why penalise me for somebody else's fault," Mathur complained.

"I don't understand."

"I am referring to the new toothbrush that my team was supposed to launch in the second half of last year," Mathur explained. "We couldn't introduce it because the design team sat on it for a long time, and then the engineering team took its own sweet time bringing it into production. By the time we were ready to go, we realised that the launch expense wouldn't be worth it. The variable component in my compensation is 20 per cent and it's been a double-whammy for me. The fact that we didn't meet our targets ensured zero-increase in my incentives, and the increase in base pay doesn't even beat the rate of inflation."

"Anil, don't forget that most of us in Care Soft are in the same boat. That said, I do think we have an issue here. Here's what I can promise: I'll put forth these issues to the compensation committee. I cannot promise anything else."

Both men looked at the clock on Arora's table. It was well past 10.

"I have to pick up medicines for my son," said Arora. "If I don't find a chemist open now, I'll be signing my divorce papers tomorrow." Both men laughed and parted.

On Monday, the first thing Arora did was to call his CEO, Rishab Patel, and advise him to convene a Compensation Committee meeting.

"This week I have a diary so full that a knife wouldn't go through it," the CEO told Arora. "Do me a favour, Nitin. I'll send out the meeting request, but could you handle it?"

"But how can we decide on anything without you being there?" Arora asked.

"Don't. Flesh out the issues and keep them ready for me. Let me finish with our foreign partners' visit this week"

"Should we have the meeting next week in that case?"

"No, go ahead. We can have a second meet next week."

One thing that had irked Arora all along was the fact that Patel seemed inadequately concerned with HR problems. He was more concerned about what he called "strategic issues".

By afternoon, Arora had got a confirmation to the meeting request sent out by Patel. The committee would meet on Wednesday pre-lunch. ("Can't tackle HR post lunch," somebody had wise-cracked in acknowledgement.)

Care Soft's Compensation Committee comprised, apart from Patel and Arora, the CFO Narayan Shastri, coo Niranjan Roy, Director (Marketing) Utpal Sinha, a principal from the consulting company that had drawn the new compensation structure Anurag Kesaria, and an independent director, who was a chartered accountant by profession, and widely regarded for his management wisdom – Raman Behl.

The agenda for the meeting had already been circulated the previous day. Therefore, all the men were aware of the issues at hand.

Contd...

"How widespread is the discontent, Nitin?" Coo Roy set the ball rolling.

"I have reason to believe that it is quite widespread," said Arora, "although only a handful of people have taken it up with me so far."

"In that case, may be we are over-reacting," said Shastri. "We need to give the new system more time. After all, it's just a year old."

"I don't think one can possibly over-react to such an issue," noted Behl. "The worst thing that we can do now is to let the morale take a hit."

"I agree," said Arora.

"I couldn't agree more," added Sinha, Director of Marketing. "I just can't afford to lose any of my men. And certainly not good men like Anil Mathur. I don't care if we have to pay him more."

"That's not a good idea," pointed out Arora... "We cannot be seen as being selective in our rewards. The whole idea behind variable pay was to motivate people across the board with the promise of greater rewards for better performance. We cannot make changes arbitrarily."

"Then, may be we didn't implement the new structure properly," bristled Sinha. "Or may be we should simply revert to the old fixed system, which according to me worked just fine."

"You are right about poor implementation," consultant Kesaria said. "But it would be a strategic mistake to bring back the old system. After all, the reasons why we introduced variable pay still hold. The business environment is changing, and we cannot afford to reward people based on the quaint notion of entitlement. Executives have to justify what they earn."

"Besides," the Chief Financial Officer, Shastri, intervened, "variable pay is a great way to control costs and improve productivity. Not to mention that such a system automatically attracts high-calibre people."

"Yes, when the going is good in the market, there is no problem with variable pay," noted Sinha. "But when the markets crash, like they have now, your profits shrink. Do you then ask people to forget all the hard work they've done, and say 'sorry, can't give you any increments because we've had a bad year'. Believe me, it will take less than six months to clean out talent from this company. Don't forget that the next year is going to be equally bad for FMCG companies."

"The IT industry is not only benching people, but asking them to take pay cuts," pointed out Shastri.

"May be," retorted Sinha. "But how many code-jocks can join insurance, banking, pharma, or any other industry as marketing heads or even CEOs? And asking people to deliver 15 per cent growth in a market that is shrinking is the surest way of losing them."

"Actually it is worth looking at what is going wrong with the system," said Behl. "As I understand it, even shop-floor workers – whose variable pay is linked to productivity – are affected since the company has cut back on production to liquidate dealer inventory."

"As far as I can see," said Kesaria, "it seems to be a problem of implementation. May be we didn't communicate adequately, perhaps we need to tweak our measurement systems, review them more frequently and reward people closer to the date of their achievements."

Contd...

"That is a good idea," said Behl. "Money may not be the only reason why people work, but it is one of the biggest reasons. Besides, a change like this needs significant lead time. It's a cultural change and people must be prepared for it."

"I would have loved to do this over a period of one year," defended Arora. "But I was asked to implement it within three months of the board deciding on it. Besides, where is the top management commitment to this initiative? Who is the champion of this variable pay? I could be, but it will have more credibility if the CEO also showed that he was committed to it."

Questions

1. How to convince people like Mathur that variable pay will actually help them in the long run?
2. How to achieve a buy-in across the organisation?
3. How to rectify some of the errors the company may have made in its implementation?
4. Finally, should the company scrap variable pay and return to the fixed system?

Source: Business Today, June 9, 2002.

3.8 Summary

- The Factories Act, 1948 protects human beings from being subject to manual laborer and long hours of bodily strain.
- This Act is applicable to whole of India.
- Occupier has the control over the affairs of the factory.
- Responsibility for getting the premises approved when the factory is to be established lies on the responsibility on the occupier.
- There are health, safety and welfare measures included in this Act.
- Second national commission on labor provided recommendation on welfare measures of the workers.

3.9 Keywords

DGFSALI: Director-General of Factory Advice Services & Labour Institutes.

Health: It is a general state of physical, mental and emotional well-being.

Industrial hygiene: The promotion and maintenance of highest degree of physical, mental and social well-being of workers.

Occupier: It is the person who has ultimate control over the affairs of the factory.

Precincts: It is the space enclosed by the wall.

Premises: It is the open land or land with building or building alone.

Safety: It is the protection of a person's physical health.

Welfare officer: The person who is appointed to look after the welfare of the workers in the factory.

Worker: Any person employed directly or indirectly in any manufacturing process.

3.10 Self Assessment

State whether the following statements are true or false:

1. If an unsafe working condition exists, an employee should quit.
2. Today employees are not obliged to give their employees safe, healthy & secure safety efforts.
3. Designing of the safety policies & rules is an important aspect of factories act, 1948.
4. Every factory should have canteen if the number of workers are 50.
5. The factories act make provisions for the recreational facilities for the workers & their children.
6. In every factory suitable arrangements for sitting shall be maintained & provided for all workers obliged to work in a standing position.

Fill in the blanks:

7. is appointed in to investigate the factory premises before granting the licence.
8. A person who is employed directly or through agency in the factory premises is called.....
9. Registration and renewal of licence is done by the of the factory.
10. are appointed in factories employing 1000 or more workers.
11.is entrusted by the government to lay down the emergency standards for the enforcement of hazardous process.

3.11 Review Questions

1. You are the owner of the factory. Elaborate on your responsibilities in the factory.
2. What are the provision for women and children working in a factory? Are they sufficient? Justify.
3. What are the shift working provisions? Do they require change? Elaborate.
4. Analyse the consequences if occupier fails to discharge his responsibility properly.
5. Analyse the recommendations of second National Commission on Labour for the welfare. Are they meeting the requirements? Justify giving recent examples from the industry.
6. Elaborate the leave provisions as per Factories Act, 1948. Do you think they are sufficient?
7. What are the provisions of working hours, closing and opening hours and holidays?
8. Taking the example of TISCO, elaborate the welfare measures taken by the company for its workers.
9. Why do you think there is need for the safety measures in the factories?
10. "An unhealthy work environment can lower the productivity, contribute to low morale & increases medical & workers compensation cost". Did you agree? Justify.
11. Analyse the provisions which the factories owner must take in order to set up the process where hazardous affluent will be received?

12. Do you think there is a need for the inspecting officer in the factory? Why?
13. While working near the machines, there are certain precautions to be observed. Elaborate on the safety measures while working near the machines.
14. You are appointed as inspecting officer for a factory. What do you think is your role and powers for the profile you are appointed.
15. Bring out the procedure for getting the licence for the factory.

Answers: Self Assessment

- | | |
|-----------------------|--------------------|
| 1. False | 2. False |
| 3. True | 4. False |
| 5. False | 6. True |
| 7. inspecting officer | 8. worker |
| 9. occupier | 10. safety officer |
| 11. DGFASLI | |

3.12 Further Readings



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Online links

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Notes

Unit 4: Contract Labour (Regulation and Abolition) Act, 1986

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- 4.1 Contract Labour
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Objectives

After studying this unit, you will be able to:

- Discuss Contract Labour Act, 1986
- Explain labour law in China

Introduction

Outsourcing and contracting has become a business necessity in order to be competitive. At the same time, contract labour is one of the most exploited sections of human labour. A good number of contract labourers are employed in selected industries. Occupations in which they are employed vary from that of purely unskilled employment such as loader, cleaner, sweeper and *Khalasi* to that of skilled employment such as polisher, turner, gas cutter and riveter in oil distribution, and driller, blaster, blacksmith, carpenter and fitter. Apart from these, there are certain regular processes such as nickel polishing and electroplating in engineering establishments, dyeing, bleaching and printing in some units in textiles and designing and raising work in almost all carpet manufacturing units where contract labour is common.

For several years, contract labour has been paid low wages, employed for longer hours of work and on sub-contract basis, placed in unhealthy working conditions and denied benefits and facilities equal to their counterparts who are employed under regular employment. Further, there is no security of tenure. Instances are not lacking where contract labour has been victimised. Moreover, contract labourers are generally not entitled to other benefits and amenities such as provident fund, gratuity, bonus, privilege leave, medical facilities, subsidised food and housing, to which the regular workman of the company are entitled. Thus, there is wide disparity in emoluments and working conditions between contract labour and direct labour and he is not treated at par with direct labour. Even in cases where the work was of a permanent nature, contract system was introduced to deny the workman's rights and benefits, which the industry gave to its directly recruited workers.

Several factors may be accounted for the continuance and growth of contract labour system. First, contract labour was unorganised and unable to look after its own interest. Second, persons who could spare time in their own houses but could not move out for employment got jobs and were able to supplement their income from different sources. They were in a position to work as and when leisure was available and unlike factory workers, there was no rigour of attending the factory or the establishment at stated time and for stated period. Third, the advantages to the employer in employing contract labour are:

1. Production at lower cost;
2. Engaging labour without giving them fringe benefits such as leave wages, benefits under the Employees' State Insurance Act or provident fund contribution and among others bonus;
3. General reduction of the overhead cost and the administrative burden of maintaining an establishment; and
4. The sheer economics of farming out contracts for manufacture of certain components rather than investing capital and installing plants for their manufacture.

Things have undergone a change since some time. During the post-Independence period, several statutory and non-statutory measures have been adopted to regulate and improve the conditions of contract labour. The problem of contract labour has often figured as a matter of dispute before tribunals and courts, which have taken pragmatic consideration into account in matters like regulation of contract labour. In certain cases, contract labour has been abolished. The Contract Labour (Regulation and Abolition) Act, has not only endorsed the judicial thinking but has taken effective measures to regulate the employment of contract labour.

4.1 Contract Labour

4.1.1 Constitutional Prohibition

Article 21 of the Constitution lays down that no person shall be deprived of his life and personal liberty, except according to the procedure established by law.

In *People's Union for Democratic Right vs. Union of India*, ((1982) 2 LL.J 454), the Supreme Court had to decide, *inter alia*, whether the violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 are also violation of Article 21 of the Constitution. The Supreme Court answered the question in the affirmative and observed:

Now the rights and benefits conferred on the workman employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workman (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity to the workman who are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 (of the Constitution) by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workman.

In *Bandhua Mukti Morcha vs. Union of India*, AIR 1984 SC 802, the Supreme Court once again deprecated callousness of the Central Government as well as the State Government of Haryana to enforce the provisions of this Act. The Court accordingly issued necessary directions for immediate relief of the poor and unfortunate workmen.

4.1.2 Concepts and Definitions

1. **Contract Labour:** Under Section 2(2)(b) of the Contract Labour (Regulation and Abolition) Act, 1970, 'a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer'.

Broadly-speaking, therefore, contract labours are persons (i) employed or engaged; (ii) in or in connection with the work, of any establishment or manufacturing process; (iii) through contractor. If these conditions are satisfied, it is immaterial whether the workman was employed with or without the consent of the principal employer.

2. **Contractor:** Section 2(c) defines "contractor" in relation to establishment to mean:

"a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor; (i) any office or department of the Government or (ii) any place where any industry, trade, business, manufacture or occupation is carried on".

3. **Principal Employer:** Section 2(g) defines "principal employer" to mean:

(a) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf,

(i) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named,

(ii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,

(iii) in any other establishment, any person responsible for the supervision and control of the establishment.

(iv) Workmen

Section 2 (i) defines 'workmen' to mean:

"any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment are expressed or implied but does not include any such person: (a) who is employed mainly in a managerial or administrative capacity; or (b) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or (c) who is an out-worker, that is to say, a person to whom articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management, of the principal employer."

Objective of the Act

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The objective of the Act is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances.

Scope and Application of the Act

As the title itself indicates, the Act does not provide for the total abolition of contract labour, but only for its abolition in certain circumstances, and for the regulation of the employment of contract labour in certain establishments. Apart from abolishing contract labour in certain cases, the Contract Labour (Regulation and Abolition) Act also regulates the working conditions of contract labourers.

The Act applies to (a) every establishment wherein 20 or more workmen are employed or were employed on any day in preceding 12 months as contract labour [Section 1(4) (a)] and (b) every contractor, who employs or employed 20 or more workmen on any day of the preceding 12 months. [Section 1(4)(6)]. Under the Act, the appropriate Government is empowered to extend the application of the Act to any establishment or contractor employing less than 20 workmen after giving two month's notice. [Provision to Section 1(4)]. The Act is, however, not applicable to establishments of intermittent or casual nature. [Section 1(5)]. The Act is also applicable where the dispute relates to service conditions of the workman engaged in the factory canteen maintained by the company.

Registration of Establishment

Employing Contract Labour

The Act empowers the appropriate Governments to appoint registering officers with whom every principal employer, or an establishment to which this Act applies, has registered the establishment in the prescribed manner.

Under Section (7), every principal employer of an establishment to which this Act applies shall, within the prescribed period, make an application to the registering officer in the prescribed manner for registration of the establishment. However, the registering officer may entertain any such application for registration after the expiry of the period fixed in this behalf, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time. If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing the prescribed particulars.

- 1 **Revocation of Registration:** Where the registration of any establishment has been obtained by misrepresentation or suppression of any material fact, or that for any other reason, the registration has become useless or ineffective and, therefore, requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke the registration.
- 2 **Effect of non-registration:** Section 9 spells out the effect of non-registration. It provides that no principal employer of an establishment, to which this Act applies, can employ contract labour, if:
 - (a) he has not obtained the certificate of registration; or
 - (b) a certificate has been revoked after being issued.

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Licensing

Section 11 authorises the appropriate Government to:

1. appoint such persons, being Gazetted Officers of Government, as it thinks fit, to be licensing officers for the purposes of this Chapter; and
2. define the limits, within which a licensing officer shall exercise the power conferred on licensing officers by or under this Act.

Licensing of Contractors

Section 12 provides that no contractor shall undertake or execute any work through contract labour, except under and in accordance with a licence issued in that behalf by the licensing officer. The Licence may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, framed under the Act.

Grant of Licence

Under Section 13, every application for the grant of a licence shall be made in the prescribed form and shall contain particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

Revocation, Suspension and Amendment of Licence

Under Section 14, if the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that a licence granted has been obtained by misrepresentation or suppression of any material fact, or the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any provision of this Act or rules made thereunder, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum, if any or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.

Appeal in cases of Registration and Licence

Under Section 15, any person aggrieved by an order relating to grant of registration to establishments, revocation of registration and revocation suspension of licences within 30 days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government. The Appellate officer shall after giving the appellant an opportunity of being heard, dispose the appeal as expeditiously as possible.

Obligation to provide certain Amenities to Workers

Sections 16, 17, 18 and 19 of the Act and the Rules made thereunder, impose an obligation on an employer to provide certain amenities for ensuring the health and welfare of the

contract labour. The amenities that are required to be provided to the contract labour are given below:

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1. **Canteens:** In every establishment where work requiring employment of contract labour is likely to continue for six months and wherein contract labour numbering one hundred or more is ordinarily employed by a contractor, one or more canteens have to be provided by the contractor for use of the contract labourers employed by him. Such a canteen or canteens should be provided within sixty days of the date of commencement of employment of contract labour. In case, such a contractor fails to provide a canteen within the aforesaid period, then the same shall be provided and maintained by the principal employer in an efficient manner. The canteen, so provided, should have a dining hall, kitchen, store-room, pantry and washing places for workers; sufficient light, smooth and clean floors and lime-washed kitchen walls. The dining hall must accommodate thirty per cent of the labourers at a time.
2. **Rest Room:** It is obligatory on the contractors to provide rest room or other suitable accommodation at every place, where contract labour is required to halt at night in connection with the work of an establishment and in which employment of contract labour is likely to continue for three months or more. The Act further requires making provision of the following in the rest rooms:
 - (a) separate rest room to be provided for female employees;
 - (b) that such rest rooms have adequate ventilation and light, protection against heat, wind, rain and smooth, hard and impervious floor surface and supply of clean drinking water.

In case, any contractor fails to provide the above amenities within the stipulated time, then the same are to "be provided by the principal employer. However, the principal employer is authorised to recover such expenses from the contractor."

3. **Drinking water and other facilities:** It is the duty of every contractor employing contract labour in connection with the work of an establishment to provide and maintain; (a) a sufficient supply of wholesome drinking water for the contract labour at convenient places; (b) a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and (c) washing facilities.
4. **First-aid Facilities:** Under Section 19 of the Act and the Rules made thereunder, it is obligatory on the part of a contractor and on his failure on the part of the principal employer to provide and maintain a first-aid box so as to be readily accessible during all working hours at every place where the contract labour is employed.
5. **Crèches:** In every establishment where twenty or more women are ordinarily employed as contract labour, there shall be provided two rooms of reasonable dimensions for the use of their children under the age of six years, one of which for use as a play room and the other as bedroom for the children. Apart from the above, the Act also enjoins upon the contractor to provide adequate number of toys and games in the playroom and sufficient number of cots and bedding in the sleeping room.

Obligations of Principal Employers regarding Payment of Wages

Section 21 –

- (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

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- (2) Ever principal employer shall nominate a representative, duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
- (3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.
- (4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Thus, it is obligatory on the principal-employer to see that the wages of the workers are paid every month on a fixed date and time and on termination of their employment, payment of wages must be made before the expiry of the second working day from the day on which their employment is terminated. Making payment of wages on a working day at the site is also obligatory. If the work is completed before the expiry of the wage period, final payment should be made within forty-eight hours of the last working day. The payment should be made directly to the worker or to a person authorised to ensure the presence of his authorised representative to supervise the payment of wages by the contractor to workmen and it is also the duty of the contractor to ensure the payment of wages in the presence of the authorised representative of the principal employer, who must certify at the end of the entries that the amount shown in such and such column has been paid to the workmen concerned in his presence on such and such date and at such and such time. It is also be responsibility of the principal employer to make payment of the wages, in case the contractor fails to do so within the prescribed period or makes short payment. The principal-employer, is, however, at liberty to recover the same from the contractor.

Employment of Young Persons

Sec. 67 to 77 and Rules 103 and 104: By Sec. 67, the employment of a child below the age of 14 years is totally prohibited. By virtue of Sec. 68, a child above the age of 14 years and an adolescent shall not be allowed or required to work unless two conditions are satisfied. (a) He has been granted a certificate of fitness, by a certifying surgeon, which certificate is in the custody of the manager of the factory. (b) Such child or adolescent carries a token giving a reference to such certificate.

Sec. 69 permits an adolescent to work as an adult for a full day's work if the certifying surgeon grants him a certificate of fitness. A certificate of fitness granted shall be valid for a period of twelve months from the date of issue. Any fee payable for the certificate shall be paid by the occupier of the factory and shall not be recovered from the young person or his parents

Sec. 71 provides that a child can be employed to work in a factory for a maximum period of four and half-hours in a day. The section further provides that a child cannot be employed during the night time, i.e. from 10 p.m. to 6 a.m. A female child cannot be employed or allowed to work during 7 p.m. and 8 a.m. Further, a child worker must get a holiday for a whole day in every week without any exemption.

Sec.72: Notice period of work for children.

Sec. 73: Register of child workers.

Sec. 74: No child shall be allowed to work except in the hours mentioned in the notice periods given in section 72 and 73.

Sec. 75: Power to require medical examination. An inspector has the power to serve a notice on the employer required that any person or young person shall be examined by a certifying surgeon.

Sec. 76: This section empowers the state govt. to formulate rules for physical standards, procedures, and other conditions for giving fitness certificate.

Sec. 77 says that the regulations in this act are in addition to Employment of Children Act 1938.

Prohibition regarding Employment of Female Workers during certain Hours

The employment of female contract labourer, excepting the women employed in pithead baths, crèches, canteens, nurses and midwives, is prohibited before 6 a.m. and after 7 p.m.

Duty to maintain prescribed Registers and Records

Section 29 of the Act enjoins upon every principal employer and every contractor to maintain the registers and records, giving prescribed particular of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and other such particulars in the prescribed form and to keep them exhibited in the prescribed manner within the premises of the establishment where the contract labour is employed.

Power to Remove Difficulties

Section 34 provides:

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

Enforcement

- 1 **Penalty:** Under Section 23, whosoever contravenes (i) any provisions of the Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or (ii) any condition of a licence granted under the Act, is liable to be punished with an imprisonment for a term, which may extend to 3 months or with a fine which may extend to ₹ 1000 or both. This section necessarily implies that the contravention must be done willfully or intentionally. (*S.B. Deshmukh vs. State*, 1981 Lab I. C. 204 (H. C. Bombay)) Further, under Section 24, a person who contravenes any other provision of the Act or rules made thereunder, for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to 3 months or with a fine of ₹ 1000/- or with both.
- 2 **Inspectors:** For the enforcement of the Act, the appropriate Government has been authorised to appoint qualified inspectors for the locality assigned to them by the government. The inspector is empowered to enter any premises or place where contract labour is employed for examining any register or record or notices required under the Act or Rules made thereunder. He may also require the production of these documents by the persons concerned. The inspector is also empowered to examine any person whom he finds in such premises or place and who, he has a reason to believe to be workmen employed therein. Further, the inspector may collect information from any person going out and any workmen in respect of the person to and from whom the work is given out or received and also with respect to payment to be made for the work. Moreover, the inspector is

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empowered to seize or take copies of relevant registers, record of wages or notices, etc. He may also exercise such other powers as may be prescribed for carrying out the purposes of the Act.

- 3 **Exemption:** According to Section 31 of the Act, the appropriate Government may in the case of an emergency, direct by notification in the Official Gazette that subject to such conditions and restrictions, if any, and for such period or periods as may be specified in the notification, all or any of the provisions of this Act or the rules made thereunder shall not apply to any establishment or class of establishment or class of contractors.

Advisory Boards

The Central Government under Section 3 is required to set up the Central Advisory Contract Labour Board on matters relating to administration of the Act as may be referred to it. It shall also discharge such other functions as may be assigned to it under the Act. The Central Board shall consist of (i) a Chairman to be appointed by the Central Government; (ii) the Chief Labour Commissioner (Central), *ex officio*; (iii) such number of members, not exceeding 17 but not less than 11, as the Central Government, the Railways, the coal industry, the contractors, the workmen and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Board. The number of persons to be appointed as members from each of the specified categories, the term of office and other conditions of service of the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Board shall be such, as may be prescribed. However, the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

Similarly, the State Government is also required to set up Boards to advise the State Government on matters relating to administration of the Act. The State Board shall consist of, (i) a Chairman to be appointed by the State Government; (ii) the Labour Commissioner, *ex officio*, or in his absence any other officer nominated by the State Government in that behalf; and (iii) such number of members, not exceeding 11 but not less than 9, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board. [(See *Gammon India Ltd. vs. Union*, (1974) ISCC. 596)]

The Central Board or the State Board may also constitute committees. The Committee constituted under sub-section (1) shall meet at such times and places and shall observe such rules or procedures regarding the transaction of business at its meetings as may be prescribed. The members of the Committee shall be paid such fees and allowances for attending its meetings as may be prescribed. However, no fees shall be payable to a member who is an officer of the Government or of any corporation established by any law for the time being in force.

Prohibition of Employment of Contract Labour

Section 10(1) empowers the appropriate Government (after consultation with the Central Board or State Board, as the case may be) to prohibit, by notification in the Official Gazette, employment of contract labour in any process operation or other work in any establishment. However, under Section 10(2), before issuing any notification in relation to any establishment, the appropriate Government is required to take into account, the conditions of work and benefits provided for contract labour in that establishment and other relevant factors, such as (i) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; (ii) whether it is of perennial nature, that is to say, it is of sufficient duration, having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; (iii) whether it is done ordinarily through regular

workmen in the establishment or an establishment similar thereto; (iv) whether it is sufficient to employ considerable number of full time workmen. The explanation to Section 10(2), which relates to clause (b), provides that if a question arises as to whether any process or operation or other work is of perennial nature, the decision of the appropriate Government shall be final.

From the above, it is evident that on abolition of such contract labour altogether by the appropriate Government, it is not obligatory on the part of principal employer to absorb the contract labour.



Note In *Air India Statutory Corporation vs. United Labour Union*, 1997 Lab.I.C.365 (S.C), the Supreme Court played a creative role by holding that “the moment the contract labour system stands prohibited under Section 10 (I), the embargo to continue as a contract labour is put to an end and a direct relationship has been provided between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the service of the workmen, hitherto regulated through the contractor.”

The *Haryana Electricity Board vs. Suresh* has put further check on the arbitrariness of the employment of Contract Labour. The HEB, at that relevant time, was not registered as Principal Employer, nor did the Contractor have a licence under Contractor Labour (R&A) Act, 1970. Hence, neither the Board was Principal Employer nor the Contractor, a contractor, under the Act. The inevitable conclusion is that the so called Contract System was a mere camouflage, smoke screen and disguised in almost a transparent veil, which can be pierced and direct relation between workers and Board relation can be seen. The Contractor is merely a broker or an agent of the Board. Majumdar, Justice observed: “It has to be kept in view that contract labour system in an establishment is a tripartite system. In between contract workers and the principal employer is the intermediary contractor and because of this intermediary, the employer is treated as principal employer with various statutory obligations flowing from the Act in connection with regulation of the working conditions of the contract labourers who are brought by the intermediary contractor on the principal’s establishment for the benefit and for the purpose of the principal employer and who do this work in his establishment through the agency of the contractor. When these contract workers carry out the work of the principal employer which is of a perennial nature and if provisions of Section 10 get attracted and such contract labour system in the establishment get abolished on fulfillment of the conditions requisite for that purpose, it is obvious that the intermediary contractor vanished and along with him vanishes the term ‘principal employer’. Unless there is a contractor agent, there is no principal. Once the contractor intermediary goes, the term ‘principal’ also goes with it. Then remains out of this tripartite contractual scenario only two parties - the beneficiaries of the abolition of the erstwhile contract labour system i.e. the workmen on the one hand and the employer on the other, who is no longer their principal employer, but necessarily becomes a direct employer for these erstwhile contract labourers. It was urged that Section 10 nowhere provides for such contingency in express terms. It is obvious that no such express provision was required to be made as the very concept of abolition of a contract labour system wherein the work of the contract labour is of perennial nature for the establishment and which otherwise would have been done by regular workmen, would provide improvement of the lot of such workmen and not its worsening.

Implicit, in the provision of Section 10 is the legislative intent that on abolition of contract labour system, the erstwhile contract-workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities on that very establishment under Chapter V prior to the abolition of such contract labour system. Though the legislature has expressly not mentioned the consequences of such abolition, but the very scheme and ambit of Section 10 of the Act clearly indicates the inherent legislative intent of making the erstwhile contract labourers direct employees of the employer on abolition of the

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intermediary. The very condition engrafted in Section 10(2)(d) contended that contractor might have employed a number of workmen who may be in excess of the requirement and, therefore, the principal employer on abolition of the contract labour may be burdened with excess workmen. It is difficult to show that while abolishing contract labour from the given establishment, one of the relevant considerations for the appropriate Government is to ascertain whether it is sufficient considerable number of full time workmen. Even otherwise, there is an inbuilt safety valve in Section 21 of the Act, which enjoins the principal employer to make payment of wages to the given number of contract workmen whom he has permitted to be brought for the work of the establishment if the contractor fails to make payment to them. It is, therefore, obvious that the principal employer as a worldly businessman in his practical commercial wisdom would not allow contractor to bring larger number of contract labour, which may be in excess of the requirement of the principal employer. On the contrary, the principal employer would see to it that the contractor brings only those number of workmen who are required to discharge their duties to carry out the work of the principal employer on his establishment through, of course, the agency of the contractor. In fact, the scheme of the Act and regulations framed thereunder clearly indicate that even the number of the workmen required for the given contract work is to be specified in the licence given to the contractor.



Note In *SAIL* case, the Supreme Court (August 2001) (five-judges bench) relaxed contract labour laws for PSUs by quashing a 1976 Notification issued by Centre prohibiting use of contract labour in certain types of jobs (Cleaning, Sweeping and Washing) and maintained that such labour need not be automatically absorbed by PSUs. Such an interpretation (automatic absorption) of the provisions of the statute will be far beyond the principle of ironing out the creases and scope of improve-live legislation and as such clearly inadmissible. It is difficult to accept that parliament intended automatic absorption of Contract Labour on issue of abolition notification U/S 10 (1) of C.L. (R&A) Act. Now Private Sector is also interpreting that automatic absorption of contract labour is not there and they are persuading the Central Government to make a legislation on that.

In *Steel Authority* case, Supreme Court of India made the following observation about appropriate Government:

“Under Contract Labour (Regulation & Abolition) Act, the industry must be carried on only or under the authority of the Central Government and not that the company/undertaking is an instrumentality or an agency of the Central Government for purposes of Article 12 of the Constitution; such an authority may be conferred either by a statute or by virtue of relationship of principal employer and agent or delegation of power and this fact has to be ascertained on the facts and in the circumstances of each case. In view of this conclusion, with due respect the view expressed by the learned Judges or interpretation of the expression “appropriate Government” in ‘*Air India*’ case (supra) cannot be agreed. Thus, the appropriate government for the Central Undertaking would be those covered under section 2(a) of the Industrial Disputes Act, 1947.”



Note **Core Activity – Andhra Pradesh Amendment (2003)**

The legal interpretations of the Central Act and the judicial pronouncements thereon had tightened the Act without giving scope for flexibility. As long as the Act is on the statute book, courts cannot help the situation than to interpret it as per law. The Central Government wanted to bring amendments to the Central Act, but could not do so, due to political reasons. The Chambers of Commerce, employers’ federation, professional bodies

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and the like came out with suggestions for reforming labour laws but of no avail. The Standing Conference for Public Enterprises (SCOPE) had even come with proposals to liberalise using contract labour in non-core activities of an establishment. This too did not see the light of the day.

There is a growing realisation that the interpretation of the Central Act has gone too far and time has come to bring some changes in the Act to make it more realistic. For a very long time, the words “in connection with the work of the establishment” contained in Section 2(b) of the Act has been stretched to such an extent that canteens, hospitals, dispensaries, sweeping premises and even garden maintenance has been considered as regular work. Any amount of pleading by the employers that running a canteen was not their core activity, did not meet the nod of the courts. In the competitive economy, flexibility is required in manning the establishment.

In the State of Andhra Pradesh, the government received many proposals from FDIs to set up industries in the State, but the parties were reluctant to do so because of the rigid labour laws. Chandrababu Naidu government had taken the initiative to cut this gordian knot by bringing an amendment to the Central Act. He brought the concept of Core Activity. The amendments to the Act received President’s assent on 19th June 2003 and the Amendment came into force from 1st August 2003 through a gazette notification. The salient features of the Amended Act (State Act) are as follows:

- (a) Section 10 (Prohibition of employment organisation contract labour) of the Central Act is replaced by a new Section which enunciates that employment of Contract labour in Core Activities of any establishment is provided the principal employer may engage contract labour if the normal function of the establishments is ordinarily done through contractors; or if the activities do not require full time workers for the major portion of the working hours in a day or for longer periods; or if any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.
- (b) A sub-section (dd) has been inserted into Section 2 of the Central Act to define Core Activity. It defines Core Activity as any activity for which the establishment is set up but does not include: sanitation works such as sweeping, cleaning, dusting, collection and disposal of wastes; watch and ward, security services; canteen and catering services; loading and unloading operations; support services like hospitals, educational and training institutes, guest houses, clubs, courier services; gardening and maintenance of lawns; transport and ambulance services; any activity incidental to core activity.
- (c) Chapter II (Advisory Boards) of the Central Act has been omitted. Instead, a new subsection (2) has been added to Section 10 which will deal with the question whether a particular activity is a Core Activity. For this purpose, the government appoints an Advisor who will look into the matter after taking all factors into consideration and submit his report within a prescribed time to the government whether the issue question is Core Activity or not.
- (d) Section 31 (power to exempt in special cases) in the Central Act has been replaced by a new Section which empowers to exempt for a specified period any establishment from the provisions of the Act. The new Act incorporates a sub-section (2) to Sec. 31 of the Central Act, which empowers the government to revoke such exemption.

Since the subject of Labour is on the concurrent list contained in seventh schedule of the Constitution of India, each State Government has the inherent right to amend any Central legislation of the above subject, taking into consideration the peculiarities of the situation and the overall good for the State. When Orissa State first took steps to dismantle State Electricity Board and replaced it by Genco, Transco and Disco, every one raised eyebrows. Later, every State followed suit of Orissa government. Perhaps other States will follow the path shown by AP Government to find a modus vivendi on the subject of engagement of contract labour.

Contract Labour (R&A) Bill 2003-04 is pending with parliament

Notes

Offences by Companies

- (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section-

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

Cognizance of Offences

No court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Limitation of Prosecutions

No court shall take cognizance of an offence punishable under this Act unless the complaint thereof 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, thereof may be made within six months of the date on which the offence is alleged to have been committed.

Inspecting Staff

- (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, and define the local limits within which they shall exercise their powers under this Act.
- (2) Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed-
 - (a) enter, at all reasonable hours, with such assistance (if any), being persons in the service of the government or any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notice required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection:

- (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workman employed therein;
 - (c) require any person giving out work and any workman, to give any information, which is in his power to give with respect to the names and addresses of the person to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;
 - (d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and
 - (e) exercise such other powers as may be prescribed.
- (3) Any information required to produce any document or thing or to give any information required by an inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code, 1860 (45 of 1860).
- (4) 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) as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.²

Registers and other records to be maintained

- (1) Every principal employer and every contractor shall maintain such register and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rate of wages paid to the contract labour and such other particulars in such form as may be prescribed.
- (2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

Effect of Laws and Agreements Inconsistent with this Act

- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of the Act:

PROVIDED that where under any such agreement, contract of service or standing orders the contract labour employed, in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they received benefits in respect of other matters under this Act.
- (2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

Notes

Contract Labour and Applicability of other Labour Laws

The following are the other labour laws which are applicable to contract labour, the relevant provisions of which are briefly described below:

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

As per Section 2(f) of the Act, any person employed by or through a contractor, in or in connection with the work of the establishment, is also an employee unless otherwise covered under the Act and will thus be eligible to get the benefits of the schemes framed under the Act. Thus, the employees engaged through the contractor will be liable to be covered under the Employees' Provident Fund and Miscellaneous Provisions Act - *DCM Ltd. vs. Regional Provident Fund Commissioner*, 1998 LLR 532 (Raj HC).

The Employees' State Insurance Act, 1948

In factories and such other establishments to which the Employees' State Insurance Act applies, contract labour will be eligible for the benefits as conferred under the Act to the employees, so long as they meet the requirements of the expression "employee" as defined in section 2(9) thereof which reads as under:

"employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and:

- (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
- (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or is incidental to the purpose of the factory or establishment; or
- (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service, and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof, of which the purchase of raw materials for, or the distribution or sale of the products of, the factory or....



Did u know? In view of the above, the employees engaged by the contractor in an establishment as covered under the Employees' State Insurance Act, liable to be covered - *Employees' State Insurance Corp. vs. Vijaymohini Mills*, 1990 LLR 304: 1990 (1) LLN 902 (Ker HC). In another case also, it has been held that the principal employer will be liable to pay ESI contributions of the employee employed through the contractor - *Standard Fabricators (India) (P) Ltd. vs. Regional Director, Employees' State Insurance Corpn., Bombay*, 1994 LLR 869 (Bom HC). In one case, the Kerala High Court has held that the workers employed by contractor for the work of the principal employer connected with the business of the factory are liable to be included for the purpose of contribution under the Act, even if such workers were casual - *Siddeshwar and Co. vs. Employees' State Insurance Corpn.*, 1997 (3) LLN 589 (Karn HC). Also the employees engaged through the contractor to do ancillary job for the principal employer will be covered under ESI Act - *Regional Director, ESI Corpn.*

vs. Saraspur Mills, 1998 LLR 686 (Fuj HC). The employees working in a canteen run in a factory under statutory requirements will be deemed to be the employees of the principal employer – *A.P. Dairy Development Co-operative Federation Ltd. vs. Shivadas Pillay*, 1990 LLR 578 (AP HC).

The Factories Act, 1948

Section 2(1) of the Act as amended w.e.f. 20.10.1976, defined ‘a worker’ as under:

“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 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.”

A perusal of the definition indicates that the Factories Act does not make any discrimination between person employed directly by the principal employer and a person who is employed by or through a contractor, in case all other conditions as given in the definition are fulfilled. Therefore, such contract labour will be entitled to all the privileges and benefits available to workers under the Factories Act, including those relating to weekly holidays, compensatory holidays, overtime wages, leave with wages, etc.

The Industrial Disputes Act, 1947

A workman under the Contract Labour (Regulation and Abolition) Act is also a ‘workman’ under the Industrial Disputes Act. The contractor would be the employer of such person. The principal employer under the Act would be employer under the Industrial Disputes Act in certain circumstances, against whom an “industrial dispute” could be raised – *Hassain Bhai vs. Alath Factory Thezbiulati Union*, 1978 Lab IC 1264: 1978 II LLJ 397;

The Mines Act, 1952

As per section 2 (1) of the Act, any contractor working in a mine or part thereof, shall also be liable for compliance of various provisions of the Act and Rules.

The Minimum Wages Act, 1948

Sub-rule IV of Rule 25 of the Contract Labour (Regulation and Abolition) Act provides that the principal employer will ensure that the workers as engaged through the contractor will not be paid wages less than the minimum rate of wages as fixed under the Minimum Wages Act.

Payment of Bonus Act, 1965

Neither the Contract Labour (Regulation and Abolition) Act nor the Payment of Bonus Act provides that the said Act will be applicable. It has been held by the Kerala High Court that the principal employer will be liable to pay wages to the employees of the contractor, if the latter fails to make the payment of wages to his employees. It has further been held that the bonus will not be payable by the principal employer to the workers engaged by two contractors, since the bonus does not come within the purview of wages.

Notes

Payment of Gratuity Act, 1972

Neither the Contract Labour (Regulation and Abolition) Act, nor the Payment of Gratuity Act provides that the employees engaged through the contractor will be entitled to gratuity from the principal employer and as such the principal employer will not be liable to pay gratuity to the employees engaged through the contractor. This clarification has been made by the Kerala High Court also - *Cominco Binani Zinc Ltd. vs. Pappachan*, 1989 LLR 123 (Ker HC).

The Workmen's Compensation Act, 1923

Section 12 of the Act deals with the liability for payment of compensation as per the provisions of the Act to a contract labour for personal injury caused by accident arising out of and in course of employment. Section 12 of the Workmen's Compensation Act reads as under:

1. Where any person (hereafter in this section referred to as the principal), in the course of or for the purposes of his trade or business, contract with any other person (hereafter 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 workman employed in the execution of the work, any compensation which he would have been liable to pay, if that workman 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 workman under the employer by whom he is immediately employed.
2. Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor, who is himself a principal, is liable to pay compensation or to indemnify principal under this section; he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.
3. Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.
4. This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

It is thus clear that the principal employer cannot escape from his liability to pay compensation to the employees of the contractor and in turn, the principal employer can recover the amount paid from the contractor as held by the Bombay High Court - *Surjeras Unkar Jadhaw vs. Gurinder Singh* (1991) 62 FLR 31 (Bom). In another case also, it has been held that the principal employer will be liable for payment of compensation when an employee engaged by contractor dies out of her employment - *State of Maharashtra vs. Mahandeo Krushna Waghmode*, 1994 LLR 950: 1994 (69) FLR 571: 1994-II CLR 238: 1994-II LLN 829 (Bom HC). The Madras High Court has also held that the principal employer would be liable to pay compensation to workmen through contractor for execution of principal employer's work - *Century Chemicals Oils (P) Ltd. vs. Esther Maragatham*, 1998 II LLJ 473 (Mad HC).



Task

Discuss the advantages and disadvantages of contract labour.



Caution If the employees under the categories i.e. cook/driver/peon is employed for M/s XYZ and are on Payroll of M/s ABC so, whether the M/s ABC required to have a contract labour license, even if M/s XYZ has a contract license.



Note

Agreement between Owners and Labour Contractor for Supply of Labour

THIS AGREEMENT made between A, son of B, resident's of hereinafter referred to as the owner of the ONE PART and C, son of D, resident of hereinafter referred to as the contractors of the OTHER PART.

WHEREAS the owner is getting the construction of building on the land bearing Plot No..... Survey No. House No. situate, lying and being in village..... Tehsil District..... hereinafter referred to as the 'said work' and is desirous of availing of labour for the said work.

AND WHEREAS The contractors are the contractor for the supply of all types of labour required for the construction work and offered their services to the owner, which the owner has agreed on the terms and conditions hereafter set forth.

NOW IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS UNDER:

The contractors will supply all labour viz. masons, labourers, water carriers and other necessary workers required for the said work to the owner at site provided that the requisition thereof is made hours in advance.

The labour shall be paid at the prevailing market rate. The present prevailing market rate of labour of all type has been given in the Schedule hereunder written. The said rates may be changed by the mutual consent of the parties.

The contractors will be entitled to a commission of on the total disbursement made to the labour so supplied by them. The said commission shall be payable to the contractors every week.

The contractors will be liable for and make good any loss or damage, caused by any act or default on the part of the labour supplied by them.

If the contractors fail to supply necessary labour on a requisition made by the owner in time, they will be liable to pay a sum of ₹ as liquidated damages per labourer, mason, water carrier or any other worker not supplied by them in accordance with the requisition by the owner.

IN WITNESS WHEREOF the parties hereto have set their respective hands to these presents on the date, month and year hereinabove written.

Signed and delivered by
The within named owner A

Signed and delivered by
the within named contractors C

WITNESSES;

- 1.
- 2.

4.2 Labour Laws in China

Scope and Application of Chinese Law

The Central Labour Law were applicable to the whole territory of the People Republic of China, that there were no areas or zones or industries or enterprise that were exempted from these laws – or where any relaxation was permitted in these laws.

Provinces and local bodies have the right to issue Regulations but all these Regulations wherever they are promulgated have to be in conformity with the National Law. All regulations, etc. have validity only within the four corners of the National Law, therefore, there were no special laws or relaxations for the Special Economic Zones, or the ‘foreign invested ventures’ or joint ventures; there are detailed “Regulations” laid down to regulate employment plans, recruitment, the signing of labour contracts with individual employees, the signing of collective contracts with Trade Unions in the enterprise, conditions for “firing”, for retrenchment, responsibility to provide basic living allowance, etc., to the laid off and retrenched etc.

Chinese Labour Contract System

Article 11 says that Labour contract system shall be implemented to the employees recruited by the foreign invested enterprise. The foreign invested enterprise must conclude the labour contract with its recruited employees according to the law, and on the basis of equality, self willingness, coordination and consistency. The labour contract must be in accordance with relevant laws and regulations of the PRC and its contents shall include:

1. Quantity and quality of the assigned work, or the working task that should be accomplished
2. The labour contract duration
3. Payment insurance and other welfare
4. Working conditions and protection
5. Working disciplines, reward and punishment, terms of dismissal and resignation
6. The circumstance under which the labour contract be terminated
7. Liabilities for those who break the labour contract
8. Other terms both parties think it necessary to put in the contract.

The labour contract shall be written in the Chinese language, and it may also be in foreign languages. But when the contents of the Chinese version are not consistent with that of the foreign version, the former shall be regarded as the criterion.

The labour contract, when concluded is a legal document and binding upon both parties in strict compliance with it. If either party demands a revision of the contract, it must secure the consent of the other party through consultation, prior to the revision. When the contract expires, it may be renewed on the basis of mutual agreement.

The standard text of the labour contract shall be filed with the relevant labour departments, personnel administration and Shanghai Confederation of Trade Unions, while these departments may supervise and examine the implementation of the contract.

Trade Union

Notes

The trade union in the foreign invested enterprise may represent staff and workers in the negotiation with the enterprise on terms of payments, working time, off-days and holidays, insurance and welfare, working protection, etc., and conclude the collective contract according to the laws. Prior to establishment of the trade union, it is representatives chosen by staff and workers.

Termination of Service

Articles 13, 14 and 18 lay down conditions under which an employee can be terminated. According to article 13, "the foreign invested enterprise may dissolve the labour contract and fire its employees upon one of the following circumstances:

1. When the employee is proved unqualified during the probation period;
2. When the employee, due to sickness or non-working related injury, is unable, either to continue the work or to take other posts reassigned by the enterprise after a designated medical care period;
3. When the employee is in serious violation of labour disciplines or of relevant regulations of the enterprise;
4. When the employee seriously neglects his/her duty or is engaged in malpractice for self-ends, thus causing huge losses of the enterprise's interests;
5. When the employee is incompetent for doing the job and after training or change of the post is yet incompetent for doing it;
6. When the particular circumstances under which the labour contract is concluded undergoes great changes, so that the labour contract can no longer be implemented, and the concerned parties cannot reach an agreement to change, the contents of the labour contract;
7. When there are other particular terms defined in the labour contract.

Article 14 says that the labour contract is automatically dissolved upon one of the following circumstances:

1. When the employee is charged with a criminal suit, enforced to labour reform or sentenced to prison;
2. When the foreign invested enterprise is dissolved or terminated.

Article 18 says that "the Chinese employee, when dismissed by the foreign invested enterprise according to Items 2, 5, 6, 7 of Article 13, or automatically dissolve the labour contract according to items 2 of Article 14, or resign according to Items 2, 3 of article 16, shall get economic compensation from the enterprise in the light of the employee's service length in the enterprise. Those whose service length is less than one year shall get economic compensation equivalent to their half a month's actual salary; those who service length is more than one year shall get economic compensation equivalent to their one month's actual salary for each working year, but the maximum shall not exceed twelve months' actual salary."

Termination of Labour Contract

Article 15 talks of codes under which the Labour contract cannot be dissolved. The foreign invested enterprise shall neither terminate nor dissolve the labour contract nor dismiss its employees upon one of the following circumstances:

Notes

1. When the employee suffers from sickness or non-working related injury but is yet in the designated medical care period, except those as defined in the Items 1, 3, 4, of Article 13 of these Regulations;
2. When the employee suffers from occupational disease or work related injury and is in medical care and recuperation period;
3. When the female employee is in pregnancy, maternity and breast feeding period, but excluding those as defined in the Items 1, 3, 4 of Article 13 of this Regulation;
4. When the labour contract has not expired and the circumstance under which to dismiss the employee does not conform to article 13 of this Regulation.

Conditions imposed on Foreign Enterprise

Due to work related injury or occupational diseases, the employees of the foreign invested enterprise, after the medical care period are identified by the Labour Assessment Commission as losing working capacity to different extent. The termination and dissolution of their labour contract must be implemented according to the following terms:

1. The foreign invested enterprise must not terminate or dissolve the labour contract of those who have completely lost working capacity
2. The foreign invested enterprise must not terminate or dissolve the labour contract of those who have greatly lost working capacity, but the foreign invested enterprise may terminate the labour contract upon an agreement with the employee
3. The foreign invested enterprise must not dissolve the labour contract of those who have partially lost working capacity.

The foreign invested enterprise must implement the relevant regulations by the State and the Shanghai Municipality to make economic compensation for those employees whose labour contract is terminated according to the Items 2, 3 of the second clause of Article 15 of this Regulation.

Other Articles talk of compensation on retrenchment or lay off, medical allowances residential facilities, payment of wages, insurance, welfare and the like. There are provisions that make it obligatory to pay overtime wages for extra working hours. Article 17 says that "any party that asks to dissolve the labour contract must seek the opinion of the trade union of the enterprise and inform the other party in written form thirty days prior to the dissolution. But in the case the dissolution of the labour contract proceeds according to Items 1, 3, 4 of Article 13, and Items 1, 2, 3 of Article 16 of these regulations, the procedure of prior information to the other party may be considered unnecessary.

Any party that violates the labour contract shall bear the responsibilities of violation of the contract and of economic compensation".

Resolution of Labour Disputes

According to Article 37, "Labour disputes between the foreign invested enterprise and its employees may be settled through consultations between concerned parties; should the consultation fail, the concerned parties may apply to the labour dispute mediation committee of the enterprise for mediation; should mediation fail, the concerned parties may apply to the labour dispute arbitration committee for arbitration; either party that is not satisfied with the adjudication of arbitration may bring the case to the people's court of the district of country where the enterprise is located within 15 days upon the reception of the adjudication."



Note It must be added here that according to the National Labour Law, the Chairman of the Mediation Committee in an enterprise is a representative of the Trade Union. The Arbitrator is a representative official of the Government.

Lay off & Retrenchment

The enterprise that lays off, or retrenches, bears the responsibility to pay the basic living allowance, medical allowance etc. during the period (2-3 years) that the laid off spends at the Rehabilitation Centre.

It is thus, clear that the law does not contemplate or permit "hire and fire"; there is no instant and one-sided termination of responsibility to a worker who has been engaged on a written contract.

Strikes

Trade Union Law in China makes no mention of strikes. It neither mentions them as a legal instrument in the hands of the workers, nor prohibits them. The law makes no mention either way. The other methods available to the workers have already been referred to: mutual talks, approach to the Mediation Centre (Every enterprise is to have a statutory mediation centre of which a representative of the Trade Union in the enterprise is the Chairman): Arbitration (a representative official of the Government is the Arbitrator) and finally, the Peoples' Court.



Note There is only one Trade Union in China, the ACFTU. When we referred to the freedom to Trade Unions and the multiplicity of Trade Unions in India, we were told that the ACFTU is the "people choice" and came into being as a part of the struggle of the working class.

Social Security Schemes

1. **Old age Pension Scheme:** It covers 100 million workers and also 32 million retired workers. The individual worker contributes 5-7% of wages and the employer contributes 20% of wages to the insurance scheme. The Government does not contribute.
2. **Medical Insurance:** The contribution rate is 2% from employees and 6% from employers.
3. **Workers Injury Scheme:** This is the liability of employers.
4. **Maternity Benefits:** This is also the liability of the employer. But the benefits are provided only for the first child, since China is following a policy of one child norm per couple.
5. **Unemployment Insurance:** This scheme was started in 1980s. The Employer pays 2% while the employee pays 1% of the wages. The Government does not contribute but tries to make good the deficit. Unemployment benefit is lower than the minimum wages, but higher than the poverty line.

Notes



Case Study

Steel Authority of India (SAIL)

The Supreme Court has repeatedly asked government undertakings to be model employers in the past decades, especially before the liberalisation wave. But one area where public sector undertakings (PSUs) find it difficult to be such role models is in the employment of contract labour. Private companies usually get away with their outsourcing policy by various stratagems. But PSUs cannot find such escape routes as they are presumed to be the 'state' in the eyes of the Constitution and the courts expect better labour practices from public functionaries.

In the past few years, the Supreme Court had decided scores of appeals brought either by the employees or the establishments regarding the status of the contract workers and the demand for their absorption. Though the constitution bench decision in the Steel Authority of India (SAIL) case in 2001 was deemed to have settled the question, the last word has not been said, as the judgement itself is one of the most-misunderstood ones, and has led to a lot of appeals.

The confusion relating to workers in the context of the provisions of the Contract Labour (Regulation and Abolition) Act, the Industrial Disputes Act and the SAIL judgement was evident in two cases dealt with by the Supreme Court in recent days. In the first case, *Sarva Shramik Sangh vs Indian Oil*, the union representing the workers of the canteen in Mumbai succeeded in its appeal. They had alleged that the contract between the corporation and the canteen contractor was a sham and their demand for absorption should be referred to an industrial tribunal.

The Bombay High Court had asked the central government to consider their request for reference. But it rejected the request on the ground that "the workers were not appointed by the management of the corporation but were engaged by the contractor holding a valid and legal contract." This was challenged by the workers in the high court, but their petition was dismissed. Therefore, they appealed to the Supreme Court. It asked the government to reconsider its decision.

The crucial question in this case was whether the workers were contract labourers or not. This question should have been decided by the tribunal. However, the government answered this question on its own without referring it to the tribunal for a decision on merits. This was unlawful. If there is a dispute which should be referred to the tribunal under Section 10(1) of the Industrial Disputes Act and the government declines to do so, the court can direct the government to make the reference.

The Supreme Court listed four situations when the court can order the government to make a reference:

1. When the government cites irrelevant and extraneous grounds,
2. When it prejudices the merits of the dispute,
3. The refusal is mala fide, and
4. When the government ignores the failure-report of the conciliation officer.

In spite of the much-misunderstood judgement in the SAIL case, the contract workers have at least three remedies, and the Indian Oil judgement cites them. It says that when the case of the workers is that the contract was bogus, they could demand that they should be declared as direct employees of the principal employer. Secondly, if that contention

Contd...

failed and it is found that the contract was valid, they can still ask for a direction to the government to consider their representation for abolition of contract labour. Thirdly, where the workers contend that the contract between the principal employer and the contractor was a camouflage merely to deny them the benefits of the labour laws, they can seek relief under the Industrial Disputes Act.

In the second decision, *IAAI vs International Air Cargo Workers' Union*, the workers lost their case of nearly two decades, after seven rounds in the Madras High Court and the Supreme Court. In these years, the contractors had changed and the conditions had changed. However, the Supreme Court found that the (i) contract labour agreement between IAAI and the society engaging the cargo handlers was "not sham, nominal or a camouflage" and the contract labour were not direct employees of IAAI; (ii) there was no violation of the Industrial Disputes Act; and (iii) in the absence of a notification under Section 10 of Contract Labour Act prohibiting the employment of contract labour in the airport, the workmen were not entitled to claim absorption.

One result of these intricate interpretations of the law is that contract workers have practically ceased to move the courts. Only those unions which have the financial and organisational stamina can fight a case for more than a decade while their members face starvation. If this is the situation in government undertakings, the morale in private sector employment can well be imagined.

Question

Analyze this case and discuss. The confusion relating to workers in the context of the provisions of the Contract Labour (Regulation and Abolition) Act.

4.3 Summary

- Outsourcing and contracting has become a business necessity in order to be competitive. At the same time, contract labour is one of the most exploited sections of human labour. A good number of contract labourers are employed in selected industries
- During the post-Independence period, several statutory and non-statutory measures have been adopted to regulate and improve the conditions of contract labour.
- The objective of the Act is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances.
- Under the Act, the appropriate Government is empowered to extend the application of the Act to any establishment or contractor employing less than 20 workmen after giving two month's notice. Where the registration of any establishment has been obtained by misrepresentation or suppression of any material fact, or that for any other reason, the registration has become useless or ineffective and, therefore, requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke the registration.
- The registering officer may entertain any such application for registration after the expiry of the period fixed in this behalf, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time
- Under Section 13, every application for the grant of a licence shall be made in the prescribed form and shall contain particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

Notes

- Sections 16, 17, 18 and 19 of the Act and the Rules made thereunder, impose an obligation on an employer to provide certain amenities for ensuring the health and welfare of the contract labour.
- In case, any contractor fails to provide the above amenities within the stipulated time, then the same are to “be provided by the principal employer. However, the principal employer is authorised to recover such expenses from the contractor.”
- Ever principal employer shall nominate a representative, duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed. The employees engaged through the contractor will be liable to be covered under the Employees’ Provident Fund and Miscellaneous Provisions Act - DCM Ltd. vs. Regional Provident Fund Commissioner, 1998 LLR 532 (Raj HC).
- Sub-rule IV of Rule 25 of the Contract Labour (Regulation and Abolition) Act provides that the principal employer will ensure that the workers as engaged through the contractor will not be paid wages less than the minimum rate of wages as fixed under the Minimum Wages Act

4.4 Keywords

Central advisory: The Central Government under Section 3 is required to set up the Central Advisory Contract Labour Board on matters relating to administration of the Act as may be referred to it.

Committee: The Committee constituted under sub-section (1) shall meet at such times and places and shall observe such rules or procedures regarding the transaction of business at its meetings as may be prescribed.

The Employees’ State Insurance Act, 1948: A workman under the Contract Labour (Regulation and Abolition) Act is also a ‘workman’ under the Industrial Disputes Act.

The Minimum Wages Act, 1948: Sub-rule IV of Rule 25 of the Contract Labour (Regulation and Abolition) Act provides that the principal employer will ensure that the workers as engaged through the contractor will not be paid wages less than the minimum rate of wages as fixed under the Minimum Wages Act.

The Mines Act, 1952: As per section 2 (1) of the Act, any contractor working in a mine or part thereof, shall also be liable for compliance of various provisions of the Act and Rules.

4.5 Self Assessment

Fill in the blanks:

1. of the constitution lays down that no person shall be deprived of his life and personal liberty, except according to the procedure established by law.
2. The Act is also applicable where the relates to service conditions of the workman engaged in the factory canteen maintained by the company.
3. The Act empowers the appropriate Governments to appoint with whom every principal employer, or an establishment to which this Act applies, has registered the establishment in the prescribed manner.

4. provides that no contractor shall undertake or execute any work through contract labour, except under and in accordance with a licence issued in that behalf by the licensing officer.
5. The shall after giving the appellant an opportunity of being heard, dispose the appeal as expeditiously as possible.
6. Under of the Act and the rules made thereunder, it is obligatory on the part of a contractor and on his failure on the part of the principal employer to provide and maintain a first-aid box so as to be readily accessible during all working hours at every place where the contract labour is employed.
7. The employment of female contract labourer, excepting the women employed in pithead baths, crèches, canteens, nurses and midwives, is prohibited
8. of the Act enjoins upon every principal employer and every contractor to maintain the registers and records, giving prescribed particular of contract labour employed, the nature of work performed by the contract labour
9. A shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
10. The may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, framed under the Act.

4.6 Review Questions

1. What are the regulative requirements under the Act? Explain.
2. In what conditions contract labour system can be abolished? Explain.
3. What are the approaches of Supreme Court of India for abolition & abortion of contract labour?
4. Discuss the contract labour in detail.
5. Describe the two examples based on Contract Labour Act.

Answer: Self Assessment

- | | |
|----------------------------------|---------------|
| 1. Article 21 | 2. dispute |
| 3. registering officers | 4. Section 12 |
| 5. Appellate officer | 6. Section 19 |
| 7. before 6 a.m. and after 7 p.m | 8. Section 29 |
| 9. contractor | 10. Licence |

Notes

4.7 Further Readings



Books

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Online links

En.wikipedia.org

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Unit 5: The Contract of Employment

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Objectives

After studying this unit, you will be able to:

- Discuss Industrial Employment Act, 1946
- Describe Contract Labour Act, 1970

Introduction

A contract of employment is a category of contract used in labour law to attribute right and responsibilities between parties to a bargain. On the one end stands an "employee" who is "employed" by an "employer". It has arisen out of the old master-servant law, used before the 20th century.

The terms and conditions of an Employment contract signify the working style and culture of an organization. While employing a person in your organization or commercial set up, you need to define the relationship in a fair and unambiguous manner. Our Employment contract helps you protect the interests of the organization while being fair to the employee.

5.1 Industrial Employment (Standing Orders) Act, 1946

An Act require employers in industrial establishments formally to define Conditions of employment under them:

Whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

It is hereby enacted as follow:

1. ***Short title, extent and application:***

- (1) This act may be called the Industrial Employment (Standing Orders) Act, 1946.
- (2) It extends to the whole of India.

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- (3) It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months:

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of number of persons less than one hundred as may be specified in the notification.

- (4) Nothing in this Act shall apply to:

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

Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.

History of the Act: The Act has been amended by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1943; The A.O. 1950; Act 3 of 1951; Act 36 of 1956; Act 16 of 1961; Act 39 of 1963; 51 of 1970 and 18 of 1982.

Object of the Act: That the object of the Act is to have uniform Standing Orders providing for the matters enumerated in the Schedule to the Act, that it was not intended that there should be different conditions of service for those who are employed before and those employed after the Standing Orders came into force and finally, once the Standing Orders come into the force, they bind all those presently in the employment of the concerned establishment as well as those who are appointed thereafter. *Agra Electric Supply Co. Ltd. v. Aladdin*, (1969) 2 SCC 598; *U.P. Electric Supply Co. Ltd. v. Their Workman*, (1972) 2 SEC 54.

