

INDUSTRIAL DISPUTE ACT

Unit Structure :

- 1.0 Objectives
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- 1.3. Definitions under the Act
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- 1.5. Award and Settlement.
- 1.6. Distinguish between Award and Settlement.
- 1.7. Summary
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1.0 OBJECTIVES

- After studying the unit, the students will be able to:
- Understand the objectives of the Industrial Dispute Act.
- Understand the Authorities involved in this act.
- Understand the meaning of Award and Settlement and distinguish between them.
- Understand the meaning of Strikes, Lockout, Retrenchment etc and the legal provisions of the same.

1.1 INTRODUCTION

The purpose of the Industrial Disputes Act, 1947 is to protect and see to it fair terms between employers and employees, workmen and workmen as well as workmen and employers. The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

1.2 OBJECTIVES OF INDIAN INDUSTRIAL DISPUTE ACT

The act was initiated to make provision for the investigation and settlement of industrial disputes and to secure industrial peace and harmony by providing mechanism and procedure for the investigation and settlement of industrial disputes by arbitration, conciliation, and adjudication which are provided under the statute.

This Act was passed with a main aim of “Maintenance of Peaceful work culture in the Industry in India” which are mentioned under the Statement of Objects & Reasons of the statute.

The Act also provides for:

- I. The provision for payment of compensation to the workman on account of retrenchment, lay off or closure.
- II. An appropriate procedure for advance permission of Government for laying off or retrenching the workers or closing down industrial establishments
- III. The actions to be taken against unfair labour practices on part of an employer or a trade union or workers.

Other Objects of the Act

1. To encourage good relations among labour and industries, and provides a medium of settling disputes through the adjudicator authorities.
2. To arrange for a committee for settlement of dispute between industry and labour with the right of representation by a registered trade union or by an association of employers.
3. Prohibit unauthorized strikes and lockouts.
4. Get across to labour that has been laid-off, unrightfully dismissed, etc.
5. Provides labour the right to collective bargaining and promote conciliation.

1.3 DEFINITIONS

1. Industry

The term Industry is defined under section 2(j) of the act as “any business, trade or undertaking manufacture or calling and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen”.

An industry exists only where When there is a relationship between employer and employee is exists, there happens to be an industry. Where the employer is engaged in business trade or undertaking and the employee is engaged in any calling service employment or handicraft.

- a) ¹In short:

This definition has its roots embedded in Section 4 of the Commonwealth Conciliation and Arbitration Act, 1904 of Australia, which states the definition of industry as:

- (i) Any business, trade, manufacture, undertaking or calling of employers on land or water;
- (ii) Any calling, service, employment, handicraft or industrial occupation or avocation of employers on land or water; and
- (iii) Any branch of an industry or a group of industries.

The triple test was laid down in the case of **Bangalore water supply v/s A.Rajappa AIR 1978 SC**, where it was laid down that there should be a systematic activity, organized by the cooperation between the employer and the employee, for the production of goods and services.

Justice Hidayatullah set fourth his view that there were two conditions that needed to be fulfil for them to fall in the purview of said definition viz, the end-product should be the out of in the co-operation between employers and the employees, and if the end-product is a service, it should be a material that is important service, which has been described as that which involves an activity for providing the community with the use of something and includes telephones, water, transportation, electric power etc.

As far as the hospital is concerned , specifically engaged in research work, and the services are those of professionally trained expert persons. The end-product viz, services rendered to the patient cannot be described as those brought into purview by the co-operation of employers and employees. The employers might have generated the necessary conditions for providing the service but the service is that of the doctor alone and is enjoyed by the patient in the form of benefit which is not visible. Hence, Justice Hidayatullah declined to include a non-material service under the purview and scope of “industry”. This was criticized by Justice Iyer who said that it is transcendental to define material service as excluding professional service. Even non-material services now qualify as the product of industry and those engaged in rendering such services are also enveloped in the concept of “industry”.

²The Term Industry does not include: -

1. Any “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or
2. hospitals or dispensaries;
3. educational, scientific, research or training institutions;
4. institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or
5. khadi or village industries; or

² <https://taxguru.in/corporate-law/definition-industry-section-2-industrial-disputes-act>

6. any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
7. any domestic service; or
8. any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or
9. any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.

2. **Workman. Section 2(s):-**

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been

dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- iv) who, being employed in a supervisory cadre, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions specifically of a managerial nature.]

3. **Industrial Dispute:**

Industrial Dispute is “any dispute of difference between employers and employers or between employers and workmen; or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.”

Industrial dispute as defined under Sec. 2(k) exists between- Parties to the dispute who may be

- Employers and workmen

- Employers and Employers
- Workmen and workmen
 - a) There should be a factum of dispute not merely a difference of opinion.
 - b) It must be espoused by the union in writing at the commencement of the dispute. Subsequent espousal will render the reference invalid. Therefore, date when the dispute was espoused is very important.
 - c) It affects the interests of not merely an individual workman but several workmen as a class who are working in an industrial establishment.
 - d) The dispute may be in relation to any workman or workmen or any other person in whom they are interested as a body.

Case Law:

Chandrakant Tukaram Nikam and others vs. Municipal Corporation of Ahmedabad and another[i]: It was held by the Supreme Court that the Jurisdiction of the Civil Court was impliedly barred in cases of the dismissal or removal from service, The appropriate forum for such relief was one constituted under Industrial Disputes Act, 1947.

4. STRIKE:

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

To have the Legal Strike following are the norms that can be followed by the workmen .

- Proposal to go on strike should be intimated to management by way of prior notice, that is 14 days stipulated time period should be given to the management to respond or react so as to avoid strike.
 - During this 14 days time no workmen should go on strike.
 - Only after expiry of the that 14 days and management fails to respond or resolve issues within that 14 days, workers can go on strike on fixed date by giving notice of strike.
 - Such strike should be done before the expiry of that six weeks only.
5. **Lay-off. Section 2 (kkk)** Section 2 (kkk) of the Industrial Disputes Act, 1947 defines the term ‘Layoff’ as the inability, failure, or refusal

of the employer to provide employment to a workman whose name is mentioned in the muster roll of his industrial establishment and who is not retrenched due to the lack of power, coal, raw materials, accumulation of stocks, breakdown of machinery or natural calamity for any other relevant reason.

6. Retrenchment: Section 2(oo)

“Retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

- (a) Voluntary retirement of the workman; or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or [(bb) termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]
- (c) Termination of the service of a workman on the ground of continued ill-health;

7. Lock-out: Section 2 (1)

According to Section 2(1) of the Industrial Dispute Act 1947, “lockout means the temporary closing of a place of employment, of the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him”.

This definition consists of the following three components of a lockout:

- Temporary closing of a place of employment; or.
- Suspension of work, or.
- Refusal to continue to employ any number of persons employed by the employer.

8. Closure: Section 2(cc)

The Act defines “Closure” as the permanent closing down of a place of employment or part thereof. Here, the employer is constrained to close the establishment permanently.

Section 2(n) of the Industrial Disputes Act and their strike is in violation of Section 22 of the Act.

The Industrial Disputes act, 1947 regulates Indian labour laws. The main objective of the act is to secure harmony and peace in the work culture of Indian Industries. The act applies only to organized sector.

As per Industrial Disputes Act, 1947, Section 2(n) defines public utility service” as—

- a) any railway service or any transport service for the carriage of passengers or goods by air
- b) any service in, or in connection with the working of, any major port or dock
- c) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends
- d) any postal, telegraph or telephone service
- e) any industry which supplies power, light or water to the public
- f) any system of public conservancy or sanitation
- g) 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 the purposes of this Act, for such period as may be specified in the notification:
- h) Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the appropriate government, public emergency or public interest requires such extension.

1.4. AUTHORITIES UNDER THIS ACT

Works Committee.—(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of

³ <https://optimizeias.com/public-utility-service/>

the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

Duties of Works Committee:

It shall be the duty of the Works Committee

1. to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.
2. **Conciliation officers.**—
 - (1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.
 - (2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.
3. **Board of Conciliation.**—
 - (1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.
 - (2) A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit.
 - (3) The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.
 - (4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have

ceased to be available, the Board shall not act until a new chairman or member has been appointed.

4. Courts of Inquiry.—

- (1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to relate to or relevant to an industrial dispute.
- (2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.
- (3) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:13Provided that, if the appropriate Government notifies the Court that the services of the chairman have ceased to be available, the Court shall not act until a new chairman has been appointed.

5. Industrial Tribunal:

The appropriate Government may, by notification in the Official Gazette under **Section 7 (A)** constitute one or more Industrial Tribunals for the adjudication of industrial disputes concerning to any matter.

Role of Industrial Tribunal

- It is a juridical Tribunal made up of a chairman and two other members (one representing Workers' interests and the other Employers' interests).
- The tribunal hears disputes in the public but it may hold private sittings.
- Provided to the conditions and rules laid down under the Act, the Tribunal is free to regulate its own procedures but it is expected to follow the rules of natural justice and to decide on the substantive merits of the case in front of it.
- The verdict of the Tribunal is termed as Awards which are binding on both parties.
- Applicability that is enforcement of the Tribunal's decisions vests in the Tribunal itself. The minister is empowered to ask the tribunal for advice regarding matters relating to Trade Disputes.
- Application fee or court fees are exempted.

6. Labour Court:

By notification in the Official Gazette the appropriate Government may, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

A Labour Court shall consist of one person only to be appointed by the appropriate Government.

Duties of Labour Court:

Labour Court shall hold its proceedings within the specified period and shall submit its award to the Government. Such award must be in writing and signed by the presiding officer.

The Labour Court has the same power of a Civil Court. The proceeding of the Labour Court shall not be questioned on the ground that it is not properly constituted

Functions of the Labour Court:

Section 7 of this act deals with the functions of the Labour Court are as follows:

Adjudicating upon industrial dispute given in the second schedule of the Industrial Dispute Act are as under:

- i. The legality of any order passed by an employer under the standing orders;
- ii. The application and interpretation of the Standing Orders
- iii. Disposition of the workman including reinstatement of, or grant of relief to, the workman wrongfully dismissed;
- iv. Abandonment of any customary concession or entitlement or benefit
- v. Illegality or otherwise of a strike or Lockout; and
- vi. All matters other than those specified in the Third Schedule which fall within the jurisdiction of Industrial Tribunal.

Powers of Presiding Officers.

- i. Power and status in trying offences
- ii. Power and status in civil matters
- iii. The labour court shall for the purpose of administer punishment have the same powers as are vested in Court of Session under that code.

- iv. A labour court shall hear the case without the members while trying an offence.

Further Powers:-

- a) To Grant Relief
- b) To grant Adjournment
- c) To enforce attendance of any Person
- d) Power to Examiner while enjoying this power Labour Court can call upon any person to examine on oath.
- e) Compel to Produce of Documents or any other Material Objects to arrive at conclusion in any matter.
- f) Labour court has the power to issue commissions for the examination of witnesses or documents.
- g) **Ex-part Proceedings:** Where the party is failed to appear the proceeding the Labour court has the power to give ex- party decision.
- h) It determine Grievance of workmen
- i) Labour court may dispose of the grievance of workmen while carrying out this, it shall go into all the fact of the case and pass such order as may be fair.
- j) **Exemption from court fee :** For filing, exhibiting or recording any document in or obtaining any document from labour court no court fees are payable.

Qualifications and Disqualifications of Presiding Officers:

Section 7-C of the Industrial Dispute Act,1947 prescribes Disqualifications for the presiding officer to be appointed to the Labour Court.

- i. He must be or has been, a Judge of a High Court; or
- ii. He has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
- iii. Any judicial office in India must be held by him for not less than seven years; or
- iv. He has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.
- v. Following persons are disqualified for being appointed or continue in the office of the presiding officer of a National Tribunal or any Labour Court.
- vi. If a person is not an independent person
- vii. If he has attained 65 years of his age.

1.5. AWARD AND SETTLEMENTS

Award: (Section 17, 17A, 18,19,20)

The judgment of an arbitrator is called his Award. Award (Judgement) of Arbitrators under section 10A is an Award.

Meaning of Award Section 2(b) of the Industrial Disputes Act, 1947 defines an award as, "...an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Court".

When matters regarding the industrial dispute has been referred to the Labour Court, Tribunal, National Tribunal for referring, and after proper referring done by the respective courthouse, it could provide an award to the party if it is satisfied that discharge or dismissal was not justified. Also, if it thinks fit, it may also provide relief to the workman and the award of lesser punishment

- **Section 16 deals with form of reports and award:** The report of a board or court will be recorded as a hard copy and will be marked by every one of the individuals from the board or court, all things considered: stated that nothing in this Section will stop any individual from the board or court from recording any moment of the contradiction from a report or from any suggestions made in that.
- **Section 17 deals with the Publication or reports and award:** Each report of a board or court along with any moment of changes recorded therewith, council, or national council will be shared in a manner by which the appropriate government thinks fit with in the period of 30 days from the day of its receipt by the proper government.
- **Section 17A deals with enforcement of Award :** An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17A
- **Section 19 deals with the Period of operation of settlements and award. -**

A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

- **Section 20 deals with commencement of Conciliation Proceedings:**

When the a conciliation proceeding shall be deemed to have start on the date on which a notice of strike or lock-out under section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the circumstances of the case

- **Section 21 deals with confidentiality of certain matters:** It is stated that any matter which is confidential shall not be a part of reward.

Ingredients of Award - To constitute Award under Section 2(b) of the Industrial Dispute Act, 1947 the following ingredients must be fulfilled: -

1. An Award is an interim or final determination of an industrial dispute.
2. It is an Interim or final determination of any question relating to such dispute.
3. The same interim or final determination is made by any Labour Court, Industrial Tribunal or National Industrial Tribunal.
4. Award (Judgement) of Arbitrators under section 10A is an award.
5. Award is binding on all the concerned parties to the dispute.

1.6. DISTINGUISH BETWEEN AWARD AND SETTLEMENT:

Award	Settlement
Section 2(b) of the Industrial dispute Act 1947 defines Award.	Section 2(p) of the Industrial dispute Act 1947 defines Settlement.
Award means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal. and includes an arbitration award made under Section 10-A.	Settlement means a settlement takes place during conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than during conciliation proceeding.
It includes an arbitration award made under Section 10-A	The settlement reaches finality only when the settlement agreement is signed by both/all the parties in the dispute.
It appears like the verdict of a Court. It is to be signed and authenticated by the Presiding Officer.	It resembles an agreement. It is signed by the parties to the dispute.
Arbitrator, Labour Court, or Industrial Tribunal are concerned about giving decisions	It is just a result of conciliation between the parties to the settlement.

Settlements (Section 18 to 21)

According to Section 2 (p) of the Industrial Dispute Act, 1947 “Settlement” means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

1. Section 19 of the Industrial Disputes Act 1947 gives the provision for the period of operation of Award and Settlement.
2. A settlement shall come into effect on the date as is agreed upon by the parties to the dispute, and if the date is not agreed upon, it should be come into effect on the date on which the memorandum of the settlement is signed by the parties to the dispute.
3. Such settlement will be binding for such period as is agreed upon by the parties. In absence of such period the same will be binding for a period of six months from the date on which the memorandum has signed by the parties to the dispute.
4. In violation or breach of any terms of a settlement or Award a person is liable for punishment. The punishment provided for is imprisonment which may extend to 6 months or with fine or with both.

1.7 .SUMMARY

Industry: The term Industry is defined under section 2(j) of the act as “any business, trade or undertaking manufacture or calling and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen”.

AUTHORITIES UNDER THIS ACT: Works Committee, Conciliation officers, Board of Conciliation. Courts of Inquiry, Industrial Tribunal, Labour Court:

Award: The judgment of an arbitrator is called his Award. Award Judgement) of Arbitrators under section 10A is an Award.

1.8. MULTIPLE CHOICE QUESTIONS.

1. In which year did the act come into operation?
 - a. 1947
 - b. 1949
 - c. 1953
 - d. 1963

2. To which settlement machinery can the central government refer the disputes under rule 81 - A?
 - a. Conciliation
 - b. Arbitration
 - c. **Adjudicator**
 - d. Supreme Court
3. The bill passing rule 81A has made two new institutions for the prevention and settlement of industrial disputes, i.e. Work Committees and _____
 - a. **Industrial Tribunal**
 - b. Commission on Labour
 - c. Arbitration
 - d. Adjudication
4. The industrial peace is secured through voluntary _____ and compulsory _____
 - a. Compromise and Arbitration
 - b. Adjudication and Arbitration
 - c. Work Committee and Industrial Tribunal
 - d. **Negotiation and Adjudication**
5. Choose the correct objective of the Industrial Disputes Act.
 - a. To prevent illegal strikes
 - b. To promote measures for securing and preserving good relations between the employers and the employees
 - c. To provide relief to workmen in matters of lay - offs, retrenchment, wrongful dismissals
 - d. **All of the above**
6. The act was first amended in the year _____
 - a. 1929
 - b. 1946
 - c. 1947
 - d. **1949**
7. Power has been given to _____ to require Works Committee to be constituted in every industrial establishment employing 100 workmen or more.
 - a. **Appropriate Government**
 - b. State Government
 - c. High Court
 - d. Board of Conciliation

Questions:

1. What are the various dispute settlement mechanism under Industrial Dispute Act?
2. Differentiate the Strike with Lock-out
3. What are the power and functions of labour courts.
4. What is the role of Industrial Tribunal?
5. What are the functions of various authorities under Industrial Dispute Act 1947?
6. What are the objectives of Industrial Disputes Act 1947.

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STRIKE, LOCK-OUT, LAY-OFF, RETRENCHMENT, CLOSURE ETC

Unit Structure :

- 2.0. Objectives
- 2.1. Strike
- 2.2. Lay off and Retrenchment
- 2.3. Closure
- 2.4. Lock-out
- 2.5. Difference between Lock-Out and Closure .
- 2.6. Distinguish between Lock-Out and Strike
- 2.7. Distinguish between Industrial Dispute and Individual Dispute
- 2.8. Summary
- 2.9. Questions

2.0 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the concept of Strike and its elements.
- Understand the meaning of Lay off and Retrenchment.
- Understand the meaning and differentiate Lock-out and Closure and Strike.
- Differentiate Industrial Dispute and Individual Dispute.

2.1. STRIKES: (SECTION 2Q)

A strike is a powerful weapon used by trade unions /workers to put across their demands or difficulties or grievances by employers or management of industries. In other words , it is the stoppage of work caused by the mass refusal in response to grievances. Workers put pressure on the employers by concert refusal to work till fulfilment of their demands. Strikes may be beneficial to workers' welfare or it may cause economic loss to the country.

According to Industrial Disputes Act 1947, a strike is “a cessation of work by a body of persons employed in an industry acting in combination; or a concerted refusal of any number of persons who are or have been so employed to continue to work or to accept employment; or a refusal under a common understanding of any number of such persons to continue to work or to accept employment”.

¹In the case of “Cox and Kings Limited v. Their Employees”, the Court held that a strike can be considered justified if it is in connection with a current labour dispute or directed against an unfair labour practice of the employer.

This definition provides limelight on a few things of a strike.

- A strike is considered as stoppage of work by a group of workers employed in a particular industry.
- It also incorporated that the strike is refusal of several employees to continue work under their employer.
- In a strike, a group of workers agrees cease working to protest something they think is improper or not fair where they work. Labourers retain or suppress their services in order to pressurise their employment or government to get settled their wants.
- Demands made by strikers can ambit from demanding for higher wages or better benefits to exploring changes in the workplace environment.
- Strikes sometimes takes place to employers listen more carefully to the workers and to look after the problems they are facing.

²Procedure of strikes in India

According to Sec. 22(1) No person employed in a public utility service shall go on strike in breach of contract:

- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Illegal Strike

Under the following situation as given under section 22, on these grounds the strikes can be considered as illegal:

1. Strike carried out without giving to employer notice of strike within six weeks before striking; or
2. Within fourteen days of giving such notice; or
3. Before the expiry of the date of strike specified in any such notice as aforesaid; or
4. During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

¹ <https://blog.ipleaders.in/right-to-strike-under-industrial-dispute-act-1947/>

² <https://www.whatishumanresource.com/strikes>

2.2 LAY OFF AND RETRENCHMENT

Strike, Lock-Out, Lay-Off,
Retrenchment, Closure Etc

Lay off (Section 2(kkk))-

“Lay-off” means the failure, refusal, or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.”

Conditions essential for a lay-off

- There must exist an inability, failure, or refusal from the employer’s side to provide employment to the workmen.
- Such inability, failure or refusal must be due to lack of power, coal, raw materials, accumulation of stocks, breakdown of machinery or natural calamity for any other relevant reason.
- The name of the workman must be mentioned in the muster roll of the employer’s industrial establishment.
- The workman must not have been subjected to retrenchment.

This right of compensation is, however, subject to the following conditions:

- (i) He is not a badli or a casual workman.
- (ii) His name should be borne on the muster rolls of the establishment.
- (iii) He should have completed not less than one year of continuous service under the employer.

A badli workman means a workman who is employed in place of another workman whose name is borne on the muster rolls of the establishment. However, such a workman ceases to be a badli workman on his completion of one year of continuous service in the establishment.

- A workman is eligible to lay-off compensation at the rate equal to fifty per cent of the total of the basic wage and dearness allowance for the period of his lay off except for weekly holidays which may intervene.
- Entitlement of compensation to be claimed for not more than forty-five days during any period of twelve months.

Retrenchment: Section 2 (oo)

Retrenchment is nothing but a termination of employment by an employer. There are legal provisions which govern the practice of retrenchment. Section 2 (oo) of the Industrial Disputes Act, 1947 defines Retrenchment as

-

“The termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

- (a) Voluntary retirement of the workman, or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

Termination of the service of the workman as a result of the non-removal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

- (c) Termination of the service of a workman on the ground of continued ill-health;

The reasons for retrenchment

The said retrenchment action is taken by the employer may be for any reason as he thinks fit depends upon the circumstances of the cases, but should be just and legal. When a portion of the staff or labour force is discharged as a overflow in a running business, termination of which may be due to many possible reasons.

Economic difficulties – If the company faces financial problems or experiences any kind of loss in its inflow, the industry then considers to opt the policy of limiting its respective employees by way of retrenchment.

Rationalization in the industry – Sometimes, companies and industries require more sensible ways in their operations as they progress. It may be possible that having such techniques will result in structural modifications. If the industry becomes extravagant as a result of such developments, the method of retrenchment can be used after such recognition and evaluation of all relevant factors

Change in Technology in Industry – Technological developments are continuously being initiated by industries in their enterprises. As a result, while accepting such technological developments may minimise the need for employees, it may also be necessary for workers to be able to properly comply with the new technology. As a result, if the expanded technologies gives the usage of employees outmoded, the firm or industry may be obliged to retrench.

Mechanical Failure – If a machinery of specific industry's fails, the steps of retrenchment may be used.

³Case Study:

Strike, Lock-Out, Lay-Off,
Retrenchment, Closure Etc

In the case of *Managing Director, Karnataka Handloom Development Corporation Limited v. Sri Mahadeva Laxman Raval* (2006), the respondent was appointed for fixed working hours and intervals as an expert weaver in the company to train other fellow weavers. His services were discontinued after the expiry of the contract period. The respondent raised an industrial dispute with the company in the labour court. The court directed his reinstatement, and the award was approved by the High Court. Hence the corporation filed an appeal in the Supreme Court. The Supreme Court held that the terms of appointment show that the respondent was not a worker but employed on contract based on a time-barred action. The court further held that Section 2(oo) of the Industrial Disputes Act of 1947 was not attracted and discontinuance of the service of the respondent was not retrenchment as defined in Section 2(oo) of the Act.

Procedure of retrenchment

The principle of retrenchment that is ‘**first come, last go**’ and ‘**last come, first go**’ are widely known in industrial law. The concept has been initiated in Section 25G of the Act. A worker can opt the procedural protections afforded by this provision. The protection can only be availed if the following requirements are fulfilled:

- The person asking or exploring protection must fall under the purview of the definition of a worker as defined in Section 2(s) of the Act.
- The concerned workman must be a citizen of India
- The employee should have been employed in the establishment, which, according to Section 2(j) of the Act, is classified as an industry.
- The employee must pertain to specific category of a workforce in the industrial organisation.
- There should not be any kind of agreement between the employer and the employee regarding the principle of ‘last come first go’

Re-employment of retrenched workmen

Section 25H of Industrial Dispute Act 1947 is based on the famous principle that Re-employment of retrenched workmen. Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons.

³ <https://blog.ipleaders.in/detailed-study-laws-retrenchment>

The workmen must fulfil following conditions:

1. The worker must be a citizen of India.
2. The notice should be given to the workmen for any kind of re-employment.
3. The workers should be granted reemployment in the same industry where he was employed before being laid off.
4. The retrenched workers shall be preferred by the employer for re-employment over other persons.

Conditions precedent to retrenchment of workmen

- a) Section 25N of Industrial Dispute Act 1947 that the worker who has been in continuous service for at least one year in the industry shall be retrenched by the employer.
- b) The said employee has been given the notice by the employer before three months stating the reasons for retrenchment and the worker has been paid with the annual wages before the notice.
- c) It is provided that the employer must make an application for retrenchment approval to the appropriate government and/or the appropriate authorities.
- d) When an application for permission has been made, the appropriate government or any authority after making such enquiry as it thinks fit and after giving a an opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- e) The government must notify the order of the employer within sixty days after the employer has applied for authorization to the government or the appropriate authorities. If the order is not made within sixty days of the expiration date, it is presumed granted.
- f) The order issued by the government or the specified authority will be final and binding on all parties, irrespective is approval or refusal and it will be in effect for one year from the day it was conveyed to the parties.
- g) An application must be referred to the tribunal for adjudication on account of order by the government is challenged by the employer and the tribunal should within thirty days pass the judgment on the matter.
- h) On account of rejection or refusal of an application for retrenchment by the government , then such retrenchment will be treated as illegal.

⁴Provision for Penalty for retrenchment without previous permission.-

Strike, Lock-Out, Lay-Off,
Retrenchment, Closure Etc

Any employer who contravenes the provisions of section 25M or of section 25N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

2.3. CLOSURE

The Act means “Closure” as the permanent closing down of a place of employment or any part thereof. Here, the employer is constrained to close the establishment permanently. Of course, the due procedure must be complied with when it comes to take out a plan of closure; the said procedure, as set out by the Act, has been detailed below.

Definition: “Closure” means the permanent closing down of a place of employment or a part thereof”. [Section 2(cc)]

Procedure for closing down an undertaking

- (1) An employer who intends to close down an undertaking of an industrial establishment shall apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the manner prescribed. Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.
- (2) Where an application for permission has been made, the appropriate government, after making such enquiry and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons those who are interested in such closure may, having regards to the, legitimacy and adequacy of the reasons provided by the employer, the interests of the general public and all other factors applicable to it, by order and for reasons to be recorded in writing, grant, or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (3) Where an application has been made and the proper government does not communicate the orders granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be treated as the permission has granted on the expiration of the said period of sixty days.

⁴ <https://indiankanoon.org/doc/1207376/#:~:text=>

- (4) An order of the proper government granting or refusing to grant permission shall, subject to the provisions made in the act, be final and binding on all the parties and shall remain in force for one year from the date of such order.
- (5) The proper government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication but further it is stated that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.
- (6) Where no application for permission is made within these period specified earlier, or where there is refusal of the permission for closure, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits available and granted under any law for the time being in force as if the undertaking had not been closed down.
- (7) Where permission for closure is likely to be granted every workman who is employed in that undertaking instantly before the date of application for permission under this section, shall be eligible to receive compensation which shall be equal to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

⁵Penalty for Closure (S.25R.)

- (1) Any employer who closes down an undertaking without complying with the provisions of section 25-O shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees, or with both.
- (2) Any employer, who contravenes 102[an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-O, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

2.4 LOCK- OUT: -

Strike, Lock-Out, Lay-Off,
Retrenchment, Closure Etc

Meaning:

According to Industrial Disputes Act 1947 [Sec. 2(1)]:

Lockout means "the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him".

From the above definition we can make out the ingredients of the lock out as under:

- It is a temporary closing down of a place of work or employment.
- Suspension of work
- Refusal by an employer to continue to employ any number of persons employed by him.

Importance as to Lock-Out

1. It is a weapon of the employer while strike is weapon in the hands of workers.
2. Just as the strike as a weapon in the hands of the workers for enforcing their demands, lockout is a weapon available to the employer to make their employees to come to their way and to make accept them to the management terms and conditions.
3. The Industrial Dispute Act does not intend to take away these rights.
4. However, the rights of strikes and lockouts have been restricted to achieve the purpose of the Act, namely peaceful investigation, and settlement of the industrial disputes.

Subsection 2 is applicable to the workmen employed in public utility services and lays down that "no person employed in a public utility service shall go on without following below said steps

Procedures of lockout:

Procedures of Lockout are as under:-

1. Notice of lockout to the employees by their employer is mandatory.
2. If the date of lockout by the employer is not mentioned in the notice, such notice is valid for six weeks only.
3. If the date of lockout is mentioned in the notice, the date of lockout should not be before the expiry of 14 days from the date of notice of strike according to the clause (b).

4. Therefore, employers should not go on lockout before the expiry of 14 days from the date of issue of notice of lockout to the employees.
5. Notice of lockout without the date of lockout is valid for six weeks only, if employer do not go on lockout within six weeks, a fresh notice of lockout by employer is necessary, if employer wants to go on lockout.
6. Employers should not go on lockout during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Common Reasons for Lockout

1. In response to a strike initiated by employees
2. disputes between workers and managers
3. Changes in the government rules
4. Illegal activity is undertaken in the company
5. Disputes or clashes in between workers and the management.
6. Unrest, disputes or clashes in between workers and workers.
7. Illegal strikes, regular strikes or continuous strikes by workers may lead to lockout of factory or industry.
8. External environmental disturbance due to unstable governments, may lead to lockouts of factories or industries.
9. Continuous or accumulated financial losses of factory or industry, may lead to opt lockout by the management.
10. Maybe lockout, if any company involves in any fraudulent or illegal activities.
11. Failure in maintaining proper industrial relations, industrial peace and harmony.

General Prohibition of strikes and lock- outs [Section 23] of The Industrial Disputes Act, 1947,

Workman who is employed in any industrial establishment shall not go on strike in breach of contract and no employer of any such workman shall declare a lock- out.....

- i. during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- ii. during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal] and two months after the conclusion of such proceedings;
- iii. during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued.

- iv. during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.
- v. prohibits an employer from declaring a lockout in any of the eventualities.

Strike, Lock-Out, Lay-Off,
Retrenchment, Closure Etc

No employer carrying on any public utility service shall lock-out any of his workman__

- a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
- b) within fourteen days of giving such notice; or
- c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Prohibition of strikes and Lockouts Section 22

- (1) No person employed in a public utility service shall go on strike in breach of contract-...
 - (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
 - (b) within fourteen days of giving such notice; or
 - (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
 - (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Illegal strikes and lock-out

Section 24 of the act defines the illegal strikes and lockouts that a strike and lock-out is illegal if it is:-

- Declared without the prior notice of 6 weeks,
- Declared during the pendency of conciliation proceeding,
- If it is continually contravention the boundaries of strikes and lockouts

2.5 DIFFERENCE BETWEEN LOCK-OUT AND CLOSURE.

No	Lock-Out	Closure
1	According to Section 2(l) of the Industrial Dispute Act 1947, “lockout means the temporary closing of a place of employment, of the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.	According to Section 2 (cc) of the Industrial Dispute Act, 1947 Closure means the permanent closing down of a place of employment or part thereof.
2	Lock out indicates the temporary closure of the place of business or place of employment and not a closure of the Business itself.	The closure of a business indicate the final and irrevocable termination of the business itself
3	Lockout is a weapon of coercion in the hands of employer	Closure is generally for trade reason.
4	A Lockout is caused by the existence or apprehension of an Industrial Dispute.	A closure need not to be in consequence of an Industrial dispute.

2.6. ‘DIFFERENCE BETWEEN STRIKES AND LOCKOUTS

S. No.	STRIKE	LOCK-OUT
1	It is the weapon of employees against employers to bend the employer in their side.	It is the weapon of the employer against employees to restrict the militant’s spirits of the workers of industry.
2	Cessation of work by employees in the industry to show grievance or to compel the employer to fulfil their demands.	Cessation of work by the employer to accept the terms and conditions decided by the management.

3	The Strike involves the united withdrawal of the supply of labour at work.	Lockout Involves the withholding of demand of labour.
4	The reasons are often economic.	Reasons can be economic or non-economic
5	The strike is of various types.	The lock-out does not have varieties.
6	The strike is conducted to gain a concession from the employer.	Lock-out is used to enforce the terms of employment during the dispute.
7	It is a full cessation of work by employees until the fulfilment of their demands.	It is a temporal shutdown by the employer, refusal of employment.
8	The strike is a union power as it is sported by the labour or union.	The Lockout is the employer power to compel the workers to do the work according to their guidelines.

2.7. DIFFERENCE BETWEEN INDIVIDUAL DISPUTE AND INDUSTRIAL DISPUTE

No	Individual Dispute	Industrial Dispute
1)	Whether a single workman who is aggrieved by an action of the employer can raise Industrial Dispute. Section 2(k) of the Industrial Act, 1947 speaks of a dispute between employer and workmen. i.e. Plural form is used.	Industrial Dispute is defined under Section 2(k) of the Industrial Dispute Act, 1947. "Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which relates to the employment or non-employment or the terms of employment or with the conditions of labour, of any persons."

2)	<p>An Individual Dispute to be declared as an Industrial Disputes, The following Conditions are to be satisfied –</p> <p>(1) A body of workmen (Trade Union) or a considerable number of workmen are found to have common cause with the Individual workman;</p> <p>(2) That the Individual dispute was taken up or sponsored by the workmen as a body (trade union) or by Considerable Section of them before the date of reference.</p>	<p>To constitute Industrial Dispute following elements are to be satisfied -</p> <p>1) A dispute Between Employers and employers or employer and workman or workman and workman.</p> <p>(2) The Dispute should relate to employment or non-employment or terms of employment or conditions of labour of any person.</p> <p>(3) The Dispute may be in relation to any workmen or any other person in whom they are interested as a body</p>
3)	<p>When the dispute is not supported by any union or any organization is an individual dispute.</p>	<p>Such disputes are collectively taken care by recognised union or many workmen of the industry should be the party of the same.</p>

2.8. SUMMARY:

Strike: A strike is a powerful weapon used by trade unions /workers to put across their demands or difficulties or grievances by employers or management of industries.

Lay-off and Retrenchment:

“**Lay-off**” means the failure, refusal, or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.”

Retrenchment Means: “The termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.

Closure: “Closure” as the permanent closing down of a place of employment or any part thereof.

Lockout means "the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him".

2.9 MULTIPLE CHOICE QUESTIONS :-

Strike, Lock-Out, Lay-Off,
Retrenchment, Closure Etc

No person employed in a public utility service shall go on strike in breach of contract within ____ of giving such a notice.

a. 14 days

b. 6 weeks

c. 7 days

d. None of the above

1. No person employed in a public utility service shall go on strike in breach of contract within ____ of giving such a notice.

a. 14 days

b. 6 weeks

c. 7 days

d. None of the above

2. Choose the correct option where no workmen shall go on a strike in breach of contract and no employer of any such workmen shall declare a lock - out during:

a. The pendency of conciliation proceedings before a board and 7 days after the conclusion of such proceedings

b. The pendency of proceedings before labour court, tribunal or national tribunal and 2 months, after the conclusion of such proceedings

c. During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award

d. All of the above

3. Section ____ covers the definition of continuous service.

a. 25B

b. 25

c. 25A

d. 26

4. How many days of service will be termed as continuous service when working in a mine industry?

a. 190 days

b. 240 days

c. 365 days

d. 180 days

5. State true or false.
- i. If a workmen is laid off for more than 45 days no compensation shall be payable in respect of any period of the lay - off after the expiry of 45 days.
- a. **True**
- b. False

[View Answer / Hide Answer](#)

6. A workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment is ____
- a. Temporary workmen
- b. Permanent workmen
- c. **Badli workmen**
- d. None of the above
7. Will a workman be entitled to compensation if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day?
- a. Yes
- b. **No**
8. How much compensation does the workman deserve at the time of retrenchment?
- a. **Equivalent to 15 days average pay**
- b. 6 months
- c. Equivalent to 30 days average pay
- d. None of the above
9. Which section deals with compensation to workmen in case of transfer of undertakings?
- a. Section 25F
- b. **Section 25FF**
- c. Section 25
- d. Section 25E

Descriptive Questions:

Strike, Lock-Out, Lay-Off,
Retrenchment, Closure Etc

1. Differentiate Strike and Lock-out
2. What is Strike? Explain the General Prohibition to it.
3. What is retrenchment bring out the condition precedent to retrenchment of workers.
4. Bring out difference between Industrial Dispute and Individual Dispute.

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TRADE UNION ACT 1926

Unit Structure :

- 3.0. Introduction
- 3.1. Meaning and Definition
- 3.2. Objectives and Roles of Trade Union
- 3.3. Registration of Trade Union
- 3.4. Funds of Trade Union
- 3.5. Rights, Duties and Liabilities of Trade Union
- 3.6. Offences under the Act
- 3.6 Summary
- 3.7 Questions

3.0. INTRODUCTION:

Before the of industrialization on a large scale, there were personal contracts between workers and employers. Therefore, no requirement for the evolution of any machinery governing the relationship between workers and employers arose until then. But after the enactment of the system of modern factory, this relationship lost its importance due to massive industrialization, which attract employers to lowering the cost of production in order to withstand the cut-throat competition in the market and enhance their profit by using technologically more experienced means of production. This is resulted in the emergence of a new class of workers who were completely relied on wages for their day to day livelihood, which changed the existing employer-and-employee relationship in which the employees were exploited by their employers. The rivalry of interest between workers and employers and the discomfort of workers turns in the growth of various trade unions.

3.1. MEANING AND DEFINITION:

Section 2(h) lays down the definition of trade unions. It states the following:

“Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:

Provided that this Act shall not affect –

- (i) any agreement between partners as to their own business;

- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade or handicraft.

Meaning:

A trade union is typically thought of as a group of wage earners or workers. It is a voluntarily formed group of workers in a particular trade or business. An organisation of wage workers known as a trade union was created largely for the purpose of taking collective action to further the defence of its professional interests and to protect the interest of those wage earner groups.

These are the components of a trade union:

- There must be a combination of employers and workers in a union;
- The business trade is necessary, and
- The primary goal of the union must be to control employer-employee interactions and establish limitations on how any trade or company may be conducted.
- Protection of the interest of the wage earners.

3.2. OBJECTIVES AND ROLES OF TRADE UNION

1. **Wages and salaries**-Wages and salaries are the most important and concerned subjects of Trade Unions. In the well-organized industry, wages and benefits are determined through processes such as collective bargaining, conciliation, and adjudication process. Working of all these processes requires logical inquiry. Union power and objective facts hopefully access the wage scene through these forums
2. **Working conditions**-Another major objective of the Trade Unions is to ensure the safety of workers. It is expected that in any organization working condition should be ideal to the workers and every worker must be provided with basic facilities like. Safe and hygienic drinking water, Medical Facilities, Minimum working hours as prescribed by law, Paid holidays, Social Security, Safety Equipment's, in short the workable conditions.
3. **Policies of the Industry**-Any personal policy of the which has framed by the employer with respect to promotion, transfer and training may be challenged by Trade Unions if it contravenes the provisions of the Industrial Dispute Act or is arbitrary in nature.
4. **Discipline**-Trade Unions also provide protection to the workers from arbitrary discipline action taken by management against any worker. No worker should be victimized by arbitrary activity of management in the form of violative transfer, retrenchment or suspension.

5. **Welfare Measures** -The main objective of the Trade Union is to carryout and to check the welfare measures for the welfare and benefit of the workers. This includes welfare of the family members or children of the worker and includes any Medical, Training facilities etc.
6. **Employee and Employer Relations-** Industrial Union helps to maintain an industrial peace there must be harmony between employer and employee. It creates the cordial relations between both.
7. **Negotiating Machinery**-Trade Unions may also put proposals before management, as this policy is based on the principle of Give and Take Trade Unions protect the interest of workers through collective bargaining.
8. **Safeguarding Organisational Health and the Interest of the Industry**-Trade Unions also help in achieving employee satisfaction. Trade unions also help in better industrial relation by creating procedure to resolve the industrial dispute.
9. **Alone workers feel weak.** Trade Union provides a workers a platform to join others to achieve social objectives as the alone worker cannot take up his problems towards the management for redressal, without the help of the group.

3.3. REGISTRATION OF TRADE UNION.

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

Following are the procedures in respect in respect of registration of trade union.

Appointment of Registrars

The appropriate government shall appoint a person to be the Registrar of Trade Unions for each state, and the appropriate government shall also appoint as many additional registrars as it may deem fit to carry out the purposes of the Act. Also, the Appropriate government is authorised to appoint additional and deputy registrar for state, where the registrar of trade union is unable to discharge the powers and functions. Within a local limit, he may exercise the power and functions as Registrar as prescribed for this purpose.

There should be a minimum of seven members. The reason behind the fixation of a minimum of seven members is to encourage the formation of more and more trade unions.

Following are the two conditions required to fulfil the registration of a Trade union.

- Requirement of seven or more members as signatories.
- Provided that there are 100 or 10% whichever is less are employed in the industry.

¹Case Law:

Tirumala Tirupati Devasthanam (1993)[3]

In this case, the court held that for the purpose of regulating the relations between the workmen and the employers, any group of employees may be registered as a trade union under the act.

Application for Registration

Application shall be made to the registrar for the registration of trade union and it should be followed with the copy of rules of the Trade Union and following particulars:-

- The name, occupation, and address of all the members those who are making the application;
- The name of the Trade Union and the address of its head office; and
- The titles, names, ages, addresses and occupations of the office-bearers of the Trade Union.

If a trade union already exists for more than one year, then a copy of the assets and liabilities of the Trade Union should be submitted along with the application for registration.

Provisions to be contained in the rules of a Trade Union

Unless the executive committee has been established in accordance with the provisions of the Act the trade Union shall not be entitled to registration under this Act and the provisions are noted below:-

- a) The name of the trade union;
- b) The objects for which the trade union has been established;
- c) The purpose/s for which the general funds of the trade union shall be applicable;

¹ <https://www.legalserviceindia.com/legal/article-6789-registration-of-trade-unions.html>

- d) The maintenance of a list of the members of the trade union;
- e) The admission of ordinary members who shall be persons actively engaged or employed in an industry with which the trade union is connected;
- f) The conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;
- g) The way the rules shall be amended, changes, or rescinded;
- h) The way the members of the executive and the other office bearers of the Trade Union shall be elected and removed;
- i) The safe custody of the funds of the trade union, an annual audit, in such manner, as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office bearers and members of the trade union, and;
- j) The modes by which the trade union may be dissolved.

Power to Call:

The registrar may call members of the application to ask for further information to verify whether the application is complete as per the provisions laid down for the purpose. If all such information is incomplete, registrar may refuse to register the Trade Union.

The registrar has the power to call the person applying for registration to make necessary the name of the Trade Union, if the name of the Trade Union proposed by the person applying for registration is identical to the name of existing registered Trade Union or if registrar finds it bit similar, which tends to fool the public or the members of either Trade Union.

Registration

Section 8 of the act mentions that if the Registrar is satisfied that the Trade Union has complied with all the requirements and observed all the norms of the act regarding the registration process, then he shall register the Trade union.

Case Law:

North Central Railway Employees Sangh and Others (2017)

In this case, the court held that in order to check whether the registration is awarded correctly or not, the same can be assessed only by the competent authority established under the Trade Unions Act. The other authorities like the police have no role in this.

On fulfilment of conditions the registrar shall issue a certificate of registration to the trade union after registration under section 8 which shall be conclusive proof that a trade union has been duly registered.

Cancellation of registration

Where the registrar is satisfied that the certificate has been obtained by fraud or mistake or the trade union has ceased to exist or has intentionally and other notice from the registrar contravened any provisions of the Act and if the registrar is satisfied that a registered trade union ceases to have requisite number of members a certificate of registration of a trade union may be cancelled or taken back or an application of the trade union to be scrutinized in such manner as may be prescribed under the provisions.

Legal Status of a Registered Trade union

Trade Union which is registered shall be a body corporate and has a status of separate legal entity in the eyes of law under the name it has been registered.

1. Trade Union once it is registered it will be having a features of Perpetual Succession which means the existence of the Union or the continuation which never dies, on the event of changes in membership or etc. in membership etc. and a common seal.
2. It also has a power to obtain and hold movable and immovable property and can enter in to any valid contract,
3. It can sue and be sued by the name which is registered.
4. No civil suit or legal proceeding can be proceeded against trade union, related to any act done in pursuit of a trade dispute in certain situation.

Benefits of registration of Trade unions

A registered trade union acquires the status of separate legal entity and recognises a body corporate which means that it can enter contracts and can also sue others.

3.4. FUNDS OF TRADE UNION

A registered trade union is allowed to maintain two kinds of funds.

- General Fund and
- Political Fund.

General Fund:

Section 15 of the act relates with and states that , a registered trade union can create a general fund. Members of the registered trade union must

contribute to the general fund. The fund can be spent for the purposes as specifically stated in the act.

²The general funds of a registered Trade Union shall not be spent on any other objects than the following, namely: —

- (a) the payment of salaries, allowances, and expenses to 22 [office-bearers] of the Trade Union;
- (b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;
- (c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
- (d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;
- (e) the compensation of members for loss arising out of trade disputes;
- (f) allowances to members or their dependants on account of death, old age, sickness, accidents, or unemployment of such members;
- (g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident, or unemployment;
- (h) the provision of educational, social, or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;
- (i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;
- (j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and
- (k) subject to any conditions contained in the notification, any other object notified by the appropriate Government in the Official Gazette.

Political Fund:

According to Section 16, the trade union must create a separate political fund for the purpose of spending it for political cause.[17] Contributions to such political funds should be collected separately. Contribution to the political fund cannot be compelled or made as compulsory or condition to admit a person as member of the trade union. However the control and management of the political fund can be vested exclusively to those members who contributed to the political fund. Section 16(2) specifically states the purposes for which the political fund may be utilized. Those are:

- a) The payment of any expenses incurred by a candidate or prospective candidate for election as a member of any legislative body or any local authority. The expenses includes the expenses incurred before, during and after the election in connecting with such candidature;
- b) Conducting any meeting or distribution of any literature or documents in support of such candidate or prospective candidate;
- c) Maintenance of any person who is a member of any legislative body or local authority;
- d) Registration of electors or the selection of a candidate for any legislative body or local authority;
- e) Conducting of political meetings or distribution of political literature and documents to the members of the trade union or to the general public.

3.5. RIGHTS AND DUTIES OF TRADE UNION:

The 'Registered Trade Unions have been granted following rights under the different provisions of the Trade Unions Act, 1926—

1. Rights Granted to it as a Legal Person —A Registered Trade Union becomes a legal person by the name under which it is registered and as such it has

- (i) Right to have a common seal in its own name;
- (ii) Right to acquire, hold and dispose of both movable and immovable property in its own name;
- (iii) Right to contract in its own name;
- (iv) Right to sue for any infringement of its rights whatsoever. Any aggrieved party may also sue it in its name.

It may be pointed out that these rights are very significant. Unless the Trade Unions has power or competence to enforce its rights by its own name, rights become meaningless.

2. Right to Spend General Funds—It is to be noted that no organization can function efficiently without funds. The Trade Unions Act makes provisions for the constitution of general as well as political funds. However, the Act puts certain restrictions on the trade union regarding utilization of these funds. The Trade Unions have authority to spend general funds only for the following objects, -

- (a) The payment of salaries, allowances, and expenses to office bearers of the Trade Union;
- (b) The payment of expenses for the administration of the Trade Union including audit of the accounts of the general funds of the Trade Union;
- (c) The prosecution or defence of any legal proceeding to which the Trade Union or any member of the Trade Union is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of a member with his employer or with a person whom the member employs. Thus, the general funds may be spent for the prosecution or defence of any legal proceeding only when the Trade Union as such or any member of the Trade Union is a party and such prosecution or defence is undertaken for the purpose of securing or protecting rights of the Trade Union as such or any rights arising out of the relations of any member with his employer;
- (d) The conduct of trade disputes on behalf of the Trade Union or any member thereof;
- (e) The compensation of members for loss arising out of trade disputes;
- (f) The allowances to members or their dependents on account of the death, old age, sickness, accidents or unemployment of such members;
- (g) The issue of, or the undertaking of liability under policies of assurance on the lives of the members, or under policies insuring members against sickness, accident or unemployment;
- (h) The provision of the educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependents of members;
- (i) The upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;
- (j) The payment, in furtherance of any of the objects on which general funds of the Trade Union may be spent, of contributions to any intended benefit workmen in general; provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general

funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year.

- (k) The general funds of the Trade Union may be spent on any other object notified by the appropriate Government in the Official Gazette subject to any condition laid down in such notification.

3. Right to Constitute a Separate Political Fund —A indicated above; the general funds of the Trade Union cannot be spent for any objects other than expressly mentioned U/S 15 of the Act and the political objects are not mentioned therein. All expenditure of the funds in furtherance of political objects is prohibited, whether direct or indirect. if the Registered Trade Union decides to carry out political objects it has authority to constitute a separate political fund for such activities from contribution separately levied for or made to that fund. From this fund payments may be made for the promotion of the civil and political interests of its members. Thus, the political funds is a fund constituted separately by the Trade Union by way of separate levy on members of the Trade Union for the promotion of civil and political interests of the members of the trade union

4. Right to Change its Name—Any registered Trade Union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of S, 25, change its name.

5. Right to Amalgamate — Any two or more Registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty percent of the votes recorded are in favour of proposal of the amalgamation.. Thus, the Registered Trade Unions have right to amalgamate. If the Trade Unions amalgamate, it is not necessary that there' must be dissolution or division of funds-of such Trade Unions..

6. Rights of Trade Unions in respect of Industrial Matters:

Besides the rights of a Registered Trade Union as granted under the different Provisions of the Trade Unions Act, 1926, the Trade Unions have certain general rights in respect of industrial matters which are exercised with a view to provide safety, protection and safeguards to its members and the well-being of the working class. Labour Unions have got the following important right of representation and acting on behalf of workmen --

- (a) Right of representation of labour before employer, in committees, before conciliation, mediation and in arbitrations, before courts and tribunals or labour departments;
- (b) Right to negotiate and settle the disputes with the employers and sign the settlement and execute them;
- (c) Right to hold meetings, conferences, post their notices or inspect the places where the members are employed for work;

- (d) Right to accept services of notices, summons, etc.;
- (e) Right To perform other formalities, e.g., attestation of agreements.
- (t) Right to obtain legal aid;
- (g) Right to collect fees on employer's premises.
- (h) Right to stage demonstrations and strikes. This is an absolute or fundamental right, but a common law right, hence it is subject to laws regulating the strikes.

However, this is most important right in the armoury of labour.

Liabilities and Duties of a Registered Trade Union —

The Trade Unions Act imposes following liabilities and duties on the unions registered under this Act —

1 Duty to Make Provisions in the Rules of Certain Matters—The constitution of the Trade Union must provide for the matters enumerated u/s 6 of the Trade Unions Act, 1926. Sec. 6 contains matters in respect of the Trade Union must provide within its rules. Some of which are rules declaring the object for which the Trade Union has been established, the purposes on which general funds of the Trade Union may be spent, admission of members to the Trade Union, the way the Trade Union may be dissolved etc.

2. Duty to Constitute Executive as Required —Registered Trade Union is under a duty to constitute the executive of the Trade Union in accordance with the provisions of this Act. The provisions relating to the constitution of executive of the Trade Union are contained U/Ss.21-A and 22 of the Act. There are two duties imposed by the provisions of the Act -as conditions precedent to the process of registration. Unless these duties are complied with, the Registrar is empowered to refuse to register the proposed Trade Union.

3. Duty to Spend General Funds as Required -- The Trade Union is under statutory duty to spend general funds of the Trade Union in accordance with S. 15 of the Act which enumerates certain specific objects on which only the general funds can be spent and not otherwise

4. Duty to Constitute a Separate Political Fund - The Trade Union if decides to promote civil and political interests of its members, must constitute a separate fund commonly known as political fund in accordance with S. 16 and it may be spent on the objects specified therein.

5. Duty to Provide Access to Books of trade Union- The account books and list of members shall be kept open by a Registered Trade Union for inspection by an office bearer or member of the Trade Union at such times as may be provided for in the rules of the Trade Union.

6. Duty to Send Notice to the Registrar—The Trade Union is under duty to send notice to Registrar in cases of every change of its name, every

amalgamation any change in the address of the head office of Trade Union, and dissolution thereof.

7. Duty to Send Notice to the Registrar—There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement audited in the prescribed manner, of all receipts and expenditure of every Registered Trade Union during the year ending on the 31st day of December, next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of December. The statement shall be prepared in such form and shall rise such particulars as may be prescribed.

3.6 OFFENCE UNDER SECTION 31 IN THE TRADE UNION ACT 1926

Failure to submit returns. —

- (1) If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every 1[office-bearer] or other person bound by the rules of the Trade Union to give or send the same, or, if there is no such 1[office-bearer] or person, every member of the executive of the Trade Union, shall be punishable with fine which may extend to five rupees and, in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues: Provided that the aggregate fine shall not exceed fifty rupees.
- (2) Any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 28 or in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to **five hundred rupees**.

3.7 SUMMARY:

“Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:

Objectives and Role of Roles of Trade Union: Wages and salaries, Working conditions, Policies of the Industry, Welfare Measures, Employee and Employer Relations, Negotiating Machinery, Safeguarding Organisational Health and the Interest of the Industry, Alone workers feel weak.

Registration of Trade Union- Appointment of Registrar- Certificate of Registration, Cancellation of Registration.

Legal Status of a Registered Trade union: Trade Union which is registered shall be a body corporate and has a status of separate legal entity in the eyes of law under the name it has been registered.

Rights, Duties and Liabilities of Trade Union, Rights Granted to it as a Legal Person ,2. Right to Spend General Funds, Right to Constitute a Separate Political Fund , Right to Change its Name, Right to Amalgamate , Rights of Trade Unions in respect of Industrial Matters:

Liabilities and Duties of a Registered Trade Union —

Duty to Make Provisions in the Rules of Certain Matters, Duty to Constitute Executive as Required, Duty to Spend General Funds as Required Duty to Constitute a Separate Political Fund -Duty to Provide Access to Books of trade Union- . Duty to Send Notice to the Registrar. Duty to Send Notice to the Registrar—

3.8. MULTIPLE CHOICE QUESTIONS:

1. The Trade Unions Act came into operation from _____.
 - a. **1st June, 1927**
 - b. 1st May, 1926
 - c. 1st June, 1926
 - d. None of the above
2. State true or false
 - i. The act was enacted with the objective of providing for the registration of trade unions and verification of the membership of trade unions registered so that they may acquire a legal and corporate status.
 - a. **True**
 - b. False
3. What is the minimum number of trade union members requires in registering themselves as a union?
 - a. **7**
 - b. 10
 - c. 5
 - d. 15
4. Which act in Industrial Relations defines the term trade union?
 - a. Industrial Trade Resolution, 1962
 - b. Industrial Policy, 1991
 - c. **The trade union and labour relations (consolidation) Act, 1992**
 - d. The industrial Employment Act, 1946

5. Which section of the act deals with the registration of the trade unions?
- Section 8**
 - Section 7
 - Section 9
 - Section 10

State true or false.

6. The registrar has the right to cancel the registration of the union if he is satisfied that the certificate has been obtained by fraud or mistake.
- True**
 - False
7. Which of the following acts do not apply to the registered trade unions?
- The Co-operative Societies Act, 1912
 - The Societies Registration Act, 1860
 - The Companies Act, 1956
 - All the above**
8. Which of the following is an object on which general funds could be spent as per section 15 of the act?
- Payment to buy goods required for the enterprise
 - Payment of employees in the factory establishment
 - The payment of expenses for the administration of trade union or any member thereof**
 - All of the above
10. State true or false
- A person who has attained the age of 10 years can be a member of a registered trade union subject to any rules of the trade union.
- True
 - False**
11. On which of the following grounds an office bearer or executive of the trade union be disqualified?
- Has been convicted by the court of any offence involving moral turpitude
 - Has not attained the age of 18 years

- C. Is not working with any establishment
- a. A & B**
- b. A & C
- c. B & C
- d. A, B and C
12. How many member's consent is required to change the name of the registered trade union?
- a. 1/4th of the total members
- b. 3/4th of the total members
- c. Half of the total members
- d. 2/3rd of the total member**
13. How many percentages of votes should be recorded when amalgamating 2 or more registered trade unions?
- a. 60%**
- b. 50%
- c. 20%
- d. 75%
14. How many members should sign the notice of dissolution?
- a. 5 members and the secretary of the trade union
- b. 10 members and the secretary of the trade union
- c. 20 members and the secretary of the trade union
- d. 7 members and the secretary of the trade union**
15. On what grounds can a union refuse to admit a person or expel a member?
- a. Because of goodwill
- b. Because of misconduct**
- c. Because of change in job
- d. None of the above

Descriptive Questions:

Trade Union Act 1926

1. What are the procedures for registration of trade union?
2. What are the types of Trade Union Finance and Funds?
3. What are the role and objectives of trade union.
4. What is trade Union? Explain its various features.
5. What are the legal status of trade union?

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MODULE II: THE FACTORIES ACT, 1948**ADMINISTRATIVE ESTABLISHMENT****Unit Structure:**

- 4.0 Objective
- 4.1 Introduction and Meaning
- 4.2 Objectives and Features of the Act.
- 4.3 Definition and Concepts under the Act.
- 4.4 Authorities under the Act.
- 4.5 Summary.
- 4.6 Questions

4.0 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the concept Factories Act 1948.
- Understand the meaning and objectives and features of the act.
- Understand the definitions and concepts under the Act.
- Understand the various authorities under this Act.

4.1. INTRODUCTION AND MEANING

The Factories Act of 1948 was formulated for the protection the interest of the welfare of the workers working in the factory through regulating their employment conditions, working environment. **The Court held in Ravi Shankar Sharma v. State of Rajasthan (1993)** that the Factory Act is social legislation that covers the health, safety, welfare, and other aspects of factory workers. The Factories Act deals with the guidelines and safety measures for using machinery, and with its strict compliance, it also provides owners with instructions. When factory workers were taken advantage of and exploited by paying them low wages, the Factories Act was passed.

4.2. OBJECTIVES OF FACTORIES ACT, 1948

The important objectives of the 1948 Act are as follows:

The major goal of the Factories Act of 1948 is to establish appropriate safety measures and to extend the health and welfare of workers employed in a factory. This act has come into existence to protect the interest of the workers from the occupational hazards they faced. The Act also protects workers from various industrial and occupational hazards.

Health Concern: This act made the owners compulsory to see to it that all the safety measures in respect of the health of the workers working in the industry have been observed. Secondly the factory must have an appropriate ventilation, temperature, Separate Restrooms, Separate Urinals must be there for male and females in convenient location in the factory which they feel to access without hesitance.

Safety Concern: The Act requires that machines be properly fenced; that no young adults work on any dangerous machines in enclosed places, and that appropriate manholes be provided so that employees may escape in an emergency.

Welfare Concern: The Act denotes that adequate washing facilities for workers must be provided and maintained in every factory. There must be storage and drying facilities, as well as sitting areas, first-aid equipment, shelters, and lunch rooms. Apart from this the act restricts on the employment of small children, teenagers etc, further it also provides the directions in regards with working hours, intervals, holidays, and annual leave with pay etc.

Working hours: The Act specifies working hours for all workers, and no adult worker must be permitted to work in a workplace for more than 48 hours per week. Weekly holidays need to be granted.

Factories act also imposes restrictions on owners, occupiers, or the manufacturer's head in order to safeguard interest of the employees and ensure their health and safety precautions.