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

- (a) "appellate authority" means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act :

[Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963, that Court or authority shall be deemed to be the appellate authority]

- (b) "appropriate Government" means in respect of industrial establishments under the control of the Central Government or a [Railway administration] or in a major Port, mine or oil field, the Central Government, and in all other in all other cases the State Government]

[Provided that where question arises as to whether any industrial establishment is under the control of the Central industrial establishment is under the control of the Central Government that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties]

- (c) "*Certifying Officer*" means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act:
- (d) "*employer*" means the owner of an industrial establishment to which this Act for the time being applies, and includes:
- (i) In a factory, any person named under [clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948], as manager of the factory;
 - (ii) In any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department;
 - (iii) In any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment;
- (e) "*industrial establishment*" means
- (i) An industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936, or
 - (ii) A factory as defined in clause (m) of Section 2 of the Factories Act, 1948, or
 - (iii) A railway as defined in clause (4) of Section 2 of the Indian Railway Act, 1890, or
 - (iv) The establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;
- (f) "*Prescribed*" means prescribed by rules made by the appropriate Government under this Act;
- (g) "*Standing orders*" means rules relating to matters set out in the Schedule;
- (h) "*Trade union*" means a trade union for the time being registered under the Indian Trade Union Act, 1926;
- (i) "*wages*" and "*workman*" have the meanings respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947).
3. **Submission of draft standing orders.**
- (1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in this industrial establishment.
 - (2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where Model standing orders have been prescribed shall be, so far as is practicable, in conformity with such model.
 - (3) The draft standing orders submitting under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong
 - (4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

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4. **Conditions for certification of standing orders:** Standing orders shall be certifiable under this Act if–
 - (a) Provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and
 - (b) The standing orders are otherwise in conformity with the provisions of this Act;and it [shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.
5. **Certification of standing orders:**
 - (1) On receipt of the draft under Section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, if any, of the workmen or where there is no trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.
 - (2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.
 - (3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications there in which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.
6. **Appeals:**
 - (1) [Any employer, workmen, trade union or other prescribed representatives of the workmen] aggrieved by the order of the Certifying Officer under sub-section (2) of Section 5 may, within [thirty days] from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions there to as it thinks necessary to render the standing orders certifiable under this Act.
 - (2) The appellate authority shall, within seven days of its order under sub-section (1) send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.
7. **Date of operation of standing orders:** Standing orders shall, unless an appeal is preferred under Section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of Section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of Section 6.

8. **Register of standing orders:** A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy there of to any person applying there for on payment of the prescribed fee.
9. **Posting of standing orders:** The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.
10. **Duration and modification of standing orders:**
- (1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen [or a trade union or other representative body of the workmen] be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came in to operation.
 - (2) Subject to the provisions of sub-section (1), an employer or workman [or a trade union or other representative body of the workmen] may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen 19 [or a trade union or other representative body of the workmen], a certified copy of that agreement shall be filed along with the application.
 - (3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.
 - (4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.
- 10A. **Payment of subsistence allowance:**
- (1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance-
 - (i) At the rate of fifty per cent of the wages which workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and
 - (ii) At the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.
 - (2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.
 - (3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law

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for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.

11. *Certifying officers and appellate authorities to have powers of Civil Court:*

- (1) Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of [Sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974)]
- (2) Clerical or arithmetical mistakes in any order passed by a Certifying officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such officer or authority, as the case may be.

12. *Oral evidence in contradiction of standing orders not admissible:* No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders finally certified under this Act shall be admitted in any Court.

12A. *Temporary application of model standing orders:*

- (1) Notwithstanding anything contained in Sections 1 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under Section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of Section 9, sub-section (2) of Section 13 and Section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.
- (2) Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

Section 12-A.-Where there are two categories of workmen, one in respect of the daily rated workmen and the other in respect of the monthly rated workmen, if there are certified standing orders in respect of the daily rated workers only, the prescribed model standing orders should be deemed to have been adopted for those who are employed on the monthly basis until such categories have their own certified standing orders,

13. *Penalties and procedure:*

- (1) An employer who fails to submit draft standing orders as required by Section 3 or who modifies his standing orders otherwise than in accordance with Section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.
- (2) An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.
- (3) No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.

- (4) No Court inferior to that of [a Metropolitan or Judicial Magistrate of the second class] shall try any offence under this section.
- 13A. **Interpretation, etc., of standing orders:** If any question arises as to the application or interpretation of a standing order certified under this Act, any Employer or workman [or a trade union or other representative body of the workmen] may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947, and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.
- 13B. **Act not to apply to certain industrial establishments:** Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations than may be notified in this behalf by the appropriate Government in the Official Gazette, apply.
14. **Power of exempt:** The appropriate Government may by notification in the Official Gazette exempt, conditionally or unconditionally any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.
- 14A. **Delegation of powers:** The appropriate Government may by notification in the Official Gazette, direct that any power exercisable by it under this Act or any rules made thereunder 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;
 - (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. **Power to make rules:**
- (1) The appropriate Government may after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.
 - (2) In particular and without prejudice to the generality of the foregoing power, such rules may:
 - (a) prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition;
 - (b) set out model standing orders for the purposes of this Act;
 - (c) prescribe the procedure of Certifying Officers and appellate authorities;
 - (d) prescribe the fee which may be charged for copies of standing orders entered in the register of standing orders;
 - (e) provide for any other matter which is to be or may be prescribed;

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

- (3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [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 any thing previously done under that rule.



Task

Make a presentation on the facts and figure related to the Industrial Employment Act, 1946.



Notes

The Schedule: [See Sections 2 (g) and 3(2)]

Matters to be provided in standing orders under this Act

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



Caselet

My Experience of Implementing VRS

It was month of September, 1997, I had just joined a Company in the North India, near Delhi, I shall call it A Company for the purpose of this case study. I had joined the A Company as HR Manager. It was my first meeting with the CEO and the Executive Director of the A Company and I was informed by both the gentlemen that due to the financial position prevailing in the Company and disturbed Market condition, the Management wanted to implement a Voluntary Retirement Scheme already approved by the Government of the State for exemption under the Income Tax but due to the hostile attitude of the Worker's Union of the factory, the VRS could not be implemented till that time. I was also informed that the validity of the VRS will be over within one and half months time. I was then told my task that the Management expected me to implement this particular Voluntary Retirement Scheme within the next one month in the Factory and the target was to persuade at least 400 employees to accept the scheme whose names were already short listed by the Management.

After having been told about the task, I was introduced to the President, General Secretary and other Office Bearers and Executive Committee. Having met them I could guess that my task is going to be tough. All these chaps were locals and believers of muscle power. They wasted no time in making me understand that if I try my hands on VRS or any issue to which they were opposed I would be in hot water. This was my first day in the office in the A Company and I was informed that the next day I have to be present in the Head Office of the Company in the morning since the M.D. of the A Company was going to have a dialogue with the President of the Worker's Union on the VRS to ask him to persuade employees to accept VRS.

Next morning at the appointed time was ushered in to a conference room where in the M.D. was to meet the President of the Worker's Union. I was quite amused to see that in the room, there was only one table and two chairs and no other piece of furniture. I was wondering where the third person would sit. I thought that there could be a special chair for the M.D., the Seth ji in fact that may be placed in the room just before he comes. While I was still contemplating about the chairs business I saw the M.D. walk in room and occupy one of the Chairs, another chair was offered to me and then M.D. called his Secretary to let the President in and I butted in between, Sir, shall I get one chair for the President, he replied no and also told me not to worry and just watch the proceedings quietly. A few moment latter the President walked in folded hand and half bent in respect stood there. He was not offered to sit. Though I knew that the President was also a worker of the factory but I was amazed to see his posture. The M.D. asked him about the VRS and he politely replied that his other associates in the Union as well as worker's are adamant on the stand and he could not do any thing about this. The meeting ended within few minutes and the President left. I was quite astonished to see the treatment given to the President by the M.D. and was not happy about this meeting. I immediately told him about my discomfort to the M.D. and told him that this is not the way I would recommend or like to have the meetings held and if the Management expects results from me, I must be allowed to handle the things my way. To my surprise the M.D. immediately agreed to my request and told that I could hold further meetings at the Factory and it will be attended by the CEO and E.D. on his behalf.

Next day I called the President and told him about my discussion with the M.D. regarding the future meetings and the President could hardly believe me, however, he said that if it

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was possible to have one to one meeting across the table, he can persuade his full Committee to come for the meeting.

Having reached this stage I persuaded the Management to allow me to share openly with the President the balance sheet and let him understand and appreciate the actual Financial condition of the Company and the implications that if this VRS is made to fail, the Company will be in deep financial problem, which could even lead to closure. Fortunately the Management allowed me to share this with the President and I taking full advantage of the situation convinced the President that if the Company succeeds in implementing VRS as they want only 400 persons to be separated with handsome amounts otherwise, a little latter if the Company goes for closure more than 1000 employees would come on the road, therefore, he and his other Union chaps have to decide which is a better option. In the mean time I had been getting a filler that most of the employees whose names were short listed were ready to accept VRS but were not coming forward due to the pressure and fear of the Worker's Union.

I succeeded in persuading the President at least not to oppose the Management's move to approach the workers to accept the VRS and also persuaded his other associates not to oppose it.

At this stage I organized a Union-Management meeting at the Administrative Block of the Factory and for the first time in the history of the A Company, the representatives of the Management and the representatives of the Worker's Union sat across each other on the same table for discussion and every body shared the same refreshments and tea in the similar utensils. Members from the Union side were quite amazed to get this treatment and members from the Management side were quite surprised to see the nice behaviour of the Union chaps. They could not believe that this was the same lot which was always using abusive language towards them. Anyway the Meeting was held in a very cordial atmosphere. Both the parties heard each other's view point with full attention and also appreciated and endorsed the right views. Ultimately it was agreed that the Management will make its move to approach the employees to accept VRS and those who agree to accept it voluntarily, can accept it. The Union will still oppose it in principle and will be free to organize "dharna" and "Pradarshan" outside the Factory's gate and will also organize Gate Meetings to oppose the VRS but no Union Member will physically stop any worker or otherwise influence such workers who are accepting VRS.

After this historical meeting, a general meeting of all workers was held, in which for the first time workers were allowed to sit on the chairs due to my insistence before the Management team. (Earlier the practice was that workers will sit on the durries on the ground and Management team will sit on chairs). I explained the entire scheme to the workers and the process to be followed for accepting it. The Union Members were sitting at " Dharna " and holding a Gate Meeting at that time opposing the Management's move to introduce the VRS but as promised in the meeting they did not disturb the meeting physically.

The VRS was launched and workers started queuing up from the first day to apply for the same. We even got a Bank's counter opened at the Factory's premise, so that such workers who wanted to invest the amount with the Bank's schemes could do so simultaneously. We even helped employees to get bank loan to start their own work if they wanted to.

Ultimately the target for the VRS was met and this led to Union's participation in Management in the A Company.

It sounds like a bollywood movie's story, isn't it. But it is a fact that happened in my life.

By V. B. Lal

5.2 Contract Labour (Regulation and Abolition) Act, 1970

Notes

An Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. Enacted by Parliament in the Twenty-first Year of the Republic of India as follows:

1. **Short title, extent, commencement and application:** (1) This Act may be called the Contract Labour (Regulation and Abolition) Act,
 - (2) It extends to the whole of India.
 - (3) It shall come into force on such date 1* as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.
 - (4) It applies- (a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour; (b) to every contractor who employes or who employed on any day of the preceding twelve months twenty or more workmen: Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.
 - (5) (a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed.
 - (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall -----
----- 1. 10th February, 1971; vide Notification No. G.S.R. 190 dated 1-2- 1971, Gazette of India, 1971, Pt. II, Sec. 3(i), p.173. 502 decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final. Explanation. - For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature - (i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or (ii) if it is of a seasonal character and is performed for more than sixty days in a year.
2. **Definitions:** (1) In this Act, unless the context otherwise requires, - 1*[(a) "appropriate Government" means, - (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government; (ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;] (b) a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer; (c) "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods of articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub- contractor; (d) "controlled industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest; ----- 1. Subs. by Act 14 of 1986, s. 2 (w.e.f. 28.1.1986). 503 (e) "establishment" means - (i) any office or department of the Government or a local authority, or (ii) any place where any industry, trade, business, manufacture or occupation is carried on; (f) "prescribed" means prescribed by rules made

* Received assent of the President on 5.9.1970. Published in Gazette of India on 7.9.1970.

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under this Act; (g) "principal employer" means- (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf, (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948) the person so named, (iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named, (iv) in any other establishment, any person responsible for the supervision and control of the establishment. Explanation. - For the purpose of sub-clause (iii) of this clause, the expressions "mine", "owner" and "agent" shall have the meanings respectively assigned to them in clause (j), clause (l) and clause (c) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952); (h) "wages" shall have the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936); (i) "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semiskilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person - (A) who is employed mainly in a managerial or administrative capacity; or (B) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or 504 (C) who is an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the Principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

(2) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

3. **Central Advisory Board:** (1) The Central Government shall, as soon as may be, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.



Did u know? The Central Board shall consist of--(a) a Chairman to be appointed by the Central Government; (b) the Chief Labour Commissioner (Central), *ex-officio*; (c) such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Board.

(2) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Board shall be such as may be prescribed:

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

4. **State Advisory Board:** (1) The State Government may constitute a board to be called the State Advisory Contract Labour Board (hereinafter referred to as the State Board) to advise the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.
- (2) The State Board shall consist of—(a) a Chairman to be appointed by the State Government; (b) the Labour Commissioner, *ex-officio*, or in his absence any other officer nominated by the State Government in that behalf; (c) such number of members, not exceeding eleven but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board.
- (3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the State Board shall be such as may be prescribed:
- Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.
5. **Power to constitute committees:** (1) The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.
- (2) The committee constituted under sub-section (1) shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.
- (3) The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed:
- Provided that no fees shall be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.
6. **Appointment of registering officers:** The appropriate Government may, by an order notified in the Official Gazette – (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers for the purposes of this Chapter; and (b) define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.
7. **Registration of certain establishments:** (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment:
- Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.
- (2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

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8. **Revocation of registration in certain cases:** If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke the registration.
9. **Effect of non-registration:** No principal employer of an establishment, to which this Act applies, shall - (a) in the case of an establishment required to be registered under section 7, but which has not been registered within the time fixed for the purpose under that section, 507 (b) in the case of an establishment the registration in respect of which has been revoked under section 8, employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be.
10. **Prohibition of employment of contract labour:** (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.



Did u know? Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as - (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; (d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation. - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

11. **Appointment of licensing officers:** The appropriate Government may, by an order notified in the Official Gazette, - (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter; and 508 (b) define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.
12. **Licensing of contractors:** (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.
 - (2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

13. **Grant of licences:** (1) Every application for the grant of a licence under sub-section (1) of section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.
- (2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.
- (3) A licence granted under this Chapter shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.
14. **Revocation, suspension and amendment of licences:** (1) If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that—(a) a licence granted under section 12 has been obtained by misrepresentation or suppression of any material fact, or (b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving 509 the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.
- (2) Subject to any rules that may be made in this behalf, the licensing officer may vary or amend a licence granted under section
15. **Appeal:** (1) Any person aggrieved by an order made under section 7, section 8, section 12 or section 14 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government:
- Provided that the appellate officer 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 officer shall, after giving the appellant an opportunity of being heard dispose of the appeal as expeditiously as possible.
16. **Canteens:** (1) The appropriate Government may make rules requiring that in every establishment – (a) to which this Act applies, (b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and (c) wherein contract labour numbering one hundred or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for – (a) the date by which the canteens 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; and 510 (c) the foodstuffs which may be served therein and the charges which may be made therefor.
17. **Rest-rooms:** (1) In every place wherein contract labour is required to halt at night in connection with the work of an establishment—(a) to which this Act applies, and (b) in which work requiring employment of contract labour is likely to continue for such period

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- as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed.
- (2) The rest-rooms or the alternative accommodation to be Provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.
18. **Other facilities:** It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain – (a) a sufficient supply of wholesome drinking water for the contract labour at convenient places; (b) a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and (c) washing facilities.
19. **First-aid facilities:** There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first-aid box equipped with the prescribed contents at every place where contract labour is employed by him.
20. **Liability of principal employer in certain cases:** (1) If any amenity required to be provided under section 16, section 17, section 18 or section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed.
- (2) All expenses incurred by the principal employer in providing the amenity may be recovered by the principal 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.
21. **Responsibility for payment of wages:** (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
- (2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
- (3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.
- (4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.
22. **Obstructions:** (1) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, 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 wilfully 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.

23. **Contravention of provisions regarding employment of contract labour:** Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under 512 this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.
24. **Other offences:** If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.
25. **Offences by companies:** (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
- Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- Explanation:* For the purpose of this section – (a) "company" means any body corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm.
26. **Cognizance of offences:** No court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no court inferior to that of a Presidency Magistrate or a magistrate of the first class shall try any offence punishable under this Act. 513
27. **Limitation of prosecutions:** No court shall take cognizance of an offence punishable under this Act unless the complaint thereof 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 thereof may be made within six months of the date on which the offence is alleged to have been committed.
28. **Inspecting staff:** (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, and define the local limits within which they shall exercise their powers under this Act.

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- (2) Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed – (a) enter, at all reasonable hours, with such assistance (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection; (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workman employed therein; (c) require any person giving out work and any workman, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work; (d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and (e) exercise such other powers as may be prescribed.
- (3) Any person required to produce any document or thing or to give any information required by an inspector under sub-section (2) shall be 514 deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860).
- (4) 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) as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.
29. **Registers and other records to be maintained:** (1) Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.
- (2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.
30. **Effect of laws and agreements inconsistent with this Act:** (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act:
- Provided that where under any such agreement, contract of service or standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act.
- (2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

31. **Power to exempt in special cases:** The appropriate Government may, in the case of an emergency, direct, by notification in the Official Gazette, that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, all or any of the provisions of this Act or the rules made thereunder shall not apply to any establishment or class of establishments or any class of contractors.
32. **Protection of action taken under this Act:** (1) No suit, prosecution or other legal proceedings shall lie against any registering officer, licensing officer or any other Government servant or against any member of the Central Board or the State Board, as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.
- (2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.
33. **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.
34. **Power to remove difficulties:** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.
35. **Power to make rules:** (1) The appropriate Government may, 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 number of persons to be appointed as members representing various interests on the Central Board and the State Board, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies; (b) the times and places of the meetings of any committee constituted under this Act, the procedure to be followed at such meetings including the quorum necessary for the transaction of business, and the fees and allowances that may be paid to the members of a committee; (c) the manner in which establishments may be registered under section 7, the levy of a fee therefore and the form of certificate of registration; (d) the form of application for the grant or renewal of a licence under section 13 and the particulars it may contain; (e) the manner in which an investigation is to be made in respect of an application for the grant of a licence and the matters to be taken into account in granting or refusing a licence; (f) the form of a licence which may be granted or renewed under section 12 and the conditions subject to which the licence may be granted or renewed, the fees to be levied for the grant or renewal of a licence and the deposit of any sum as security for the performance of such conditions; (g) the circumstances under which licences may be varied or amended under section 14; (h) the form and manner in which appeals may be filed under section 15 and the procedure to be followed by appellate officers in disposing of the appeals; (i) the time within which facilities required by this Act to be provided and maintained may be so provided by the contractor and in case of default on the part of the contractor, by the principal employer; (j) the number and types of canteens, rest-rooms, latrines and urinals that should be provided and maintained; (k) the type of equipment that should be provided in the first-aid boxes; (l) the period within which wages payable to contract labour should be paid by the contractor under sub-section (1) of section 21; (m) the form of registers and records to be maintained by principal employers and contractors; (n) the submission of

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returns, forms in which, and the authorities to which, such returns, may be submitted; (o) the collection of any information or statistics in relation to contract labour; and (p) any other matter which has to be, or may be, prescribed under this Act.

- (3) 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 successive sessions, and if before the expiry 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 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.



Task Search and make a list of the cases which are related to the Contract Labour (Regulation and Abolition) Act 1970.

5.3 Summary

- The terms and conditions of an employment contract signify the working style and culture of an organization.
- While employing a person in your organization or commercial set up, you need to define the relationship in a fair and unambiguous manner.
- Employment contract helps you protect the interests of the organization while being fair to the employee.
- Industrial Employment (Standing Orders) Act, 1946 extends to the whole of India It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months.
- Contract Labour (Regulation and Abolition) Act, 1970 is an Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

5.4 Keywords

Contract of Employment: It is a category of contract used in labour law to attribute right and responsibilities between parties to a bargain.

Certifying Officer: It means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government.

5.5 Self Assessment

Fill in the blanks:

1. An industrial establishment employs 98 workers Act may not apply in this case.
2. Act has been amended by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1943; The A.O. 1950; Act 3 of 1951; Act 36 of 1956; Act 16 of 1961; Act 39 of 1963; 51 of 1970 and 18 of 1982.

3. means in respect of industrial establishments under the control of the Central Government or a [Railway administration] or in a major Port, mine or oil field, the Central Government, and in all other in all other cases the State Government.
4. On receipt of the draft under Section 3, the shall forward a copy thereof to the trade union.
5. means prescribed by rules made by the appropriate Government under the Industrial Employment (Standing Orders) Act, 1946.
6. means rules relating to matters set out in the Schedule.
7. means a trade union for the time being registered under the Indian Trade Union Act, 1926.
8. and have the meanings respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947).
9. The State Government may constitute a board to be called the
10. It shall be the duty of the to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.
11. The may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in the Contract Labour Act, 1970.

5.6 Review Questions

1. State the facts about Industrial Employment (Standing Orders) Act, 1946 with relevant situations.
2. Analyse and Explain the contract of the employment. And lay down names of certain employers from the industry.
3. Discuss the Contract Labour Act 1970. Do you think the Act needs updation? Critically examine.
4. "The Labour Act, 1970 is effective than Industrial Employment (Standing Orders) Act, 1946." Discuss. If yes then why? If no then why?
5. Make a comparative study of both of the Employments acts and determine which considers to be more relevant.
6. Explain the influence of Industrial Employment Act 1946. Comment with reference to the contract of employment.
7. "Make a detailed list of the Indian industrial houses following and not following the Industrial Employment Act, 1946." Comment.
8. Comment which of the act from the unit is apt in your view. Comment with relevant belief.
9. Determine any Analyse the constitution of Central Advisory Board and State Advisory Board of Contract Labour Act, 1970.
10. Explain the relevancy of Contract of Employment in determining effective industrial relations.

Notes

Answers: Self Assessment

1. Industrial Employment (Standing Orders)
2. Industrial Employment (Standing Orders) Act, 1946
3. Appropriate Government
4. Certifying Officer
5. Prescribed
6. Standing orders
7. Trade union
8. Wages, workmen
9. State Advisory Contract Labour Board
10. contractor
11. central government

5.7 Further Readings



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Online links

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Unit 6: Trade Union Act

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Objectives

After studying this unit, you will be able to:

- Explain background and forces responsible for birth of trade unions
- Discuss various conceptual and theoretical aspects of trade unions

Notes

- Understand Trade Union Act 1926
- Describe the challenges before trade unions management in changing business environment

Introduction

Trade Union had to pass through a very difficult and hostile period in the initial years. The employers wanted to crush them with iron hands. Then came the period of agitation and occasional acceptance. When the union gained strength they started confronting the employer. This is the period of struggle which continued for long. Employers were forced to accommodate, tolerate and hesitatingly accept them. Then came the period of understanding in the industry in collective bargaining. This was followed by a fraternal stage where union became matured and employers started consulting them. The desired state is the "Fusion Stage" in which joint efforts were required to be made for union-management cooperation and partnership.

6.1 Trade Unions: Meaning and Justification

According to Webbs, a trade union is a continuous association of wage-earners for the purpose of maintaining and improving the conditions of their working lives. Under the Trade Union, Act of 1926, the term is defined as any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workers and employers or for imposing restrictive conditions on the condition of any trade or business and includes any federation of two or more unions. Let us examine the definition in parts:

1. Trade union is an association either of employees or employers or of independent workers.
2. It is a relatively permanent formation of workers. It is not a temporary or casual combination of workers.
3. It is formed for securing certain economic (like better wages, better working and living conditions), and social (such as educational, recreational, medical, respect for individual) benefits to members. Collective strength offers a sort of insurance cover to members to fight against irrational, arbitrary and illegal actions of employers. Members can share their feelings, exchange notes and fight the employer quite effectively whenever he goes off the track.

A more recent and non-legislative definition of a union is:

"An organisation of workers acting collectively who seek to protect and promote their mutual interests through collective bargaining".

-De Cenzo & Robbins (1993)

6.2 Theories of Trade Unionism

There is no one theory of Trade Unionism, but many contributors to these theories are revolutionaries like Marx and Engels, Civil servants like Sydney Webb, academics like Common and Hoxie and labour leaders like Mitchall. Important theories of trade unionism are as follows:

1. **Political Revolutionary Theory of Labour Movement of Marx and Engels:** The Theory is based on Adam Smith's theory of labour value. Its short-run purpose is to eliminate competition among labour, and the ultimate purpose is to overthrow capitalist-businessman. Trade union is a pure and simple class struggle, and the proletarians have nothing to lose but their chains and there is a world to win.

*Note*

Marx and Engels lived as revolutionary exiles in England during the period of the rise of trade unionism. Even before they had arrived in England, they had recognized the objective significance of trade unionism as the response of the working class to the efforts of the employers to lower their wages. In opposition to the petty-bourgeois theoretician Pierre-Joseph Proudhon, who denied the utility of both trade unions and strikes on the grounds that increases in wages achieved through their efforts led only to increases in prices Marx insisted that both formed necessary components of the struggle of the working class to defend its standard of living.

Marx was certainly correct in his criticism of the views of Proudhon, but it is necessary to bear in mind that these early writings were produced at a time when the trade unions themselves were still in their swaddling clothes. The experience of the working class with this new organizational form was extremely limited. The possibility could not be foreclosed, at that time that the trade unions could yet evolve into potent instruments of revolutionary struggle, or at least as the direct forerunners of such instruments. This hope was expressed in Marx's observation in 1866 that as "centers of organization" the trade unions were playing for the working class the same role "as the medieval municipalities and communes did for the middle class."

Even by then, however, Marx was concerned that "the Trades" Unions have not yet fully understood their power of acting against the system of wages slavery itself." But it was in this direction that they had to evolve:

"Apart from their original purposes, they must now learn to act deliberately as organizing centers of the working class in the broad interest of its complete emancipation. They must aid every social and political movement tending in that direction. Considering themselves and acting as champions and representatives of the whole working class, they cannot fail to enlist the non-society men into their ranks. They must look carefully after the interests of the worst paid trades, such as the agricultural laborers, rendered powerless by exceptional circumstances. They must convince the world at large that their efforts, far from being narrow and selfish, aim at the emancipation of the downtrodden millions."

Marx sought to impart to the trade unions a socialist orientation. He warned the workers "not to exaggerate to themselves" the significance of the struggles engaged in by the trade unions. At most, the unions were "fighting with effects, but not with the causes of those effects; that they are retarding the downward movement; that they are applying palliatives, not curing the malady." It was necessary for the unions to undertake a struggle against the system that was the cause of the workers' miseries; and, therefore, Marx proposed to the trade unions that they abandon their conservative slogan, "A fair day's wage for a fair day's work," and replace it with the revolutionary demand, "Abolition of the wages system."

But Marx's advice made little impression, and by the late 1870s, the observations of Marx and Engels on the subject of trade unionism had assumed a far more critical character. Now that bourgeois economists were expressing greater sympathy toward the trade unions, Marx and Engels took pains to qualify their earlier endorsement. They distinguished their views from those of bourgeois thinkers like Lujó Brentano, whose enthusiasm for the trade unions was dictated, according to Marx and Engels, by his desire "to make the wage-slaves into contented wage-slaves."

By 1879, it was possible to detect in Engels' writings on the subject of trade unionism an unmistakable tone of disgust. He noted that the trade unions had introduced organizational statutes that prohibited political action, thus barring "any participation in any general

Contd...

Notes

activity on the part of the working class as a class." In a letter to Bernstein, dated June 17, 1879, Engels complained that the trade unions had led the working class into a dead end. "No attempt should be made to conceal the fact that at this moment a genuine workers' movement in the continental sense is non-existent here, and hence I don't believe you will miss much if, for the time being, you don't get any reports on the doings of the TRADE UNIONS here."

In an article written six years later, in which he contrasted the England of 1885 to that of 1845, Engels made no attempt to conceal his contempt for the conservative role played by the trade unions. Forming an aristocracy within the working class, they cultivated the friendliest relations with the employers, in order to secure for themselves a comfortable position. The trade unionists, Engels wrote with scathing sarcasm, "are very nice people indeed nowadays to deal with, for any sensible capitalist in particular and for the whole capitalist class in general."

But the trade unions had all but ignored the great mass of the working class, for whom "the state of misery and insecurity in which they live now is as low as ever, if not lower. The East-end of London is an ever-spreading pool of stagnant misery and desolation, of starvation when out of work, and degradation, physical and moral, when in work."

Engels' hopes were aroused, toward the end of the 1880s, by the development of a new and militant trade union movement among more exploited sections of the working class. Socialists, including Eleanor Marx, were active in this new movement. Engels responded to these developments with enthusiasm, and noted with great satisfaction that "These new Trades Unions of unskilled men and women are totally different from the old organizations of the working-class aristocracy and cannot fall into the same conservative ways ... And they are organized under quite different circumstances all the leading men and women are Socialists, and socialist agitators too. In them I see the real beginning of the movement here."

But Engels' hopes were not fulfilled. It was not too long before these "new" unions began to exhibit the same conservative tendencies as the old ones. This was an early verification of the theoretical conception we consider critical to the analysis of the trade unions i.e., that the essential character of these organizations is not determined by the social position and status of the particular sections of workers organized within them. These are factors, which, at most, only influence certain secondary aspects of trade union policy perhaps making some unions more or less militant than the average. Yet, in the final analysis, the trade union form, whose structure is drawn from, and embedded in, the social and production relations of capitalism, and, we must add, the nation-state framework, exercises the decisive influence that determines the orientation of its "content" the working class membership.

The theory of modern Socialism is inseparable from the constructive thought of Karl Marx. The theory of modern Socialism does not admit of arbitrarily constructed Utopian ideals. The philosophical basis of Marxian Socialism is a synthesis of the theories of the economic interpretation of history, of the class-struggle and of surplus value.

2. **Webb's Theory of Industrial Democracy:** Webb's book 'Industrial democracy' is the Bible of trade unionism. According to Webb, trade unionism is an extension of democracy from political sphere to industrial sphere. Webb agreed with Marx that trade unionism is a class struggle and modern capitalist state is a transitional phase which will lead to democratic socialism. He considered collective bargaining as the process which strengthens labour.
3. **Cole's Theory of Union Control of Industry:** Cole's views are given in his book "World of Labour", 1913. His views are somewhere in between Webb and Marx. He agrees that unionism is class struggle and the ultimate is the control of industry by labour and not revolution as predicted by Marx.

4. **Common's Environment Theory:** He was sceptical of generalisations and believed only that which could be proved by evidence. He agreed that collective bargaining was an instrument of class struggle, but he summarised that ultimately there will be partnership between employers and employees.
5. **Mitchell's Economic Protection Theory of Trade Unionism:** Mitchell, a labour leader, completely rejected individual bargaining. According to him unions afford economic protection too.
6. **Simon's Theory of Monopolistic, Anti-democratic Trade Unionism:** He denounced trade unionism as monopoly founded on violence. And he claimed monopoly power has no use, save abuse.
7. **Perlman's Theory of the "Scarcity Consciousness" of Manual Workers:** He rejected the idea of class consciousness as an explanation for the origin of the trade union movement but substituted it with what he called job consciousness. According to him, 'working people in reality felt an urge towards collective control of their employment opportunities, but hardly towards similar control of industry.' Perlman observed that three dominant factors emerged from the rich historical data:
 - (a) The capacity or incapacity of the capitalist system to survive as a ruling group in the face of revolutionary attacks (e.g., failure in Russia).
 - (b) The source of the anti-capitalist influences being primarily from among the intellectuals in any society.
 - (c) The most vital factor in the labour situation was the trade union movement. Trade unionism, which is essentially pragmatic, struggles constantly not only against the employers for an enlarged opportunity measure in income, security and liberty in the shop and industry, but struggles also, whether consciously or unconsciously, actively or passively, against the intellectual who would frame its programmes and shape its policies.

But Perlman also felt that a theory of the labour movement should include a theory of the psychology of the labouring man. For instance, there was a historical continuity between the guilds and trade unions, through their common fundamental psychology; the psychology of seeking a livelihood in the face of limited economic opportunity. It was when manual workers became aware of a scarcity of opportunity, that they banded together into unions for the purpose of protecting their jobs and distributing employment opportunities among themselves equitably, and to subordinate the interests of the individual to the whole labour organism. Unionism was ruled thus by this fundamental scarcity consciousness (Perlman, 1970, pp. 4-10, 237-47, 272-85).

8. **Hoxies Functional Classification of Unionism:** He classified Unionism on the basis of its functions. His classifications were Business Unionism for protecting the interest of various craftsmen, "uplift unionism" for the purpose of contributing better life such as association of sales engineers, etc., "Revolutionary Unionism" which is eager to replace existing social order and "Predatory Unionism" which rests on the support of others.
9. **Tannenaum's Theory of Man vs. Machine (1951):** According to him, Union is formed in reaction to alienation and loss of community in an individualistic and unfeeling society. In his words, the union returns to the workers his society, which he left behind him when he migrated from a rural background to the anonymity of an urban industrial location. The union gives the worker a fellowship and a value system that he shares with others like him.

Notes



Task The liberalization, privatization and globalisation era has virtually compelled both labour and management to have a relook at their collective roles and discharge their duties with sufficient care and caution. Discuss

6.3 Types of Trade Unions

6.3.1 Types based on Ideology

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

6.3.2 Types based on Trade

Many unions have memberships and jurisdictions based on the trades they represent. The most narrow in membership is the craft union, which represents only members certified in a given craft or trade, such as pipe fitting, carpentry and clerical work. Although very common in the western world, craft unions are not common in countries like India and Sri Lanka.

At the other extreme, in terms of the range of workers represented in the general union, which has members drawn from all trades. Most unions in India and Sri Lanka are in this category.



Did u know? Another common delineation of unions, based on trades or crafts, is that between so-called blue-collar workers and white-collar workers. Unions representing workers employed on the production floor or outdoor trades such as in construction work are called blue-collar unions. In contrast, those employees in shops and offices and who are not in management grades and perform clerical and allied functions are called white-collar workers.

In addition, trade unions may be categorised on the basis of the industries in which they are employed. Examples of these are workers engaged in agriculture or forestry: hence, agricultural labour unions or forest workers' unions.

6.3.3 Types based on Agreement

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

1. **Closed Shop:** Where management and union agree that the union would have sole responsibility and authority for the recruitment of workers, it is called a Closed Shop agreement. The worker joins the union to become an employee of the shop. The Taft-Hartley Act of 1947 bans closed shop agreements in the USA, although they still exist in the construction and printing trades. Sometimes, the closed shop is also called the 'Hiring Hall.'

2. **Union Shop:** Where there is an agreement that all new recruits must join the union within a fixed period after employment it is called a union shop. In the USA some states are declared to be having 'right-to-work'.
3. **Preferential Shop:** When a Union member is given preference in filling a vacancy, such an agreement is called Preferential Shop.
4. **Maintenance Shop:** In this type of arrangement there is no compulsory membership in the union before or after recruitment. However, if the employee chooses to become a member after recruitment, his membership remains compulsory right throughout his tenure of employment with that particular employer. This is called maintenance of membership shop or maintenance shop.
5. **Agency Shop:** In terms of the agreement between management and the union a non-union member has to pay the union a sum equivalent to a member's subscription in order to continue in employment with the employer. This is called an agency shop.
6. **Open Shop:** Membership in a union is in no way compulsory or obligatory either before or after recruitment. In such organisations, sometimes there is no union at all. This is the least desirable form for unions. This is referred to as an open shop.

The above classifications are more usual in the west than on the Indian subcontinent.

6.4 Trade Union Movement in India

Trade unions in India, as in most other countries, have been the natural outcome. Institutionally, the trade union movement is an unconscious effort to harness the drift of our time and reorganise it around the cohesive identity that men working together always achieve of the modern factory system. The development of trade unionism in India has a chequered history and a stormy career.

6.4.1 Early Period

Efforts towards organising the workers for their welfare were made during the early period of industrial development by social workers, philanthropists and other religious leaders mostly on humanitarian grounds. The first Factories Act, 1881, was passed on the basis of the recommendations of the Bombay Factory Commission, 1875. Due to the limitations of the Act, the workers in the Bombay Textile Industry under the leadership of N. Lokhande demanded reduced hours of work, weekly rest days, mid-day recess and compensation for injuries. The Bombay Mill owners' Association conceded the demand for weekly holidays. Consequently, Lokhande established the first Workers' Union in India in 1890 in the name of Bombay Mill-hands Association. A labour journal called Dinabandu was also published.

Some of the important unions established during the period are: Amalgamated Society of Railway Servants of India and Burma (1897) Management and Printers' Union, Calcutta (1905) and the Bombay Postal Unions (1907), the Kamgar Hitavardhak Sabha (1910) and the Social Service League (1910). But these unions were treated as ad hoc bodies and could not serve the purpose of trade unions.

6.4.2 Modest Beginning

The beginning of the labour movement in the modern sense started after the outbreak of World War I in the country. Economic, political and social conditions of the day influenced the growth of trade union movement in India. Establishment of International Labour Organisation in 1919 helped the formation of trade unions in the country. The Madras Labour Union was

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formed on systematic lines in 1919. A number of trade unions were established between 1919 and 1923. Category wise, unions like Spinners' Union and Weavers' Union came into existence in Ahmedabad under the inspiration of Mahatma Gandhi. These unions were, later, federated into an industrial union known as Ahmedabad Textile Labour Association. This union has been formed on systematic lines and has been functioning on sound lines, based on the Gandhian Philosophy of mutual trust, collaboration and non-violence.

6.4.3 All India Trade Union Congress

The most important year in the history of Indian Trade Union movement is 1920 when the All India Trade Union Congress (AITUC) was formed consequent upon the necessity of electing delegates for the International Labour Organisation (ILO). This is the first All India trade union in the country. The first meeting of the AITUC was held in October, 1920 at Bombay (now Mumbai) under the Presidentship of Lala Lajpat Rai. The formation of AITUC led to the establishment of All India Railwaymen's Federation (AIRF) in 1922. Many Company Railway Unions were affiliated to it. Signs of militant tendency and revolutionary ideas were apparent during this period.

1. **Period of Splits and Mergers:** The splinter group of AITUC formed the All India Trade Union Federation (AITUF) in 1929. Another split by the communists in 1931 led to the formation of All India Red Trade Union Congress. Thus, splits were more common during the period. However, efforts were made by the Railway Federation to bring unity within the AITUC. These efforts did bear fruit and All India Red Trade Union Congress was dissolved. Added to this, All India Trade Union Federation also merged with the AITUC. The unified AITUC's convention was held in 1940 in Nagpur. But the unity did not last long. World War II brought splits in the AITUC. There were two groups in the AITUC, one supporting the war while the other opposed it. The supporting group established its own central organisation called the Indian Federation of Labour. A further split took place in 1947, when the top leaders of the Indian National Congress formed another central organisation.
2. **Indian National Trade Union Congress:** The efforts of the Indian National Congress resulted in the establishment of the Indian National Trade Union Congress (INTUC) by bringing a split in the AITUC. INTUC started gaining membership right from the beginning.
3. **Other Central Unions:** The Socialists separated from the AITUC and formed the Hind Mazdoor Sabha (HMS) in 1948. The Indian Federation of Labour merged with the HMS; the Radicals formed another union under the name of the United Trade Union Congress in 1949. Thus, the trade union movement in the country was split into four distinct central unions during the short span of 1946 to 1949.

Some other central unions were also formed. They were Bharatiya Mazdoor Sangh (BMS) in 1955, the Hind Mazdoor Panchayat (HMP) in 1965 and the Centre of Indian Trade Unions (CITU) in 1970. Thus, the splinter group of the INTUC formed the Union Trade Union Congress - the split in the Congress Party in 1969 resulted in the split in INTUC and led to the formation of the National Labour Organisation (NLO).

6.4.4 Present Position

There are over 9,000 trade unions in the country, including unregistered unions and more than 70 federations and confederations registered under the Trade Unions Act, 1926. The degree of unionism is fairly high in organised industrial sector. It is negligible in the agricultural and unorganised sectors.

Though the number of unions has greatly increased in the last four decades, the union membership per union has not kept pace. The National commission on labour has stated that only 131 unions had a membership of over 5,000. More than 70% of the unions had a membership of below 500. Over the years, the average membership figures per union have fallen steadily from about 1387 in 1943 to 632 in 1992-93 (Pocket Book of Labour Statistics 1997). Unions with a membership of over 2000 constitute roughly 4 per cent of the total unions in the country.

There is a high degree of unionisation (varying from 30% to over 70%) in coal, cotton, textiles, iron and steel, railways, cement, banking, insurance, ports and docks and tobacco sectors. White collar-unions have also increased significantly covering officers, senior executives, managers, civil servants, self-employed professionals like doctors, lawyers, traders, etc., for safeguarding their interests.



Caution There are as many as 10 central trade union organisations in the country (as against one or two in UK, Japan and USA). The criteria for recognition as Central Trade Union have been that the combined strength should be 5 lakhs in numbers with a spread over to at least 4 states and 4 industries as on 31.12.89. Ten such Trade Unions are; (1) BMS (2) INTUC (3) HMS, (4) U.T.U.C - LS (5) AITUC (6) CITUC (7) NLO (8) UTUC (9) TUCC (10) NFITU. As per the latest survey (Economic Times, 24.9.97) the five leading Trade Unions' strength are as follows:

| | | |
|----------|---|-----------------|
| BMS | - | 331 Lakhs |
| INTUC | - | 271 Lakhs |
| AITUC | - | 18 Lakhs |
| HMS | - | 15 Lakhs |
| CITU | - | 3.4 Lakhs |
| 27/12/06 | - | Economics Times |
| BMS | - | 60 Lakhs |
| INTUC | - | 38 Lakhs |
| AITUC | - | 33 Lakhs |
| HMS | - | 17 Lakhs |
| CITU | - | 26 Lakhs |

The number of central unions has swelled from eight to around a dozen, with SEWA, DMK's Labour Progressive Front, CPI-ML's AICCTU and Forward Bloc-backed TUCC joining the club. AITUC, expand from nine lakhs members to 33 lakhs, while the BMS has a membership of around 60 lakh, up from 28 lakhs, INTUC has increased from 25 lakhs to nearly 38 lakhs & HMS has grown by around 17 lakh members. However, the growth in membership is lowest in the CITU, which has strength of approximately 26 lakhs.

Unorganized Union-splintering of Unions

As central trade unions are not managing themselves well, there are many sub-groups within them. Those are known as splintering of unions. They are pressure groups with vested interest and they create all the trouble for them. But they are such splinter groups which cannot be generally neglected either by Industry or the trade unions.

This also causes intra- union rivalry, leading to litigations and violence.

6.5 Problems of Trade Union

Over the years, trade unions in India have been taken for a ride by outside political leaders. In the process, the interests of workers and their aspirations have been totally neglected. The Trade Union Act, 1926, did not go for recognising a representative union. As a result, multiple unions have cropped up, often with blessings from management and outsiders. The union finances have not been very sound in the beginning. The average membership figures for each union remain poor and have not improved. The forces of liberalisation unleashed in the early '90s have strengthened the hands of employers in closing down unviable units. The new corporate 'mantras' – productivity, performance, efficiency, survival of the fittest-have virtually pushed them to the wall, where their very survival looks uncertain. Let's recount the factors responsible for their ever-increasing woes and depreciated status thus:

6.5.1 Trade Union Leadership

The nature of leadership significantly influences the union-management relations as the leadership is the linchpin of the management of trade unions. The leadership of most of the trade unions in India has been outside leadership mainly drawn from political parties.

6.5.2 Reasons for Emergence of Outside Leadership

Outside leadership has been playing a pivotal role in the Indian Trade Union Movement due to the inability of insiders to lead their movement. In view of the low education standards and poor command over English language which is still the principal language of labour legislation and negotiations, low level of knowledge about labour legislation, unsound financial position, fear of victimisation by the employer and lack of leadership qualities, outside leaders have come to stay. The main reason for this trend is that the Trade Unions Act, 1926, itself provided the scope for outside leadership. Section 22 of the Act requires that ordinarily not less than half of the officers of the reregistered union shall be actively engaged or employed in an industry to which the union relates. Thus, this provision provides the scope for outsiders to the tune of 50% of the office bearers. The Royal Commission of Labour (RCL) 1931 recommended for the reduction of the statutory limit of outsiders from 1/2 to 1/3 but no efforts were taken in this direction.

6.5.3 Evil Effects of Outside Leadership

The evil effects of outside leadership analysed by the National Commission on Labour are as follows:

1. Outside leadership undermined the purposes of Trade Unions and weakened their authority. Personal benefits and prejudices, sometimes, weighed more than unions.
2. Outside leadership has been responsible for the slow growth of Trade Unions.
3. Internal leadership has not been developed fully.
4. Most of the leaders cannot understand the workers' problems as they do not live the life of a worker.

Even though outside leadership is permissible in the initial stages it is undesirable in the long run because of many evils associated with it. Political differences of leaders have been inhibiting the formation of one union in one industry. Most of the Trade Union leaders fulfill their personal aspirations with their knowledge and experience gained in the Trade Unions.

6.5.4 Measures to Minimize the evil Effects of Outside Leadership

Notes

In view of the limitations of outside leadership, it is desirable to replace the outside leaders progressively by the internal leaders. The National Commission on Labour, 1969, also stated that outsiders in the Trade Unions should be made redundant by forces from within rather than by legal means.

Both the management and trade unions should take steps in this direction. The steps may be:

1. Management should ensure that the victimisation will be at zero level, even if the trade unions are led by insiders;
2. Extensive training facilities in the areas of leadership skills and management techniques and programmes should be provided to the workers;
3. Special leave should be sanctioned to the office-bearers.

Union rivalry has been the result of the following factors:

1. The desire of political parties to have their bases among the industrial workers;
2. Personal-cum-factional politics of the local union leaders;
3. Domination of unions by outside leaders;
4. Attitude and policies of the management, i.e., divide and rule policy; and
5. The weak legal framework of trade unions.
 - (a) *Measures to minimise Union Rivalry:* In view of the evil effects of inter-union rivalry and the problem of formation of one union in one industry, it may be necessary to consider the recommendations of the National Commission on Labour, 1969. The recommendations of NCL to minimise union rivalry are:
 - (i) Elimination of party politics and outsiders through building up of internal leaders
 - (ii) Promotion of collective bargaining through recognition of sole bargaining agents
 - (iii) Improving the system of union recognition
 - (iv) Encouraging union security
 - (v) Empowering labour courts to settle inter-union disputes if they are not settled within the organisation.
 - (b) *Multiple unions:* Multiple unionism, both at the plant and industry levels, poses a serious threat to industrial peace and harmony in India. The situation of multiple unions is said to prevail when two or more unions in the same plant or industry try to assert rival claims over each other and function with overlapping jurisdiction. The multiple unions exist due to the existence of crafts unions and formations of two or more unions in the industry. Multiple unionism is not a phenomenon unique to India. It exists even in advanced countries like UK and the USA. Multiple unionism affects the industrial relations system both positively and negatively. It is, sometimes, desirable for the democratic health of labour movement. It encourages a healthy competition and acts as a check to the adoption of undemocratic practice, authoritative structure and autocratic leadership. However, the negative impacts of multiple unions dominate the positive impacts. The nature of competition tends to convert itself into a sense of unfair competition resulting in inter-union rivalry. The

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rivalry destroys the feeling of mutual trust and cooperation among leadership. It is a major cause for weakening the Trade Union Movement in India. Multiple unionism also results in the small size of the unions, poor finances, etc.

- (c) *Union Rivalry*: The formal basis for Trade Union Organisation is provided by the Indian Trade Union Act, 1926. The relevant article reads as follows:

“Any seven or more members of a trade union may be subscribing their name to the roles of the trade union and by otherwise complying with the provisions of this Act with respect to the registration, apply for registration of the trade union under this Act.”

This provision has led to the formation of multiple unions and resulted in inter-union rivalry in different industries. But the inter-union rivalry breaks the very purpose of the trade unions by weakening the strength of collective bargaining. On the other hand, the existence of a single, strong union not only protects the employee interests more effectively but also halts the various unproductive activities of the unions and forces the leaders to concentrate on the strategic issues. Further, it helps to bring about congenial industrial relations by bringing about a system of orderliness in dealing with the employees and by facilitating expeditious settlement of disputes.

The state of rivalry between two groups of the same union is said to be inter-union rivalry. Inter and intra-union rivalries have been a potent cause of industrial disputes in the country. They are responsible for weak bargaining power of trade unions in collective bargaining. These rivalries are responsible for slow growth of trade union movement in the country.

- (d) *Finance*: Sound financial position is an essential ingredient for the effective functioning of trade unions, because in the process of rendering services or fulfilling their goals, trade unions have to perform a variety of functions and organise programmes which require enormous financial commitments. Hence, it is imperative on the part of a trade union to strengthen its financial position.

But it is felt that the income and expenditure of the trade unions in India over the years is such, with few exceptions, that the financial position of the unions is generally weak, affecting their functioning. It is opined that the “... trade unions could be more effective, if they paid more attention to strengthening their organisations and achieving higher degree of financial solvency.”

The primary source of income to the unions is membership subscription. The other sources of union finances are donations, sale of periodicals, etc. The items of expenditure include: allowances to office bearers, salaries to office staff, annual convention/meeting expenses, rents, stationery, printing, postage, telegrams, etc.



Did u know? Most of the trade unions in India suffer from inadequate funds. This unsound financial position is mostly due to low membership and low rate of membership fee. The Trade Union Act, 1926, prescribed the membership fee at 25 paise per member per month. But the National Commission on Labour recommended the increase of rate of membership subscription from 25 paise to Re. 1 in the year 1990. But the Government did not accept this recommendation.

As the National Commission on Labour observes, “an important factor limiting the effective functioning of unions in our country has been their financial weakness. In most unions, poor finances are the result of inadequate membership strength. This, in turn, can be traced to the small size of units. In a majority of unions, the rate of contributions required of members is also small. With a relatively low rate

of unionisation, total funds collected are small. The general picture of finances of unions is disappointing.”

- (e) *Other problems:* The other factors responsible for the unsound functioning of trade unions in India are:
- (i) **Illiteracy:** Workers in India fail to understand the implications of modern trade unionism. Their illiteracy coupled with ignorance and indifference account for the predominance of outside leadership.
 - (ii) **Uneven Growth:** Trade unionism activities are, more or less, confined to major metros in India and are traceable only in large scale units (especially cotton textile industry). The degree of unionism also varies from industry to industry, varying between to 30-70 per cent in coal, cotton textiles, iron and steel, tobacco, railways, cement, banking, insurance, ports and docks, etc. The degree of unionism is quite negligible in the agricultural and unorganised sectors.
 - (iii) **Low Membership:** The average membership figures of each union are quite depressing. In 1992-93 the average membership figure was 632, a steady fall from 3,594 per union from 1927-28. Because of their small size, unions suffer from lack of adequate funds and find it difficult to engage the services of experts to aid and advise members in times of need. They can't bargain with the employer effectively on their own.
 - (iv) **Heterogeneous Nature of Labour:** Since workers come to the factory with varying backgrounds, it is difficult for them to present a joint front in case of trouble. Employers exploit the situation, under the circumstances, by dividing workers on the basis of race, religion, language, caste, etc.
 - (v) **Lack of Interest:** For a large majority of workers, unionism even today remains a foreign issue. In fact, workers avoid union activities out of sheer disinterestedness. Those who become part of the union, do not also participate in the union work enthusiastically. In such a scenario, it is not surprising to find outside political leaders exploiting the situation to serve their own personal agenda.
 - (vi) **Absence of Paid Office Bearers:** Weak finances do not permit unions to engage the services of full time, paid office bearers. Union activists, who work on a part-time basis, neither have the time nor the energy to take up union activities sincerely and diligently.

6.6 Functions of Trade Unions

1. ***Militant or protective or intra-mutual functions:*** These functions include protecting the workers' interests, i.e., hike in wages, providing more benefits, job security, etc., through collective bargaining and direct action such as strikes, gheraos, etc.
2. ***Fraternal or extramural functions:*** These functions include providing financial and non-financial assistance to workers during the periods of strikes and lock-outs, extension of medical facilities during slackness and casualties, provision of education, recreation, recreational and housing facilities, provision of social and religious benefits, etc.
3. ***Political functions:*** These functions include affiliating the union to a political party, helping the political party in enrolling members, collecting donations, seeking the help of political parties during the periods of strikes and lock-outs.

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4. **Social functions:** These functions include carrying out social service activities, discharging social responsibilities through various sections of the society like educating the customers etc.

6.7 Measures to Strengthen Trade Unions

The following are some of the measures to minimise trade union problems and to strengthen the Trade Union Movement of India:

1. **United Labour Front:** Unions must present a joint front. Splinter groups/multiple unions dissipate their energies, dilute their power and reduce their effectiveness. Trade unions should form a sort of labour party and all the trade unions in the country should be affiliated to it. It gives adequate strength to the trade unions both in industry and Parliament.
2. **Efficient Leadership:** Outside political leadership has developed due to the absence of internal leadership. Outside leadership is the main cause for the multiple problems of the trade unions. These problems can be eradicated through the development of leadership talents from within. Management should encourage internal workers to lead their own movement. Management and trade unions should provide educational and training facilities for the development of internal leadership.
3. **Membership Fees:** The membership fees should be raised as the amount of wages of the workers increased significantly, compared to the situation in 1926 when Trade Union Act provided for the collection of 25 paise per month per member as subscription fee. Even the amended ₹ 1/- is not sufficient. Some other source of finance may also be explored to make trade union financially healthy.
4. **Other Measures**
 - (a) Trade unions should extend welfare measures to the members and actively pursue social responsibilities. Social-responsibility of Trade Unions should go beyond their limited constituency within members only.
 - (b) The Trade Union Act, 1956 should be amended and the number of members required to form a trade union should be increased from 7 to 50% of the employees of an organisation. Similarly, the scope for the outside leadership should be reduced from 50% to about 10%. The membership subscription should be enhanced from 25 paise to 1% of the monthly wage of the worker.
 - (c) Trade Unions should make efforts to raise their declining membership. This is a worldwide phenomenon:
 - (i) Japan 50% (1950) - 25% (in 1991)
 - (ii) U.S.A. 30% (1959) - 16% (in 1989)
 - (iii) India - 2% (in 1989)
 - (iv) Trade Unions must broaden their base membership-unorganised sectors, which constitute about 92% of the workforce and IT sectors/BPO-Call Centres - from where most of the employment is coming
 - (v) Attracting and retaining new breed of workers by monitoring them.
 - (d) Trade Unions must reorient themselves:
 - (i) From political/ideology obsession to Business Union-Partners in progress, sharing the gains
 - (ii) Protesting organisation to Partnering organisation

- (iii) Bureaucratic organisation to democratic and service organisation
- (iv) Complacency to struggle
- (v) Power-hunger to service orientation
- (e) Trade Unions should be smart, IT savvy; on-line working to have connectivity to employees abroad as also International Trade Unions and other Trade bodies.
- (f) Trade Unions have to adapt to new realities in new business environment. "The simple notion of solidarity is now outdated, a narrow concept to encompass the mutual support of those whose positions and interests are different."
 - (i) (Zoll - 1996): Solidarity concept is getting diluted because of diversities in work force and increasing individualisation.
 - (ii) In order to make members updated Trade unions must organise continuous training and developmental programmes.
 - (iii) Future needs smart and responsive Trade Unions, if they have to survive and thrive.
- (g) The Trade Union Act should be amended in order to avoid dual membership in central legislation also.
- (h) There should be legal provision for the recognition of the representative union.
- (i) Unions should not intervene in day-to-day matters. They must focus on important issues affecting workers.

6.8 Trade Union Act, 1926

The Trade Union Act 1926 legalises the formation of trade unions by allowing employees to form trade union. It allows trade union to get registered under the Act. Registration provides legal status to the trade union and it becomes body corporate. It can hold moveable and immoveable property and can enter into contract and can sue and can be sued. The Act also provides immunities to the unions from civil and criminal prosecution for *bona fide* trade union activities. The Union can generate General Fund for the day-to-day activities and Political Fund for political activities (For details - Refer Act).

Though labour organizations came into existence in India in the last decade of the 19th century, it was only after the outbreak of First World War in 1914 that they appeared in the form of modern trade unions. Subsequently, as their numbers increased, membership expanded and they became active in seeking to promote and safeguard the interests of workers, they had to face the open hostilities of the employers and the public authorities. In the absence of any special legislation protecting their status, they received the same set-back under the Common law as their British counterparts did much earlier. Thus, the interpretations given to section 120(B) of the Indian Penal Code dealing with criminal conspiracy, raised considerable doubts regarding the legality of trade unions. Besides, their activities could also be considered in restraint of trade under Section 27 of the Indian Contract Act which provided, "Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to that extent void."

The legal position of trade unions under the existing statutes and the Common Law became clearer following a decision of the High Court of Madras in 1921, in a case between *M/s. Binny and Company (Managing Agents of the Buckingham Mills) vs. the Madras Labour Union*. The court basing its decision on the Common Law of England, considered the trade unions as illegal conspiracy and issued injunctions on the leaders of the Madras Labour Union restraining them from instigating workmen to break their contracts with their employer, and ordered their imprisonment. Though the case was withdrawn, the attitude of the courts towards trade unions became obvious. The

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decision aroused considerable resentment amongst the unionists, and it was rightly apprehended that the history of legal prosecution of the British trade unions during their early days would be repeated in India, also, if the Common Law was not adequately amended by a specific statute guaranteeing to the workers the right to organize. Strong demands were made for a legislation recognizing workers' right to organize and to engage in concerted activities.

The same year, the Legislative Assembly adopted a resolution moved by N.M. Joshi, the then general secretary of the AITUC, urging immediate steps for registration of trade unions and protection of the legitimate trade union activities. Subsequently, the local governments were requested to ascertain the view of public bodies and private persons on certain connected issues such as the principle of proposed legislation, recognition of strikes, protection of trade unions from civil and criminal liabilities, management of unions, and others. After receiving the view of the local governments, the Government of India drew up a Bill which was introduced in the Legislative Assembly on 31st August 1925. The Bill was passed the next year as the Indian Trade Unions Act, 1926. The Act with subsequent amendments is still in force in the country.

As a result of this legislation, the Indian trade unions escaped that long process of prosecution which the trade unions in Great Britain had to undergo, for about hundred years under the Common Law and the Combination Acts. It is apparent that legal protect to trade unions was made available very early in the history of the Indian trade unions movement. It may not be derogatory to the Indian trade unions to say that, because of this early protection, they have come to miss much of the tightening of muscles, the toughness and the solidarity which the trade unions in Great Britain came to acquire during their struggle for existence.

The Trade Unions Act, 1926 and Legal Framework

Registration (Sec 4)

The Trade Unions Act, 1926 (Sec 4), legalises the formation of trade unions by allowing employees the right to form and organise unions. It permits any 7 persons to form their union and get it registered under the Act. They must agree to abide by the provisions of the Act relating to registration and submit a copy of the rules of the trade union in their application to the Registrar of Trade Unions. If the union has been in existence for more than one year, the application must be accompanied by a statement of assets and liabilities of the union (Sec. 5). The application must contain (a) the names, occupations and addresses of the members (b) name of the union, its head office (c) details about office bearers. After verifying the particulars, the Registrar will issue a certificate of registration in the prescribed form.

Status of a Registered Union

A trade union enjoys the following advantages after registration:

1. It becomes a body corporate
2. It gets a common seal
3. It can buy and hold movable and immovable property
4. It can enter into contracts with others
5. It can sue and be sued in its name.

Cancellation of Registration (Sec. 10)**Notes**

The Registrar of Unions can cancel the registration of a union on the following grounds:

1. On the application by the union
2. Where the application was obtained by fraud or mistake
3. Where the union has ceased to exist
4. Where it has willfully and after notice from the Registrar contravened any provisions of the Act or allowed any rule to continue in force which is inconsistent with any provisions of the Act
5. Where the union has rescinded any rule providing for any matter, provision for which is required by Section 6
6. Where the primary objects of the union are no longer in agreement with the statutory objects.

Obligations (Sec. 21)

Under the act it is obligatory for the union to:

1. Allow anyone above the age of 15 years to be a member of the union
2. Collect membership fees not less than 25 paise per month and per member
3. Specify that 50% of office bearers must be from the persons actually employed
4. Maintain membership register, get the books of account audited and make them available to members
5. State the procedure for change of its name, its merger with other unions and its dissolution
6. Spend uniform funds for the purposes specified in the Act.

Rights (Sec. 18)

1. Claim immunity from civil and criminal prosecution for bonafide trade union activities
2. Create a political fund
3. Spend general funds on salaries of staff and meet certain other expenses as stated in the Act
4. Can represent workers to the works committee

If a union is formed by giving wrong information or registration is obtained through fraudulent means, the Registrar of Trade Unions can cancel such registration by giving 2 months' notice stating reasons.

Liabilities

1. A registered union should maintain books of account and a list of members
2. Should keep books and the list open for inspection by members
3. Should have office bearers who do not suffer from the disqualifications prescribed under the TU Act, 1926

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4. Should submit statements of receipts, expenditure, assets, liabilities etc., to the registrar of trade unions
5. Should give correct information to persons intending to become members.

Recognition of Trade Union

The Bombay Industrial Relations Act, 1946, classified the registered unions as:

1. Representative union having a membership of not less than 25% of the total employees as members in an industry;
2. Qualified union having at least 5% of membership in an industry; and
3. Primary union having a membership of at least 15% of employees in an undertaking.

The rights of a Representative union under the Act are:

1. First preference to appear or act in any proceedings under the Act as the representative of employees;
2. Right to submit a dispute for arbitration;
3. To make a special application to the Labour Court to hold an inquiry; and
4. Office-bearers of the union cannot be dismissed or discharged.

One of the long pending problems of the Indian Industrial Relations System is to evolve a satisfactory and acceptable means of setting the problem of recognising a bargaining agent from out of rival unions. Collective bargaining cannot exist and function without recognising the bargaining agent. Since there is no law for compulsory recognition of trade unions, it is left to the choice of the employees. In view of the union rivalry and multiple unions, the employer finds it is difficult to recognise a union in the context of political affiliation. The employer may recognise those unions with the highest number of members. But more than one union may claim the highest number of membership in view of dual and multiple memberships. Efforts have been made to bring about legislative measures for compulsory recognition of unions immediately after Independence.

The Bombay Industrial Relations Act 1946 provided for the largest trade union in an undertaking with a total membership of at least 15% of the workforce. Madhya Pradesh and Rajasthan laid down, more or less, similar conditions for the recognition of a representative union. In other States, unfortunately, there is no statutory provision for union recognition (they follow the Code of Discipline adopted in 1958).

The underlying idea of forming a trade union is to negotiate and bargain with employers to improve the service and employment conditions of workers on their behalf. This collective bargaining process can be possible only when the employer recognises the trade union as a bargaining agent and agrees to negotiate with it because it is difficult to negotiate with multiple trade unions in a single organisation.

The Trade Union Act, 1926, the only Central Law, which regulates the working of the unions, does not have any provision for recognition of trade unions. Some attempts were made to include compulsory recognition in the Trade Union Act in 1947, 1950, 1978 and 1988, but these did not get materialised.

There are, however, state legislations like the Maharashtra Recognition of Trade Union and the Prevention of Unfair Labour Practices Act 1971, the Madhya Pradesh Industrial Relations Act, 1960 and other states like Gujarat, Andhra Pradesh and Orissa, etc., which have gone for such legislations, of late.

The usual methods used to determine union strength, which is the basis for recognition are the following:

1. **Election by Secret Ballot:** Under this system, all eligible workers of an establishment may vote for their chosen union and the elections are to be conducted by a neutral agent, generally the Registrar of Unions, in a manner very similar to the conduct of general elections. Once held, the results of the elections would remain valid for a minimum period, usually for two years.
2. **Check-off Method:** Under this each individual worker authorises management in writing to deduct union fees from his wages and credit these to the chosen union. This gives management concrete evidence about the respective strengths of the unions. But the system is also prone to manipulation, particularly collusion between management and a favoured union. Sometimes, genuine mistakes may occur, particularly when the number of employees are large. It also depends on all unions accepting the method and cooperating in its implementation.
3. **Verification** of the union membership method by the labour directorate has been adopted as for a resolution in the session of the ILC and is used widely in many establishments. This process is carried out by the labour directorate, which on the invitation of the union and the management of an organisation or industry, collects particulars of all unions in a plant with regard to their registration and membership. The claim lists of the unions, their fees books, membership records and accounts books are scrutinised for duplicate membership. Under a later amendment, unions also made lists of members in order to avoid dual membership. After cross-checking of records, physical sampling of workers, particularly in cases of doubt or duplication, a final verified list is prepared for employers, unions and the government.
4. **Rule of Thumb** or intelligent guessing by management or general observation to assess the union strength, either by the response at gate meetings, strikes or discussions with employees. This is not a reliable method, particularly in large establishments and can also be subject to change at short intervals.

Of the above methods, the first one is an universally accepted method used all over the world but there has been no consensus among the trade unions on that in India.



Did u know? The Second National Commission of Labour (2003) considered the issues seriously and made the following recommendations:

1. We recommend that the negotiating agent should be selected for recognition on the basis of the check off system. A union with 66% membership is entitled to be accepted as the single negotiating agent, and if no union has 66% support, then, union that has the support of more than 25% should be given proportionate representation on the negotiating table.
2. Secret ballot is logically and financially a difficult process in certain industries. Check-off system has the advantage of ascertaining the relative strength of trade unions. Check-off system should be made compulsory for all establishments employing 300 or more workers. For establishments employing less than 300 workers also, the check-off system would be the preferred mode. Recognition, once granted, should be valid for a period of four years, to be coterminous with the period of settlement.

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Voluntary Recognition under the Code of Discipline, 1958

With the consensus of employers, employees and the Government, the following criteria for the recognition of unions was drawn up under the Code of Discipline which was adopted at the 16th Indian Labour Conference.

1. Where there is more than one union, a union claiming recognition should have been functioning for at least one year after recognition. This condition does not apply where there is only one union.
2. The membership of the union should cover at least 15% of the workers in the establishment concerned. Membership should be counted only of those who had paid their subscriptions for at least three months during the period of six months immediately preceding recognition.
3. A union may claim to be recognised as a representative union for an industry in a local area if it has a membership of at least 25 per cent of the workers of that industry in that area.
4. When a union has been recognised, there should be no change in the position for a period of 2 years.
5. When there are several unions in an industry or establishment, the one with the largest membership should be recognised.
6. A representative union for an industry in an area should have the right to represent workers in all the establishments in the industry, but if a union of workers in a particular establishment has a membership of 59% or more of workers it should have the right to deal with matters of purely local interest, such as, for instance, the handling of the grievances of its own members. All other workers who are not members of that union might either operate through the representative union for the industry or seek redress directly.
7. Only those unions which follow the Code of Discipline would be entitled to recognition.
8. In the case of trade union federations not affiliated to any of the four central organisations of labour, the question of recognition will have to be dealt with separately.

Verification of Trade Union Membership

Employers often face difficulties (even when observing the above criteria) while verifying the majority character of the union to be recognised when there is more than one union. At present the Labour Department, on the request of the management, does the verification work taking the following things into account:

1. Details of existing unions in the unit, date of registration; whether the existing recognised union has completed a two year period, whether any of the unions violated any stipulations of the Code of Discipline etc. Within 10 days the unions claiming recognition and other existing unions will have to produce documentary proof to the verification officer: details about membership, subscription list of members who have paid subscriptions for 3 months out of the preceding 6 months, money receipt counterfoils, books of account, bank statements, etc.
2. Where there are two or more unions, all of them have to furnish the above details. If they fail to produce the above data, the verification officer may, after giving 10 days' notice, decide the issue as per the evidence collected and facts obtained.
3. The verification process is done in the presence of unions furnishing the above data. The muster rolls of the firm are generally checked to see whether the names tally with the employment register.

4. The concerned unions can recheck the verified list and forward objections, if any, to the verification officer. In case of objections regarding dual membership, the officer talks to the concerned workers and draws his own conclusions (based on personal interrogation).
5. The officer will then submit the report to the Government as well as the management of the firm.

Verification, thus, is a contentious and time-consuming process. Most trade unions in India do not maintain their membership records properly and even after several requests from the Labour Department do not furnish membership register as well as receipts. Again, verifying common names appearing in the Trade Union registers is not an easy task, with claims and counter-claims coming from various quarters. Some of the unions do not agree to the secret ballot too, which is adopted to find out the truth behind the curtain. The 'secret ballot' itself is a dangerous proposition because it creates an election-like atmosphere with some leaders making promises which they will never fulfil. The leaders may try to divide workers along caste, community, religion, linguistic and regional lines. For short-term gains, the leaders may divide the illiterate workers playing on sentimental and emotional issues and, in the process, damage the harmonious relations within the unit permanently.

The Check-off System

Check-off system is, often, being advocated as a useful way of verifying the membership claims of rival unions within a unit. In this system the membership fee is collected through the payroll at the time of payment of wages. The amount so collected by the employer will directly go into the account of the concerned union. The subscription figures of each union following the check-off system, thus, offer reliable evidence of its membership and the same can be used to determine its representative character or otherwise rights of a Representative Union.

The rights of Representative union under the Act are:

1. First preference to appear or act in any proceedings under the Act as the representative of employees;
2. Right to submit a dispute for arbitration;
3. To make a special application to the Labour Court to hold an inquiry; and
4. Office-bearers of the union cannot be dismissed or discharged.

The Code of Discipline mentions the following rights of a recognised union: (a) enter into a collective agreement with employer regarding terms of employment and service conditions (b) collect subscription from members within the premises (c) put up a notice board within the unit and use it for its regular announcements relating to meetings etc. (d) hold discussions with its members inside the unit (e) discuss the grievances of its members with the management (f) inspect any place in the undertaking where any member of the union is employed (g) finally, appoint its nominees on joint consultative bodies and committees.

Multiplicity of trade unions creates problems for both the employer and the trade unions. Therefore, recognition of a trade union as a negotiating agent is a business necessity. Sooner a central legislation is passed and industry and business houses start dealing with recognised unions, the better it will be. Such a device is beneficial for both the employer and the trade unions. It provides strength, it provides opportunity for understanding and mutual appreciation and, thus, provides opportunity for a matured employer-union relationship.



Task Do you think that trade unions in India have served the objectives for which they were formed? Why and why not?

6.9 Judicial Activism

Indian Constitution provides three limbs of government for its effective functioning. They are; Legislative, Executive and Judiciary. Their functioning is based on the principles of “checks and balances”. During the run of government and after a passage of time there are certain legislations which become obsolete and outdated, some became irrelevant, some legislations leave gaps and there are some areas where legislature does not enact law because of political considerations. There are some aberrations that are noticed during the execution of these laws by the Executive wings, which requires either removal or strengthening. The Indian Constitution gives judiciary the power of “judicial review” by which it can intervene and interpret the existing laws in correct perspective and in the best interest of the society. It can invent and reinvent new laws to match the needs of society. Of late, judiciary has moved beyond the beaten track and have gone to intervene in the cases of social and national interest suo moto or through public interest litigations. These are beyond classical jurisprudence practices. The result is that many of the land mark judgements in the field of Child Labour, Bonded Labour, Industrial Pollution and many other vital areas have come and compelled judiciary to take unprecedented stands and give verdict to bring balance and order in the society.

Classical role of judiciary is to follow law/rule/precedent blindly. But today, it takes inspirations from Human Rights Conventions, UNO’s charters, ILO’s conventions and recommendations and reasoning and logics provided by various national and international bodies. It takes into account the requirements of technological developments, communications through media and unhealthy and unbalanced growth/developments because of these new phenomenon and gives instructions and directions to society to move in right direction. These forces have pressurised judiciary to expand and stretch its role and do social-engineering and by cutting undesirables and adding desirable ones. Social-justice, Economic justice and Political justice enshrined in the preamble of our Constitution gives it the right to intervene in any sphere of Society’s functioning. This has given birth to concepts like “Creative justice” or “Innovative justice”. This phenomenon is also known as “Judicial Activism”. Critics call it “judicial Anarchism” or “judicial despotism” or judicial “adventurism”. Whatever it may, it has come to stay and it has impacted our living and working and will continue to do in future also.

After independence we entered the age of socialism and egalitarianism, therefore judiciary was busy in protecting the interest of weaker sections of society by advocating the principles of “social justice”, “distributive justice” and “discriminative justice”. Such a stance have produced many land marked judgements protecting the interests of workers, some of which have hampered the interest of industry and business. However, trends got reversed after we have entered the age of liberalisation and globalisation where our corporations have to compete with multinationals. Judiciary has realised that our labour and trade unions have been too much protected and pampered. Therefore, time has come to take realistic stand on issues affecting on business and industries. The result is that of late there have been a number of judgements where the High Courts and Supreme Court have given their judgements against populist stand held by our Trade Unions and workers. There are a number of judgements in which both employers and workers have been happy or unhappy.

Both employees and workers have been affected by some judgements. Closure of polluting industries and prohibition of mining activities in forest areas have been resisted by both the parties. Closure and shifting of factories in Agra to prevent pollution to Taj was opposed by owner and workers.

Courts have now started giving importance to Consumer Rights as well as social rights of the workers. Consumers are no more silent spectators. We have a Consumer Protection Act, 1986 which is meant to redress the grievances of the consumers. Both Consumer Courts and Civil Courts are telling workers and their unions that rights are theirs only if in exercising them they do not stand on the right of others.



Caution

| Examples of judgements which make Employers happy | Examples of judgements which make Workers happy |
|--|--|
| Imposition of fine on trade union leaders for indulging in arson, loss of company property, etc. Strike is not a fundamental right. | Regularisation of casual/contract labour. Absorption organization contract labour as regular labour when the system of contract labour is abolished. |
| Ruling that a strike has not only to be legal, but also justified; Application of the norm of no work no pay in the case of strikes and for those who do union work as against company work. | Striking off of the contents of service conditions and standing orders in matters like treating unauthorised absence for over a week as abandonment of employment. |
| Restrictions on protest demonstration, political bundhs, etc. | Requirement of a notice of change when the Voluntary Retirement Scheme is introduced because work done by more people will now be required to be done by fewer people. |
| Decision of the Karnataka High Court upholding the dismissal of the president of the employees' association of a public sector establishment for having criticised its chairman in the media and for having made representation to the Governor. | Ruling of the Supreme Court that the service of employees in an organisation cannot be terminated arbitrarily and abruptly by giving notice of one or three months or pay in lieu of notice. |
| Decision that in the case of accidents by a bus or lorry, the compensation payable to the victims should be recovered from the earning of drivers. | Abolition of child labour in hazardous industries. |

Political bundhs and protest should not penalise our civil rights. The court questions the collective bargaining rights of workers in LIC, when it was found that their agreement was pre-judicial to the interest of policy holders. Telcom Unions in Orissa and Mathadi workers in Mumbai have been asked to pay damage for causing loss to the consumer. Courts are fixing responsibility not only on organisation, but also on individual employees/unions/associations leaders. In some cases, courts are empowering employers to recover money from the Sacred Provident Fund money. The courts have upheld the privatisation of public sectors (BALCO case), despite the protest by public sector workers.



Task

Is union influence on the decline? If yes, illustrate arguments with examples from the corporate world.



Case Study

Norman (I) Limited

The Company

The first wall tile manufacturing plant in India was established by Kay Pee in 1963 at Thane in Mumbai under the name Norman tiles. The company was using the brand name 'Norman', a leading international tile manufacturer, Norman International Limited and was paying royalty for the same. The Norman International Limited owned 49% equity in this venture since its inception. With growth in sight the company set up another manufacturing unit at Rampur in the state of Uttar Pradesh with an investment of ₹ 85 million in the year 1981. Initially, at Rampur unit the company was carrying out only partial operations with semi-finished products being supplied by Thane unit. It was only in 1984, that the company started carrying out full operations at the Rampur unit. Since, the market for ceramic tiles started expanding, the company expanded its operations, accordingly. The process of manufacturing wall tile was such that it needed unskilled manpower barring few

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fitters and electricians. Accordingly, the company hired 400 workers mostly uneducated and unskilled from nearby villages. Few of them were taken for the fitter and mechanic positions. Apart from these, there were sixty staff members looking after the other support functions. The workers were paid low wages and were employed on temporary basis at the beginning and till 1986 most of them were not made permanent. The human resource department was headed by R.C. Jain, who was an experienced professional and was with the firm since its inception.

The Genesis

In 1986, the company ventured into floor tile manufacturing and set up another facility at Rampur unit. This plant was semi-automatic as compared to the wall tile plant which needed manual operations. The machinery of floor tiles unit was bought from Italy and due to the nature of process some experienced workers were shifted from wall tile facility. Slowly, two distinct groups of workers emerged based on the nature of their job and subsequent skills required. First group was that of unskilled workers mostly associated with manual operations and the second group was that of skilled workers looking after technical operations. The second group was paid higher wages than the first group. This disparity led to discontentment among workers but in the absence of union, it never came out as an organised reaction. The first such organised attempt was made by workers in 1988, but a prompt and harsh action from management aborted the workers' bid to form union. However, this event drew management's attention towards workers' grievances and management helped workers to form a union in 1989. The union was named "Bhartiya Crystallisation Mazdur Sangh". However, since most of the workers barring few technical ones were uneducated, they were unaware of roles and responsibilities of union.

The Management started negotiations with the newly formed union and the first wage settlement agreement was signed on January 19, 1990. In this agreement, though the management agreed to increase wages to the extent of ₹ 250 per month, it linked wages to production targets. After three months of this agreement, the union leader left the organisation to join government service. The union was left leaderless. After some time the workers started voicing their concern about the target-linked wages, but in the absence of a leader their concerns could not get a voice. It was at this point that some external labour leaders started inciting the workers. A gate meeting was organised to exploit the situation on September 21, 1990. After this incident, the industrial relations situation further worsened and led to a go-slow movement by workers in January 1991. This affected the productivity of the plant severely. Due to the absence of union leadership, management too, found it difficult to control the situation, since external leaders' influence was very much visible and company's HR Manager R.C. Jain refused to talk to the outsiders. He remained adamant and left the job in March 1991 and the go-slow by the workers continued. In another development, the incumbent, HR Manager Arun Joshi, who took over after Jain left converted variable DA to a fixed DA rate. Since, at that time inflation was spiralling and the rate of DA, elsewhere, was high, the workers refused to accept this provision. Ultimately, under pressure from external leaders as well as workers of the firm, Joshi withdrew the fixed DA and accepted the variable DA provision.

In the meantime, K. N. Trivedi took over as the unit head on May 5, 1991. Before joining this plant, he had served the Indian Air Force for seventeen years and was a strict disciplinarian. The organisational situation demanded quick action to stop go-slow because the company had market share of forty per cent in both the tile categories and the demand for tiles was still going up. The management did not want to lose a single day's production. In a calculated move, the management suspended thirty five workers who were on a go-slow. This was for the first time that any worker was suspended from the plant which instilled a

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sense of fear in the minds of the workers. As a result of this, workers started working and the productivity of the plant started showing improvement.

Meanwhile, the management had terminated some of the suspended employees who later on moved to the labour court against management's action on the presumption that labour courts are generally sympathetic to the workers. At the same time, Trivedi started dialogue with the external leaders to end the stalemate. The external leaders put pressure on the management to reinstate the suspended workers. Management agreed to make permanent those employees who were working with the company since its inception and did it with immediate effect. Suspension of some of the workers was also cancelled. Though these efforts helped management in streamlining the production, the attitude of the workers could not be changed totally. The ownership spirit amongst workers could not be developed.

The situation took another ugly turn in February, 1992 when the workers who were suspended earlier tried to create disturbances in the plant. The discontent was further fuelled by bad food provided to the workers in the unit's canteen in March, 1992. Ultimately, this led to formation of a new union "Bhartiya Yuva Sanitary and Crystallisation Mazdur Sangh". This union was not affiliated to any national labour union. However, the leaders were under the influence of Bhartiya Mazdur Sangh (BMS). This union submitted a charter of demands to the management. The demands included grain loan which was a contentious issue because the company had never given any grain loan to the workers. The demands were not accepted by the management. The workers gheraoed Trivedi but the management did not accede to the demands and called the police to intervene.

On March 17, 1992, the workers went on strike, on the call of the union without giving any prior notice. The management terminated seventeen workers during the strike. The strike continued till May 5, 1992. The workers were not paid any wages during the strike period. Since the workers were low wage earners, they were unable to continue the strike for a longer period. The management used the situation to their advantage and accepted only minor demands of sanctioning an advance of ₹ 500 to the workers. The workers accepted the management decision and were willing to restart production. Management reemployed the suspended workforce gradually over a period of fifteen-twenty days. Since, the workers did not receive wages for the strike period, they had realised the importance of their employment.

In October, 1993, the second agreement was signed between management and the union. Between October, 1993 and December, 1996 the productivity and industrial relations were improved. In 1996 the organisation started receiving export orders for its products. The quality requirements for the export orders were stringent. Therefore, the organisation decided to go in for ISO 9000 certification for their Rampur plant. The management realising the importance of workers' involvement in ISO 9000 certification process started training workers on a continuous basis in June, 1996. The in-house training emphasised on house keeping, general hygiene of the workers, standard operation procedure and awareness about all kinds of losses. As a result of continued efforts, ISO 9002 certification was received by the plant in January, 1997. Meanwhile, the third wage agreement was signed between the management and the union for a period of three years in January, 1997. To reinforce the training process, HRD cell with well-equipped in-house training tools was developed in January, 1998. Training programmes focussed on shop-floor excellence and total productive maintenance (TPM). Quality manual for internal use was also developed. The goals for 2000-2001 for the plant were devised as under:

1. Laying of natural gas pipeline
2. ISO 14000 certification

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3. Control of losses
4. Reduction in personnel expenditure
5. Team building training

The Rampur plant of Norman had come a long way since its inception. In the words of Trivedi “despite all the bottlenecks we have achieved a satisfactory level of productivity. We still intend to continue doing so by various means. However, I want to build this plant as a community where each member’s commitment with the plant remains high. This can only be achieved by inculcating the ownership value. We sincerely believe that this can only be developed by creating a community of Norman in which every member is ensured of a minimum standard of living with all basic amenities and worry free life away from work. We intend to do so by providing medical, educational and vocational training facilities for their families, thereby developing trust between the management and the workers:”

The case was developed by Dr. S.S. Bhakar, Prof. Prashant Mishra (Prestige Institute of Management and Research, Indore), Dr. Ravindra Jain (Pt. Jawahar Lal Nehru Institute of Business Management, Vikram University, Ujjain), Prof. Shantiswaroop (Dayalbagh Educational Institute, Agra) and Mr. K. Shivappa (Kousali Institute of Management Studies, Karnatak University, Dharwad) in the Fourth National Case Writing Workshop organised by Prestige Institute of Management and Research, Indore and sponsored by IMS (Association of Indian Management Schools) on March 11 -13, 2000.

Questions

1. Does formation of trade unions help organisations improve industrial relations?
2. Was it a right strategy to nurture pro-management union leaders?
3. Was it a right strategy adopted by Jain not to recognise and encourage outside leadership for the plant union?
4. “The strategy to instill fear in the minds of workers to improve their productivity was in the interest of the organization.” Discuss.
5. In your view, what action should have been taken by the management at various stages to improve labour-management relations?
6. In your view, what are the thrust areas in HR strategy which may improve the competitive strength of the workers?

6.10 Summary

- A trade union is a continuous association of wage-earners for the purpose of maintaining and improving the conditions of their working lives.
- Under the Trade Union Act of 1926, the term is defined as any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workers and employers or for imposing restrictive conditions on the condition of any trade or business and includes any federation of two or more unions.
- Trade unions in India, as in most other countries, have been the natural outcome institutionally, the trade union movement is an unconscious effort to harness the drift of our time and reorganise it around the cohesive identity that men working together always achieve of the modern factory system. The development of trade unionism in India has a chequered history and a stormy career.

- In 1920 All India Trade Union Congress (AITUC) was formed. The first meeting of the AITUC was held in October, 1920 at Bombay (now Mumbai) under the presidentship of Lala Lajpat Rai. The formation of AITUC led to the establishment of All India Railwaymen's Federation (AIRF) in 1922. Many Company Railway Unions were affiliated to it.
- There are over 9,000 trade unions in the country, including unregistered unions and more than 70 federations and confederations registered under the Trade Unions Act, 1926.
- Outside leadership has been playing a pivotal role in the Indian Trade Union Movement due to the inability of insiders to lead their movement. The Royal Commission of Labour (RCL) 1931 recommended for the reduction of the statutory limit of outsiders from 1/2 to 1/3 but no efforts were taken in this direction. Outside leadership has been responsible for the slow growth of Trade Unions.
- In view of the evil effects of inter-union rivalry the recommendations of the National Commission on Labour, 1969. To minimise union rivalry are: Elimination of party politics and outsiders through building up of internal leaders, Promotion of collective bargaining through recognition of sole bargaining agents, and Empowering labour courts to settle inter-union disputes if they are not settled within the organisation.
- To minimise trade union problems and to strengthen the Trade Union Movement. Unions must present a joint front. Trade unions should form a sort of labour party and all the trade unions in the country should be affiliated to it.
- Trade unions should extend welfare measures to the members and actively pursue social responsibilities.
- The Trade Union Act, 1956 should be amended and the number of members required to form a trade union should be increased from 7 to 50% of the employees of an organisation.
- The Government of India drew up a Bill which was introduced in the Legislative Assembly on 31st August 1925. The Bill was passed the next year as the Indian Trade Unions Act, 1926. The Act with subsequent amendments is still in force in the country.
- The federation of trade unions also requires registration. It was held in National Organisation of Bank Workers' Federation of Trade Unions vs. Union of India and others (Bombay -1993) that where a federation of Trade Unions is not registered, it is not a trade union under the Act.
- The Supreme Court upheld the writ petition, brought as a class action by certain social activists and NGOs, concerning the fundamental rights of working women with particular reference to the evil of sexual harassment of women at workplaces.

6.11 Keywords

AIRF: All India Railwaymen's Federation

AITUC: All India Trade Union Congress

BMS: Bhartiya Mazdoor Sangh

Reformist or Welfare Unions: Work for changes and reforms within existing socio-political framework of society - European Model.

Revolutionary Unions: Believe in destruction of existing social/economic order and creation of a new one. They want shift in power and Authority and use of force - Left Unions.

Trade Union: A trade union is an association of wage earners for the purpose of maintaining and improving the conditions of their working lives.

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Uplift Unions: They advocate extensive reforms well beyond the area of working condition, i.e., change in taxation system, elimination of poverty, etc.

6.12 Self Assessment

Fill in the blanks:

1. A trade union wants that new laws should be created and old ones should be totally scrapped. This is a union.
2. The development of in India has a chequered history and a stormy career.
3. A union wants all new recruits to join within a week of employment. Such a compulsion comes under shop.
4. unions work for the eradication of social evils like poverty and un-education.
5. was the first trade union in India.
6. Due to low level of knowledge of members of unions, has become prominent.
7. In order to stop outside leaders from entering the union extensive facilities should be provided to the insiders.
8. The formal basis of trade unions in India, is provided by
9. A firm has several unions at different levels that have conflicting views. This is a situation of
10. Labors conflict with each other due to caste differences. This is due to nature of the labors.
11. Trade unions can be made financially healthy by raising
12. Registration of trade unions can be cancelled if they obtained it by

6.13 Review Questions

1. Discuss the objectives and functions of trade unions in India.
2. What is a trade union? How can you make trade unions an effective tool for human relations in India?
3. State briefly the weaknesses of trade unions in India. What should be done to strengthen the trade union movement in the country?
4. Are unions necessary? Should unions be recognised? If yes, how? What should be done to improve trade union finances?
5. Should the Indian industry have a single trade union? Why?
6. How are unions striving to save jobs in the LPG (Liberalisation, Privatisation, Globalisation) era?
7. Why have labour and management tended to treat each other as adversaries in the Indian labour relations system?

8. State the reasons for the formation of Employers' Associations in India, tracing their origin and growth.
9. Do you think that when compared to Labour Unions, Employers' Associations have met the expectations of their members? If yes, how? If not, state the reasons.
10. Employers' Associations are "rich mens' poor club". Comment.
11. In the light of challenges brought about by new technology, methods and processes, do you think the employer-employee relationship has changed completely? If yes, did the Labour Unions and EAs learn to dance with the times?

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Answers: Self Assessment

- | | |
|------------------------|---------------------------------|
| 1. Revolutionary | 2. Trade unionism |
| 3. Union | 4. Uplift |
| 5. Madras Labour Union | 6. Outside leadership |
| 7. Training | 8. Indian Trade Union Act, 1920 |
| 9. Multiple Unions | 10. Heterogeneous |
| 11. Membership fees | 12. Fraud |

6.14 Further Readings



Books

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En.wikipedia.org

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Unit 7: Dispute Resolution and Industrial Harmony

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Objectives

Notes

After studying this unit, you will be able to:

- Explain concept of conflict in general
- Analyze causes of conflict and legal framework
- Discuss resolution of conflict
- Explain industrial disputes like strikes, retrenchment and closure
- Describe the concept of standing order and disciplinary

Introduction

According to Industrial Disputes Act, 1947, Industrial dispute is any dispute or difference between employees and employees, or between employers and employees, which is connected with the employment or non-employment, or the terms of employment or with the conditions of work of any person.

Conflict is inevitable in the industrial organisation. Labour and management oppose each other in numerous ways in the course of daily work. Most industrial jobs are repetitive, monotonous, difficult, dirty and even accident prone. As a result of this management uses strict supervision to get the work done, on the other hand, the normal sentiment of the worker is one of discontent. The interests of these two parties are in conflict with each other.

7.1 Causes of Industrial Disputes/Conflict

Industrial includes three different possible sets of antagonists in industrial conflict. However, the present discussion is confined to disputes arising between management and workers.

According to Nair and Nair causes of dispute are:

1. *Economic causes* – Wages, salaries, profit, etc.
2. *Social causes* – Low morale, corruption, pollution, rising unemployment, etc.
3. *Political causes* – Political rivalry, unstable government, etc.
4. *Technical causes* – Loss of jobs due to automation, unsuitable technology, etc.
5. *Psychological causes* – Loss of job, propaganda, instigation, etc.
6. *Market causes* – Competition, loss, recession, etc.
7. *Legal causes* – Court order of closing down factories, shifting (under zoning laws).

Disputes arise from a variety of sources for a variety of reasons. The following sections review the various causes under two categories: conflicts caused by unions and those caused by management.

7.1.1 Conflict/Dispute Caused by Unions

You cannot expect the unions to cooperate with the management all the time. In reality, it doesn't happen that way. The quality of the relationship also depends on the people who interact for the two parties, meaning those in the management and the trade union officials. In some countries, the trade unions are also politicised and as a result even if the relationship between the management and the unions are free of conflict, political interference may disturb the

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relationship and give rise to conflict situations. Some of the situations that may arise as a result are:

1. Non-cooperation
2. Arguments and quarrelsome behaviour - indiscipline
3. Hostility and irritations
4. Stress, strain and anxiety
5. Unwillingness to negotiate or participate in discussions
6. Resentment or withdrawal
7. Absenteeism, alcoholism or high incidence of accidents
8. 'Work to rule' or 'go slow' tactics
9. Demonstrations
10. Strikes

7.1.2 Conflict/Dispute Caused by Management

In a unionised setting, managers can create their share of conflict. An arrogant employee of the Personnel department can cause a dispute that ends up in a strike. Many are the court cases that were the result of a heated argument between "Personnel" and workers over trivial issues. Some of the causes are outlined below. Refusal to discuss or negotiate a demand by the union is a very common cause resulting in a dispute. Also, a manager may use derogatory language on an employee resulting in sections of employees walking out in protest until that manager tenders a public apology. Some causes may emanate from disciplinary issues that result in suspension, demotion, dismissal, etc. A few other causes are:

1. Layoffs
2. Lock-out
3. Termination

7.2 Types of Industrial Disputes

ID can be classified into various types depending on their nature. The following are some of the types of disputes which could be experienced in work-organisations.

1. **Perceived Conflict:** Perceived conflict is one which people perceive that conflicting conditions exist in the work-organisation. The perceived conflict may be true or otherwise. But there is a potential ground for perceived conflict to turn into real conflict.
2. **Latent Conflict:** Latent conflict is one which does not emerge in open. Although parties to the conflict realise the fact of conflict for various reasons they do not show it openly. Such a conflict is termed as latent conflict.
3. **Manifest Conflict:** Manifest conflict is one which is not only recognition of conflict, but also expressing it explicitly or openly. This is a stage of open conflict.

7.3 Prevention of Industrial Disputes

Notes

The Act not only provides machinery for investigation and settlement organization disputes, but also some measures for the containment and prevention of conflicts and disputes. Important preventive measures provided under the Act are:

1. Setting up of Works committees in establishments employing 100 or more persons with equal number of representatives of workers and management for endeavouring to compose any differences of opinion in matters of common interest, and thereby promote measure for securing and preserving amity and cordial relations between the employer and workmen. The representatives of workmen will not be less than the representatives of employers and such representatives of workmen will be from among the workmen engaged in the establishment and in consultation with registered trade unions. The decision of the works committee carries weight but is not conclusive and binding; its duties is to smooth away friction then to alter conditions of services, etc. (section 3).
2. Prohibition of changes in the conditions of service in respect of matters laid down in the Fourth Schedule of the A (Appendix-I) (a) without giving notice to the workmen affected by such changes; and (b) within 21 days of giving such notice. No such prior notice is required in case of, (a) changes affected as a result of any award or settlement; (b) Employees governed by Government rules and regulations (Sec. 9A).
3. Prohibition of strikes and lock-outs in a public utility service (a) without giving notice to other party within six weeks before striking or locking out, (b) within 14 days of giving such notice, (c) before the expiry of the date of strike or lock-out specified in the notice and during the pendency of any conciliation proceedings before a conciliation office and seven days after the conclusion of such proceedings. In non-public utility services strikes and lock-out are prohibited during the pendency of conciliation proceedings before the Board of Conciliation and seven days after the conclusion of such proceedings, during the pendency of proceedings before an arbitrator, labour court, and Industrial Tribunal and National Tribunal, during the operation of an award and settlement in respect of matters covered by the settlement or award (Sections 22 and 23).
4. Prohibition of Unfair Labour Practices: Sec. 25 T and 25 U prohibit employers, employees and unions from committing unfair labour practices mentioned in the Schedule V of the Act (Appendix-II). Commission of such an offence is punishable with imprisonment up to six months and fine up to ₹1,000, or both. (ch.V-C).
5. Requiring employers to obtain prior permission of the authorities concerned before whom disputes are pending for conciliation, arbitration and adjudication, for changing working and employment conditions, or for dismissal or discharging employees and their union leaders (Section 33).
6. Regulation of lay-off and retrenchment and closure of establishment: Sec. 25 and its sub-section require employers to (a) pay lay-off compensation to employees (in establishments employing 50 or more) for the period that they are laid-off, at the rate of 50% of the salary or wages which they would have paid otherwise, (b) give one month notice, and three months notice in case of establishments employing 100 or more persons or pay in lieu of notice, and also pay compensation at the rate of 15 days wages for every completed year of service for retrenchment and closing establishments, (c) retrench employees on the basis of first come last go, and (d) obtain permission from the Government for retrenchment laying off employees and closing of establishments employing 100 or more persons (Ch. VA, VB).

7.4 Settlement of Industrial Disputes

For Industrial disputes which are not prevented or settled by, collective bargaining or Works Committees or by Bipartite negotiations, the following authorities are provided under the Industrial Disputes Act for resolving the same:

1. Conciliation Officer and Board of Conciliation
2. Voluntary Arbitration
3. Adjudication by Labour Court, Industrial Tribunal and National Tribunal

7.4.1 Conciliation

Conciliation in industrial disputes is a process by which representatives of management and employees and their unions are brought together before a third person or a body of persons with a view to induce or persuade them to arrive at some agreement to their satisfaction and in the larger interest of industry and community as a whole. This may be regarded as one of the phases of collective bargaining and extension of process of mutual negotiation under the guidance of a third party, i.e. Conciliation Officer, or a Board of Conciliation appointed by the Government.

Both the Central and State Government are empowered under the Industrial Disputes Act, 1947 to appoint such number of conciliation officers as may be considered necessary for specified areas for specified industries in specified areas either permanently or for limited periods.

The main duty of a Conciliation Officer is to investigate and promote settlement of disputes. He has wide discretion and may do all such things, as he may deem fit to bring about settlement of disputes. His role is only advisory and mediatory. He has no authority to make a final decision or to pass formal order directing the parties to act in particular manner.

Process of Conciliation

Where any industrial dispute exists or is apprehended, and is brought to the notice of conciliation officer by the parties concerned, or is referred to him by the government, or he receives a notice of strike or lock-out, he is to hold conciliation proceedings in the prescribed manner. Conciliation proceedings are obligatory in case of public utility services, and in such cases conciliation proceedings have to be started immediately after receiving notice of strike or lock-out or reference from the Government.

Powers of Conciliation Officer

Under the Act, conciliation is not a judicial activity. It is only administrative, since it is executed by the Government agency. Although conciliation officer is not a judicial officer, but to enable him to discharge his duties cast upon him under the Act, he has been empowered to enter the premises occupied by an establishment to which the dispute relates after giving reasonable notice for inspecting same, or any of its machinery, appliances or articles. He is also empowered to enforce the attendance of any person for the purpose of examination of such persons. For all these purposes the conciliation of officer shall have the same power as are vested in a Civil Court under the Code of Civil Procedure. He is also deemed to be public servant within the meaning of Sec. 21 of the Indian Penal Code.

Settlements In and Outside Conciliation

Notes

A settlement arrived at in proceedings under the Act is binding on all the parties to the dispute. It is also binding on other parties if they are summoned to appear in conciliation proceedings as parties to the dispute. In case of employer such a settlement is also binding on his heirs, successors, assigns in respect of establishment to which these dispute relate. In regard to employees, it is binding on all persons who were employed in establishment or part of the establishment to which the dispute relates on the date of dispute, and to all persons who subsequently become employed in that establishment.

A settlement arrived at by agreement between the management and workers or their unions outside conciliation proceedings is binding only on the parties to the agreement (Section 18).

Board of Conciliation

Board of Conciliation is a higher forum which is constituted for a specific dispute. It is not a permanent institution like the Conciliation Officer. The Government may, as occasion arises, constitute a Board of Conciliation for settlement of an industrial dispute with an independent chairman and equal representatives of the parties concerned as its members. The chairman, who is appointed by the Government, is to be a person unconnected with the dispute or with any industry directly affected by such dispute. Other members are to be appointed on the recommendations of the parties concerned, and if any party fails to make recommendation, the Government shall appoint such persons as it thinks fit to represent that party. The Board cannot admit a dispute in conciliation on its own. It can act only when reference is made to it by the Government (Section 5).

The Boards of Conciliation are rarely appointed by the Government these days. This is more so when disputes relate to a whole industry, or important issues.

7.4.2 Voluntary Arbitration

When Conciliation Officer or Board of Conciliation fails to resolve conflict/dispute, parties can be advised to agree to voluntary arbitration for settling their dispute. For settlement of differences or conflicts between two parties, arbitration is an age old practice in India. The Panchayat system is based on this concept. In the industrial sphere voluntary arbitration originated at Ahmedabad in the textile industry under the influence of Mahatma Gandhi. Provision for it was made under the Bombay Industrial Relations Act by the Bombay Government along with the provision for adjudication. Since this was fairly popular in the Bombay region in the 40s and 50s.

In 1956 the Government decided to place voluntary arbitration as one of the measures for settlement of a dispute through third party intervention under the law. Sec. 10A was added to the Industrial Disputes Act, and it was enforced from 10th March, 1957.

Reference of Disputes for Arbitration

Where a dispute exists or is apprehended. It can be referred for arbitration if the parties to the dispute agree to do so by submitting a written agreement to that effect, mentioning the person acceptable to them as arbitrator and also the issues to be decided in arbitration proceedings, to the Government and the Conciliation Officer concerned before it is referred for adjudication to Labour Court or Tribunal. The Agreement must be signed by both the parties. Both under Secs, 10A and 10(2) reference is obligatory.

Arbitration Award is enforceable in the same manner as the adjudication award of Labour Court or Industrial Tribunal.

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Arbitration is an alternative to adjudication and the two cannot be used simultaneously. It is voluntary at the discretion of the parties to a dispute. Arbitrator is a quasi-judicial body. He is an independent person and has all the attributes of a statutory arbitrator. He has wide freedom, but he must function within the limit of his powers. He must follow due procedure of giving notice to parties, giving fair hearings, relying upon all available evidence and documents. There must be no violation of the principles of natural justice.

Acceptance of Arbitration

Voluntary arbitration has been recommended and given place in law by the Government. Experience, however, shows that although the step has been strongly pressed by the Government for over thirty years it has yet to take roots. During the last decade not even 1% of the disputes reported were referred for arbitration. The National Commission on Labour examined the working of arbitration as a method of settling disputes, and found that it was yet to be accepted by the parties, particularly by the employers, unreservedly. The main hurdles noticed yet are:

1. Choice of suitable arbitrator acceptable to both parties.
2. Payment of arbitration fees- Unions can seldom afford to share such costs equally with management. Apart from these, it appears that arbitration under the Act is not correctly understood by the employers and trade unions. When arbitration is suggested, the impression often is that matter is to be left to the sole decision of an individual who can act in any manner he likes. The sanctity of the decision by an arbitrator is also held in doubt. The fact that law covers voluntary arbitration and places it almost parallel to adjudication, is not appreciated or known widely.

Undoubtedly an arbitrator can give a decision more promptly and enjoys greater freedom since he is not bound by fetters of law and procedure.

7.4.3 Adjudication

Unlike conciliation and arbitration, adjudication is compulsory method of resolving conflict. The Industrial Disputes Act provides the machinery for adjudication, namely, Labour Courts, Industrial Tribunals and National Tribunals. The procedures and powers of these three bodies are similar as well as provisions regarding commencement of award and period of operation of awards. Under the provisions of the Act, Labour Courts and Industrial Tribunals can be constituted by both Central and State Governments, but the National Tribunals can be constituted by the Central Government only, for adjudicating disputes which, in its opinion, involve a question of national importance or of such a nature that industrial establishments situated in more than one State are likely to be affected by such disputes.

1. **Labour Court:** It consists of one person only, who is also called the Presiding Officer, and who is or has been a judge of a High Court, or he has been a district judge or an additional district judge for a period not less than three years, or has held any judicial office in India for not less than seven years. Industrial disputes relating to any matter specified in the Second Schedule of the Act (Appendix-III) may be referred for adjudication to the Labour Court. (Section 7).
2. **Industrial Tribunal:** This is also one-man body (Presiding Officer). The Third Schedule of the Act mentions matters of industrial disputes which can be referred to it for adjudication (Appendix-IV). This Schedule shows that Industrial Tribunal has wider jurisdiction than the Labour Court. The Government concerned may appoint two assessors to advise the Presiding Officer in the proceedings. (Section 7 A).

3. **National Tribunal:** This is the third adjudicatory body to be appointed by the Central Government under the Act for the reasons already mentioned above. It can deal with any dispute mentioned in Schedules Second and Third of the Act or any matter which is not specified therein. This also consists of one person to be appointed by the Central Government, and he must have been a Judge of a High Court. He may also be assisted by two assessors appointed by the Government to advise him in adjudicating disputes.

The Presiding Officers of the above three adjudicatory bodies must be independent persons and should not have attained the age of 65 years. Again, these three bodies are not hierarchical. It is the prerogative of the Government to refer a dispute to these bodies. They are under the control of the labour department of the respective State Government and the Central Government. The contending parties cannot refer any dispute for adjudication themselves, and the award of these bodies are binding on them. (Section 7B).

Reference of Dispute for Adjudication (Section 10)

If a dispute is not settled by direct negotiation, or conciliation, if the parties do not agree to get it settled by voluntary arbitration, the Government at its discretion may refer it to Labour Court, Industrial Tribunal or National Tribunal, depending upon whether the matter of the dispute appears in the Second or Third Schedule of the Act. However, if the parties to the dispute jointly or separately apply for a reference to Labour Court or Tribunal, the Government is obliged to make a reference accordingly if it is satisfied that the persons applying represent the majority of each party. Disputes which are considered vexatious or frivolous, are not referred to adjudication. The Government has also the power to refer disputes which have not taken place, but are only apprehended. After referring the dispute to adjudication the Government can prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of its reference.

An order referring a dispute to Labour Court or Industrial Tribunal or National Tribunal shall specify the period within which they shall submit their award on such dispute to the Government concerned. In case of individual disputes such a period shall not exceed three months. The period can, however, be extended if the parties concerned apply for such extension, or the Labour Court or Industrial Tribunal may consider expedient to do so for the reason to be recorded. The proceedings before these authorities shall not lapse on the ground that the proceedings have not been completed within the specified time or by reason of the death of any of the parties to dispute being a workman. In computing any period specified in the order of reference, the period if any, for which proceedings had been stayed by the injunction of the Civil Court, shall be excluded.

When the Central Government is the appropriate Government in relation to any industrial dispute, it can refer the dispute for adjudication to Labour Court or Industrial Tribunal appointed by the State Government instead of setting up its own Labour Court or Tribunal for that purpose.

7.5 Industrial Disputes Act

The Industrial Disputes Act, 1947 is a piece of social legislation enacted to provide for investigation and settlement of industrial disputes and for certain other matters. It is an Act calculated to ensure specific justice to both employers and workmen and advance the progress of industry by bringing about harmony and cordial relationship between the parties. The co-operation between capital and labour would obviously lead to more production and that naturally helps boost national economy and progress. In achieving this goal, industrial adjudication takes into account several principles such as the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay, etc. apart from several other factors. In deciding

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an industrial dispute one of the primary objectives is and has to be the restoration of peace and goodwill in the industry itself on fair and just basis to be determined in the light of all relevant considerations.



Did u know? After the close of the First World War, there was a great out-break of industrial unrest. It led to the passing of the Trade Disputes Act by the Government of India in the year 1929. This act armed the government with powers which could be used whenever it considered fit to intervene in industrial disputes. It contained special provisions regarding strikes in the public utility services and general strikes affecting the community as a whole. The Act made provision for only ad hoc conciliation Board and Courts of Inquiry. This Act was amended in the year 1938 authorising the Central and Provincial Governments to appoint the conciliation officers for mediating in or promoting the settlement of industry disputes. During the Second World War - the government promulgated Defence of India Rules to meet exigencies. Rule 81 A gave powers to govt. to intervene in industrial disputes. Defence of India Rules 124, 118, 119 were used to prohibit strikes and lock-outs.

The Industrial Dispute Bill was introduced in Central Legislative Assembly in October, 1946. The Bill was passed in March, 1947 and implemented w.e.f. 1st April, 1947. Since then, it has as many as 34 to 35 major amendments. It has 9 Chapters and 40 sections.

Besides Central Act, many State Governments have their own industrial dispute resolution laws - e.g. the Bombay Industrial Relations Act, 1946, the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Likewise, MP, AP, Orissa, Gujarat, Rajasthan etc. also have their own legislation on the subject.

Scope: This Act is applicable in all states of India - to all industrial and commercial establishments, employing technical and non-technical workmen, drawing ₹ 1600/- p.m. - Western India Automobiles Association case - S.C. 1948.

7.5.1 Preamble and Objectives of the Act

The Preamble to the Act reads thus, "An Act to make provision for the investigation and settlement of industrial disputes and for certain other purposes."

On the basis of various judgments of Supreme Court given from time to time (specially Dimakuchi Tea Estate Case, 1958) is made, the principal objectives of the Act may be stated as below:

1. To ensure social justice to both employers and employees and advance progress of industry by bringing about harmony and cordial relationship between the parties.
2. To settle disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation, arbitration and if necessary, by approaching the tribunals constituted under the Act. If disputes are not settled, it would result in strikes or lockouts and entail dislocation of work, essential to the life of the community.
3. To promote measures for securing and preserving amity and good relations between the employer and workmen.
4. To prevent illegal strikes and lockouts.
5. To provide compensation to workmen in cases of lay-off, retrenchment and closure.
6. To protect workmen against victimisation by the employer and to ensure termination of industrial disputes in a peaceful manner.

7. To promote collective bargaining.

Justice Krishna Iyer, L.I.C.-SC 1980 - IDA is a benign measure. It preempts industrial tension - It is a mechanism for dispute resolution - It ensures industrial justice and creates climate of goodwill.

7.5.2 Some Important Concepts

1. **Appropriate Government Section 2(a):** Labour is a concurrent subject. Article 254 of Indian Constitution. Both centre and state have power to intervene, therefore the act clarifies as to which one is appropriate government in different situation.

- (a) In relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry such as may be specified or in relation to an industrial dispute concerning a banking or an insurance company, a mine, or an oil field, or a major port, the Central Government; and
- (b) In relation to any other industrial dispute, the State Government.

The Central Government is the appropriate Government for:

- (i) Any industry carried on by under the authority of the Central Government;
- (ii) Any industry carried on by a railway company;
- (iii) Any controlled industry (it should be so specified in this behalf for the purposes of S.2 (a)(i) of the I.D. Act (Bijay Cotton Mills Ltd. vs. Their Workmen - 1960 I LLJ 262 (SC);
- (iv) ESI Corporation;
- (v) The Indian Airlines and Air India Corporation;
- (vi) The Agricultural Refinance Corporation;
- (vii) The Deposit Insurance Corporation;
- (viii) The Unit Trust of India;
- (ix) A Banking Company;
- (x) An Insurance Company;
- (xi) A Mine;
- (xii) An Oil-field;
- (xiii) A Cantonment Board;
- (xiv) A Major Port.

"Carried on by or under the authority of the government" means either the industry carried on directly by a department of the government such as posts and telegraphs or the railways or one carried on by such department through any other agency.

In cases where the entire business of an establishment is confined to the territories of a State, obviously the government of that State is the appropriate government. But difficulties arise in cases where an employer has establishments in more than one State. The Act does not contain any provision in this respect. Nor does it contemplate a joint reference by more than one State. In certain cases, the courts have relied upon the principles governing the jurisdiction of civil courts to entertain actions or proceedings. The principle of "cause of action" has been applied, though this test is neither comprehensive nor satisfactory.

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The question arose in the *Heavy Engineering Mazdoor Union vs. State of Bihar* (1969-II LLJ 549), whether the Government of India which owned 99 per cent of the shares in the company (HEC) or the Government of the State where the factory was situated was the appropriate government. The Supreme Court held that since it was a company and not a Government department, the State Government was the appropriate Government.

The position however got changed in the landmark judgment of Supreme Court, 1997 in *Air India* case, where the Central PSUs were considered as limbs of Central Government and were brought under the jurisdiction of Central Government for the purpose of ID Act. This created difficulty both for Central Government and State Governments. The Central Government did not have infrastructure to administer ID Act in all the States and State Governments, which have created infrastructures to run ID Act were left high and dry. However, the situation again got changed in Supreme Court judgement, 2002 in *SAIL* case, wherein the court held that the appropriate government for central undertakings would be those covered under Section 2A of IDA 1947.

2. **Public Utility Service [Sec.2(m)]:**

- (a) any railway service or any transport service for the carriage of passengers or goods by air;
- (b) any section of an industrial establishment on the working of which the safety of the establishment or the workmen employed therein depends;
- (c) any postal, telegraph or telephone service;
- (d) any industry which supplies power, light or water to the public;
- (e) any system of public conservancy or sanitation;
- (f) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for a specified period not exceeding six months in the first instance. It may be extended from time to time by the appropriate Government if it deems such extension necessary.

Some of the industries mentioned in the First Schedule are as follows:

- (i) Transport (other than railways) for the carriage of passengers or goods by land or water;
- (ii) Banking;
- (iii) Defence Establishments;
- (iv) Fire Brigade Services;
- (v) India Government Mints;
- (vi) Indian Security Press;
- (vii) Coal.

3. **Industry:** The term "Industry" has been defined under Sec. 2(j) to mean any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

The Supreme Court by a judgement of far-reaching importance delivered on February 22, 1978, gave a wide implication to the meaning of industry. It laid down a triple test to decide the applicability of the ID Act to them. The triple test is: (i) Systematic Activity; (ii) Cooperation between employer and employees; (iii) Production and/or distribution of

goods and services calculated to satisfy human wants and wishes. If these tests are satisfied prima facie, there is an "industry". The decisive test is functional and the focus is on the nature of activity with special emphasis on the employer-employee relations. Absence of profit motive or gainful objective is irrelevant wherever the undertaking is - whether in the public, joint, private or other sector. If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking. All organised activity possessing the triple elements, although not trade or business, may still be industry provided the nature of the activity on the employer-employee basis bears resemblance to what is to be found in a trade or business. This would take into the fold of the word "industry" all undertakings, calling and services analogous to the carrying on the trade or business. The consequences are: (i) professions; (ii) clubs; (iii) educational institutions; (iv) other kindred adventures, if they fulfil the above triple tests, cannot be exempted from the scope of Section 2(j). However, a restricted category of professions, clubs, cooperatives and even gurukulas and little research labs may qualify for exemption if, in simple ventures, substantially, and going by the dominant nature of criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit. A single lawyer, a rural medical practitioner or urban doctor with a little assistance and/or menial servant may ply a profession but may not be said to run an industry. That is not because the employee does not make a contribution nor because the profession is too high to be classified as a trade or industry with its commercial connotations but because there is nothing like organised labour in such employment. Voluntary free medical clinic, Ashramites working at the bidding of the holiness etc. may be exempted. Sovereign functions (governmental functions) strictly understood qualify for exemption but not the welfare activities or economic adventures. Where complex activities are carried on, some of which may qualify for exemption, the test will be what is "dominant activity" as propounded in the Nagpur Corporation Case. The whole undertaking will be "industry" although those who are not workmen by definition may not benefit by the statute (*Bangalore Water Supply and Sewerage Board vs. A. Rajappa*, 1978 I LLJ 349).

Hospitals carry out systematic activities with organised cooperation between employer and employees, and also render services to human beings. Consequently, hospitals are industries. The altruistic, charitable or non-profit intention does not subtract the hospital or other organisations from the definition of industry.

Schools, Colleges, Universities, Solicitor's Offices, Gymkhana, Clubs, Institutes, Charitable Projects, are also within the definition of industry.

Devasthanam as a whole is not an industry within the meaning of the Trade Unions Act or I.D. Act. It cannot be regarded as carrying on trade or business. But the electricity and water departments of the TTD will be an industry or analogous to an industry and the employees in those department would be workmen within the meaning of the Trade Unions Act and they will be entitled to register themselves under the Act. Similarly, persons employed in TTD as drivers and conductors are also workmen employed in an industry (*T.T. Devasthanam vs. Commissioner of Labour*, 1979 I LLJ 448).

The term 'industry' must be analogous to trade or business and have an element of economic venture. The function organization of the agricultural department of the Punjab Government is to render help to the agriculturists in the pursuit of farming and the nature of its work is largely advisory. The department does not delve in economic ventures of any kind and the character of its activity is neither that of trade or business nor any economic venture.

Therefore, the department cannot come within the ambit of the definition of 'industry' in Section 2 (j) of the Act, and, as such no reference can be made in respect of any industrial

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dispute in relation to such department. To fall within the definition of 'industry' the government activity must at least be analogous to trade and business and there must be an element of economic venture in the activity. [*State of Punjab vs. Daljit Singh and Another* - 1986 (68) FJR 310 Pun. & Har.]

The Supreme Court held that Madhya Pradesh Khadi and Village Industries Board constituted under Khadi and Village Industries Act, 1959 established to encourage khadi and village industries is an industry within the meaning of Madhya Pradesh Industrial Relations Act, 1960. (*Gopal vs. Administrative Officer and Other* - 1986 I LLJ 58).

Social Welfare Department of Govt. of Rajasthan is an Industry. Royal and sovereign functions alone will be entitled to exemption (*Kanhaiya Lal vs. State of Rajasthan & Ors*, 1994-II LLJ 474).

The term 'industry' covers directorate of State Lottery, Hindustan Copper Ltd., Irrigation Department, Kerala State Science and Technological Museum, Municipal Council, Panchayat Samiti as per the judgements of different courts.

4. **Industrial Dispute [Section (2k)]:** Industrial Dispute means any dispute or difference between employers and employer or between employers and workmen and between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

The concept of employment involves employer-employee relationship and a contract of employment. An employer may dismiss a man or the organization may decline to employ him. This matter raises a dispute as to non-employment. Reinstatement is connected with non-employment.

The definition is in three parts. The first part refers to the fact of a real and substantial dispute, the second part to the parties to the dispute and the third to the subject-matter of the dispute (*Standard Vacuum Refining Co. vs. Their Workmen*, AIR 1960 S.C. 948).

Unless a demand is raised by a workman and rejected by the management, there cannot be any industrial dispute (*W.S. Insulators of India Ltd. vs. Industrial Tribunal*, 1977-II LLJ 225).

The Act says, 'of any person'. While the purpose of the Act shows that these words cannot mean anybody and everybody, it is possible for an industrial dispute to be raised concerning any person even a non-workman, in whose employment, non-employment, terms of employment or conditions of labour, the parties to the dispute as a group or class have a direct and substantial interest [*Workmen of Dimakuchi Tea Estate vs. Dimakuchi Tea Estate*, 1958-I LLJ 500 (S.C.)]. It could sometimes be an officer or other non-workman if there was real community of interest and this interest was direct, immediate and non-remote. [*The Workmen vs. Greaves Cotton & Co.*, 1971-II LLJ 479 (S.C.)]. The community of interest on the part of the workmen must exist; when the government makes the reference. [*Western India Match Co. vs. Workers Union*, 1970-II LLJ 257 (S.C.)]

It is settled law that before any dispute between an employer and his workmen can be said to be an industrial dispute under the Act, it must be sponsored by a substantial number of workmen. In other words, it is only a collective dispute that can constitute an industrial dispute.

Even non-recognised and unregistered unions may raise an industrial dispute. The key point is the dispute being raised by a substantial number of workmen? (*Newspapers Ltd., Allahabad vs. U.P. State Industrial Tribunal*, A.I.R. 1960 S.C. 777)

An individual dispute may become an industrial dispute if it is taken up by a union of workmen of the establishment or substantial number of workmen who have a direct and

substantial interest in the case. [*Workmen vs. Shri Ranga Vilas Motors Ltd.*, 1967-II LLJ 12 (S.C.)]

Even a minority union or minority group of workmen can raise an industrial dispute. (*Associate Cement Co. vs. Workmen*, AIR 1960 S.C. 777).

If discharged workman dies while contesting his termination, his legal representatives may continue his case in the Labour Court (*V. Bhaskaran vs. Union of India*, 1982, 44) (FLR 331).

Union recognition is a most important issue but recognition is not within the definition of 'industrial dispute' in the Act. It is not a condition of service or of employment or non-employment. Consequently, non-recognition of a union has not been judged to constitute an industrial dispute and therefore such disputes are not conciliated or adjudicated under the I.D. Act.

Sec.2A: Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

An individual workman whose services are terminated can now raise an industrial dispute and take his case to the conciliation machinery or approach the government for a reference of the dispute to adjudication. The object of the section is to give an individual dispute relating to discharge, dismissal, retrenchment or otherwise termination, the status of an industrial dispute.

In sum, the following conditions must exist for an Industrial Dispute:

(i) There must be an industry; (ii) between the parties there must be a relationship of workmen and employer; (iii) the dispute must be connected with the employment or non-employment, terms of employment or the conditions of labour; (iv) the dispute must be related to a workman or any other person in whom, the group has a direct and substantial interest; and (v) generally speaking, the dispute should not be merely an individual dispute; it should in some sense be a collective dispute. However, in disputes related to termination of service (dismissal, discharge, or retrenchment), an individual can raise an industrial dispute.

5. **Workman [Section 2(s):** "Workman" means any person (including an apprentice employed in any industry to do any skilled or unskilled manual, supervisory, operational, technical or clerical work for hire or reward whether the terms of employment be expressed or implied, and for the purposes, of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person:

- (a) Who is subject to the Army Act, 1950 (46 of 1950), or the Air Force Act, 1950 (45 of 1950), or the Navy (Discipline) Act, 1934 (34 of 1934); or
- (b) Who is employed in the police service or as an officer or other employee of a prison; or
- (c) Who is employed mainly in a managerial or administrative capacity; or
- (d) Who is being employed in a supervisory capacity, draws wages exceeding 1,600 rupees *per mensem* or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

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Unless a person is employed in an industry, he will not be a workman within the meaning of the definition. Similarly, a person who performs supervisory work and draws wages, exceeding ₹1,600/- *per mensem* is not a workman.

A contractor is not a workman within the meaning of Sec.2 (s). The same applies to a sub-contractor.

The question, whether a person is employed in a supervisory capacity or on clerical work, depends upon whether the main and principal duties carried out by him are those of a supervisory character or of a nature carried out by a clerk

The pilot or a plane held to be a workman and whatever supervisory or administrative work he did, it was only incidental to his work (*Mathur Aviation vs. Lt. Governor, Delhi*, 1977-II LLJ 255).

Even a part time employee is a "workman" under Section 2(s) of the Industrial Disputes Act, 1947.

A probationer is also a workman - *Hutchiah v. Karnataka State Road Transport Corporation*, 1998 LLR 391.

In determining whether a person is a workman or not, the mere nomenclature of the post held by him is no of much consequence. What is to be seen is the nature of duties performed by him i.e. the substantial nature of his employment; what is the main work performed by the person and which part of his work is incidental or subsidiary (*Shalimar Tar Products Ltd. vs. Labour Court*, 1981 (58) FJR 255). In this connection Bombay High Court in *Union Carbide vs. Samuel* (1999) and Supreme Court of India have led down certain criteria for determining whether a person is workman or not.

- (a) Can his decision bind the employer?
- (b) Does he have power to sanction leave?
- (c) Does he have power to appoint?
- (d) Can he examine quality?
- (e) Can he assign duty?
- (f) Can he indent material?
- (g) Can he recommend leave?
- (h) Are any person working under him?
- (i) Does he supervise work?
- (j) Does he write C.R?

7.6 Power of Labour Court and Industrial Tribunals

Every investigation by these authorities is deemed to be a judicial proceeding within the meanings of Sections 93 and 228 of the Indian Penal Code. They are also deemed to be Civil Court for the purposes of Sections 345, 346 and 348 of the Code of Criminal Procedure. They have also the power to substitute their decision for the decision of the employer in disciplinary cases.