The Act protects workers from exploitation and improves working conditions and the environment within factory premises.

Penalties: The said also specifies specific rules created with provisions under the Act, and written orders that are violated. It is an offence, and penalties will be imposed, imprisonment for up to a year; a fine of up to one lakh rupees; or both fine and imprisonment. Any employee who misuses equipment related to the welfare, safety, and health of other employees, or those connected to the performance of his duties, suffers a Rs.500 fine.

Features of Factories Act, 1948

The Factories Act, 1948 is a beneficial legislation. The object of the Act is essentially to safeguard the interests of workers, stop their exploitation and take care of their safety, hygiene, and welfare at their places of work. It casts various obligations, duties, and responsibilities on the occupier of a factory and on the factory manager. Amendments to the Act and court decisions have further extended the nature and scope of the concept of occupier, especially vis-a-vis hazardous processes in factories.

- a. The word “factory” has been extended to include ‘contract labour’ when determining whether a factory has a maximum of 10 or 20 employees by the Factories (Amendment) Act of 1976 .
- b. The Act enhanced the minimum age for children to work in workplaces from 12 to 14 and reduced their daily working hours from 5 to 4 and a half.
- c. The Act prohibits women and children from working in factories from 7 p.m. to 6 a.m.
- d. Seasonal and non-seasonal factory differentials have been abolished by this Act.
- e. Provisions for Registration and Licencing has been made under this Act.
- f. Further all the concerned State Government is made it compulsory to the factories to be registered and to have a valid licence that are renewed as and when required by and under law.
- g. State Governments authorities have been empowered to enact for formulate the rules required in favour of the workmen.

¹Scope and Applicability of Factories Act

The Act is applicable to any factory wherein ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on; but this does not include a mine, or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place.

4.3. DEFINITIONS AND CONCEPTS UNDER ACT: -

Factory: (Section 2(m)) :- “factory” means any premises including the precincts thereof—

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, — but does not include
 - a mine subject to the operation of the Mines Act, 1952 (35 of 1952)], or
 - a mobile unit belonging to the armed forces of the Union,
 - railway running shed or
 - a hotel, restaurant or eating place

A. Occupier: Section 2(n)

"occupier" of a factory means 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 7A, section 7B, section 11 or section 12;
 - (b) section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;
 - (e) section 18, section 19, section 42, section 46, section 47 or section 49, in relation to the workers employed on such repair or maintenance;
- (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 purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44 or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to-
 - (a) the workers employed directly by him or by or through any agency; and
 - (b) the machinery, plant, or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person;

B. Manufacturing Process Section 2 (k)

“Manufacturing process” means any process for—

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

- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;
- (vi) preserving or storing any article in cold storage;

C. **“Hazardous process” Section 2(cb)** means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would—

- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
- (ii) result in the pollution or the general environment:

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

D. **“Worker” Section 2(1)** means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union;

4.4. AUTHORITIES UNDER FACTORIES ACT 1948

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

The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

By Notification in the Official Gazette State Government may appoint as many Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors and as many other officers as it thinks fit to assist the Chief Inspector and to exercise such of the powers of the Chief Inspector as may be specified in such notification.

4.4.1 OCCUPIER

Who is an Occupier?

According to Section 2 (n) of the Factories Act 1948, an occupier can be defined as a person who has the ultimate control over the affairs of the factory. In simple terms, Occupier is someone who is responsible for all the matters related to the factory.

The Duties of Occupier under the Factories Act 1948 are –

To obtain License for the Establishment of Factory

The first duty of the Occupier is to obtain permission in writing from the State Government or the Chief Inspector for the site on which the factory is to be situated under section 6 of the Act.

To Serve Notice to the Chief Inspector for the Permission of Factory

As per section 7 of this act the Occupier needs to serve a notice to the Chief Inspector as per section 7 at least 15 days before starting using the factory premises. The Notice must contain the following information –

- Name and Address of the Occupier and the factory
- Name of the owner of the premises
- Address for communication
- Nature of the manufacturing process which would be carried out in the factory
- Total No. of house powers that are required to be installed
- Name of the manager of the factory
- No. of employees that are likely to be employed in the factory
- Any other particulars as prescribed under the Act
- To act as a manager.

It is one of the Duties of the Occupier to act as a manager of the factory and manage everything in the factory till the time an actual manager is appointed in the factory.

To maintain and Provide the Plant and Systems of Work

The Occupier is duty-bound to provide the required plant and factory work systems to ease the smooth functioning of operations of the factory and avoid any delay in any functional aspects.

To Maintain Working Environment:

Provide and maintain such working environment in the factory that is proved to be safe in respect of health and with adequate facilities and to make necessary arrangement for the welfare of the worker.

To make Adequate Arrangements in the Factory to ensure Safety.

The duties of the Occupier include planning within the factory to ensure safety and avoid any risks of injuries or health of the workers by ensuring proper arrangements for the use, storage, handling, and transportation of substances or articles.

To Provide Training to the Workers

The Occupier is bound for providing necessary training, information, instructions, and supervision to its workers as are essential to assure the safety and health of the workers of the factory.

To Maintain a Safe and Healthy Working Condition

The Occupier must ensure to provide safe and healthy working conditions to its workers by keeping a check on the cleanliness and hygiene and fulfilment of necessities like drinking water and sitting space to the factory workers.

To Formulate a Policy for the Factory

The Occupier must formulate a policy for the factory subsist of the health and safety measures within the factory and make sure that the workers must stand by the policy.

To Appoint Safety Officer

The Factories Act provides the Duties of Occupier such as the appointment of the Safety Officer.

According to Section 40-B of the Act, In case of 1000 or more workers is there in the factory the safety officer must be appointed by the Occupier,

If the State Government is of the opinion that the manufacturing process carried out within the factory can cause any bodily injury, disease, poisoning or any other hazard to the workers' health.

To Disclose Compulsory Information

As per Section 41- B, it is the duty of the Occupier to disclose the compulsory information and obtain approval of the Chief Inspector regarding the following:-

- i. The hazardous process is carried on in the factory.
- ii. The policy formulated by the Occupier about the health and safety measures undertaken for the workers involved in the hazardous process
- iii. Design the site emergency plan and detailed disaster control measures for the workers' safety and obtain the chief inspector's approval for the site plan and the enlisted measures.

Fulfil the Specific Responsibility regarding hazardous Process

Section 43-B, there are certain specific Duties of Occupier that he must fulfil. The duties include the following: –

Maintenance of the (adequate and up-to-date) health or medical records of the workers of the factory

- Appointment of qualified personnel for handling the hazardous substances
- Facilitation of the medical examination of the workers.
- Set up a Safety Committee

Another duty as per the Duties of Occupier under Factories Act 1948 is to set up a Safety Committee in the factory involving the hazardous process. the safety Committee must comprise of equal representatives of workers and management to promote co-operation between the both to maintain the health and safety standards and review the same periodically.

To Take Remedial action unforeseen situation.

The Occupier is obligated to take instant remedial action in imminent danger and send a report of the same to the Chief Inspector.

To Conduct Occupation and Heath Survey

Another important duty of the Occupier is conducting health and occupational surveys of the workers in the factory. The Occupier must ensure sufficient arrangements for the testing and examining of the plant and machinery, collection of samples or any relevant data required for conducting the survey.

Specific Responsibility of the occupier in relation to Hazardous Process. (Section 41-C)

Every occupier of a factory involving any hazardous process shall-

- maintain authentic and timely health records or medical records, of the workers in the factory;
- appoint persons who has qualifications and experience in handling hazardous substances;
- provide for medical examination of every worker.

4.4.2 ²Inspectors. (Section 8)

- i. The State Government may, by notification in the Official Gazette may appoint an Inspector.
- ii. The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Additional Chief Inspector, who shall, in addition to powers conferred on Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.
- iii. No person shall be appointed or having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or work connected with the factory.
- iv. Every District Magistrate shall be an Inspector for his district.
- v. The State Government may also, by notification as aforesaid, appoint such public officers an additional Inspectors for all or any of the purposes of this Act,

Powers of Inspectors. –(Section 9)

- a. He/ She can make examination of the premises, plant, machinery, article, or substance;
- b. He/ She can enter with such authority, being persons in the service of the Government, or any local or other public authority or with an expert;
- c. To make an inquiry into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not;
- d. To take on the spot statements of any person which he may consider necessary for such inquiry;
- e. To seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act.
- f. To yield measurements and photographs and carryout such recordings as required for the purpose of examination under this Act.
- g. To exercise all such other powers as may be prescribed under this Act.

4.4.3 Certifying Surgeons. (Section 10)

The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or

² <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm>

for such factory or class or description of factories as it may assign to them respectively.

The examination and certification of young persons under this Act;

The examination of persons engaged in factories in such dangerous Occupations or processes as may be prescribed;

The exercising of such medical supervisions as may be prescribed for any factory or class or description of factories where-

- (i) cases of illness have occurred, which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
- (ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process, or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
- (iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

4.4.3 Safety Officers. (Section 40B.)

Under the said section it is prescribed that in every factory where the more than one thousand or more workers are employed or engaged in manufacturing process involved in any type of risk including bodily injury, poisoning or diseases or disease or any other hazard to health, to the person employed in the factory safety officer shall be appointed.

The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government.

4.4.4 Welfare Officers. – (Section 49)

It is provided that the occupier of the factory mandatorily to appoint a welfare officer where five hundred or more workers are employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

The duties, qualifications and the service conditions prescribed by the State Government under this Act.

4.5 SUMMARY

Objectives of Factories Act, 1948

The important objectives of the 1948 Act are as follows:

Health Concern: Safety Concern: Welfare Concern Working hours: Administrative Establishment Penalties:

Features of Factories Act, 1948

The Factories Act, 1948 is a beneficial legislation. The object of the Act is essentially to safeguard the interests of workers, stop their exploitation and take care of their safety, hygiene, and welfare at their places of work.

- a. The Act enhanced the minimum age for children to work in workplaces from 12 to 14 and reduced their daily working hours from 5 to 4 and a half.
- b. The Act prohibits women and children from working in factories from 7 p.m. to 6 a.m.

The Duties of Occupier under the Factories Act 1948 are –

To obtain License for the Establishment of Factory

To Serve Notice to the Chief Inspector for the Permission of Factory

To maintain and Provide the Plant and Systems of Work

To Maintain Working Environment:

To make Adequate Arrangements in the Factory to ensure Safety.

To Provide Training to the Workers

To Maintain a Safe and Healthy Working Condition

To Formulate a Policy for the Factory

To Appoint Safety Officer

To Disclose Compulsory Information

Fulfil the Specific Responsibility regarding hazardous Process

To Take Remedial action unforeseen situation.

To Conduct Occupation and Health Survey

Specific Responsibility of the occupier in relation to Hazardous Process.
(Section 41-C)

Every occupier of a factory involving any hazardous process shall-

- maintain authentic and timely health records or medical records, of the workers in the factory;
- appoint persons who has qualifications and experience in handling hazardous substances;

- provide for medical examination of every worker.

³Inspectors. (Section 8)

Powers of Inspectors. –(Section 9)

- a. He/ She can make examination of the premises, plant, machinery, article, or substance;
- a. He/ She can enter with such authority, being persons in the service of the Government, or any local or other public authority or with an expert;

Certifying Surgeons. (Section 10.)

Drinking water. – (Section 18)

Latrines and urinals. (Section 19.)

Safety Officers. (Section 40B.)

Welfare Officers. – (Section 49)

4.6 MULTIPLE CHOICE QUESTIONS:

1. Which of the following is not a statutory welfare facility under the Factories Act, 1948?
(A) Crèche
(B) Canteen
(C) **Transport**
(D) First-Aid Boxes
2. The constitution of site appraisal committees is under the:
(A) **Factories Act, 1948**
(B) Contract labour (Regulation and Abolition) Act, 1970
(C) Maternity Benefit Act, 1965
(D) Employees State Insurance Act, 1948
3. To avoid overcrowding the space provided for each worker under the Factories Act, 1948 is
(A) 12 cubic metres for factories built before 1948 and 14.2cubic meters for those built after 1948
(B) 10 cubic metres for factories built before 1948 and 14.2 cubic meters for those built after 1948

³ <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm>

- (C) **9.9 cubic metres for factories built before 1948 and 14.2 cubic meters for those built after 1948**
- (D) 9.9 cubic meters for factories built before 1948 and 14.4 cubic meters for those built after 1948.
4. Under the Factories Act, 1948 the working hours of 8 per day and 48 per week
- (A) Include spread over.
- (B) Are minimum working hours
- (C) Include rest interval period.
- (D) **Do not include rest interval period.**
5. Which of the following statements relating to the Factories Act is not true?
- (A) There is a provision in the Act relating to the constitution of a Managing Committee for the management of the canteen.
- (B) There is a provision in the Act regarding the setting up of a safety committee.
- (C) The Act does not have a provision relating to the setting up of welfare committee.
- (D) **The Act has a provision relating to the establishment of a Grievance Committee.**
6. Which of the following authorities has the power to prescribe the form of certificate of fitness to work in a factory under the Factories Act?
- (A) The certifying surgeon
- (B) The owner or occupier of the factory
- (C) The Chief Inspector of Factories of the State
- (D) **The State Government**
7. Which part of the definition of 'worker' under the Factories Act is incomplete?
- (A) A person employed directly or by or through any agency.
- (B) With or without the knowledge of the principal employer.
- (C) **For remuneration**
- (D) In the manufacturing process
8. Ambulance room shall be provided if
- (A) 30 women workers are employed under Maternity Benefit Act, 1965.
- (B) Creche is provided under the Factories Act, 1948.
- (C) **500 workers are employed in the factory under the Factories Act, 1948.**

- (D) The Workmen Compensation Act, 1923 is applicable to the factory.
9. The maximum daily hours of work in a day with normal wage allowed in factories is
- (A) 11 hours
 - (B) 10 hours
 - (C) **9 hours**
 - (D) 8 hours
10. Which of the following statements relating to Welfare Officer is not true?
- (A) The provision of Welfare Officer is given in both the Factories Act, 1948 and the Mines Act, 1952.
 - (B) **Welfare Officer's duties and responsibilities are defined and prescribed in the legislation.**
 - (C) Welfare Officer's appointment is tagged to the provision of minimum workforce employed in an organisation
 - (D) The Welfare Officer's role was designed as a 'Third force'.
11. As per Factories Act, "-----" of a factory means the person who has ultimate control over the affairs of the factory.
- A. Manager
 - B. Owner
 - C. Director
 - D. Occupier**
12. The ----- of Railway Production Units have been appointed as "Occupiers" of the respective units in terms of the provisions of the Factories Act, 1948.
- A. General Managers
 - B. Chief Personnel Officers
 - C. Chief Mechanical Engineers / CWM**
 - D. Chief Security Commissioners
13. No woman shall be employed in any factory except between the hours of
- A. 7 PM and 6 AM
 - B. 6 AM and 7 PM**
 - C. 10 PM and 6 AM
 - D. 6 AM and 10 PM

14. Which of the following statements given below is not correct in respect of Inspector appointed under Section 8 of this Act.?
- A. No person shall be appointed who is directly or indirectly interested in a work connected with the factory.
 - B. Every District Magistrate shall be an Inspector for his district.
 - C. The State Government may appoint an additional Inspectors for all or any of the purposes of this Act,
 - D. None of the above**
15. In every factory where the more than one thousand or more workers are employed safety officer/s must be appointed under section 40(B) of Factory Act 1948
- A. More than one thousand**
 - B. More than two thousand
 - C. More five hundred
 - D. More than eight hundred.

Descriptive Questions:

1. Describe the provisions related to the safety of the workers made under Factory Act 1948
2. What are the general duties of an Occupier?
3. Who can become an Inspector appointed under Factory Act? What are his powers and duties.?
4. What are the functions of Welfare Officer and Certifying Surgeons?
5. Explain the provisions related to drinking water, Latrines, and urinals under the Act

Write a note on :

- a) Hazardous Process
- b) Manufacturing Process
- c) Factory under Factory Act

PROVISIONS IN FAVOUR OF WORKERS

Unit Structure

- 5.0. Objective
- 5.1. Introduction
- 5.2. Provisions regarding safety of workers.
- 5.3. Provisions regarding health of workers
- 5.4. Provisions related to welfare of the workers.
- 5.5. Rights and obligations of Employees.
- 5.6. Miscellaneous Provisions
- 5.7. Offences and Penalties.
- 5.8. Summary
- 5.9. Questions

5.0 OBJECTIVES

After studying the unit, the students will be able to:

- ☐ Understand the concept Factories Act 1948.
- ☐ Understand the meaning and objectives and features of the act.
- ☐ Understand the definitions and concepts under the Act.
- ☐ Understand the various authorities under this Act.

5.1. INTRODUCTION:

There are various defects and weaknesses in the first Factories Act, 1934. The first Act which is made for labourers working in factories is but, due to defect and lacunas provisions under the same was not so effective and not much satisfactory. The amendment Factories Act, 1948 brings about the provisions in respect of Health, Safety and Welfare of the workers. In previous Act provisions related to welfare, health, and safety not so acceptable and hence was not up to the mark. If we see the definition of a factory is not that much wider. But to protect the labours we made this Act in a wider sense. The provision of welfare, health, and safety is not adequate in various industries and does not cover the large numbers of workers working in a factory. If the workers are working in a factory then it was the duty of every employer to take the health and safety of workers.

5.2. 'PROVISIONS REGARDING THE SAFETY OF WORKERS'

Administrative Establishment

Rule for the purpose of securing safety of workers are discussed and laid down under Sections 21 to 40A, 40B and 41 of the Act . A brief summary of the provisions of the Factories Act in respect of the safety of the workers are given below.

1. **Fencing of machinery.** All dangerous machinery must be securely fenced e.g., moving parts- of prime movers and flywheels connected to every prime mover. electric generators. etc.-Sec. 21.

2. **Work on or near machinery in motion.** Work on or near machinery in motion must be carried out only by specially trained adult male workers wearing tightly fitting clothes. -Sec. 22.

3. **Employment of young persons on dangerous machines.** It is stated that no young person shall work at any dangerous machine' unless he has been specially instructed as to the dangers and the precautions to be observed. has received sufficient training about the~ work. and is under the supervision of some person having thorough knowledge and experience of the machine.-Sec. 23.

4. **Striking gear and devices for cutting off power.** In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom. Section-24.

5. **Self-acting machines.** Moving parts of a self-acting machine must not be allowed to come within 45 cms. of any fixed structure which is not part of the machine.-Sec. 25.

6. **Casing of new machinery.** In all machinery installed after the commencement of the Act. certain parts must be sunk, encased or otherwise effectively guarded e.g., set screw. bolt. toothed gearing etc. -sec. 26.

7. **Women and children near cotton Openers.** Women and children must not be allowed to work near cot/On openers, except In certain cases.-Sec. 27

8. **Hoists, lifts, chains etc,** Every hoist and lift must be so constructed as to be safe. There are detailed rules as to how such safety is to be secured. There are similar provisions regarding lifting machines. chains, ropes and lifting tackle .Sec. 28. 29.

9. **Revolving machinery.** Where grinding is . carried on the maximum safe working speed of every revolving machinery connected therewith must be notified. Steps must be taken to see that the safe speed is not exceeded.-Sec. 30.

¹ https://www.brainkart.com/article/Provisions-Regarding-the-Safety-of-Workers_7138/

10. Pressure plant. Where any operation is carried on at a pressure higher than the atmospheric pressure, steps must be taken to ensure that the safe working pressure is not exceed~cL-.sec. 31.

11. Floors, stairs and means of access. All floors, steps, stairs, passage and gangways shall be of sound construction and properly maintained. Handrails shall be provided where necessary. Safe means of access shall be provided to the place where the worker will carry on any work.-Sec. 32.

12. Pits, sumps. openings in floors etc. Pits. sumps. openings in floors etc. must be securely covered or fenced.-Sec. 33.

13. Excessive weights. No worker shall be made to carry a load so heavy as to cause him injury.-8ec. 34.

14. Protection of eyes. Effective screen or suitable goggles shall be provided to protect the eyes of the worker from fragments thrown off in course of any manufacturing process and from excessive light if any.-Sec. 35.

15. Precautions against dangerous fumes. No person shall be allowed to enter any chamber. tank etc. where dangerous fumes are likely to ,be present. unless it is equipped with a manhole or other means of going out. In such space no portable electric light of more than 24 ,volts shall be used. Only a lamp or light of flame proof construction can be used in such space. For people entering such space suitable breathing apparatus, reviving apparatus etc. shall be provided. Such places shall be cooled by ventilation before any person is allowed to enter.-8ecs. 36 and 36A.

16. Explosive or inflammable gas etc. where a manufacturing process produces inflammable gas. dust. fume. etc. steps must be taken to enclose the machine concerned, prevent the accumulation of substances and exclude all possible sources of ignition. Extra precautionary measures are to be taken where such substances are worked at greater than the atmospheric. pressure.-Sec. 37.

17. Precaution in case of fire. Fire escapes shall be provided. Windows and doors shall be constructed to open outwards. The means of exit in case of the fire shall be clearly marked in red letters. Arrangements must be made to give warning in case or fire -sec. 38

18. Specifications of defectives etc. and safety of buildings and machinery. If any building or machine is in a defective or dangerous condition, the inspector of factories can ask fer the holding of tests to determine how they can be made safe. He can also direct the adoption of the measure necessary to make them safe. In case of immediate danger, the use of the building or machine can be prohibited.-Secs. 39. 40.

19. Maintenance of Buildings. If the Inspector of Factories thinks that any building in a factory, or any. part of it. is in such a state of disrepair that it is likely to affect the health and welfare of the workers. he may serve on the

occupier or manager or both in writing specifying the measures to be done before the specified date. Sec. 40A.

Administrative Establishment

5.3. PROVISIONS IN RESPECT OF HEALTH OF WORKERS.

1. Cleanliness (Section 11)

Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner further the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method

2. Disposal of Wastes and effluents (Section 12)

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

3. Ventilation and temperature (Section 13)

Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom adequate ventilation by the circulation of fresh air, and such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health.

Walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable.

4. Dust and Fume (Section 14): This section deals with Dust and fume. Dust and Fume is injurious to the health of the workers, where dust or fume or impurity of such a nature is given off as a result of the manufacturing process which is likely to be injurious or offensive, effective measures must be taken to prevent its inhalation and accumulation in a workroom and if an exhaust appliance is necessary for this purpose, it shall be applied very near to the point of origin which must be enclosed.

The internal combustion engine is not started until there is no proper ventilation in the factory. Exhaust appliances must be used by the factory effectively. It also caused cancer and tuberculosis if proper care is not taken by the authority.

5. Artificial humidification (Section 15)

In manufacturing, process humidity is maintained by the employer to adopt the various method. It will be a must to maintain the temperature of that area where workers are working. If to maintain a humidity water cooler is used then the employer must make it clean. If air and water are used to

maintain the temperature then it will be taken from a public supply or another source of drinking water.

6. Overcrowding (Section 16)

It is provided that no workroom of the factory is overcrowded as its injurious to the health of workers. If a factory is established before the commencement of this Act, then the distance between workers is 9.9 cubic meters, but if a factory is established after the commencement of this Act then the distance between two workers is 14.2 cubic meters. The floor of the room is high at 4.2 meters.

7. Lighting (Section 17)

In the factory, proper light is provided to the workers. If proper light is not provided to workers then it causes a bad effect on the eyes of workers and due to its various dangerous diseases are caused to the worker. Glass and tiles reflect light then it harms the eyes of the worker then these types of tiles must be removed. In passage and staircases provide proper light. The state government made rules related to lighting and implemented it accordingly.

8. Drinking Water (Section 18)

To provide proper facilities for drinking water. Drinking water is a must condition. In writing it was mentioned that drinking water is provided here and this was written in that language which is used by most of the workers. It was on that font size visible to all the workers

9. Latrines and urinals (Section 19)

It is a general facility of latrines and urinals. This facility is provided to workers. For males and females, different facilities of latrines and urinals are provided in a factory. In latrines and urinals proper facility of light and ventilation is provided. Cleaning and sanitary properly maintained in latrines and urinals. The sweeper is hired by an employer whose duty is to clean the place of latrine and urine regularly.

10. Spittoons (Section 20)

To place the spittoons in the factory according to the convenient number. It must place in a clean and hygienic condition. The state government makes rules related to spittoons and makes rules regarding it. If spittoons in a factory, then no person spits in any other place. Spittoons can be washed daily by disinfectant. If anyone breaks the rule of spittoons then punishment is not exceeding rupees five.

11. When employees work on or near machinery in motion. (Section 22)

If any worker is working near a motion machine and on the motion machine then proper cloth provided to that person. The only adult male can work on a motion machine. No young person or woman can work on

a motion machine or near on that motion machine. If any adult person works on mounting a belt then the length of the belt is not more than 15 cm. If belt length is more than 15 cm then the worker denies doing work on the machine.

5.4 PROVISIONS RELATED TO WELFARE OF WORKERS

The Factories Act, 1948 contains the following provisions relating to Labour Welfare:

(1) Washing Facilities:

In every factory (a) adequate and suitable facilities shall be provided and maintained for the use of workers; (b) separate and adequately screened facilities shall be provided for the use of male and female workers; (c) such facilities shall be easily accessible and shall be kept clean.

(2) Facilities for storing and drying clothing:

In every factory provision for suitable place should exist for keeping clothing not worn during working hours and for the drying of wet clothing.

(3) Facilities for sitting:

In every factory, suitable arrangements for sitting shall be provided and maintained for all workers who are obliged to work in a standing position so that the workers may take advantage of any opportunity for rest which may occur in the course of work. If in any factory workers can efficiently do their work in a sitting position, the Chief inspector may require the occupier of the factory to provide such seating arrangements as may be practicable.

(4) First aid appliances:

Under the Act, the provisions for first-aid appliances are obligatory. At least one first-aid box or cupboard with the prescribed contents should be maintained for every 150 workers. It should be readily accessible during all working hours.

Each first-aid box or cupboard shall be kept in the charge of a separate responsible person who holds a certificate in the first-aid treatment recognised by the State Government and who shall always be readily available during the working hours of the factory.

In every factory wherein more than 500 workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size containing the prescribed equipment. The ambulance room shall be in the charge of properly qualified medical and nursing staff. These facilities shall always be made readily available during the working hours of the factory.

(5) Canteens:

In every factory employing more than 250 workers, the State government may make rules requiring that a canteen or canteens shall be provided for the use of workers. Such rules may provide for (a) the date by which the canteen shall be provided, (b) the standards in respect of constitution, accommodation, furniture and other equipment of the canteen; (c) the foodstuffs to be served therein and charges which may be paid thereof; (d) the constitution of a managing committee for the canteens and representation of the workers in the management of the canteen; (e) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer.

(6) Shelters, rest rooms and lunch rooms:

In every factory wherein more than 150 workers are ordinarily employed, there shall be a provision for shelters, rest room and a suitable lunch room where workers can eat meals brought by them with provision for drinking water.

5.5 RIGHTS AND OBLIGATIONS OF EMPLOYEES

Rights of Employees:**Every worker shall have the right to -**

- a) Obtain from the occupier, information relating to worker's health and safety at work,
- b) Get trained within the factory wherever possible, or, to get himself sponsored by the occupier for getting trained at a training centre or institute, duly approved by the Chief Inspector, where training is imparted for worker's health and safety at work.
- c) Represent to the Inspector directly or through his representative in the matter of inadequate provision for protection of his health and safety in the factory.
- d) Right to claim wages in lieu of leave allowable to him, under the payment of Wages Act.

Obligation of Workers:

No worker in a factory-

- (a) Shall wilfully interfere with or misuse any appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein;
- (b) Shall wilfully and without reasonable cause do anything likely to endanger himself or others; and

(c) Shall wilfully neglect to make use of any appliance or other thing provided in the factory for the purpose of securing the health and safety of the workers therein.

(2) If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made there under, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

5.6. MISCELLANEOUS PROVISIONS

A. Working hours for Young Person:

Section 69 of the Factories Act provides that a child below the age of 14 years is not allowed to be employed in a Factory. A young person above 14 but below 15 years of age can be employed only for 4.5 hours per day and that too subject to a doctor's permission by way of certification of fitness for work. An individual more than 15 however below 18 years old is termed as "adolescent or juvenile". He can be employed as an adult on the off chance that he has a certificate of fitness for an entire day's work from a certifying surgeon. There are more limitations on the work of female juvenile.

B. Working hours for Women:

Section 66(1)(b) of the Act provides that a woman worker cannot be employed after the hours 6 a.m. to 7.00 pm. State Government can allow an exemption to any factory or gathering or class of factories, however, no woman can be allowed to work from 10 PM to 5 AM. Shift change can be only after weekly or other holidays and not in between.

C. Weekly Holiday

Worker, shall have a holiday for every six days of continuous work. However, the manager may call upon a worker to work on a Sunday. In such cases, one day holiday must be given either out of the 3 days preceding the Sunday or out of the 3 days succeeding the Sunday. Before making this arrangement, a manager shall deliver a notice to the office of the inspector expressing his intention to that effect.

Furthermore, notice must also be displayed in the factory, intimating such change. No substitution can however be made, in such a way that it makes a worker to work for more than 10 days consecutively. Sunday shall, for the purpose of calculating weekly hours of work, be included in the preceding week, where any worker works on a Sunday.

Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for several days calculated at the rate of—

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

D. Register of Workers:

The manager of every factory shall maintain a register of adult workers, to be readily available to the Inspector during working hours. The said register contain the following: -

- (a) the name of each adult worker in the factory;
- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shifts, the relay to which he is allotted;
- (e) such other particulars as may be prescribed.

No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult workers.

E. Earned Leave:

The Act states that each worker who has worked for 240 days or more in a factory in a particular calendar year, shall be allowed annual leave with wages, during the subsequent calendar year, at the rate of 1 day for every 20 days of work performed by an adult in the preceding calendar year and 1 day for every 15 days of work performed by a child in the preceding calendar year.

The Act has not mention regarding the maximum number of earned leave, which may be accumulated by a worker. The Act, however, provides a threshold limit on the number of accumulated earned leaves, which can be carried forward to next calendar year.

If a worker has does not avail the whole of the earned leave allowed to him in a particular calendar year, the residual of leave not taken by him will stand accumulated to his credit at the end of the year. Though there is no limit to such accumulation, the maximum number of days of such accumulated leave, which is allowed to be carried forward to the succeeding year is 30 days, in case of an adult and 40 days, in case of a child. Any un-availed leave, in excess of the carry forward limits lapse at the end of the year.

□ **General penalty for offenses: Section 92**

This section provides that in case there is any kind of contravention, then the occupier and the manager of the factory will be equally responsible for the breaking of the law.

There will be punishable for with imprisonment up to 2 years and fine up to Rs.2 lakhs. In case, they continue the breach, they will be punishable with Rs. 10 thousand each day of the continuing breach.

□ **Liability of owner of premises under special circumstances: Section 93**

This section provides that in case a factory is on lease to various occupiers, the owner of the factory is still liable for providing and maintaining services like drainage, approach roads, water supply, electricity, lighting, sanitation, etc.

□ **Enhanced penalty after a previous conviction: Section 94**

At first if there is any person in a factory who does any general offense and repeats it, then he will be punishable with imprisonment up to 3 years or fine of at least Rs. 10 thousand (up to Rs. 2 lakhs) or both. Secondly, in order to find the applicability of this provision, the managers should only count the offenses within the last 2 years of the latest offense.

□ **Penalty for obstructing an inspector Section 95**

This Section provides that, whoever 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, then that person will be punishable with imprisonment up to 6 months or fine up to Rs. 10 thousand or both.

□ **Worker's offenses: Section 97**

If any worker working in the factory contravenes with the rules or any provisions of the Act, creating liabilities for other workers, will be punishable with a fine of at least Rs.500.

□ **False Certificate of Fitness: Section 98**

Fitness Certificate states the ability of fitness of a person for a particular work. In factories, this certificate plays an important role. This section punishes those workers who try to present a false 'Certificate of Fitness'.

If anyone tries to do so, he will be punishable with imprisonment of 2 months, He may be punishable with a fine of at least Rs. 10 thousand. In certain cases, he is punished with fine and imprisonment.

□ **Power of court to make orders: Section 102**

This section states that powers of the courts in case any manager does any offense under the Act. The court along with punishing the offenders can

take steps in upholding the situation or remedial measures are taken to tackle the problems.

5.8 SUMMARY

Provisions regarding the safety of Workers.

Fencing of machinery. Work on or near machinery in motion. Employment of young persons on dangerous machines. Striking gear and devices for cutting off power. Self-acting machines.

Casing of new machinery. Women and children near cotton Openers. Hoists, lifts, chains etc

Revolving machinery. Pressure plant. Floors, stairs and means of access. Pits, sumps. openings in floors etc. Excessive weights Protection of eyes. Precautions against dangerous fumes. Explosive or inflammable gas etc. Precaution in case of fire. Specifications of defectives etc. and safety of buildings and machinery. Maintenance of Buildings.

Provisions in respect of health of workers.

Cleanliness (Section 11) Disposal of Wastes and effluents (Section 12) Ventilation and temperature (Section 13) Dust and Fume (Section 14): Artificial humidification (Section 15) Overcrowding (Section 16) Lighting (Section 17) Drinking Water (Section 18) Latrines and urinals (Section 19)

Spittoons (Section 20)

Provisions related to welfare of workers

The Factories Act, 1948 contains the following provisions relating to Labour Welfare:

Washing Facilities: Facilities for storing and drying clothing: Facilities for sitting: First aid appliances: Canteens: Shelters, rest rooms and lunch rooms:

Offences and penalties under the act.

General penalty for offenses: Section 92

Liability of owner of premises under special circumstances: Section 93

Enhanced penalty after a previous conviction: Section 94

Penalty for obstructing an inspector Section 95

Worker's offenses: Section 97

False Certificate of Fitness: Section 98

Power of court to make orders: Section 102

5.9 QUESTIONS:

1. Total number of hours of work in any week including overtime shall not exceed ____
 - A. **Sixty**
 - B. Sixty Two
 - C. Seventy Five
 - D. None of the above.
2. To avoid overcrowding the space provided for each worker under the Factories Act, 1948 is
 - A. 12 cubic metres for factories built before 1948 and 14.2 cubic meters for those built after 1948
 - B. 10 cubic metres for factories built before 1948 and 14.2 cubic meters for those built after 1948
 - C. **9.9 cubic metres for factories built before 1948 and 14.2 cubic meters for those built after 1948**
 - D. 9.9 cubic meters for factories built before 1948 and 14.4 cubic meters for those built after 1948
3. Under the Factories Act, 1948 the working hours of 8 per day and 48 per week
 - (A) Include spread over.
 - (B) Are minimum working hours
 - (C) Include rest interval period.
 - (D) **Do not include rest interval period**
4. Ambulance room shall be provided if :-
 - (A) 30 women workers are employed under Maternity Benefit Act, 1965.
 - (B) Creche is provided under the Factories Act, 1948.
 - (C) **500 workers are employed in the factory under the Factories Act, 1948.**
 - (D) The workmen' Compensation Act, 1923 is applicable to the factory
5. The maximum daily hours of work in a day with normal wage allowed in factories is
 - A. 11 hours
 - B. 10 hours

C. **9 hours**

D. 8 hours

6. A person who has ultimate control over the affairs of the factory under Factories Act, 1948 is called as__

A. **Occupier**

B. Manager

C. Chairman

D. Managing Director.

7. A premises including precincts thereof is a 'factory' within the meaning of the Factories Act, 1948 wherein a manufacturing process is being carried on without the aid of power and where the number of workers working is

A. 10 or more workers

B. **20 or more workers**

C. 15 or more workers

D. 50 or more workers

8. Where—————or more workers are employed in a factory, then there shall be a Safety Committee in the factory

A. 100 or more workers

B. 150 or more workers

C. 200 or more workers

D. **250 or more workers**

9. Who is liable to pay the fee for a Certificate of Fitness?

A. The person himself

B. The person's guardian

C. **The occupier of the factory**

D. Trade Union

10. The Factories Act, 1948 requires the appointment of the 'Safety Officer' in factories employing at least

(A) 250 workers (B) 500 workers

(C) **1000 workers**

(D) None of the above.

11. No worker shall be allowed to work overtime for more than _____ days at a stretch and the total number of hours of work in any quarter shall not exceed _____.

- A. seven, sixty five
- B. six, seventy five
- C. **seven, seventy five**
- D. seven, sixty

12. Crèche is to be provided if _____ or more lady employees are engaged

- A. 25
- B. 32
- C. **30**
- D. 40

13. The term Sabbatical is connected with

- A. **Paid leave for study**
- B. Paternity leave
- C. Maternity leave
- D. Quarantine leave

14. The Factories Act imposes the following obligations upon the employer in

regard to his workers.

- A. Health
- B. Safety
- C. Welfare
- D. **All the above.**

15. Section 41- G of the Factories Act 1948 says about

- A. Fencing of machineries
- B. Facing of machineries
- C. Work on near machinery in motion

D. Workers participation in safety management

Descriptive Questions:

1. Write a detailed note on 'Provisions related to health of the workers'
2. Describe the provisions related to the welfare of the workers under Factory Act 1948.
3. Discuss the provisions related to the safety of the workers under Factory Act 1948
4. What are the offences and penalties under this Act?

Write a Note on: -

- a) Register of worker
- b) Rights and obligations of employees
- c) Working hours for Young Person and Women
- d) Provisions of leave with wages.

CHAPTER 6

WORKMEN'S COMPENSATION ACT.1923

Unit Structure

- 6.0. Objective**
- 6.1. Introduction**
- 6.2. Scope and Objectives of the Act.**
- 6.3. Eligibility**
- 6.4. Circumstances under which the employer is not liable to pay compensation.**
- 6.5. Doctrine of Assumed Risk**
- 6.6. Doctrine of Common Employment.**
- 6.7. Doctrine of Contributory Negligence**
- 6.8. Definitions**
- 6.9. Employers' liability for compensation**
- 6.10. Summary**
- 6.11. Questions**

6.0 OBJECTIVES

After studying the unit, the students will be able to:

- ☐ Understand the Scope and objectives of the Workmen's Compensation Act
- ☐ Understand the eligibility criteria to get the compensation.
- ☐ Understand the Principles of various doctrine under the Act.
- ☐ Understand various definition and the meaning under the Act.
- ☐ Explain Employers Liability for Compensation under various Sections of the Act.

6.1 Introduction

The Employees Compensation Act, 1923 is the first social security legislation undertaken in India to provide workmen and their dependents relief for injury by accident resulting in death or disability. According to the theory of notional extension of employment, a fictitious employment extension is a presumptive or imaginary extension of an employee's working time under certain circumstances in order to enjoy temporary benefits under various laws by the employer. The employer is liable in certain circumstances for the injury caused to his workers even when he is away from the premises at the time of the accident.

6.2 Scope and Objectives of the Act

This Act applies to factories, mines, plantations, transport, establishment, construction works, railways, other hazardous occupations, and employments mentioned in schedule II. Establishments which are covered under employees' state insurance Act, 1948, are kept outside the purview of this Act the reason behind it is the same benefit is provided under ESI Act, 1948 for disablement and death to the workmen and their dependents.

Objectives of the Act:

1. The Act safeguards the interests of the employers and employee. The reason of enactment of this act is that a large number of workforce is working in the factories, Manufacturing Units etc. Hence this act promotes the social welfare of the labourer.
2. To provides safe and healthy work environment in the work place for his workforce.
3. Workers suffering from the injury or death due to the occupational hazards, are liable to get compensation.
4. The employer and worker may not reach to the appropriate amount when it deals with compensation in such cases.

6.3 Eligibility.

Every worker including the worker who got employed through contractor, who suffers any injury due to an accident arising out of and in the course of his employment, shall be entitled to compensation under this Act. There is no wage limit for a worker for becoming eligible for compensation under the Act. Monthly wage of a worker is more than Rs.4, 000 is taken to be only Rs.4, 000 for calculating compensation either in case of death or permanent total disablement.

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

Following are the benefits which are included in the wages they are as under –

- a) Cleanliness allowance;
- b) Bonus;
- c) Free accommodation;
- d) Dearness allowance;
- e) Benefits in the form of food and clothing;
- f) Value of any other concessions, benefits, or privileges capable of being estimated in money.
- g) Overtime pay;

Section 3 Employer's Liability for Compensation – A workman is entitled to receive compensation from the employer in the following situations or circumstances:

- A. In case of an accident;
- B. In case of occupational disease;
- C. The said accident or disablement has arisen out of and in the course of employment

In the Case of Chronicle v/s. Mrs Lazarus, an employee during the course of his employment had to frequently go to the heating room from a cooling point and he has died because of pneumonia. The court stated that the injury was caused by an accident in the instant case and is not considered to be a physical injury as the injury caused was because of his nature of work and was verdict that the heir of the deceased employee will be entitled to compensation of Rs 3,500 as the deceased was drawing Rs. 150 per month and in accordance with provisions of the workmen's Compensation Act.

6.4 Circumstances under which the employer is not liable to pay compensation.

If any injury not emanating in the total or partial disablement of the workman for a period exceeding three days;

in respect of any injury not causing death, by an accident which is directly determinable to –

- (i) the workman having been under influence of drink or drugs, or;
- (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for securing the safety of workmen, or;
- (iii) the wilful disobedience to the instructions by the workman of the safety guard or any other device which he knew to have been provided for the purpose of securing the safety of the worker.

6.5. Doctrine of Assumed Risks:

This theory describes that if the employee knew the nature of the risks he was undertaking when working in a factory, the employer had no liability for injuries. The court assumed in such case that the workman had voluntarily accepted the risk and incidental to his work. The doctrine followed from the rule 'Volenti Non-Fit-Injuria, which means that one, who has volunteered to take a risk of injury, is not entitled to damages if injury actually occurs.

6.6. Doctrine of Common Employment

The doctrine of Common Employment is a legal principle that restricts an injured worker from suing their employer when a co-worker negligently caused the injury. The doctrine of Common Employment came in to existence from common law. It states that when an employer has given safe, proper, appropriate, and suitable machinery, tools, and appliances as per the duty imposed upon such an employer by law, then such employer is not liable for any injury caused to an employee as a result of the act of another employee

Meaning of the doctrine of Common Employment

This doctrine is an exception to the principle that the master is vicariously liable for the act done by his employee. The doctrine refers to the principle whereby the employer is not liable for the negligent act done by one employee to another in the course of their employment. The said doctrine is based on the implied contract of service. This means that the employee

impliedly is at the risk of injuring another employee. Here, the act of an employee done during employment refers to the situations where such an employee –

Is involved and engaged in the business of the employer.

- ☐ The act occurs while employment, i.e., during the time and within the limits authorized for employment.
- ☐ The act must be done to fulfil the requirements of the work regarding such employment
- ☐ The act should have been done by the employee against another employee without the knowledge of the employer.

6.7. DOCTRINE OF CONTRIBUTORY NEGLIGENCE.

Negligence is a type of tort which means a breach of duty that is duty to take care by one person which causes damages to another person. It is an act of carelessness and ignorance on the part of the defendant which he is obligated to perform which a rational and wise and cautious man would not do.

In general, negligence is the omission to perform a duty which results in the injury of the plaintiff. Negligence is involved in respect of property and person.

Breach of duty to take care and measures in order to avoid any kind of performing an act is the basic requirement in order to raise liability of negligence. Suit for negligence arises when there is a breach of duty which is recognised by law.

Example:

- ☐ A doctor while performing a surgery accidentally leaves one of his tools inside the body of the plaintiff, this will give rise to actionable negligence as the doctor was negligent on his part and completely ignored his duty to take care.
- ☐ A' who was driving at the wrong side met with a collision from another car will be held negligent on his part and is liable to pay compensation.

Essentials of Negligence

- ☐ The defendant shall be legally obligated to perform such duty.
- ☐ Ignorance of the defendant in order to take reasonable care while performing his act.
- ☐ Injuries must be sustained by the plaintiff due to the carelessness of the defendant.

6.8. Definitions:

- a) "**Commissioner**" means a Commissioner for Workmen' s Compensation appointed under section 20;
- b) "**compensation**" means compensation as provided for by this Act;
- c) "**dependant**" means any of the following relatives of a deceased workman, namely:--

(i) a widow, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death,

o a widower,

o a parent other than a widowed mother,

o a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and a minor or if widowed and a minor,

o a minor brother or a unmarried sister or a widowed sister if a minor,

o a widowed daughter- in- law,

o a minor child of a pre- deceased son,

o a minor child of a pre- deceased daughter where no parent of the child is alive, or

o a paternal grandparent if no parent of the workman is alive;

d) "**employer**" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship means such other person while the workman is working for him;

e) "**managing agent**" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer

f) "**minor**" means a person who has not attained the age of 18 years;

g) "**partial disablement**" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time shall be deemed to result in permanent partial disablement.

Partial and Total Disablement

a. Partial Disablement

It has been defined under Section 2 (1) (g) to mean where, the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of his accident resulting in the disablement, and where, The disablement is of permanent nature, such disablement as reduces the earning capacity in every employment which he was capable of undertaking at that time provided that every injury specified in Part II of Schedule I6 shall be deemed to result in permanent partial disablement.

When an accident occurs and the workman sustains injury, it results into loss of earning capacity of that workman. Such condition of incapacity of doing work is called disablement. If the earning capacity of a workman is reduced by the disablement merely in the particular employment in which he was engaged at the time of his accident, it is known as partial disablement of temporary nature, on the other hand if the earning capacity of a workman is reduced as result of disablement in every employment which he was capable of undertaking at the time of the accident, it is known as partial disablement of permanent nature.

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

(i) " qualified medical practitioner" means any person registered under any Central Act, Provincial Act or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last- mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

(j) " seaman" means any person forming part of the crew of any 6 ship, but does not include the master of the ship;

(k) " total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement: 8 Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more;

The total disablement may be of two kinds, first temporary total disablement and secondly, permanent total disablement. In temporary total disablement the earning capacity of a workman is lost for a temporary period and in permanent total disablement the earning capacity of a workman is lost forever with regard to all work which he was capable of performing at the time of the accident resulting in such disablement. It has been expressly provided that in total disablement, 100% earning capacity is lost as a result of any injury specified in Part I of Schedule I or as a result of two or more injuries specified in Part II of Schedule I. The loss of earning capacity has to be determined by taking into account the diminution or destruction of physical capacity as disclosed by the medical evidence. Then it must be seen to what extent such diminution or destruction should reasonably be taken to have disabled the affected employee from performing the duties which a workman of his class ordinarily performs. The medical evidence as to physical capacity is an important factor in the assessment of loss of earning capacity. The certificate of a medical expert can only say what the injury is, its effect temporary or total and to an extent the physical incapacity of the man. It is however, for the Court to find having regard to the evidence before it whether the workman has suffered partial or total disablement.

(l) " wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

(m) " workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is--

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

(ii) employed in any such capacity as is specified in Schedule II,

Whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing.

The provisions of the Act have been extended to cooks employed in hotels, restaurants using power, liquefied petroleum gas or any other mechanical device in the process of cooking.

6.9 EMPLOYER'S LIABILITY FOR COMPENSATION.

Arising out of and in the course of employment

Following factors decide whether the act is 'arising out of' or 'in the course of employment':

- ☐ When the injury occurred, the employee must have been engaged in the business of the employer. Also, he must not be doing something for his personal benefit. The accident must occur where the employer was performing his duties.
- ☐ The injuries occurred because of the risk incidental to the duties of the work or services or if the nature or condition of employment is inherent.

To make the employer pay the workers compensation at the time of injury or death suffered by the employee or workman should be a consequence of some accident in course of or out of his/her employment depends upon the following conditions.

1. The casual connection between the accident and the injury which is personal injury is caused to a workman while he/she is on work.
2. The probability is based on the reason that work has contributed because of personal injury
3. The accident and injury that is caused during the employment course.
4. The applicant who proves that the accident or injury occurred during work and its results strain that has aggravated or contributed to the injury.

Accident

The Act provides that compensation is provided to employees and their dependants only if the injuries from the accident include occupational diseases. The accident must occur in the course of employment. The Act also applies to railway servants and persons employed in any such capacity as specified in Schedule 2 of the Employees Compensation Act. The people employed in factories, mines, plantations, vehicles, construction works, and certain other hazardous occupations come under Schedule 2.

A fatal accident is one where there is death or a high risk of loss of life of the employee. In the case of a fatal accident, the employee might die or suffer severe disablements and injuries. On the other hand, non-fatal accidents are those accidents that do not have a high probability of death. In the case of non-fatal accidents, the employee or the workman might suffer disabilities or any type of personal injury.

Both fatal and non-fatal accidents are covered by the Employees Compensation Policy, if such accidents result in the mentioned contingencies in the act. Fatal accidents are taken as those which result in death, or permanent total disablement, permanent partial disablement, or fatal injuries. If any of these contingencies occur, the employees' compensation policy would pay the claim faced by the company. In the case of non-fatal accidents though, the covered contingencies might not occur. The employee or worker might not face any type of disablement or injury from such accidents. If the employee or workman suffers from a type of disablement and the disablement does not last for more than 3 days, the claim would not be paid. As a result, in several employees' compensation policies, non-fatal accidents are usually not covered unless they cause a disablement which lasts for more than 3 days.

Occupational Diseases.

There are certain occupations which expose employees to particular diseases that are inherent-

- ☐ Infra-red radiations;
- ☐ Skin diseases due to chemical or leather processing units;
- ☐ Hearing impairment caused by noise;
- ☐ Lung cancer caused by asbestos dust and Diseases due to effect of extreme climatic conditions.

Example- Miners are at a risk of developing a disease called silicosis. Sometimes miners also develop lung diseases due to exposure to dust. The people who work in agricultural lands, develop diseases through spraying of pesticides. These pesticides are toxic in nature and are health hazards to many farmers.

There are thousands of workplaces where occupation itself is dangerous in nature.

When is employer not liable to pay compensation?

The employer is not liable to pay compensation in the following circumstances:

- (a) if any injury does not result in the total or partial disablement of the employee for a period exceeding three days;
- (b) if any injury does not result in death or permanent total disablement caused by an accident which is directly attributable to-
 - ☐ if the employee is under the influence of drink or drugs at that time,
 - ☐ the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees,
 - ☐ the wilful or intentional removal by the employee of any safety guard or other devices which he knew to have been provided for the purpose of securing the safety of employees.

AMOUNT OF COMPENSATION: Section 4:

Where death results from the injury-

Where death results and from the injury an amount equal to fifty per cent. of the monthly wages of the deceased employee multiplied by the relevant factor; or an amount of one lakh and

twenty thousand rupees, whichever is more;

Where permanent total disablement results from the injury-

where permanent total disablement results from the injury an amount equal to sixty per cent. of the monthly wages of the injured employee multiplied by the relevant factor; one lakh and twenty thousand rupees, whichever is more;

("relevant factor", in relation to an employee means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the employee on his last birthday immediately preceding the date on which the compensation fell due.)

Where permanent partial disablement results from injury-

In the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury.

□ ***Explanation:*** *In the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.*

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

Explanation II.--In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I.

Where temporary disablement, whether total or partial, results from the injury:

A half monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the employee, to be paid for the *period of disablement or 5 years whichever is less. (* Sub-Section 2)

4A. Compensation to be paid when due and penalty for default.

Compensation pertaining to section 4 shall be paid as soon as it falls due.

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

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall--

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the

maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty:

SECTION 5. METHODS OF CALCULATION OF WAGES:

In this Act and for the purposes thereof the expression "monthly

"Wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows, namely: --

(a) where the employee has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the *[employee] shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

(b) where the whole of the continuous period of service immediately preceding the accident during which the employee was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the employee shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed on similar work in the same locality;

(c) The monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

Explanation.--A period of service shall, for the purposes of this section be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen day

SECTION 6: REVIEW OF HALF MONTHLY PAYMENT

1. Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the employee accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

2. Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased, or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

SECTION 7: COMMUTATION OF HALF-MONTHLY PAYMENTS.

Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for

not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

SECTION 8: DISTRIBUTION OF COMPENSATION.

(1) No payment of compensation in respect of an employee/ workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation: Provided that, in the case of a deceased employee, an employer may make to any dependant advances on account of compensation of an amount equal to three months' wages of such employee and so much of such amount] as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto. The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(3) On the deposit of any money under sub-section (1), as compensation in respect of a deceased employee/ 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 dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(4) Compensation deposited in respect of a deceased employee/ workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased employee/ 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.

(5) 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.

(6) 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, of 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 employee/ workman or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the employee.

(7) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, 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:

(8) 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

SECTION:9. COMPENSATION NOT TO BE ASSIGNED, ATTACHED OR CHARGED. -

This section provides that no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the employee by operation of law nor shall any claim be set off against the same.

SECTION 10: NOTICE AND CLAIM. -

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

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed

(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which employees are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured employee employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.

10A. POWER TO REQUIRE FROM EMPLOYERS STATEMENTS REGARDING FATAL ACCIDENTS.

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

If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased employee that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

10B. REPORTS OF FATAL ACCIDENTS AND SERIOUS BODILY INJURIES.-

(1) The said Act prescribes that the notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the Commissioner giving the circumstances attending the death or serious bodily injury. It is further prescribed that the notice is required to be sent to an authorities prescribed by the State Government under this Act.

(2) The State Government may, by notification in the Official Gazette, extend the parameters and limits of the provisions of this Act in respect of reports of Fatal Accident to any class to any class of premises.

(3) Further it is notified that provisions of S.10B does not applies to the factories to which the ESI that, is Employees State Insurance Act applies.

SECTION 11 DEALS WITH MEDICAL EXAMINATION OF THE WORKMEN.

Medical examination (Sec. 11). In certain cases of accidents, a workman must be medically examined in order to be entitled to claim any compensation as per the rules laid down from time to time

1. Where a workman has given notice of an accident and the employer before the expiry of 3 days from the date of the service of the notice offers to have him examined free of charge by a qualified medical practitioner. The workman shall submit himself for such an examination. Where the workman is in receipt of a half-monthly payment, he may also be required to submit himself for medical examination from time to time.

2. If the workmen improperly refuse to submit himself for medical examination or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction.

3. If the workmen voluntary leaves, without having been so examined, the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for the medical examination.

4. Where the workmen, who refused medical examination, subsequently dies, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

5. Where a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

6. In case the injury of a workman has been aggravated due to his refusal to be attended by a qualified medical practitioner or his refusal to follow the instructions of the medical practitioner, the workman would get compensation only for that injury which would have been, had he been properly treated. He would not get any compensation for aggravated injury

SECTION 12. CONTRACTING- Employment by Contract:

This Section Provides that where a person(principal) is during some business or trade, with any other person(contractor) for the execution of any work, the principal will be liable to pay the amount to the employee and the amount of wages will be calculated by the employer.

When the principal will be liable to pay, he will be indemnified by the contractor or any other person from whom the employee can claim compensation. The agreement between the principal and the contractor about the right amount and indemnity will be settled by the commissioner.

On, in or about the premises

If the accident occurred at a different place that is either on the premises of the workplace or any other place, the employee will not be able to recover compensation from the employer. Other than this no other constraint is there and employees can recover compensation from the contractor instead of principal.

SECTION 13: REMEDIES OF EMPLOYER AGAINST A STRANGER

This Section Provides where an employee recovers compensation as he suffered any injury and creates a legal liability of some other person other than the person by whom the compensation was paid, the other person will be entitled to be indemnified by the person who is liable to pay damages.

14A. COMPENSATION TO BE FIRST CHARGE ON ASSETS TRANSFERRED BY EMPLOYER. -

Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefor accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property.

SECTION 17: CONTRACTING OUT

This section provides that if an employee has made a contract or agreement before or after the commencement of the act, and if he voluntary ceases the right to compensation from the employer it shall be considered null and void. The employee cannot seek compensation for any personal injury arising out of or in the course of employment and the liability will be reduced of any person who is entitled to pay compensation under this Act.

18A PENALTIES.

This act provides that...

- (a) whoever fails to maintain a notice-book which he is required to maintain under sub-section (3) of section 10, or
- (b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10A, or
- (c) fails to send a report which he is required to send under section 10B, or
- (d) fails to make a return which he is required to make under section 16, shall be punishable with fine which may extend to 124 five thousand rupees.

No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence under this section, unless complaint thereof is made 125 within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner.

6.10. SUMMARY:

The Employees Compensation Act, 1923 is the first social security legislation undertaken in India to provide workmen and their dependents relief for injury by accident resulting in death or disability.

This Act applies to factories, mines, plantations, transport, establishment, construction works, railways, other hazardous occupations, and employments mentioned in schedule II.

EMPLOYER'S LIABILITY FOR COMPENSATION: Arising out of and in the course of employment.

When is employer not liable to pay compensation:

- ☐ if the employee is under the influence of drink or drugs at that time,
- ☐ the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees,

Amount of compensation: section 4: where death results from the injury- **where permanent partial disablement results from injury, methods of calculations of the wages.**

Review of half monthly payment:

Commutation of half-monthly payments.

Distribution of the Compensation.

Medical Examinations of the workmen.

Contracting and Contracting out.

No contribution is required for getting benefit under which of the following legislations?

- (A) Maternity Benefit Act
- (B) Employees' Compensation Act
- (C) Both under (A) & (B)
- (D) None of the above

6.11.MULTIPLE CHOICE QUESTIONS:

1. Under Workmen's Compensation Act, 1923

- (A) Individual manager subordinate to an employer cannot act as managing agent.
- (B) Managing agent includes an individual manager subordinate to an employer.
- (C) Only employer can act as managing agent.
- (D) The appropriate government shall appoint managing agent.**

2. The Workmen's Compensation Act, 1923, the Maternity Benefit Act, 1965 and the Employees State Insurance Act, 1948

- (A) Together can be applicable.
- (B) The Maternity Benefit Act and the Employees State Insurance Act can be applicable at a time.
- (C) The Workmen's Compensation Act and the Employees State Insurance Act can be applicable at a time.
- (D) If the Workmen's Compensation Act and the Maternity Benefit Act are applicable, the Employees State Insurance Act is not applicable.**

3. Assertion (A): Provisions of Employees' compensation Act and Maternity Benefit Act do not apply to all industries.

Reason (R): Employees' Compensation Act is a comprehensive social security legislation.

- (A) (A) is wrong, but (R) is right.
- (B) (A) is right, but (R) does not related to the (A).
- (C) (A) and (R) are right, and (R) validates the (A).**
- (D) (A) and (R) are wrong.

4. While working at the construction of a multi-storeyed building of a company, a worker employed by a 'contractor', supplied by a 'sirdar', faced an accident and became temporarily disabled. For paying compensation to the worker, who shall be held responsible as per law?

- (A) The contractor who employed the worker**
- (B) The sirdar who supplied the worker
- (C) Both (A) and (B)

(D) None of the above

5. No contribution is required for getting benefit under which of the following legislations?

(A) Maternity Benefit Act

(B) Employees' Compensation Act

(C) Both under (A) & (B)

(D) None of the above

6. If the money is due from the employer under the settlement or award, the workman or his assignee can make an application to the appropriate government for the recovery within the period given below.

(A) One year.

(B) One year and also after the said period of the appropriate government is satisfied that the applicant has sufficient cause for not making the application within one year.

(C) Two years.

(D) Three years.

7. The name of which of the following legislations has been recently changed?

(A) Workmen's Compensation Act

(B) Employees' State Insurance Act

(C) Maternity Benefit Act

(D) Payment of Gratuity Act

8. Which of the following statements relating to the Employees' Compensation Act is not correct?

(A) This Act has a link with the Workmen's Compensation Act

(B) This act is the outcome of the amendment that was made to the Workmen's Compensation Act

(C) This act does not have any provision relating to temporary disablement of workmen

(D) This act has a provision relating to permanent partial disablement

9. Assertion (A): Industrial accidents occur inter-alia due to fatigue.

Reason (R): Fatigue is the result of personal health condition of the worker as well as by overwork, monotony and boredom as part of work experience.