They are empowered to determine as to who, to what extent, and to whom the cost of proceedings before them are to be paid. They are also empowered to enforce the attendance of any person for the purpose of examination of such persons, compel the production of documents and material

objects and issue commission for examination of witnesses. They are also deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. They can also enter premises of an establishment to which dispute is related for purposes of enquiry after giving reasonable notice.

7.6.1 Introduction of Section 11-A in the Act

Section 11-A was inserted in the Act by the Industrial Disputes (Amendment) Act, 1971, w.e.f. 15.12.1971. The statement of objects and reasons specifically referred to the decision of the Supreme Court in *Indian Iron & Steel Co. Ltd. and another vs. Their Workmen* (1958-I LLJ 260). It also referred to recommendation No.119 of the International Labour Organisation, that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination, among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body.

Section 11-A reads as under

Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen-

Where an industrial dispute relating to discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceeding the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require; provided that in any proceeding under this section, the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

Effect of Section 11-A

Prior to the introduction of Section 11-A, the Tribunal had no power to interfere with the finding of misconduct recorded in the domestic enquiry unless there existed one or other infirmities pointed out by the Supreme Court in the case of *Indian Iron & Steel Co. Ltd.* The conduct of disciplinary proceedings and punishment to be imposed were all considered to be a managerial function which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. But now under this Section, the Tribunal is clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by employer established the misconduct alleged against a workman. The limitations imposed on the powers of the Tribunal by the decision in the *Indian Iron & Steel Co. Ltd.*, can no longer be invoked by an employer. Vaidialingam J. held: "The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of employer has ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter." Ultimately, the Tribunal may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge.

Under this section, for the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power also for the first time, to

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interfere with the punishment imposed by an employer. When such wide powers have now been conferred on Tribunals, the Legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the proviso. The proviso only emphasises that the Tribunal has to satisfy itself one way or the other regarding misconduct, punishment and relief to be granted to workmen only on the basis of the "materials on record" before it.

Section 11-A does not cover retrenchment or retirement cases, because the section clearly indicates that it is for discharge and dismissal cases only.

7.6.2 Awards of Labour Courts and Tribunals

Adjudication awards of Labour Courts and Tribunals are binding on the parties concerned, on the heirs, successors and assignee of employers and on all persons employed subsequently. On receipt of award it is to be published by the appropriate government within thirty days of the receipt. They become enforceable on the expiry of thirty days from the date of their publication in the Official Gazette. The normal period of operation of any award as fixed under the Act is one year. The Government has, however, the power to reduce the period and fix such period as it thinks fit, the government can also extend the period of operation up to one year at a time, but the total period of operation of any award cannot exceed three years from the date when it came into effect. Even if it is not extended, the award remains binding on the parties till it is terminated by two months notice given by the majority of one of the parties bound by the award to the other party intimating its intention to terminate the award. The Government may not accept or give effect to an award in relation to a dispute to which it is a party, or if the award is given by a National Tribunal and it is considered inexpedient on ground of national economy or social justice. In such a situation the government may by notification in the Official Gazette declare that the award does not become enforceable on the expiry of the said period of thirty days. Within thirty days of its publication the Government may make an order, rejecting or modifying the award and shall on the first available opportunity lay the award together with copy of the order before the State Legislative Assembly or the Parliament, as the case may be, where the award may be rejected or modified. Such an award shall become enforceable on the expiry of 15 days from the date it is so laid. Where no order is made in pursuance of declaration, award becomes enforceable within 90 days of its publication. The award comes into operation from the date mentioned in the order and where no date is mentioned, it operates from the date if becomes enforceable. [secs. 17,8(3)]

Protection of Workmen during Pendency of Proceedings

These awards are semi-judicial in nature after they are published. They are amenable to constitutional remedies provided by Articles 32, 226 and 227 of the Constitution on grounds of defects of jurisdiction, violation of the principles of natural justice or any error of law. Proceedings can be initiated against these awards both in the High Court and the Supreme Court. But if an employer prefers any proceedings against an award which directs the reinstatement of any workman, in High Court or the Supreme Court, he is liable to pay to such workman during the pendency of such proceedings full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period. If, however, it is proved to the satisfaction of the Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable for such period or part thereof, as the case may be. (Section 17B).

Persons on whom Settlements and Award are Binding

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Section 18 of the Act enumerates persons on who settlements and awards are binding. For this purpose settlements are classified in two categories, namely:

1. Settlement arrived at otherwise than in the course of conciliation proceedings, i.e. without the aid of statutory agency, and
2. Settlement arrived at in the course of conciliation proceedings, i.e. with the aid of statutory agency.

In the former case a settlement under Section 18(1) arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement. But any such settlement in order to be binding must be signed by the parties thereto in the manner prescribed by rule and a copy of it must also be sent to the appropriate Government.

Section 18(2) which is made subject to the provisions of Section 18(3) provides that an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to the arbitration.

Sub-section (3) provides that -

1. a settlement arrived at in the course of conciliation proceedings under this Act; or
2. an arbitration award in a case where a notification has been issued under sub-section (3-A) of the Section 10-A; or
3. an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on:
 - (a) All parties to the industrial dispute.
 - (b) All other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal as the case may be, record the opinion that they were so summoned without proper cause.
 - (c) Where party referred to is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates.
 - (d) Where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part thereof.

Persons Bound by Settlement

Under Section 19(1) a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement. A settlement arrived at in the course of a conciliation proceeding is binding not only on the parties to the industrial dispute but also on other persons specified in clauses (b), (c) and (d) of sub-section (3) of Section 18 of the Act – *Tata Chemicals v. Workmen, Tata Chemicals*, AIR 1978 SC 828. Even if settlement regarding certain demands is arrived at otherwise than during the conciliation proceeding between the employer and the union representing majority of workmen, the same is not binding on the other union which represents minority workmen and which was not a party to that settlement. The other union can, therefore, raise the dispute in respect of the demand covered by the settlement and the same can be validly referred for adjudication. In the above situation the settlement will not operate as stopped against minority union raising same

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demands even though the benefits flowing from the settlement are accepted by workmen who were not signatories to it.

7.7 Conditions to Strike and Lock-outs

"Strike" means a cessation of work by body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment [Sec. 2 (q)].

Lockout means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. [Sec.2(i)].

The definition of 'strike' postulates the following ingredients:

- (1) Plurality of workmen.
- (2) Cessation of work or refusal to continue to work.
- (3) Acting in combination or concerted action under a common understanding.
- (4) Duration is immaterial.

Strike is used by workmen as instrument of economic coercion to compel management to accept their demands.

7.7.1 Strike

Simple instances of strike are "cessation of work", "refusal to continue to work" or refusal to accept employment. But workmen resort to different methods express their pressure. Do all these fall within the ambit of definition of strike?

1. Stay-in-strike, Sit-down-strike, Pen down Strike or tool down strike - all of these are synonymous of each other. Supreme Court has interpreted these forms of strikes coming within the ambit of Sec. 2(q).
2. Go-slow- deliberately slow-down the pace of work - it may not be getting covered under the definition of strike. But in various judgements. Supreme Court (Bharat Sugar Mills vs. Jai Singh, Bank of India vs. Kelawala) has interpreted it to be illegal strike and serious misconduct.
3. Lighting or wild-Cat Strike (Sudden withdrawal from work). Such strikes are prohibited in Public utility Services but in other industries also they are not justified.
4. Work-organization-Rule - Remaining on the job - interpreting rule interacting or compressing as per their convenience. This hampers work and do damage. In U.S.A it is recognised, form of strike. But in India, it is not a "stoppage or work". Therefore, does not come within the ambit of strike.
5. Gherao means encirclement. In *Jay Engineering Works v. State of West Bengal* (1968), it is a wrongful confinement u/s 339 or 340 of IPC and also a mischief u/s 7 of Cr.PC. Such an act does not get saved by Sec. 17 of T.O.A. 1926.
6. Bundh - means closed or locked. It is different from Strike or hartal. In Kerala -Govt. case the Supreme Court has held it as illegal and anti constitutional.
7. **Picketing and Peaceful demonstration** - This contains freedom of speech, freedom of movement, freedom of association and freedom to carry out profession and business is a permissible weapon. Pickets however, are not entitled to compel people to listen, obstruct passage, catching holding of hand, blocking the passage and pestering people etc.



Did u know? **There is no fundamental right to go on strike**

In *T.K. Rangarajan v. Government of Tamil Nadu and Others* (i), Justice M. B. Shah, speaking for a Bench of the Supreme Court consisting of himself and Justice A. R. Lakshmanan, said, "Now coming to the question of right to strike - in our view no such right exists with the government employee."

Even as early as 1961, the Supreme Court had held in *Kameshwar Prasad v. State of Bihar* (ii) that even a very liberal interpretation of article 19 (1) (c) could not lead to the conclusion that the trade unions have a guaranteed fundamental right to strike. In *All India Bank Employees' Association v. National Industrial Tribunal* (iii - the AIBE case) also it was contended that the right to form an association guaranteed by Article 19 (1) (c) of the Constitution, also carried with it the concomitant right to strike for otherwise the right to form association would be rendered illusory. The Supreme Court rejected this construction of the Constitution: "to read each guaranteed right as involving the concomitant right necessary to achieve the object which might be supposed to underlie the grant of each of such rights, for such a construction would, by ever expanding circles in the shape of rights concomitant to concomitant right and so on, lead to an almost grotesque result."

It was a culmination of the ratios of the *Kameshwar Prasad* and the *A.I.B.E.* cases that resulted in the decision in the highly contentious *Rangarajan* case. In reliance of these judgments, the Apex court was correct in opining that there exists no fundamental right to strike. But in stating that Government employees have no "legal, moral or equitable right", the Court has evolved a new industrial jurisprudence unthought of earlier. It is true that the judgments mentioned above have rejected the right to strike as a fundamental right, but not as a legal, moral or equitable right. The question of 'strike' not being a statutory or a legal right has never even been considered in the court. Further the expression 'no moral or equitable right' was uncalled for. A court of law is concerned with legal and constitutional issues and not with issues of morality and equity.

The *Rangarajan* case simply ignores statutory provisions in the *Industrial Disputes Act, 1947* and the *Trade Unions Act, 1926*, and an equal number of case laws laid down by larger benches that have recognized the right to strike. It also fails to consider *International Covenants* that pave the way for this right as a basic tenet of international labour standards.

This has been finally decided by Supreme Court of India 2003 in *T.K. Rangarajan vs. Govt. of Tamil Nadu* that Strike is not a fundamental right.

However, it may be noted that the industrial workmen have been given this privilege of going on strike in negative and indirect way in *Industrial Disputes Act*. Therefore for industrial workman right to strike is a legal right after observing some conditions stipulated in the Act.

General Prohibition of Strikes (Sec. 23)

No group of workman may strike in the following five situations:

1. When conciliation is going on before a Board of Conciliation an seven days thereafter.
2. When adjudication is going on before a Labour Court or Tribunal and two months thereafter.
3. When and if an appropriate Government in its reference prohibits the continuance of any strike.
4. When arbitration is going on before an arbitrator and two months thereafter.

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5. When a settlement or award is in operation. (Note that the prohibition here is restricted to those matters only which are covered by the settlement or award).

Additional restrictions on strikes in public utility services (Section 22).

1. A strike notice must be given to the employer and Conciliation Officer.
2. The strike must not take place for 14 days after the notice has been given.
3. The strike must not take place after six weeks from the notice.
4. The strike must not take place before the day, if any, specified in the strike notice.
5. The strike must not take place during conciliation before a Conciliation Officer and seven days after the conclusion of such proceedings.



Task

Do you think the right of the workers to strike is a fundamental right, as guaranteed in the constitution of India? Why and why not?

7.7.2 Lock-outs

The employers' right to lockout is subjected to the same restrictions as the workmen's right to strike. The same rules apply with the same additional restrictions for public utilities. A strike is not illegal when it is declared because of an illegal lockout.

Section 22 and 23 Compared

- (1) Section 22 applies to public utility concerns only. Section 23 is applicable to both public utility as well as non-public utility concerns.
- (2) Section 23 does not prohibit strike or lock-out during the pendency of conciliation proceeding before a Conciliation Officer, Section 22 does so.
- (3) Under Section 22 notice of strike or lock-out is necessary, under Section 23 no such notice is required.
- (4) Both Sections 22 and 23 are applicable to public utility service, but Section 23 applies to non-public utility services only. Section 22 is not applicable to non-public utility services. Therefore in case of strike or lock-out in a public utility service prohibitions contained in Section 22 as well as Section 23 apply. As no notice in case of a non-public utility service is necessary, a sudden strike is not prohibited under this Act in such concerns.

Illegal Strikes and Lock-outs

According to Section 24 (1) a strike or lock-out shall be illegal if it is:

- (1) Commenced or declared in contravention of Section 22 in a public utility service;
- (2) Commenced in contravention of Section 23 in any industrial establishment (including both public utility and non-public utility service);
- (3) Continued in contravention of an order made by the Appropriate Government under Section 10(3) or sub-section (4-A) of Section 10-A of the Act.

Sub-section (2) provides that where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of reference of the dispute to a Board, an

arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under Section 10(3) or sub-section (4-A) of Section 10-A.

According to Section 24 (3) a lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Strikes, Lockouts and Wages

The Act does not say anything about wages during a strike or lockout period but the decisions of Tribunals have generally been as follows:

| Strikes or Lockouts | Wages |
|--------------------------------|-----------|
| 1. Illegal strikes | No |
| 2. Illegal lockouts | Yes |
| 3. Legal & justified strikes | sometimes |
| 4. Legal & unjustified strikes | No. |

[*Pereira & State of Madras, H.C. Northbrook Jute Company vs. Their Workmen*, 1962-1-LLJ 122; 1960-1-LLJ 580, (S.C.)]



Notes

Punishment for Illegal Strikes

The workers have a right if not a fundamental right, to go on strike. If a strike is illegal the party guilty of the illegality is liable to punishment under Section 26 of the Act. Even in case of illegal strikes a distinction has been attempted to be made between (i) illegal but justified strike; and (ii) illegal and unjustified strike. How can strike, which is illegal be at the same time justified. It is said that a strike may be technically illegal because it is in contravention of the provision of this Act but because the causes that lead to a strike are often mixed question of legal and illegal demands, a strike may not be unjustified but the conduct of workmen may be objectionable, or their behaviour may be violent. On the other hand a strike may be illegal but it might have been taken recourse to for good reasons and carried on in an orderly and peaceful manner. It is for these reasons that even illegal strikes are classified as justified and unjustified by those who administer industrial law.

Crompton Greaves vs. Their Workmen is a leading case on this point. In this case it was held that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. A strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. The use of force or violence or acts of sabotage resorted to by the workmen during a strike, disentitle them to wages for the strike period. Where, before the conclusion of the talks for conciliation which were going on through the instrumentality of Assistance Labour Commissioner, the company retrenched as many as 93 of its workmen without even intimating to the Labour Commissioner that it was carrying out its proposed plan of effecting retrenchment of the workmen, the strike cannot be said to be unjustified.

Whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. During the period of strike, the contract of employment continues but the workers

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withhold their labour. Consequently they cannot expect to be paid (*Bank of India vs. T.S. Kelawala*, 1990 I CLR 748).

The employer is not liable to pay either full day salary or even the pro rata salary for the hours of work that the employees remained in the work place without doing any work. It is not the mere presence of the workmen at the place of work, but the work that they do according to the terms of the contract which contributes to the fulfilment of the contract of employment and for which they are entitled to be paid [*Bank of India vs. T.S. Kelawala*, 1990 II LLJ 39 (SC)].

The effect of an illegal strike on the demand of the workmen to wages or compensation and their liability to punishment, according to one view is based on the strike being justified. Mere illegality of the strike does not end the matter. It means if the strike is illegal, and at the same time unjustified, the workmen have no claim to wages and must also be punished, if it is justified, they have a right to claim wages. This view is based on a Full Bench decision of the Labour Appellate Tribunal in a reference on question "whether the employer can dismiss a workman for joining a strike which is not illegal but unjustified". It was held in this case that the right to strike is recognised by implication. For various reasons a strike may be unjustified, for example:

- (1) demands may be unreasonably high,
- (2) demands may be made with extraneous motives,
- (3) steps taken by employer to redress the alleged grievances through negotiation or conciliation.

The strike does not, by itself put an end to the employer-employee relationship, nor can an employer discharge a workman for mere participation in a strike which is not illegal, or in an illegal strike where there was no appropriate provision in the Standing Orders.

Illegal Strike Amount to Misconduct

Going on illegal strike, is certainly "misconduct". The punishment for misconduct is dismissal, or, in the alternative suspension, for a period not exceeding four days. If the management had, without any regard to what happened, in respect of the first strike, imposed punishment under clause 22 of the Standing Orders in respect of an illegal strike, which is "misconduct" after a fair enquiry, the punishment, meted out being a managerial function, would not be normally interfered with also of the view that the punishment is unconscionable and unjustified. It is on these grounds that the Labour Court has interfered with the order or dismissal, passed by the management.

In *Gujarat Steel Tube* case S.C. (1980), the S.C. rejected the theory of community guilt and collective punishment and ruled that no worker will be dismissed save on the proof of his individual delinquency.

Strike and Other Forms of Strikes Like; Bandh, Picketing, Gherao, etc.

In *Bharat Union Palicha vs. State of Kerala* the Full Bench of Kerala High Court held bandh to be illegal, unconstitutional and violative of Articles 19 and 21 of the Constitution. This was also upheld by Supreme Court (1997).

Strike vs. Stoppage of work: Strike under ID Act unlike Bombay Industrial Relations Act need not be related with pending disputes; there is a provision for work stoppage in BIR Act. A concept of stoppage is wider than strike.

Right of employer to compensation for loss caused by illegal strike: In *Rohtas Industries v. its Union*, the Supreme Court held that the remedy for illegal strike has to be sought

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exclusively in Section 26 of the Act. The award granting compensation to employer for loss of business through illegal strike is illegal because such compensation is not a dispute within the meaning of Section 2(k) of the Act.

Strike by Government Servants: The rights of a Government servant to go on strike are different from the workmen employed in private concerns. There are different rules which prohibit him to go on strike. Central Government employees are governed by the Central Civil Service (Conduct) Rules, 1955. Rule 4-A which deals with the demonstrations and strike by the Central Government employees enacts that "no Government servant shall participate in any demonstration or resort to any strike in connection with any matter pertaining to his conditions of service." Rule 4-A of the Bihar Government Servants Conducts Rules, 1956 is identical with above Central Rule 4-A. While interpreting Rule 4-A of the Bihar Government Servants Conducts Rules, the Supreme Court in *Kameshwar Prasad v. State of Bihar* held that a person did not lose his fundamental rights by joining Government service. This was further and finally settled in *T.K. Rangarajan vs. Govt. of Tamil Nadu & Others* - Supreme Court 2003, that Government servant has no legal and statutory right to go on strike. The court further held that they have no moral or equitable justification to go on strike. These conclusions were supported by Article 33 of the Constitution whereby fundamental rights of the members of the Armed Forces, etc. can be abridged or abrogated by law, thus implying that fundamental rights of other Government servants cannot be abridged. Rule 4-A was held to be valid so far as it referred to strikers, and void in so far as it referred to demonstration because it violated the fundamental right of speech and expression. This decision was followed by the Supreme Court in *O.K. Ghosh vs. E.R. Joseph*. Thus the provisions of this Act shall apply to Government servants going on strike. Of course they shall further be subject to the conduct rules as framed by the Government concerned.

The conduct rules framed by the Government, in order to be valid must not be in contravention of the fundamental rights guaranteed by the Constitution.

7.7.3 Penalty for Illegal Strikes and Lock-outs

Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty for Instigation etc.

Any person who instigates or incite others to take part in, or otherwise acts in furtherance of a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both (section 27).

7.7.4 Government can Prohibit the Continuation of Strikes and Lock-outs

Section 10(3) of the Industrial Disputes Act, 1947 empowers the appropriate Government to prohibit the commencement and continuance of strikes and lock-outs in certain circumstances for investigation and adjudication of the industrial disputes in a peaceful atmosphere. In order to exercise the power to prohibit the strike or lock-out it is necessary that an industrial dispute should have been referred to a Board, Labour Court, Industrial Tribunal or National Tribunal under section 10 or the arbitrator under section 10A of the Industrial Disputes Act, 1947 and that on the date of reference for adjudication there would be a strike or lock-out in existence in connection with such dispute.

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An order under section 10B for prohibiting a lock-out or strike requires finding on facts and an adjudication thereon before the power under it could be exercised by the appropriate Government. If an order is made without determining these facts, in certain circumstances it may prove incapable of implementation, for instance, if for any valid reasons, it has become impossible to continue the industry, or the employer has disposed of the same, the order under section 10(3) will become incapable of implementation. The Government may not prohibit the continuance of a lock-out because the workmen have indulged in unlawful and criminal activities, and there is scope for apprehension that, if the work is restored, such activities would continue. Non-compliance with such an order is illegal under section 24(1) (ii) and is punishable with imprisonment and/or fine under section 26 of the Industrial Disputes Act, 1947.

The power to prohibit a strike or lock-out springs into existence only when such dispute has been made the subject of reference under section 10(1) of the Industrial Disputes Act, 1947. If Government feels that it would prohibit a strike under section 10(3) it must give scope for the merits of all the disputes or demands for which the strike had been called to be gone into by some adjudicatory body. In regard to such dispute natural justice would depend upon the circumstances of the case, the nature of enquiry and the subject matter that was being dealt with.

IDA & ESMA (Essential Service Maintenance Act)

ESMA empowers the Central Government to prohibit any and all strikes, lockouts or lay-off in any essential service, if this is considered necessary in the public interest.

It would publish an order which would remain in force for six months, extendable for another such period. The order would render such strikes, lockouts, lay-off illegal.

It is the acronym of a law, Essential Services Maintenance Act (Esma), which the government can invoke to prohibit striking employees from refusing to work in certain essential services, which are necessary for the maintenance of normal life in the country.

The enactment of this law lists the following:

1. **Power to prohibit strikes in certain employments:** If the Central Government is satisfied that in the public interest, it is necessary or expedient to do so. It may, by general or special Order, prohibit strikes in any essential service specified in the Order.
2. The order shall be published in such manners as the Central Government considers the best calculated manner to bring it to. The notice of the persons affected by the order.
3. The order shall be in force for six months only, but the Central Government may (by a like order) extend it for any period, that does not exceed six months, if it is satisfied that in the public interest it is necessary or expedient to do so.
4. **Upon the issue of an Order:** (a) No person employed in any essential service to which the order relates, shall go or remain on strike; (b) any strike declared or commenced, whether before or after the issue of the order, by persons employed in any such service shall be illegal.
5. **Penalty for illegal strikes:** Any person who commences a strike which is illegal under this Act or goes or remains on, or otherwise takes part in, any such strike shall be punishable by imprisonment for a term, which may extend to six months, by a fine (which may extend to two-hundred rupees) or both.
6. **Penalty for instigation, etc:** Any person who instigates, or incites other persons to take part in, or otherwise acts in furtherance of a strike (which is illegal under this Act) shall be punishable by imprisonment for a term which may extend to one year, a fine which may extend to one thousand rupees, or both.

7. **Penalty for giving financial aid to illegal strikes:** Any person who knowingly expends or supplies any money in furtherance or support of a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one year, a fine which may extend to one thousand rupees, or both.
8. **Power to arrest without warrant:** Power to arrest without warrant. Notwithstanding anything contained in the Code of Criminal Procedure of 1898 (5 of 1898), any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.
9. **Act to override other laws:** The provisions of this act and of any order issued thereunder, shall have effect notwithstanding anything inconsistent there with. 68 contained in the Industrial Disputes Act of 1947 (14 of 1947), or in any other law for the time being in force.

What are Essential Services?

Any service with respect to which the Parliament has power to make laws or the government feels that its discontinuation would affect the maintenance of supplies and services necessary for sustaining life is considered an essential service.

Which Services fall under this Category?

Services related to public conservancy, sanitation, water supply, hospitals or related with the defence of the country are considered essential. Any establishment dealing with production, supply or distribution of petroleum, coal, power, steel and fertilizers also falls under the essential services category. Apart from this, any service in connection with banking can be subject to ESMA. Communication and transport services and any government undertaking related to the purchase and distribution of food grains are also subject to this act. The employees can't even refuse to work overtime if their work is considered necessary for the maintenance of any of the essential services.

Instances when ESMA was invoked

Since its birth, ESMA has been invoked many times by the State governments, as well as Central government in India.

Some of the notable ones are the Delhi hospital strike incident in 2005 and 2007, the All India airport strike by AAI employees in 2008, the Kerala State Government employees strike, the ESMA Against Truckers Strike by many states in 2009 and the ESMA against Oil Companies' employees, which highly affected oil and gas supplies all over the country (9th Jan 2009).

Many top officials have also been suspended under this Act.

The term is extremely comprehensive and includes not only services that are obviously such (posts and telegraphs, railways, airlines, ports, etc.) but also any other service connected with matters with respect to which in its opinion would prejudicially affect the maintenance of any public utility service, public safety or the maintenance of supplies and services necessary for the life of the community or for avoiding grave hardship to it.

ESMA overrides all other laws in case of conflict.

A mere participation in an illegal strike would make an employee liable to dismissal, new penalties have been set connected with illegal strikes (and illegal lockouts, layoff), police officers have been given power to arrest without warrant anyone reasonably suspected of an offence under the Act; and any metropolitan magistrate or any judicial magistrate may summarily try all offences under the Act.

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The First Schedule of the IDA gives the appropriate Government the power to declare any industry a public utility and there by put limitations on the right to strike and lockout. ESMA gives the power to prohibit strikes, lockouts, and lay-offs outright.

ESMA places the power to prohibit strike/lock out in the hands of the Central Government whereas in the IDA the power to declare an industry a public utility was shared with the State Governments. In this respect, power at the centre is increased.

It is but with regard to strikes and lockouts it is becoming more of a Central subject.



Case Study

Tamil Nadu Government Staff Strike

The unprecedented action of the Tamil Nadu Government terminating the service of all employees who had resorted to strike for their demands was challenged before the High Court of Madras by filing of writ petitions under Articles 226 and 227 of the Constitution. The learned single judge by an interim order *inter alia* directed the State Government that suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further orders and such employees be directed to resume duty. The order was challenged by the State Government by filing of writ appeals on behalf of the government employees challenging the validity of the Tamil Nadu Essential Services Maintenance Act, 2002 and also the Tamil Nadu Ordinance No. 3 of 2003. The Division Bench of the Madras High Court set aside the interim order and arrived at the conclusion that without exhausting the alternative remedy of approaching the administrative tribunal, writ petitions were not maintainable. It was pointed out to the Court that the total detentions were 2211, of which 74 were women and only 65 men; seven female personnel had so far been freed on bail, which reveals the pathetic conditions of the arrestees. The asserters were mainly clerks and subordinate staff.

The Court, therefore, directed that those who were under arrest and lodged in jails be released on bail. That order was challenged by filing these appeals. For the same relief, writ petitions under Article 32 were also filed. Under Article 226 of the Constitution, the High Court is empowered to exercise its extraordinary situation having no parallel. It is equally true that extraordinary powers are required to be sparingly used. The facts of the present case reveal that this was a most extraordinary case, which called for the interference by the High Court, as the State Government had dismissed about 200,000 employees for going on strike. It is true that in *L Chandra Kumar vs. Union of India and Others* (1997) 3 SCC 261, this Court had held that it will not be open to the employees to directly approach the High Court even where the question of views of the statutory legislation is challenged. The question which was decided by this court when it was sought to be contended that once the tribunals are established under Article 323A or Article 323B, the jurisdiction of the High Court would be excluded. Negating the said contention this court made it clear that jurisdiction conferred upon the High Court under Article 226 of the Constitution is a part of the inviolable basic structure of the Constitution and it cannot be said that such tribunals are an effective substitute to the High Courts in discharging powers of judicial review. It is also an established principle that where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extraordinary jurisdiction under Article 226 and that has been reiterated by holding that the litigants must first approach the tribunals, which act like courts of first instance in respect of the areas of law for which they have been constituted and therefore, it will not be open to the litigants to the directly approach the High Court even where the question

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of views of the statutory legislation challenged. However in a case like this, if thousands of employees are directed to approach the administrative tribunal the tribunal would not be in a position to render justice to the cause. Hence, as stated earlier because of the very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petition on the ground of alternative remedy provided under the statute. Now coming to the question of the right to strike whether fundamental statutory of equitable/moral right, in our view no such right exists with the government employees.

- (A) There is no Fundamental Right to go on strike. Law on this subject is well settled and it has been repeatedly held by this court that the employees have no Fundamental Right to resort to strike. In *Kameshwar Prasad and Other vs. State of Bihar* and Another (1962) Suppl. 3 SCR 369, this Court held that the rule in so far as it prohibited strikes was valid since there is no fundamental right to resort to strike. In *Radhy Shyam Sharma vs. The Post Master General, Central Circle, Nagpur* (1964) 7 SCR 403, the employees of the Post and Telegraph department of the Government went on strike from the midnight of 11th July 1960 throughout India and the petitioner was on duty that day. He went on imposing upon him. That was challenged before this court. In that contest, it was contended that Sections 3,4 and 5 of the Essential Services Maintenance Fundamental Rights guaranteed by Clauses (a) and of (b) of Article 19 (1) Constitution. The Court considered the ordinance and held that Sections 3, 4, and 5 of the said ordinance did not violate the fundamental right enshrined in Article 19(1) and (b) of the Constitution. The court further held that a perusal of Article 19(1) (a) shows that there is no fundamental right to strike and all that the ordinance provided was with respect to any illegal strike. For this purpose the Court relied upon the earlier decision in *All India bank Employees' Association vs. National Industrial Tribunal and Others* (1962) 3 SCR 269, wherein the Court specifically held that even very liberal interpretation of sub-clause (c) of clause (1) Article 19 cannot lead to the conclusion that trade unions have guaranteed right to an effective collective bargaining or to strike either as part of collective bargaining or otherwise. In *Ex-Capt. Harish Uppal vs. Union of India and Another* (2003) 2 SCC 45, the Court held that lawyers have no right to go on strike or give a boycott and even they cannot go on token strike. The Court specifically observed that for just or unjust cause, strike cannot be justified in the present day situation. A strike as a weapon, does more harm than justice. The sufferer is society - the public at large. In *Communist Party of India (M) vs. Bharat Kumar and other* (1991) 1 SCC 201, a three judge bench of this court approved the full bench decision of the Kerala High Court by holding thus:

There cannot be any doubt that the Fundamental Rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or concluded or enforce a 'bandh' which interferes with the exercise of the fundamental freedoms of other citizens in additions to causing national loss in many ways. We may also add that the reasoning given by the High Court particularly those in paragraphs 12,13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement. The relevant paragraph 17 of the Kerala High Court judgment reads as under:

17. Political party or organization can claim that it is entitled to paralyze the industry and commerce in the entire State or Nation and is entitled to prevent the citizens not in sympathy with its viewpoints, from exercising their Fundamental Rights or from performing their duties for their own benefit or for the benefit of the State or the

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nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a Fundamental Right by a political party to those comprising it.

- (B) There is no legal/statutory right to go on strike: There is no statutory provision empowering employees to go on strike.

Further there is prohibition to go on strike under the Tamil Nadu Government Servants' Conduct Rules, 1973 (hereinafter referred to as the 'conduct rules') Rule 22 provides that no Government servant shall engage himself in strike or in incitements thereto or in similar activities'. The explanation to the said provision explains the term 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the government or any demonstrative fast usually called 'hunger strike' for similar purposes. Rule 22-A provides that 'no Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government office or inside any office premises (a) during office hours or any working day, and (b) outside office hours or on holidays, save with the prior permission of the head of the department or head of office as the case may be'.

- (C) There is no moral or equal rights, government employees cannot claim they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare state, they have to resort to the machinery provide under different statutory provisions for redressal of their grievances. Strike, as a weapon is mostly misused and results in chaos and total maladministration. Strike affects society as a whole and particularly when two lakh employees go on strike en masse, the entire administration comes to a grinding halt. In the case of strike by a teacher, the entire educational system suffers; many students are prevented from appearing for exams, which ultimately affects their whole career. In case of strike by employees of transport services, entire movement of the society comes to a standstill; business is adversely affected and a number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike.

Further, Mr. K.K. Venugopal, learned senior counsel appearing for the State of Tamil Nadu, also submitted that there are about 12 lakh Government employees in the State. Out of the total income from direct tax, approximately 90% of the amount is spent on the salary of the employees. Therefore, he rightly submits that in a society where there is large-scale unemployment and a number of qualified persons are eagerly waiting for employment in government departments or in public sector undertakings, strike cannot be justified on any equitable ground. We agree with the said submission. In the prevailing situation, apart from being conscious of rights, we have to be fully aware of our duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees do some more work honestly, diligently and efficiently, such gestures would not only be appreciated by the authority but also by people at large. The reason being in a democracy even though they are government employees, they are a part and parcel of the governing body and owe duty to the society. We also agree that misconduct by government employees is required to be dealt with the accordance to law. However, considering the gravity of the situation and the fact that on occasion, even if employees are not prepared to agree with what is contended by some leaders who encourage strikes, they are forced to go on strikes for reasons beyond their control. Therefore, even though the provisions of the Act and Rules are to be enforced, they are to

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be enforced after taking into consideration the situation and the capacity of the employees to resist. On occasion, there is a tendency or compulsion to blindly follow others. In this view of the matter, the employees who went on strike may be reinstated in service. Finally it is made clear that employees who are reinstated in service would take care in the future, in maintaining discipline as there is no question of having any fundamental, legal or equitable right to go on strike. The employees have to adopt alternative methods for redressal of their grievances. For those employees who are not reinstated in service on the ground that FIRs are lodged against them or after holding any departmental enquiry penalty is imposed, it would be open to them to challenge the same before the administrative tribunal and the tribunal would pass appropriate order including interim order within a period of two weeks from the date of filing such application before it. It is unfortunate that the concerned authorities are not making the administrative tribunals under the Administrative Tribunal Act, 1985, functional and effective by appointing men of caliber. It is for the High Court to see that if the administrative tribunals are not functioning, justice should not be denied to the affected persons. In case, the administrative tribunal is not functioning, it would be open to the employees to approach the High Court. Lastly, we make it clear that we have not at all dealt with the considered constitutional validity of the Tamil Nadu Essential services Maintenance Act, 2002 and the Tamil Nadu Ordinance No. 3 of 2003 or interpretation of any of the provisions thereof, as the State Government has gracefully agreed to reinstate most of the employees who had gone on strike. For this we appreciate the efforts made and the reasonable stand taken by the learned counsel for the parties. Further we have not dealt with the grievances of the employees against various orders issued by the State Government affective to their service benefits. We hope that the government would try to consider the same appropriately.

7.8 Grievance Handling

In employment relationships both employer and employee have mutual expectations. When an employee's expectations are not fulfilled he will have a grouse against the employer because of the disagreement or dissatisfaction it causes. Similarly when employer's expectations about an employee are not fulfilled, the employer will have a grouse against such employee. It may be a problem of indiscipline.

An aggrieved employee is a potent source of indiscipline and bad working. According to Julius, a grievance is "any discontent or dissatisfaction, whether expressed or not, whether valid or not, arising out of anything connected with the company which an employee thinks, believes or even feels to be unfair, unjust or inequitable."

7.8.1 Meaning

The International Labour Organisation (ILO) defines a grievance as a complaint of one or more workers with respect to wages and allowances, conditions of work and interpretation of service conditions covering such areas as overtime, leave, transfer, promotion, seniority, job assignment and termination of service. The National Commission on Labour observed that "complaints affecting one or more individual workers in respect of their wage payments, overtime, leave transfer, promotion, seniority, work assignment and discharges would constitute grievances".

It is important to make a distinction between individual grievances and group grievances. If the issue involved relate to one or a few individual employees, it needs to be handled through a grievance procedure. But when general issues with policy implications and wider interest are involved they become the subject matter for collective bargaining. Ideally in individual grievance redressal, trade union should have less or no role while in grievances of a collective nature and wider ramifications, trade union need to be involved.

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For our purpose, in this lesson grievance has a narrow perspective; it is concerned with the interpretation of a contract or a award as applied to an individual or a few employees.

Dissatisfaction, Complaint and Grievance

According to Pigors and Myers, and three terms 'dissatisfaction', 'complaint', and 'grievance' indicate the various forms and stages of employee dissatisfaction. Dissatisfaction is "anything that disturbs an employee, whether or not he expresses his unrest in words." A complaint is a 'spoken or written dissatisfaction, brought to the attention of the supervisor and the shop steward'. A grievance is simply a "complaint that has been ignored, overridden, or dismissed without due consideration".

A grievance in the context of a business organisation is always expressed either verbally or in writing. If the discontent remains unexpressed, it does not constitute grievance for the reason that the management cannot take note of such subliminal process, which are not ventilated. This does not mean that the management should not be concerned at all with unexpressed discontent. Nevertheless, the fact remains that in an organizational setting such unexpressed grievance are not capable of being handled through the grievance procedure. Thus the grievance is more formal in character than a complaint. While a complaint can be either oral or written, a grievance is always in writing. Un-redressed, piled-up individual grievances may often assume the form of industrial disputes, thereby attracting the provisions of the Industrial Disputes Act, 1947 or leading to a snap industrial action such as work stoppages, violence or disorderly behavior.

Why Grievances?

Grievances may occur for a variety of reasons:

1. **Economic:** Wage fixation, wage computation, overtime, bonus, etc. Employees feel they are getting less than they ought to get.
2. **Work Environment:** Poor working conditions, defective equipment and machinery, tools, materials, etc.
3. **Supervision:** Disposition of the boss towards the employee. Perceived notions of favoritism, nepotism, bias etc.
4. **Work Group:** Strained relations or incompatibility with peers. Feeling of neglect and victimization.
5. **Work Organisation:** Rigid and unfair rules too much or too less work responsibility lack of recognition, etc.



Caution S. Chandra's study on grievance procedure and practices revealed the following as some of the main causes of employee grievances:

1. Amenities
2. Compensation
3. Conditions of work
4. Continuity of service
5. Disciplinary action
6. Fines

7. Leave
8. Medical benefits
9. Nature of job
10. Promotions
11. Payments
12. Safety environment
13. Superannuation
14. Transfers
15. Suppression
16. Victimization

The list is indicative and not comprehensive.

The apparent cause or sources of grievances may not always be the real ones. There is need for deeper analysis of the policies, procedures, practices, structures and personality dynamics in the organisation to arrive at the real causes of grievances.

Grievances stem from management policies and practices, particularly when they lack consistency, uniformity, fair play and the desired level of flexibility. Grievances also may arise because of intra-personal problems of individual employees and union practices aimed at reinforcing and consolidating their bargaining strength.

Features

If we analyse this definition, some noticeable features emerge clearly:

1. A grievance refers to any form of discontent or dissatisfaction with any aspect of the organisation.
2. The dissatisfaction must arise out of employment and not due to personal or family problems.
3. The discontent can arise out of real or imaginary reasons. When the employee feels that injustice has been done to him, he has a grievance. The reasons for such a feeling may be valid or invalid, legitimate or irrational, justifiable or ridiculous.
4. The discontent may be voiced or unvoiced. But it must find expression in some form. However, discontent *per se* is not a grievance. Initially, the employee may complain orally or in writing. If this is not looked into promptly, the employee feels a sense of lack of justice. Now the discontent grows and takes the shape of a grievance.
5. Broadly speaking, thus, a grievance is traceable to perceived non-fulfillment of one's expectations from the organisation.

Forms of Grievance

A grievance may take any one of the following forms: (a) factual, (b) imaginary, (c) disguised.

1. **Factual:** A factual grievance arises when legitimate needs of employees remain unfulfilled, e.g., wage-hike has been agreed but not implemented citing various reasons.
2. **Imaginary:** When an employee's dissatisfaction is not because of any valid reason but because of a wrong perception, wrong attitude or wrong information he has. Such a

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situation may create an imaginary grievance. Though management is not at fault in such instances, still it has to clear the 'fog' immediately.

3. **Disguised:** An employee may have dissatisfaction for reasons that are unknown to himself. If he/she is under pressure from family, friends, relatives, neighbours, he/she may reach the work spot with a heavy heart. If a new recruit gets a new table and almirah this may become an eyesore to other employees who have not been treated likewise previously.

Causes of Grievance

Grievances may occur for a number of reasons:

1. **Economic:** Wage fixation, overtime, bonus, wage revision, etc. Employees may feel that they are paid less when compared to others.
2. **Work Environment:** Poor physical conditions of workplace, tight production norms, defective tools and equipment, poor quality of materials, unfair rules, lack of recognition, etc.
3. **Supervision:** Relates to the attitudes of the supervisor towards the employee such as perceived notions of bias, favouritism, nepotism, caste affiliations, regional feelings, etc.
4. **Work Group:** Employee is unable to adjust with his colleagues; suffers from feelings of neglect, victimisation and becomes an object of ridicule and humiliation, etc.
5. **Miscellaneous:** These include issues relating to certain violations in respect of promotions, safety methods, transfer, disciplinary rules, fines, granting leave, medical facilities, etc.



Caution

| | Classification | Causes |
|----|---------------------------------------|--|
| 1. | Wage grievances | <ul style="list-style-type: none"> • demand for individual wage adjustment • complaint about job classification • complaint about incentive system • miscellaneous |
| 2. | Supervision | <ul style="list-style-type: none"> • complaint against discipline/administration • complaint against behaviour of supervisor • objection to the method of supervision |
| 3. | Working conditions | <ul style="list-style-type: none"> • safety and health • violation of rules and regulations • miscellaneous |
| 4. | Seniority and promotion and transfers | <ul style="list-style-type: none"> • loss of seniority • calculation/interpretation of seniority • promotion - denial or delay • transfer or change of shifts |
| 5. | Discipline | <ul style="list-style-type: none"> • discharge/dismissal/layoffs • alcoholism, absenteeism and accidents • harshness of punishment and penalty |
| 6. | Collective bargaining | <ul style="list-style-type: none"> • violation of contract/award/agreement • interpretation of contract/award/agreement • settlement of grievances |
| 7. | Union-management relations | <ul style="list-style-type: none"> • recognition of union • harassment of union bearers • soldiering / go-slow tactics |

According to Nair and Nair the following cases may be there behind the employees' grievances:

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1. **Organisational aspects:** Organisational structure, policy plans and procedure.
2. **Informational aspects:** Ignorance about company rules, regulations, promotion policies, career prospects, transferability, etc.
3. **Human aspects:** A variety of reasons, the major ones being poor mental health and attention. Jackson (p.5) traces the causes of grievances as arising from the following issues:
 - (a) Working environment, e.g., light, space, heat
 - (b) Use of equipment, e.g., tools that have not been properly maintained
 - (c) Supervisory practices, e.g., workload allocation
 - (d) Personality clashes and other inter-employee disputes (work-related or otherwise)
 - (e) Behaviour exhibited by managers or other employees, e.g., allocation of 'perks' such as Sunday overtime working and harassment, victimisation and bullying incidents
 - (f) Refused requests, e.g., annual leave, shift changes
 - (g) Problems with pay, e.g., late bonus, payments, adjustments to overtime pay
 - (h) Perceived inequalities in treatment: e.g. claims for equal pay, appeals against performance-related pay awards
 - (i) Organisational change, e.g., the implementation of revised company policies or new working practices.

The authors stress that all these causes should be investigated to achieve the following twin objectives:

1. Redress the grievances of the complainant
2. Initiate remedial steps to prevent recurrence of similar grievances in the future

Effect of Grievance

Grievances can have several effects which are essentially adverse and counter productive to organizational purpose.

The adverse effects include:

1. Loss of interest in work and consequent lack of morale and commitment
2. Poor quality of production
3. Low productivity
4. Increase in wastage and costs
5. Increase in employee turnover
6. Increase in absenteeism
7. Increase in the incidence of accidents
8. Indiscipline
9. Unrest

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Grievances, if they are not identified and redressed, may affect adversely the workers, managers and the organisation. The effects include:

1. ***On production:***
 - (a) Low quality of production
 - (b) Low quality of production and productivity
 - (c) Increase in the wastage of material, spoilage/leakage of machinery
 - (d) Increase in the cost of production per unit.
2. ***On employees:***
 - (a) Increases the rate of absenteeism and turnover
 - (b) Reduces the level of commitment, sincerity and punctuality
 - (c) Increases the incidence of accidents
 - (d) Reduces the level of employee morale.
3. ***On managers:***
 - (a) Strains the superior-subordinate relations
 - (b) Increases the degree of supervision, control and follow up
 - (c) Increases in disciplinary action cases
 - (d) Increase in unrest and, thereby, machinery to maintain industrial peace.

Breach also refers to several reasons why there should be a formal procedure to handle grievances:

1. All employee complaints and grievances are in actual practice not settled satisfactorily by the first level supervisor, due to lack of necessary human relations skills or authority to act.
2. It serves as a medium of upward communication, whereby the management becomes aware of employee frustrations, problems and expectations.
3. It operates like a pressure-release valve on a steam boiler, providing the employees with an outlet to vent their frustrations, discontents and gripes.
4. It also reduces the likelihood of arbitrary action by supervision, since the supervisors know that the employees are able to protest such behaviour and make their protests heard by higher manager.
5. The very fact that employees have a right to be heard-and actually are heard-helps to improve morale.

7.8.2 Handling Grievances

The following guidelines may help a supervisor while dealing with grievances. He need not follow all these steps in every case. It is sufficient to keep these views in mind while handling grievances (W. Baer, 1970).

1. Treat each case as important and get the grievance in writing.
2. Talk to the employee directly. Encourage him to speak the truth. Give him a patient hearing.
3. Discuss in a private place. Ensure confidentiality, if necessary.

4. Handle each case within a time-frame.
5. Examine company provisions in each case. Identify violations, if any. Do not hold back the remedy if the company is wrong. Inform your superior about all grievances.
6. Get all relevant facts about the grievance. Examine the personal record of the aggrieved worker. See whether any witnesses are available. Visit the work area. The idea is to find where things have gone wrong and who is at fault.
7. Gather information from the union representative, what he has to say, what he wants, etc. Give short replies, uncovering the truth as well as provisions. Treat him properly.
8. Control your emotions, your remarks and behaviour.
9. Maintain proper records and follow up the action taken in each case.

Glueck refers to the following measures to reduce grievances:

1. Reduce the causes of grievances such as bad working conditions or adopt a less employer-oriented supervisory style.
2. Educate managers on contract provisions and effective human relations oriented grievance.
3. Quickly and efficiently process all grievances.
4. Encourage supervisors to consult personnel and other supervisors before processing grievances to get the best advice and improve effectiveness in the grievance process.

Objectives of a Grievance-Handling Procedure

Jackson (2000, 11) lays down the objectives of a grievance-handling procedure as follows:

1. To enable the employee to air his/her grievance
2. To clarify the nature of the grievance
3. To investigate the reasons for dissatisfaction
4. To obtain, where possible, a speedy resolution to the problem
5. To take appropriate actions and ensure that promises are kept
6. To inform the employee of his or her right to take the grievance to the next stage of the procedure, in the event of an unsuccessful resolution.

Legal Framework: Sec. 9C of Industrial Disputes Act, 1947 (inserted in 1982), provides for the setting up of Grievance Settlement Authority. In every establishment where 50 or more workmen are employed, for settlement of industrial dispute connected with an individual workman. In terms of the said section, where an industrial dispute connected with an individual workman arises, a workman or any trade union of workmen of which such workman is a member refer the dispute to the Grievance settlement Authority provided for by the employer. The Grievance Settlement Authority provided for by the employer. The Grievance Settlement Authority shall follow such procedure and complete its proceedings within such period as may be prescribed. The section also provides for referring the dispute to a Conciliation Board or a Labour Court or an Industrial Tribunal, or to an Arbitrator, if the decision of the grievance settlement authority is not acceptable to any of the parties to the dispute. It is, however, important to note that this section has not been enforced so far.

Grievance Interview: Grievance resolution may quite often involve a personal interview with the aggrieved employee. Grievance interview serves several purposes as, for instance, bringing the concealed feelings to the surface, narrowing down the issues and making the problem more explicit and clear. It also helps in getting confirmation from the employee that the interpretation

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placed by the supervisor on the true nature of grievance is correct and helps him in dealing with the grievance application in the right perspective.

Typically, grievance interview is informal unstructured it is employee driven and is situation specific. It is non-directive and freewheeling in so far as the employee has full freedom to say whatever he feels about the real or perceived injustice done to him, while the supervisor plays the role of an "active listener". It is important to see that the interview setting ensures absolute privacy and is free from interruption.

Methodology of, and Pitfalls in, Grievance-Handling

1. Vagueness should be avoided while handling grievances. The problem has to be defined properly and in precise terms, as otherwise, the management may have to solve the same problem over and over again with no finality.
2. Careful, attentive listening is an essential feature of grievance handling. More specifically, where a grievance interview is held, the supervisor should be able to listen projectively i.e. he should be able to grasp (a) the direction in which the grievant is proceeding, (b) what is deep down in his mind, (c) what may probably come next, (d) in what manner tone and tenor the grievant is likely to express it as the interview progresses. It is essential to remember that grievance interview is an unstructured interview and the interviewer should not express his opinion on any aspect of the grievance before the grievant has completed his part of the job. He should strictly adhere to the principle, 'withhold evaluation until comprehension is complete'. The interviewer should constantly display empathy towards the grievant throughout the interview process. A great deal of skill in interviewing and counseling and a proven ability to hold conferences and discussions are called for.
3. Facts should be separated from opinions and impressions. Similarly, the person should also be separated from the problems, which means that those in charge of handling grievance should not have any pre-conceived notions about the grievance on the basis of who the grievance is. This calls for total objectivity on the part of the supervisor. The facts should be carefully analysed and evaluated before arriving at some decision. There can be more than one possible solution.
4. The management representative should be aware that the decision taken on a seemingly simple grievance of an individual employee might have organisation-wide repercussions and set a precedent, which cannot be departed from later. A wrong decision may have to be lived with in other cases also in future. Sometimes the decisions may lead to serious conflicts of dysfunctional nature among individuals groups and departments. There possibilities call for a holistic perspective on the managers while handling individual grievances.
5. An answer should be communicated to the employee within the prescribed time limit, whether it is favourable or adverse to him. People dislike procrastination, and have no respect for supervisors and managers who are incapable of taking a stand-be it for or against.
6. There should be a consistent policy as to who communicate the grievance redressal decisions to the employee. The same functionary should communicate all the decisions, good or bad, to the grievants.
7. The object of grievance procedure is to resolve disagreement between the employee and organisation. Discussion and conference naturally form the important elements of the process.

8. Follow-up is necessary to determine whether the grievance, as perceived by the employee, has been resolved to the satisfaction of the aggrieved. If it reveals that the grievance was handled unsatisfactorily, then the management may have to review and redefine the problem and find a solution a fresh.

7.8.3 Recommendations of the National Commission on Labour

The First National Commission on Labour was constituted on 24.12.1966 which submitted its report in August, 1969 after detailed examination of all aspects of labour problems, both in the organised and unorganised sector. The need for setting up of the Second National Commission on Labour had been felt for the following reasons:

1. During the period of three decades since setting up of the First National Commission on Labour, there has been an increase in number of labour force etc. because of the pace of industrialisation and urbanisation.
2. After the implementation of new economic policy in 1991, changes have taken place in the economic environment of the country which have in turn brought about radical changes in the domestic industrial climate and labour market.
3. Changes have occurred at the work places, changes in the industry and character of employment, changes in hours of work and overall change in the scenario of industrial relations. These changes have resulted in certain uncertainties in the labour market requiring a new look to the labour laws.

In the light of the above position, the government has decided on 24.12.1998 to set up the Second National Commission on Labour so that a high powered body could dispassionately look into these aspects and suggest appropriate changes in the labour legislation/labour policy.

The National Commission on Labour is a high powered body comprising of a Chairman and 02 full time members. In addition, there are 07 part-time members representing government, industry and workers. The Commission is required to give its final report in 24 months from the date of its constitution.

The National Commission on Labour has made certain important and path-breaking recommendations in the context of the review of labour laws.

1. The Commission recommends a specific provision in the Trade Union Act to enable workers in the unorganised sector to form trade unions and register them. It has recommended a waiver of the condition of employer-employee relationship and also of the 10 per cent membership in the establishment. This is a path-breaking recommendation that can pave the way for bringing into the fold of the labour movement 92 per cent of the workers in the unorganised sector.
2. The Commission has recommended using the check-off system to determine the negotiating agent in an establishment. Moreover, by fixing 66 per cent membership for entitlement as negotiating agent, the panel has not favoured the principle of simple majority but has opted for two-thirds majority. If the condition is not satisfied, a composite negotiating agent from among representatives of unions with support of more than 25 per cent has been recommended.
3. The Commission has recommended a three-tier system of Lok Adalats, Labour Courts and the Labour Relation Commission. While the Lok Adalats and Labour Courts deal with individual grievances and complaints, the Labour Relations Commission has been empowered to deal with both individual problems and those of collective bargaining a settlement cannot be reached through bilateral negotiations.

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4. The Commission has recommended that Labour Courts should have final authority in issues pertaining to labour and jurisdiction of civil courts in this area be banned. By imposing on the unions the condition of 10 per cent membership to represent labour in various fora, the Commission has eliminated the role of very small unions parading as genuine representatives of labour. The idea of establishing an All-India Labour Judicial Service is welcome.
5. The Commission has guaranteed 8.33 per cent bonus for all employees when it states that every employer should pay each worker one month's bonus before an appropriate festival. Any demand in excess of this up to a maximum of 20 per cent of the wages will be subject to negotiation.
6. The Commission has recommended that the present system of two wage ceilings for reckoning entitlement and for calculation of bonus should be suitably enhanced to ₹ 7,500 and ₹ 3,500 for entitlement and calculation respectively. It has presented the minimum and maximum limits for bonus and permitted freedom to negotiate.
7. The Commission's categorical view that no exemption from labour laws should be allowed to export promotion zones or special economic zones is further evidence of its sincerity in implementing the laws.
8. The Commission has recommended that the Government may lay down a list of such highly paid jobs in the high-wage islands, such as those of air-pilots, who may be declared as non-workers, or alternatively fix a cut-off limit of remuneration, which is substantially high (such as ₹ 25,000 per month), beyond which employees will not be treated as ordinary workers. Fixing a cut-off of ₹ 25,000 can open a Pandora's box because a very large number of supervisory and managerial personnel are drawing less than ₹ 25,000 per month. All these categories will put pressure on the Government to be included in the category of workers to get the benefit of labour laws.
9. However, certain recommendations are vague and require further debate and deliberation. It would be desirable to take up certain issues and clarify them.

The National Commission on Labour has given a statutory backing for the formulation of an effective grievance procedure which should be simple, flexible, less cumbersome, and more or less on the lines of the present Model Grievance Procedure. It should be time bound and have a limited number of steps, say approach to the supervisor, then to the departmental head, and thereafter representatives. It should be made applicable to only those units which employ more than 100 workers.

The Industrial Disputes (Amendment) Act, 1982 has provided for a reference of certain individual disputes to grievance of certain individual disputes to grievance settlement authorities. Section 9C of the Act stipulates that in every establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the employer shall set up a time-bound grievance redressal procedure. However this particular provision has not come into force.

A grievance procedure, whether formal or informal, statutory or voluntary, has to ensure that it gives a sense of satisfaction to the individual worker: a reasonable exercise of authority of the manager and an opportunity of participation to the unions. The introduction of unions in the grievance procedure is necessary because ultimately it is the union that is answerable to its members.

A basic ingredient of the procedure should be that the total number of steps involved should be limited, not more than four are generally envisaged even in the largest units. A grievance procedure should normally provide for three steps, namely. (a) approach appeal to the immediate supervisor, (b) appeal to the department head/manager, (c) appeal to the bipartite grievance

committee representing management and the recognized union. The constitution of the committee should have a provision that in case no unanimous decision is possible, the unsettled grievance may be referred to an arbitrator.



Did u know? Key Features of a Good Grievance-Handling Procedure

Torrington and Hall (p.539) refer to four key features of a grievance-handling procedure:

1. **Fairness:** Fairness is needed not only to be just but also to keep the procedure viable, for if employees develop the belief that the procedure is only a sham, then its value will be lost, and other means sought to deal with the grievances. This also involves following the principles of natural justice, as in the case of a disciplinary procedure.
2. **Facilities for representation:** Representation, e.g. by a shop steward, can be of help to the individual employee who lacks the confidence or experience to take on the management single-handedly. However, there is also the risk that the presence of the representative produces a defensive management attitude, affected by a number of other issues on which the manager and shop steward may be at loggerheads.
3. **Procedural steps:** Steps should be limited to three. There is no value in having more just because there are more levels in the management hierarchy. This will only lengthen the time taken to deal with matters and will soon bring the procedure into disrepute.
4. **Promptness:** Promptness is needed to avoid the bitterness and frustration that can come from delay. When an employee 'goes into procedure,' it is like pulling the communication cord in the train. The action is not taken lightly and it is in anticipation of a swift resolution. Furthermore, the manager whose decision is being questioned will have a difficult time until the matter is settled.

Discovery of Grievances

Knowledge about grievance is important in handling them. Upward channels of communication provide the dependable sources for discovery of grievances. One can also come to know about grievances through gossip and grapevine or through unions. It is always preferable to have first hand knowledge based on observation and through direct communication from the employee concerned. Some of the important ways of discovering grievances are briefly outlined here:

1. **Direct observation:** A good manager can usually track the behaviours of people working under him. If a particular employee is not getting along with people, spoiling materials due to carelessness or recklessness, showing indifference to commands, reporting late for work or is remaining absent - the signals are fairly obvious. Since the supervisor is close to the scene of action, he can always spot such unusual behaviours and report promptly.
2. **Grievance procedure:** A systematic grievance procedure is the best means to highlight employee dissatisfaction at various levels. Management, to this end, must encourage employees to use it whenever they have anything to say. In the absence of such a procedure, grievances pile up and erupt in violent forms at a future date. By that time things might have taken an ugly shape, impairing cordial relations between labour and management. If management fails to induce employees to express their grievances, unions will take over and emerge as powerful bargaining representatives.
3. **Gripe boxes:** A gripe box may be kept at prominent locations in the factory for lodging anonymous complaints pertaining to any aspect relating to work. Since the complainant need not reveal his identity, he can express his feelings of injustice or discontent frankly and without any fear of victimisation.

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4. **Open door policy:** This is a kind of walk-in-meeting with the manager when the employee can express his feelings openly about any work-related grievance. The manager can cross-check the details of the complaint through various means at his disposal.
5. **Exit interview:** Employees usually leave their current jobs due to dissatisfaction or better prospects outside. If the manager tries sincerely through an exit interview, he might be able to find out the real reasons why 'X' is leaving the organisation. To elicit valuable information, the manager must encourage the employees to give a correct picture so as to rectify the mistakes promptly. If the employee is not providing fearless answers, he may be given a questionnaire to fill up and post the same after getting all his dues cleared from the organisation where he is currently employed.
6. **Other channels:** Group meetings, periodical interviews with employees, collective bargaining sessions are some of the other channels through which one can have information about employee discontent and dissatisfaction before they become grievances or disputes. Each channel referred to above serves the purpose in a different way. Using more than one channel is desirable because it may not be possible to get information about all types of dissatisfaction from one channel. For example the type of information one can get through a grievance procedure would be perceptibly different from what one can get from a gripe box or an exit interview.

Essential Prerequisites of a Grievance Procedure

Every organisation should have a systematic grievance procedure in order to redress the grievances effectively. As explained above, unattended grievances may culminate in the form of violent conflicts later on. The grievance procedure, to be sound and effective, should possess certain prerequisites:

1. **Conformity with statutory provisions:** Due consideration must be given to the prevailing legislation while designing the grievance-handling procedure.
2. **Unambiguity:** Every aspect of the grievance-handling procedure should be clear and unambiguous. All employees should know whom to approach first when they have a grievance, whether the complaint should be written or oral, the maximum time in which the redressal is assured, etc. The redressing official should also know the limits within which he can take the required action.
3. **Simplicity:** The grievance handling procedure should be simple and short. If the procedure is complicated it may discourage employees and they may fail to make use of it in a proper manner.
4. **Promptness:** The grievance of the employee should be promptly handled and necessary action must be taken immediately. This is good for both the employee and management, because if the wrong-doer is punished late, it may affect the morale of other employees as well.
5. **Training:** The supervisors and the union representatives should be properly trained in all aspects of grievance-handling beforehand, or else it will complicate the problem.
6. **Follow up:** The Personnel Department should keep track of the effectiveness and the functioning of grievance handling procedure and make necessary changes to improve it from time to time.

Steps in the Grievance Procedure

Notes

1. **Identify grievances:** Employee dissatisfaction or grievance should be identified by the management if they are not expressed. If they are ventilated, management has to promptly acknowledge them.
2. **Define correctly:** The management has to define the problem properly and accurately after it is identified/acknowledged.
3. **Collect data:** Complete information should be collected from all the parties relating to the grievance. Information should be classified as facts, data, opinions, etc.
4. **Prompt redressal:** The grievance should be redressed by implementing the solution.
5. **Implement and follow up:** The Implementation of the solution must be followed up at every stage in order to ensure effective and speedy implementation.