Codes:

(A) (A) is right but (R) is wrong.

(B) (A) is right and the (R) rightly explains the (A).

(C) Both (A) and (R) are wrong.

(D) (A) is wrong but (R) is right.

10. If there is willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing safety of workman,

(A) Employer is liable to pay compensation

(B) Employer is not liable to pay compensation

(C) Appropriate government is liable to pay compensation

(D) The Trade Union is liable to pay compensation

12. In case of fatal accident if the commissioner serves notice to the employer based on his source

(a) The employer can neglect the notice.

(b) If the employer thinks liable, he shall make the deposit within sixty days of the service of notice.

(c) If the employer thinks liable, he shall make the deposit within thirty days of the service of notice.

(d) If the employer is not liable, he shall in his statement indicate the grounds on which he disclaims liability.

(A) All statements are correct.

(B) All statements are incorrect.

(C) Only (a) and (d) are correct.

(D) Only (c) and (d) are correct.

13. Under Workmen's Compensation Act, 1923, which of the following are considered as dependent of deceased workman for the purpose of paying compensation?

(i) a minor brother or an unmarried sister or a widowed sister

(ii) a widowed daughter-in-law

(iii) a minor child of a pre-deceased son

(iv) a minor child of a pre-deceased daughter where no parent of the child is alive

(v) a paternal grandparent if no parent of the workman is alive;

(A) i, ii & v

(B) i, ii, iii & iv

(C) i, ii, iii & v

(D) i, ii, iii, iv & v

14. Under this Act, employer shall not be liable to pay compensation in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding ----- days;

(A) 7

(B) 3

(C) 5

(D) 2

15. Under this Act, employer shall not be liable to pay compensation in respect of any injury not resulting in death or permanent total disablement caused by an accident

(A) Under the influence of drink or drugs

(B) Due to the wilful disobedience of the workman to an order expressly given or to a rule expressly framed for the purpose of securing the safety of workmen

(C) Due to the wilful removal or disregard by the workman of any safety guard or other device he knew to have been provided for the purpose of securing the safety of workman

(D) All the above

Descriptive Questions:

1. What is the liability of employer to pay compensation to the workmen?
2. Explain the basics and objectives to workmen's compensation Act.
3. State and explain the provisions under section 7 and 10A of the Workmen's Compensation Act.
4. **Write a brief note on the following:**
 - a) Workmen
 - b) Monthly wages
 - c) Occupational Diseases
 - d) Employer not liable to pay compensation
 - e) Partial disablement and Total disablement
 - f) Provisions about medical examination of workmen
 - g) Penalties under the act
5. Write a detailed Provisions Calculation of the amount of compensation.

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CHAPTER 7

SOCIAL LEGISLATION

7.1 Employee State Insurance Act ,1948

7.2 Miscellaneous Provisions Act , 1948

Unit 3 Employee State Insurance Act ,1948

- **DEFINITIONS SECTION 2 :**

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

1. **Appropriate Government** means, in respect of establishment under the control of the Central Government or a railway administration or a major port or a mine or an oilfield, the Central Government, and in all other cases, the State Government. [Section 2 (1)]

2. **Confinement** : means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead. [Section 2 (3)]

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

4. **Corporation** : means the Employees State Insurance Corporation set up under Section 3 of this Act. [Section 2 (6)]

5. **Dependant** : means any of the following relatives of a deceased insured person, namely

i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter;

ii) a widowed mother;

iii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of eighteen years and is infirm;

iv) if wholly or in part dependent on the earnings of the insured person at the time of his death -

a) a person other than a widowed mother,

b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or a widowed and a minor.

c) a minor brother or an unmarried sister or a widowed sister if a minor.

d) a widowed daughter-in-law, a minor child of a minor child of a pre-deceased son, a minor child of pre-deceased daughter where no parents of a child in alive, or a paternal grand - parent if no parent of the insured person in alive.

The relatives in groups (i) and (ii) will be entitled to clean the benefits under the Act by the virtue of their relationship injured person.

The relations in group (iii) and (iv) will have prove thier to dependence on the insured workman in order to claim the benefit under the Act.

6. Employment Injury [Section 2 (8)] : It means a personal injury to an employee caused by accident as an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accedent occurs or the occupational disease is contracted within or outside the territorial limits of India An "Insurable employment" means an employment in a factory establishment to which this Act applies.

7. Contribution period : [Section 2 (6)] It means the such period as may be specified in the regulations. It must not exceed 6 consecutive months [Rule 2 (2 – A)] .

8. Insured Person [Section 2 (14)] : It means a person who is or was an employee in respect of whom contributions are or were payable under the act, and who is by reason thereof, entitled to any of the benefit provided by the Act.

- **OBJECTIVES :**

The main objectives of the employee's State Insurance Act, 1948 it is provide to the workers medical relief, sickness cash benefit, maternity benefit to women workers, pension to the dependents of deceased workers and compensation for fatal and other employment injuries including occupational diseases, in an integrated form through a contributory fund. Where a workman is covered under ESI scheme, no compensation could be claimed from his employer under the workmen's compensation Act in respect of employment injury sustained by him.

- **EXEMPTION :**

The Act does not apply to the following :

i) Factories wherein less than 10 persons are employed.

ii) Seasonal factories engaged exclusively in any of the following activities namely cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar, tea or any manufacturing process incidental to or connected with any of the aforesaid activities, and including factories engaged for a period of not exceeding seven months in a year in blending, packing or repacking of tea or coffee, or in such other process as may be specified by the Central Government under section 2 (19 A)

iii) A factory which was exempted from the provisions of the Act as being a seasonal factory will not lose the benefit of the exemption on accounts of the amendment of the definition of "Seasonal Factory"

iv) Mines subject to the Mines Act, 1952.

v) Railway running Sheds.

vi) Government factories or establishments, whose employees are in receipt of benefits similar or superior to the benefit provided under the Act; and

vii) Indian naval, military or air forces, section 2(9) .

- **EMPLOYEES ENTITLED :**

Every employee (including casual and temporary employees), whether employed directly or through a contractor who is in receipt of wages upto Rs. 15000/- p.m (excluding remuneration for overtime work) are also covered.

However, apprentices engaged under the Apprentices Act are not entitled to the ESI benefits. Coverage of part time employees under the ESI Act will depend on whether they have contract of service or contract for service with the employer. The former are covered whereas the latter are not covered under the ESI Act.

In the following cases, the employees have been held to be covered under the Act :

- i) Persons employed in a canteen of a club
- ii) Drivers employed by the transport organisation
- iii) Persons engaged in distribution and sale of products.
- iv) Person carrying administrative work of processing the orders and executive sales
- v) Hawkers employed for sale of products
- vi) Employees of cycle stand and canteen run in cinema theatres by contractors.
- vii) Members of editorial and administrative staff of printing press publishing newspaper.
- viii) A home worker rolling beedis at home.
- ix) Medical representatives.
- x) Persons employed in a hospital attached to and maintained by factory.
- xi) Part time doctor employed for ambulance room.
- xii) Book binders engaged by a contractor.
- xiii) Sales clerk working in a factory.
- xiv) A director and the managing director of a company who is paid a certain remuneration per month have been held to be an employee.

- **INSURABLE LIMIT :**

The ESIC has enhanced the wage ceiling from Rs. 10000 to Rs. 15000. The new ceiling came into force by the Central Government in March 2010. The following family members are entitled to the benefit.

- a) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,
- b) minor brother or an unmarried sister or a widowed sister if a minor,
- c) a widowed daughter-in-law,
- d) a minor child of a pre-deceased son,
- e) a minor child of a pre-deceased daughter where no parent of the child is alive, or
- f) a paternal grandparent if no parent of the insured person is alive. [Section 2 (6A)]

- **REGISTRATION OF FACTORIES AND ESTABLISHMENT**

1. Every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf. [Section 2A]

1 **a) Establishment of Employees' State Insurance Corporation**

Section 3 of the Act provides for the establishment of the Employees State Insurance Corporation by the Central Government for the administration of the Employees State Insurance Scheme in accordance with the provisions of this Act.

[Section 3 (1)] The 'Corporation shall be a body corporate by the name of Employees' State Insurance Corporation having perpetual succession and a common seal and shall by the said name sue and be sued. **[Section 3 (2)]**

- **CONSTITUTION [SECTION 4] :**

The Corporation shall consist of the following members, namely -

- a) A Chairman, a Vice-Chairman and not more than five persons to be appointed by the Central Government;
- b) One person each representing each of the States in which this Act is in force to be appointed by the State Government concerned;
- c) One person to be appointed by the Central Government to represent the Union territories;
- d) Ten persons representing employers to be appointed by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government;
- e) Ten persons representing employees to be appointed by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government;

f) Two persons representing the medical profession to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government;

g) Three members of Parliament of whom two shall be members of the Lok Sabha and one shall be a member of the Rajya Sabha elected respectively by the members of the Lok Sabha and Rajya Sabha; and

h) The Director General of the ESI Corporation, ex officio.

• **TEAM OF OFFICE OF MEMBERS OF THE CORPORATION [SECTION 5] :**

The term of office of members of the Corporation, other than the members referred to in clauses (a), (b), (c), (d) and (e) of section 4 and the ex officio member, shall be four years commencing from the date on which their appointment or election is notified. [Section 5 (1)]

Provided that a member of the corporation shall, notwithstanding the expiry of the **said period of four years**, continue to hold office until the appointment or election of his successors is notified.

The members of the Corporation referred to in clauses (a), (b), (c), (d) and (e) of section 4 shall hold office during the pleasure of the Government appointing them. [Section 5 (2)]

An outgoing member of the Corporation, the Standing Committee, or the Medical Benefit Council shall be eligible for reappointment or re-election as the cases may be. [Section 6]

• **DUTIES OF THE CORPORATION :**

The ESI corporation shall, in each year, frame a budget showing the pro le receipts and the expenditure which it proposes to incur during the following year and shall submit a copy of the budget for the approval of the Central Government before such date as may be fixed by it in that behalf. [Section 32]

The Corporation shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government. [Section 33]

The accounts of the Corporation shall be audited annually by the Comptroller and Auditor-General of India (CAG). [Section 34 (1)]

The CAG of India and any person appointed by him in connection with the audit of the accounts of the Corporation shall have the right to demand the production of books, accounts, and connected vouchers and other documents and papers and to inspect any of the offices of the Corporation. [Section 34 (2)]

The certificate of accounts together with the audit report thereon shall be forwarded by the Corporation to the Central Government along with its comments on the report of the Comptroller and Auditor-General. [Section 34 (3)]

The Corporation shall submit to the Central Government an annual report of its work and activities. [Section 35]

The Corporation shall, at intervals of five years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government. **[Section 37]**

The Director General or any officer of the Corporation may, if so authorized by the Central Government by general or special order, recover any arrears of amount due from a factory or an establishment or, as the case may be, from the Principal or immediate employer by distraint and sale of its or his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961.

[Section 45G (5)]

• **APPLICATION OF CERTAIN PROVISIONS OF THE INCOME TAX :**

The provisions of the **Second and Third Schedules to the Income-Tax Act, 1961, and the Income-Tax (Certificate Proceedings) Rules, 1962**, as in force from time to time, shall apply with necessary modifications as if the said Provisions and the rules referred to the arrears of the amount of contributions, Interests or damages under this Act instead of to the income-tax. **[Section 45H]**

Provided that any reference in the said provisions and the rules to the “assesses” shall be construed as a reference to a factory or an establishment or the principal or immediate employer under this Act.

• **GENERAL PROVISION ON BENEFIT :**

Subject to the provisions of this Act, the insured persons, their dependents or the persons hereinafter mentioned, as the case may be, shall be entitled to following benefits, namely –

- a) Periodical payments to an insured person in case of sickness certified a duly appointed medical practitioner (hereinafter referred to sickne benefit);
- b) Periodical payments to an insured woman in case of confinement miscarriage or sickness arising out of pregnancy, confinement, prematut birth of child or miscarriage, (hereinafter referred to as maternity benefit);
- c) Periodical payments to an insured person suffering from disablement as result of an employment injury (hereinafter referred to as disablement benefit);
- d) Periodical payments to such dependants of an insured person who dies as a result of an employment injury (hereinafter referred to as dependents benefit);
- e) Medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit);
- f) Payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person (to be known as funeral expenses. **[Section 46 (1)]**

Provided that the amount of such payment shall not exceed such amount as may be prescribed by the Central Government and the claim for such payment shall be made within three months of the

death of the insured person or within such extended period as the Corporation or any officer or authority authorized by it in this behalf may allow conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person. [Section 46 (2)]

- **SICKNESS BENEFIT :**

The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government. [Section 49]

The daily rate of sickness benefit, in respect of the insured person during any benefit period, shall be the standard benefit rate corresponding to the average daily wages of that person during the corresponding contribution period.

The insured person shall not however, be entitled to sickness benefit for an initial waiting period of 2 days. But if the spell of sickness re-occurs within **15 days** he shall be entitled to recover the benefit even for the **first 2 days in the second or subsequent spell**. The sickness benefit is also not to be paid to any person for more than **91 days in any 2 consecutive benefit periods**.

- **MATERNITY BENEFIT :**

The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government. [Section 50]

An insured woman shall be entitled to maternity benefit in case of

- i) confinement or
- ii) Miscarriage or
- iii) Sickness arising out of pregnancy, confinement, or miscarriage. Before a woman is entitled to maternity benefit she must be certified to be eligible for such payment by an authority specified in this behalf.

[Section 46(1) (b)].

Provisions of **Rule 56 of Employees State Insurance (General) Regulations, 1950** are

1. An insured woman shall be qualified to claim maternity benefit for a confinement occurring or expected to occur in a benefit period, if the contribution were payable for not less than 70 days in the immediately preceding **2 consecutive** contribution period.
2. To obtain benefit the insured woman must get one certificate of pregnancy, of expected date of confinement and of actual confinement and **send them to the Local Office to which she is attached**.
3. The daily rate of maternity benefit shall be equal to twice the standard benefit corresponding to the average daily wages in respect of the insured woman during the corresponding period or Rs. 20 whichever is higher. The payment of maternity benefit is subject to following rules :

a) The insured woman who is qualified to claim maternity benefit shall be entitled to recover it at the daily rate for all days on which she does not work for remuneration during a period of **12 weeks** of which not **more than 6** shall **precede the expected date of confinement.** [Section 50 (2)]

b) If the insured woman dies during her confinement or **within 6 weeks** thereafter, leaving behind the child, maternity benefits shall be paid for the whole of that period.

c) If the child also dies during the said period, maternity benefits shall be paid for the day up to and including the day of the death of the child. In case **(b) and (c), maternity benefit shall be paid to the person nominated by the woman for the purpose. If there is no such nominee, the maternity benefit shall be paid to her legal representative.**

An insured woman shall, **in case of miscarriage** or medical termination of pregnancy, be entitled to maternity benefit if -

a) She is qualified to claim maternity benefit;

b) She produces such proof of miscarriage as may be required under the regulations. If these conditions are satisfied the insured woman shall be entitled to maternity benefits for all days on which she does not work for remuneration during a **period of 6 weeks** immediately following the date of her miscarriage or medical termination of pregnancy.

An insured woman shall be entitled to maternity benefit for an **additional Period not exceeding 1 month for all days she does not work for remuneration in case of (a) sickness arising out of pregnancy (b) Confinement (c) premature birth of child or (d) miscarriage.** But the following conditions must be fulfilled before she can claim maternity benefit :

i) She must be qualified to claim this amount under **Sec. 50**

ii) She must produce such proof as may be required under the regulations in support of her claim.

Medical Bonus : Rs. 2000 on account of confinement expenses shall be paid to an insured woman and an insured person in respect of his wife, if confinement occurs at a place where necessary medical facilities under ESI scheme are not available. The confinement expenses shall be paid for two confinements only with effect from 1st December, 2008.

• **DISABLEMENT BENEFIT :**

Subject to the provisions of this Act -

a) A person who sustains temporary disablement for not less than three days (excluding the day of accident), shall be entitled to periodical payment at such rates and for such period and subject to such conditions as may be prescribed by the Central Government;

b) A person, who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment at such rates and for such period' and subject to such conditions as may be prescribed by the Central Government. [Section 51]

4.14.1 Disablement benefit shall be paid to an insured person suffering from disablement as a result of an employment injury sustained as an employee if he is certified to be eligible for such payment by an authority established in this behalf. **[Section 46 (1) (c)]**

- **Presumption as to Accident Arising in the Course of Employment**

a) For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment. **[Section 51A]**

b) Accident Happening While Acting in Breach of Regulation, etc.

An accident shall be deemed to arise out of and in the course of an insured person's employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or he is acting without instructions from his employer, if -

i) The accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or on without instructions from his employer, as the case may be; and

ii) The act is done for the purpose of and in connection with the employer's trade or business. **[Section 5 (I)(B)]**

c) **Accident Happening While Traveling in Employer's Transport.** An accident happening while an insured person is, with the express or implied permission of his employer, traveling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if -

i) The accident would have been deemed so to have arisen had he been under such a obligation; and

ii) At the time of the accident, the vehicle –

a) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and

b) is not being operated in the ordinary course of public transport service. **[Section 51 C(1)]**

c) In this section "vehicle" includes a vessel and an aircraft. **[Section 51C (2)] [Accident Happening While Meeting Emergency]**

d) An accident happening to an insured person in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, or protect persons who are, or are thought to be or possibly to be, injured or imperiled, or to avert or minimize serious damage to property. **[Section 5 ID]**

- **DEPENDANT'S BENEFITS:**

If an insured person dies as a result of an employment injury sustained as employee under this Act (whether or not he was in receipt of any periodical avment for temporary disablement in respect of the injury) dependants' benefit shall be payable at such rates and for such period and subject to such conditions as may be prescribed by the Central Government to his dependants specified in **sub clause (i), sub-clause (ia) and sub-clause (ii) of clause (6A) of section 2. [Section 52 (1)]**

In case the insured person dies without leaving behind him the dependants as aforesaid, the dependants' benefit shall be paid to the other dependants of the deceased at such rates and for such period and subject to such conditions as may be prescribed by the Central Government. **[Section 52 (2)]**

- **FUNERAL BENEFIT**

This Act provides for reimbursement of expenditure made by —

- a) Eldest surviving member of the family of Insured person towards funeral, or
- b) If the insured person did not have family, or
- c) Was not living with his family at the time of his death, to the person who actually incurred the expenditure on the funeral.
- d) Maximum amount allowed is Rs. 5000/- with effect from 1st september, 2009
- e) The claim should be made within 3 months of the date of death of insured person or such extended period as may be allowed by the coporation.

In addition is the above mentioned benefit the other benefit are :

- i) Rehabilitation allowance
- ii) Medical benefit to Retired/ Disabled Insured persons and his/her spouse.
- iii) Confinement expenses
- iv) Vocational rehabilitation Allowances
- v) Unemployment Allowances

- **OCCUPATIONAL DISEASE :**

- i) If an employee employed in any employment specified in **Part A of Third Schedule** contracts any disease specified therein as a occupational disease in particular to that employment, or
- ii) If an employee employed in the employment specified in **Part B of that Schedule** for a continuous period of **not less than six months** contracts any disease specified therein as an occupational disease in particular to that employment or

iii) If an employee employed in any employment specified in **Part C of that Schedule** for such continuous period as the Corporation may specify respect of each such employment, contracts any disease specified there: as an occupational disease in particular to that employment.

The contracting of the disease shall, unless the contrary is proved, be deemed to be an "employment injury" arising out of and in the course employment. **[Section 52A (1)]**

• **OBLIGATIONS OF EMPLOYERS :**

1. The employer should get his factory or establishment registered with the E.S.I corporation within 15 days after the Act becomes applicable to it, and obtain the employer's code number.

2. The employer should obtain the declaration form from the employees covered under the Act and submit the same along with the return of declaratio forms, to the ESI office. He should arrange for the allotment of Insurance Numbers to the employees and identity cards.

3. The Employer should deposit the employees' and his own contribution to the ESI Account and the employees contribution in the prescribed manner. Whether he has sufficient resources or not, his liability under the Act can not be disputed. He cannot justify non-payment of contribution due to non availability of finance.

4. The employer should furnish a return of contribution along with the challan of monthly payment within 30 days of the end of each contribution period.

5. The employer should not reduce the wages of an employee on account of the contribution payable by employer **[Section 72]**

6. The employer should cause to be maintained the prescribed records /registers namely the register of employees, the inspection book and the accident book.

7. The employer should report to the E.S.I. authorities of any accident in til place of employment within 24 hours or immediately in case of serious of fatal accidents. He should make arrangements for first aid transportation of the employee to the hospital. He should also furnish to the authorities such further information and particulars of an accident as may be required.

8. The employer should inform the local office and the nearest E.S.I. dispensary or hospital in case of death of any employee immediately

9. The employer should inform the local office and the nearest ESI dispensary hospital and furnish all information and particulars of an accident as may required.

10. The employer put to work any sick employee and allow him leave, if he has been issued the prescribed certificate.

11. The employer should not dismiss a discharge any employee during the period he/she is in receipt of sickness / maternity temporary disablement benefit, or his under medical treatment, or is absent from work as a result of illness duly certified or due to pregnancy or confinement. **[Section 73]**

• **OBLIGATION OF EMPLOYEES :**

1. The employees should assist their employer for the registration with the ESI authorities and in obtaining the insurance and identity cards,
2. The employees who are receipt of sickness or temporary benefit, should remain under medical treatment and observed the instructions of the medical officer of the ESI dispensary or hospital and should not be anything to retard the process of recovery [**Section 64**]
3. The employee who sustains an employment injury, should give a notice of the accident to the employer by means of an entry in the accident book or otherwise.
4. The employee should submit the claims for the benefits within the prescribed time and along with the prescribed document.

- **RIGHTS OF EMPLOYERS :**

1. Right to recover the employees' share of contribution from his wages.
2. Right to discharge any employee after giving the requisite notice provided the terms of employment so allow, under following circumstances.
 - i) If the employee has been in receipt of temporary disablement benefit for a continuous period atleast 6 months.
 - ii) If the employee has been under medical or has been absent from work as a result of illness due to pregnancy etc. for a continuous period of atleast 6 months; or
 - iii) If the employee has been under medical treatment for any of the specified diseases, for a continuous period of atleast 18 month [Regulations 98].
3. Right to appeal against an order of the Employees Insurance court involving a substantial question of law, to the high court within 60 days [**Section 82**].

- **RIGHTS OF EMPLOYEES :**

1. Right to claim the medical and cash benefits allowable in accordance with the Act and the regulations.
2. Right to appeal against an order of the Employee's Insurance court, to the High court within 60 days.

- **EMPLOYEE'S INSURANCE COURT :**

A dispute arising under the Act shall be decided by Employee's Insurance court and not by a civil court. The Employees Insurance court shall be constituted by the State Government for such local areas as may be specified and consisting of such number of judges as the Government may think fit [**section 74**]

Adjudtcation of Disputes and Claims

The Employees Insurance Court shall adjudicate upon the following disputes and claims :

A. Disputes as to

- i) whether an employee is covered by the Act or whether he is liable to pay contribution; or
- ii) The rate of wages or average daily wages of an employee; or
- iii) The rate of contribution payable by the employer in respect of an employees; or.
- iv) The person who is or was the principal employer in respect of an employee; or
- v) The right of any benefit and the amount and duration thereof; or
- vi) Any direction issued by the corporation on a review of any payment dependent's benefit; or
- vij) Any other matter in respect of any contribution or benefit or other due payable or recoverable under the Act.

B. Claims as to :

- i) recovery of contributions from the principal employer;
- ii) recovery of contribution from a contractor;
- iii) recovery for short payment or non payment of any contribution under section 68. iv) recovery of the value or amount of benefits received improperly under section 70.
- v) recovery of any benefit admissible under the Act.

• **CONDITIONS FOR ADMISSION OF CERTAIN DISPUTES :**

No matter which is in disputes between employer and the ESI corporation in respect of any contribution or any other dues shall be admitted unless the employer deposits with the court 50% of the amount due from him as claimed by the corporation, The court may waive or reduce the amount to be deposited for reasons to be recorded in writing.

• **APPEAL :**

An appeal shall lie to the High Court against an order of an employee's Insurance Court, if it involves a substantial question of law. The appeal should be preferred within 60 days [Section 82].

Questions

1. Define the following terms as per Employee State Insurance Act 1948
 - a. Appropriate Government
 - b. Confinement :
 - c. Contribution :

- d. Corporation :
 - e. Dependant :
 - f. Employment Injury
 - g. Contribution period
 - h. Insured Person
2. What are the objectives of the Employee State Insurance Act 1948
 3. What are the benefits to which Employees are entitled under the Act
 4. State the Insurable Limit under the Act
 5. Describe the process of Registration of Factories And Establishment
 6. Explain the Constitution of the Employees State Insurance Corporation
 7. State the Duties of the Employees State Insurance Corporation
 8. Explain the provisions of Maternity Benefit
 9. Explain the Disablement Benefit available under the Act
 10. What are the Funeral Benefits available under the Act
 11. Write a note on Occupational Disease
 12. What are the Obligations of Employers under the Act
 13. What are the Obligations of Employees under the Act
 14. What are the rights of employers under the Act
 15. What are the rights of employees under the Act

3.2 Miscellaneous Provisions Act , 1948

5.3 : MEANING OF PROVIDENT FUND :

This Act does not define Provident Fund, however [S-2(e)] of the Provident Funds Act 1925 says

—

Provident Fund -A fund in which subscriptions or deposits of any class or classes of employees are received and held on their individual accounts, and includes any contributions and any interest or increment accruing on such subscriptions, deposits or contributions under the rules of the fund.

The Employees' Provident Funds and Miscellaneous Provisions Act 1952 presently consist of three schemes.

- i) Employees' Provident Fund Scheme, 1952.
- ii) Employees' Deposit Linked Insurance Scheme, 1976.
- iii) Employees' Pension Scheme, 1995. (Earlier Family Pension Scheme 1971).

- **APPLICABILITY:**

It extends to the whole of India except the State of Jammu and Kashmir.

Coverage : It applies to :

- a) Every establishment which is a factory, engaged in any industry specified in **Schedule-I** and in which **20 or more** persons are employed.
- b) Any **other establishment** employing 20 or more persons, or
- c) Class of such establishments, which the Central Government may by notification in the official gazette specify in this behalf. In exercise of this power this Act has been extended to workers in plantations of tea, coffee, rubber, cardamom and pepper employing 50 or more workers.
- d) The Central Government after giving 2 months notice by notification in the official gazette can apply provisions of this Act to any establishment employing less than 20 persons.

1. This Act **does not apply** to the following : [S. 16]

1. Co-operative Societies

This Act does not apply to any establishment, registered under any Cooperative Societies Act, and employing less than 50 persons and working without the aid of power.

2. Government Establishments

Establishment belonging to or under the control of the Central or the State Government, whose employees are getting benefits of contributory provident fund, or old-age pension, according to the scheme framed by the Central or State Government.

3. Central Provincial or State Act

Establishment set up under :

- a) Central

- b) Provincial or
- c) State Act, whose employees are entitled to the benefits of contributory provident Fund or old-age pension, under that Act.

4. Establishments Exempted on Account of Financial Problems and other Circumstances

The Central Government by a notification may exempt any class of establishments from the provisions of this Act, which may be retrospective or prospective, upon the conditions and for the period specified in the notification.

• DEFINITIONS :

1. Appropriate Government : [S.2(a)]

a) Appropriate Government is the Central Government, in relation to :

- i) an establishment belonging to or under the control of the Central Government, or
- ii) in relation to an establishment connected to a railway company, or
- iii) a major port, or
- iv) a mine, or
- v) an oil field, or
- vi) a controlled industry, or
- vii) in relation to an establishment having departments and branches in more than one State.

b) Appropriate Government means the state government in relation to any other establishment.

2. Controlled Industry : [S.2(d)]

It means any industry the control of which by the union has been declared by Central Act to be expedient in the public interest. All the industries specified in the First Schedule of Industries (Development and Regulation) Act have been taken under the control of the union in the public interest.

3. Employer : [S.2(e)]

a) Employer means in relation to an establishment which is a factory –

- i) the owner, or
- ii) the occupier of the factory, including
 - a) the agent of such owner or occupier,
 - b) the legal representative of a deceased owner or occupier,
 - c) manager of a factory under [section 7] of Factories Act.

b) In relation to any other establishment employer means –

- the person who has ultimate control over the affairs of the establishment; or
- the authority which has the ultimate control over the affairs of the establishment; or
- where the affairs of the establishment are entrusted to a manager, managing director or managing agent. Such manager, managing director or managing agent.

4 Employee : [S.2(f)]

Employee means :

- a) any person employed for wages in any kind of work, manual or Otherwise
- b) in or in connection with the work of an establishment, and
- c) who gets his wages directly or indirectly from the employer and includes any person
- d) employed by or through a contractor, or
- e) in or in connection with the work of an establishment, or
- f) engaged as an apprentice (not being an apprentice engaged Under the Apprentices Act, 1961), or
- g) under the standing orders of the establishment.

In short, employee means any person who is employed for wages in any kind of work manual or otherwise, in relation to the work of an establishment and who gets wages directly or indirectly from the employer. It also includes any person employed by or through a contractor relating to the work of the establishment. The **Polyclinic, Nagarcoil Vs. Regional Commissioner E.P.F. Tamil Nadu** : It was held that apprentices are not employees.

- **EXEMPTED EMPLOYEE : [S.2(FF)] :**

Exempted employee means an employee to whom a scheme or the insurance scheme, as the case may be, would, but for the exemption granted under Section 17 have applied. Section 17 deals with exemption to an establishment or a person and class of persons.

Appropriate Government is given powers to exempt establishments from the provisions of this Act, by a notification in the official gazette where :

- a) rules of such establishment relating to contribution are equal to or better than those provided under this Act.
- b) employees are enjoying better benefits of Provident Fund.
- c) employees are getting benefits in the nature of Provident Fund, Pension, Gratuity and these benefits separately or jointly are better as compared to the benefits under this Act, and

d) the appropriate government is of the opinion that these benefits are not less favourable to the benefits provided under this Act.

e) this exemption can be granted only after consulting the central board.

f) once, the exemption is granted the employer has to establish Board of Trustees for administration of Provident Fund.

- **EXCLUDED EMPLOYEE : [PARA- 2(f)] :**

Para 2 (f) of employees Provident Fund Scheme, 1952 says. Excluded employee means:

a) an employee who having been a member of the fund, withdraw the full amount of his accumulations in the fund, on retirement from service after attaining the age of 55 years. Or

b) immediately before migration from India for permanent settlement abroad, or for taking employment abroad.

c) an employee whose pay, at the time, he is entitled to become a member, exceeds Rs. 6,500 per month (w.e.f. 1.6.2001)

1. The term pay includes :

i) basic wages

ii) dearness allowance

iii) retaining allowance

iv) cash value of food concession, if any :

2. After becoming the member of the Fund, if the pay exceeds Rs. 6,500 per month, he continues to be a member but his contributions are payable on the basis of Rs. 6,500 per month

- **EXEMPTED ESTABLISHMENT [S.2(FFF)]**

Exempted Establishment means an establishment in respect of which exemption has been granted under Section 17 from the operation of.

a) all, or

b) any of the provisions of any scheme, or

c) the insurance scheme, as the case may be whether such exemption has been granted to :

i) the establishment as such, or

ii) any person, or

iii) class of persons employed therein.

- **CANCELLATION OF EXEMPTION :**

The exemption may be cancelled by the authority who granted it, by an order writing, if the employer fails to comply with the conditions imposed by the authority. On cancellation, the accumulated amount of each employee shall be transferred to the scheme within the specified time and the manner prescribed.

Establishment include all departments and branches : where an establishment consists of -

- a) different departments. or
- b) has branches.
- c) whether situated in the same place. or
- d) at different places, all such departments and branches shall be treat parts of the same establishment.

- **FACTORY : [S.2(G)] :**

Factory means:

- a) any premises including any precincts thereof
- b) in any part of which a manufacturing process is being carried on, or
- c) is ordinarily so carried on
- d) with the aid of power, or
- e) without the aid of power. (For details see definition under "Factories Act")

Pragnarain Vs. Crown : It was held-Factory means premises where any this done towards the making or finishing of an article upto the state when it ready to be sold or is in a suitable condition to be put in the market.

- **Manufacturing Process : S.2(ic)**

Manufacture or Manufacturing Process means, any process for

- i) making (ii) altering
- iii) repairing (iv) ornamenting
- v) finishing . (vi) packing
- vii) oiling (viii) washing
- ix) cleaning (x) breaking up
- xi) demolishing, or xii) otherwise treating or adapting. any article or substance. with a view to it use, sale, transport, delivery or disposal. (For details refer definition under "Factories Act").

V.H. Kotecha Vs. Regional Inspector of Factories : It was held the business of collecting ghee brought from several places, pouring in a big pan, heating to make it uniform and again pouring into the tins and sealing was manufacturing process because - the process involved "packing and treating adapting any article or substance with a view to its transport and sale,

- **THE EMPLOYEES PROVIDENT FUND SCHME :**

1 [S.5] gives powers to the Central Government to frame a scheme to be called "the Employees' Provident Fund Scheme", for the establishment of provident funds under this Act for :

a) Employees or class of employees.

b) The establishment or class of establishments to which the said scheme shall apply. This is done by the Central Government by a notification in the official gazette.

i) Immediately, after the framing of the scheme a **fund** in accordance with the provisions of this Act and the scheme shall be established.

ii) The **fund** shall vest in, and be administered by the 'Central Board'

iii) A scheme framed under the Act may provide for **all or any of the matters** specified in **Schedule - II**.

iv) Any of the provisions of the scheme shall take effect either (i) prospectively or (ii) retrospectively on such date, as may be specified in the scheme.

- **Central Board : [S.5 (A)]**

A. The Central Government may, constitute a **Board of Trustees** called the "Central Board", with effect from such date as may be specified in the notification, consisting of the **following persons as members** :

i) **A Chairman and a Vice-Chairman** to be appointed by the Central Government.

ii) Central Provident Fund Commissioner, Ex-Officio.

iii) Not more than **5 persons** appointed by the **Central Government** from amongst its officials

iv) Not more than **15 persons** representing **Government of such States** as the Central Government may specify and appointed by the Central Government.

v) **10 persons** representing **Employers of Establishment** to which the scheme applies, appointed by the Central Government after consultation with such organizations of employers, recognized by the Central Government.

vi) **10 persons** representing **Employees** in the establishments. Appointed by the Central Government after consultation with such organizations of employees, appointed by the Central Government.

B. The **terms and conditions** subject to which a

- i) member of the central board may be appointed,
- ii) time,
- iii) place and
- iv) procedure of the meetings.

Shall be such as may be provided in the scheme.

C. The Central Board shall perform such **functions** as may be required under any provisions of the scheme.

D. The Central Board shall maintain proper **accounts** of its income and expenditure in the prescribed form and manner, after consulting the Comptroller and Auditor-General of India.

i) These accounts shall be **Audited** annually by the Comptroller and Auditor-General of India and the expenses for audit shall be borne by the Central Board.

ii) The Comptroller and Auditor-General of India and any person appointed by him shall have the same **rights, privileges and authority** as they have in connection with audit of Government accounts.

iii) The **accounts certified** by them, together with audit report shall be forwarded to the Central Board, which will forward the same to the Central Government with its comments and also the annual report. This will be placed before each House of Parliament.

• **Executive Committee : [S.5AA] :**

The Central Government may constitute an Executive Committee by a notification to assist the Central Board in performance of its functions. It shall consist of –

- i) a chairman appointed by the Central Government from among the members of the Central Board.
- ii) persons from Central Government,
- iii) employers
- iv) employees

All these persons are to be appointed from amongst the members of the Central Board.

v) Central Provident Fund Commissioner, ex-officio,

The terms and conditions subject to which a member of the Central Board may be appointed or elected to the Executive Committee and the time, place and procedure of the meetings of the Executive Committee shall be such as may be provided in the scheme.

• **State Board : [S.5B] :**

a) The Central Government may, constitute a Board of Trustees called the "State Board" in consultation with the State Government, by a notification

b) The state Board shall exercise such (i) Powers and (ii) Duties as the Central Government may assign to them from time to time.

c) The terms and conditions subject to which (i) a member of a State Board may be appointed and (ii) the time, (iii) place and (iv) procedure of the meetings, shall be, as may be provided for in the scheme.

d) The method of recruitment, salary, allowances discipline and other conditions of service of officers and employees of a State Board shall be as may be specified by that Board.

- **Appointment of Officers : [S.5DJ**

The Central Government has powers to appoint the following :

i) Central Provident Fund Commissioner, who shall be the Chief Executive officer of the Central Board.

ii) Financial Advisor and Chief Accounts Officer, who shall assist the Central Provident Fund Commissioner.

iii) Deputy and Regional Provident Fund Commissioner.

iv) Assistant Provident Fund Commissioner and

v) Such other officers and employees as it may be necessary to be appointed by the Central Board.

vi) The method of recruitment, salary and allowances, discipline and other conditions of service shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the employees and officers of the Central Government, drawing corresponding scales of pay.

- **Inspectors : [5.13]**

The Appropriate government has powers to appoint inspectors by notification in Official Gazette, for the purposes of this Act.

Powers and Duties of Inspectors : The Inspector may -

i) Require an employer or any contractor to furnish such information as may be necessary

ii) Enter and search any establishment or any premises and require any person to produce documents relating to employment of persons and payment of wages.

iii) Examine

- the employer or
- any contractor
- his agent or servant or
- Any other person in charge of the establishment,

- iv) Make copies of or take extracts from documents maintained in relation to the establishment.
- v) Seize documents which he considers relevant in respect of any offence.
- vi) Exercise such other powers provided in the scheme.

Provisions of the Code of Criminal Procedure 1898, shall apply in search or seizure made under the authority of a warrant, issued under the Code

- **Delegation of Powers : [S. 19]**

The appropriate Government may direct that:

- a) any power or
- b) authority or
- c) jurisdiction exercisable by it under this Act

the scheme, the Pension scheme or the Insurance scheme shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also :

- i) 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 Governments, as may be specified in the notifications; and
- ii) 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.

- **CONTRIBUTIONS :**

- 1. Basic Wages [S-2 (b)]
- 2. Contribution [S-2 (c)]
- 3. Law Relating to Contributions

- 1. **Basic Wages : [S.2 (b)]**

The term "**Wages**" is not defined anywhere in this Act but, "**Basic Wages**" means all emoluments which are earned by an employee :

- i) while on duty, or
- ii) on leave, or
- iii) on holidays with wages in either case,
- iv) in accordance with the terms of the contract of employment and
- v) are paid or payable in cash to him

But does not include

- i) the cash value of any food concession
- ii) any Dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living)
- iii) House rent allowance,
- iv) overtime allowance,
- v) bonus,
- vi) Commission or
- vii) any other similar allowance payable to the employee in respect of his employment, or
- viii) of work done in such employment,
- ix) any presents made by the employer.

1. a) Dearness Allowance

1. [S.6] : For the purpose of this section the Dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Dearness allowance for the purposes of this section means all such amount paid to an employee on account of a rise in the cost of living.

1.b) Retaining Allowance

(2) Explanation to [S-6] : For the purpose of this section, Retaining Allowance means:

- any allowance payable for the time being to an employee of any factory, or
- other establishment, during any period in which the establishment is not working, for retaining his services.

2. Contribution : [S.2(c)]

“Contribution” means, a contribution payable in respect of a member under

(a) a scheme, or (b) the contribution payable in respect of an employee to whom the Insurance Scheme applies.

3. Law Relating to Contributions may be summarized as follows :

a) The Provident Fund Act provides for 2 types of contributions :

- i) Employers contribution
- ii) Employees contribution

b) All the employees, other than an Excluded Employee are required to be enrolled as members of the *fund* from the day; the Act comes into force in such establishments.

c) According to the amending Act of 1998, which is deemed to have come into force from 22/9/1997, Both, the employees and the employers have to contribute to the Fund, at the Rate of 12% of (i) the Basic wages, (ii) Dearness Allowance, and (iii) Retaining Allowance, (if any) payable to the employees per month. [Basic wages, Dearness Allowance and Retaining Allowance are explained above.] Under the scheme, a salary earner currently contributes 12% of salary (basic + D.A) towards EPF and EPS and the employer matches this contribution. Thus, the total contribution of the employer and employee put together is 24% of salary, of this 8.33% is transferred to Employees' Pension Scheme and the remaining 15.67% is transferred to Provident Fund.

d) The rate of contribution is **10%** in case of the following establishments :

i) Any covered establishment with less than **20** employees.

ii) Any Sick Industrial Company, as defined in [S.3 (1)(0)] of the Sick Industrial Companies (Special Provisions) Act, 1985 [SICA] and which has been declared as such by the Board for Industrial and Financial Reconstructions (BIFR)

iii) Any establishment which has at the end of any financial year, accumulated losses equal to or exceeding its entire net-worth, and

iv) Any establishment in the (a) Jute, (b) Beedi (c) Brick, (d) Coir and (e) Gum Industries/ Factories

e) The contribution as a percentage of wages under the provident fund scheme shall be generally at the rate of **12%** for both (i) Employee and (ii) Employer. Except in the case of certain establishments, (as per details given above) which shall be at the rate of **10%** both, for the employer as well as the employee.

f) Any employee, who so desires, is allowed to contribute more than the above mentioned rate, Subject to the Condition that, the employer shall not be under any obligation to pay any contribution over and above his contribution payable under this Act.

g) The contribution shall be calculated on the basis of the

i) Basic wages,

ii) Dearness Allowance,

iii) Cash value of any food concession and

iv) Retaining Allowance (if any) drawn actually during the whole month, whether paid on

- Daily basis,
- Weekly basis,
- Fortnightly basis, or
- Monthly basis.

h) Each contribution shall be calculated to the nearest Rupee (fraction of rupee less than 50 paisa to be ignored)

i) Both the contributions mentioned in 'a' are to be paid by the employer i.e. the employer is responsible for making payment of the contribution of himself and also on behalf of the employee

j) The employer also has to pay administrative charges. The expression "Administrative charges" means, such percentage of Basic wages, Dearness allowance, Retaining allowance, (if any) and cash value of food concession, payable to the employees (except excluded employee) as the Central Government may fix. The charges are decided by the Central Government after taking into account the resources of the fund for meeting its normal administrative expenses.

k) The employer shall not be allowed to deduct his share of contribution (i.e. the employer's contribution), from the wage of a member or in any other manner.

l) The member's share of contribution (i.e. employee's contribution) shall be recovered by Deduction from wages only for the relevant period.

m) The employee's provident fund contribution can be recovered from wages, other than the relevant period, when —

i) Employee has given in writing a False Declaration, while joining the service that he was not a member of Provident Fund

ii) where employer has failed to make deductions from the current wages on account of-

n) Such deductions can be made with the permission of the Provident Fund Inspector.

• **RECOVERY OF MONEYS :**

1. Recovery of Damages for Default in Payment of any Contribution

Where an employer makes default :

i) in payment of any contribution to the fund, or

ii) in the transfer of accumulations required to be transferred by him, under the Act, or

iii) in payment of any charges payable under the Act, then the Central Provident Fund Commissioner has powers to recover from the employer, by way of (a) penalty, (b) damages at the rates given below:

Period of Default	Rate of Damages (per annum)
a) Less than 2 months	5% on arrears
b) 2 months and above but less than 4 months	10% on arrears
c) 4 months and above but less than 6 months	15% on arrears
d) 6 months and above	25% on arrears

This shall be calculated to the nearest rupee.

2. Reduction or Waiver of Damages

The Central Government may reduce or waive the damages levied, in case of

i) Change of management including;

- transfer of the undertaking to workers' co-operative,
- merger
- amalgamation of the sick industrial company with any other industrial company - Complete waiver of damages may be allowed.

ii) BIFR recommends in writing - Waiver upto 100% may be allowed.

iii) In other cases, depending upon the merits, reduction of damages up to 50% may be allowed.

3. Determination of Moneys : [S.7A]

1. In case of a Dispute relating to

a) applicability of this Act, and

b) the amount due from any employer

- the Central Provident Fund Commissioner,
- any Additional Provident Fund Commissioner,
- any Deputy Provident Fund Commissioner,
- any Regional Provident Fund Commissioner, or
- any Assistant Provident Fund Commissioner,

may, by an order, determine the amount due from any employer and for this purpose may conduct such inquiry as he may deem necessary.

2. The officer conducting the inquiry shall have the same powers as are vested in a court under the Civil Procedure Code, 1908, for trying a suit in respect of the following matters :

- a) enforcing attendance of any person or examining him on oath
- b) requiring discovery and production of documents.
- c) receiving evidence on affidavit
- d) issuing commissions for the examination of witnesses.

3. Any such inquiry shall be deemed to be a Judicial Proceeding.
4. An order of determining the amount due from an employer can be made only after the employer is given a reasonable opportunity of representing his case.
5. This order shall be final and shall not be questioned in any court of law.
6. Where the employer, employee or any other person-
 - a) fails to attend the inquiry without a valid reason or
 - b) fails to produce any document or
 - c) file any report or return, in such a case the officer conducting the inquiry may decide the amount due on the basis of evidence and the documents available on record.
7. Where an "Ex-Parte" order is passed, in such a case the employer may within 3 months of the order apply for setting aside the same if he satisfies the officer that
 - a) show cause notice was not duly served, or
 - b) he was prevented by any sufficient cause from appearing when the inquiry was held.
8. The officer shall set aside his order and appoint a date for the inquiry.
9. The order shall not be set aside -
 - a) When appeal is made against the order
 - b) unless notice is served on the opposite party.

4. Recovery of Moneys : [S.8J] :

This Act Provides for -

- a) Recovery from employers
- b) Recovery by employer from contractor.
- c) Recovery by contractor from employer.

a) Recovery of money due from the employer : [S.8] :

The matters relating to this section are :

1. Contribution payable to fund and insurance fund.
2. Accumulations in any provident fund standing to the credit of employees.
3. Accumulations to the credit of an exempted employee.
4. Damages recoverable for default in payment under [S- 14B]

5. Any charges payable by the employer under the provisions of the Act.
6. Any amount in Arrears in case of an exempted establishment.

b) Mode of Recovery : [S.8B to S.8G]

1. The authorized officer issues a Certificate to the recovery officer, specifying the amount under his signature.
2. The recovery officer on receiving such certificate recovers the amount due in the following ways :
 - a) attachment and sale of the properties of the establishment,
 - b) arrest and detention of the employer in prison,
 - c) appointing a receiver for management of the property of the establishment.
 - d) where attachment and sale is insufficient for recovering the whole amount, then the recovery officer can proceed against the property of employer.

3. Jurisdiction : [S.8C] :

[S.8C (1)] : The authorized officer may send the certificate to the recovery officer in whose Jurisdiction,

- i) employer carries on Business or Profession, or
- ii) has principal place of establishment, or
- iii) resides, or
- iv) any movable or immovable property of the establishment, or
- v) the employer is situated.

[S.8C (2)] : Where the property is situated within Jurisdiction of more than one Recovery Officer, then, the recovery officer sends copy of recovery certificate to the other Recovery Officer, specifying the part or whole of the amount to be recovered.

[S.8D] : The **employer cannot dispute** the correctness of the amount before the Recovery Officer. However, the authorized officer can withdraw the Recovery Certificate, or correct it in any way by sending intimation to the Recovery Officer.

c) Stay of Proceedings : [S.8E]

1. After issuing the Recovery Certificate, if the authorized officer gives time to employer for making payment, then the Recovery Officer has to wait till the expiry of time.
2. The authorized officer has to keep Recovery Officer informed, about the amount paid or time granted.

3. When 'the order' is a subject matter of appeal, the Recovery Officer shall wait till the appeal is pending.

4. If the amount is reduced on an appeal, the authorized officer shall withdraw or amend the certificate.

d) Protection of Contributions : [S.10]

1. Member

The amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or the exempted employee. Neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to, or have any claim on, any such amount.

2. Nominee

Any amount standing to the credit of a member in the fund or of any exempted employee in the provident fund at the time of his death and payable to his nominee, subject to any deduction authorized by the scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any court.

e) Priority of Contributions : [S.11]

Where an employer adjudicated insolvent or being a company, an order for winding up is made, the amount due from the employer in respect of :

i) any contribution payable by him to the Provident Fund or the Insurance Fund

ii) damages recoverable

iii) accumulations required to be transferred

iv) any charges payable by him shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

The liability of the above amounts due from the employer, shall accrue before the date of the order of adjudication or winding-up, as the case may be. If any amount is due from the employer in respect of the employee's contribution, whether in respect of the employee's contribution, deducted from the wages of the employee or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment and shall be paid in priority to all other debts.

• EMPLOYEES' DEPOSIT LINKED INSURANCE SCHEME, 1976 :

1. This scheme was notified with effect from 1st August, 1976.

2. **Applicability** : Scheme is applicable to all the members of the EPF scheme 1952

3. **Membership** : All members of EPF are deemed to be the members of the **EDLI Scheme 1976**, unless an exemption has been obtained for **EDLI Scheme**, in favour of LIC Policy as approved by the authorities.

4. **Contribution** : The employer is required to contribute at the rate of **0.5%** of the wages of the members on which the provident fund has been paid.

5. **Benefits** : Benefits under EDLI Scheme, 1976 are payable to the person who is entitled to receive the provident fund of the deceased member on the death of the member of the EPF, while being a member of the fund (while in service). "This is called **assurance benefit**." The claimant or the nominee or nominees —

a) is paid an amount equal to the average balance in the account of provident fund during preceding 12 Months, or

b) during the period of membership whichever is less.

This period is to be calculated backwards from the month preceding the month in which death of the member occurs. **Except** where the average balance exceeds Rs. 35,000, the amount shall be Rs. 35,000 Plus 25% of the amount in excess of Rs. 35,000. Subject to a maximum of Rs. 60,000. (w.e.f. 24-6-2000)

• **OBLIGATIONS OF EMPLOYERS :**

1. To pay the employer's and employees' contributions and administrative charges as required under the Act / schemes. Financial difficulties is no excuse for payment of dues as held in **Jagan Nath Prashad Jhalani and ors V/S RPF commissioner, Haryana and ors 1987 (77) FJR 204**. The contribution has to be made irrespective of the fact whether wages are paid or not paid to the employee due to lock-out, strike, etc.

2. To furnish the following returns to be Provident Fund Commissioner.

i) Return of ownership / Management of in Form 5-A; within 15 days of the applicability of the scheme.

ii) Return of membership of employees-first return in Form 9 and subsequently in Form 5 (together with declaration in Form 2) within 15 days of close of every month [Para 36-A of EPF scheme and Para 21 of Employees Pension Scheme]

iii) A return in the prescribed form in respect of employees leaving the service during the month, within 15 days of close of every month.

iv) A monthly return of contributions in the prescribed form within 25 days of close of each month, alongwith receipt in triplicate copies of challans for the amount of contributions and administrative charges deposited into the SBI. If no contributions have been recovered during a particular 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.

v) Annual return of contribution in Form 6-A, showing the employers' and employees contribution in respect of each employee made during the year, is to be submitted within one month of the close of each year. The employer should retain a duplicate copy of the statement with himself.

Non filing of returns is not a continuous offence. **(C.B. Bhandari VS P.F. Inspector, Bangalore 1988 (1) CLR 296 (ker. H. C)**

3. To maintain the following records registers

i) **Contribution Cards** : The employer should maintain a contribution card for each member - employee showing the wages of the employee contributions recovered and remitted every month during the year (Para 35 of Employee's Provident Fund Scheme).

ii) **Eligibility Register** : In this register the employer records the particulars of every employee whosoever is eligible to become a member of Provident Fund and the number of working days during each month.

iii) **Provident Fund Register** : This register is in the form of contribution cards for each employee.

iv) **Provident Fund Ledger** : This ledger contains the total monthly contribution, withdrawals from the account, repayment of loans and balance at the end of each month.

v) **Inspection Book** : The employer should maintain an inspection note book for an inspector to record his observation on his visit to the establishment.

4. To allow the employees to avail temporary / permanent withdrawals out of their contributions, pension, Life assurance benefit, insurance benefit etc. permissible under the schemes.

5. To transfer within the specified time, the accumulated balance in the account of an employee leaving the service and obtaining re-employment in another establishment section 17-A.

6. Every contractor shall within 7 days of the close of every month, submit to be principal employer a statement showing the particulars in respect of employers employed by or through him, in respect of whom contribution to the Fund are payable and shall furnish such information as the principal employer is required to furnish to the commissioner. [Para 36-B of EPF scheme and Para 22 of Employees pension scheme).

• **OBLIGATIONS OF EMPLOYEES :**

Every employee is required to

i) furnish the Declaration and Nomination in the prescribed forms to the employer at the time of employment or joining the fund.

ii) allow the employer to deduct the employees' contribution every month and deposit the same with the Provident Fund Commissioner.

• **RIGHT OF EMPLOYERS**

1. The employers has a right to deduct the employees' contribution from their wages for that period or from the contractors bill in case of contract labour. The contractor can in turn deduct employees' contribution from their wages.
2. The employer has a right to be allowed a reasonable opportunity of representing his case, before an order determining the amount due from him is passed under section 7A or 7C.
3. The employer has a right to prefer an appeal against a notification issued or an order passed by the Central Government or any authority, before the E.P.F. Appellate Tribunal.

- **INSPECTORS THEIR DUTIES AND POWERS :**

The appropriate government may appoint such Inspectors for the purposes of the Act, as it may thing fit.

The duties of the Inspectors are :

- i) inquiring into the correctness of any information furnished in connection with the Act or the schemes.
- ii) ascertaining whether any of the provisions of the Act or the schemes have been complied with in respect of an establishment covered by the Act,
- iii) ascertaining whether the provisions of the Act or the schemes are applicable to any establishment.
- iii) determining whether the conditions subject to which exemption was granted under section 17, are being complied with by the employer in relation to an exempted establishment.

Questions

1. Define the following as per the provisions of the Miscellaneous Provisions Act 1948
 - a. Appropriate Government
 - b. Controlled Industry
 - c. Employer
 - d. Employee
2. Explain Exempted Employee and Excluded Employee
3. Explain Exempted Establishment
4. Explain provisions of Cancellation of Exemption
5. Define Factory under the provisions of the Act

6. Define Manufacturing Process under the provisions of the Act
7. Explain The Employees Provident Fund Scheme
8. Discuss the powers of Central Board , Executive Committee and State Board
9. Explain the provisions of Appointment of Officers under the Act
10. Explain the powers of Inspectors under the Act

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CHAPTER 8

LAW RELATED TO COMPENSATION MANAGEMENT

4.1 The Payment of Wages Act, 1949

4.2 The Payment of Bonus Act 1965

4.3 The Payment of Gratuity Act, 1972

The Payment of Wages Act, 1936

- INTRODUCTION :

1. The preamble of this Act states that it is meant to regulate the payment of wages to certain classes of persons employed in industries.

2. It is clear from the preamble itself that it is meant only for certain classes of employees employed in Industries.

3. The Government felt it necessary to make certain provisions about payment of wages because of :

a) Wrongful deductions from the wages.

b) Untimely payment of the wages,

c) Unreasonable deductions from wages,

d) Payment of wages in kind by the employers and other problems associated with payment of wages.

4. This Act also provides for the remedies available to the employees in case

a) Wrongful deductions are made from their wages

b) Wages are delayed.

c) Wages are not paid.

5. This Act also provides in what form or manner the wages are to be paid and also they must be paid at regular intervals.

The Bombay High Court in *Arvind Mills Ltd. vs. K. R. Gadgil* has observed that "the general purpose of the Act is to provide that employed persons shall be paid their wages in a particular form and at regular intervals without any unauthorized deductions."

6. Any deduction from the wages of the employed person governed by this Act, unless authorized by this Act shall be deemed to be illegal.

Balmer Lawrie Worker's Union, Bombay & another Vs. Balmer Lawrie & Co. Ltd.

Held - Any deduction from the wages of the workmen, under a settlement between representative Union and employer can, however permit a deduction as it is the outcome of an understanding between the parties even though such deduction may not be authorized or legally permissible under this Act.

- **APPLICABILITY : [S.1]**

1. This Act extends to whole of India.

2. This Act applies to the payment of wages to an employed person :

a) Employed in any factory or

b) Employed upon any railway by a railway administration. Including persons employed directly or through a subcontractor by a person having a contract with a railway administration.

c) Employed in industrial or other establishment specified in [S.2 (ii) (a) to (g)] (p.1 see definition of Industrial or other establishment)

3. The Appropriate Government may apply the provisions of this Act to the persons employed in any establishment or class of establishments by giving 3 months notice.

4. In case of establishments owned by the Central Government, such notification can be issued in consultation with the Central Government.

5. In various State this Act has been extended to shop and establishments also.

6. This Act applies to wages payable to an employed person in respect of a wage period if wages for that wage period do not exceed Rs. 6,500/- p.m. or such other higher sum published by the National Sample survey Organization, on the basis of figures of the Consumer Expenditure Survey. The Central Government may specify this by a notification in the Official Gazette, after every 5 years, [S. 1 (6)]

In exercise of this power the Central Government has specified, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organization that the wages for coverage will be Rs. 10,000 per month (W.E.F. 8/8/2007)

- **NON-APPLICABILITY : [S.1 (6)]**

Since, this Act is meant for the benefit of industrial employees. Therefore **this Act does not apply** to persons whose wages exceed Rs. 10,000 per month, (old Rs.1,600 then Rs. 6,500).

It is **important** to note that this Act does not make any distinction between the employees with reference to nature of work carried on by them.

- **DEFINITIONS:**

1. "**Appropriate Government**" [S.2 (i)] is the Central Government in relation to (a) railways (b) air transport services (c) mines and oil fields.

The State Government is the appropriate Government in all other cases.

- Industrial or other establishment [S,2(ii)] means any –
 - a) Tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
 - (aa) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the union or the Civil Aviation Department of the Government of India;
 - b) dock, wharf or jetty;
 - c) inland vessel mechanically propelled;
 - d) mine, quarry or oil field;
 - e) plantation;
 - f) Workshop or other establishment in which articles are
 - (a) produced, (b) adapted, **or** (c) manufactured with a view to their use, transport or sale;
 - g) establishment in which any work relating to the (a) construction, (b) development, or (c) maintenance of buildings, roads, bridges or canals or relating to operations connected with navigation, irrigation or supply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;
 - h) any other establishment or class of establishments which the Appropriate Government may having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

Explanation : The Payment of Wages Act apart from a factory also applies to an Industrial establishment as specified by the appropriate Government. Any establishment in which articles are produced, adapted, or manufactured, with a view to their use, transport or sale would be covered by the definition of Industrial or other establishment.

We find from the above definition that it includes various activities done —

- on ground [part a)].
- air [part (aa)].
- water [part (b & c)].
- underground [part (d)]
- in plantation [part (e)].
- in workshop [part (e)]
- Any establishment relating to above activities [part (g)].

- Any other establishment notified by the appropriate Government [part (h)].

It does not include —

Service relating to (i) Military (ii) Air force (iii) Civil aviation Department of the Government of India.

- **Wages : [S.2 (vi)]**

1. The definition of the term "Wages" under this Act is a very important definition, because a reference of this definition is made under other Acts also such as ESI Act. Industrial Disputes Act, Contract Labour [Regulation and Abolition] Act etc.

2. The definition of wages under this Act is divided into 3 parts

a) First part gives an outline of the term wages.

b) Second part says what type of remuneration shall be wages.

c) Third part says what type of payment shall not be called as wages.

3. Generally speaking, all remuneration payable to an employed person out of the terms of employment whether express or implied can be called wages.

4. The term wages means wages earned and not potential wages.

5. Wide definition of the term wages' would include bonus as well, since it is remuneration whether by way of salary, or otherwise expressed in terms of money.