Model Grievance Procedure

The Model Grievance Procedure suggested by the National Commission on Labour involves six successive time-bound steps each leading to the next, in case of dissatisfaction. The aggrieved worker in the first instance will approach the foreman and tells him of his grievances, orally. The foreman has to redress his grievance and if the worker is not satisfied with this redressal, he can approach the supervisor. The supervisor has to provide an answer within 48 hours. In the event of the supervisor not giving an answer or the answer not being acceptable to the worker, the worker goes to the next step. At this stage, the worker (either alone or accompanied by his departmental representative) approaches the Head of the Department who has to give an answer within three days. If the Departmental Head fails to give an answer or if the worker is not satisfied with his answer, the worker may appeal to the Grievance Committee, consisting of the representative of the employer and employees. The recommendations of this Committee should be communicated to the Manager within seven days from the date of the grievance reaching it. Unanimous decisions, if any, of the committee shall be implemented by the management. If there is no unanimity, the views of the members of the committee shall be placed before the manager for his decision. The manager has to take a decision and inform the worker within three days.



| Procedure | Time Frame |
|--|------------------|
| Appeal to CMD | One week |
| ↑ General Manager | 7 days |
| ↑ Grievance Committee (Manager + Union Reps.) | 7 days unanimous |
| ↑ HOD | 3 days |
| ↑ Supervisor | 48 hours |
| Shop-Floor Foreman | |
| ↑ Worker | |

The worker can make an appeal against the manager's decision and such an appeal has to be decided within a week. A union official may accompany the worker to the manager for discussion

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and if no decision is arrived at this stage, both the union and management may refer the grievance to voluntary arbitration within a week of the receipt of the management's decision. The worker in actual practice may not resort to all the above mentioned steps. For example, if the grievance is because of his dismissal or discharge he can resort to the second step directly and he can make an appeal against dismissal or discharge.

7.8.4 Redressal of Grievances (ROG)

Nair and Nair state that in the Indian context, certain guidelines were evolved in formulating grievance-handling procedures in different types of organisations-small, big, unionised, and non-unionised.

According to Nair and Nair, grievance-handling procedures can be broadly classified as 3-step, 4-step or 5-step, The details are tabulated in the following table. One of the prominent features of the procedure suggested by Nair and Nair is the intervention of Grievance Committees in the 5-step procedure, which works in the Indian context. This committee consists of:

1. In unionised context, two nominees each from the management and the union (1 union representative should be from the same department as the aggrieved employee).
2. In a non-unionised set up, two representatives from the management, representative in the Works Secretary/Vice President of the 'Works Committee.'

Table 7.1: Comparison of ROG Procedure

| Steps | 3-Step Procedure | 4-Step Procedure | 5-Step Procedure |
|-------|--|--|--|
| No.1 | Worker with shop Rep. of union vs. Shop Supervisor | Worker with shop Rep. of union vs. Shop Supervisor | Worker with shop Rep. of union vs. Shop Supervisor |
| No.2 | Union Re. of Plant vs. G.M. or Owner | Work Committee vs. Manager | Union Re. of Plant vs. Manager - R.R. |
| No.3 | Arbitration by independent Authority | Local Union Leaders vs. Chief Executive | Grievances Committee vs. Director (Panda) |
| No.4 | | Arbitration | Regional Re. Union vs. Chief Executive |
| No.5 | | | Arbitration |

Source: Nair and Nair

Grievance Management in Indian Industry

At present, there are three legislations dealing with grievances of employees working in industries. The Industrial Employment (Standing Orders) Act, 1946, requires that every establishment employing 100 or more workers should frame standing orders. These should contain, among other things, a provision for redressal of grievances of workers against unfair treatment and wrongful actions by the employer or his agents. The Factories Act, 1948, provides for the appointment of a Welfare Officer in every factory ordinarily employing 500 or more workers. These Welfare officers also look after complaints and grievances of workers. They will look after proper implementation of the existing labour legislation. Besides, individual disputes relating to discharge, dismissal or retrenchment can be taken up for relief under the Industrial Disputes Act, 1947, amended in 1965.

However, the existing labour legislation is not being implemented properly by employers. There is a lack of fairness on their part. Welfare officers have also not been keen on protecting the interests of workers in the organised sector. In certain cases, they are playing a dual role. It

is unfortunate that the public sector, which should set up an example for the private sector, has not been implementing labour laws properly.

In India, a Model Grievance Procedure was adopted by the Indian Labour Conference in its 16th session held in 1958. At present, Indian industries are adopting either the Model Grievance Procedure or procedures formulated by themselves with modifications in the Model Grievance Procedure. In other words, the grievance procedures are mostly voluntary in nature.

Proactive Grievance Redressal

The traditional Grievance Redressal System is mechanically reactive and formal. But Grievances are human problems with lot of emotions and sentiments attached with them. It requires informal, proactive and a human touch. It must give the impression that management cares about the employees and attaches value to them.

A proactive grievance redressal system has been fixed in V.S. and NALCO with a great success. It is based on the principle of "management by walking". A thirsty man goes to the well. That is a common phenomenon. A proactive phenomenon will be if the well goes to the thirsty and quenches his thirst.

In the existing system an aggrieved employee goes to the Management and follows formal procedure for the redressal of his grievances. It is insensitive to human emotions. Very often, grievances get rejected on flimsy grounds. In proactive system the management system goes to the worker, listens to the grievances and, on the following day, answers his grievance. Even if his grievance is not removed, the causes and other details are to be explained in person. This has worked well. Organisations can improvise the system as per their requirements. Improved experiments must go on.

Sincerity of management is the pre-condition. Union leader and shop managers have to play a positive role. It takes time to catch on. Therefore, patience is another requirement. Message must go out that management 'cares' about the employees. Only then, it can serve the purpose.



Task

Prepare a note on Industrial Disputes Act, 1947 and amendments to it.

7.9 Summary

- The co-operation between capital and labour world obviously lead to more production and that naturally helps boost national economy and progress.
- The Industrial Dispute Bill was introduced in Central Legislative Assembly in October, 1946. The Bill was passed in March, 1947 and implemented w.e.f. 1st April, 1947. Since then, it has as many as 34 to 35 major amendments. It has 9 Chapters and 40 sections.
- Smart organisations invariably go for smart grievance-redressal system. If the culture of grievance-redressal is not developed, the employee becomes discontented, dissatisfied and disgruntled. That may not be visible but it does affect performance. Such hidden grievances do more harm than the manifested ones.
- There must be a mechanism to identify grievances, systematically, and reduce the possibility of such grievances emerging again in future.
- Improved types of grievance redressal devices must be explored based on researches in behavioural sciences.

7.10 Keywords

Adjudication: It is compulsory method of resolving conflict/dispute.

Conciliation: A process by which representatives of management and employees and their unions are brought together before a third person with a view to persuade them to arrive at some agreement.

ID Act, 1947: A law for investigation and settlement of industrial disputes and other related matters. ID Bill was introduced in Central Legislative Assembly in October, 1946; passed in March 1947; and implemented w.e.f. 1st April 1947. Since the 35 Amendments done to it. It has 9 chapters and 40 sections.

Industrial Disputes: Any dispute or difference between employees and employees, or between employers and employers, which is connected with the employment, or non-employment, or the terms of employment or with the conditions of work of any person.

Voluntary Arbitration: When conciliation officer or Board of conciliation fails to resolve conflict/dispute, parties can be advised to agree to voluntary arbitration for settling their dispute.

7.11 Self Assessment

Choose the appropriate answer:

1. can also cause a conflict,
 - (i) Layoff
 - (ii) Refusal to accept demand
 - (iii) Retirement of CEO
 - (iv) Both (i) and (ii)
2. Conflict that has not actually happened but may happen is conflict
 - (i) Latent
 - (ii) Manifest
 - (iii) Perceived
 - (iv) None of the above
3. The 3rd party who comes in for conciliation is
 - (i) Conciliation officer
 - (ii) Board of conciliation
 - (iii) Conciliation Committee
 - (iv) (i) or (ii)
4. Settlement arrived at by agreement between management and workers outside conciliation proceeding is only.....
 - (i) Binding on both the employer and his heirs
 - (ii) Binding on only the employer
 - (iii) Binding on the parties of the agreement
 - (iv) Binding on conciliation officer
5. Arbitration and Adjudication simultaneously.
 - (i) Can be used
 - (ii) Cannot be used
 - (iii) May be used
 - (iv) Should be used
6. Which of them is not a compulsory method of resolving conflict?
 - (i) Conciliation
 - (ii) Adjudication
 - (iii) Arbitration
 - (iv) Both (i) and (iii)

7. doesn't come under the purview of central government. Notes
- (i) The Unit Trust of India (ii) The Agricultural Refinance Corporation
(iii) ESI Corporation (iv) Sahara India Group
8. On receipt of an award by labour courts and tribunals it should be published
30 days
- (i) Within 30 days (ii) After 30 days
(iii) On 30th day (iv) Between 30 to 40 days

State whether the following statements are true or false:

9. Perceived conflict is one which people doesn't perceive that conflicting conditions exist in the work-organisation.
10. Latent conflict is one which does not emerge in open.
11. Manifest conflict is one which is not only recognition of conflict, but also expressing it explicitly or openly.
12. Conciliation in Industrial disputes is a process by which representatives of management and employees and their unions are brought together before a third person with a view to persuade them to arrive at some agreement.
13. Both the Central and State Government are empowered under the Industrial Disputes Act, 1947.
14. Strike is used as instrument of financial coercion to compel management to accept their demands.
15. Rigid and unfair behavior of co-workers is due to work group problems.
16. Imaginary grievance is not due to management faults.
17. Exit interview is an important way of solving grievances.

7.12 Review Questions

1. "The Industrial Disputes Act, 1947 has been a significant piece of regulative labour legislation reflecting the nature of government policy in regard to industrial relations, particularly prevention and settlement of industrial disputes". Discuss the statement.
2. Could you determine different authorities for settlement of Industrial Disputes? Are they effective today?
3. Whether the provision for retrenchment/closer under chapter 5B should be removed from the law? Discuss.
4. Discuss the suggestions you will give to improve the effectiveness of Industrial Disputes Act, 1947.
5. Explain strike and lockout. Should the workers be paid for illegal strike? Comment vice-versa.
6. Discuss the ESMA with respect to dispute resolution and industrial harmony. Give relevant views.
7. Give a detailed overview on national commission on labour with reference to industrial relations.

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8. Analyse the procedural role in Grievance handling in dispute resolution and industrial harmony. Explain critically.
9. "There is no fundamental right to go on strike". Comment.
10. Critically analyse and determine the influence of grievance handling procedures.

Answers: Self Assessment

- | | |
|-----------|-----------|
| 1. (iv) | 2. (iii) |
| 3. (iv) | 4. (iii) |
| 5. (ii) | 6. (iv) |
| 7. (iv) | 8. (i) |
| 9. False | 10. True |
| 11. True | 12. True |
| 13. True | 14. False |
| 15. True | 16. True |
| 17. False | |

7.13 Further Readings



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Online links

En.wikipedia.org

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Unit 8: Collective Bargaining

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Objectives

After studying this unit, you will be able to:

- Explain concept and meaning of collective bargaining
- Discuss nature and levels of collective bargaining
- Analyze need and importance of collective bargaining
- Discuss levels and legal framework of collective bargaining

Introduction

The prime objective of the industrial relations is to regulate the power of managements and organised labour and to provide a mechanism is reconcile thereto. It presupposes equal status before law of labour and management and acts as countervailing force to reduce the inherent inequality in the collective power of the two parties. In the world of industry and commerce a process has been evolving in the past century for the regulation between management and workers of terms and conditions of service and the establishment of peaceful, orderly relations at the place of work through mutual settlement of differences and cooperation of all those engaged in the enterprise. The process is known as Collective Bargaining. In this unitan attempt is made to explain the historical background for emergence of Collective Bargaining, its meaning, characteristics and importance. The term Collective Bargaining was given co-currently by Sidney & Beatrice Webb in U.K and Samuel Campers in the U.S.A.

8.1 Meaning of Collective Bargaining

The term Collective Bargaining was given co-currently by Sidney & Beatrice Webb in U.K and Samuel Campers in the U.S.A. Collective Bargaining is a process of joint decision-making, a democratic way of life in industry. It establishes a culture of bipartism and joint consultations for establishing industrial harmony. It is called "Collective" because both employers and workers act as a group rather than as individuals, and it is described as "bargaining" because the method of reaching an agreement involves approach proposals and counter proposals, offers and counter-offers and a give and take approach.

Collective bargaining is a procedure by which the terms and conditions of workers are regulated by agreements between their bargaining agents and employers. Ever since the advent of modern trade unions, the workers have been pressurizing their employers in a concerted manner for improving the terms and conditions of employment, but the term 'collective bargaining' was seldom used for this concerted action.

There are three concepts of collective bargaining with different emphasis and stress, namely, marketing concept, government concept, and the industrial relations or managerial concept.

1. **Marketing Concept:** The marketing concept views collective bargaining as the means by which labour is bought and sold in the market place. In this context, collective bargaining is perceived as an economic and an exchange relationship. This concept focuses on the substantive content of collective agreements on the pay hours of work, and fringe benefits, which are mutually agreed between employers and trade union representatives on behalf of their members.
2. **Government Concept:** The governmental concept of collective bargaining, on the other hand, regards the institution as a constitutional system or rule making process, which determines relation between management and trade union representatives. Here collective bargaining is seen as a political and power relationship.

3. **Managerial Concept:** The industrial relations or managerial concept collective bargaining views the institution as a participative decision-making between the employees and employers, on matters in which both parties have vital interest.



Did u know? Industrial bargaining has three approaches:

1. Unilateral
2. Bilateral
3. Tripartite

In Unilateral approach the employer alone decides the terms and conditions of employment. This is known as Individual Bargaining. In Bilateral Approach, the Employer and Worker negotiate with each other. When workmen/their association and their representatives, negotiate with one another, it is known as Bipartite collective bargaining. In Tripartite Approach, besides the two main parties, a third party also intervenes to facilitate settlement.

8.2 Characteristics of Collective Bargaining

Collective Bargaining has been characterised as a form of industrial democracy and industrial government. Some of the important features of Collective Bargaining as stressed by Edward T. Cheystiz and others are as follows:

The main characteristics of collective bargaining are:

1. ***It is a group action as opposed to individual action and is initiated through the representatives of workers:*** On the management side are its delegates at the bargaining table; on the side of workers is their trade union, which may represent the local plant, the city membership or nation-wide membership.
2. ***It is flexible and mobile, and not fixed or static:*** It has fluidity and scope for compromise, for a mutual give-and-take before the final agreement is reached or the final settlement is arrived at. Bakke and Kerr observe, "Essentially a successful Collective Bargaining is an exercise in graceful retreat without seeming to retreat. The parties normally ask for more or offer less than they ultimately accept or give. The "take-it-or-leave it" proposition is not viewed as being within the rules of the game. One of the most damaging criticisms is that a party is adamant in holding to its original position. Before retreating with as much elegance as circumstances permit, each party seeks to withdraw as little as possible. This involves ascertaining the maximum concession of the opposing negotiator without disclosing one's own ultimate concession. In this sense, all negotiations are exploratory until the agreement is consummated."
3. ***It is a two-party process:*** It is a mutual give-and-take rather than take-it-or-leave-it method of arriving at the settlement of a dispute. Both the parties are involved in it. In this connection, Clark Kerr observes, "Collective Bargaining can work only with the acceptance by labour and management of their appropriate responsibilities." It can succeed only when both labour and management wants it to succeed. It can flourish only in an atmosphere which is free from animosity and reprisal. There must be mutual eagerness to develop the Collective Bargaining procedure and there must be attitudes which will result in harmony and progress.

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4. ***It is a continuous process:*** This provides a mechanism for continuing and organized relationships between the managements and trade unions. "The heart of Collective Bargaining is the process of for a continuing joint consideration and adjustment of plant problems". It does not end with negotiation, but as Glen Garderner puts it: "It begins and ends with the writing of a contract. Actually, it is only the beginning of Collective Bargaining. It goes on 365 days a year.... the most important part of Collective Bargaining..... is the bargaining that goes on from day to day under the rules established by labour agreements."
5. ***It is dynamic and not static:*** It is relatively a new concept, is growing, expanding and changing. In the past, it used to be emotional, turbulent and sentimental. But now it is scientific, factual and systematic. Its coverage and style have changed. In this connection, J.M. Chart says: "Collective Bargaining has become, with surprising swiftness, one of the greatest forces in our society. In anything like its present scale and power, it is a new thing. It is a process which transforms leading into negotiation, which permits employees' dignity as they participate in the formulation of their terms and conditions of employment, which embarrasses the democratic ideal and applies it correctly and effectively at the place of work."
6. ***It is industrial democracy at work:*** Industrial democracy is the government of labour with the consent of the governed- the workers. The principle of arbitrary unilateralism has given way to that of self-government in the industry. Collective Bargaining is not a mere signing of an agreement granting seniority, vacations, and wage increases. It is not a mere sitting around a table, discussing grievances. Basically it is democratic: it is joint formulation of company policy on all matters, which directly affect the workers in a plant. It is self-government in action. It is the projection of a management policy, which gives the workers the right to be heard. It is establishment of factory law based on common interest.
7. ***Collective bargaining is not a competitive process but it is essentially a complimentary process:*** Each party needs something that the other party is, namely, labour can make a greater productive effort and management has the capacity to pay for that effort and to organize and guide it for achieving its objectives. The behavioural scientists have made a distinction between "Distributive bargaining" and "Integrative bargaining". The former is the process of dividing the 'cake which represents the whole which has been produced by the joint efforts of the management and labour'. In this process, if one party wins something, the other party, to continue the metaphor of the cake, has a relatively smaller size of it. So it is a "win-lose" relationship. In other words, distributive bargaining deals with issues or an issue in which two or more parties have conflicting or adversary interests. 'Integrative bargaining' is the process where both the parties can win, each contributing something for the benefit of the other party. Such a process develops common objectives, a better understanding of each others' needs and capabilities, a better respect for each other and a greater involvement of commitment to the well-being and growth of the enterprise as a whole.
8. ***It is an art, advanced form of human relation:*** To substantiate this, one needs only witness the bluffing, the oratory, dramatics and coyness mixed in an inexplicable fashion which may characterize a bargaining session.



Task

Outline the major collective bargaining issues of companies in India today. What do you foresee as the major issues of the future? Explain your response.

8.3 Types of Bargaining

The types of collective bargaining according to the region/industry level to the enterprise or even plant level are as under:

Industry Bargaining

The industry level collective bargaining is common in the case of core industries in public sector like coal, steel, cement, ports, banks and insurance. The collective bargaining on industry basis is practiced by traditional industry groups like textiles, plantations and engineering in the private sector.

Enterprise Bargaining

The importance of enterprise is growing as a bargaining level as the industry wide bargaining is losing ground. Enterprise level agreements are steadily increasing in number and becoming a point of decision-making.

Concession Bargaining

Concession bargaining originated in USA as a temporary measure to save jobs in the period of economic depression. Concession bargaining was undertaken by the employers to face increased competition and cope up with higher productivity requirements. Apart from accepting wage reduction, other options considered under concession bargaining were: (a) shorter working hours; (b) freeze on fresh recruitment; (c) restriction on overtime; (d) training and retraining of workers.

In USA the concession bargaining agreements included wage cuts in case of newly hired workers, curbing the cost of health insurance, and increased compensation for voluntary separation. In India, it has taken the form of downsizing of employees and offering of voluntary retirement schemes.

Composite Bargaining

The contents of conventional bargaining are mainly wages, allowances and benefits, and conditions of work and employment. The composite bargaining calls for a strategic shift from conventional bargaining to include issues like quality of work life, productivity improvement, enhancing of market share or even financial matters. Composite bargaining reflects a change in strategy from confrontation to coordination between management and labour for the promotion of their common interest of survival and progress of enterprises.

8.4 Importance of Collective Bargaining

Collective bargaining includes not only negotiations between the employers and unions but also includes the process of resolving labor-management conflicts. Thus, collective bargaining is, essentially, a recognized way of creating a system of industrial jurisprudence. It acts as a method of introducing civil rights in the industry, that is, the management should be conducted by rules rather than arbitrary decision-making. It establishes rules, which define and restrict the traditional authority exercised by the management.

Notes

8.4.1 Importance to Employees

1. Collective bargaining develops a sense of self respect and responsibility among the employees.
2. It increases the strength of the workforce, thereby, increasing their bargaining capacity as a group.
3. Collective bargaining increases the morale and productivity of employees.
4. It restricts management's freedom for arbitrary action against the employees. Moreover, unilateral actions by the employer are also discouraged.
5. Effective collective bargaining machinery strengthens the trade unions movement.
6. The workers feel motivated as they can approach the management on various matters and bargain for higher benefits.
7. It helps in securing a prompt and fair settlement of grievances. It provides a flexible means for the adjustment of wages and employment conditions to economic and technological changes in the industry, as a result of which the chances for conflicts are reduced.

8.4.2 Importance to Employers

1. It becomes easier for the management to resolve issues at the bargaining level rather than taking up complaints of individual workers.
2. Collective bargaining tends to promote a sense of job security among employees and thereby tends to reduce the cost of labor turnover to management.
3. Collective bargaining opens up the channel of communication between the workers and the management and increases worker participation in decision-making.
4. Collective bargaining plays a vital role in settling and preventing industrial disputes.

8.4.3 Importance to Society

1. Collective bargaining leads to industrial peace in the country.
2. It results in establishment of a harmonious industrial climate which supports, which helps the pace of a nation's efforts towards economic and social development since the obstacles to such a development can be reduced considerably.
3. The discrimination and exploitation of workers is constantly being checked.
4. It provides a method or the regulation of the conditions of employment of those who are directly concerned about them.

8.5 Collective Bargaining at Different Levels

In India the collective bargaining agreements have been concluded at the three levels-at plant level, industry level and national level.

8.5.1 At Plant Level

A collective agreement at plant level is reached only for the plant for which it has been drafted, and its scope and extent are limited only to that particular unit or undertaking. The agreement generally provides for certain common norms of conduct with a view to regulate labour

management relations and eliminating hatred and misunderstanding. It contains provisions for a quick and easy solution of those issues which require immediate and direct negotiation between the two parties, and lays down a framework for their future conduct if and when controversial issues arise.

Since 1955, a number of plant level agreements have been reached. These include: The Bata Shoe Company Agreement.

The highlights of the agreement between the Tata Iron & Steel Co. and its workers' union, which was concluded in 1956 "to establish and maintain orderly and cordial relations between the company and the union so as to promote the interests of the employees and the efficient operation of the company's business", are:

- (1) The company recognises the Tata Workers' Union as the sole bargaining agent of the employees at Jamshedpur. It agrees to the establishment of a union membership security system and the collection of union subscriptions which would be deducted at the source from the wages of all employees, except from the salaries and wages of the supervisory staff.
- (2) The union recognises the right of the company to introduce new and/or improved equipment and methods of manufacture, to decide upon the number and locations of plants, and the nature of machinery and/or equipment required for them, subject to the condition that the union would be consulted before and if the interests of the employees are likely to be affected adversely.
- (3) The union recognises the right of the company to hire, transfer, promote or discipline employees after the normal procedure for this purpose has been gone through, to fix the number of men required for the normal operation of a section of a department, and to abolish, change or consolidate jobs, sections, departments, provided that, when the employees' interests are likely to be adversely affected, the management shall consult the trade union before any decision is taken.
- (4) The company assures the union that there shall be no retrenchment of existing employees. The employees required for the various jobs shall, wherever necessary, be trained on the specific jobs; and if any employees are transferred or put under training, their present average earnings shall be guaranteed to them.
- (5) The company and the union agree to a programme of job evaluation as the basis of a simplified and rational wage structure.
- (6) The company agrees that promotions to vacancies in the supervisory and non-supervisory staff shall be made, wherever possible, internally. It further agrees that the grievance redressal procedure, formulated in consultation with the union, shall be introduced in all the departments, and shall be strictly followed. The top management of the company and of the union shall intervene only in exceptional cases.
- (7) The company agrees that the amount of dearness allowance will be included in the wages of employees at the time of the calculation of gratuity to be paid to them.
- (8) The company and union agree to negotiate revised wages and emoluments separately for the workers in the plant, for the supervisory staff and for employees outside the works.

8.5.2 At the Industry Level

The best example of an industry level agreement is offered by the textile industry of Bombay and Ahmedabad.

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The agreement between the Ahmedabad Millionaires' Association and the Ahmedabad Textile Labour Association, which were signed on 27th June, 1955, laid down the procedure to be followed for the grant of bonus and the voluntary settlement of industrial disputes. The salient features of the first agreement are:

The agreement applied to all the member mills of the Association and contained terms for the determination and settlement of bonus claims for four years - from 1953 to 1957. It was agreed between the parties that the bonus would be payable only out of an "available surplus or profit" after all the charges had been provided for - charges for statutory depreciation and development rebate, taxes, reserves for rehabilitation, replacement and/or modernisation of plant and machinery, including a fair return on paid-up capital.

The second Agreement provided that all future industrial disputes between the members of the two Associations would be settled by mutual negotiation, failing which by arbitration, and that they would not resort to any court proceedings for the purpose of resolving their disputes.

8.5.3 At the National Level

The agreements at the national level are generally bipartite agreements and are finalised at conferences of labour and managements convened by the Government of India. The Delhi Agreement of 7th February, 1951, and the Bonus Agreements for Plantations Workers of January 1956 are example of such bipartite agreements.

The Delhi Agreement was concluded at a conference of the representatives of labour and managements and related to rationalisation and allied matters. It was agreed at this conference that:

- (1) Musters would be standardised and workloads fixed on the basis of the technical investigations carried out by experts selected by the management and labour. At the same time, the working conditions of labour would standardised. When a new machinery is set up, a period of trial may be necessary before standardisation is effected.
- (2) Wherever rationalisation is contemplated, fresh recruitment should be stopped; and vacancies which occur as a result of death or retirement should not be filled.
- (3) Surplus workers should be offered employment in other departments whenever it is possible to do so. At the same time, it should be ensured that there is no break in their service and that their emoluments do not go down.
- (4) Whenever conditions in an industry permit -- that is, conditions governed by the raw materials position, the state of the capital goods and the products manufactured by a company - new machinery should be installed.
- (5) Gratuities should be offered to workers to induce them to retire voluntarily.
- (6) Whenever there is need for retrenchment, the services of those who were employed last should be terminated first.
- (7) Workers who are thrown out of employment as a result of rationalisation should be offered facilities for retraining in alternative occupations. The period of such retraining may be extended up to nine months. A scheme for this purpose should be jointly worked out by the government, the employers and the workers.
- (8) The maintenance of the workers during the period of their retraining would be the responsibility of the employers, while the cost of this re-training would be borne by the government.

- (9) The fullest use should be made of surplus labour in the various projects undertaken by the government.
- (10) Incentives in the form of higher wages and a better standard of living should be offered to show the gains which have accrued as a result of rationalisation. Where such gains have largely been the result of additional efforts made by the workers, the latter should have a share in them, particularly when their wages are below the living wage. The capital investment of the management should, however, be taken into account while determining the workers' share in the gains of rationalisation. In this way, workers would be persuaded to accept the need for rationalisation.



Task

Write a note on Collective Bargaining and its importance in India.

8.6 Policy and Law on Collective Bargaining in India

V.D. Kennedy, in his book on *Essays on India labour*, has observed that Collective Bargaining makes large demands on the parties. It needs an orderly and rational environment – an environment in which the incidental causes of uncertainty are kept to a minimum, an environment that maintains general rules designed to further bargaining as an orderly process but otherwise throws the parties on their own resources to develop their relationships and workout solutions to their problems; Government policy and administrative practices have an important role to play in helping to create this kind of environment. When we analyse the history of Collective Bargaining in India, its era has started in true namely from 1977. Prior to this period, the Collective Bargaining took a back seat with the emergence of violent and coercive methods in industrial relations, further there was an attitude give or take between management and labour but not given and take. But from 1977 onwards we find a positive approach to Collective Bargaining, but more importantly, there is a change in the attitude and approach of the government. In fact the Government made efforts to provide legal framework for Collective Bargaining. According to Randle and Wortmas, the policy and legal requisites of Collective Bargaining are:

- (1) The employer must recognise a duly certified bargaining unit;
- (2) Both the parties are legally obligated to bargain collectively without any compulsion to agreement but in N O faith;
- (3) Any subject matter of interest to the parties such as, wages, hours of work, profit sharing, welfare retirement benefits etc. must be discussed;
- (4) Agreements when consummated must be reduced to writing;
- (5) Bargaining meetings must be held at reasonable intervals; and
- (6) ***The agreements should be accorded a legal status to facilitate their enforcement:*** Keeping in view the above legal requirements, we now trace the emergence of legal frame work on Collective Bargaining in India. The first and foremost requirement is that the existence of able trade unions and organised managements with an open minds to appreciate each others stand. In this direction, the Government of India has included an exclusive union governments labour and industrial relations policy in each and every five year plan documents, as the plan documents are the means of declaring the official policy statement; on every aspect of development. The importance of unionism to the Collective Bargaining system is certainly recognised in these policy statements. The policy statement on Collective Bargaining in the public sector is positive, which is revealed in the following words "Collective Bargaining" between workers and management should be encouraged. Such

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Collective Bargaining should embrace both economic and non-economic demands. The management on this front should be given full discretion and power to enter into commitments within certain prescribed financial limits. Further the policy statement underlines the need for orderly bargaining arrangements. It states that a legal framework be created to determine the appropriate bargaining agency and fix the responsibility for the enforcement of collective agreements. In the later plan documents there was a mention need for consolidate the gains of earlier years. It is envisaged by the government to convert the legal policy into administrative measures, in that direction for orderly conduct of Collective Bargaining, the following administrative measures provided in different enactments passed by Central and State Governments. They are:

- (a) Growth of strong independent unions;
- (b) Creation of bargaining agents and conferring exclusive bargaining rights on them;
- (c) Compulsion on employers and the representative union to bargain in good faith and to avoid unfair labour practices;
- (d) Legal status to the collective agreements for compulsory enforcement if necessary; and
- (e) Grievance redressal, mediation and arbitration machinery.

To translate the above measures Central Government has enacted different labour Acts - they consists, Trade Unions Act of 1926; the Industrial Employment (Standing Orders Act of 1946; and the Industrial Disputes Act of 1947). The above acts are amended to incorporate the changes in the labour policy of Government. A part from these acts to improve the labour management relations, the code of discipline was adopted. This code consists of principles or commitments to be observed by the employers and labour unions.

8.7 Concept of Negotiation

Negotiation is the deliberate interactions of two or more complex social units which are attempting to define or redefine the terms of their interdependence. Negotiation is a process for resolving conflict between employee and employer where in their demands are modified to arrive at an acceptable agreement. For negotiation teams should be formed.

The team should consist of members of both sides with adequate knowledge of job and skill for negotiations and also should have the full authority to speak on behalf of their respective sides as well as make decisions. A correct understanding of the main issues and an intimate knowledge of operations, working conditions and in addition must also possess balanced views, even temper, analytical mind and objective outlook. The management team, especially, should consist of those executives who can authoritatively speak on both personnel and production matters. Well begun is half done applies to Collective Bargaining. It will be nice to stress the need of mutual cooperation before starting the negotiation with a proper climate for mutual understanding and a common desire to reach agreement by objective assessment of facts, the process of negotiations has all the chances to have success. During the negotiations there are always chances of emotional outburst blocks. The important thing is to develop side alleys and keep continuing. When the main issue gets confused sometimes it is better to come to the fundamental aspects. Sometimes it is advisable to leave the controversial points and leap over to the next issue. As long as talks continue ultimately a solution will be possible. Negotiations will be easier if it is recognised and appreciated on both sides that what they are after fundamentally is not to win a victory over the other but to solve the practical problems of industrial life created through the interaction of various forces and various interests and also to lay the foundation for better understanding, better performance and increased prosperity in the future for the benefit of all concerned. It is much easier and much more practical to deal with a few representatives of strong and organised

body then with a heterogeneous mass of divided individuals. While it is not for the management to interfere with union activities, or choose the union leadership, its action and attitude will go a long way towards developing the right type of union leadership "Management gets the union it deserves" is not just an empty phrase. If management has through its actions and dealing, established a reputation for fair but firm dealing. If it has persistently followed a labour policy based on the three principles of justice. Sympathy and firmness and if it has made it clear that it believes in the growth of healthy and strong trade unionism, soon the right type of leadership will develop.

8.7.1 Preparation for Negotiation

The third and the most important part of the pre-negotiation phase is that of preparation for negotiations. The success of Collective Bargaining is directly proportional to the thoroughness of the preparations made by the parties involved in negotiations. Preparation is second only to actual negotiations in importance. The nature of preparation will vary considerably in terms of the size and importance of the bargaining relationship. In a multi-employer and multi-union bargaining set-up, or in bargaining by the employers' association, negotiations require a great deal of preparation from both sides. But if it is customary in a particular relationship to use a pattern set by an industry leader as a policy guide in negotiations, only some amount of advance preparation may be necessary. But when bargaining involves more than simple acceptance of a standard agreement, there will normally be much preparation on both sides. Further, many bargaining relationships do not differ greatly from what they were some fifteen or twenty years ago, and involve comparatively uncomplicated bargaining issues. In such situations, negotiations do not call for advance preparations.

In general, however, most employers and unions do a great deal of factual spadework and opinion seeking when preparing for negotiations. The larger industrial unions have a rather elaborate apparatus for obtaining accurate information on rank-and-file demands and pressures. They are also adept in the use of modern public relations techniques for creating membership enthusiasm for future contract demands regarded as critical by the leadership.

Negotiations may commence at the instance of either party – of either labour or of management.

While some management hide their time till trade unions put forward their proposals, others resort to what is known as positive bargaining by submitting their own proposals for consideration by labour representatives. Many contracts specifically lay down that either party proposing changes in the existing agreement should notify the other party of the nature and extent of such changes before the termination of the contract.

Both employees and employers devote a great deal of time to the preparations for negotiation. The necessary data have to be collected on a large number of issues - on wages and salaries, on seniority, over-time allowance, the cost of living, the policies of trade unions and of management, productivity trends in a company, retirement and fringe benefits, hours of work and other pertinent information on area-cum-industry practices as well as on the nature of agreements in other companies, the patterns of these agreements, controls and regulations, and a variety of related subjects.

Information on these items collected by management from their associations and central organisations, from the government and by surveyors, conducted by their research staff. At the same time, the personnel department of the company examines and analyses the public statements of trade union leaders, the proceedings of union conventions and conferences, and the Collective Bargaining trends which have developed all over the country. The trade unions, however, gather the data they require from their own central organisations and research staff by an analysis of labour contracts in force elsewhere in the country, from pronouncements of employers,

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from contracts in force elsewhere in the country, from pronouncements of employers, from public surveys and from studies and reports brought out by employers' associations.

The personnel department sets the objective which are proposed to be achieved through negotiation and which have to be necessarily related to anticipated trade union demands. Before, however, negotiations commence, the top management's approval must be obtained on:

- (1) The specific proposals of the company, including the objectives of the negotiations;
- (2) An appraisal of the cost of implementing the proposals if they are accepted by the two parties; and
- (3) An approval in principle of the demands of the trade union over which bargaining has to be made, the demands which are acceptable to the company and the demands which cannot be accepted by it.

8.7.2 Principles of Negotiation

An interesting statement of principles and policies to be followed in negotiation has been provided by Arnold F. Campo. He describes some rules for guidance of both union and management, as follows:

- (1) Be friendly in negotiation, introduce everybody.
- (2) Be willing to listen.
- (3) Give every one an opportunity to state his position.
- (4) Always keep in mind the right and fair thing to do.
- (5) Don't try to guide the discussion along a straight line directed to solving problems.
- (6) Define each issue clearly and discussing in the light of all available facts.
- (7) At all times search only for correct and real solution.
- (8) Avoid short precise.
- (9) Consideration should be given to fatigue and mental attitude in determining the length of session.
- (10) Both parties should respect the rights of public at all times.

8.7.3 Procedure and Tactics of Negotiation

The Negotiations may be undertaken by a representative of each party of by a committee or by line or staff personnel. The negotiation committee may be composed of from three to four members. As far as possible, a committee should be small, for "large committees become disorderly; and they are more inclined to concentrate on a discussion of industrial grievances or problems of interest to one group rather than to the union as a whole". The management committee, which has a chief spokesman or principal negotiator, works as a team; the committee plans the negotiations, while the chief negotiator evolves a strategy of action and of the tactics to be adopted during the negotiations.

Generally speaking, negotiations are best done if both the parties do their homework well; that is, they should come to the bargaining table equipped with adequate information, as also a willingness to make a *quid pro quo* approach.

The union demands should be analysed and classified into three categories, demands which may possibly be met; demands which may be rejected, and demands which call for hard bargaining. There is no hard and fast rule which determines which demands should first be discussed. Some negotiations tackle the hard ones first; others prefer the easier ones. Prof. Leonad Smith observes in this connection: "The negotiations must consider the entire agreement whenever they are discussing any one clause. Although it is advisable to bargain on one main issue at a time, no decision should be reached or agreed upon until the other main issues have been properly discussed. Either party may find itself burdened with an in satisfactory clause unless the effect of each point to be agreed upon are weighted in relation to all the other clauses and the possible effects on other agreements to be negotiated in the plant, the company or the industry".

Arnold Campo suggests that the following procedure should be adopted in negotiation.

For Union and Management

- (1) Be friendly in negotiation, introduce everybody. Relieve the existing tension.
- (2) Be willing to listen. There would be time enough for you to worry about things and say "No", after you have heard all the facts.
- (3) Give everyone an opportunity to state his position and point of view. In this way, you will uncover the person who is really insistent about a particular problem or grievance, and know how to deal with him.
- (4) Know something about the personal history of the other parties representatives.
- (5) Always bear in mind the fact that you have to do what is right and fair.
- (6) Both parties should strive in maintain an objective approach to a problem or grievance. They should think rather than feel their way through a problem.
- (7) Don't attempt to guide the discussion along a straight line which goes straight to the solution of the problems. Let it wander at times; don't hurry it.
- (8) Don't let the negotiation reach the stage of a stalemate. Help to define the problem and suggest a solution. Unilateral are out of place at the negotiation table.
- (9) If facts disclosed that there is a need for doing more than just solving the immediate problem, go as far as justified in the circumstances.
- (10) Define each issue clearly and unambiguously, and discuss it in the light of all the available facts.
- (11) Avoid the insertion of specific regulations or details in the contract to ensure greater flexibility.
- (12) Search for the correct solution at all times.
- (13) Keep the membership of the conference as small as possible. Small groups facilitate successful negotiations.
- (14) Avoid sharp practices.
- (15) The length of a session should be determined by the fatigue, physical or mental, it generates among the members at the conference table.
- (16) Have a committee of employees present during the negotiations, for it would be highly advantageous and would be very practical, particularly, if the bargaining unit is a single establishment.

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- (17) The terms which are agreed upon should be put down in writing and the parties should sign the document without any mental reservations. The phrasing of the contract should be precise and realistic but not legalistic.
- (18) Arbitration should not be resorted to except in cases in which negotiations fail utterly or the parties are unable to arrive at any agreement.
- (19) Both the parties should, at all times, respect the rights of the public.

For the Management

1. The management must, at the outset, make sure that the labour leaders it is going to negotiate with are really the representatives of the workers.
2. Don't use lawyers as negotiators unless they have intimate knowledge of industrial relations.
3. Don't limit contacts with the union to controversial subjects, but consider such matters as are of common interest to both.



Caution

Guidelines for Negotiations

William Werther and Keith Davis have mentioned some guidelines for negotiations in the form of Do's and Don'ts.

The Do's of Negotiations

1. Do seek more or offer less than you place to receive or give.
2. Do negotiate in private not through the media.
3. Do let both sides win otherwise the other side may retaliate.
4. Do start with easy issues.
5. Do remember that negotiations are seldom over when the agreement is concluded eventually the contract will be re-negotiated.
6. Do resolve deadlocks by stressing past progress another point or counter proposals.
7. Do enlist the support of the federal mediation and conciliation service if a strike seems likely.

The Don'ts of Negotiations

1. Do not make your best offer first, that is so in common that the other side will expect more.
2. Do not seek unwanted charges. You may get them.
3. Do not say 'no' absolutely. Unless your organisation will back you up absolutely.
4. Do not violate a confidence.
5. Do not settle too quickly union members may think quick settlement is not a good one.
6. Don't let the other side bypass your team and go directly to the top management.
7. Do not let the top management actually participate in face to face negotiations; they are often inexperienced and poorly informed.

Thus negotiations is a tactics where in both the parties try to move from their ideal position to a settlement point which is mutually acceptable. The settlement depends on the relative bargaining strength and skills of negotiation.

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Case Study

Dilemma of Negotiation: Dolphin Limited

Dolphin Limited was a pioneer in the manufacture of construction equipments and hydraulic earth moving equipments. The first unit was set up in Bangalore. At that time, Escorts- JCB was a pioneer in wheeled earthmoving equipments. Since there was a good potential for these equipments, Dolphin Limited also set up a unit for manufacturing wheeled equipments as it was not possible to expand their existing Bangalore unit. They searched for new location keeping in mind availability of land, capital subsidy, exemption of sales tax etc. Dolphin Limited decided to set up this unit at Pithampur, Indore which was a notified Industrial area. State Government also assured the company to provide adequate infrastructural facilities with attractive tax benefit schemes. The work started in the year 1989 on the 40 acre site at Pithampur. The company entered into technical collaboration with the CASE Corporation (a U.S. based corporation), the market leader in the field of excavators and other earthmoving and construction equipments.

Production commenced in the year 1991. It was belatedly realised that CASE passed on an outdated design which was being used in Brazil. Hence, it was not found fit for Indian use and field failures were reported. This affected the image of Dolphin Limited in the market. After this, the company engineers did a lot of work on this Brazilian version and tried to improve it. Some improvements were made and the products were offered for Indian use as a new version Model II. Later, Model III was launched with some more improvements in the year 1997-98. Despite all efforts, the sales and performance results were not up to the expectations of Dolphin Limited whereas the market for construction and earthmoving equipments was growing very fast. The unit was started with 70 employees having matric qualification with ITI background. Only a few employees had past experience in any other company and for most of them, this was the first employment. In the beginning there was no formal union in the unit. Employees used to approach the management directly for their problems. Because of growing number of individual grievances, problems and other issues, it became difficult for the management to deal with employees individually. Therefore, management started taking interest in having formal representation of the workers.

In 1993, Dolphin Limited Shramik Sangh was established. Initially, it was an internal union without affiliation to any outside recognised union body. The first charter of demands was submitted in October, 1993 and the settlement was signed in March, 1994 which was made effective from January, 1994 for a period of four years as per standard Dolphin Limited negotiation practices. The settlement was reached without much difficulty. Initially, the tenure of office-bearers of the union was for one year. It was realised by the union office-bearers that a one-year period was not sufficient and it was extended to three years. Similarly, office-bearers also felt the need to get themselves associated to Bhartiya Kamgar Sena (BKS), a recognized union at Powai, the main unit of Dolphin Limited. BKS was an associate of Shiv Sena. This was done to exert more pressure on the management.

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As the settlement was about to expire, the then office-bearers started criticising the previous settlement. They promised an ambitious wage package for workers coupled with a number of other beneficiary measures. Since BKS was also involved, this package became a prestige issue for both the parties. The new charter of demands incorporating 32 demands was submitted to the management in March, 1998 after a delay of three months from the expiry of the last settlement.

The major issue of the charter was four times hike in the existing salary i.e., from ₹ 3,000 to ₹12,000. While submitting the proposal the union people were well aware of the fact that the salary figure of ₹ 12,000 was irrational but they deliberately demanded to pressurise and to negotiate for a higher gain. The office-bearers took workers into confidence and told them that in any way they would get hike of ₹ 5,000 and asked the workers to keep patience if they wanted a better deal.

Although 50 meetings were held between management and union leaders, nothing concrete emerged. Even the help of BKS was sought and one person was deputed by BKS to smoothen the negotiation process, who incidentally was also handling the Ahmednagar unit of Dolphin Limited. Because of the dual involvement he could not concentrate on the Pithampur issue. By this time the workers had lost their patience and faith in the office-bearers. By January, 1998 workers informally decided to opt for a "Go-Slow" movement of their own even without bothering to inform their leaders. After some time, this hidden movement became visible and production came down. Similarly, during February, 1998 they started other pressure-building tactics like abusing, slogan - shouting, etc. The situation became worse, when they started tampering with the products, which created a lot of field failures tarnishing the image of the company. It is important to note that at this time workers were not under the control of office-bearers. Management had decided not to compromise with such activities. Since, the local office-bearers were not able to control the situation they realised the need for more serious and active involvement of BKS.

The union people, including BKS, were informed by management that the activities like slogan-shouting, damaging the products, etc., should be stopped, for resumption of the negotiation process. Finally, agreement was arrived at with a clear understanding that the workers would make up the production loss to the company and this new settlement would be applicable from January, 1999 for a period of 4 years. The major outcomes of the package were as under:

1. Average salary hike was of the order of ₹ 2,500 with minimum of ₹ 4,600.
2. Interest free festival advance was raised from ₹ 1,000 to ₹ 2,500.
3. The number of casual leaves was increased from 7 to 8, sick leaves from 6 to 7 and the process of leave encashment started.
4. A number of social security measures were introduced, such as group insurance scheme, pension scheme and medical claim, etc.

[This case was developed by Prof. Pradeep Puranik (Prestige Institute of Management and Research, Indore), Dr. Dinesh Seth (NITIE, Mumbai), Dr. D.P Goyal (Punjab Schools of Management Studies, Punjab University, Patiala), Dr. Sandeep Kulshreshtha (Indian Institute of Tourism and Travel Management, Gwalior), Prof. A. Rajasekhar (School of Mangement Studies, University of Hyderabad, Hyderabad) in the Fourth National Case Writing Workshop organised by Prestige Institute of Management and Research, Indore and sponsored by AIMS (Association of Indian Management Schools) on March 11-13, 2000.]

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| Questions | Notes |
|---|-------|
| 1. Was it in the interest of the management to formalise union activities in the organisation? | |
| 2. Do you think resorting to sabotage and informal protest was in the interest of the union? Comment. | |
| 3. Should the nationalised union bodies having affiliation with political parties be involved in internal union activities? | |
| 4. What would be the best strategy for Dolphin Limited after being in negotiation with union for 4 years? | |

8.8 Collective Bargaining in India

Union and Management usually faces many substantive and procedural issues in collective bargaining in India. Some of the issues can probably be handled at the bargaining table by using existing structures and strategies. Some of the traditionally handled issues are as follows:

8.8.1 Performance based Wage Bargaining

Wages will remain at the centre stage but emphasis has shifted from assured wages to contingent wages based on contribution.

8.8.2 Women's Issues

The explosive growth in the number of women employees may give rise to fresh challenges to both employers and unions to squarely face the particular concerns and problems of females on-the-job. Women issues are going to figure more and more in future collective bargaining.

8.8.3 Job Security/Job Insecurity

The potential loss of jobs due to technological change has always been a major concern for the unions. Use of automation and computers will expand as Indian companies attempt to increase productivity and remain competitive in domestic and international markets. This will continue in the future and may even accelerate the collective bargaining process.

8.8.4 Productivity

Time has come, according to many economists, for the unions to be vitally concerned with productivity and to realize that employee welfare is tied directly to the success of the enterprise and industry. In short, what is needed in collective bargaining is re-approachment between union and management that recognizes the necessity of co-operating to raise productivity.

8.8.5 Quality of Work Life (QWL)

The issue of quality of work life is related to the need for organized labour and management to work co-operatively toward the goal of greater productivity. The attention now being paid to the QWL reflects the growing importance being attached to it. It is apparent that substantial number of employees are unhappy with their jobs and are demanding more meaningful work. They do not want to be treated as cog in a wheel. QWL experiments will continue bargaining across countries.

8.8.6 Managing Change through Collective Bargaining

Negotiated change will be the order of the day. All types of flexibility and work place practices required to increase productivity & competitiveness will require collective bargaining process.

Like many other countries, in India, collective bargaining got some impetus from various statutory and voluntary provisions. The Trade Disputes Act 1929, the Bombay Industrial Relations Act 1946, the Industrial Disputes Act 1947, and the Madhya Pradesh Industrial Relations Act 1960, provided machinery for consultation and paved the way for collective bargaining. Among the voluntary measures, mention may be made to the different tripartite conferences, joint consultative machineries, code of discipline, and Central and State Implementation and Evaluation Units.

Collective bargaining was traditionally conducted at the level as in the case of TISCO, Indian Aluminium Company, and Bata Shoe Company. In some industrial units, detailed grievance procedures have been laid down by mutual agreements. The collective agreement signed between the TISCO and the Tata Workers' Union in 1956 embodies a provision for grievance procedures and closer association of employees with management.

8.9 Summary

- Collective bargaining may take place at various levels, for instance, plant, locality, employer, area or region, company, industry and national levels.
- Even at a particular level, a number of situations may be envisaged. For example, at the plant or establishment level, collective bargaining may take place between the employer, on the one side and one or more industrial unions or one or more craft unions or one or more general unions separately or in combination, on the other.
- At the industry level there may be various units of bargaining, for example, one or more employers or a company corporation or one or more employers' associations on the one side, and one or more trade unions established at the industry, region, plant or national level, on the other.
- The term 'bargaining unit' refers to the parties, that is, employers and workers/trade unions represented in negotiations, and to whom the resulting collective agreement applies.
- The 'level of bargaining' is a broad term denoting the nature of ownership of undertakings, the geographical area, the industry, the jurisdictions of employers and trade union, or the layer where collective bargaining takes place.
- Negotiation is the deliberate interactions of two or more complex social units which are attempting to define or redefine the terms of their interdependence.
- Negotiation is a process for resolving conflict between employee and employer where in their demands are modified to arrive at an acceptable agreement.

8.10 Keywords

Bilateral Approach: In it the employer and worker negotiate with each other.

Collective Bargaining: It is a process of discussion and negotiation between two parties, one or both of whom is a group of persons acting in concert. The resulting bargain is an understanding as to the terms and conditions under which a continuing service has to be performed.

Government Concept: It regards institution as a constitutional system or rule making process, which determines relation between management and trade union representatives.

Managerial Concept: It views the institution as a participative decision-making between employees and employers, on matters in which both parties have vital interest.

Marketing Concept: It views Collective Bargaining as the means by which labour is bought and sold in the market place.

Negotiation: Negotiation is the deliberate interactions of two or more complex social units which are attempting to define or redefine the terms of their interdependence.

Pre-negotiation Phase: Pre-negotiation phase is vital to Collective Bargaining. Basically, this stage involves three elements, viz. (a) establishing bargaining relationships, (b) laying down a labour policy, and (c) preparing for negotiations.

Tripartite Approach: In it besides the two main parties, third party also intervenes.

Unilateral Approach: In it the employer alone decides the terms and conditions of employment.

8.11 Self Assessment

Fill in the blanks:

1. is a continuous, dynamic process of solving problems, on the principles of give and take and balance of power.
2. The concept views collective bargaining as the means by which labour is bought and sold in the market place.
3. The concept of collective bargaining regards the institution as a constitutional system or rule making process, which determines relation management and trade union representatives.
4. includes not only negotiations between the employers and unions but also includes the process of resolving labour-management conflicts.
5. issues are going to figure more and more in future collective bargaining.

State whether the following statements are true or false:

6. Collective bargaining is not a process of bargaining between employees and employer.
7. The term Collective Bargaining was given by Sidney & Beatrice Webb in U.K.
8. Collective bargaining includes job security, productivity and quality of work life.
9. Government concept of Collective Bargaining regards institution as a constitutional system of rule making process.
10. The prerequisite of Collective Bargaining includes willingness to adopt a 'give and take' approach.
11. Collective bargaining can be carried on individually.
12. Integrative bargaining is a process where both parties can win.
13. Restriction on overtime is an issue related to composite bargaining.
14. Agreements at the plant levels are meant for all the plants of that industry.
15. Negotiations are useful only when all the parties are ready to listen.
16. Quality of work life is related to issues like sales, marketing and finance directly.

Notes

8.12 Review Questions

1. Discuss the concept of collective bargaining. Give various definitions of collective bargaining with relevant explanation.
2. Critically examine the pre-requisites of collective bargaining.
3. Can you determine the theory of union bargaining process? State relevant proof to support it.
4. Can you determine different types of bargaining? Analyse the role played by concession bargaining.
5. Narrate the role of collective bargaining in India with preview of industrial relations.
6. Analyse the concept of negotiation in collective bargaining in India.
7. Explain the procedure being laid down by Arnold campo in Negotiation.
8. "Collective Bargaining agreements have been concluded at three levels." Comment.
9. Analyse the importance of Collective Bargaining with reference to "Employees", "Employer" and "Society".
10. Do you think "Collective Bargaining" is better than "Negotiation"? Comment vice-versa.

Answers: Self Assessment

- | | |
|--------------------------|--------------------------|
| 1. Collective bargaining | 2. Marketing |
| 3. Government | 4. Collective bargaining |
| 5. Women | 6. False |
| 7. True | 8. True |
| 9. True | 10. True |
| 11. False | 12. True |
| 13. False | 14. False |
| 15. True | 16. False |

8.13 Further Readings



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Unit 9: Social Security Legislations

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Objectives

After studying this unit, you will be able to:

- Explain the Workers Compensation Act, 1923
- Discuss the Employees, State Insurance Act, 1948
- Describe the Maternity Benefit Act, 1961

Introduction

Social security legislation in India in the industrial field consists of the following enactments:

1. the Workmen's Compensation Act, 1923;
2. the Employees' State Insurance Act, 1948;
3. the Maternity Benefit Act, 1961.

In our country, the institutionalized form of social security began with the Workmen's Compensation Act, 1923 which "provides for the payment by certain classes of employers to their workmen of compensation for injury by accident." As in the industrialized countries, the protection under the Act was limited to certain occupational groups and the contingency covered was also limited to occupational injuries and diseases. The Act was based on the principle of employer's liability. Social insurance came later with the enactment of the Employees' State Insurance Act, 1948.

9.1 The Workmen's Compensation Act, 1923

Workmen's Compensation Act is one of the oldest and most important pieces of social security legislation.

Objective

The object of the Workmen's Compensation Act is to make provision for the payment of compensation to a workman only, i.e. to the concerned employee himself in case of his surviving the injury in question and to his dependents in the case of his death.

Definitions

1. **Dependant:** The relations of a workman are divided into three classes. Dependents belonging to any category may claim:
 - (i) The first category includes a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter and a widowed mother. They are deemed in law as dependents of a workman, whether they are in fact dependant on the earnings of the workman or not.
 - (ii) In the second category of dependents are included a son and a daughter; they have to fulfil the following conditions, namely:
 - (a) They must be wholly dependant on the earnings of the workman at the time of his death;
 - (b) They must be infirm; and
 - (c) They must have attained the age of 18 years.
 - (iii) The following are included in the third category of dependents, provided they are wholly or in part dependant on the earnings of the workman at the time of his death:
 - (a) a widower,
 - (b) a parent other than a widowed mother,
 - (c)
 - (i) a minor illegitimate son,
 - (ii) an unmarried illegitimate daughter,
 - (iii) a daughter whether legitimate or illegitimate or adopted if married and 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 predeceased son,

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- (g) a minor child of a predeceased daughter, where no parent of the child is alive, or
- (h) a paternal grandparent, if no parent of workman is alive.

Where a person claims compensation as a dependant of the deceased workman, he must establish that he is a dependant within the meaning of the Act. In all those cases, the question of payment of compensation is conditioned by such claimant being, wholly or in part, dependant upon the earnings of the workman; it is not necessary for the dependents to obtain written letters of administration or a succession certificate. Dependand does not include all the heirs of a workman but only those who, to some extent, depend upon him. Kinship, coupled with dependency, is made the sole criterion for a person to fall within the ambit of the definition of dependant.

2. **Partial Disablement:** Such disablement is of two kinds:

- (i) Temporary partial disablement
- (ii) Permanent partial disablement

The test of such disablement is the reduction in the earning capacity of the workman. If the earning capacity of a workman is reduced in relation to the employment he had been at the time of the accident resulting in such disablement, it is temporary partial disablement. If the injury caused by an accident results in the reduction of the earning capacity in respect of employment, which the workman was capable of undertaking at the time of accident, it is permanent partial disablement. Compensation under the Act is payable only if the injury caused by an accident results in workman's disablement exceeding three days.

To determine whether the injury is permanent or temporary, the courts have to see whether the injury has incapacitated the workman from every employment, which he was capable of undertaking at the time of accident or merely from the particular employment in which he was at the time of the accident resulting in disablement. In the former case, the disablement is partial but permanent; in the latter case, it is temporary.

Loss of earning capacity or the extent of it is determined by taking into account the diminution or destruction of physical capacity as disclosed by the medical evidence and then, it is to be seen to what extent such diminution or destruction would reasonably be taken to have disabled the affected workman from performing the duties, which a workman of his class ordinarily performs.

3. **Total Disablement:** When a workman is incapacitated from doing any work, which he was capable of performing at the time of the accident, resulting in such disablement, it is total disablement. Incapacity for all work is different from the incapacity for the work which a workman was doing at the time of accident. It is further provided in the Act that permanent total disablement shall be deemed to result from any combination of injuries in Part II of Schedule I, where the aggregate percentage of the loss of earning capacity, as specified against those injuries amounts to one hundred per cent or more.

4. **Wages:** Wages are defined as any privilege or benefit which is capable of being estimated in money. The following are not wages:

- (a) Traveling allowance or the value of any traveling concession
- (b) Contribution paid by the employer of a workman towards:
 - (i) Any pension, or
 - (ii) Any provident fund

- (c) Any sum paid to a workman to cover any special expenses incurred on him by the nature of his employment
- (d) Leave carried forward to next year.

Annual leave with wages is certainly a privilege, but this privilege only means that no wages due for that period shall be deducted from the wages. It does not mean that the workman can claim an equivalent amount in lieu of such leave. Thus, in calculation of wages, an addition to wages for the period of leave a workman was entitled to after working for one year is not justified, unless there is in the contract of service an express provision for such amount of wages in lieu of the leave earned for the year.

Applicability

Every employer of a factory, an establishment or a circus etc., is liable to compensate any of his employees who has suffered an accident in the course of his employment, under the Workmen's Compensation Act. The Workmen's Compensation (Amendment) Act, 1995, has extended the scope of the Act to cover newspaper establishments, drivers, cleaners, etc. working in connection with a motor vehicle, workers employed by Indian companies abroad, persons engaged in spraying or dusting of insecticides/pesticides and doing other mechanical jobs. The provisions of the Act have been extended to the cooks employed in hotels, restaurants using power, liquefied petroleum gas or any other mechanical device, in the process of cooking. If the provisions of ESI Act have become applicable to the factory/establishment, its employer shall cease to be liable under the Workmen's Compensation Act.

Employees Entitled

Any employee, including those employed through contractor but excluding a casual employee, employed for the purposes of employer's business in any such capacity as is specified in Schedule II of the Act, and who has suffered an accident in the course of his employment is entitled to receive compensation for the injury/disablement/loss of life.

Compensation - When not Payable

The employer is not liable to pay any compensation for the injury to an employee under following circumstances:

1. When injury does not cause total/partial disablement for more than 3 days;
2. When injury, not resulting in death (or permanent total disablement) is directly attributable to employees' willful disobedience of the safety rules, or disregard of the safety devices, or the employee having been under the influence of drink or drugs;
3. Where the employee has contracted a disease, which is not directly attributable to a specific injury caused by an accident in the course of his employment;
4. When the employee has filed a suit for damages against the employer or any other person in a civil court.

Amount of Compensation

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

- (a) In case of death- 50% of the monthly wages × Relevant factor OR ₹ 80, 000, whichever is more, and ₹ 2500 for funeral expenses.

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- (b) In case of permanent total disablement specified under Schedule I of the Act - 60% of the monthly wages × Relevant factor OR ₹ 90, 000, whichever is more.
- (c) In case of permanent partial disablement specified under Schedule I - Such percentage of the compensation payable in case (b) above as is the percentage of the loss in earning capacity (specified in Schedule I).
- (d) In case of permanent partial disablement not specified in Schedule I - Such percentage of compensation payable in case of (b) above, as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner).
- (e) In case of temporary disablement whether partial or total - A half-monthly payment of the sum equal to 25% of the monthly wages, for the period of disablement or 5 year, whichever is shorter.

The amount of compensation should be paid as soon as it falls due. It will be computed on the date of accident. If the amount is not paid within one month from the date it fell due, the Commissioner may, after giving reasonable opportunity of being heard, direct the employer to pay simple interest @ 12% p.a. or at such higher rate as may be specified not exceeding the maximum lending rate of any scheduled bank. Besides, if there is no justification for the delay, the Commissioner may after giving reasonable opportunity of being heard, direct the employer to pay a further sum not exceeding 50% of the compensation, by way of penalty. The amount of penalty (earlier payable to the government) and also interest shall be paid to the workman or his dependent as the case may be.

Compensation to be paid when due and Penalty for Default

- (1) Compensation pertaining to amount of compensation 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 or liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman 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 schedule 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.

Distribution of Compensation

- (1) No payment of compensation in respect of workman whose injury has resulted in death, and no payment of a lump sum as compensation to a workman or a person under 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.
- (2) Any other sum amounting to not less ten rupees, which is payable as compensation, may be deposited with the Commissioner on behalf of the person entitled thereto.

- (3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.
- (4) On the deposit of any money under sub-section (1), as compensation in respect of a deceased workman, the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependents to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any enquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a settlement showing in detail all disbursements made.
- (5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependents of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.
- (6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.
- (7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, on his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.
- (8) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the party of a parent or on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case.
- (9) Provided that no such order prejudicial to any person shall be made, unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.
- (10) Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

Registration of Agreements

1. Where the amount of any lump-sum payable as compensation has been settled by an 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

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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:

Provided that,

- (i) No such memorandum shall be recorded before seven days after communication by the Commissioner of notice of the parties concerned;
 - (ii) The Commissioner may at any time rectify the register;
 - (iii) Where it appears to the Commissioner that an agreement as to the payment of lump-sum whether by way of redemption of half-monthly payment or otherwise, or an agreement as to the amount of compensation payable to a woman or a person under a legal disability, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order, including an order as to any sum already paid under the agreement, s/he thinks just in the circumstances.
2. An agreement for the payment of compensation, which has been registered under the above provisions, shall be enforceable under this Act, notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force.

However, where a memorandum of any agreement, the registration of agreement is required and if it is not sent to the Commissioner, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act.



Caselet

Workmen's Compensation Bill Introduced in LS

A Bill to enhance the compensation to workers and their dependents in case of industrial accidents and occupational diseases was introduced in the Lok Sabha on Friday.

Amendments to the Workmen's Compensation Act, 1923, introduced by the Minister of State for Labour, Mr Harish Rawat, would make the legislation more worker-friendly and gender-neutral.

The Workmen's Compensation (Amendment) Bill, 2009, seeks the substitution of the word "workman" with "employee" to ensure that the Act is applicable to all classes of employees and make the expression gender-neutral.

The Bill proposes providing an enhancement in minimum rates of compensation from ₹ 80,000 to ₹ 1.20 lakhs for death of an employee and from ₹ 90,000 to ₹ 1.40 lakhs in case of permanent disability.

It also empowers the Central Government to enhance the minimum rates from time to time. The Bill was introduced in the House in October last year but had lapsed due to the dissolution of the 14th Lok Sabha.

Source: thehindubusinessline.com

9.2 Employer's Liability for Compensation

Notes

The liability of an employer to pay compensation is limited and is subject to the provisions of the Act. The liability of the employer to pay compensation is dependent upon the following four conditions:

1. Personal injury must have been caused to a workman;
2. Such injury must have been caused by an accident;
3. The accident must have arisen out of and in the course of employment; and
4. The injury must have resulted either in death of the workman or in his total or partial disablement for a period exceeding three days.

The employer shall not be liable to pay compensation in the following cases:

- (a) If the injury did not result in total or partial disablement of the workman for a period exceeding three days;
- (b) In respect of any injury not resulting in death or permanent total disablement, the employer can plead:
 - (i) that the workman was at the time of accident under the influence of drinks or drugs;
 - (ii) that the workman willfully disobeyed an order expressly given or a rule expressly framed for the purpose of securing the safety of workmen; and
 - (iii) that the workman having known that certain safety-guards or safety devices are specifically provided for the purpose of securing the safety of workman, willfully disregarded or removed the same.

The employer can succeed in his plea, only if he can establish that the injury was attributable to any one of the above factors.

- (i) **Occupational Diseases:** The list of the occupational diseases is contained in Schedule III of the Act. Schedule III is divided into three parts, A, B and C. The disease contracted must be an occupational disease peculiar to the employment specified in Schedule III. In respect of every such disease mentioned as occupational disease in Schedule III, a list of a number of employments is given. To support any claim for compensation in case of occupational disease in Part A, no specified period of employment is necessary; for diseases in Part B, the workman must be in continuous employment of the same employer for a period of six months in the employment specified in that part; and for diseases in Part C, the period of employment would be such as is specified by the Central Government for each such employment, whether in the service of one or more employers. The contracting of any disease specified in Schedule III shall be deemed to be any injury by accident, arising out of and in the course of employment, unless the contrary is proved.
- (ii) **Personal injury:** Injury ordinarily refers to a physiological injury. Personal injury does not mean only physical or bodily injury but includes even a nervous shock, a mental injury or strain, which causes a chill. It is a term wider than bodily injury. In *Indian News Chronicle vs. Mrs. Lazarus*, a workman employed as an electrician had frequently to go to a heating room from the cooling plant, catches pneumonia and dies after a short illness of five days. The Court held that the injury caused by an accident is not confined to physical injury and the injury in this case was due to his working and going from a heating room to a cooling plant as it was his indispensable duty.

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- (iii) **Accident:** The expression "accident" has not been defined in the Act. It means only unexpected mishap, toward event, or consequence brought about by some unanticipated or undersigned act, which could not be provided against. Whether a particular occurrence is an accident or not, it must be looked upon not only from the point of view of the person who causes it but also from the point of view of the person who suffers it.



Caution Arising out of and in the course of employment

The expression "arising out of" suggests the cause of accident and the expression "in the course of" points out to the place and circumstances under which the accident takes place and the time when it occurred. A causal association between the injury by accident and employment is necessary. The onus is on the claimant to prove that the accident arose out of and in the course of employment. The employment should have given rise to the circumstances of injury by accident. A direct connection between the injury caused by an accident and the employment of the workman is not always essential. Arising out of the employment does not mean that personal injury must have resulted from the mere nature of employment and is also not limited to cases where the personal injury is referable to the duties which the workman has to discharge. The words 'arising out of employment' are understood to mean that during the course of the employment, injury has resulted from some risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered. There must be a causal relationship between the accident and employment. If the accident had occurred on account of a risk which is an incident of the employment; the claim for compensation must succeed unless of course the workman has exposed himself to do an added peril by his own imprudence. This expression applies to employment as such, to its nature, its conditions, its obligations and its incidents and if by reason of any of these, a workman is brought without the zone of special danger and so injured or killed, and the Act would apply. The employee must show that he was at the time of injury engaged in the employer's business or in furthering that business and was not doing something for his own benefit or accommodation. The question that should be considered is whether the workman was required or expected to do the thing, which resulted in the accident, though he might have imprudently or disobediently done the same. In other words, was the act which resulted in the injury so outside the scope of the duties with which the workman was entrusted by his employer as to say that the accident did not arise out of his employment.

The course of employment refers to the period of employment and the place of work. It is neither limited to the period of actual labour nor includes acts necessitated by the workman's employment. An injury received within reasonable limits of time and space, such as while satisfying thirst or bodily needs, taking food or drink is to be regarded as injury received in the course of employment.

9.3 Concepts Governing Compensation

The purpose of the Workmen's Compensation Act is not to provide for solatium to the workman or his dependents but to make good the actual losses suffered by him. Compensation is in the nature of insurance of the workman against certain risk of accident. The rule, that in order to make the employer liable to pay compensation, death or injury must be the consequence of an accident arising out of and in the course of his employment.

Doctrine of Added Peril

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The principle of added peril means that if a workman while doing his employer's work, trade or business, engages himself in some other work, which he is not ordinarily required to do under the contract of his employment and which act involves extra danger, he cannot hold his master liable for the risk arising there from. The doctrine of added peril, therefore, comes into play only when the workman is at the time of meeting the accident performing his duty.

Doctrine of Notional Extension

Ordinarily a man's employment does not begin until he has reached the place where he has to work and does not continue after he has left the place of his employment. The period of going to or returning from employment are generally excluded and are within the course of employment. Traveling to and from is *prima facie* not in the course of employment. But there may be reasonable extension in both the time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The sphere of a workman's employment is not necessarily limited to the actual place where he does his work. If in going to or coming from his work he has to use an access which is part of his employer's premises, or which he is entitled to traverse because he is going to or coming from his work, he is held to be in his master's business while he is using that access.

Doctrine of Contributory Negligence

Contributory negligence is not ground under the Act for reducing the amount of compensation, if the accident has arisen in the course of employment. A workman, an employee in a saw mill received injuries on his finger, was given treatment by the employer and re-employed. Later on, the injury developed into tetanus and the workman dies, due to negligence. It was held that compensation payable to the widow cannot be reduced on the ground of contributory negligence. An injury caused by accident which could have been anticipated or foreseen or is brought about intentionally or negligently by the workman himself does not make the master liable, for it cannot be termed as an injury by accident within the terms of the Act. Accident means any unintended and unexpected occurrence, which produces hurt or loss. If the mishap was designed, intended or anticipated, it is self-inflicted injury and not an injury caused by accident.

9.4 Penalties

1. Whoever
 - (a) fails to maintain notice-book, which he is required to maintain under sub-section (3) of section 10 pertaining to notice of claim; or
 - (b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10A pertaining to powers of the Commissioner required from an employer statement regarding fatal accident;
 - (c) fails to send a report which he is required to send under section 10B pertaining to report of fatal accidents and serious bodily injuries;
 - (d) fails to make a return which he is required to make under section 16, shall be punishable with fine, which may extend to five thousand 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

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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.

Appraisal of the Act

The Act places the entire liability for the compensation on the employer with no obligation on him to insure his liability. In case of fatal accidents, many employers in small industry find it difficult to pay compensation to workmen. The Act makes no provision for the medical care and treatment in case of injury to a worker.



Case Study

Workman's Accident

The workman was residing in the quarters provided to him at a distance of three furlongs from the work premises. When he went out to light a coal oven in the backyard, he came in contact with a live electric wire and got electrocuted and died. His legal heir claimed compensation for the accident.

Question: Is it an accident arising out of and in the course of employment? Justify?

Answer: It cannot be considered accidental just because residential quarters were provided and the employee had to stay there. The accident arose when he was attending to his own household work. Moreover, his duty hours were over and so also the employer was not responsible for it, since there was no nexus or casual connection between the accident and employment, the theory of notional extension cannot be stretched so as to bring the accident under its scope. "In the course of employment" means in the course of work, which is incidental to it. "Arising out of employment" means that during the course of employment, injury has resulted from some risk incidental to the duties which if not engaged in, the workman would not have suffered.

Source: Labour Laws for Managers, Dudgei Jena vs. Deulbera Colliery 1976 49 FJR 414.

9.5 The Employees' State Insurance Act, 1948

The Employees' State Insurance Act, 1948 is social welfare legislation for providing the medical help & unemployment insurance to industrial workers during illness.

Objective and Scope

It is enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provisions for certain other matters incidental thereto. The Act tries to attain the goal of socio-economic justice enshrined in the Directive Principles of State Policy under Part IV of the Constitution, in particular articles 41, 42 and 43, which enjoin the State to make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of any undeserved want to make provision for securing just and human conditions of work, and maternity relief and to secure, by suitable legislation or economic organisation or in any other way, to all workers, work, a living wage, decent standard of life and full enjoyment of leisure and social and cultural activities.



Notes

The benefits provided by the Act to insured persons or their dependents are:

1. periodical payment in case of sickness of the insured person, (sickness benefit);
2. periodical payment to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage (maternity benefit);
3. periodical payment to an insured person suffering from disablement as a result of an employment injury (disablement benefit);
4. periodical payment to dependents of an insured person who dies as a result of an employment injury (dependant's benefit);
5. medical treatment for and attendance on insured person (medical benefit); and
6. Payment for expenditure on the funeral of the insured person (funeral expenses).

Applicability of the Act

This Act is applicable to all factories using power and employing 20 or more persons on wages. The provisions of the Act have been extended to cover:

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

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



Did u know? Workmen covered under the ESI Act cannot claim compensation under the Workmen's Compensation Act, as there is a bar under section 53 of the ESI Act. (*A. Trehan vs. Associated Electrical Agencies & Anr.* 199H611 CLR 348).

Registration

The registration of a factory/establishment with the Employees' State Insurance Corporation is a statutory responsibility of the employer. The owner of a factory/establishment to which the Act applies for the first time is liable to furnish to the appropriate regional office, within 15 days after the Act becomes applicable, a declaration of registration in Form 01. On receipt of the 01 Form, the regional office will examine the coverage; and after it is satisfied that the Act applies to the factory/establishment, will allot a code number to the employer.

Notes

The forms for the registration of employees are the declaration form and rerun of declaration forms (covering letter). The principal employer should get the declaration form filled in by every employee covered under the scheme.

The statutory registers to be maintained up to date are:

1. Register of Employees;
2. Accident Book in which every accident to employees during the course of employment is recorded; and
3. Inspection Book (to be produced before an Inspector or any other authorised officer).

9.6 Benefits

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

1. ***Sickness and Extended Sickness Benefit:*** For sickness during any period, an insured person is entitled to receive sickness cash benefits at the standard benefit rate for a period of 91 days in any two consecutive benefit periods. The eligibility condition for sickness benefit is that the contribution of an insured person should have been paid/or payable for not less than half the number of days of the corresponding contribution period. An insured person suffering from any special long-term ailment - tuberculosis, leprosy, mental disease - is eligible for extended sickness benefit at a rate, which is 40% higher than the standard benefit rate, rounded to the next higher multiple of 5 paise, for a period of 124/309 days. The Director General may enhance the duration of extended sickness benefit beyond the existing limit of 400 days to a maximum period of 2 years in deserving cases, duly certified by a medical board. The facility of extension would be available up to the date on which the insured person attains the age of 60 years. The rate of this benefit is 40 per cent more than the standard benefit rates for 7 days for vasectomy and 14 days for tubectomy. This is paid in addition to the usual sickness benefits.
2. ***Maternity Benefit:*** An insured woman is entitled to maternity benefit at double the standard benefit rate. This is practically equal to full wages for a period of 12 weeks, of which not more than 6 weeks shall precede the expected date of confinement, Additional maternity benefit is given in case of miscarriage. In case of sickness arising out of pregnancy, confinement, premature birth of a child or miscarriage, an additional benefit is given for a period not exceeding one month. The eligibility condition for maternity benefit is 80 days in one or two preceding contribution periods of one year.
3. ***Disablement Benefit:*** If a member suffers an injury in the course of his employment, he will receive free medical treatment and temporary disablement benefit in cash, which is about 70 per cent of the wages, as long as the temporary disablement lasts, provided that the temporary disablement has lasted for not less than 3 days, excluding the day of the accident. In case of permanent total disablement, the insured person will be given a life pension at full rate, i.e. about 70 per cent of his wages, while in case of partial permanent disablement, a portion of it will be granted as life pension. The benefit is paid for Sundays as well. At the option of the beneficiary, the permanent disablement pension may be commuted to a lump sum payment, if the rate of benefit is less than one rupee and fifty paise per day.
4. ***Dependents' Benefit:*** The dependents' benefit consists of timely help to the eligible dependents of an insured person who dies as a result of an accident or an occupational disease arising out of, and in the course of, employment. Pension at the rate of 40 per cent more than the standard benefit rate (70 per cent of wages) will be paid periodically to the

widow and children. It will be available to the widow as long as she lives or until she marries; to sons and unmarried daughters up to the age of 18 without any proof of education; and to infirm or wholly dependant offspring as long as the infirmity lasts. Where neither a widow nor a child is left, the dependents' benefit is payable to a dependant parent or grandparent for life, but equivalent to 3/10ths of the full rate; and if there are two or more parents or grandparents, the amount payable to them shall be equally divided between them.

5. **Funeral Benefit:** This benefit was introduced in 1968. Accordingly, an amount not exceeding rupees one thousand five hundred is payable as funeral benefit to the eldest surviving member of the family of the deceased insured person. The time limit for claiming the benefit is three months from the death of the insured person.
6. **Medical Benefit:** The kingpin of the scheme is medical benefit, which consists of free medical attendance and treatment of insured persons and their families. This benefit has been divided into three parts:
 - (a) *Restricted Medical Care:* It consists of out-patient medical care at dispensaries or panel clinics.
 - (b) *Expanded Medical Care:* This consists of consultation with specialists and supply of such medicines and drugs as may be prescribed by them.
 - (c) *Full Medical Care:* It consists of hospitalization facilities, services of specialists and such drugs and diet as are required for in-patients. An insured person and members of his family are entitled to medical care of all the above three varieties.

9.7 Restrictions

When a person is entitled to any of the benefits provided under this Act, he shall not be entitled to receive any similar benefit under any other enactment. An insured person will not be entitled to receive for the same period:

1. Both sickness benefit and maternity benefit; or
2. Both sickness benefit and disablement benefit for temporary disablement; or
3. Both maternity benefit and disablement benefit for temporary disablement.

Where a person is entitled to more than one of the benefits, he has an option to select any one of them.

9.8 Protection

The employer cannot dismiss, discharge or otherwise punish an employee during the period he/she is in receipt of sickness benefit or maternity benefit, or of disablement benefit, or is under medical treatment for sickness, or is absent from work as a result of illness which arises out of pregnancy or confinement. Any notice of dismissal, discharge or reduction during the period specified above is invalid and inoperative.

An employer can discharge or punish an employee on due notice if :

1. He/she has received temporary disablement benefit and remained absent for six months or more continuously;
2. He/she is under medical treatment for sickness, other than T.B. or a disease arising out of pregnancy, and has remained absent continuously for six months or more; and

Notes

3. He/she is under medical treatment for T.B. or a malignant disease and has remained absent continuously for 18 months or more (Section 73 and Regulation 98).

9.9 Penalties and Damages

The Act provides for penalties and damages for various offences. It also provides that if any person commits any offence after having been convicted by the court, he will be punishable, for every such subsequent offence, with imprisonment for a term, which may extend up to ₹ 2000 or both. If the subsequent offence is for failure to pay any contribution, then for every such subsequent offence a person is liable to punishment for a term of imprisonment which may extend up to one year and which shall not be less than 3 months; and he will also be liable to pay a fine up to ₹ 4000.

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

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

9.10 Role of ESI Corporations and Hospitals

As provided under the ESI Act, the scheme is administered by a duly constituted corporate body called the Employees' State Insurance Corporation (ESIC). It comprises members representing Central and State Governments, Employers, Employees, Parliament and the medical profession. Union Minister of Labour functions as Chairman of the Corporation whereas the Director General, as chief executive, discharges the duty of running the day-to-day administration. A Standing Committee representing all stakeholders is elected from the body corporate for managing the affairs of the scheme and monitoring the progress of implementation of various decisions and policies etc. from time to time.

The Medical Benefit Council, a statutory body advises the Corporation on matters related to administration of medical benefit under the ESI scheme. The central headquarters of the Corporation is located at New Delhi. For purpose of coverage, revenue collection, extension of the scheme to new classes of establishments, implementation of the scheme in new areas, co-ordination with the State Governments and general administration the Corporation has established Regional and Sub-regional Offices across the country mostly located in State capitals.

Given the huge number of beneficiaries – about 329 lakhs now – the Corporation has set up a wide spread network of service outlets for prompt delivery of benefits in cash and kind that includes full medical care. Medical facilities are provided through a network of 1427 ESI Dispensaries, over 2100 Panel Clinics, 307 diagnostic centres besides 143 ESI hospitals and 43 hospital annexes with over 27000 beds. For providing super-specialty medical care the Corporation has tie up arrangements with advanced medical institutions in the country, both in public and private sector. The medical benefit is administered with the active co-operation of State Governments. The payment of cash benefits is made at the gross roots level through as many as 800 Branch Offices and Cash Offices that function under the direct control of the Corporation.

Role of ESIC in Delivery of Benefits

Notes

The ESIC is to ensure that:

1. The quality and quantity of benefits is as per norms and standards laid down by the Corporation for the purpose.
2. The benefits are made available within the given time frame to insured persons and beneficiaries.
3. No harassment is caused to the beneficiaries across the counter at the grass root level by way of word or deed.
4. All requisite information, procedural guidance etc. is made available to the beneficiaries for claiming benefits.
5. All types of forms etc. are made available to the beneficiaries free of cost as may be required by them for filing claims etc.
6. No beneficiary is exploited at any level in any way in the process of delivery of benefits.
7. Office hours as notified for ESIC/ESIS establishments are strictly adhered to by the staff and displayed prominently so as to avoid any inconvenience being caused to the beneficiaries in smooth flow of benefits.
8. Drugs, dressings, injections etc. as prescribed by the authorised doctors are made available timely.
9. A complaint box is fixed within the office premises for posting written complaints.

Role of ESIC in Servicing Employers

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

Appraisal of the Act

ESI scheme though provides all the benefits to the employees but it is criticized on the low coverage within the organized sector. It is not popular among the employees & unions. Employees

Notes

complain about the inadequacy of the facilities & the benefits. They have to spend additional amount of money for buying medicines not available in ESI dispensaries. There is also time lag or delay in providing the benefits to the workers.



Case Study

Fair or Unfair

Francis de Costa, the respondent, met with an accident on June 26, 1971 while he was on his way to his place of employment. The accident occurred at a place, which was about one kilometer away to the north of the factory. The time of occurrence was 4.15 p.m. The respondent was going to his place of work on bicycle. He was hit by a lorry belonging to his employers, *M/s. J.P. Coats (P) Ltd.* He sustained fracture injuries and was in hospital for 12 days. His claim for disablement benefit was allowed by ESI court and appeal against the same was also dismissed. Allowing the appeal by special leave, the Supreme Court held that the injury suffered by the workman one kilometer away from the factory while he was on his way to the factory was not out of employment.

Question

Do you agree to the decision of the court? Why or why not? What would be your decision if you have to give your decision?

9.11 The Maternity Benefit Act, 1961

This Act provides for the payment of maternity benefit to the working ladies on certain conditions. The provisions of the Act relates to eligibility criteria, the period for which benefits are to be paid and the rate of the benefit. This Act is applicable to all establishments not covered under the ESI Act, 1948.

Applicability of the Act

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

Employees Entitled

Any woman employee, whether employed directly or through any agency, who has actually worked in the establishment for a period of at least 80 days in the 12 months immediately preceding the date of her expected delivery, is entitled to receive maternity benefit.

Where the factory/establishment is governed under the provisions of the ESI Act but,

1. the woman employee is not qualified to claim maternity benefit u/s 50 of the ESI Act; or
2. Her monthly wages exceed ₹ 3000 then such woman employee shall be entitled to maternity benefit under the Maternity Benefit Act.

Maternity Benefit

Notes

Maternity benefit comprises of compensation for the period of actual absence of a woman employee due to her pregnancy. It is payable for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day, at the rate of the average daily wages or the minimum wages as specified or ₹ 10/-, whichever is highest. If a woman employee does not avail six weeks' leave preceding the date of her delivery, she can avail of that leave following her delivery, provided the total leave period does not exceed 12 weeks.

If, however, a woman dies during this period, the benefit is payable only unto the day of her death.

"The average daily wages" means the average of the wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the day from which she absents herself on account of maternity.

9.12 Benefits

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

1. The maximum period for which a woman can get maternity benefit is twelve weeks. Of this, six weeks must be taken prior to the date of delivery of the child and six weeks immediately following that date.
2. To be entitled to maternity leave, a woman must have actually worked for not less than 80 days in the twelve months immediately preceding the day of her expected delivery. Only working days are taken into account when calculating these 80 days. Weekly holidays and all leave – paid or unpaid – are not included. However, if a workman is laid off from work, such periods will be deemed as working days.
3. To avail of the six weeks' leave before expected delivery, a notice must be given in writing stating the date of absence from work also a certificate of pregnancy. (There is a form for both which must be filled in). The employer has to pay the maternity benefit in advance for this period to the concerned employee or any person nominated for this purpose.
4. For the six weeks' leave from the date of delivery, another notice must be sent together with a certificate of delivery after the child is born. The employer has to pay to the employee, or her nominees, maternity benefit within 48 hours of receiving this notice.
5. Every woman entitled to maternity benefit is also entitled to a medical bonus of rupees two hundred and fifty, if pre-natal and post-natal care has not been provided for by the employer free of charge.
6. In case of miscarriage, a woman is entitled to six weeks leave, with pay from the day of miscarriage. In this case also, she must give notice, together with a certificate of miscarriage.
7. For illness arising out of pregnancy, delivery, premature birth or miscarriage, a woman employee can take extra leave, up to a maximum period of one month. She has to get a certificate from a doctor in the prescribed form; this leave can be taken at any time during the pregnancy, or can be attached to the six weeks prior to or after delivery or miscarriage.

Notes

With a view to encourage Planned Parenthood, the Act provides for;

- (a) six weeks' leave with wages in cases of Medical Termination of Pregnancy (MTP);
- (b) grant of leave with wages for a maximum period of one month, in cases of illness arising out of MTP or tubectomy; and
- (c) two weeks' leave with wages to women workers who undergo tubectomy operation.

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

9.13 Restrictions on Employment

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

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

A female employee resuming duties after delivery is to be given two nursing breaks of prescribed duration, in addition to her regular rest intervals, to nurse the child until her child attains the age of fifteen months.

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

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

9.14 Forfeiture

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

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

The acts which constitute misconduct are:

1. Willful destruction of employer's goods or property;
2. Assaulting any superior or co-employee at the place of work;

3. Criminal offence involving moral turpitude, resulting in conviction in a court of law;
4. Theft, fraud or dishonesty in connection with the employer's business or property; and
5. Willful non-observance of safety measures or rules or willful interference with safety devices or with fire fighting equipment.

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

Appraisal of the Act

The maternity benefits provide the working women with a lot of benefits during the pregnancy meeting certain conditions. Most of the small organisations do not extend the benefits to them on pretext of one or other cause and even, many women workers do not claim maternity benefits due to their ignorance about the laws.

9.15 Summary

- Social security measures seek to relieve the tension and stress of the workers in case of unemployment or accidents.
- The Workers Compensation Act aims at providing the workers with the compensation in case of injuries or accidents suffered by them during the course of employment.
- The Employee's State Insurance Act offers medical help and unemployment coverage to industrial workers during their illness.
- The Maternity Benefit Act provides for the payment of maternity benefits to women workers in the form of leaves on certain benefits.

9.16 Keywords

Disablement: It is the reduction in the earning capacity of the workmen.

Employee: It refers to any person employed on wages to work in factory or establishment.

ESIC: Employees State Insurance Corporation.

Occupational disease: Diseases or illness resulting from exposure to certain aspects of the working environment.

Principle of added peril: It comes into play only when the workman is at the time of meeting the accident performing his duty.

Self-inflicted Injury: An injury caused by accident which could have been anticipated or foreseen or negligently by the workman himself does not make the master liable.

Social security: The protection given by the societal laws to its members against contingencies of life like sickness, accidents, etc.

Wages: All the remunerations paid in cash on the fulfillment of the terms of the contract.

9.17 Self Assessment

State whether the following statements are true or false:

1. Social security is an instrument for social and economic justice.
2. Workers get compensated under the Workers Compensation Act when they get injured while watching a movie in cinema hall.
3. Contribution paid to the provident fund account is remuneration for the employee.
4. The negligence on the part of the worker leading to death also entails him to ensure compensation from the employer.
5. Funeral benefits entail the payment of two thousand rupees to the eldest surviving member of the family.
6. The basic and indispensable ingredient of the accident is the unexpectedness.

Fill in the blanks:

7. is the reduction in earning capacity of the worker due to accident.
8. Any nervous shock, or mental strain isinjury.
9. is the compensation for the period of absence of women from the employment due to her pregnancy.
10. Medical bonus is given to all the pregnant ladies for which amount of Rs..... is paid to them.
11. To provide benefits to the employees in case of sickness, Act is passed in 1948.

9.18 Review Questions

1. A factory worker having a heart disease while coming out of the factory was profusely sweated and died after four hours of work inside the factory premises. Do you think he is eligible for compensation from his employer? Justify.
2. Of the different social security benefits companies' offer, which one would you think is most valuable for you? Why?
3. Critically examine the factors for the forfeiture.
4. Analyse the provisions made by the government for the distribution of the compensation to the workers.
5. You are the HR manager of your company. Outline the benefits you will be providing to the employee under the ESIC Act, 1948.
6. Critically examine the importance of the concept of "arising out of and in course of employment".
7. Examine the penalties which the employer will receive if he fails to make payment of compensation.
8. A female employee gave you the notice for the maternity leave today. Outline the benefits you will provide her as per the law giving the restrictions as well.
9. Examine the relevance of the concept of "notional extension" in Workers Compensation Act giving example.

10. Do you agree that the entire liability of the compensation is on the employer and no obligation on the employer to insure his liability? Justify & give some measures for the improvement.
11. "It has been found that the legislation act of maternity led to the tendency among the employers not to employ married women". Do you agree? Justify.
12. A driver while driving developed a heart disease and later died. Is he entitled to receive compensation from his employer? Justify.
13. A worker while working in the factory premises dies due to bursting of the steamer. Now you being the employer have to give the compensation to his heirs. What factors you will take in account while deciding the compensation to be paid for this accident.
14. The Workers Compensation Act does not make any provision for the medical care and treatment in case of the injury to the worker. Can you suggest some measures for the improvement of the same?
15. "There must be a causal relationship between the accident and employment." Justify.

Answers: Self Assessment

- | | |
|--------------------------------|-------------|
| 1. True | 2. False |
| 3. False | 4. True |
| 5. False | 6. True |
| 7. disablement | 8. physical |
| 9. maternity benefits | 10. 250 |
| 11. Employees' State Insurance | |

9.19 Further Readings



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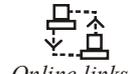
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Unit 10: Provident Fund and Gratuity Payment Acts

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Objectives

After studying this unit, you will be able to:

- Explain the Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- Discuss the Employees' Provident Fund Scheme, 1952
- Understand the Employees' Pension Scheme, 1995
- Explaining the Employees' Deposit-linked Insurance Scheme, 1976.
- Describe the Payment of Gratuity Act, 1972

Introduction

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare legislation enacted for the purpose of institution of provident fund for employees in factories and other establishments. The provisions are intended for the better future of the industrial worker on his retirement and also for his dependents, in the event of his death in the course of

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employment. Gratuity is the gift or a present received by the employee from his organisation for the services rendered by him. The Payment of Gratuity Act, 1972 provides a scheme for the gratuity payment to employees engaged in factories, mines, oilfields, plantations, ports, railways, etc. welfare measures like pension, provident fund, gratuity, etc are in confirmation with the directive principles of State Policy of the Constitution of India.

10.1 The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a piece of social welfare legislation; a beneficent measure, enacted for the purpose of institution of provident fund for employees in factories and other establishments. The provisions are intended for the better future of the industrial worker on his retirement and also for his dependents, in the event of his death in the course of employment. The Act provided for the institution of Compulsory Provident Fund, Family Pension Fund and Deposit Linked Insurance Fund for the benefit of the employees. The object of the Act and the scheme framed thereunder is to ensure that all industries, to which the Act has been made applicable, establish compulsory provident fund for employees with effect from the date when the scheme has been declared applicable to them.

Provident fund is an effective old-age and survivorship benefit, but when the employee happens to die prematurely, the accumulations in the provident fund have been felt too slender to render adequate and long-term protection to his family. With a view to providing long-term financial security to the families of industrial employees in the event of their premature death, the legislature has provided for a Family Pension Scheme for the employees covered by the Act and a Family Pension Fund created thereunder for the purpose by diverting a portion of both employer's and employees' contribution to the provident fund to which would be added a contribution by the Central Government. Out of the fund so set up, family pension was to be paid at prescribed scale to the survivors of employees who die while in service before reaching the age of superannuation. Besides family pension, a compulsory life insurance benefit would also be payable to the survivors of the employees in the event of death in service. In case of retirement, a lump sum payment up to a prescribed maximum would be made to the employee depending upon the length of his service.

A recent significant development in this line is the introduction of a pension scheme as the present social security measures available to the employees have been found inadequate, for they do not provide for monthly pension to members on superannuation, widow pension on death of employee after superannuation, children pension, or disablement benefits. To fill these lacunae in the existing system, the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1995 was promulgated by the President of India date 5.1.1996, amending the Act with effect from 16.11.1995 conferring power upon the Central Government to frame a suitable pension scheme, incorporating provisions for superannuation pension, retiring pension or permanent disablement pension to employees to whom the Act applies, and widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees in the event of death. In exercise of this power, the Central Government framed the Employees' Pension Scheme, 1995 providing for the aforesaid benefits effective from the date on which the Ordinance commenced, repealing and replacing the Family Pension Scheme, 1971 framed under the existing provisions. As the Parliament was not in session to enact the said ordinance, the same was repealed by the Employees' Provident Funds and Miscellaneous Provisions (amendment) Second Ordinance of 1996, dated 27.3.1996, with effect from 16.11.1995 which was again replaced by the Third Ordinance of 1996. This Ordinance has been repealed by the present Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1996 with retrospective effect from 16.11.1995. The new pension scheme thereunder shall apply to all employees who were covered by the Family Pension Scheme and also to new members.

Legislation for compulsory institution of contributory provident fund in industrial undertakings was discussed several times at tripartite meetings in which representatives of the Central and State governments and of employers and workers took part. A large measure of agreement was reached on the need for such legislation. A non-official Bill on this subject was introduced in the Lok Sabha in 1948 to provide for the establishment and grant of provident fund to certain classes of workers by their employers. The Bill was withdrawn only on an assurance by the government that it would soon consider the introduction of a comprehensive bill. There was also a persistent demand that the Central Government extend the benefits of Coal Mines Provident Fund Scheme to workers employed in other industries. The view that the proposed legislation should be undertaken was largely endorsed by the Conference of Provincial Labour Ministers' held in January 1951. On 15th November 1951, the Government of India promulgated the Employees' Provident Funds Ordinance which came into force on that date. It was subsequently replaced by the Employees' Provident Funds Act passed on 4th March 1952.

Object of the Act

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

The Act provides for a scheme for the institution of provident fund for specified classes of employees. Accordingly, the Employees' Provident Fund Scheme was framed under Section 5 of the Act, which came into force on 1st November 1952. On a review of the working of the scheme over the years, it was found that provident fund was no doubt an effective old age and survivorship benefit; but in the event of the premature death of an employee, the accumulations in the fund were not adequate enough to render long-term financial protection to his family. This lacuna led to the introduction of the Employees' Family Pension Scheme with effect from 1st March 1971. The Act was further amended in 1976 with a view to introducing Employees' Deposit Linked Insurance Scheme, a measure to provide an insurance cover to the members of the provident fund in covered establishments without the payment of any premium by these members. Thus, three schemes have been framed under the Employees' Provident Funds and Miscellaneous Provisions Act.

Applicability of the Act

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is applicable from the date of functioning or date of set-up of establishments, provided the factory/establishment employed twenty or more persons. The Act, however, does not apply to co-operative societies employing less than 50 persons and working without the aid of power. The Central Government is empowered to apply the provisions of this Act to any establishment employing less than 20 persons after giving not less than two months' notice of its intention to do so by a notification in the Official Gazette. Once the Act is applied, it does not cease to be applicable, even if the number of employees falls below 20. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with the mutual consent of the Act.

Employees Entitled

Every employee, including the one employed through a contractor, who is in receipt of wages up to ₹ 6500/- p.m. shall be eligible for becoming a member of the funds.

Notes



- Notes*
1. If the pay of a member-employee increases beyond ₹ 6500 after his having become a member, he shall continue to be a member but the contribution payable in respect of him shall be limited to the amount payable on monthly pay of ₹ 6500.
 2. An employee ceases to be member of the Employees' Family Pension Fund at the age of 60 years. The Employees' Family Pension Fund has been replaced by Employees' Pension Fund w.e.f. 16.11.95.

10.2 The Employees' Provident Fund Scheme, 1952

The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10% of the pay of the employees. The Act provides that the Central Government may enhance the statutory rate of contribution to 12% of wages in any industry or class of establishments.

The contributions received by the Provident Fund Organisation from unexempted establishments as well as by the Board of Trustees from exempted establishments shall be invested, after making payments on account of advances and final withdrawals, according to the pattern laid down by the Government of India from time to time. The exempted establishments are required to follow the same pattern of investments as is prescribed for the unexempted establishments. The provident fund accumulations are invested in government securities, negotiable securities or bonds, 7-year national saving certificates or post office time deposits schemes, if any.

10.3 Employer's Obligations

1. The employer is required to contribute towards Employees' Provident Fund and Pension Fund as:
 - (a) In case of establishments employing less than 202 persons or a sick industrial (BIFR) company or 'sick establishments' or any establishment in the jute, beedi, brick, coir or gaur gum industry - 10% of the basic wages, dearness allowance and retaining allowance, if any.
 - (b) In case of all other establishments employing 201 or more persons - 12% of the wages, D.A., etc.

An amount equal to 8.33% of the employees' pay shall be remitted to the Pension Fund and the balance of employer's contribution will continue to remain in Provident Fund account.

Where, the pay of the employee exceeds ₹ 5,000 p.m., the contribution to Pension Fund shall be limited to 8.33% of his pay of ₹ 5,000 only. The employee may voluntarily opt for the employer's contribution @ 8.33% of the full wages to be credited to Pension Fund.

2. Towards Deposit-Linked Insurance Fund, he has to pay: - 0.5% of the wages, D.A., etc.
3. The employer cannot reduce the wages or other benefits such as pension, gratuity or provident fund of an employee, on account of the employer's contribution or administrative charges payable by him.
4. The employer is required to deduct the employee's contribution from his wages and deposit the same into the provident fund account along with his own contribution. The

employee's contribution shall be equal to the employer's contribution, i.e. 10% or 12% as the case may be. The employee is not required to contribute towards Deposit-linked Insurance Fund.

5. The employer is required to pay the following administrative charges also:
 - (a) w.e.f. 1.8.1998 @ 1.10% (0.65% up to 31.7.98) of the employees' wages, subject to a minimum of ₹ 5 every month, for administration of Provident Fund.
 - (b) 0.01% of the employee's wages, subject to a minimum of ₹ 2 every month, for administration of Deposit-Linked Insurance Fund.
6. The employer should, within 15 days of the close of every month, deposit the total amount of the employer's and employees' contributions and administrative charges with P.F. Commissioner into the respective accounts maintained at the State Bank of India.



Did u know? The amounts deposited into the Provident Fund Account are invested in specified securities and under Special Deposits Scheme. The Commissioner shall credit to the provident fund account of each member interest at such rate as the Central Government may determine, on the balance standing to his credit on first day of April each year. The rate of interest notified for the year 1998-99 was 12% p.a. The rate of interest had been reduced to 11% w.e.f. 1.4.2000 and further reduced to 9.5% w.e.f. 1.4.2001. Interest is also earned on the Family Pension Fund and Deposit-linked Insurance Fund Accounts.

Under the Employees' Provident Fund Scheme, the Central Government, on the recommendation of the Central Board of Trustees, declares the rate of interest to be credited annually to the accounts of provident fund subscribers.

7. The employer is required to prepare a contribution card in Form 3-A, in respect of each member-employee. The card shall be valid for a period of one year and thereafter a new card shall be prepared for the next year. The wages of employee, provident fund and family pension fund contribution recovered and remitted every month and break in reckonable service should be entered therein.
8. The employer is required to send to the Commissioner, a Monthly Return of Contributions within 25 days of close of each month, along with receipted triplicate copies of challans for the amount of Provident Fund, Family Pension Fund and Deposit-linked Insurance Fund contributions and the administrative charges deposited into the State Bank of India.
9. If no contributions have been recovered during a month, a nil return shall be furnished by the employer. The employer should retain a duplicate copy of the statement and the fourth copies of the challans with himself.
10. The employer should send to the Commissioner a Consolidated Annual Contribution Statement in Form 6A within one month of the close of the year, showing the employer's and employee's contribution in respect of each employee made during the year. The employer should retain a duplicate copy of the statement with himself.

10.4 Employees Benefits under the Scheme

1. Under the scheme, a member can withdraw the full amount standing to his credit in the fund, in the event of:
 - (a) Retirement from service after attaining the age of 55;
 - (b) Retirement on account of permanent and total incapacity;

Notes

- (c) Migration from India for permanent settlement abroad; and
 - (d) Termination of service in the course of mass retrenchment (involving 3 or more persons). The membership for this purpose is reckoned from the time of joining the covered establishment till the date of the settlement of the claim.
2. A member can withdraw up to 90% of the amount of provident fund at credit after attaining the age of 54 years or within one year before actual retirement on superannuation, whichever is later.
3. The Scheme provides for non-refundable partial withdrawals/advances to meet certain contingencies:
- (a) Financing of life insurance policies;
 - (b) House-building;
 - (c) Purchasing shares of consumer co-operative credit housing societies;
 - (d) During temporary closure of establishments;
 - (e) Illness of member, family members;
 - (f) Member's own marriage or for the marriage of his/her sister, brother or daughter/son and post-matriculation education of children;
 - (g) Damages to movable and immovable property of members due to a calamity of exceptional nature;
 - (h) Unemployment relief to individual retrenched members;
 - (i) Cut in supply of electricity to the factory/establishment; and
 - (j) Grant of advance to members who are physically handicapped for the purchase of equipment.
4. If there is no nominee, the amount shall be paid to the members of the family in equal shares except:
- (a) Sons who have attained majority;
 - (b) Sons of a deceased son who have attained majority;
 - (c) Married daughters whose husbands are alive;
 - (d) Married daughters of a deceased son whose husbands are alive.
5. The nomination form shall be filled in duplicate and one copy duly accepted by the provident fund office will be kept by members. In case of change, a separate form for a fresh nomination should be filled in duplicate.
6. When a member leaves service in one establishment and obtains re-employment in another establishment, whether exempted or unexempted, in the same region or in another region, he is required to apply for the transfer of his provident fund account to the Regional Provident Fund Commissioner in the prescribed form. The actual transfer of the provident fund accumulations with interest thereon takes place, in cases of:
- (a) Re-employment in an establishment whether exempted or unexempted, in another region/sub-region;
 - (b) Re-employment in an exempted establishment in the same region/sub-region;

- (c) Leaving service in an exempted establishment and re-employment in an unexempted establishment;
 - (d) Re-employment in an establishment not covered under the Act.
7. A member of the fund is entitled to get full refund of both the shares of contributions made by him as well as by his employer with interest thereon immediately after leaving the service.
8. After the completion of each accounting year, every member of the fund shall be supplied with an account slip showing:
- (a) The opening balance;
 - (b) The amount contributed during the year;
 - (c) The amount of interest credited or debited during the year; and
 - (d) Closing balance.

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



Notes

Exemption

An establishment/factory may be granted exemption under Section 17 if, (i) in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contributions are not less favourable than those specified in Section 6 of the Act, and (ii) if the employees are also in enjoyment of other provident fund benefits, which on the whole are not less favourable than the benefits provided under the Act or any scheme in relation to the employees in any other establishment of a similar character. While recommending to the appropriate government, grant of exemption under this section, the Employees' Provident Fund Organisation usually takes into consideration, the rate of contribution, the eligibility clause, the forfeiture clause and the rate of interest. Also, the totality of the benefits provided under the rules of the exempted funds is taken into consideration.

The Central Government is empowered to grant exemption to any class of establishments from the operation of the Act for a specified period, on financial or other grounds under section 16(2). The exemption is granted by issue of notification in the Official Gazette and subject to such terms and conditions as may be specified in the notification. The exemption does not amount to total exclusion from the provisions of the Act. The exempted establishments are required to constitute a Board of Trustees, according to the rules governing the exemptions to administer the fund, subject to overall control of the Regional Provident Fund Commissioner. The exempted establishments are also required to maintain proper accounts, submit prescribed returns, invest provident fund accumulations in the manner prescribed by the Central Government from time to time, and to pay inspection charges. Exemption is liable to be cancelled for breach of any of these conditions.

10.5 The Employees' Pension Scheme, 1995

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

Notes

Membership

1. Every member of the Employees' Provident Scheme, 1952 and those who opted for Employees Family Pension Scheme, 1971.
2. All new entrants to the Employees' Provident Fund Scheme, 1952 will become member of the Employees' Pension Scheme, 1995 on compulsory basis.
3. Every employee who has ceased to be a member of the Employees Family Pension Scheme, 1971 during 1.4.1993 and 15.11.1995 was given option to become member of the Employees' Pension Scheme, 1995 up to 31.3.1998.
4. Every existing member of the Employees' Provident Fund Scheme, 1952 not being member of Family Pension Scheme, 1971 has option to become member of Employees' Pension Scheme, 1995.

Option Requirement

1. Members who have died between 1.4.1993 and 15.11.1995 shall be deemed to have exercised the option of joining Employees' Pension Scheme, 1995 with effect from the date of death.
2. Members who are alive may exercise option to become member of the Employees' Pension Scheme, 1995 on the date of exit from the employment by depositing amount along with interest at the rate of 8.5 per cent per annum from the date of such withdrawal.
3. Members will have option to join Employees' Pension Scheme, 1995 by depositing the contribution along with up to date interest under ceased Employees' Family Pension Scheme, 1971, with effect from 1.3.1971.

Contribution

Employee is not required to contribute separately under the Employees' Pension Scheme, 1995. Employer's share of provident fund contribution at the rate of 8.33% is diverted to pension fund every month.

Service for Pension

Actual service rendered after 16.11.1995 together with the service for which the contribution has been made under the ceased Family Pension Scheme, 1971, if any, will be treated as service for pension.

A person is entitled for pension after completing the age of 58 years, with a minimum service of 10 years.

Six months or more shall be treated as one year and service less than six months shall be ignored.

Determination of Pensionable Salary

Pensionable salary shall be the average monthly pay drawn in any manner, including on piece rate basis during the contributory period of service in the span of 12 months preceding the date of exit from membership of the Employees Provident Fund.

10.6 Benefits under Pension Fund Scheme, 1995

Notes

1. A member shall be entitled to superannuation pension, if he has rendered eligible service of 20 years or more and retires at the age of 58 years, or retirement pension if he has rendered eligible service of 20 years or more and retires before the age of 58 years, or short service pension if he has rendered eligible service of 10 years or more but less than 20 years.
2. A monthly reduced pension shall be allowed at the option of the member, from a date earlier than 58 years of age but not earlier than 50 years.
3. A member may opt for commutation of pension up to a maximum of 1/3 of the normal pension. The commuted value shall be 100 times the amount of pension commuted. Uncommuted pension shall be paid on monthly basis as per option under clause (d).
4. A member may opt to draw Reduced Pension and avail of Return of Capital equal to 90 or 100 times the original monthly pension, under three alternative plans.
5. If a member has not rendered the minimum eligible service of 10 years on the date of retirement/superannuation, he shall be entitled to Return of Contribution at the prescribed rate.
6. A member, who is permanently and totally disabled during the employment shall be entitled to the monthly member's pension, subject to a minimum of ₹ 250 p.m.
7. A monthly widow pension ranging from ₹ 450 p.m. to an amount equal to monthly member's pension is payable from the date of member's death to the date of death of widow or her remarriage.
8. A monthly children pension, equal to 25% of monthly widow pension, subject to a minimum of ₹ 150 p.m. per child (for two children) is allowed.
9. Where widow pension is not payable, the children shall be entitled to a monthly orphan pension, equal to 75% of monthly widow pension, subject to a minimum of ₹ 250 per child.
10. Pension shall be allowed for commutation, with effect from November 1998. Member can opt for commutation up to a maximum of one third of pension.
11. A member is allowed withdrawal benefit, where a minimum of pensionable service of 10 years has not been rendered on the date of exit/on attaining age of 58 years.



Did u know? The pension scheme will be administered by the tripartite Central Board of Trustees set up under the Employees' Provident Fund and Miscellaneous Provisions Act. The Regional Committees set up under the Provident Fund Scheme shall advise the Regional Boards on matters relating to administration and implementation of the scheme in their respective regions.

Notes



Caselet

EPF Members can opt for New Pension Scheme

ALL members of the Employees Provident Fund (EPF) can also participate in the new pension scheme announced by the Government.

Though the scheme is primarily for Central Government employees who have joined the public services after January 1, 2004, the ordinance says that any person governed under the EPF may also opt to join the scheme. Under the new pension scheme, the monthly contribution of employees would be 10 percent of the salary and dearness allowance and this would be matched by the Central Government. However, it has been clarified that there will be no contribution from the Government in respect of individuals who are not Government employees.

Moreover, State Government employees are also eligible to join the new scheme, if the State, by a notification, extends it to its employees. States that are making quick progress in their pension fund reforms are Tamil Nadu, Andhra Pradesh, Rajasthan, Madhya Pradesh, Gujarat, Kerala, Orissa, Himachal Pradesh and Chhattisgarh.

Others who are eligible to opt for the new pension scheme are those who are members of the Coal Mines Provident Fund, Assam Tea Plantations PF, Jammu and Kashmir Employees PF and Seaman's PF.

However, the Ordinance caveats that subscribers cannot exit from the scheme except as specified by a Central Government notification. This notification is yet to be issued.

The five-member Pension Fund Regulatory and Development Authority (PFRDA) will permit one or more pension funds to receive contributions, accumulate them and make payments to subscribers.

It is also understood that there would be a "default option" of a pension fund manager and a pension fund for subscribers who do not want to choose among the various service providers and their products. This default fund manager is likely to be a public sector undertaking.

Source: thehindubusinessline.com

10.7 The Employees' Deposit-linked Insurance Scheme, 1976

The scheme came into force from August 1, 1976. It is applicable to all factories/establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies. All the provident fund member-employees are covered under this scheme. While the employees are not required to contribute to the Insurance Fund, the employers are required to pay contributions to it at the rate of 0.5% of the pay of the employees who are provident fund subscribers. The Central Government also contributes to the insurance fund at the rate of 0.25% of the pay in respect of the covered employee. The employers are also required to pay administrative charges to the insurance fund at the rate of 0.01% of the pay drawn by the employees, subject to a minimum of ₹ 2 per month. The Central Government also meets partly the expenses in connection with the administration of the insurance scheme by paying into the insurance fund an amount at the rate of 0.005% of the pay drawn by the employee members, subject to a minimum of ₹ 1 per month. The employers of exempted establishments are required to pay inspection charges at the rate of 0.02% of the pay of the employee-members.

Under the scheme, the nominees/ members of the family of employees of covered establishments will get, in the event of death while in service, an additional amount equal to the average balance in the provident fund account of the deceased during the preceding 12 months, wherever the average provident fund balance is less than ₹ 25,000. In cases where the average provident fund balance of preceding twelve months exceeds ₹ 25,000 plus 25% of the amount in excess of ₹ 25,000, subject to a maximum of ₹ 35,000.

There is a provision in the scheme for the exemption of factories/ establishments which have an insurance scheme approved by government and conferring more benefits than those provided under this statutory scheme, provided that a majority of the employees are in favour of such exemption. Subject to certain conditions, individual employees or class of employees may also be granted exemption. The Central Government is the appropriate authority to grant exemption from the Employees' Deposit-linked Insurance Scheme under Section 17(2A).

Private Provident Fund Scheme

Establishments employing 100 or more persons may opt for a Private Provident Fund Scheme after getting it approved by the Commissioner u/s 16A. A private scheme shall not be approved, if it is in any way less beneficial to the employees than the government's scheme, and at least majority of employees consent to it. A private scheme is usually drawn on the pattern of the government scheme.

Settlement of Claims within 30 Days

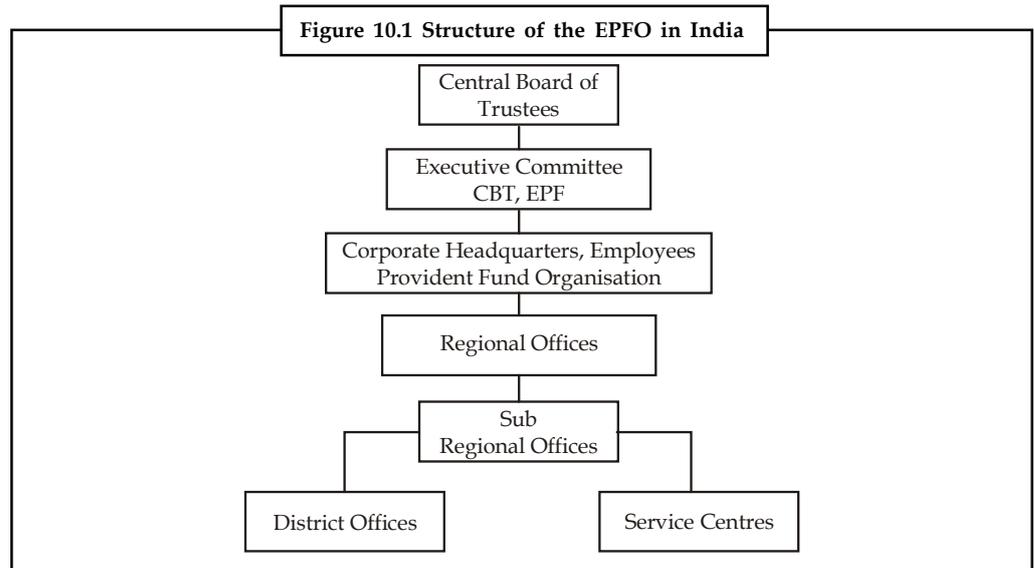
All claims relating to provident fund and pension complete in all respects submitted along with the requisite documents shall be settled and benefit amount paid to the beneficiaries within 30 days of receipt. Any deficiency in the claim shall be recorded in writing and communicated to the applicant within 30 days. For any delay beyond 30 days without sufficient cause, interest @ 12% p.a. on the benefit amount shall be payable to the beneficiary, which shall be recoverable from the Commissioner's salary.

Role of Central and Regional Provident Fund Organisations

The Employees' Provident Fund Organisation (EPFO), India is a state sponsored compulsory contributory pension and insurance scheme. It is one of the largest social security organisations in the world in terms of members and volume of financial transactions undertaken. The Employees Provident Fund Organisations is the incharge of all the three schemes. The organisation functions under the overall superintendence of the policies framed by the Central Board of Trustees, a tripartite body consisting of the chairman's, nominees of the Central and State Governments and employees and employers organisations. The Chief Executive Officer of the Organisation is the Central Provident Fund Commissioner, who is also a Member of the Board and its Secretary.

He is assisted by the Regional Provident Fund Commissioner, one in each state and in Delhi. The regional committees advise the Central Board on matters connected with the administration of the scheme in their respective States. Sub-regional provident fund offices have been opened in some regions to render better services to the subscribers of the fund. Provident fund inspectors are appointed to carry out inspections and to perform an advisory role vis-à-vis the employers and workers in different covered establishments. They conduct surveys to ensure that all coverable establishments/factories are covered under the Act. They also recommend and file prosecutions in the courts against defaulting employers and pursue these cases till their final disposal.

Notes



Offences and Penalties

The penalties in respect of the various offences in regard to provident fund, family pension fund, etc. are as follows:

Table 10.1: Offences and Penalties

| Offence | Penalty |
|---|---|
| 1. Making any false statement or misrepresentation to avoid any payment towards provident fund, family pension fund or deposit-linked insurance fund. | Imprisonment up to one year or fine of ₹ 5000/- or both. |
| 2. Default in payment of administrative charges towards Provident Fund (Para 38) or payment of inspection charges [Sec. 17(3)(a)] | Imprisonment up to 3 years and a fine of ₹ 5000/- (Minimum imprisonment for 6 months). |
| 3. Default in payment of employees' contribution [Sec.6]. | Imprisonment up to 3 years and a fine of ₹ 10,000 (Minimum imprisonment for 1 year) |
| 4. Default in payment of contribution or administrative charges or inspection charges towards the Deposit-linked Insurance Fund. | Imprisonment up to 1 year or a fine up to ₹ 5000/-, or both. (Minimum imprisonment for 6 months). |
| 5. Contravention of or default in complying with, any of the provisions. | Imprisonment up to 1 year or fine up to ₹ 4000 or both. |
| 6. Contravention of or default in complying with, any of the conditions, subject to which exemption was granted u/s 17. | Imprisonment up to 6 months (minimum 1 month) and fine up to ₹ 5000. |
| 7. Any subsequent offence committed after previous conviction (sec. 14AA) | Imprisonment up to 5 years (minimum 2 years) and fine up to ₹ 25,000. |

Damages and Penalties

When an employer fails to remit the dues under the Scheme within 15 (20 days with 5 days grace period) days of the close of each month, the employer will be liable to pay penal damages as may be determined by the Regional Commissioner (RC) not exceeding 37% of the arrears.

Any amount outstanding from the employer can be recovered by the Regional Commissioner as an arrear of land revenue. The powers for revenue recovery and issue of recovery certificates are vested with the Regional Commissioner (with effect from 1/7/90).

An employer, who fails to remit the contributions and administrative charges and/or submit the monthly and other periodical returns, is liable to be prosecuted under Section 14 of the Act. For failure to remit employees' share recovered from the wages, the employer shall also be liable for prosecution under Section 406/409 of the I.P.C.

The employers are liable for action under the penal provisions of the Act, in case they default compliance with the provisions of the Scheme. This is apart from the provisions relating to levying of penal damages and recovery of the outstanding dues as revenue under the Revenue Recovery Act.

Appraisal of the Act

Corruption by the enforcement officers has been a serious problem facing the organisation, since joining the scheme is compulsory and the subscription rate being high, many of the smaller companies avoid joining the scheme. The organisation, having legal powers to prosecute such companies, and make ad-hoc assessments and recover past arrears including interest and penalty, many of the field official connive with such companies for consideration. The interest rate being offered to subscribers is still very high and the investment of the corpus of fund by the organisation is not fetching such interest, resulting in drawal from surplus. This is a major concern for government and the organisation.



Task

Critically analyse the challenges which the employees face in getting their provident fund after leaving the organisation.

10.8 Payment of Gratuity Act, 1972

Gratuity as an additional retirement benefit has been secured by labour in numerous instances, either by agreement or by awards. It was conceded as a provision for old age and a reward for good, efficient and faithful service for a considerable period. In the early stages, gratuity was treated as a payment gratuitously made by an employer at his will and pleasure. In the course of time, gratuity came to be paid as a result of bilateral agreements or industrial adjudication. The Supreme Court had laid down certain broad principles to serve as guidelines for the framing of the gratuity scheme. They were:

1. The general financial stability of the concern;
2. Its profit-earning capacity;
3. Profits earned in the past;
4. Reserves and the possibility of replenishing the reserves; and
5. Return on capital, regard being had to the risk involved.

The first central legislation to regulate the payment of gratuity was the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. The Government of Kerala enacted legislation in 1971, for payment of gratuity to workers employed in factories, plantations, shops and establishments. In 1971, the West Bengal Government promulgated an ordinance, which was subsequently replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971. After the enactment of these two Acts, some other State Governments also voiced their intention of enacting similar measures in their respective states. It became necessary, therefore, to have a Central law on the subject so as,

1. To ensure a uniform pattern of payment of gratuity to the employees throughout the country, and

Notes

2. To avoid different treatment to the employees of establishment having branches in more than one state, when under the conditions of their service, the employees were liable to transfer from one state to another.

Hence, the Government of India enacted legislation on gratuity. The Act came into force from September 16, 1972.

Object of the Act

The Act provides for a scheme of compulsory payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, motor transport undertakings, shops or other establishments and for matters connected therewith or incidental thereto.

Applicability

The Act is applicable to:

1. Every factory, mine, oilfield, plantation, port and railway companies;
2. Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a state, in which 10 or more persons are employed or were employed on any day of the preceding 12 months;
3. To every motor transport undertaking, in which 10 or more persons are employed or were employed on any day of the preceding 12 months,
4. Such other establishments or class of establishments, in which 10 or more employees are employed or were employed on any day of the preceding 12 months, as the Central Government may, by notification, specify in this behalf.

The Act provides for the grant of exemption from the operation of the Act to any person or class of persons, if they are in receipt of gratuity or pensioner benefits not less favourable than the benefits conferred under the Act.

Employer's Obligations

1. Every employer has to obtain insurance for his liability to pay gratuity from the LIC.
2. However, an employer who has already established an approved gratuity fund or who having at least 500 employees establishes an approved gratuity fund may claim exemption from such compulsory insurance.
3. Every employer shall get his establishment registered with the controlling authority (Assistant Labour Commissioner).
4. Premium to the insurance company should be paid without fail, or the employer shall be liable to pay the amount of gratuity payable to the controlling authority.
5. As soon as the gratuity becomes payable, the employer should determine the amount of gratuity & give a notice in Form L to the payee viz. the employee or his nominee or legal heir & to the controlling authority of that area.
6. The employer should pay the gratuity within 30 days from the date it becomes payable or after such date along with simple interest @ 10% p.a. (or as notified by the Government from time to time) on the amount of gratuity, unless the delay is on the part of the payee.

7. The employer should deposit the amount of gratuity payable with the controlling authority, viz. Asst. Labour Commissioner (Central) of that area, if:
- The nominee or the legal heir of the employee is a minor, or
 - There is any dispute as to the amount or admissibility of the claim of gratuity, or as to the person entitled, etc.

Notes

10.8.1 Benefits and Entitlement

An employee should have completed or should be in the continuous service for a period. It means if for that period, he has been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absent in respect of which an order imposing a punishment of penalty or treating the absence as break in service has been passed in accordance with the standing orders, rules or regulation governing the employees of the establishment), lay-off, strike or a lockout or cessation of work not due to any fault of the employees, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

- Where an employee is not in continuous service within the meaning of the above clause for any period of one year or six months, he shall be deemed to be in continuous service under the employer, if he has actually worked for 190 days during the preceding 12 months in an establishment, which works less than 6 days a week and 240 days in any other case;
- Further, for determining the continuous period of six months, an employee should have completed 95 days in an establishment, which works for not less than 6 days in a week and 120 days in any other case.



Notes

- Employee is a person employed on wages in any establishment, factory, mine, oilfield, plantation, railway company or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, where the terms of such employment are express or implied, and includes any such person, who is employed in a managerial or administrative capacity, but does not include any person who hold a civil post under the Central Government or a State Government.

The family consists of:

- In the case of male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the widow and children of his predeceased son, if any;
- In the case of 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.

A female employee can exclude her husband from her family by a notice in writing to the controlling authority. In such event, her husband and his dependent parents will not be deemed to be included in her family, unless the said notice is subsequently withdrawn.

Contd...

Notes

2. 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, overtime wages and any other allowance.

Every employee irrespective of his wages is entitled to receive gratuity after he has rendered continuous service for 5 years or more, at the time of termination of his services, either (i) on superannuation, or (ii) on retirement, or (iii) on resignation, or (iv) on death or disablement due to accident or disease. However, the condition of 5 years' continuous service is not necessary if services are terminated due to death or disablement.

Disablement means permanent inability or incapacity of an employee to do the work, which he was capable of doing before the accident or disease. In case of death of the employee, gratuity payable to him is to be paid to his nominee, and if no nomination has been made, then to his heirs.

For every completed year of service or part thereof in excess of six months, the employer has to pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the concerned employee. In the case of piece-rated employee, daily wages are computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment. For this purpose, the wages paid for any overtime work will not be taken into account.