6. Bonus voluntarily declared on the basis of profits made does not amount to wages.

D.P. Kelkar Vs. Ambadas Held -

The definition of wages is not limited to remuneration payable under an agreement or contract. It applies to all kinds of remuneration, whether arising from :

- a contract,
- an award,
- a settlement or
- under a statute.

Gopalan Vs. Augmati Chit Fund Held —

Statutory bonus of $8\frac{1}{3}\%$ is payable whether there are profits to the accounting year or not. After coming into force of the Payment of Bonus Act, Bonus has become an implied term of Employment not dependent upon the profits and therefore comes under the category of remuneration. Viewed in this the wages as a general term would include bonus.

The definition of wages provided under this Act says "Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment, express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment, and includes –

- a) any remuneration payable under any award or settlement between the parties or order of a court;
- b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- d) any sum which by reason of such as notice pay, termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made.
- e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

but does not include -

- i) Any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court.
- ii) The value of any house accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government.
- iii) Any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon.
- iv) Any travelling allowance or the value of any travelling concession.
- v) Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment or
- vi) Any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)

- **Employed Person : [S. 2 (ia)]** Includes the legal representative of a deceased employed person.

This definition does not tell us as to who is an employed person. It merely tells us what is included in this term. Therefore, we may say that an employee or workman is an employed person in a general sense.

- **RESPONSIBILITY FOR PAYMENT OF WAGES : [S.3]**

The term payment has not been defined or explained in this Act. However, it transfer of money from one person to another to satisfy a debt or obligation. **Parmeshwar Vs. Atti Held** - payment signifies satisfaction of a claim. Basically every employer is responsible for the payment of wages but this responsibility is also cast on other persons also they are:

- a) In case of Factories the manager of the factory.
- b) In case of Industrial establishment if there is a person responsible to the employer for supervision and control then such a person.
- c) In case of Railways, person nominated to be the person responsible for the payment of wages.
- d) In case of a contractor, a person designated by such contractor who is directly under his charge.
- e) In any other case, a person designated by the employer as a person responsible for complying with the provisions of this Act.

It shall be the responsibility of the employer to make payment of all wages in case the contractor or the person designated by the employer fails to make such payment.

The term 'employer' is not defined anywhere in this Act, it only says under [section, 2 (ib)] that the term employer includes the legal representative of a deceased employer. For this reason we can interpret that in the case of companies the directors are the employers. They are, therefore liable to pay wages.

- **FIXATION OF WAGE PERIODS AND TIME OF PAYMENT OF WAGES : [S.4 AND 5]**

- i) Every person responsible for payment of wages shall fix wage periods.
- ii) A wage period shall not exceed one month.

One of the reasons for enacting the Payment of Wages Act is that wages were not paid in time and they had no relation to a definite period of work. Therefore, this Act provides that the employer may decide any period as a wage period but such wage period shall not exceed one month.

1. In case of -

- a) an Industrial establishment, or
- b) a factory, or
- c) a railway establishment,

wherein less than 1000 employees are employed, the wages shall be paid within 7 days after the expiry of the wage period. In any other case they shall be paid before the expiry of the 10th day after the last day of the wage period in respect of which the wages are payable.

2. In the case of -

(a) docks (b) wharfs, (c) jetties (d) mines

the wages are to be paid before the expiry of the 7th day on completion of the final tonnage account of the material loaded or unloaded.

3. In case of termination of the services of an employee, the wages earned by him shall be paid before the expiry of the 2nd working day from the date on which his employment is terminated.

4. The appropriate Government may, by general or special order, exempt the person responsible for the payment of wages from the operation of the above provisions in certain cases including a Public Works Department. However, in the case of persons employed as daily rated workers, order shall be made after consultation with the Central Government.

5. All payments of wages shall be made on a working day.

• **MODE OF PAYMENT OF WAGES : [S.6]**

1. Under the Payment of Wages Act, wages cannot be paid in kind. They must be paid in current coins or currency notes or in both.

2. The employer may, if he desires after obtaining the written authorization of the employed person pay his wages either by cheque or by crediting the wages in the bank account.

• **DEDUCTIONS WHICH MAY BE MADE FROM WAGES : [S.71]**

The term deduction has not been defined or explained in this Act. Generally speaking, it means to remove money from a total or subtraction from a larger to smaller amount.

Upper India Vs. J. C. Mathur

Held – The word deduction in [Section 15] appears to have been used in a very wide sense so as to include the 'entire deficiency' which the employee alleges to have been caused in the payment of wages as a result of the withholding of the same by the employer partially or wholly.

The usual rule of payment of wages is that the employed person shall be paid his wages without any kind of deductions except those authorized under this Act. In relation to this, explanations to section 7 are very important

a) Any payment made by the employed person to the employer or his agent is deduction from wages.

b) If the employer imposes upon an employed person a penalty not in accordance with requirements made by the appropriate Government in respect of the rules of discipline then the resulting loss in wages shall be taken as deduction from wages. Such loss may be due to —

i) withholding of an increment, or

ii) withholding of promotion, or

iii) reduction to a lower post on time scale or to a lower stage, or

iv) suspension.

However, loss of wages on these grounds in accordance with the requirements laid down by the appropriate Government shall not be deemed to be a deduction from wages.

• **AUTHORIZED DEDUCTIONS UNDER THIS ACT ARE AS FOLLOWS :**

- a) Fines [S.8] : An employer may impose on an employed person a penalty or fine.
- b) While imposing such penalty the employer has to obtain the previous approval of the appropriate Government to the acts and omissions for which the fine may be imposed.
- c) Notice about such acts and omissions shall be exhibited in the prescribed manner by the employer.
- d) Before imposing fine the employed person shall be given an opportunity of showing cause against the fine.
- e) The procedure shall be carried out as may be prescribed.
- f) The maximum fine that can be imposed is 3% of the wages payable to an employed person in respect of that wage period.
- g) Fine cannot be imposed on an employed person below the age of 15 years
- h) Fines shall be considered as imposed on the day on which the act or omission is committed by an employed person.
- i) The fine cannot be recovered in installments.
- j) The fine cannot be recovered after the expiry of 90 days from the day on which it was imposed.
- k) All fines shall be recorded in a register as prescribed.
- l) The amount of fine realized is to be utilized for the purposes beneficial to the employees as approved by the prescribed authority.

Deductions for Absence from duty [S.9] Section 9 give power to the employer to deduct wages for absence from duty.

- i) If an employed person is absent from the place or places where by the terms of his employment, he is required to work, deduction on account of his absence from duty can be made by the employer.
- ii) Such absence may be for the whole day or for any part of the period for which he is required to work.
- iii) The deduction for absence from duty shall be in proportion to the time for which an employed person is absent from duty.
- iv) Subject to the rules made by the appropriate Government if 10 or more employed persons, who is acting in concert absent themselves (i) without due notice to the employer (ii) and without

reasonable cause then the employer may deduct such amount not exceeding wages for 8 days from the wages payable to an employed person.

v) A person shall be considered as absent from duty, in case although present in the establishment, (i) is absent from the place of work where he is required to work or (ii) when he refuses for any unreasonable cause or (iii) stay-in-strike to carry out his work.

- **Deduction for Damage or Loss [S. 10]**

a) If the goods are expressly entrusted to the employed person for custody or in case he loses money which he is required to account or in the case of a railway administration losses occur on account of any rebates or refunds incorrectly granted by the employed person where such /Loss is directly attributable to damage or the neglect or default of the employed person, deductions from wages can be made.

b) The deduction of such amount shall not exceed the amount of the damage or loss caused to the employer.

c) Before making such deduction the employer shall give an opportunity to the employed person of showing cause against the deduction.

d) Such deduction should be recorded in a prescribed register to be kept by the person responsible for payment of wages.

- **Deductions for Services Rendered : [S.11 and 7(2)]**

a) House Accommodation : Supplied by the employer or by Government or any housing board : Such deductions cannot be made unless the employed person has accepted the amenity of house accommodation as a term of employment and such deduction shall not exceed an amount equal to the value of house accommodation amenity.

b) Deductions for such amenities and services supplied by the employer as the appropriate Government may by general or special order authorize : These deductions can be made only when such supply is accepted as term of employment by the employed person. The term "Services" does not include the supply of tools and raw materials required for the purposes of employment.

- **Deductions for Recovery of Advances : [S. 12]**

This is subject to the following conditions :

a) Recovery of an advance of money given before employment began can be made from the first payment of wages in respect of complete wage period but no recovery shall be made of such advance given for travelling expenses.

b) Recovery of advance of money given after employment began and of wages not already earned is subject to the conditions imposed by the appropriate Government.

c) Recovery of advances of wages not already earned shall be according to the rules made by the appropriate government including the installments by which they may be recovered.

- **Deductions for Recovery of Loans : [S. 12-A]**

Deductions for recovery of loans granted for house building or other purposes shall be as per the rules approved by the appropriate Government regulating the extent to which such loans may be granted and rate of interest payable on it.

- **Deductions for Payments to Cooperative Societies and Insurance Schemes : [S. 13 and 7(2)]**

These deductions shall include :

a) Deductions for payments to cooperative societies approved by the appropriate Government or to a scheme of insurance maintained by the Indian Post Office.

b) Deductions made with the written authorization of the employed person for :

i) payment of any premium on his life Insurance policy to LIC of India

ii) Purchase of securities of the Government of India or any State government

iii) being deposited in any Post office Savings Bank in furtherance of any savings scheme of any such government.

iv) Payment of his contribution to any fund constituted by the employer or a trade union for welfare of the employed persons or the members of their families or both.

v) Payment of membership fees to trade union.

vi) Contribution to the Prime Minister's National Relief Fund or other fund specified by the Central Government by notification in the Official Gazette. The above deductions shall be subject to conditions imposed by the appropriate Government.

- **Other Deductions**

1. Deductions of Income tax payable by an employed person.

2. Deductions according to the order of a court or other authorities competent to make such order.

3. Deductions for subscriptions to and repayment of advances from any provident fund approved by the appropriate Government.

4. Deductions for payment of insurance premium on Fidelity Guarantee Bonds

5. In case of Railway Administration -

a) deductions for the recovery of losses on account of acceptance by the employed person of counterfeit or coins mutilated or forged currency notes.

b) deductions on account of failure of the employed person to invoice, bill, collect, or to account for the appropriate charges due to the railway administration.

c) deductions for recovery of losses on account of any rebates or refunds incorrectly granted by the employed person.

6. Deductions for contribution to any insurance scheme framed by the Central Government for the benefit of its employees.

Explanation : Any agreement by which any employed person agrees to any deductions other than those authorized under this Act would be null and void. Limit on Deductions : [S. 7(3)] The total deductions which may be made from the wages payable to an employed person for the reasons given above shall not exceed :

- a) **75%** including payments to cooperative societies.
- b) **50%** in any other case.

If the total authorized deductions exceed this limit, in such a case, the balance may be recovered in the manner prescribed by the appropriate Government.

- **Remedy for Unauthorized Deductions or Delayed Payment of Wages : [S.15,16,17]**

The Payment of Wages Act provides for the constitution of a separate Authority for any specified area to hear and decide claims arising out of deductions from the wages or delay in the payment of wages.

The authorities are :

- i) Commissioner of workmen's compensation or
- ii) Regional Labour Commissioner or
- iii) Assistant Labour Commissioner
- iv) Officer of the State Government not below the rank of Assistant Labour Commissioner or
- v) a presiding officer of any labour court or
- vi) a presiding officer of Industrial Tribunal or
- vii) any other officer with experience as a Judge of a civil court or
- viii) A Judicial Magistrate.

The expression 'delayed wages' can only mean wages which are admittedly due but the payment wage has been postponed on some excuse or other

[Arumugham v/s Jawahar Mills]. The expression includes 'refused wages'

[Jiwanjirao Sugar Company v/s J.M. Banerji].

- **APPLICATION**

A person himself or an legal practitioner or any official of a Registered Trade Union authorized in writing to act on behalf of such person or any inspector under this Act or any other person with prior permission of the authority may make a claim.

- **PERIOD**

Such a claim is to be made within 12 months from the date on which the deductions were made or from the date on which payment of wages was to be made. In appropriate cases the authority can condone the delay in filing the application.

- **COMPENSATION**

If the authority is satisfied that there were wrongful deductions, it may in addition to the refund of the amount wrongfully deducted require the employer to pay compensation not exceeding 10 times the actual amount of deductions. In case of delayed wages it may direct the employer to pay the wages immediately and also may impose a penalty not exceeding Rs. 3, 000 but not less than 1,500. If the amount is paid before disposal of application then not more than Rs. 2,000.

- **PERIOD**

A claim shall be disposed of as far as possible in 3 months from the date of registration of the claim.

Extension of period

This period of 3 months may be extended if both parties to the dispute agree. No payment of compensation shall be made in case of delayed wages, when it is due to :

- i) a bonafide error or dispute relating to the amount payable to the employed person.
- ii) the occurrence of emergency or exceptional circumstances.
- iii) the failure of the employed person to apply for or accept payment.

- **MALICIOUS OR VEXATIOUS CLAIM**

If the authority is satisfied that the application for claim was either malicious or vexatious it may impose a penalty on the person presenting the application not exceeding Rs. 375 to be paid to the employer or other person responsible for payment of wages. If the authority is satisfied that the applicant should not have been compelled by the employer to seek redress, it may direct the employer to pay a penalty upto Rs. 375 to the appropriate Government.

Any amount directed to be paid may be recovered -

- i) Magistrate : If the authority is a Magistrate, by him, as if it was a fine imposed by him.
- ii) Not a Magistrate : If the authority is not a magistrate, by any Magistrate to whom the authority makes application, as if it were a fine imposed by such magistrate.

- **MEANING OF UNPAID GROUP**

Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if deductions have been made from their wages :

- i) in contravention of this Act,
- ii) for the same cause and
- iii) during the same wage period or periods or
- iv) If their wages for the same wage period or periods have remained unpaid after the day fixed by [S-5J] ([S-51] deals with time of payment of wages.)

- **SINGLE APPLICATION BY A GROUP**

If the number of employed persons belong to the same unpaid group or deductions have been made from their wages for the same cause and during the same wage period, a single application may be made for any number of employed persons belonging to the same unpaid group.

- **COMPENSATION**

Every person on whose behalf such application is presented maybe awarded maximum compensation to the extent given in [S.15 (3)]. The authority may deal with any number of separate pending applications, as a single application.

- **CONDITIONAL ATTACHMENT OF THE PROPERTY [S.17A]**

The authority has powers to make a conditional attachment of the property of the person responsible for the payment of wages if the authority is satisfied that the employer or the other persons responsible for the payment of wages is likely to evade payment of any amount that may be directed to be paid. Such conditional attachment is of so much of property which is in the opinion of the authority-sufficient to satisfy the amount payable.

- **PAYMENT OF WAGES IN CASE OF DEATH OF AN EMPLOYEE**

In case of death of an employee, or in case his whereabouts are not known, all amounts payable to him as wages shall be either paid to his nominee or, where there is no nominee, or amount cannot be paid to the nominee for any reason, it shall be deposited with the prescribed authority. Section 25 A(1) and (2) whereupon the employer shall be discharged of his liability to pay those wages.

- **RETURN, REGISTERS AND RECORDS**

The employer is required to submit an annual return of wages in Form No. IV in respect of every year, by the 15th February of the succeeding year.

The employer/ manager is required to maintain the following registers and records :

- a) Register of payment of wages giving particulars of persons employed, nature of work performed by them, wages paid and the deductions made therefrom, the receipts given by them and other prescribed particulars under Section 13A.
- b) Register of fines imposed and realizations thereof, in the prescribed form under Section 8 (8).

c) Register of deductions for damage or loss and realizations thereof, in the prescribed form under Section 10(2).

All the registers should be preserved for a period of 3 years after the date of entry made therein.

- **DISPLAY OF NOTICE**

The employer or manager should ensure that a notice containing the abstracts of the Act and the rules made thereunder, is displayed at a prominent place in the factory or establishment. The notice shall be in the prescribed form, in English and in the local language of the majority of the persons employed under Section 25.

- **CONTRACTING OUT IS VOID**

Any contract or agreement whereby an employee relinquishes his right under the Act, shall be null & void in so far as it purports to deprive him of such right, under Section 23.

Further, no unauthorized deduction shall be made under an agreement though true.

6.23 APPEAL [S.17]

An appeal against the order can be filed before the court of small causes in presidency towns and in the district court at all other places. The employer can appeal only if the total amount directed to be paid exceeds Rs. 300. An appeal can be made against the decision of the authority within 30 days.

The employed person can appeal if the total amount of wages claimed exceeds Rs. 20 or an unpaid group when it exceeds Rs. 50. A memorandum of appeal should be accompanied by a certificate of the authority that saying that the appellant has deposited the amount payable.

- **RIGHTS OF EMPLOYERS**

1. Right to make permissible deductions from the wages of an employee (section 7).
2. Right to appeal against an order directing the employer to refund deductions wrongfully made or to pay the delayed wages or compensation to the employee under section 15 (3) or an order imposing penalty under section 15 (4). The appeal can be made if the order directs payment of wages and compensation exceeding Rs.300 or imposes a financial liability exceeding Rs. 1,000. The appeal should be made within 30 days of the date of the order (Section 17).

- **RIGHT OF EMPLOYEES**

1. Right to claim unpaid or delayed wages, unauthorized deductions from wages and fines imposed alongwith some compensation. The applications for such claims may be presented within 12 months, by the employee himself or through a legal practitioner or an official of a registered trade union, authorised in this behalf. An application filed after 12 months can also be entertained provided there was a sufficient cause for the delay (Section 15).

2. Right to appeal against an order of the Payment of Wages authority if the amount of wages claimed to have been withheld exceeds Rs. 20 or against an order imposing penalty under section 15 (4) for making a malicious or vexatious claim against an employer.

MINIMUM WAGES ACT, 1948

7.1 INTRODUCTION

This Act seeks to provide workers who are employed in certain scheduled employments at a minimum rate of wages to prevent exploitation by employers. In Maharashtra this Act is also applicable to all shops and commercial establishments in addition to factories.

The Royal Commission on Labour after a survey of labour conditions in the country stressed the need for fixing minimum wages for workers employed in certain industries. It was found that in many cases employees were working on ridiculously low wages. There was no uniformity as workers in the same industry and different factories in the same locality were being paid very varied wages for identical work. This sorry state of affairs was possible because the workers were not organized and unified under a strong trade union. Hence, they did not have any bargaining power with the employers and they had to accept whatever was given to them for fear of losing even their jobs to unemployed persons.

The Indian Labour Conference held in 1943, 1944 and 1945 separately highlighted the urgent need for enacting legislation for fixing minimum wages. As a first step the Act which was passed in 1948, brought social justice to workmen employed in certain scheduled employments by providing them minimum rates of wages.

7.2 APPLICABILITY

The Minimum Wages Act applies to the whole of India. Only industries given in the schedule of the Act automatically come under the Act regardless of the number of workmen actually employed in the establishment. The Schedule consists of two parts. Part I gives the names of industries which are brought under the Act. Part II of the Schedule *covers* employment in agriculture and allied enterprises.

Other industries do not come under the Act. The appropriate government, however, is empowered to add to the Schedule any employment if it decides that minimum rates of wages need to be fixed.

Thus, contract labour falling in the, jurisdiction of the Contract Labour (Regulation and Abolition) Act, 1970, has to be paid wages under the Minimum Wages Act. In Maharashtra State, as mentioned earlier all workmen employed in shops and commercial establishments which are governed by the Shops and Establishment Act 1948, are covered by the Minimum Wages Act.

1. The Act gives the following important definitions :

a) "**Wages**" means all remuneration capable of being expressed in terms of money which would be payable to the worker and includes house rent allowance but does not include :

i) value of any house accommodation, supply of light, water, power, medical attendance or any other amenity or service, excluded by a general or special order of the appropriate Government,

- ii) any contribution paid by the employer to a provident fund or pension fund or any other scheme of social insurance,
- iii) any travelling allowance or value of any travelling concession,
- iv) any sum paid by the person employed to defray special expenses entailed on him by the nature of his employment,
- v) any gratuity payable on discharge.

b) Cost of Living Index Number : It means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to the employers in scheduled employment by the Central or State Government. This Act was passed to enforce a minimum wage to workers. If any worker is paid less than the minimum wage, it amounts to forced labour and **violates Article 23** of the Constitution. Workers employed in construction works are also entitled to seek implementation of this Act under **Article 32**. Minimum wages and dearness allowance have to be paid even at the stage of the closure of the industry.

7.3 WHAT IS A MINIMUM WAGE ?

In an important judgement (**Hydro Engineers Pvt. Ltd. v/s Workmen**), it was held that - This Act contemplates that minimum wages rates must ensure not only the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family, but also preserve his efficiency as a workman.

7.4 HOW MUCH IS A MINIMUM WAGE?

It is significant that minimum wages is not defined in this Act presumably because it would not be possible to lay down uniform minimum wages for all the industries throughout the country on account of different and varying conditions prevailing from industry to industry and from one part of the country to another.

7.5 CONSUMER PRICE INDEX NUMBER

Most State Governments have replaced the term Cost of Living Index Number by the new term, Consumer Price Index Number. This change is to conform to international practice. The Supreme Court has held that this change of name does not affect the provision of this Act.

7.6 EMPLOYER SEC 2 (e)

Employer means any person who :

(a) employs (b) whether directly or through another person or (c) whether on behalf of himself or any other person (d) one or more employees in any Scheduled employment (e) in respect of which minimum rates of wages have been fixed under the Act and includes

1. in a factory where there is carried on any scheduled employment - the *Manager* under the Factories Act.
2. in any Scheduled employment under the control of the Government of India

a) the person / authority appointed by the Government for the supervision and control of employees,

b) head of the Department where no person/authority is appointed.

3. in any Scheduled employment under any local authority —

a) the person appointed by such authority for the supervision and control of employees,

b) the CEO when no person is appointed.

4. in any other case, any person responsible to the owner for the supervision and control of employees for the payment of wages.

5. The Act does not apply : (Section 26 (3) [Who is not an employer])?

a) To wages payable to a member of the employer's family who is living with him and is dependent on him. Employer's family includes his /her spouse, child, parent, brother or sister.

b) When the work is given to a contractor who in turn engages workmen. The person giving the work to the contractor is not the employer. The contractor will be the employer or the person he appoints.

c) If minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer. This was held in **Nathuram Shukla v/s. State of M.P.** In this case a new branch was opened in a Government factory giving Scheduled employment by the Minister. As he had not taken prior sanction of the Cabinet, Finance Dept. did not release the salary, a decision which was upheld by the Court.

7.7 SCHEDULED EMPLOYMENT SEC. 2 (G)

Scheduled employment means

a) an employment specified in either Part I or Part II of the Scheduled or

b) any process or branch of work forming part of such employment.

Part I

- Employment in all woolen carpet-making or shawl weaving establishments.
- Employment in any rice mill, floor mill or dal mill.
- Employment in any tobacco (including bidi making) manufacturing.
- Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
- Employment in any oil mill.
- Employment under any local authority.

- Employment on the construction or maintenance of the roads or in building operations.
- Employment to stone breaking or stone crushing.
- Employment in any lac manufacturing.
- Employment in any mica works.
- Employment in public motor transport.
- Employment in tanneries and leather manufactory.
- Employment in gypsum mines.
- Employment in bauxite mines.
- Employment in manganese mines.
- Employment in the maintenance of buildings and employment in the construction and maintenance of runways.
- Employment in China clay mines.
- Employment in kyanite mines.
- Employment in magnesite mines.
- Employment in copper mines.
- Employment in clay mines covered under the Mines Act, 1952.
- Employment in magnesite mines covered under the Mines Act, 1952.
- Employment in white clay mines.
- Employment in stone mines.
- Employment in Sterlite mines (including the mines producing Soapstone and Talc) covered under the Mines Act, 1952.
- Employment in ochre mines.
- Employment in asbestos mines.
- Employment in graphite mines.
- Employment in literate mines.
- Employment in dolomite mines.
- Employment in wolfram mines.

- Employment in iron ore mines.
- Employment in hematite mines.
- Employment in loading and unloading in railways, goods sheds, docks and ports.
- Employment in ashpit cleaning on railways.

Part II

• **Part II** of the schedule covers employment in agriculture, that is to say, in any form of farming, including cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of livestock, bees or poultry, and any practice, performed by a farmer as incidental to or in conjunction with farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market of farm produce) : The minimum wages for agricultural workers are fixed both by the central and state governments/union territories.

7.8 EMPLOYEE Section 2 (i)

Employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in Scheduled employment in respect of which Minimum Wages have been fixed and includes any out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, finished, ornamented, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out worker or in some other premises; not being premises under the control and management of that other person and also includes an employee declared to be an employee by the Appropriate Government : but does not include any member of the Armed forces of the Union. A careful and analytic reading of the definition of an employee in this Act will show that this is a very wide and comprehensive definition which embraces and includes all kinds of work either on job basis or piecework in any Scheduled employment.

From the definition all the following types of persons have been held to be employees :

- i) An outworker who prepares goods at his/her residence and then supplies them to the employer.
- ii) A chowkidar who guards the factory in tea plantation.
- iii) An accountant in a tea plantation.
- iv) A compounder in a tea plantation.
- v) A dismissed employee for the purpose of claiming relief under the Act.

7.9 CONTRACTING OUT SEC. 25

This is a practice where the employer and the employee agree that the employee is willing to accept wages less than the minimum wages fixed by the government. It is undercutting whereby the

employer saves on the wages he would normally have to pay. The employee is promised a greater volume of work than he would have normally been assigned.

This practice of selective preference goes against the spirit which is behind the principle of beneficial social legislations like the Minimum wages Act and the payment of wages Act which make it mandatory for employers to pay minimum wages and other benefits and to follow fair labour practices. There will be always some selfish and near-sighted employees willing to be exploited for immediate gain. This practice is condemned and any such agreement is void.

Section 25 says that any contract or agreement, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege, concession accruing to him under the Act shall be null and void, in so far as it purports to reduce the minimum rate of wages fixed under the Act.

7.10 FIXATION AND REVISION OF WAGES

The Appropriate Government (Sec. 2 b) has the power to fix minimum wages and also to revise them from time to time. The Appropriate Government is the Central 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, oil-field, major port or any corporation established by a Central Act.

In relation to any other Scheduled employment, the State Government is the appropriate government.

7.11 FIXING OF MINIMUM RATE OF WAGES

1. The State Government fixes the minimum rate of wages based on the cost of living index. It notifies the rate of wages and the employer is duty bound to pay every employee accordingly. **(Sec. 3a)**

2. The State Government may review the wages at such intervals as they think fit but not exceeding five years and revise them if necessary **(Sec 3b)**.

3. The State Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which less than 1000 employees are employed in the whole State **(Sec 3(b))**. However, the State Government shall impose minimum wages when the number of employees has risen to 1000 or more.

4. The minimum rates of wages may be fixed

- i) for different employments,
- ii) for different classes of workers in the same employment,
- iii) for adolescents, children and apprentices,
- iv) for different localities.

5. The rate of wages may be **(i) a time-rate, (ii) a piece-rate, (iii) a guaranteed time rate, (iv) an overtime rate**. Thus the rate may be fixed by the State Government by the hour, by the day,

by the month or by a longer period. Once fixed by the government, the payment under **Sec. 4** of the Payment of Wages Act shall be made.

6. The rate fixed may consist of (i) basic rate of wages and (ii) cost of living allowance and (iii) cash value of concessions if essential commodities like oil, grain, pulses, etc. are supplied at concessional rates. In addition to the above, the Act provides for the payment of a special allowance which is linked to the customer price index and this allowance can be revised periodically.

7. It has been held by the Court that dearness allowance (DA) cannot exceed the increase in the cost of living. (Sangli Dist. Power Loom Owner' Association V/s. State of Maharashtra 1988.)

8. It has also been held by the Court that the Minimum Wages Act does not cast a statutory obligation on the State Government to fix or revise the rate of minimum wages strictly according to the cost of living index. (Bhikusa Yumasa Kshatriya V/s. Sangamner Akola Bidi Kamgar Union, 1959.)

Questions

1. Define the following as per the provisions of the Payment of Wages Act , 1948
 - a. "Appropriate Government"
 - b. Wages
 - c. Employed Person
2. What are the Deductions which may be made from Wages under section 71?
3. What are the Authorized Deductions under this Act ?
4. What are the Deduction for Damage or Loss
5. What are the Deductions for Services Rendered
6. What are the Deductions for Recovery of Advances
7. What are the Deductions for Recovery of Loans
8. What are Deductions for Payments to Cooperative Societies and Insurance Schemes
9. What are the remedies for Unauthorized Deductions or Delayed Payment of Wages
10. Write a note on Period Compensation
11. Explain the Meaning of Unpaid Group
12. What is the Compensation Conditional Attachment of the Property
13. What the provisions for Payment of Wages in case of Death of an Employee

14. Write a note on Return, Registers and Records
15. Explain why “ CONTRACTING OUT IS VOID”
16. What are the Rights of Employers and Right of Employees under this Act?

Unit 4.2 Payment of Bonus Act, 1965

Introduction

The Payment of Bonus Act will be applicable to the persons working in every company or organisation, which is employing 20 persons on any day during an accounting year. According to the act even if the number of employees falls below 20 the bonus has to be continued.

Definition of an Employee

According to the act an employee means any person other than apprentice, engaged for hire/reward whether the terms of employment be express or implied and includes supervisors/managerial and administrative employees drawing salary/wages not exceeding Rs.10,000 per month. Every employee not drawing salary /wages beyond Rs.10,000 per month who has worked for not less than 30 days in an accounting year. Shall be eligible for bonus for minimum of 8.33% of the salary/wages even if there is loss in the

establishment whereas a maximum of 20% of the employee's salary/wages

is payable as bonus in an accounting year. However, in case of the

employees' salary/wage range of Rs.3,500 to Rs.10,000 per month for month for the purpose of payment of bonus, their salaries /wages would be deemed to be Rs.3,500 per month.

Eligibility for Bonus :

The payment of Bonus Act indicates that the following categories of persons will be eligible for getting bonus:

- a) Skilled or unskilled or manual labour;
- b) Managerial staff;
- c) Supervisory staff;
- d) Administrative staff;
- e) Technical staff;
- f) Clerical staff.