Caution

Gratuity Payable = 15 days' wages × No. of completed years of service.

Not exceeding ₹ 3, 50,000/-

In case of seasonal establishment,

Gratuity Payable = 7 days' wages × No. of seasons for which employed.

Not exceeding ₹ 3, 50,000/-

In case of monthly rated employee,

$$15 \text{ days' wages} = \frac{\text{Monthly wages last drawn}}{26}$$

In the case of an employee employed in a seasonal establishment, and who is not so employed throughout the year, the employer shall pay gratuity at the rate of 7 days wages for each season.

In case an employee has been employed on reduced wages after his disablement, his wages for the period before his disablement shall be taken into account for calculating gratuity in respect of that period and the wages so reduced shall be considered for calculating gratuity for the period subsequent to his disablement.

The employee who has become eligible for payment of gratuity should apply in Form I or J or K, respectively, within 30 days from the date of gratuity becoming payable. This application should be sent to the employer either personally or through Registered A.D.

However, where the date of superannuation or retirement is known, the employee may apply even 30 days before such date.

Besides, a legal heir may apply within one year from the date the gratuity becomes payable. Any delayed application for payment of gratuity should also be entertained by the employer, if there is sufficient cause for the delay.

The gratuity should be paid in cash, or by Demand Draft or cheques. If the amount of gratuity is less than ₹ 1000/-, then it may be paid by postal money order, at the desire of the payee. Details of payment of gratuity should be intimated by the employer to the controlling authority Assistant Labour Commissioner (Central) of the area.

10.8.2 Forfeiture

If the services of an employee have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, his gratuity can be forfeited to the extent of the damage or loss so caused to the employer. The gratuity payable to an employee can be wholly forfeited, if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence or an offence involving moral turpitude committed by him in the course of his employment.

Section 4(6) provides as under:-

"Notwithstanding anything contained in sub-section (1)

- (a) The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
- (b) The gratuity payable to an employee may be wholly or partially forfeited;
 - (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act 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."

The Gratuity Act also provides that the employees' right to receive better terms of gratuity under any Award/Settlement/Regulation with the employer shall be protected. The bank employees/officers should, therefore, be paid higher amount of the gratuity payable either under the Act or Award /Settlement/Officers' Service Regulations.



Did u know? The limit on maximum amount of gratuity exempt from the income-tax has been raised from ₹ 1, 00000 to ₹ 3, 00000 w.e.f. 1.4.1995 vide Notification No. 9959.

10.8.3 Nomination

1. An employee who has completed one year of service has to name his/her nominee in the prescribed form. An employee in his nomination can distribute the amount of gratuity amongst more than one nominee.
2. If an employee has a family at the time of making the nomination, it has to be made in favour of one or more members of the family.
3. If nomination is made in favour of a person who is not a member of his family, the same is void. However, if the employee has no family at the time of making a nomination, he can make the nomination in favour of any person.
4. If such employee acquires a family subsequently, then such nomination becomes invalid forthwith, and the employee has to make a fresh nomination in favour of one or more members of his family.

Notes

5. Nomination once made can be modified, after giving due notice to the employer. If a nominee predeceases the employee, a fresh nomination is required to be made.
6. A person who is entitled to gratuity has to apply himself/herself or through an authorised person to the employer for gratuity within the prescribed time, the employer has to consider the same.
7. Similarly, the employer has to give notice to the person entitled to gratuity and to the controlling authority immediately after it became payable, specifying the amount of gratuity, and thereafter make arrangements for its payment.

10.8.4 Settlement of Claims

The employee and the employer or any other person raising the dispute regarding the amount of gratuity, may make an application to the controlling authority to decide the dispute. No appeal by an employer shall be admitted, unless the employer produces a certificate of the controlling authority to the effect that he has deposited with the controlling authority an amount equal to the amount of gratuity required to be deposited or deposits with the appellate authority such amount.

An aggrieved employee can file an application to the controlling authority for recovery of the amount of gratuity. The controlling authority will issue a certificate to the collector for recovery of that amount, together with compound interest, at the rate of 9% per annum from the date of expiry of the prescribed time as arrears of land revenue, and pay the same to the person entitled to it.

Offences and Penalties

Section 9 declares certain acts as offences and prescribes penalties for them. Whoever, for the purpose of avoiding any payment, makes any false statement or false representation is punishable with imprisonment up to 6 months and/or fined up to ₹ 1000.

| Offence | Penalty |
|---|---|
| 1. Making a false statement or false representation to avoid any payment under the Act | Imprisonment up to 6 months or fine of ₹ 10,000/- or both. |
| 2. Contravention or non-compliance of any provision of the Act or the Rules | Imprisonment up to 1 years or fine up to ₹ 20,000/- or both (minimum imprisonment for 3 months and fine up to ₹ 10,000) |
| 3. Non-payment of any gratuity payable under the Act | Imprisonment up to two years (minimum 6 months) or fine up to ₹ 20,000 (Minimum ₹ 10,000) or both |
| 4. Failure to make payment by way of premium for compulsory insurance u/s 4A(1) or by way of contribution to an approved gratuity fund. | Fine up to ₹ 10,000 and ₹ 1,000 for each day during which the offence continues. |

Appraisal of the Act

In Gratuity Act, minimum service is 5 years experience to claim the gratuity but in some cases in the company knows the particular employee(s) are reaching his 5 years period so we can terminate them due to some reasons. By that they can exempt themselves from paying the gratuity.



Case Study

15 Day's Wages

The word "15 day's wages" has been interpreted differently by different judicial authorities. Dig Vijay Woolen Mills Ltd. and Shri Mahendra Prataprai Buch appealed to the court for the calculation of 15 days wages for gratuity payment. In this appeal, the question came up how to calculate 15 days' wages for the purpose of Payment of Gratuity in terms of Section 4(2) of the Payment of Gratuity Act. The appellant-company calculated the amount of gratuity on the basis that fifteen days' were half of the company wages last drawn. The respondents demanded an additional sum as gratuity on the ground that their monthly wages should be taken as what they got for 26 working days and their daily wages should be ascertained on that basis, but not by just taking half of the wages for a month of 30 days, or fixing their daily wages by dividing monthly wages by 30. According to the Supreme Court, the pattern followed by the method of 26 working days appears to be legitimate and reasonable.

Question

Do you agree to the decision of the Supreme Court? Justify.

10.9 Summary

- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare legislation enacted for the purpose of institution of provident fund for employees in factories and other establishments.
- This Act provides for the institution of compulsory provident fund, family pension fund and deposit linked insurance fund for the benefit of the employees.
- Gratuity as an additional retirement benefit has been secured by labour in numerous instances, either by agreement or by awards.
- The employee and the employer or any other person raising the dispute regarding the amount of gratuity, may make an application to the controlling authority to decide the dispute.
- Nomination once made can be modified, after giving due notice to the employer. If a nominee predeceases the employee, a fresh nomination is required to be made.
- The purpose of avoiding any payment makes any false statement or false representation is punishable with imprisonment up to 6 months and/or fined up to ₹1000.

10.10 Keywords

Disablement: It is the permanent inability or reduction in the earning capacity of the workmen.

Employee: Any person who is employed for wages in any kind of work, manual or in connection with the work of an establishment and who gets wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the establishment.

Employer: The owner or occupier of the establishment.

Notes

EPFO: Employees Provident Fund Organisation

Gratuity: It is a sort of an award which an employer pays out of his gratitude, to an employee for his long and meritorious service, at the time of his retirement or termination.

Retirement: It is defined as the termination of the service of an employee other than on superannuation.

Superannuation: It is the attainment of such age by the employee as is fixed in the contract or conditions of service as the age on the attainment of which he has to leave the employment.

Wages: The compensation received by the worker for his services.

10.11 Self Assessment

State whether the following statements are true or false:

1. To qualify for the old-age insurance benefits, a person must have reached the retirements age & be fully insured.
2. An employee ceases to be the member of the provident fund at the age of 60 years.
3. At present the rate of interest on provident fund is 12%.
4. Profit-earning capability of the firm is one of the guiding principles for framing the gratuity scheme.
5. The gratuity of a person can be forfeited if his employment is terminated due to his bad health.

Fill in the blanks:

6. When an employee attains a particular age as stated in the contract after which he is entitled to leave the services is called.....
7. After a period of Years a person is usually eligible for the gratuity payment.
8. is the award given by the corporates to their employees for the loyalty & services rendered by them for a long period.
9. When an employee is terminated from the services on the account of his age & not on the basis of the misconduct is
10. offers a fixed sum when an employee reaches a predetermined retirement age.
11.% of the wage is the contribution of the employer towards the deposit linked insurance fund.

10.12 Review Questions

1. "The principles which are incorporated in the Payment of the Gratuity Act is conducive to the industrial harmony & is in consonance with public policy." Comment.
2. You are working in an organisation & every month your company deducts a part of PF from your salary. It's been 3years that you are working with the same organisation. Now you want to withdraw your PF. Examine the conditions you are required to meet before withdrawing the PF.

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3. Mr. Devi is working in ABC corporation for last 4.5yrs as a senior administration officer but during the argument with the management today, he misbehaved & using abusive language at the workplace. Do you think in this case he will suffer from the forfeiture of the gratuity? Justify.
4. You are the owner of ABC estates Pvt. Ltd. You had 300 employees under your supervision. Analyse your duties & obligations towards the pension & gratuity benefits of the employees in your company.
5. Mr. Graham was working with a reputed MNC but due to certain circumstances he was absconding from his services after informing his supervisor who rejected to release him without serving the notice period. Do you think he is entitled to receive his provident fund from the company? Justify.
6. Critically analyse the paradigm shift that has occurred in the employee's provident funds & miscellaneous provisions Act.
7. You are the employee of the XYZ Pvt. Ltd. for last 5 yrs. You are entitled to receive gratuity from the company. Discuss your rights & obligations in this regard.
8. Do you think the main objective of the Provident fund Act is met in current scenario? Justify giving examples.
9. Being the HR of the company, you are asked to calculate the gratuity amount for the employees. Design the methods you will use to calculate the gratuity. Take any example & use those methods there.
10. Analyse the penalties a corporate has to suffer for the default in making contribution towards gratuity & provident fund.
11. Do you think the Acts introduced by the government for the security of the employees have met their required purpose in today's globalized & privatized world? Justify.
12. "Merely stating that employee went on an illegal strike & so caused a heavy damage to the company is not a ground for denying gratuity." Do you agree? Justify.
13. Mrs. Renu was working with Ernesto Construction for last 12yrs & now she is retired. Examine the benefits which she can avail under the pension Fund Scheme.
14. Do you think these social legislation Acts covers all the aspects of the employees concern for the retirement & loyalty towards the company? Suggest some improvements.
15. You have joined a reputed firm & they asked you to nominate the member for the provident fund scheme at the time of joining. Examine the options you have in nominating the member for the scheme.

Answers: Self Assessment

- | | |
|---------------|-------------------|
| 1. True | 2. True |
| 3. False | 4. True |
| 5. False | 6. Superannuation |
| 7. five | 8. gratuity |
| 9. retirement | 10. pension plan |
| 11. 0.5 | |

Notes

10.13 Further Readings



Books

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Online links

En.wikipedia.org

www.ilo.org

Unit 11: Minimum Wages Act, 1948

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Objectives

After studying this unit, you will be able to:

- Discuss Minimum Wages Act, 1948
- Describe objectives and Government control on the Act

Introduction

The philosophy of labour laws, including the Minimum Wages Act, is that industry is for man and not man for industry. Industry should, therefore, exist to make life good and comfortable. Work in industry should be an integrated part of happiness. Employers are, therefore, under an obligation, call it economic or social, to provide their employees safe, healthy and comfortable living, employment and working conditions. It is only when they failed to honour this obligation that the Government stepped in, to safeguard the interest of workmen by enacting suitable legislation. This has happened all over the world, and in India also, the Government has recognised its duty to undertake legislation to protect workers from being exploited. If the employers had given a fair deal to their workers, the question of legislative intervention by the Government would not have arisen.

The conception of minimum wages is based on the principles of equity and social justice. Its underlying idea is that "he who works is entitled to a fair remuneration, which may enable him

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to live a life consistent with human dignity". Wages are not an economic abstraction but an important price in society. Economically speaking, wages may be the price of labour, just as, interest is the price of capital and profit the price of risk carrying, but from social point of view, they are unique in that they not only constitute payment for this effort but also provide the means of subsistence for those who supply the effort.

All over the world, wages and their problems have been assuming great importance with the advancing economic and social development, which has for its result the larger proportion of population gaining their living as employees, or wage earners. The same is the case with our country. Though it is predominantly agricultural, but in recent years, it has made rapid strides in the field of industrial and commercial development. This has resulted in an appreciable increase in salaried and wage employment, and has thus, created the same labour problems, including that of wages as in other developed and developing countries. For handling these problems, the Government has already undertaken a number of statutory and other measures. In regard to wages, there is a need to formulate a suitable wage policy, which may help to maintain industrial peace, which is so essential for maintaining and promoting the economic growth of the country. An objective of this policy is to set a floor to wages by establishing what may be regarded as a social minimum which is to be designed to enable workman and his family to maintain a certain minimum standard of living, in accordance with modern ideas as understood in this country and permitted by the state of economy. It is in pursuance of this objective the Government enacted the Minimum Wages Act in 1948, so that the worker may be ensured wages at least sufficient to maintain his health and efficiency.

11.1 Minimum Wages and ILO

The need for regulating minimum wages has been gaining increasing attention, not only of the governments of developing and developed countries, but also of the International Labour Organisation at Geneva (ILO), which is formulating International Labour Standards for its member countries since its very inception after the First World War. The ILO attached much importance to the question of fixing minimum wages as far back as 1921, and the result of its enquiry led to the adoption of a Convention No.20 and a Recommendation No.30 on minimum wage fixing machinery 1928, covering only non-agriculture sector of employments. After 23 years, that is 1951, the ILO Conference at its 34th Session adopted a Minimum Wage Fixing Convention No.99 and a Recommendation No.83 for agricultural employments. Since then a number of conventions and recommendations have been adopted having important bearings on the question of minimum wages.

11.2 Fixation of Minimum Wages in India

India has ratified the ILO convention on Minimum Wage Fixing Machinery and has enacted a central minimum wage legislation, known as Minimum Wages Act, 1948. As in other countries, here also the need for fixing minimum wages arose from the conditions created by the payment of low and sweated wages in the unorganised and organised sectors of industries, and consequent need for protecting workers against exploitation. Before achieving the present status, the concept of minimum wages had to pass through several stages. As far back as 1921, a resolution recommending the establishment of Industrial Boards for the determination of minimum wages in the Bengal Presidency was debated in the Bengal Legislative Council. Since then, the movement for fixing minimum wages by legislation has been gaining momentum. It received further impetus from the development of the trade union movement, and the agitation of workers and their unions for adequate wages. In 1929, the Royal Commission of Labour recommended a policy of gradual introduction of statutory minimum wages. This cautious approach was based on their finding that there might be many trades, in which a minimum may be desirable but not

practicable. In 1938, the Central legislative Assembly adopted a resolution urging the payment of sufficient wages and fair treatment for workers in industries protected and subsidised by the government. Subsequent labour enquiry committees, appointed by the Bihar, Bombay and UP governments, recommended suitable minimum wage fixing machinery; but no action was taken on the basis of these recommendations, except in UP where basic minimum wages were fixed for workers in textile and electricity undertakings. The sharp rise in prices in 1943 and the constant erosion of real wages compelled the Government to consider the matter at the 3rd and 4th meetings of the Standing Labour Committee in 1943 and 1944. The Indian Labour Conference at its 5th session approved, in principle, the enactment of minimum wage legislation. A draft Bill was prepared and considered at its 6th and 7th sessions, and at a special sub-committee meeting in 1946. The Bill was introduced in the Central Assembly and it became an Act in March 1948.

11.3 Minimum Wages Act, 1948: Its Objectives

Object of the Act

The object of the Act is to promote the welfare of workers by fixing minimum rates of wages in certain industries where labour is not organised and sweated labour is most prevalent. The Act seeks to prevent exploitation of workers by ensuring that they are paid the minimum wages, which would provide for their subsistence and preserve their efficiency.

When the constitutionality of this Act was challenged in 1955, in the case of *Bejoy Cotton Mills vs. State of Ajmer* before the Supreme Court, the Court rejected the contention and upheld the constitutionality of the Act, observing that securing of living wage to workers, which ensures not only bare subsistence but also maintenance of health and decency, is conducive to general interest of the public, and it is also in conformity with the Directive Principles of State Policy embodied in Article 43 of the Constitution.

Scope and Coverage of the Act

The Act applies to the whole of India. Initially, it applied to agricultural employment and 12 other employments as mentioned in the Schedule to the Act (reproduced below). The appropriate Government is empowered to extend this Act to any other employment in respect of which it is of the opinion that minimum rates of wages should be fixed under the Act. State Governments have used this power to bring within the purview of the Act not just a few other employments, with the result that now the Act covers more than three hundred employments.

Definitions (Interpretation)

Appropriate Government (Sec. 2 (b))

The appropriate government in relation to any scheduled employment carried on by or under the authority of the Central Government, or a railway administration, or in relation to a mine, oilfield, or major port, or any corporation established by a Central Act means the Central Government (Sec. 2 (b)(ii)).

In relation to any other Scheduled employment, the appropriate government means the State Government. (Sec. 2(b) (ii)).

Notes

The Schedule (Sec. 2 (g) and Sec. 27)

Part I

1. Employment in any woolen carpet making or shawl weaving establishment.
2. Employment in any rice mill, flour mill or dal mill.
3. Employment in any tobacco (including *bidi* making) manufactory.
4. Employment in any plantation, that is to say any estate which is.
5. Employment in the construction or maintenance of roads or in building operations.
6. Employment in any tannery or any other leather manufactory.
7. Employment in any oil mill.
8. Employment in any local authority.
9. Employment in any stone breaking or stone crushing establishment.
10. Employment in any mica works.
11. Employment in lace manufactory.
12. Employment in any public motor transport establishment.

Part. II

1. Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, raising of livestock, bees and poultry, and any practice performed by farmer or on a farm as incidental to or in conjunction with farm operation (including any forestry or timbering operation, and the preparation for market and delivery, to storage or to market or to carriage for transportation to market of farm product.
2. Employment in cleaning and sorting of onions and other incidental work.

Employee: Employee means any person who is employed for hire or reward to do any work, skilled and unskilled, manual and clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed. The term includes an out-worker to whom an article or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adopted, or otherwise processed for sale for the purposes of trade or business of that person, where the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of that other person. The term also includes an employee declared to be an employee by the appropriate government. It does not, however, include any member of Armed Forces of the union, *chowkidar*, a dismissed employee, for the purposes of claiming relief under the Act, an accountant who is concerned with accounts are, however, held by the Courts as employees under the Act.

Wages: "Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of contract of employment, expressed or implied were fulfilled, be payable to a person employed, in respect of his employment or of work done in such employment. It includes house rent allowance, but does not include the value of (a) any house accommodation, supply of light, water medical attendance, or (b) any other amenity or any service excluded by general or special order of the appropriate government.

'Wages' do not include any contribution paid by employer to any pension fund or provident fund under any scheme of social insurance, or

1. any travelling allowance or value of any travelling concession
2. any gratuity payable on discharge, or
3. any sum paid to the person employed to defray special expenses entailed by him by the nature of his employment.

11.4 Fixation and Revision of Minimum Wages

The appropriate government may fix the minimum rates of wages payable to the employees of scheduled employment, either for the whole State or a part of the State or for any specified class or classes of such employment. Minimum rates of wages may be fixed, both for time-rated and piece-rated workers; and also for over-time work. The minimum wages, so fixed, may be reviewed at such intervals as the Government may think fit; such intervals not exceeding five years. Until the rates are so revised, the minimum rate in force immediately before the expiry of the said period of five years shall continue in force.

The minimum rates of wages may be fixed by the hour, by the day, by the week, by the month, or by any larger wage period as may be prescribed. Where such rates are fixed by the month or the day, the manner of calculating wages for a month, or for a day, as the case may be, may be indicated.

In fixing or revising minimum rates of wages, different rates may be fixed for (i) different scheduled employments; (ii) different classes of work in the same scheduled employment; (iii) adults, adolescents, children and apprentices; (iv) and different localities. Different rates of minimum wages may also be fixed by anyone or more of the following wage periods; by the hour, by the day, by the week, by the month or by a larger wage period as may be prescribed.

The appropriate government may refrain from fixing minimum rates of wages in respect of any scheduled employment, in which there are in the whole state, less than one thousand employees in such employment. But if, at any time, the appropriate Government comes to find after an enquiry that the number of employees in any individual employment has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment as soon as after such finding. (Section 3).

11.5 Minimum Rates of Wages

Minimum rates of wages fixed and revised under this Act may consist of:

- i) a basic rate of wages and a special allowance at a rate to be adjusted to variation in the cost of living index applicable to such workers at such intervals and in such manner as the Government may direct; or
- ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concession, in respect of supplies of essential commodities at concession rates where so authorised; or
- iii) An all-inclusive rate, allowing for the basic rate, the cost of living allowance, the cash value of the concession, if any.

The cost of living allowance and cash value of the concession shall be computed by a competent authority at such intervals and according to such directions, as may be given by the appropriate Government. (Section 4).

11.5.1 Procedure for Fixing and Revising Minimum Wages

Minimum rates of wages, in respect of any scheduled employment, can be fixed or revised by the appropriate Government in either of two methods: (a) It shall appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be. Or it shall, by notification in the Official Gazette, publish its proposal for the information of the persons likely to be affected thereby, and specify a date, not less than two months from the date of notification, on which the proposal will be taken into consideration.

After considering the advice of the committee or committees or all representations received by it before the date specified in the notification, the appropriate Government, by notification in the official Gazette, shall fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of three months from the date of issue of notification, unless otherwise directed.

Where the appropriate Government proposes to revise the minimum rates of wages by notification, it shall also consult the Advisory Board appointed under Sec. 7 of the Act. Before the Government fixes the revised minimum rates of wages, it shall take into consideration re-presentation received by it. Time must be specified for making representation.

Consultation with the Advisory Board is obligatory for revision of minimum wages and not initial fixation.

The conferment of discretion on the Government to use either of the two procedures for fixation of minimum wages cannot be held to be violative of Art. 14 of the Constitution (*Chandra Bhavan Boarding & Lodging, Bangalore vs. State of Mysore*, A.I.R. (1968 Mys. 156).

A committee appointed under Sec. 5 is only an advisory body. The Government is not bound to accept its recommendation in every case. Further, any irregularity in the constitution of the committee or the procedure adopted by it cannot affect the validity of the notification issued by the appropriate government under Sec. 5 (i) (b).

If no advice is given by the committee, or if in-adequate advice is given, Sec. 5 does not deprive the appropriate Government of its power and duty to fix or revise the minimum rates of wages. (Section 5).

11.5.2 Advisory Board

For the purpose for co-ordinating the work of committees and sub-committees appointed under Sec. 5 of the Act, and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board to function. It can devise its own procedure.

Composition of Committees and Advisory Board (Sec. 9)

Each of the Committee, Sub-Committee, and the Advisory Board shall consist of persons to be nominated by the appropriate Government, representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members. One of the independent persons shall be appointed the Chairman by the appropriate government. An official of the Government can be appointed as an independent person. The mere fact that a person happens to be a Government servant will not divest him of the character of an independent person. (*State of Rajasthan vs. Hari Ran Nathwani*, A. I. R. (1976) S.C. 277).

Central Advisory Board (Sec. 8)

Notes

The Central Government shall appoint a Central Advisory Board (a) for the purpose of advising the Central and State Governments in the matter of fixing and revising minimum rates of wages, and the matters under the Act; and (b) for co-ordinating the work of the Advisory Boards (Sec. 8 (i)).

It shall consist of persons nominated by the Central Government representing employers and employees in the scheduled employments, who shall be in equal in number, and independent persons, not exceeding one-third of its total number of members. One of the independent persons shall be appointed the Chairman of the Board by the Central Government. (Sec. 8 (2)).

Wages in Kind: Minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government may, by notification in the Official Gazette, authorise the payment of minimum wages, either wholly or partly in kind. (Sec.11 (ii)).

The appropriate government may also by, notification in the Official Gazette, authorise the provision of the supply of essential commodities at concessional rates (Sec. 11 (3)). The cash value of wages in kind and of concession, in respect of supplies of essential commodities at concession rates authorised under Sec. 11 (2) and (3) shall be estimated in the prescribed manner (Sec. 11 (4)).

11.6 Payment of Minimum Rates of Wages

Where in respect of any scheduled employment, minimum wages have been fixed; the employer shall pay to every employee, wages at a rate not less than the minimum rate of wages fixed for that class of employees in the employment. Such wages shall be paid without any deduction, except as may be authorised. Where the contract rate of wages is higher, the statutory obligation does not come into play. (Section 12).

Fixing Hours for a Normal Working Day

Where minimum rates of wages have been fixed in regard to any scheduled employment, the appropriate government may;

- i) Fix the number of hours of work, which constitute a normal working day, inclusive of one or more specified intervals.
- ii) Provide for a day of rest in every period of seven days and for payment of remuneration in respect of such days of rest.
- iii) Provide for payment for work on a day of rest at a rate not less than overtime rate.

In relation to the following class of employees, the above provisions shall apply to such extent and subject to such conditions as may be prescribed:

- i) employees engaged in urgent work or in any emergency, which could not have been foreseen and prevented;
- ii) employees engaged in the nature of preparatory or complementary work, which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
- iii) employees whose employment is essentially intermittent;

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- iv) employees engaged in any work, which for technical reasons, has to be completed before the duty is over;
- v) employees engaged in any work, which could not be carried on, except at times, dependent on the irregular action of natural forces. (Section 13).

Rates of Overtime

Where an employee, whose minimum rate of wages has been fixed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour, or for part of an hour so worked in excess, at the overtime rate fixed under this Act, or under any law of the appropriate government for the time being in force, whichever is higher.

Where a worker works in an employment for more than nine hours on any day or for more than 48 hours in any week, he shall, in respect of such overtime work, be entitled to wages at double the ordinary rate of wages. (Section 14). Wages of workers who work for less than normal working days (Sec. 15), where an employee whose minimum rates of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall 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.

However, he shall not be entitled for a full normal working day in the following cases:

- i) in any case, where his failure to work was caused by his unwillingness and not by the omission of the employer to provide him with work;
- ii) in other such cases and circumstances as may be prescribed.

Wages for two or more Classes of Worker (Sec. 16)

Where, an employee does two or more classes of work, to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of time respectively occupied in each such class of work, wages at not less than minimum rate in force in respect of each such class.

Minimum Time Rate Wages for Piece Work (Sec. 17)

Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under the Act, the employer shall pay to such an employee, wages at not less than the minimum time rate.

Registers and Records (Sec. 18)

- i) Every employer shall maintain such registers and records giving such particulars of employees employed by him, the work performed by them, the wages paid to them, the receipt given by them, and such other particulars and in such forms as may be prescribed;
- ii) Every employer shall keep the notices exhibited in such factory, workshop or place as may be used for giving out work to them;
- iii) The appropriate government may, by rules made under the Act, provide for the issue of wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed. It may prescribe the manner in

which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

Notes

Enforcement of the Act

Inspectors (Sec. 19): By notification in the Official Gazette, the appropriate government may appoint Inspectors, and define the local limits within which they shall exercise their functions. The Inspectors have to see that the provisions of the Act are complied with. For this, Inspectors are empowered to:

- i) enter at all reasonable hours, with such assistance they may think fit, any premises or place where employees are employed, in respect of which minimum rates of wages have been fixed, for the purpose of examining any register, record of wages, or notice required to be kept or exhibited by or under this Act, or rules made thereunder, and require the production thereof for inspection;
- ii) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee;
- iii) require any person giving out work or any worker to give any information, which is in his power to give, with respect to other persons and for whom the work is given or received, and with respect to the payment to be made for the work;
- iv) seize or take copies of such register, record of wages or notices as he may consider relevant, in respect of any offence under this Act, which he has reason to believe has been committed by an employer; and
- v) exercise such other powers as may be prescribed (Sec. 19 (2)).

Any person required to produce any document or thing or to give any information by an Inspector under Sec. 19 (2) shall be deemed to be legally bound to do so within the meaning of Sec. 175 of the Indian Penal Code (Sec. 19 (4)).

Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860 (Sec. 19 (3)).

Claims (Sec. 20): The appropriate government, may by notification in Official Gazette, appoint an authority to hear and decide for any specified area all claims:

- a) arising out of payment of less than the minimum rates of wages, or
- b) for work done on days of rest, or
- c) in respect of wages at the overtime rate to employees employed or paid in that area.

Authority for Hearing and Deciding Claims

The authority to be appointed may be:

- i) any commissioner for workmen's compensation;
- ii) any officer of the Central Government exercising functions as Labour Commissioner for any region;
- iii) any officer of the State Government not below the rank of a Labour Commissioner; or
- iv) any other officer with an experience as a judge of a Civil Court or as a stipendiary Magistrate (Sec. 20 (I)).

Notes

Who may apply?

Where an employee has any claim, any of the following may apply to the authority for hearing and deciding the case:

- i) The employee himself; or
- ii) Any legal practitioner;
- iii) Any official of a registered trade union, authorised in writing to act on his behalf;
- iv) Any Inspector; or
- v) Any person acting with the permission of the authority (Sec. 20 (2)).

Every such application under Sec. 20 shall be presented within six months from the date of which the minimum wages and other amounts become payable. It may be admitted after six months, when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

Amount of compensation: When an application is entertained, the authority shall hear the applicant and the employer, or give them opportunity to be heard. After such further enquiry, if any, as it may consider necessary, may direct, without prejudice to any other penalty to which employer may be liable under this Act.

- i) in the case of claim arising out of payment of less than the minimum rates of wages, payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the authority may think fit not exceeding ten times the amount of such excess.
- ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the authority may think fit, not exceeding ten rupees. The authority may direct payment of such compensation in cases where the excess or the amount due, is paid by the employer to the employee before the disposal of the application.
- iii) if the authority is satisfied while hearing the application that it was either malicious or vexatious, it may direct the applicant to pay to the employer a penalty not exceeding ₹50.
- iv) any amount directed to be paid under Sec. 20 may be recovered by the authority as if it were a fine imposed by the authority as a Magistrate.
- v) every direction of the authority under Sec. 20 shall be final.
- vi) the authority shall have all powers of the Civil Court under the Code of Civil Procedure, 1908 for the purpose of taking evidence, enforcing the attendance of witnesses, and compelling the production of documents.

Single Application of a Number of Employees (Sec. 21)

A single application may be presented on behalf of or in respect of any number of employees in the scheduled employment in respect of which minimum rates of wages have been fixed. In such cases, maximum compensation which may be awarded shall not exceed ten times the aggregate amount of such excess or ten rupees per head, as the case may be.

The authority may deal with any number of separate pending applications presented in respect of employees in the scheduled employments as a single application and the provision of Sec. 20 (i) shall apply accordingly.

Offences and Penalties (Sec. 22 and 22-A)

Notes

Any employer who:

- a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provision of the Act, or
- b) contravenes any rule or order made under Sec. 13, shall be punishable with imprisonment which may extend to six months or with fine which may extend to ₹ 500, or with both. In imposing any such fine, the court shall take into consideration, the amount of any compensation already awarded against the accused in any proceedings taken under Sec. 20.

An employer who contravenes any provision of the Act or any rule and order made thereunder, if no other penalty is provided for the contravention by the Act, be punishable with fine, which may extend to five hundred rupees.

In imposing any such fine, the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under Sec. 20.

Any employer who contravenes any provision of the Act or any rule or order made thereunder shall, if no other penalty is provided for such contravention by the Act, be punishable with fine, which may extend to five hundred rupees.

Cognizance of offences (Sec. 22 B): No court shall take cognizance of a complaint against any person for an offence:

- a) involving payment of less than the minimum wages, unless all application in respect of the facts constituting such offence has been duly presented under Sec. 20 and granted and the appropriate government or an officer authorised by it in this behalf has sanctioned the making of the complaint;
- b) involving contravention of any rule or order made under Sec. 13 or Sec. 22 A except on a complaint made by, or with the sanction of, an Inspector.

Further, no court shall take cognizance of an offence:

- i) under Sec. 22 unless complaint thereof is made within one month of the grant of sanction.
- ii) unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Offence by Companies (Sec. 22C)

If the person committing any offence under the 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. Such person shall not be liable to any punishment provided in the Act 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.

Where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Notes

Undisbursed amount due to employees (Sec. 22 D): All amounts payable by an employer to an employee as the amount of minimum wages or otherwise due to employee under the Act shall be deposited with the prescribed authority, if such amounts could not be paid.

- i) on account of his death before payment or
- ii) on account of his whereabouts not being known.

The prescribed authority shall deal with the money so deposited in such manner as may be prescribed.

Protection against Attachment of Assets of Employer with Government (Sec. 22 E)

Any amount deposited with the appropriate government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer toward any employee employed in connection with the contract aforesaid.

Exemptions

Exemption of Employer (Sec. 23): Where an employer is charged with an offence under this Act, he shall be excused from liability, if he can show that some other person was responsible for the offence and that:

- i) he had used due diligence to enforce the execution of the Act, and
- ii) the said other person committed the offence in question without his knowledge, consent or connivance.

In such a case, the 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.

In seeking to prove as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

Bar on Suits (Sec. 24)

No court shall entertain any suit for the recovery of wages in so far as the sum so claimed:

- i) forms the subject of an application under Sec. 20, which has been presented by or on behalf of the plaintiff; or
- ii) has formed the subject of a direction under that section in favour of the plaintiff; or
- iii) has been adjudged in any proceeding under that section not to be due to the plaintiff; or
- iv) could have been recovered by an application under that section.

Contracting out (Sec. 25)

Any contract or agreement whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act, shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

11.7 Powers of the Government

Notes

Power to Grant Exemptions and Exceptions (Sec. 26)

The appropriate Government may:

- i) direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees;
- ii) exempt by notification in the Official Gazette some specified scheduled employments from the application of some or all of the provisions of the Act;
- iii) direct that the provisions of the Act shall not apply to the wages payable by an employer to a member of his family who is living with him and is dependent on him.

The appropriate government may direct by notification in the Official Gazette that the provisions of this Act or any of them shall not apply in relation to the employees who are in receipt of wages exceeding the prescribed limit.

Power to add to Schedule (Sec. 27)

The appropriate government, after giving notification in the Official Gazette not less than three month's notice of its intention so to do, may by a like notification add to the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its applications to the State be deemed to be amended accordingly.

Power to give Directions (Sec. 28)

The Central Government may give directions to a State Government regarding the execution of this Act in the State.

Power to make Rules (Sec. 29)

The Central Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules prescribing the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the Central Advisory Board.

Power to make Rules (Sec. 30)

The appropriate government may, subject to the condition of previous publication, by notification in the Official Gazette make rules for carrying out the purposes of this Act.

Obligation of Employers

Under the Act, it is the obligation of every employer to:

- a) pay to every employee engaged in a scheduled employment under him the minimum rates of wages in case fixed by the Government without any deduction, except as may be authorised under the Payment of Wages Act, 1936;

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- b) observe all directions which may be issued under the Act in regard to normal working hours, weekly day of rest with wages and overtime rates;
- c) maintain registers and records as required by the Government showing particulars of employees' work performed by them, wages paid to them and receipts given by them;
- d) issue wage books or slips to employees in respect of minimum rates of wages if required by the Government, and make authenticated entries in such wage books or wages slips.

Right of Workers: Every worker has a right to:

- i) receive minimum wages, including overtime wages, as fixed and notified by the Government, and
- ii) file claims for short payments within six months from the date the minimum wages become payable. Delay in filing the claim may be condoned, if there is sufficient cause.

11.8 General Remarks

As observed by the National Commission of Labour, Minimum Wages Act is an important landmark in the history of labour legislation in India. This Act recognises that in a country like India where there is so much surplus labour, both educated and uneducated, wages cannot be allowed to be determined by the forces of demand and supply alone, as this would make it difficult to prevent sweating of labour. Its main objective of preventing exploitation of labour through payment of low or sweated wages seems to have been achieved as nearly 90% of industrial and commercial workers are reported to have been ensured minimum subsistence wage by the implementation and enforcement of the provisions of this Act.

During the last fifty years of its operation, the Act has been amended several times for widening its coverage by adding more employments to the schedule and improvements in the method and procedure of fixing and revising minimum wages. The implementation of the Act has also improved the level of wages, both in the organised and unorganised sectors of industries, and has thus reduced the number of disputes on account of wages. In spite of amendments made in the Act, it still suffers from the following limitations:

- i) The Act is applicable only to employments mentioned in the schedule to the Act. This limitation is minimised to some extent by the provisions made in the Act empowering the appropriate government to apply it to any other employment by including it in the schedule. This power has been used extensively by the government concerned with the result that now more than 300 employments are covered by the Act against twelve beside agricultural to start with. This limitation may also be justified on administrative grounds, since the Act is applicable to very small employments, the large number of which makes the enforcement of the act difficult and expensive as this may require appointment of more Inspectors.
- ii) The act does not lay down principles and criteria for determining minimum wages. This omission may be due to the thinking on the part of the framers of this legislation to allow the appropriate government to adopt criteria and principles suiting its social and economic conditions.
- iii) The Act does not define the term "Minimum Wages" in its contents. It is, however, defined in the judgements of the Supreme Court and some High Courts mentioning its content. According to most of the definitions, minimum wage should include what is required by the worker for the subsistence of himself and his family and the preservation of his efficiency as a workman. In calculating it, beside food, clothing and rent expenses, medical and education expenses should also be considered. It is also a common view that the minimum wage has no reference either to the value of work done by the worker or to the

capacity of industry to pay. It is bedrock minimum which must be paid to the worker for maintaining himself and his family and for preservation of his efficiency as a workman. In calculating it, beside food, clothing and rent, medical and education expenses should also be considered. If any concern cannot pay such a minimum, it must be shut down. Similar view was expressed by the Supreme Court in the case, of Crown Aluminium Works vs. their workman in 1958 AIR 30.

Thirty-sixth Labour Conference held in May, 1987 had recommended that minimum wage fixed under the Act should bear a relation to the concept of "Poverty Line". In this regard the State Governments were advised on 15th May 1990 that ₹15 per day shall be the National Minimum Wage, below which the State Governments may not fix minimum rates of wages for any employment. The National Commission of Rural Labour has also recommended that the minimum wages should not be less than ₹20 per day, and this recommendation has also been brought to the notice of the State Governments.

The statutory minimum wages, as fixed under this Act, have their own contribution to make, particularly in a developing country like India where working class is largely illiterate and unconscious and collective bargaining is yet to emerge as a weapon for regulating labour and management relations. In our country inadequate wages are still an important cause of labour disputes and consequent loss of man days and production. A legislation like the Minimum Wages Act, which improves the level of wages, is bound to improve industrial relations, provided it is administered and implemented effectively.

The Central Government is considering seriously to amend this Act further to widen its scope and coverage, improve method and procedure for fixing minimum wages, reduce the time limit for revision of minimum wages and enhance penalties for making the Act more effective. The above mentioned three limitations of the Act should be brought to the notice of the Government for consideration while amending the Act, to see if they could be minimised, if not removed entirely.



Notes

Recommendation on Second National Commission on Labour

The minimum wage payable to anyone in employment, in whatever occupation, should be such as would satisfy the needs of the worker and his family (consisting in all of 3 consumption units) arrived at on the Need Based formula on the 15th Indian Labour conference, supplemented by the recommendations made in the judgement of the Supreme Court in the Raptakos Brett & Co. case.

Central Government may notify the National Floor Level Minimum Wage. Each State/ Union Territory should have the authority to fix minimum rates of wages, which shall not be, in any event, less than the National Floor Level Minimum Wage when announced.



Task

Give practical examples related to Minimum Wages Act, 1948.

11.9 Summary

- The need for regulating minimum wages has been gaining increasing attention, not only of the governments of developing and developed countries, but also of the International Labour Organisation at Geneva (ILO), which is formulating International Labour Standards for its member countries since its very inception after the First World War.

Notes

- India has ratified the ILO convention on Minimum Wage Fixing Machinery and has enacted a central minimum wage legislation, known as Minimum Wages Act, 1948. As in other countries, here also the need for fixing minimum wages arose from the conditions created by the payment of low and sweated wages in the unorganised and organised sectors of industries, and consequent need for protecting workers against exploitation.
- The object of the Act is to promote the welfare of workers by fixing minimum rates of wages in certain industries where labour is not organised and sweated labour is most prevalent. The Act seeks to prevent exploitation of workers by ensuring that they are paid the minimum wages, which would provide for their subsistence and preserve their efficiency.
- The appropriate Government is empowered to extend this Act to any other employment in respect of which it is of the opinion that minimum rates of wages should be fixed under the Act.
- Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, raising of livestock, bees and poultry, and any practice performed by farmer or on a farm as incidental to or in conjunction with farm operation (including any forestry or timbering operation, and the preparation for market and delivery, to storage or to market or to carriage for transportation to market of farm product.
- The appropriate government may fix the minimum rates of wages payable to the employees of scheduled employment, either for the whole State or a part of the State or for any specified class or classes of such employment.
- In fixing or revising minimum rates of wages, different rates may be fixed for (i) different scheduled employments; (ii) different classes of work in the same scheduled employment; (iii) adults, adolescents, children and apprentices; (iv) and different localities. Different rates of minimum wages may also be fixed by anyone or more of the following wage periods; by the hour, by the day, by the week, by the month or by a larger wage period as may be prescribed.
- For the purpose for co-ordinating the work of committees and sub-committees appointed under Sec. 5 of the Act, and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board to function. It can devise its own procedure.
- Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under the Act, the employer shall pay to such an employee, wages at not less than the minimum time rate.
- The appropriate government may, by rules made under the Act, provide for the issue of wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed. It may prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.
- Any amount deposited with the appropriate government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer toward any employee employed in connection with the contract aforesaid.

- Any contract or agreement whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act, shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

11.10 Keywords

Amount of compensation: When an application is entertained, the authority shall hear the applicant and the employer, or give them opportunity to be heard.

Employee: Employee means any person who is employed for hire or reward to do any work, skilled and unskilled, manual and clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed.

Inspector: Any person required to produce any document or thing or to give any information by an Inspector under Sec. 19 (2) shall be deemed to be legally bound to do so within the meaning of Sec. 175 of the Indian Penal Code (Sec. 19 (4)).

Wages: "Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of contract of employment, expressed or implied were fulfilled, be payable to a person employed,

11.11 Self Assessment

Fill in the blanks:

1. In 1929, the recommended a policy of gradual introduction of statutory minimum wages.
2. The Indian Labour Conference at its 5th session approved, in principle, the enactment of
3. Minimum rates of wages may be, both for time-rated and piece-rated workers; and also for over-time work.
4. A of wages with or without the cost of living allowance, and the cash value of the concession, in respect of supplies of essential commodities at concession rates where so authorised.
5. An, allowing for the basic rate, the cost of living allowance, the cash value of the concession, if any.
6. Consultation with the is obligatory for revision of minimum wages and not initial fixation.
7. A committee appointed under is only an advisory body. The Government is not bound to accept its recommendation in every case.
8. An official of the Government can be appointed as an
9. Minimum wages payable under the Act shall be paid in
10. A may be presented on behalf of or in respect of any number of employees in the scheduled employment in respect of which minimum rates of wages have been fixed.
11. The Central Government may give directions to a regarding the execution of this Act in the State.

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12. The appropriate government may, subject to the condition of previous publication, by notification in the make rules for carrying out the purposes of this Act.
13. An employer who any provision of the Act or any rule and order made thereunder, if no other penalty is provided for the contravention by the Act, be punishable with fine, which may extend to five hundred rupees.

11.12 Review Questions

1. What is Minimum Wages? How it is fixed?
2. What are the penal provision for non payment of minimum wages?
3. Who is inspecting Authority under Minimum Wages Act?
4. What is wage? Who is responsible of making payment of wages?

Answers: Self Assessment

- | | |
|-------------------------------|-----------------------------|
| 1. Royal Commission of Labour | 2. minimum wage legislation |
| 3. fixed | 4. basic rate |
| 5. all-inclusive rate | 6. Advisory Board |
| 7. Sec. 5 | 8. independent person |
| 9. cash | 10. single application |
| 11. State Government | 12. Official Gazette |
| 13. contravenes | |

11.13 Further Readings



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Unit 12: Payment of Wages Act, 1936

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Objectives

After studying this unit, you will be able to:

- Discuss Payment of Wages Act, 1936
- Describe concept of illegal deductions

Introduction

In the early days of industrial revolution, workers were exploited with exorbitant delays in payment of wages, arbitrary deductions and other unfair practices on the part of employers. Delay in the payment of wages, deductions of two days' wages for one day's absence, heavy fines for small omissions and commissions, were quite common. Irregularities committed by employers were brought to the notice of the Royal Commission of Labour in India. In the report submitted in 1931, the Commission pointed out wide prevalence of such unfair practices in regard to the payments of wages due to workers, such as non-payment of wages, short payment, irregular payment, payment in kind rather than in cash, short measurement of work of piece rate workers, and excessive fines and deductions. The Commission stressed the need for protecting the earned wages of workers by elimination of these practices. The Commission also observed that the purpose of laying down a machinery for evolving a proper and equitable wage structure is defeated if malpractices in regard to payment of wages are not checked.

In pursuance of the recommendations of the Commission, the Payment of Wages Act, was passed in 1936, and it came into force on 28th March 1937. It has since then been amended several times, and its latest amendment in 1982 extended its coverage by raising the wage limit from ₹1000 to ₹1600.

12.1 Object of the Act

The Act is a protective piece of legislation. It seeks to regulate the payment of wages of certain class of workers employed in industry. The main object of the Act is to ensure to workers, payment of their earned wages on due date without unauthorised deduction. In order to ensure timely payment of wages, the Act regulates the manner of payment of wages at regular intervals. It lays down permissible deductions to protect the employed persons against arbitrary or unauthorised deductions being made from their wages.

12.1.1 Scope and Coverage

The Act applies to the whole of India. The Act applies to the payment of wages to persons employed in any factory and to persons employed (other than in a factory) upon any railway by a railway administration. In the latter case, it also applies to persons employed either directly or through a contractor or by a person fulfilling a contract with a railway administration. The State Government may after giving three months' notice extend the provisions of the Act to any class of persons employed in any industrial establishment specified by the Central Government and State Governments. In the case of industrial establishments owned by the Central Government, the notification can be issued with the concurrence of the Central Government. In some States the Act has been extended to shops and establishments also. (Section 1).

The Act does not apply to persons whose wages exceed ₹1600 per month. This limit was raised from ₹1000 by amending the Act in 1982. The need for amending the Act was felt, as a large number of workers previously covered by the Act got excluded with the upward revision of pay scales and increase in dearness and other allowances in recent years. The present limit of ₹1600 per month has again become? as with the increase in lends of wages. A very large number of workers do not get the benefit of the Act.

The Act is also applicable to persons employed in coal mines and plantations, as well as establishments in which work relating to the construction, development or maintenance of building, roads, bridges, supply of water, or relating to operations connected with navigation, irrigation or the supply of water, or relating to generation, transmission and distribution of electricity, or other form of power is carried on.

12.1.2 Definitions (Sec. 2)

1. **Employed Person:** Employed person includes the legal representative of a deceased employed person.
2. **Employer:** Employer includes the legal representative of deceased employer.
3. **Industrial Establishment:** It means any:
 - a) Tram-way service or motor transport engaged in carrying passengers and goods or both by road for hire or reward;
 - b) Air transport service other than such service belonging to or exclusively employed in the military, naval or Air Force of the Union, or the Civil Aviation Department of the Government of India;

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- c) Dock, wharf, or jetty;
 - d) Inland vessel mechanically propelled;
 - e) Mine, quarry or oil field;
 - f) Plantation;
 - g) Workshop or other establishments, in which articles are produced, adopted, or manufactured with a view to their use, transport or sale;
 - h) Establishment in which any work relating to the construction, development or maintenance of building, roads, bridges or canals or relating to transmission, or distribution of electricity, or any other form of power is being carried on;
 - i) Any other establishment or class of establishment which the Central Government or a State Government may have with regard to the need for protection of persons employed therein and other relevant circumstances, specified by notification in the Official Gazette.
4. **Wages:** "Wages" means all remuneration (whether by way of salary, allowances, otherwise) expressed in terms of money or capable of being expressed which would, if the terms of employment, expressed or implied are fulfilled, be payable to persons employed in his employment or of work done in such employment.

The definition of "wages" is made sufficiently wide by including within the expression:

- a) any remuneration payable under award or settlement between parties or order of a court;
- b) any additional remuneration under the terms of employment (whether called a bonus or by any other name);
- c) any remuneration to which the person employed is entitled in respect of overtime work or holiday or any leave period.
- d) any sum which by reason of termination of employment of the person employed is liable under any other 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 has to be made;
- e) any sum to which the person employed is entitled under any other scheme framed under any law for the time being in force.

The amount of bonus payable under the Payment of Bonus Act, 1965, the amount of retrenchment compensation payable, and a sum payable to the employee on the termination of his service under the Industrial Disputes Act, 1947, are wages as defined under this Act. The amount of Gratuity payable under the terms of any award is also covered by this Act.

The expression "Wages" does not include:

- 1. The Bonus declared voluntarily on the basis of profits, and the 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;
- 2. The value of any house accommodation, of the supply of water, light, medical attendance, or other amenity or any service excluded from the computation of wages by a general or specific order of the State Government;

3. Any contribution paid by the employer to any pension or provident fund, and the interest accrued thereon;
4. Any travelling allowance or the value of any travelling concession;
5. Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
6. Any gratuity payable on the termination of employment;
7. Whether house rent are wages depends on the terms of the contract. It is so, if its payment is compulsory, otherwise it is not;
8. The term “wages” means wages earned and not potential wages;
9. No other meaning can be assigned to the term “wages” than is mentioned in the definition.

12.1.3 Responsibility for Payment of Wages

Every employer shall be responsible to pay wages to persons employed by him. But in the case of persons employed (otherwise than by a contractor) in factories, industrial establishments and railways, the following persons shall be responsible for payment of wages:

- a) in factories, the person named as manager;
- b) in industrial establishments, the person who is responsible to the employer for the supervision and control of the industrial establishment;
- c) upon railways (otherwise than in factories) the person nominated by the railway administration in this behalf for the local area concerned. (Section 3)

Rules for Payment of Wages

Under the Payment of Wages Act, 1936, rules regarding the payment of wages are as follows:

Fixation of Wage-period: Every person responsible for the payment of wages under Sec. 3 shall fix periods, known as Wages Periods in respect of which such wages shall be payable. A wage period shall not exceed one month. (Section 4)

Time of Payment of Wages

The following rules have been laid down regarding the time of payment of wages:

1. If the number of persons employed in a factory, an industrial establishment, or railways, including daily rated workers, is less than 1000, wages must be paid before the expiry of the seventh day after the last day of the wage period.
2. In other cases, wages must be paid before the expiry of the tenth day after the expiry of the wage period.
3. In the case of persons employed on dock, mine, wharf or jetty, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, shall be paid before the expiry of the seventh day after such completion.
4. Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which employment is terminated.

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5. If the employment is terminated due to the closure of establishment for any reason other than a weekly or other recognised holiday, wages will be paid before the expiry of second working day from the day on which employment is being terminated.
6. The State Government may, by a general or special order, exempt the person responsible for the payment of wages from the operation of the above provisions in certain cases.
7. All payment of wages shall be made on a working day. (Section 5).

Medium of Payment of Wages

All wages shall be paid in current coin or currency notes or both. The employer may, after obtaining the written permission of the employed person, pay him wages either by cheque or by crediting the wages in the bank account. (Section 6).

Deduction from Wages

The wages of an employed person shall be paid to him without deductions of any kind, except those authorised under the Payment of Wages Act. This is notwithstanding the Provisions of Sec. 47 of the Indian Railways Act, 1890 (Sec. 7).

Kinds of Deductions

The following kinds of deductions are permitted under the Act:

1. **Fines (Sec. 8):** Provisions regarding fines are as follow:
 - a) No fine shall be imposed on any employed person, except in respect of such acts' omissions on his part as the employer, with the previous approval of the State Government or of the prescribed authority, may have been specified by a notice.
 - b) The notice specifying the acts and omissions for which fines may be imposed shall be exhibited in the prescribed manner on the premises or the place in which the employment is carried on.
 - c) No fine shall be imposed on an employed person until he has given an opportunity of showing cause against the fine.
 - d) The total amount of fine in any one wage period on any employed person shall not exceed three per cent of the rupee wages payable to him in respect of that wages period.
 - e) No fine shall be imposed on a person who is below the age of fifteen years.
 - f) No fine shall be recovered from the employed person by installments or after the expiry of sixty days from the day on which it was imposed.
 - g) Every fine shall be deemed to have been imposed on the day of the act or omission.
 - h) All fines and realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages in such form as may be prescribed. All realisation of fines shall be applied only to such purposes as are beneficial to the persons employed in the factory.
2. **Deductions for Absence from Duty (Sec. 9)**
 - a) Deductions may be made on account of the absence of an employed person from duty from the place or place where, by the terms of employment, he is required to work.

- b) An employed person shall be deemed to be absent from duty if, though present at the place of work, he refuses to carry out his work, in pursuance of a stay-in strike or for any other cause which is not reasonable.
- c) The ratio between the amount of deductions for absence from duty and the wages payable shall not exceed the ratio between the period of absence and total period within such wage period.
- d) If, however, ten or more persons, acting in concert, absent themselves without due notice and without reasonable cause, the deduction for absence from duty from any such person may include such amount not exceeding his wages for eight days as may be due to the employer in lieu of notice.

3. ***Deductions for Damage of Loss (Sec. 10)***

- a) A deduction for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money which he is required to account for can be made, where such loss is directly attributable to his neglect or default.
- b) A deduction for damage or loss shall not exceed the amount of damage or loss caused to the employer by his neglect or default.
- c) A deduction for damage or loss shall not be made until the employed person has been given an opportunity of showing cause against the deduction.
- d) All deductions and realisations in respect of damage or loss shall be recorded in a register, to be kept by the person responsible for the payment of wages.

4. ***Deductions for Accommodation and Service (Sec.11)***

Deduction for house accommodation and amenities and service supplied by the employer can be made subject to the following conditions:

- a) Deductions cannot be made unless such services have been accepted by the employed person as a term of his employment.
- b) Services do not include the supply of tools and raw materials required for the purposes of the employment and no deduction can be made in that respect.
- c) The amount of deduction cannot exceed an amount equivalent to the value of house accommodation, amenity or service supplied.
- d) The amenities and services must be authorised by the State Government by a general or special order.
- e) State Governments are empowered to make rules governing deductions for amenities and services.

5. ***Deductions for Recovery of Advance (Sec. 12).***

Deductions for recovery of advances or adjustments of over-payment of wages can be made, subject to the following conditions:

- a) Recovery of an advance of money given before employment shall be made from the first payment of wages in respect of complete wage period, but no recovery can be made of such advance given for travelling expenses.
- b) Recovery of an advance of money given after employment began shall be subject to such conditions as the State Government may impose.

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- c) Recovery of advances of wages not already earned shall be subject to any rules made by the State Government in this regard. The State Government may regulate the extent to which such advances may be given, the installments by which they may be recovered and the rate of interest that may be charged on such advance.
6. **Deductions for Recovery of Loans (Sec. 12-A)**
- a) Deduction for recovery of loans made from any fund constituted for the welfare of labour and the interest due in respect thereof can be made, provided the fund is constituted in accordance with the rules approved by the State Government.
- b) Deductions can be made for recovery of loans granted for house building or other purposes approved by the State Government and the interest due in respect thereof.
7. **Deductions for Payments to Co-operative Societies and Insurance Schemes (Sec. 13).** These deductions shall include:
- a) deductions for payments to co-operative societies approved by the State Government or to a scheme of insurance maintained by the Indian Post Office;
- b) deduction made with the written authorisation of the person employed for the payment of any premium on his life insurance, policy to the Life Insurance Corporation of India or for the purchase of securities of the Government of India or of any State Government, or for being deposited in any Post office Savings Bank in furtherance of any savings scheme of any such Government.
- These deductions shall be subject to such conditions as the State Government may impose.
8. **Other Deductions.** The following deductions are also permissible under the Act:
- a) deductions of income-tax payable by the employed person;
- b) deductions required to be made by order of a court;
- c) deductions for subscriptions to, and for repayments of advances from any provident fund to which the Provident Funds Act, 1925 applies or any recognised provident fund or any provident fund approved in this behalf by the State Government;
- d) deductions for payment of insurance premia of Fidelity Guarantee Bonds;
- e) deductions made, with the written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer or trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families or both and approved by the state government or any officer specified by it on the behalf, during a continuing of such approval;
- f) deductions made, with the written authorisation of the employed persons, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926;
- g) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;
- h) deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice to bill, to collect or to account for the appropriate charges due to that administration whether in respect of freight fares, demurrage, warfare and carriage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;

- i) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;
- j) deductions made with the written authorisation of the employed person for contribution to the Prime Minister's National Relief Fund or to such other funds as the Central Government may by notification in the official Gazette specify;
- k) deductions for contribution to any insurance scheme framed by the Central Government for the benefit of its employees.

The list of deductions in Sec. 7 (2) is exhaustive. Further, if any deduction is claimed by an employer, the burden specifically and clearly lies upon him to prove that the deduction is of a nature which is capable of falling within the several clauses of Sec. 7 (2).

There is no provision in the Act limiting the period within which the employer should make the deduction for adjustment of overpayment of wages.

Every payment by the employed person to the employer or his agent shall be deemed to be a deduction. Any loss of wage resulting from the imposition, for good and sufficient cause, upon a person employed, of any of the following penalties, shall not be deemed to be a deduction from any wages. These penalties are suspension, withholding of increment or promotion (including stopping of increment at the efficiency bar).

12.2 Illegal Deductions

Any deductions other than those authorised under Section 7 of the Act would constitute illegal deductions.

Limit on the Amount of Deductions (Sec. 7(3))

The total amount of deductions, which may be made under Section 7 in a wage period from the wages of any employed person shall not exceed 75 per cent of such wages in cases where such deductions are wholly or partly made for payments to co-operative societies. In any other case, the deductions shall not exceed 50 per cent of such wages. Any agreement or contract by which an employee agrees to any deductions other than those authorised under the act would be null and void under Section 23 of the Act. There is, however, no provision in the Act limiting the period within which the employer should make the deduction for adjustment of overpayment of wages.

Maintenance of Registers and Records (Sec. 13-A)

Every employer must maintain registers and records, giving the following particulars of every person employed by him:

- a) the work performed by the person employed;
- b) the wages paid to him;
- c) the deductions made from his wages;
- d) the receipts given by him.

The registers and records shall be in such form as may be prescribed; they shall be preserved for a period of three years after the date of the last entry made therein.

12.3 Inspectors and their Powers

An Inspector of Factories appointed under the Factories Act, 1948 shall be an inspector for the purposes of the Payment of Wages Act in respect of all factories within the local limits assigned to him.

Moreover, the State Government may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of the Act. It may define the local limits within which and the class of factories and industrial or other establishments in respect of which they shall exercise their functions. It may also appoint Inspectors for the purpose of the Act in respect of persons employed upon a railway to whom the Act applies.

Power of Inspectors (Sec. 14 and 14-A)

An Inspector may:

- a) make such examination and inquiry as he thinks fit in order to ascertain if the provisions of the Act are being observed;
- b) enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of the Act;
- c) supervise the payment of wages to persons employed in any railway or in any factory or industrial or other establishments;
- d) examine the registers and records maintained in pursuance of the Act and take statements of any persons which he considers necessary for carrying out the purposes of the Act;
- e) Seize or take copies of registers or documents which may be relevant in respect of an offence committed by an employer;
- f) Exercise other such powers as may be prescribed.

No person shall be compelled to answer any question or make any statement tending to incriminate himself. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code. Every employer shall afford an inspector at all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under this Act.

Appointment of Competent Authority

The State Government may, by notification in the Official Gazette, appoint a person as the Authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages of persons employed or paid in that area, including all matters incidental to such claims. The following may be appointed as the Authority.

- a) a presiding officer of any Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act, 1947, or
- b) any Commissioner for Workmen's compensation, or
- c) any other officer with the experience as a judge of a civil court or as a stipendiary Magistrate.

If the State Government considers it necessary to do so, it may appoint more than one Authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act. (Section 15).

Every authority so appointed shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908. For the purpose of taking evidence, enforcing the attendance of witnesses and

compelling the production of documents. Further, every such authority shall be deemed to be a Civil Court for all the purpose of Sec. 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973.

12.3.1 Who may File Application and When?

An application for claims arising under this Act may be filed by:

- a) the employed person himself;
- b) any legal practitioner; or
- c) any official of a registered trade union authorised in writing to act on his behalf; or
- d) any Inspector under the Act; or
- e) any other person acting with the permission of the Authority appointed under the Act.

Every such application must be made within twelve months from the date on which the deduction from wages was made, or from the date on which the payment of the wages was due to be made. An application may also be admitted after twelve months, if the applicant satisfied the Authority that there was a sufficient cause for not making the application within twelve months. But sufficiency of the cause is to be decided by proper legal principles. Before admitting any such application, the Authority must give notice to and bear, the opposite party and admission should be conscientious. The discretionary power conferred on the Authority to condone delay in filing an application is not excessive because the aggrieved party can seek redress against abuse of this power by invoking the supervisory jurisdiction of the High Court under Article 227 of the Constitution. (Section 15).

12.3.2 Procedure and Directions

When any application for claims under this Act is entertained, the Authority shall bear the applicant and the employer or other person responsible for payment of wages or give them an opportunity of being heard. After such further inquiry (if any) as may be necessary, the Authority 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 of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount improperly deducted and twenty five rupees in case of delayed wages. Even before the amount deducted or the delayed wages are paid before the disposal of the application, the Authority may direct the payment of compensation as the authority may think fit, not exceeding rupees twenty-five.

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 bonafide error or bonafide 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 the payment. (Section 15 (3)).

If the authority hearing an application is satisfied that the application was malicious or vexatious, it may direct a penalty not exceeding fifty rupees to be paid to the employer or other person responsible for payment of wages, by the person presenting the application. The authority may further direct that a penalty not exceeding fifty rupees be paid to the State Government by the

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employer or other person responsible for the payment of wages in case where the application ought not to have been compelled to seek redress under the Act (Sec. 15 (4)).

Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final (Sec. 15 (4A)).

Any inquiry under this section shall be deemed to be judicial proceeding within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (Sec. 15 (4B)).

Recovery of Amount

An amount directed to be paid under Sec. 15 may be recovered,

- a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by him as a Magistrate, and,
- b) if the Authority is not a Magistrate, by any Magistrate, to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate. (Section 15 (5)).

Single Application for same Unpaid Group (Sec. 16)

A single application may be presented under Sec. 15 on behalf of or in respect of any number of employed persons belonging to the same unpaid group. When a single application is made, every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in Section 15 (3).

Employed persons are said to belong to the same unpaid group if:

- a) they are borne on the same establishment, and
- b) deductions have been made from their wages in contravention of the Act for the same cause and during the same wage period or periods, or
- c) if their wages for the same wage period or periods have remained unpaid after the day fixed under Section 5.

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 single application.

Appeals

An appeal may be preferred against the following:

1. An order dismissing, either wholly or in part, an application made on the ground that deductions are made contrary to the Act or payment of wages has been delayed.
2. A direction to refund the amount deducted from wages to the employed person.
3. A direction by the Authority to pay penalty to the employer from making malicious or vexatious application.

The appeal may be preferred before the Court of Small Causes in case of a Presidency town and before the District Court in other cases. The appeal must be preferred within 30 days of the date on which the order or direction was made.

The Court may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision. (Section 17)

Who may make an Appeal? (Sec. 17)

Notes

The appeal may be preferred by:

1. The employer or the other person responsible for the payment of wages if the total sum directed to be paid by way of wage and compensation exceeds ₹ 300 or such direction has the effect of imposing on the employer or the other person a financial liability exceeding rupees one thousand, or
2. An employed person,
3. Any legal practitioner,
4. Any official of a registered trade union authorised in writing to act on his behalf,
5. Any inspector under this Act,
6. Any person permitted by the Authority to make an application under Sec. 15(2),
7. If the total amount of wages claimed to have been withheld from him exceeds twenty rupees or from the unpaid group to which he belongs or belonged exceeds fifty rupees.
8. Any person directed to pay a penalty under Sec. 15(4).

Conditions for an Appeal (Sec. 17)

No appeal shall be made as aforesaid, unless:

The memorandum of appeal is accompanied by a certificate by the prescribed authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

Where an employer prefers an appeal, the authority against whose decision the appeal has been preferred may, and if so directed by the Court shall, pending the decision of the appeal, withhold payment of any sum in deposit with it. Any order dismissing either wholly or in part an application made under Sec. 15(2) or a direction made under Sec. 15(3) or Sec. 15(4) shall be final, save as provided in Sec. 17(1). The appeal under Section 17 must be governed by and disposed of according to the rules of practice and procedure prescribed by the Code of Civil Procedure.

Conditional Attachment of Property (Sec. 17-A)

Where at any time after an application has been made under Section 15(2) or where at any time after an appeal has been filed under Sec. 17 and where the Authority in the first instance and the court in the second instance, is satisfied that the employer or other person responsible for the payment of wages is likely to evade payment of any amount that may be directed to be paid, then the Authority or the Court may direct the attachment of so much of the property of the employer or other person responsible for the payment of wages as is, in the opinion of the Authority or Court, sufficient to satisfy the amount which may be payable under the direction. Before giving such a direction, the employer or other person must be given an opportunity of being heard except when the Authority or Court is of the opinion that the ends of justice would be defeated by the delay.

The provisions of the Code of Civil Procedure, 1908 relating to attachment before judgment shall, so far as may, apply to any order of attachment.

12.4 Offences and Penalties (Sec. 20)

- 1) Whoever being responsible for the payment of wages to an employed person:
 - a) fails to pay wages in title;
 - b) makes unauthorised deductions from wages;
 - c) impose fines in contravention of Sec. 8;Shall be punishable with fine, which shall not be less than two hundred rupees but which may extend to rupees one thousand.
- 2) Whoever:
 - a) fails to fix wages periods or fixed wage periods exceeding one month;
 - b) fails to pay wages on a working day;
 - c) fails to pay wages in current coins or currency or both;
 - d) fails to record fines and all realisations in the register;
 - e) fails to apply all such realisations as per the provisions of Section 8(8).Shall be punishable with fine which may extend to rupees five hundred for each offence.
- 3) Whoever being required under this Act to maintain any record or to furnish any information or return:
 - a) fails to maintain such registers or records; or
 - b) wilfully refuses or without lawful excuse neglects to furnish such information or return; or
 - c) wilfully furnishes or causes to be furnished any information or return which he knows to be false; or
 - d) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act;Shall, for each such offence, be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.
- 4) Whoever:
 - a) wilfully obstructs an Inspector in the discharge of his duties under this Act; or
 - b) refuses or wilfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision or inquiry authorised by or under the Act in relation to any railway, factory or industrial or other establishment; or
 - c) wilfully refuses to produce on the demand of an Inspector, any register or other document kept in pursuance of the Act; or
 - d) prevents or attempts to prevent any person from appearing before an inspector acting in pursuance of his duties under the Act.shall be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.
- 5) If any person who has been convicted of any offence punishable under the Act is again guilty of an offence involving contravention of the same provision, he shall be punishable

on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to three months, or with fine which shall not be less than five hundred rupees but which may extend to three thousand rupees, or with both. But no cognizance shall be taken of an earlier conviction made more than two years before the date of commission of the offence being punished.

- 6) If any person fails or wilfully neglects to pay the wages of any employed person by the fixed date, he shall without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to one hundred rupees for each day for which such failure or neglect continues.

12.5 Cognizance and Trial of Offences (Sec. 21)

No court shall take cognizance of:

1. a complaint against any person for an offence arising out of non-compliance with the provisions of the Act relating to delay in payment of wages and unauthorised deductions from wages, 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 or the appellate court granting such application has sanctioned the making of the complaint;
2. a contravention of provision dealing with fixation of wage periods or with payment of wages in current coin or currency notes, except on a complaint made by or with the sanction of an Inspector under the Act;
3. any offence punishable under Sections 20(3) and 20(4), except on a complaint made by or with the sanction of an Inspector under the Act.

In imposing any fine for an offence under Sec. 21(1) above, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under Section 12. Before sanctioning the making of a complaint against any person for an offence under Sec. 20(1), the Authority or the appellate court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction. The sanction shall not be granted if such person satisfies the Authority or Court that his default was due to:

- a) a bonafide error or bonafide 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.

Bar on Suits (Sec. 22)

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 for claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims, which has been presented by the plaintiff and which is pending before the authority appointed, 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 procedure under Section 15 not to be owned to the plaintiff; or

Notes

- d) could have been recovered by an application under Section 15;
- e) where an application has been presented after a period of twelve months 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 without any sufficient cause.

The provisions of the Act and rules made under it do not bar a civil suit for recovery of arrears payable to a workman whose dismissal has been set aside.

Protection (Sec. 22-A)

No suit, prosecution or other legal proceeding shall be against the Government or any officer or the Government for anything which is in good faith done or intended to be done under the Act.

Contracting Out (Sec. 23)

Any contract or agreement whereby an employed person relinquishes any right conferred by the Act shall be null and void in so far as it purports to deprive him of such right.

Application of Act (Sec. 24)

In relation to railways, air transport services, mines and oil fields, the powers conferred upon the State Government by the Act shall be powers of the Central Government.

Display of Notice (Sec. 25)

The person responsible for the payment of wages to persons employed in a factory or an industrial or other establishment shall cause to be displayed a notice containing such abstracts of the Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory or an industrial or other establishment, as may be prescribed.

Payment of Wages in Case of Death

In case of death of an employed person or in case of his whereabouts not being known, all amounts payable to him as wages, shall:

- a) be paid to the persons nominated by him in this behalf in accordance with the rules made under the Act;
- b) be deposited with the prescribed authority;
 - i) where no nomination has been made, or
 - ii) where for any reasons such amounts cannot be paid to the person nominated.

The prescribed authority shall deal with the amounts deposited in the prescribed manner. Where the amounts payable by an employer as wages are disposed of in the manner referred to above, the employer shall be discharged of his liability to pay those wages. (Section 25-A).

Power to make Rules

The State Government is empowered to make rules to regulate the procedure to be followed by Authorities and Courts. The State Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect provisions of the Act.

In making any rule under Sec. 26, the State Government may provide that a contravention of the rule shall be punishable with fine, which may extend to two hundred rupees. All rules made under Sec. 26 shall be subject to the condition of previous publication, and the date to be specified under Sec. 23(3) 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.

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 the Parliament. If both Houses agree in making any modification in the rule, the rule shall thereafter have effect only in such modified form. If both Houses agree that the rule should not be made, it shall have no effect. But any such modification or annulment of the rule shall be without prejudice to the validity of anything previously done under that rule. (Section 26).

Obligations of Employers

Under the Act, every employer is required:

1. to see that all his workmen are paid their wages regularly and in time, as required, under the Act (Sec. 3 & 5);
2. to fix wage periods which shall not exceed one month (Sec. 4);
3. to pay wages in current coin or currency notes or both (Sec. 6);
4. not to make unauthorised deductions (Sec. 7);
5. to impose fines only for permissible acts and omissions and after giving adequate opportunity to show cause against the fines and deductions (Sec. 8);
6. to maintain registers and records giving particulars of persons employed, the work performed by them, the wages paid to them and the deductions made from their wages, fines imposed and realisations made (Sec. 10, 13A);
7. not to enter into any agreement with an employed person, whereby he relinquishes any right conferred by the Act (Sec. 23); and
8. to display a notice containing abstracts of the Act and the rules made thereunder in English and in the language of the majority of the employed persons (Sec. 25).

Rights of Employers: Every employer has the right:

- a) to deduct from the wages of a worker an amount not exceeding his wages for 8 days as may, by any terms be due to the employer in lieu of clue notice, if the worker together with 10 or more workers absents himself from duty without notice or without any reasonable cause, or goes on strike or resorts to stay-in strike (Sec.9(2));
- b) to appeal to District Court against the directions made by the Authority appointed under the Act for payment of wages and compensation, if the amount of these sums exceed rupees three hundred (Sec. 17).

Right of Employees: Every workman is entitled:

- i) to receive his wages in the prescribed wage period in cash or by cheque or by credit to his bank account (Sec. 3);
- ii) to refuse to agree to any deductions and fines, other than those authorised under the Act. (Sec 7, 8);
- iii) approach within six months, the prescribed authority to claim unpaid or delayed wages, unauthorised deductions and fines along with compensation (Sec. 15, 16); and

Notes

- iv) to appeal against the direction made by the authority, if the amount of wages claimed exceeds rupees one hundred (Sec. 17).

General Remarks

This Act is a Central legislation being administered by both Central and State Government in their respective spheres as defined under the Act. In its original form, it suffered from a number of lacunae and thus, failed to provide effective protection against unfair practices in regard to payment of wages. With the gaining of experience in its working, it was amended several times. To start with, it was made applicable to factory and railways employees with monthly wages up to ₹200. Since then, it applied to workers of most of the organised industries, and the pay limit for coverage of workers was raised to ₹1600/- per month in 1982. Now again this wage limit is proving to be too low to cover most of the workers due to large increase in their wages and salaries during the last fifteen years, the government is considering seriously to amend the Act to raise the wage limit suitably and also to make Penalties for contravention of the Act more deterrent. Both the Central and Stage Governments have framed rules under this Act, which provide necessary safeguards to workers against delay in the payment of wages and unauthorised deductions and fines.

The working of the Act and its rules have, no doubt, benefited the working class, as complaints regarding non-payment of wages and erosion of wages by unauthorised and heavy deductions and fines are not so many as before. In fact, since the enactment of this Act, employers have started disciplining their workers more by suspending, discharging and dismissing them than by imposing heavy fines and deductions. Increasing education, awakening among workers, growth or trade unions, and increasing desire on the part of employers to play fair to their workers, have also contributed to this improvement.

But still, as observed by the National Commission on Labour, which reviewed the working of the Act, all the malpractices regarding payment of wages on the part of some employers have not been checked by this Act. Some unfair practices still prevail largely in unorganised sector and small industries, and also in some big industries like mines, plantations, and other establishments where substantial number of workers are paid piece rate wages by weighing and measuring their daily output. Complaints regarding wrong measurement are not rare. In regard to time-rated workers' complaints regarding non-payment of overtime are also not few. Rejection of sub-standard work in industries like *Bidi*, still affects earnings of workers adversely. The enforcement machinery has also been finding it difficult to bring round defaulting employer because of the cumbersome procedure for prosecution, and small penalties as compared to monetary benefits reaped by employers by delaying the payment of wages. Inspectors appointed under this Act are experiencing difficulty in enforcing compliance with the provision of the Act in Government-owned industries like railways. Mere amendment of the Act for simplifying the procedure for prosecution, or making penalties for defaults more deterrent may not produce all the desired results. Other possible measures, which may ensure greater protection of earned wages, are the strengthening of inspection machinery, exercising greater vigilance by the implementing authorities, policing by workers and their unions, and more education and awareness of workers and supervisors in regard to the provisions of this Act and rules framed thereunder.

The ILO has also laid down international standards for the protection of wages by adopting one convention and one recommendation.

| | |
|--|---|
|  <i>Task</i> | Explain Payment of Wages Act, 1936 by providing some cases related to this. |
|--|---|

12.6 Summary

Notes

- The Act is a protective piece of legislation. It seeks to regulate the payment of wages of certain class of workers employed in industry. The main object of the Act is to ensure to workers, payment of their earned wages on due date without unauthorised deduction. In order to ensure timely payment of wages, the Act regulates the manner of payment of wages at regular intervals. It lays down permissible deductions to protect the employed persons against arbitrary or unauthorised deductions being made from their wages.
- Any gratuity payable on the termination of employment;
- Whether house rent are wages depends on the terms of the contract. It is so, if its payment is compulsory, otherwise it is not;
- The term “wages” means wages earned and not potential wages;
- No other meaning can be assigned to the term “wages” than is mentioned in the definition.
- If the number of persons employed in a factory, an industrial establishment, or railways, including daily rated workers, is less than 1000, wages must be paid before the expiry of the seventh day after the last day of the wage period.
- In other cases, wages must be paid before the expiry of the tenth day after the expiry of the wage period.
- Every fine shall be deemed to have been imposed on the day of the act or omission.
- All fines and realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages in such form as may be prescribed. All realisation of fines shall be applied only to such purposes as are beneficial to the persons employed in the factory.
- Deduction for recovery of loans made from any fund constituted for the welfare of labour and the interest due in respect thereof can be made, provided the fund is constituted in accordance with the rules approved by the State Government.
- Deductions can be made for recovery of loans granted for house building or other purposes approved by the State Government and the interest due in respect thereof.
- The total amount of deductions, which may be made under Section 7 in a wage period from the wages of any employed person shall not exceed 75 per cent of such wages in cases where such deductions are wholly or partly made for payments to co-operative societies. In any other case, the deductions shall not exceed 50 per cent of such wages. Any agreement or contract by which an employee agrees to any deductions other than those authorised under the act would be null and void under Section 23 of the Act. There is, however, no provision in the Act limiting the period within which the employer should make the deduction for adjustment of overpayment of wages.
- When any application for claims under this Act is entertained, the Authority shall bear the applicant and the employer or other person responsible for payment of wages or give them an opportunity of being heard.
- If the authority hearing an application is satisfied that the application was malicious or vexatious, it may direct a penalty not exceeding fifty rupees to be paid to the employer or other person responsible for payment of wages, by the person presenting the application. The authority may further direct that a penalty not exceeding fifty rupees be paid to the State Government by the employer or other person responsible for the payment of wages in case where the application ought not to have been compelled to seek redress under the Act (Sec. 15 (4)).

Notes

- 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 the Parliament. If both Houses agree in making any modification in the rule, the rule shall thereafter have effect only in such modified form. If both Houses agree that the rule should not be made, it shall have no effect. But any such modification or annulment of the rule shall be without prejudice to the validity of anything previously done under that rule. (Section 26).

12.7 Keywords

Appeals: An order dismissing, either wholly or in part, an application made on the ground that deductions are made contrary to the Act or payment of wages has been delayed.

Application of Act (Sec. 24): In relation to railways, air transport services, mines and oil fields, the powers conferred upon the State Government by the Act shall be powers of the Central Government.

Contracting Out (Sec. 23): Any contract or agreement whereby an employed person relinquishes any right conferred by the Act shall be null and void in so far as it purports to deprive him of such right.

Display of Notice (Sec. 25): The person responsible for the payment of wages to persons employed in a factory or an industrial or other establishment shall cause to be displayed a notice containing such abstracts of the Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory or an industrial or other establishment, as may be prescribed.

Employed Person: Employed person includes the legal representative of a deceased employed person.

Employer: Employer includes the legal representative of deceased employer.

Fixation of wage-period: Every person responsible for the payment of wages under Sec. 3 shall fix periods, known as Wages Periods in respect of which such wages shall be payable. A wage period shall not exceed one month. (Section 4)

Illegal Deductions: Any deductions other than those authorised under Section 7 of the Act would constitute illegal deductions.

Inspector: make such examination and inquiry as he thinks fit in order to ascertain if the provisions of the Act are being observed;

Protection (Sec. 22-A): No suit, prosecution or other legal proceeding shall be against the Government or any officer or the Government for anything which is in good faith done or intended to be done under the Act.

Wages: "Wages" means all remuneration (whether by way of salary, allowances, otherwise) expressed in terms of money or capable of being expressed which would, if the terms of employment, expressed or implied are fulfilled, be payable to persons employed in his employment or of work done in such employment.

12.8 Self Assessment

Notes

Fill in the blanks:

1. The Act applies to the of India.
2. Value of any, of the supply of water, light, medical attendance, or other amenity or any service excluded from the computation of wages by a general or specific order of the State Government;
3. The may, by a general or special order, exempt the person responsible for the payment of wages from the operation of the above provisions in certain cases.
4. All payment of wages shall be made on a (Section 5).
5. The wages of an employed person shall be paid to him without deductions of any kind, except those authorised under the
6. may be made on account of the absence of an employed person from duty from the place or place where, by the terms of employment, he is required to work.
7. The amount of deduction cannot an amount equivalent to the value of house accommodation, amenity or service supplied.
8.of an advance of money given before employment shall be made from the first payment of wages in respect of complete wage period, but no recovery can be made of such advance given for travelling expenses.
9. An Inspector of Factories appointed under theshall be an inspector for the purposes of the Payment of Wages Act in respect of all factories within the local limits assigned to him.
10. Any inquiry under this section shall be deemed to be judicial proceeding within the meaning of Sections of the Indian Penal Code (Sec. 15 (4B)).
11. A contravention of provision dealing with or with payment of wages in current coin or currency notes, except on a complaint made by or with the sanction of an Inspector under the Act;
12. Any punishable under Sections 20(3) and 20(4), except on a complaint made by or with the sanction of an Inspector under the Act.
13. The is empowered to make rules to regulate the procedure to be followed by Authorities and Courts.

12.9 Review Questions

1. What are the deduction under Payment of Wage Act?
2. What are the punishments if payment is not made as per the provisions of this Act?
3. Why is registers mainting is compulsory and how it maintained in this Act?
4. What powers does an inspector have under this Act?

Notes

Answers: Self Assessment

- | | |
|------------------------------|------------------------|
| 1. whole | 2. house accommodation |
| 3. State Government | 4. working day |
| 5. Payment of Wages Act | 6. Deductions |
| 7. exceed | 8. Recovery |
| 9. Factories Act, 1948 | 10. 193, 219 and 228 |
| 11. fixation of wage periods | 12. offence |
| 13. State Government | |

12.10 Further Readings



Books

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Online links

En.wikipedia.org

www.ilo.org

Unit 13: Wage Legislation

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Objectives

After studying this unit, you will be able to:

- Discuss Equal Remuneration Act 1976
- Explain Payment of Bonus Act, 1965

Introduction

Sex discrimination on payment of wages has been one of the most prevalent unfair labour practices in most of the countries in the world. Such a widespread unfair labour practice could not escape the notice of the International Labour Organisation set up for removing such discriminations by formulating international labour standards for its member countries. In fact, the I.L.O. adopted equal remuneration for men and women workers for work of equal value, without discrimination based on sex as its fundamental principle included in its Constitution. The General Assembly of United Nations has also given its support to this principle. It also became the subject of a Convention No.100 and a Recommendation No.90, adopted by the International Labour Conference in 1951.

The Constitutions of many countries specifically proclaim the principle or else prohibit sex discrimination. The principle is also approved by many non-governmental organisations, including trade unions and international federations and confederations of trade unions.

Though the principle of equal pay is widely accepted in the social policy of many countries, its practical application varies greatly. It is extensively applied in some countries, and substantial progress continues to be made. In many of the countries, the Governments set an example by implementing it with regard to their employees, while arbitration awards, wage council decisions and many collective agreements between employers, organisations and trade unions fix the same rate for both men and women in various job classifications. In other countries, including many of the developing ones, implementation in practice has lagged far behind. In these countries, the raising of the status and promotion of job opportunities of women are among the many problems involved in the transformation of traditional communities into modern States.

Notes

Payment of bonus finds justification on the ground that the workers should have a share in the prosperity of the concern for which they have made their contribution. The Bonus Commission rejected the argument that the payment of bonus is meant to fill up the gap that is in existence between the actual and the living wages though in the process of sharing the prosperity the gap is narrowed down or closed. It was not felt appropriate by the Commission that the amount of available surplus to be set apart for the purpose of payment of bonus should be linked with the wages level for that would introduce uncertainty and there are in existence wage boards for different industries with the object to reduce disparity in the wages prevailing in different industries.

13.1 Equal Remuneration Act, 1976

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

Scope and Coverage

The act extends to the whole of India. The act came into force on dates notified, from time to time, by the Central Government in respect of different establishments or employments, so that the total coverage was completed within 3 years from the passing of the Act, which was February 1976. Thus, the act was extended to all establishments, employments, public or private, including domestic service and this is the only labour act with universal coverage (Sec. 1).

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

- a) *“appropriate Government”* means
 - i) in relation to any employment carried on by or under the authority of the Central Government, or a railway administration, or in relation to a banking company, a mine, oilfield or a major port or any corporation established by or under the Central Act, the Central Government; and
 - ii) in relation to any other employment, the State Government;
- b) *“remuneration”* means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, expenses or implied, were fulfilled,;
- c) *“same work or work of a similar nature”* means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions by a man or a woman and the differences, if any, between that skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment;
- d) *“worker”* means a worker in any establishment or employment in respect of which this Act has come into force;

Equal pay for equal work

Equal pay for equal work, it is self evident, is implicit in the doctrine of equality enshrined in Art. 14; it flows from it. Because Cl. (d) of Art. 39 spoke of “equal pay for equal work for both men and women,” it did not cease to be a part of Art. 14. To say that the said rule

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

Basic wages

When an award gives revised pay scales, the employees become entitled to the revised emoluments and where the said revision is, with retrospective effect, the arrears paid to the employee, as a consequence, are the emoluments earned by the them while on duty.

2. **Act to have overriding effect:** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement of contract of service whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force. (Section 3).

Payment of Remuneration at Equal Rates to Men and Women Workers

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

- 1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work of a similar nature.
- 2) No employer shall, for the Purpose of complying with the provisions of sub- section (1), reduce the rate of remuneration of any worker.
- 3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work of a similar nature are different only on the ground of sex, then the higher (in case where there are only two rates), or as the case may be, the highest (in cases where there are more than two rates), or such rates shall be payable, on and from such commencement, to such men and women workers: Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act.

Onus of Proof

The employer has to show that it is more probable than not that the variation was due to a material difference, and a genuine material difference, not based on sex. In other words, that the difference between a women employee's salary and that of her male colleagues was bona-fide due to some difference other than the difference of sex.

Same work or work of a similar nature. As defined and interpreted, the work done by a women employee and man employee need not be identical to warrant payment of equal remuneration. Broadly, the skill, effort and responsibilities required are to be the same when performed under similar working condition; the difference if any, should not be of any practical importance.

Notes

It is relevant to know that while the Equal Remuneration Act, 1976 talks of 'same work or work of a similar nature', ILO Convention 100 talks of 'work of equal value'. The two concepts are not the same but it can be argued that the formulation in the law is easier to interpret than the formulation in the ILO convention.

No Discrimination to be Made while Recruiting Men and Women Workers

On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature (or any condition of service subsequent to recruitment, such as, promotions, training or transfer) make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

Provided that the provision of this section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to posts in an establishment or employment. (Section 5).

Advisory Committee

- 1) For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more Advisory Committees to advise it with regard to the extent to which women may be employed in such establishments or employment as the Central Government may by notification, specify in this behalf.
- 2) Every Advisory Committee shall consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women.
- 3) In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part-time employment and such other relevant factors as the Committee may think fit.
- 4) The Advisory Committee shall regulate its own procedure.
- 5) The appropriate Government may after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations, issue such directions in respect of employment of women workers, as the appropriate Government may think fit. (Section 6).

Hearing and Deciding Claims and Complaints

- 1) The appropriate Government may, by notification, appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding:
 - a) complaints with regard to the contravention of any provision of this Act;
 - b) claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature.and may, by the same or subsequent notification, define the local limits within which each such authority shall exercise its jurisdiction.

- 2) Every complaint or claim referred to in sub-section (1) shall be made in such manner as may be prescribed.
- 3) If any question arises as to whether two or more works are of the same nature or of a similar nature, it shall be decided by the authority appointed under sub-section (1).
- 4) Where a complaint or claim is made to the authority appointed under sub-section (1), it may direct, after giving the application and the employer and opportunity of being heard, and after and such inquiry as it may consider necessary:
 - a) in the case of a claim arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature that payment be made to the worker of the amount by which the wages payable to him exceed the amount actually paid.
 - b) in the case of complaint, the adequate steps be taken by the employer so as to ensure that there is no contravention of any provision of this Act.
- 5) Every authority appointed under sub-section (1) shall have all the powers of a civil court under the Code of Civil Procedure 1978 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a civil court for all the purposes of Sec. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).
- 6) Any employer or worker aggrieved by any order made by an authority appointed under sub-section (1), on a complaint or claim may within thirty days from the date of the order, prefer an appeal to such authority as the appropriate Government may, by notification, specify in this behalf, and that authority may, after bearing the appeal, confirm, modify or reverse the order appealed against and no further appeal, confirm, modify or reverse the order appealed against and no further appeal, shall lie against the order made by such authority.
- 7) The authority referred to in sub-section (6) may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified in sub-section (6), allow the appeal to be preferred within a further period of thirty days but not thereafter.
- 8) The provision of sub-section (1) of sec. 33-C of the Industrial Disputes Act, 1947 (14 of 1947), shall apply for the recovery of monies due an employer arising out of the decision of an authority appointed under this section. (Section 7).
- 9) Duty of employer to maintain registers: On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the workers employed by him as may be prescribed. (Section 8).
- 10) Inspectors
 - a) The appropriate Government may, by notification, appoint such persons as it may think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.
 - b) Every Inspector shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code (45 of 1860). (Section 9).

Notes

Penalties

- 1) If, after the commencement of this Act, any employer, being required by or under the Act, so to do:
 - a) omits or fails to maintain any register or other document in relation to workers employed by him, or
 - b) omits or fails to produce any register, muster roll or other document relating to the employment of workers, or
 - c) omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker from giving evidence, or
 - d) omits or refuses to give any information.

He shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.
- 2) If, after the commencement of this Act, any employer:
 - a) makes any recruitment in contravention of the provisions of this Act, or
 - b) makes any payment of remuneration at unequal rates to men and women workers, for the same work or work of a similar nature, or
 - c) makes any discrimination between men and women workers in contravention of the provisions of the Act, or
 - d) omits or fails to carry out any direction made by the appropriate Government under sub-section (5) of sec. 6, he shall be punishable with fine not less than thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months, but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.
- 3) If any person being required to do so, omits or refuses to produce to an inspector any register or other document or to give any information, he shall be punishable with fine which may extend to five hundred rupees. (Section 10).

Offences by Companies

- 1) Where an offence under this Act has been committed by 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 to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
- 2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been omitted by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation for the Purpose of this Section

Notes

- a) "company" means any corporate body and includes a firm or other association of individuals;
or
- b) "director", in relation to a firm, means a partner in the firm. (Section 11).

Cognizance and Trial of Offences

- 1) 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.
- 2) No Court shall take cognizance of an offence punishable under this Act except upon:
 - a) its own knowledge or upon a complaint made by the appropriate Government or an officer authorised by it in this behalf, or
 - b) a complaint made by the person aggrieved by the offence or by any recognised welfare institution or organisation. (Section 12).

Power to make Rules

The Central Government may, by notification, make rules for carrying out the provisions of this Act. (Section 13).

Act not to apply in special cases: Nothing in this Act shall apply:

- a) to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women, or
- b) to any special treatment accorded to women in connection with:
 - i) the birth or expected birth of a child, or
 - ii) the term and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death. (Section 15).

Power to make Declaration

Where the appropriate Government is, on a consideration of all the circumstances of the case, satisfied that the differences in regard to the remuneration, or a particular species of remuneration, of men and women workers in any establishment or employment is based on a factor other than sex, it may, by notification, make a declaration to that effect that any act of the employer attributable to such a difference shall not be deemed to be a contravention of any provision of this Act. (Section 16).

Power to remove Difficulties

If any difficulty arises in giving effect to the provision of this Act, the Central Government may, by notification make any order, not inconsistent with the provisions of this Act, which appears to be necessary for the purpose of removing the difficulty: Provided that every such order shall, as soon as may be, after it is made be laid before each House of Parliament. (Section 17).

Notes

General Remarks

It is to be noticed that, apart from providing for equal pay for men and women workers under the same employers, for doing same work or work of a similar nature, the Act in section 5 stipulates that no discrimination is to be made by the employer while recruiting men and women workers. Likewise, Sec. 5 provides for advisory committees to be set up by the appropriate Government. The main function of the committees is to examine and advise the government on steps to be taken, both to prevent reduction of employment opportunity for women and also to enhance their employment.

Unlike in the labour laws, Sec. 12 empowers complaints to be filed before courts, not only by the Government functionaries but also by aggrieved persons or by recognised welfare institutions or organisation.

Selected Case Law

- i) A settlement arrived at between the management and employees cannot be a valid ground for effecting discrimination (Mackinson Mackerzie & Co vs. Audrey D'costa ((1987) 2 Sec. 409).
- ii) The benefit conferred on females under the act is not absolute and unconditional. Sec. 16 clearly authorises if a declaration is made by the appropriate Government (Air India vs. Nergesh Meerza ((1981) 4 Sec. 355).
- iii) The principals of equal pay for equal work is not applicable to professional services (C. Girijambal vs. AP Government ((1981) 2 Sec. 155).
- iv) No exemption can be claimed by an employee on the ground of financial incapability (Mackinson Macherzie & Co. vs. Audrey D'costa ((1987) 2 Sec. 469).
- v The Payment of Bonus Act, 1965

13.2 Payment of Bonus Act

Payment of bonus is not the product of generosity of the employer but is one paid in the name of industrial peace and to make available to every employee a living wage, which more often is more than the actual wages. It is thus the difference between the actual wages and the living wages, which is ascertained on the basis of available material such as available surplus, industry-wise wages or region-wise wages and various other aspects connected with bonus and organisations.

Profits are made possible by the contribution of both the labour and the capital, hence the labour has a right to share in the increased profits that are made in a particular period. But the distribution of increased profits among the workers is better achieved by giving annual bonus than by a further rise in the wages. Wages must be fixed on the basis of normal conditions.

This part comprising the Payment of Bonus Act, 1965 as amended up to date with short comments and latest case law will meet the requirement of having a first hand understanding about the payment of bonus in India.

Definitions**Notes**

In this Act, unless the context otherwise requires:

- (I) *“accounting year”* means
- (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;
 - (ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
 - (iii) in any other case,
 - (a) the year commencing on the 1st day of April; or
 - (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced.

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised, except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit.
- (4) *“allocable surplus”* means-
- (a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income Tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;
 - (b) in any other case, sixty per cent of such available surplus;
- (6) *“available surplus”* means the available surplus computed under section 5;
- (12) *“direct tax”* means-
- (a) any tax chargeable under-
 - (i) the Income-tax Act;
 - (ii) the Super Profits Tax Act, 1963 (14 of 1963);
 - (iii) the Companies (Profits) Surtax Act, 1964 (7 of 1964);
 - (iv) the agricultural income-tax law; and
 - (b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act;
- (13) *“employee”* means any person (other than an apprentice) employed on a salary or wage not exceeding three thousand and five hundred rupees per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

Notes

- (14) “*employer*” includes-
- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (I) of section 7 of the Factories Act, 1948 (63 of 1948); the person so named; and
 - (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;
- (21) “*salary or wage*” means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include-
- (i) any other allowance which the employee is for the time being entitled to;
 - (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
 - (iii) any travelling concession;
 - (iv) any bonus (including incentive, production and attendance bonus);
 - (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
 - (vi) any retrenchment compensation or any gratuity or other retirement benefits payable to the employee or any ex gratia payment made to him;
 - (vii) any commission payable to the employee.

Explanation: Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.

Establishments to include departments, undertakings and branches -

Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act.

Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus.

Computation of gross profits

Notes

The gross profits derived by an employer from an establishment in respect of the accounting year shall

- (a) in the case of a banking company, be calculated in the manner specified in the First Schedule;
- (b) in any other case, be calculated in the manner specified in the Second Schedule.

Computation available surplus

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6;

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of

- (a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 6; and
- (b) an amount equal to the difference between:
 - (i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
 - (ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that Year.

Sums deductible from gross profits

The following sums shall be deducted from the gross profits as prior charges, namely:

- (a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be;

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once, and within one year from that date) continue, to be such notional normal depreciation;

- (b) any amount by way of development rebate or investment allowance or development allowance, which the employer is entitled to deduct from his income under the Income-tax Act;
- (c) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
- (d) such further sums as are specified in respect of the employer in the [Third Schedule].

Notes

Calculation of Direct Tax Payable by the Employer

Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:

- (a) in calculating such tax no account shall be taken of:
 - (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
 - (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of section 32 of the Income-tax Act;
 - (iii) any exemption conferred on the employer under section 84 of the Income- tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965 (10 of 1965);
- (b) where the employer is a religious or a charitable institution to which the provisions of section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
- (c) where the employer is an individual or a Hindu individual family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;
- (d) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;
- (e) no account shall be taken of any rebate (other than development rebate or investment allowance or development allowance) or credit or relief or deduction (not herein mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

13.3 Eligibility for Bonus

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

Disqualification for Bonus

Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises of the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment.

Payment of minimum bonus

Notes

Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year. Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words "one hundred rupees", the words "sixty rupees" were substituted.

Payment of maximum bonus

- (1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year, subject to a maximum of twenty per cent of such salary or wage.
- (2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.

Set on and set off of allocable surplus

- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.
- (2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.
- (3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act (4), where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Special provisions with respect to certain establishments

- (1) Where an establishment is newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this act in accordance with the provisions of sub-sections (IA), (1B) and (IC).

Notes

- (1A) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Act in relation to that year, but without applying the provisions of section 15.
- (1B) For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 15 shall apply, subject to the following modifications, namely-
- (i) for the sixth accounting year: set on or set off as the case may be, shall be made in the manner illustrated in the [Fourth Schedule] taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;
 - (ii) for the seventh accounting year-set on or set off, as the case may be, shall be made in the manner illustrated in the [Fourth Schedule] taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.
- (1C) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 15 shall apply in relation to such establishment as they apply in relation to any other establishment.

Time-limit Payment or Bonus

All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer:

- (a) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
- (b) in any other case, within a period of eight months from the close of the accounting year;

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

13.4 Bonus Act

Every employer employing 20 or more persons, is liable to pay bonus to his employees in respect of each accounting year, as per the provisions of the Payment of Bonus Act, 1965 (Abridged Text of Important Provisions of the Act is given in Appendix 10-I). The main obligations of an employer are as follows:

- (1) To calculate and pay the annual bonus as required under the Act.
- (2) To maintain such records/registers as may be prescribed, in the prescribed manner. (See para 'Registers and Returns').
- (3) To furnish such information to the Inspector as may be required by him.

Employees Entitled

Notes

Every employee receiving salary or wages up to ₹ 3500 p.m. (The limit has been raised from ₹2500 vide Payment of Bonus (Amendment) Act, 1995 w.e.f. 1.4.1993) is entitled to bonus per every accounting year, if he has worked for at least 30 working days in that year. (Sec.8).

Wages means basic pay and dearness allowance.

Minimum Bonus

The minimum bonus, which an employer is required to pay even if there is no allocable surplus, (except in case of new establishments), is:

- (a) 8.33% of the salary or wages during the accounting year, or
- (b) ₹100 in case of employees above 15 years and ₹ 60 in case of employees below 15 years, whichever is higher. (Sec. 10, Payment of Bonus Act).

If an employee has not worked for all the working days in an accounting year, the minimum bonus payable to him for that year, (as stated above), shall be proportionately reduced (Sec. 13, Payment of Bonus Act). For this purpose, an employee shall be deemed to have worked, during the days of-

- (i) Layoff,
- (ii) Leave with pay,
- (iii) Temporary disablement caused by accident in the course of employment, or
- (iv) Maternity leave (Sec. 14, Payment of Bonus Act)

Maximum Bonus

If in any accounting year, the allocable surplus exceeds the minimum bonus, the employer should pay bonus in proportion to the salary or wages earned by the employee during that accounting year. However, bonus should not exceed 20% of such salary or wages (Sec. 11, Payment of Bonus Act).

Mode and Time Limit for Payment of Bonus

Bonus should be paid in cash and within 8 months from the close of the accounting year or within one month from the date of enforcement of the award. However, an employer may apply for extension of the period of 8 months to up to two years, if there is a sufficient cause (Sec. 19, Payment of Bonus Act).

Calculation of Bonus

Note: In case of an employee with monthly pay between ₹ 2500 (The limits have been increased from ₹1600 and ₹2500 respectively vide Payment of Bonus (Amendment) Act, 1995) and ₹ 3500, pay of ₹ 2500 only is to be considered for working out the amount of bonus payable to him (Sec. 12, Payment of Bonus Act).

The method for calculation of annual bonus is as follows:

1. Calculate gross profit in the manner specified in-
 - (a) First Schedule, in case of a banking company, or
 - (b) Second Schedule, in any other case (Sec. 4, Payment of Bonus Act)

Notes

2. Calculate the available surplus: (Sec. 5, 6 and 7, Payment of Bonus Act)
Available Surplus = A + B, where
A = Gross Profit - Depreciation admissible u/s 32 of the Income Tax Act - Development rebate or investment allowance or development allowance - Direct taxes payable for the accounting year (calculated as per Sec. 7) - Sums specified in the Third Schedule.
B = Direct Taxes (calculated as per Sec. 7) in respect of gross profits for the immediately preceding accounting year - Direct Taxes in respect of such gross profits as reduced by the amount of bonus, for the immediately preceding accounting year.
3. Calculate Allocable Surplus (Sec. 2(4) Payment of Bonus Act)
Allocable Surplus = 60%* of Available Surplus
*67% in case of foreign companies.
4. Make Adjustment, for 'Set On', and 'Set Off',
For calculating the amount of bonus in respect of an accounting year, allocable surplus is computed after considering the amount of set on and set off from the previous years, as illustrated in Fourth Schedule.
5. The allocable surplus, so computed is distributed amongst the employees in proportion to salary or wages received by them during the relevant accounting year.

Set on and Set off (Sec. 15, Payment of Bonus Act)

If in an accounting year, the allocable surplus exceeds the amount of maximum bonus payable, then such excess shall be carried forward for being SET ON in the succeeding four accounting years. The amount to be carried forward should not exceed 20% of salary/wages for that accounting year.

If there is no allocable surplus or if the allocable surplus falls short of the minimum bonus payable, then such deficiency be met out of the amount brought forward for being SET ON from the previous accounting year, if any.

If there is still any deficiency, then such amount be carried forward for being SET OFF in the succeeding four accounting years.

While calculating bonus for the succeeding accounting years, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.



Example: M/s ABC had an allocable surplus of ₹20,000 in 1999. Minimum bonus payable was ₹2000.

Maximum bonus (@ 20%) was ₹4800. Bonus paid ₹4,800.

Amount of SET ON carried forward to next year = (Allocable Surplus-Bonus paid), restricted to 20% of Salary or wages i.e. ₹4800.

In 2000, Allocable Surplus was nil and minimum bonus payable was ₹2500. Amount of SET ON (1999) adjusted and bonus paid = ₹2500.

Balance amount on SET ON (1999) carried forward to 2001 = ₹2300.

In 2001, allocable surplus was nil and minimum bonus payable was ₹2800. Amount of SET ON (1999) adjusted = ₹ 2300. Balance amount of bonus payable ₹500 carried forward for being SET OFF in next years.

Deductions Permissible from Bonus

Notes

Following amounts can be adjusted against the amount of bonus payable.

- (1) Any customary/festival interim bonus paid (Sec. 17, Payment of Bonus Act)
- (2) Any financial loss caused by the misconduct of the employee (Sec. 18, Payment of Bonus Act)

Forfeiture of Bonus

Right to receive bonus shall be forfeited if the employee is dismissed from service for fraud, riotous or violent behaviour while on the premises of the establishment, or theft, misappropriation or sabotage of any property of the establishment (Sec. 9, Payment of Bonus Act). The right is forfeited not only for the year in which he is so dismissed but also for the past years bonus remaining unpaid to him.

Registers and Returns

It is obligatory for every employer to maintain the following registers:

- (a) Register showing the computation of the allocable surplus in Form A.
- (b) Register showing set on and set off of the allocable surplus in Form B, and
- (c) Register showing the details of the amount of bonus due to each employee, deductions therefrom and the amount disbursed, in Form C (Rule 4, Payment of Bonus Rules).

Every employer is bound to produce these registers for examination by the visiting Inspector (Sec. 27(4) Payment of Bonus Act).

Every employer should also submit an annual return in Form D, to the Inspector within 30 days of the expiry of the time limit specified for payment of bonus (Rule 5, Payment of Bonus Rules).

Bonus Linked with Production/Productivity

Where the employees enter into an agreement or settlement with their employer for payment of an annual bonus linked with production or productivity, in lieu of bonus based on profits, they shall be entitled to receive bonus due to them under such agreement or settlement, subject to a minimum of 8.33% and a maximum of 20% of the salary or wages earned by them during the relevant accounting year.

Contracting Out is Void

All contracts or agreements depriving the employees of their right to receive minimum bonus, shall be void and not enforceable (Sec.31A, Payment of Bonus Act).

Bonus in case of New Establishments (Sec. 16, Payment of Bonus Act)

Newly set up establishments are exempted from the liability to pay bonus during the initial period.

In the first 5 accounting years following the year in which the employer begins to sell his goods or render services, bonus is payable only in respect of that accounting year in which the employer derives 'profits' (Profits for this purpose shall be calculated after deducting in full, the amount of (i) depreciation in respect of the relevant account year, and (ii) unabsorbed depreciation and

Notes

unabsorbed losses brought forward from the previous accounting years). Bonus for this year is to be calculated according to the provisions of the Act (as discussed above) excepting the provisions of set on and set off.

In the sixth accounting year, set on or set off is to be made of the excess or deficiency carried forward from the fifth and sixth accounting years.

In the seventh accounting year, set on or set off is to be made of the excess or deficiency carried forward from the fifth, sixth and seventh accounting years.

From the eight accounting year onwards, bonus is to be calculated as in case of any other establishment.

Offences and Penalties (Sec. 28, Payment of Bonus Act)

The penalties leviable in respect of the various offences under the Payment of Bonus Act are as follows:

| Offence | Penalty |
|---|---|
| 1. Contravention of the provisions of the Act or Rules | Imprisonment up to 6 months or fine up to Rs.1000 or both |
| 2. Failure to comply with the directions or requisitions made | As above |



Task Define Bonus Act 1965, by the help of some examples or cases.

13.5 Summary

- The act extends to the whole of India. The act came into force on dates notified, from time to time, by the Central Government in respect of different establishments or employments, so that the total coverage was completed within 3 years from the passing of the Act, which was February 1976.
- Basic wages: When an award gives revised pay scales, the employees become entitled to the revised emoluments and where the said revision is, with retrospective effect, the arrears paid to the employee, as a consequence, are the emoluments earned by the them while on duty.
- In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part-time employment and such other relevant factors as the Committee may think fit.
- The Advisory Committee shall regulate its own procedure.
- The appropriate Government may after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations, issue such directions in respect of employment of women workers, as the appropriate Government may think fit. (Section 6).

- If any difficulty arises in giving effect to the provision of this Act, the Central Government may, by notification make any order, not inconsistent with the provisions of this Act, which appears to be necessary for the purpose of removing the difficulty: Provided that every such order shall, as soon as may be, after it is made be laid before each House of Parliament. (Section 17).
- Explanation: Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.
- Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act.

13.6 Keywords

Company: "company" means any corporate body and includes a firm or other association of individuals; or

Director: "director", in relation to a firm, means a partner in the firm. (Section 11).

available surplus: "available surplus" means the available surplus computed under section 5;

Direct Tax: "direct tax" means-

any tax chargeable under- the Income-tax Act; the Super Profits Tax Act, 1963 (14 of 1963); the Companies (Profits) Surtax Act, 1964 (7 of 1964); the agricultural income-tax law; and

Employee: "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding three thousand and five hundred rupees per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

Employer: where the employer is an individual or a Hindu individual family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;

Income of employer: where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

13.7 Self Assessment

Fill in the blanks:

1. India satisfied Convention 100 on equal remuneration in 1958.
2. Every shall consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women.
3. The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in
4. Any amount by way of depreciation in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be;

Notes

5. Subject to the provisions of, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
6. Any conferred on the employer under section 84 of the Income- tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965 (10 of 1965);
7. Every shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.
8. Every employer employing 20 or more persons, is liable to pay bonus to his employees in respect of each accounting year, as per the provisions of the
9. Bonus should be paid in cash and from the close of the accounting year or within one month from the date of enforcement of the award.

13.8 Review Questions

1. What is concept of Equal Remuneration for men & Women both?
2. What are the provisions in the act?
3. What are the punishments?
4. What is concept of annual bonus? Is it not a deferred wage?
5. What is method of calculating annual bonus? Explain?
6. What are penalties in case of non payment of bonus?

Answers: Self Assessment

- | | |
|--------------------|-------------------------------|
| 1. ILO | 2. Advisory Committee |
| 3. section 6; | 4. admissible |
| 5. section 7 | 6. exemption |
| 7. employee | 8. Payment of Bonus Act, 1965 |
| 9. within 8 months | |

13.9 Further Readings



Books

A N Aiyar, *Encyclopaedia of Labour Laws and Industrial Legislation*. Vol 6. The Labour and Industrial Digest 1855 - 1956, Federal Law Depot, Delhi, 1957

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Unit 14: The Child Labour (Prohibition and Regulation) Act, 1986

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Objectives

After studying this unit, you will be able to:

- Explain meaning of Child Labour (Prohibition and Regulation) Act, 1986
- Discuss Regulation of Work Conditions
- State Duties of Employers/Penalties for Violation
- Explain Occupations and Processes where Child Labour is Prohibited

Introduction

The Child Labour Act, bans the employment of children, below 14 years of age in specified occupations and processes which are considered unsafe and harmful to child workers and regulates the conditions of work of children in employment's where they are not prohibited from working.

It also lays down penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children.

The Act extends to the whole of India. The Child Labour Act of 1986 applies to all establishments and workshops wherein any industrial process is carried on (excluding one covered under section 67 of the Factories Act, 1948).

An "establishment" includes a shop, commercial establishment, workshop, farm, residential hotel, and restaurant, eating house, theatre or other place of public amusement or entertainment.

14.1 Meaning

Notes

1. This Act may be called the Child Labour (Prohibition and Regulation) Act, 1986.
2. It extends to the whole of India.
3. The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and for different classes of establishments.



Did u know? Under the Act, Child? Means a person who has not completed his fourteenth year of age. Any such person engaged for wages, whether in cash or kind, is a child worker.

14.2 Regulation of Conditions of Work of Children

Application of Part

The provisions of this Part shall apply to an establishment or a class of establishments in which none of the occupations or processes referred to in Sec. 3 is carried on.



Notes This section lays down that provisions of this Part shall apply to an establishment in which none of the prohibited occupations or processes is carried on.

Hours and Period of Work

- (1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.
- (2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.
- (3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section(2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.
 - (a) No child shall be permitted or required to work between 7 p.m. and 8 a.m.
 - (b) No child shall be permitted or required to work overtime.
 - (c) No child shall be permitted or required to work in any establishment on any day on
 - (d) which he has already been working in another establishment.



Notes This section prescribes working hours for a child labour.

Notes

Provision if Mandatory or Directory

The surest test for determination as to whether the provisions is mandatory or directory is to see as to whether the sanction is provided therein.

Weekly Holidays

Every child employed in an establishment shall be allowed in each week, a holiday or one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.



Notes This section lays down that a weekly holiday should be allowed to every child labour.

Notice to Inspector

- (1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely:
 - (a) the name and situation of the establishment;
 - (b) the name of the person in actual management of the establishment;
 - (c) the address to which communications relating to the establishment should be sent; and,
 - (d) the nature of the occupation or process carried on in the establishment.
- (2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars as are mentioned in sub-section (1).

Explanation - For the purposes of sub-sections (1) and (2), "date of commencement of this Act, in relation to an establishment" means the date of bringing into force of this Act in relation to such establishment.

- (3) Nothing in Secs. 7,8and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any schools established by, or receiving assistance or recognition from, Government.



Notes This section makes provision for furnishing of information regarding employment of a child labour to Inspector.

Explanation - It is now well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

Disputes as to Age

Notes

If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed authority, be referred by the Inspector for decision to the prescribed medical authority.



Notes This section makes provision for settlement of disputes as to age of any child labour.

Maintenance of Register

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing –

1. the name and date of birth of every child so employed or permitted to work;
2. hours and periods of work of any such child and the intervals of rest to which he is entitled;
3. the nature of work of any such child; and
4. such other particulars as may be prescribed



Notes This section makes provision for maintenance of register in respect of child labour.

Display of Notice containing abstract of Secs. 3 and 14

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Secs. 3 and 14.



Notes This section makes provision for display of notice in a conspicuous place at every railway station or port or place of work regarding prohibition of employment of child labour, penalties, etc., in the local languages and in the English language.

Health and Safety

- (1) The appropriate Government may, by notification in the official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.
- (2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely :
 - (a) cleanliness in the place of work and its freedom for nuisance;
 - (b) disposal of wastes and effluents;

Notes

- (c) ventilation and temperature;
- (d) dust and fume;
- (e) artificial humidification;
- (f) lighting;
- (g) drinking water;
- (h) latrine and urinals;
- (i) spittoons;
- (j) fencing of machinery;
- (k) work at or near machinery in motion;
- (l) employment of children on dangerous machines;
- (m) instructions, training and supervision in relation to employment of children on dangerous machines;
- (n) device for cutting off power;
- (o) self-acting machinery;
- (p) easing of new machinery;
- (q) floor, stairs and means of access;
- (r) pits, sumps, openings in floors, etc.;
- (s) excessive weight;
- (t) protection of eyes;
- (u) explosive or inflammable dust, gas, etc.;
- (v) precautions in case of fire;
- (w) maintenance of buildings; and
- (x) safety of buildings and machinery.



Notes This section lies down that the Government is required to make rules for the health and safety of the child labour.

14.3 Regulation of Work Conditions

Employment of children in an establishment or a class of establishments shall be regulated as under:

Maintenance of Register

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment other than those prohibited, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing:

1. The name and date of birth of every child so employed or permitted to work;

2. Hours and periods of work of any such child and the intervals of rest to which he is entitled;
3. The nature of work of any such child; and
4. Such other particulars as may be prescribed.

Notes

Hours and Period of Work

No child shall be permitted or required to work between 7 p.m. and 8 a.m. and to work overtime. The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had a rest interval for at least one hour. The total working hours including the rest interval and the time spent in waiting for work shall not be spread over more than six hours per day.

No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Weekly Holiday

The Act also provides that every child employed in an establishment shall be allowed in each week, a holiday for one whole day. The weekly holiday specified by the employer shall not be altered more than once in three months and a notice to that effect shall be displayed at a conspicuous place in the establishment.

Health and Safety of Child Workers

The appropriate Govt. has been empowered under the Act to make rules for the health and safety of working children in any establishment or class of establishment. These rules may provide for such matters as cleanliness in work place, drinking water, temperature and artificial humidification, fencing of machinery, excessive weights, protection of eyes, device for cutting off power, etc.



Task

Make a survey of nearby slums and make a report about cases of child labour.

14.4 Duties of Employers/Penalties for Violation

1. The employer will notify the Inspector in case he employs a child in his establishment, within 30 days from the date of such employment.
2. The employer shall maintain a register in respect of children employed or permitted to work in his establishment and make it available for inspection by an inspector. This register will show:
 - (a) Name and date of birth of each child worker engaged by him or working in his establishment,
 - (b) Hours and period of work and rest interval of each such child, and
 - (c) The nature of work of every such child.
3. A notice in the local language and in English, containing an abstract of the list of occupations and processes which cannot employ a child and the penalty for doing so shall be displayed at every railway station, port or establishment, by its occupier.

Notes

Penalties

1. For employing any child or permitting any child to work in any of the occupations or processes in which he is not allowed to do so the penalty is imprisonment for at least months which may extend to one year, or fine of not less than ₹ 10,000 which may be increased to ₹ 20,000, or both.
2. Repeating the offence mentioned above after conviction the penalty is imprisonment for not less than 6 months, which may be extended to two years.
3. Failure to give notice to the inspector, or failure to maintain register, or failure to display a notice, (as explained under duties of employer) or failure to comply with or contravention of any other provision the penalty is simple imprisonment which may extend to one month, or fine up to ₹ 10,000, or both.

Procedure Relating to Offences

1. Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction.
2. Every certificate as to the age of a child which has been granted by a prescribed medical authority shall for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.
3. No court inferior to that of a Metropolitan Magistrate or a magistrate of the first class shall try an offence under this Act.



Case Study

Child Labour

Case 1: Ranjith, 14 Years

The boy was a native of West Bengal and came from a very poor family. He along with 9 other children from West Bengal were brought to Kerala for work. Ranjith was placed in a gold shop at Thrissur. Long hours of work (16 hours), with very little food and physical abuse were a part of his life. Unable to take more of this ill treatment he finally escaped from the place and came to Calicut.

Calicut Control Police referred 14-year-old Ranjith to Kozikode CHILDLINE on 11th April 2005. During the course of interactions the child gave the number of the agent. A team meeting was organized following which an Action Plan was formulated to rescue the other children. One of the lady constables, posing as a schoolteacher, called the agent informing him that Ranjith was with her. She asked the agent to come to Calicut bus stand at 5 P.M and informed that she would hand over the boy to him at the said place and time. The next day a team consisting of Circle Inspector, Sub Inspector, the lady constable, and two police constables along with the boy arrived at the bust stand in civil dress. However, the agent did not turn up instead in his place another man was sent. He was arrested.

Based on the information given by the man the police carried raids at three places and rescued 6 children along with the agent on 20th April 2005. All the seven children were provided shelter at the Children's Home, Calicut. The following day they were taken to the District Government Hospital for a medical check up. An F.I.R was registered and the accused (agent and owner of the Gold shop) were produced before the CJM. The accused were remanded to the Kozhikode Sub Jail for 14 days.

Contd....

Ranjith along with the three other boys have been restored home, while the other 2 boys were produced before the CJM for rehabilitation.

Case 2: M.C. Mehta vs. State of Tamil Nadu and Others (Supreme Court of India, 10th December, 1996)

This public interest litigation highlights the magnitude of the problem of child labour in India.

In a landmark judgement the Supreme Court orders the elimination of child labour and listed the obligations of the state and employer thus: (state to provide) compulsory education of children affected by the judgement and (employer to provide and state to ensure) alternative employment for adult members of the family whose child is in employment in a factory or a mine or in other hazardous work, in lieu of child. State to create a child labour rehabilitation-cum-welfare fund and employer and state to deposit a sum of ₹ 20,000 and ₹ 5,000 respectively for each child employed in contravention of the provisions of the Child Labour (Prohibition & Regulation) Act, 1986. The parent/guardian of the concerned child would be paid monthly interest of the deposit of ₹ 25,000. Employment to adult member and payment of deposit in the name of the child would cease if the child were not sent for education.

This judgement lists the obligations of the state and the employer, but not those of the parents, trade unions and other interest groups in society in dealing with child labour.

14.5 Occupations and Processes where Child Labour is Prohibited

No child should be employed or permitted to work in any occupations set forth below, or in any workshop wherein any of the processes listed in Part B of the schedule is carried on, except a workshop wherein the process is carried on by the occupier with the aid of his family or a Government recognised/aided school.



Caution Any occupation connected with:

1. Transport of passengers, goods or mails by railway,
2. Cinder picking, clearing of an ash pit or building operation in the railway premises,
3. Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment, from one platform to another or into or out of a moving train,
4. Work relating to the construction of a railway station or with any other work which is done in close proximity to or between the railway lines,
5. A port authority within the limits of any port,
6. Work relating to selling of crackers and fireworks in shops with temporary licenses, and
7. Abattoirs/Slaughter Houses.

The processes specified in Part B of the schedule are:

1. Bidi making
2. Carpet weaving
3. Cement manufacture including bagging thereof

Notes

4. Cloth printing, dyeing and weaving
5. Manufacture of matches, explosives and fire works
6. Mica-cutting and splitting
7. Shellac manufacture
8. Soap manufacture
9. Tanning
10. Wool-cleaning
11. Building and construction industry
12. Manufacture of slate pencils (including packing)
13. Manufacture of products from agate
14. Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene pesticides and asbestos
15. Hazardous processes, Printing and dangerous operations as notified in the rules of the Factories Act, 1948
16. Cashew and cashew nut descaling and processing
17. Soldering processes in electronic industries.

14.6 Summary

- The Child Labour Act bans the employment of children, below 14 years of age in specified occupations and processes which are considered unsafe and harmful to child workers and regulates the conditions of work of children in employment's where they are not prohibited from working.
- The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and for different classes of establishments.
- Under the Act, Child? Means a person who has not completed his fourteenth year of age. Any such person engaged for wages, whether in cash or kind, is a child worker.

14.7 Keywords

Child Labour: It refers to the employment of children at regular and sustained labour.

Establishment: It includes a shop, commercial establishment, workshop, farm, residential hotel, and restaurant, eating house, theatre or other place of public amusement or entertainment.

14.8 Self Assessment

One-word/line answers:

1. Register of ABC Ltd. records names and nature of work of all children who work there. Is their register complete?

2. What generally serves as a valid age proof, according to the act?
3. Name one industry or factory, which made news, related to child labour issues.

State whether the following statements are true or false:

4. The Child Labour Act bans the employment of children, below 16 years of age.
5. The Child Labour Act extends to the whole of India and its neighbours.
6. No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.
7. The appropriate Govt. has been empowered under the Act to make rules for the health and safety of working children in any establishment or class of establishment.

Choose the appropriate answer:

8. Establishment includes one of the items from the following:
 - (i) Hopping center
 - (ii) Commercial establishment
 - (iii) Service station
 - (iv) State farm
9. The Child Labour Act also provides that every child employed in an establishment shall be allowed in each week, a holiday for day.
 - (i) Two
 - (ii) One
 - (iii) Half
 - (iv) Sunday
10. The appropriate Govt. has been empowered under the Child Labour Act to make rules for the working children in any establishment or class of establishment such as:
 - (i) Health and safety
 - (ii) Entertainment
 - (iii) Watersupply
 - (iv) Good wages

14.9 Review Questions

1. Discuss the Child Labour Act with relevant causes pertaining to the dilemma of child labour in India.
2. State the important overview of Child Labour Act and legal measures being considered.
3. State the occupations and processes where child labour is prohibited.
4. Is prohibiting child labour is a solution or a curse on society? Discuss.
5. Determine and find appropriate rulings pertaining to the Child Labour Act.
6. Discuss the occupation and processes specified in part B where child Labour is prohibited.
7. Discuss the duties of employers and Penalties covered under child labour act in India.
8. Determine the new updation in Child Labour Act . Which you feel should be included?
9. Do you think Child Labour Act norms are relevant? Comment.
10. How can there be regulation of working conditions in terms of Child Labour?

Notes

Answers: Self Assessment

1. No, birth date and hours of work also has to be recorded.
2. Certificate issued or granted by a prescribed medical authority
3. Firecrackers companies like Kaliswari, Sivakasi etc.
4. False
5. False
6. True
7. True
8. (ii)
9. (ii)
10. (i)

14.10 Further Readings



Books

A N Aiyar, *Encyclopaedia of Labour Laws and Industrial Legislation*. Vol 6. The Labour and Industrial Digest 1855 - 1956, Federal Law Depot, Delhi, 1957

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