An employee who has been engaged on hire or reward on terms which are either express or implied, and his salary does not exceed Rs.10,000 per month but he must have worked at least 30 working days in a year,

Who is not an apprentice, is entitled to bonus. Every person who falls within the definition of the term 'employee' in

section 2(13) of the Payment of Bonus Act will be entitled to bonus under the Payment of Bonus Act even if he is not a 'workman' under the definition of section 2(s) of Industrial Disputes Act, 1947.

- **Extent and application of the Act:**

The provisions of this Act shall apply to the following factories/establishments:

The word 'factory' shall have the same meaning as in clause (m) of section 2 of the Factories Act, 1948. Section 2(m) of the Factories Act defines 'factory' as any premises including the precincts thereof

- a) Whereon ten or more workers are working, or were working on any day of the preceding 12 months and the manufacturing process is being carried on with the aid of power; or
- b) Whereon 20 or more workers are working, or were working on any day of the preceding 12 months and the manufacturing process is being carried on without the aid of power.

But the term 'factory' does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

Every other establishment in which 20 or more persons employed on any day during an accounting year. An establishment in public sector means an establishment owned, controlled or managed by Govt. company as defined in section 67 of the Companies Act, 1956. Section 617 of the Companies Act

defines a 'Government Company' as a company in which not less than 51% of the paid up share capital is held by the Central Govt. or by any state Govt. or jointly by the State and Central Governments. An establishment in public sector also means a Corporation in which not less than forty per cent. of its capital is held whether singly or taken together by (i) the Government, or (ii) the Reserve Bank of India, or (iii) a Corporation owned by the Government or the Reserve Bank of India. On the other hand, an establishment in private sector means any establishment other than an establishment in public sector

- **Applicability of the Act to Public Undertakings:**

1. The Act will also be applicable to public sector organization in certain cases.

2. If any organization in public sector will be able to get an income of 20% of the gross income of the organization in public sector, in competition with private sector organizations through the goods produced or manufactured by it or by any services provided by it, then the provisions of this Act shall apply to such establishment in public-sector.

In other words, section 20 of the Act provides for the application of the bonus formula to those public sector establishments which fulfill the twenty per cent. And if the bonus formula is applicable to any such organization, then even if the 20% compensation test is not satisfied in any subsequent accounting year, the organization will continue to apply.

3. If any establishment carried by any department of State or Central Govt. or any local authority then it is not considered as an establishment in public sector

• **Establishments Exempted from the Act:**

The following are the classes of employees which are not applicable to get bonus as per The Payment of Bonus Act: (1)

a. Employees employed by the Life Insurance Corporation of India. (2)

b. Seaman as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958. (3)

c. Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers

d. Employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority. (5)

e. Employees employed by (a) the Indian Red Cross Society or any other institution of a like nature (including its branches); (b) Universities and other educational institutions; (c) Institutions (including Hospitals, Chambers of Commerce and Social Institutions) established not for the purpose of profit.

f. Employees employed through contractors on building operations.

g. Employees of (a) the Industrial Finance Corporation of India, (b) any financial corporation established under section 3 or section 3A of the State Financial Corporation Act, 1951, (c) the Deposit Insurance Corporation, (d) the Agriculture Refinance Corporation, (e) the Unit Trust of India, (f) the Industrial Development Bank of India, (g) any other financial institution being an establishment in public sector which the Central Government notifies in the Official Gazette with

regard to its capital structure, its objects, its extent of financial assistance and any other relevant factor.

h. Employees of the Reserve Bank of India.

i. Employees of inland water transport establishments operating on routes passing through any other country.

- **Accounting Year:**

Section 2(1) of the Act defines accounting year as defined in relation to (i) a corporation, (ii) a Company, and (iii) any other cases. Regarding corporation the accounting year is the ending day of the particular year on which the books and accounts of the corporation are closed and balanced. In case of a company it means 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. In any other case it means the year commencing on the 1st day of April, or if the accounts of an establishment maintained by the employer thereof are closed or 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 the accounts are so closed and balanced.

- **Allocable Surplus:**

In case of a company other than a

banking company allocable surplus means sixty-seven per cent. of the available surplus in an accounting year of the 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. In all other cases allocable surplus in an accounting year.

- **Available Surplus:**

Available surplus in any accounting year is computed under section 5 of the Act. The available surplus as provided by section 5 of the Act in respect of any accounting year shall be the gross profit for that year after deducting there from those sums referred to in section 6 of the Act. Prior to the Payment of Bonus (Amendment) Act, 1969 one of the sums referred to in section 6 was the tax which the employer was liable to pay for the accounting year in respect of his income, profits and gains during the year. The available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of (a) the gross profit for that accounting year after deducting those sums as 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 the same manner but 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. The following sums shall be deducted from the gross profits as prior charges:-

(a) Any amount by way of depreciation admissible in accordance with the provisions of the Income-tax law. In case an employer has been paying bonus to his employees under a settlement or an award or an 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 shall continue at the option of such employer to be such notional normal depreciation. But the employer must exercise this option once and within one year from that date in all other cases amount of income-tax payable for bonus year is to be calculated after deducting statutory depreciation and not notional normal depreciation. A claim for depreciation on account of double or multiple shifts can be allowed even though such amount is not claimed under the Income-tax Act.

(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. Amount actually allowable as development rebate under section 33 of the Income-tax Act, 1961 should be allowed as deduction and not seventy per cent. Of that amount contemplated by section 34(3) of the Income-tax Act as development rebate reserve.

(c) 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. This charge shall operate subject to the provisions of section 7 of the Act. The direct taxes are to be worked out on the gross profits worked out under section 4, less the prior charges under section 6, namely depreciation and development rebate but without deducting

from such balance the bonus payable by the company in the particular accounting year. The amendment of the Act in 1969 has not altered this position.

(d) Such further sums as are specified in respect

of the employer in

the Third Schedule. In the

Third Schedule to the Act employees have been classified into six categories, viz.,-

(1) Company other than a Banking Company, (2) Banking Company, (3) Corporation, (4) Co-operative Society, (5) Any other employer not falling under any of the aforesaid categories, and (6) Any employer falling under item No. 1 or item No. 3 or item No. 4 or item No. 5 and being a licensee within the meaning of the Electricity Supply Act, 1948.

- **Bonus On Commission:**

Section 2(21) of the Payment of Bonus Act defines 'salary or `wages'. Its opening provision includes within it all remunerations (other than the remuneration in case 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 and includes

Dearness allowance, yet in express terms, the definition does not include any commission payable to the employee vide clause (vii) of section 2(21) of the Act.

- **Forfeiture of Bonus:**

An employee who is dismissed from service on the grounds of Fraud, riotous or violent behavior at the premises of the establishment or for theft, misappropriation or sabotage of any property of the establishment as contained in section 9 of the Payment of Bonus Act shall not only be disqualified from receiving

the bonus for the accounting year in which he was dismissed but also for the past years remained unpaid to him.

- **Wages For Bonus:**

Salary or wages for payment of wages other than house rent *allowance* includes dearness allowance.

Here in below are clarifications with regard to components

wages

or

salary.

- **Time Limit For Payment of Bonus:**

All amounts payable to an employee by way of bonus are to be *paid* in cash:

(a) Where there is dispute regarding payment of bonus pending before an authority (under the I.D. Act) within one month from the date on which the award becomes enforceable or settlement comes into operation, in respect of such dispute; and

(b) in all other cases within 8 months from the close of the accounting year.

Questions

1. Define Employee under the provisions of Payment of Bonus Act 1965
2. What is the Eligibility for Bonus payment
3. Discuss the Extent and application of the Payment of Bonus Act 1965
4. What are the establishments exempted from the Act
6. Define Accounting Year:
7. Define Allocable Surplus:

8. Define Available Surplus:
9. Define Bonus on Commission:
10. Explain Forfeiture of Bonus
11. What is the Time Limit For Payment of Bonus:

Unit 4.3 Payment of Gratuity Act 1972

- **Introduction and Concept**

Gratuity is a kind of retirement benefit like provident fund or pension. It is a payment, which is intended to help an employee after his retirement whether the retirement is the result of the rules of some physical disability. The general principle underlying gratuity schemes is that by faithful service over the long period the employee is entitled to claim a certain amount as retirement benefit.

- **Extent of the Payment of Gratuity Act**

The act provides for a scheme of compulsory payment of gratuity by management of factories, mines, oilfields, ports, railway companies, shops and other establishments employing 10 or more persons on any day of the preceding 12 months.

- **The Act does not apply to certain classes of Employee**

1. Employees employed by any insurer carrying on general insurers business and the employees employed by the LIC of India.
2. Employees employed through contractors on building operation.
3. Employees employed by the reserve bank of India.
4. Employees employed by
 - a) industrial finance corporation of India.
 - b) the deposit insurance corporation.
 - c) the unit trusts of India.
 - d) the national housing bank.
 - e) the industrial development bank of India.
 - f) the national bank for agriculture and rural development.

- **Employees Entitled**

Every employee (other than an apprentice) irrespective of his wages is entitled to receive gratuity after he has rendered continuous service for 5 years or more.

Gratuity is payable at the time of termination of his services, either

- i) on superannuation, or
- ii) on retirement or resignation, or
- iii) on death or disablement due to accident or disease
- iv) Termination of services includes retrenchment
- v) However, the condition of 5 years continuous service is not necessary if services are terminated due to death or disablement.

- **Continuous Service**

An employee is said to have rendered continuous service, if —

- i) he was been in interrupted service, including service interrupted by sickness, accident, absence from duty with or without leave, lay off, strike or lock-out or cessation of work not due to the employee's fault;
- ii) In case of mine or a non-seasonal establishment working for less than 6 days in a week, he has actually worked for at least 190 days during the preceding 12 months or 95 days during the preceding 6 months, he shall be deemed to have rendered continuous service for a period one year or six months respectively.
- iii) In case of any other non-seasonal establishment he has actually worked at least 240 days during the preceding 12 months or 120 days during the preceding 6 months, he shall be deemed to have rendered continuous service for a period of one year or six months, respectively.
- iv) In case of a seasonal establishment, he has actually worked for at least 75% of the days on which the establishment was in operation under section 2 —A.

- **What Is Gratuity**

Gratuity is a sort of an award which an employer pays out of his gratitude, to an employee for his long and meritorious services at the time of his retirement or termination of his services. Payment of gratuity is however, compulsory for employers in certain units and establishments to which the payment of gratuity Act applies.

Calculation of Gratuity

In case of non — seasonal establishment -

Gratuity Payable = 15 days wages x No of completed years of service (part of a year in excess of 6 months is counted as one year)

In case of seasonal establishment —

Gratuity Payable = 7 day's wages x No of seasons for which employed.

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.

- **DEFINITIONS**

1. *"Appropriate" government means*

In relation to an establishment -

- a) belonging to, or under the control of the central government.*
- b) having branches in more than one state.*
- c) of a factory belonging to or under the control of the central government.*
- d) of a major port, oilfield, railway or mine companies the central government.*

2. *"Employee" means any person employed on wages in any establishment, factory, mine oilfields etc to do any skilled, or unskilled, manual, supervisory, technical or clerical work whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the central government or a state government and is governed by any other act or by any rules providing for the payment of gratitude.*

- **Payment Of Gratuity [Section . 4]**

Gratuity shall be payable Co an employee on the termination of employment after he has rendered continuous service for not leno than five years.

- a) on his retirement
- b) on his resignation
- c) on his death or disability

Compulsory Insurance

With effect from such date as may be notified by the appropriate government in this behalf, every employer, other than an employer or an establishment belonging to or under the control of the central government or state government, shall obtain an insurance in the manner prescribed for his liability for the payments towards the gratuity under this act, from the Life Insurance Corporation of India established under the Life Insurance of India Act, 1956.

- **Power To Exempt**

1. The appropriate government may by notification and subject to such conditions as may be specified in the notification exempt any establishment factory, mine, oilfield, plantation, port railway company or shop to which this act if in the opinion of the appropriate government the employees in such establishment, factory, mine, etc are in receipt of gratuity or pensioners benefits not less favorable than the benefits conferred under this act.

2. A notification issued under the sub-section may be issued retrospectively a date not earlier than the date of commencement of this act, but no such notification shall be issued so as to prejudicially affect the interests of any person.

- **Nomination**

Each employee is required to make a nomination within a specified period and in the specific manner.

1. Nomination within 90/30 days each employee who has completed 1 year of service after the commencement of the payment of gratuity rules, 1972, shall make within 90 days and each employee who completes 1 year of service after the date of the commencement of these rules, within 30 days of completion of 1 year of service, a nomination sec 6(1) read with rule.

2. Distribution of amount - an employee may in his nomination distribute the amount of gratuity payable to him under the act amongst more than one nominee sec (6. {2}).

3. Nomination in favour of family members - if an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family. To protect the interests of the family, it has been specifically provided that any nomination made by such employee in favour of a person, who is not a member of his family shall be void sec. 6 (3).

However, if at the time of making a nomination the person has no family then the nomination may be made in the favour of any person. If the employee subsequently acquires a family such nomination shall forthwith become invalid and the employee shall make within 90 days a fresh nomination in favour of one or more members of his family sec 6. (4).

4. Modification of nomination - it can be done at any time after giving to his employer a written notice of his intension to do so. Sec. 6{(5)}.

- **Determination of the Amount of Gratuity (Section 7)**

As soon as gratuity becomes payable the employer shall determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable. Notice is also to be given to the controlling authority specifying the amount of gratuity so determined. This exercise is to be done by the employer irrespective of the fact whether an application for payment of gratuity has been made or not section 7(2).

- **Modes of Payment**

The gratuity is generally payable in cash or by Demand Draft or cheque. If the amount of gratuity is less than Rs. 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).

- **Time Limit for Payment**

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, under section 7 (3A) w.e.f. 1.10.1987.

- **Application to the Controlling Authority for Direction**

An employee who is eligible for payment of gratuity under the act or any person authorized in writing to act on his behalf shall send an application to the employer within 30 days from the date the gratuity become payable for payment of such gratuity. The controlling authority has the authority to -

- i) Refuse to accept a nomination or to entertain an application for payment of gratuity.
- ii) Issues a notice either specifying an amount of gratuity, which is considered by the applicant to be less than what is payable or rejecting eligibility to payment of gratuity.
- iii) Having received an application for payment of gratuity fails to issue any notice within 15 days.

- **Powers of the Controlling Authority**

	Unit	4.3
<hr/> Payment of Gratuity Act 1972 <hr/>		

- **Introduction and Concept**

Gratuity is a kind of retirement benefit like provident fund or pension. It is a payment, which is intended to help an employee after his retirement whether the retirement is the result of the rules of some physical disability. The general principle underlying gratuity schemes is that by faithful service over the long period the employee is entitled to claim a certain amount as retirement benefit.

- **Extent of the Payment of Gratuity Act**

The act provides for a scheme of compulsory payment of gratuity by management of factories, mines, oilfields, ports, railway companies, shops and other establishments employing 10 or more persons on any day of the preceding 12 months.

- **The Act does not apply to certain classes of Employee**

1. Employees employed by any insurer carrying on general insurers business and the employees employed by the LIC of India.
2. Employees employed through contractors on building operation.
3. Employees employed by the reserve bank of India.

4. Employees employed by

- a) industrial finance corporation of India.
- b) the deposit insurance corporation.
- c) the unit trusts of India.
- d) the national housing bank.
- e) the industrial development bank of India.
- f) the national bank for agriculture and rural development.

- **Employees Entitled**

Every employee (other than an apprentice) irrespective of his wages is entitled to receive gratuity after he has rendered continuous service for 5 years or more.

Gratuity is payable at the time of termination of his services, either

- vi) on superannuation, or
- vii) on retirement or resignation, or
- viii) on death or disablement due to accident or disease
- ix) Termination of services includes retrenchment
- x) However, the condition of 5 years continuous service is not necessary if services are terminated due to death or disablement.

- **Continuous Service**

An employee is said to have rendered continuous service, if —

- i) he was been in interrupted service, including service interrupted by sickness, accident, absence from duty with or without leave, lay off, strike or lock-out or cessation of work not due to the employee's fault;
- ii) In case of mine or a non-seasonal establishment working for less than 6 days in a week, he has actually worked for at least 190 days during the preceding 12 months or 95 days during the preceding 6 months, he shall be deemed to have rendered continuous service for a period one year or six months respectively.
- iii) In case of any other non-seasonal establishment he has actually worked at least 240 days during the preceding 12 months or 120 days during the preceding 6 months, he shall be deemed to have rendered continuous service for a period of one year or six months, respectively.
- iv) In case of a seasonal establishment, he has actually worked for at least 75% of the days on which the establishment was in operation under section 2 —A.

- **What Is Gratuity**

Gratuity is a sort of an award which an employer pays out of his gratitude, to an employee for his long and meritorious services at the time of his retirement or termination of his services. Payment of gratuity is however, compulsory for employers in certain units and establishments to which the payment of gratuity Act applies.

Calculation of Gratuity

In case of non — seasonal establishment -

Gratuity Payable = 15 days wages x No of completed years of service (part of a year in excess of 6 months is counted as one year)

In case of seasonal establishment —

Gratuity Payable = 7 day's wages x No of seasons for which employed.

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.

- **DEFINITIONS**

1. "Appropriate" government means

In relation to an establishment -

- a) belonging to, or under the control of the central government.
- b) having branches in more than one state.
- c) of a factory belonging to or under the control of the central government.
- d) of a major port, oilfield, railway or mine companies the central government.

2. "Employee" means any person employed on wages in any establishment, factory, mine oilfields etc to do any skilled, or unskilled, manual, supervisory, technical or clerical work whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the central government or a state government and is governed by any other act or by any rules providing for the payment of gratitude.

- **Payment Of Gratuity [Section . 4]**

Gratuity shall be payable to an employee on the termination of employment after he has rendered continuous service for **not less than five years**.

- a) on his retirement

- b) on his resignation
- c) on his death or disability

Compulsory Insurance

With effect from such date as may be notified by the appropriate government in this behalf, every employer, other than an employer or an establishment belonging to or under the control of the central government or state government, shall obtain an insurance in the manner prescribed for his liability for the payments towards the gratuity under this act, from the Life Insurance Corporation of India established under the Life Insurance of India Act, 1956.

- **Power To Exempt**

1. The appropriate government may by notification and subject to such conditions as may be specified in the notification exempt any establishment factory, mine, oilfield, plantation, port railway company or shop to which this act if in the opinion of the appropriate government the employees in such establishment, factory, mine, etc are in receipt of gratuity or pensioners benefits not less favorable than the benefits conferred under this act.
2. A notification issued under the sub-section may be issued retrospectively a date not earlier than the date of commencement of this act, but no such notification shall be issued so as to prejudicially affect the interests of any person.

- **Nomination**

Each employee is required to make a nomination within a specified period and in the specific manner.

1. Nomination within 90/30 days each employee who has completed 1 year of service after the commencement of the payment of gratuity rules, 1972, shall make within 90 days and each employee who completes 1 year of service after the date of the commencement of these rules, within 30 days of completion of 1 year of service, a nomination sec 6(1) read with rule.
2. Distribution of amount - an employee may in his nomination distribute the amount of gratuity payable to him under the act amongst more than one nominee sec (6. {2}).
3. Nomination in favour of family members - if an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family. To protect the interests of the family, it has been specifically provided that any nomination made by such employee in favour of a person, who is not a member of his family shall be void sec. 6 (3).

However, if at the time of making a nomination the person has no family then the nomination may be made in the favour of any person. If the employee subsequently acquires a family such nomination shall forthwith become invalid and the employee shall make within 90 days a fresh nomination in favour of one or more members of his family sec 6. (4).
4. Modification of nomination - it can be done at any time after giving to his employer a written notice of his intension to do so. Sec. 6{(5)}.

- **Determination of the Amount of Gratuity (Section 7)**

As soon as gratuity becomes payable the employer shall determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable. Notice is also to be given to the controlling authority specifying the amount of gratuity so determined. This exercise is to be done by the employer irrespective of the fact whether an application for payment of gratuity has been made or not **section 7(2).**

- **Modes of Payment**

The gratuity is generally payable in cash or by Demand Draft or cheque. If the amount of gratuity is less than Rs. 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).

- **Time Limit for Payment**

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, under section 7 (3A) w.e.f. 1.10.1987.

- **Application to the Controlling Authority for Direction**

An employee who is eligible for payment of gratuity under the act or any person authorized in writing to act on his behalf shall send an application to the employer within 30 days from the date the gratuity become payable for payment of such gratuity. The controlling authority has the authority to -

- i) Refuse to accept a nomination or to entertain an application for payment of gratuity.
- ii) Issues a notice either specifying an amount of gratuity, which is considered by the applicant to be less than what is payable or rejecting eligibility to payment of gratuity.
- iii) Having received an application for payment of gratuity fails to issue any notice within 15 days.

- **Powers of the Controlling Authority**

The controlling authority for the purpose of conducting an inquiry as to the amount of gratuity payable to an employee or as to the admissibility of any claim of or in relation to an employee for payment of gratuity or as to the person entitled to receive the gratuity shall have the same powers as are vested in a court, while trying a suit under the code of civil procedure, 1908. It shall have powers in respect of the following matters :

- a) enforcing the attendance of any person or examining him on oath.
- b) requiring the discovery and production of documents.
- c) receiving evidence on affidavits.
- d) issuing commission for the examination of witnesses.

- **Appeal**

Any person aggrieved by an order of the controlling authority may, within 60 days from the date of the receipt of the order, prefer an appeal to the Appropriate Government or such other Authority as, the case may be.

The authority after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reserve the decision of the controlling authority sec.7{8}.

- **Inspectors**

The appropriate government appoint as many inspectors as it deems fit for the purposes of the act section. {7-A} it may be general or special order define the area to which the authority of an inspector appointed shall extent. Where 2 or more inspectors are appointed for the same area, it may also provide by such order for the distribution or allocation of work to be performing by them under the act. Sec.7A{2}.

- **Recovery of Gratuity**

If the employer does not pay the amount of gratuity payable under the act within the prescribed time to the person, he shall or can make an application the controlling authority.

The controlling authority shall on an application made to it's in this behalf by the aggrieved person issue a certificate for that amount to the collector. The collector shall recover the amount together with compound interest thereon at such rate from the date of expiry of the preceded time as arrears of land revenue and pay the same to the person.

- **Protection of Gratuity**

No gratitude payable under this act and no gratitude payable to an employee employed in any establishment, factory, mine, oilfields, plantation, port, Railway Company or shop exempted under section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

- **Exemption of Employer from Liabilities in Certain Cases**

Under Section 10 - on being charged with an offence punishable under the act an employer shall be entitled to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge. He shall however be entitled to do so upon compliant duly made by him and on giving to the compliant not less than three clear days notice in writing of his intension to do so. After the commission of the offence has been proved, the employer has to prove to the satisfaction of the court :

- a) that he has used due diligence to enforce the execution of the act, and
- b) that the said other person committed the offence in question without his knowledge, consent or connivance.

If the employer proves as aforesaid, the other person shall be convicted for the offence and shall be liable to the like punishment as if he were the employer. The employer shall then be discharged from any liability under the act in respect of such offence section 10.

- **Cognizance of Offences [Section 11]**

No suit or other legal proceeding shall lie against the controlling authority or any other person in respect of anything, which is in good faith done, or intended to be done under the act or any rule or order made hereunder.

- **Protection of Action taken In Good Faith [Section 12]**

No suit or other legal proceeding shall lie against the controlling authority or any other person in respect of anything, which is in good faith done, or intended to be done under or any rule or order made hereunder.

- **Forfeiture of Gratuity [Section. 4 (6)]**

If the service of the employee is 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. Gratuity can be wholly or partly forfeited. When employees go on an illegal strike and thereby caused a heavy loss is not a ground for denying gratuity. For calculation of gratuity the same factory will be a seasonal establishment for those persons who work seasonally and will be a non-seasonal establishment for those who work throughout the year. Thus it is legal to have two rates of gratuity. If the service are terminated for his riotous or disorderly behavior or any other act of violence on his part or if the services are terminated for any act which constitutes an offence involving moral turpitude. Provided, that such offence is committed by him in course of his employment.

- **Obligations Of Employers**

1. The employer is usually required to submit a notice of opening an establishment to the controlling authority of the area, in the prescribed form containing name and address of the establishment, employer, nature of business etc. The employer is also required to intimate the controlling authority if there is any change in these particulars or if he intends to close down the business.

2. The employer should correctly ascertain the amount of gratuity payable as per the provisions of the Act and pay the same accordingly.

3. To obtain an insurance in the prescribed manner for his liability for payment of gratuity under the Act or establish approved Gratuity Fund in the prescribed manner.

4. The employer is generally required to display following notice, at or near the main entrance of the establishment, in bold letters in English and in the local language.

- **Rights of Employers**

- i) To make certain deduction from the gratuity payable to an employee, such as the amount of damage or loss caused by his willful omission or negligence.

ii) To forfeit the amount of gratuity payable to an employee, wholly or partly, if his services have been terminated due to riotous or disorderly conduct; violence or moral turpitude.

iii) To refer any dispute as to admissibility of any claim or as to person entitled to the controlling authority of the area section 7 (4) (b).

iv) To appeal against an order of the controlling authority to the appellate authority within 60 days of the receipt of the order section 7 (7).

- **Right of Employees**

a) Appoint any of his family member(s) or any other persons as his nominee; entitled to receive the amount of gratuity payable to him after his death.

b) Claim the amount of gratuity payable in accordance with the Act.

c) Apply to the controlling authority for recovery of gratuity payable which remains unpaid under section 8.

d) Refer any dispute as to admissibility of any claim or as to person entitled, to the controlling authority of the area.

e) Appeal against an order of the controlling authority to the appellate authority within 60 days of the receipt of the order.

Maximum Gratuity

The amount of gratuity payable should not exceed Rs. 10,00,000 in any case w.e.f. 24.5.2010 vide Notification No. S.O.1217 (E) dated 24.5.2010.

- **Offences & Penalties**

	OFFENCES	PENALTY
1.	Failure to make payment by way of premium for compulsory insurance under section 4A (1) or by way of contribution to an approved gratuity fund.	Fine upto Rs. 10,000/- and Rs. 1,000/- for each day during which the offence continues.
2.	Making a false statement as false representation to avoid any payment under the Act. (Section 9 (1)).	Imprisonment upto 6 months or fine upto Rs. 10,000 or both.
3.	Contravention or non-compliance of any provision of the Act or the Rules	Imprisonment upto one year (minimum 3 months or fine upto Rs. 20,000 (minimum Rs. 10,000 or both)

4.	Non Payment of any gratuity payable under the Act	Imprisonment upto two years (minimum 6 months), or fine upto Rs. 20,000 (minimum Rs. 10,000), or both.
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Qu

Questions

1. What Is Gratuity
2. Explain Calculation of Gratuity
3. Define "Appropriate" government
4. Define "Employee"
5. Explain provisions for Payment of Gratuity [Section 4]
6. What is Compulsory Insurance
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10. What are the Modes of Payment of gratuity
11. What is the Time Limit for Payment of gratuity
12. How is Application to the Controlling Authority for Direction made
13. Explain Powers of the Controlling Authority
14. Powers of the Controlling Authority
15. Explain provisions for appeal
16. Write a note on Cognizance of Offences [Section 11]
17. Explain Protection of Action Taken In Good Faith [Section 12]
18. Write a note on Forfeiture of Gratuity [Section. 4 (6)]
19. What are the Obligations of Employers under this act
20. Discuss Offences & Penalties

The controlling authority for the purpose of conducting an inquiry as to the amount of gratuity payable to an employee or as to the admissibility of any claim of or in relation to an employee for payment of gratuity or as to the person entitled to receive the gratuity shall have the same powers

as are vested in a court, while trying a suit under the code of civil procedure, 1908. It shall have powers in respect of the following matters :

- e) enforcing the attendance of any person or examining him on oath.
- f) requiring the discovery and production of documents.
- g) receiving evidence on affidavits.
- h) issuing commission for the examination of witnesses.

- **Appeal**

Any person aggrieved by an order of the controlling authority may, within 60 days from the date of the receipt of the order, prefer an appeal to the Appropriate Government or such other Authority as, the case may be.

The authority after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reserve the decision of the controlling authority sec.7{8}.

- **Inspectors**

The appropriate government appoint as many inspectors as it deems fit for the purposes of the act section. {7-A} it may be general or special order define the area to which the authority of an inspector appointed shall extent. Where 2 or more inspectors are appointed for the same area, it may also provide by such order for the distribution or allocation of work to be performing by them under the act. Sec.7A{2}.

- **Recovery of Gratuity**

If the employer does not pay the amount of gratuity payable under the act within the prescribed time to the person, he shall or can make an application the controlling authority.

The controlling authority shall on an application made to it's in this behalf by the aggrieved person issue a certificate for that amount to the collector. The collector shall recover the amount together with compound interest thereon at such rate from the date of expiry of the preceded time as arrears of land revenue and pay the same to the person.

- **Protection of Gratuity**

No gratitude payable under this act and no gratitude payable to an employee employed in any establishment, factory, mine, oilfields, plantation, port, Railway Company or shop exempted under section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

- **Exemption of Employer from Liabilities in Certain Cases**

Under Section 10 - on being charged with an offence punishable under the act an employer shall be entitled to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge. He shall however be entitled to do so upon compliant duly made by him and on on giving to the compliant not less thus three clear days notice

in writing of his intension to do so. After the commission of the offence has been proved, the employer has to prove to the satisfaction of the court :

- c) that he has used due diligence to enforce the execution of the act, and
- d) that the said other person committed the offence in question without his knowledge, consent or connivance.

If the employer proves as aforesaid, the other person shall be convicted for the offence and shall be liable to the like punishment as if he were the employer. The employer shall then be discharged from any liability under the act in respect of such offence section 10.

- **Cognizance of Offences [Section 11]**

No suit or other legal proceeding shall lie against the controlling authority or any other person in respect of anything, which is in good faith done, or intended to be done under the act or any rule or order made hereunder.

- **Protection of Action taken In Good Faith [Section 12]**

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