Caseman

Labour Laws

C. Jamnadas & Co.

LABOUR LAWS

A LUCID COMMENTARY ON:

I. **THE EMPLOYEE'S COMPENSATION ACT, 1923 (Formerly, THE WORKMEN'S COMPENSATION ACT, 1923)**

II. **THE PAYMENT OF WAGES ACT, 1936**

&

III. **THE INDUSTRIAL DISPUTES ACT, 1947 (as amended by Act 24 of 2010)**

BY

CASEMAN

C. JAMNADAS & CO.

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PREFACE TO THE TWELVETH EDITION

It gives us great pleasure to present the Twelveth edition of our popular book on Labour Laws to the student community. All the important provisions of the Workmen's Compensation Act, the Payment of Wages Act and the Industrial Disputes Act (as amended in 2010) have been discussed in simple and lucid language.

***Vide an Amendment of the Act in 2009,* which came into force on *18m January, 2010,* the name of the Workmen's Compensation Act was changed to *"The Employee's Compensation Act".* The rates of compensation were also enhanced by the 2009 Amendment Act and other minor changes have been effected in the Act. All these amendments have been dealt with at the appropriate places. In view of this Amendment, any reference in this book to a 'workman' should be read as a reference to an 'employee'.**

Questions asked at recent examinations of the University of Mumbai are given in the margin. Relevant cases have also been added at the appropriate places.

We are confident that this book will continue to be of immense utility to all the students of this subject.

— The Publishers

(CONTENTS)

A. Statements regarding Fatal Accidents (S. 10A)
B. Report of Fatal Accidents and Serious Bodily Injuries (S. 10B)
C. Returns regarding Compensations (S. 16)
D. Contracting out (S. 17)
E. Penalties (S. 18A)

CHAPTER V Special Liabilities

A. Employers and Contractors (S. 12)
B. Employer's Remedies against Strangers (S. 13)
C. Employer's Insolvency (S. 14)
D. First Charge on Assets (S. 14A)
E. Special provisions...Master and Seamen (S. 15)
F. Special Provisions relating to Captains and Other Members of Crew of Aircrafts (S. 15A)
G. Special Provisions relating to Workmen abroad of Companies and Motor Vehicles (S. 15B)

CHAPTER VI Commissioner of Employee's Compensation

A. Reference to Commissioners (S. 19)
B. Appointment of Commissioners (S. 20)
C. Venue of Proceedings (S. 21)
D. Form and Occasion of Application (S. 22)
E. Commissioner's Power: Further Deposit (S. 22A)
F. Powers and Procedure (S. 23)
G. Appearance of Parties (S. 24)
H. Method of Recording Evidence (S. 25)
I. Time-frame for disposal of compensation cases (S. 254)
J. Costs (S. 26)
K. Power to Submit Cases (S. 27)
L. Registration of Agreements (S. 28)
M. Effect of Failure to Register Agreements (S. 29)
N. Appeals (S. 30)
O. Withholding Payments Pending Appeal (Sec. 30A)
P. Recovery (Sec. 31)
Q. Summary of Powers and Functions of the Commissioner

CHAPTER VII Rules

A. State Government's Power to Make Rules (S. 32)
B. Publication of Rules (S. 34)
C. Transfer of Money : Rules (S. 35)
D. Rules to be Placed before Parliament

CHAPTER VIII The Schedules

A. Schedule l-(See Section 2(1) & (4)
B. Schedule ll-List of Persons Included in Definition of Workman Schedule lll-(See Section 3)
C. Schedule IV-(See Section 4)

PART II

THE PAYMENT OF WAGES ACT, 1936

CHAPTER I Object, Purpose and Application of the Act

Introductory
Object and Purpose
Application and Scope
The Act at a Glance

PART III
THE INDUSTRIAL DISPUTES ACT, 1947

Conciliation Officers
Board of Conciliation
Courts of Inquiry
Labour Court
Industrial Tribunal
National Tribunal

CHAPTER IV Notice of Change
Notice of Change: When Required
Matters in the Fourth Schedule
When Notice Not Required
Power to Exempt

CHAPTER V Reference of Disputes to Boards, Courts or Tribunals
Reference of Individual Disputes to Grievance Settlement Authorities
Reference of Disputes under Section 10 to Boards, Courts and Tribunals
Effect of an Order of Reference Generally
Voluntary Reference to Arbitration under Section 10A
Workman's Death

CHAPTER VI Awards and Settlements
Form of Report and Award (S. 16)
Publication of Reports and Awards (S. 17)
Commencement of an Award (S. 17)
Persons on whom Settlements and Awards Are Binding (S. 18)
Period of Operation of Settlements and Awards (S. 19)
Commencement and Conclusion of Proceedings (S. 20)
Penalty for Breach of Settlement and Award (S. 29)

CHAPTER VII Strikes and Lock-outs
Strike and Lock-out Defined [Ss. 2(q) & 20)]
Prohibition of Strikes and Lock-outs in Public Utility Services (S. 22)
General Prohibition: Strikes and Lock-outs (S. 23)
Illegal Strike and Lock-out (S. 24)
Prohibition of Financial Aid to Illegal Strikes and Lock-outs and Penalty in Respect thereof (Ss. 25 & 28)
Penalty for Illegal Strikes and Lock-outs (S. 26)
Penalty for Instigation of Illegal Strikes or Lock-outs (S. 27)

CHAPTER VIII Lay-off and Retrenchment
Introduction: Chapter V & V-A of the Act
Lay-off and Retrenchment Defined
General Provisions: Lay-off (Ss. 25A to 25E)
General Provisions: Retrenchment (Ss. 25F, 25G & 25H)
Special Provisions: Transfer of Undertakings (S. 25FF)
Special Provisions: Closing Down (Ss. 25FFA & 25FFF)
Effect of Inconsistent Laws (Ss. 25J)
Special Provisions: Lay-off, Retrenchment & Closure in Certain Establishments (Ss. 25K, 28S)
Unfair Labour Practice (Ss. 25T and 25U)

CHAPTER IX Protection to Workmen during Pendency of Proceedings

Service Conditions to Remain Unchanged [Ss. 33(11),(2)&(5)
Special Provisions relating to Protected Workmen [Ss.33(3)& (4)]
Adjudication as to whether Service Conditions Changed (S. 33A)

Penalty for Contravention of [S. 31(1)]

CHAPTER X Miscellaneous Topics

Grievance Settlement Authority
Penalty of Disclosing Confidential Information (S. 30)
Offences by Companies (S. 32)
Appropriate Government's Power to Transfer Proceedings (S. 33B)
Recovery of Money due from an Employer (S. 33C)
Cognizance of Offences (S. 34)
Protection of Persons (S. 35)
Representation of Parties (S. 36)
Power to Remove Difficulties (S. 36A)
Power to Exempt
Protection of Action Taken under the Act (S. 37)
Power to Make Rules (S. 38)
Delegation of Powers (S. 39)

CHAPTER XI The Schedules

A. The First Schedule
B. The Second Schedule
C. The Third Schedule
D. The Fourth Schedule
E. The Fifth Schedule
F. Power to Amend Schedules

PART I

THE EMPLOYEE'S COMPENSATION ACT, 1923

(Formerly, the Workmen's Compensation Act, 1923)

CHAPTER I

OBJECT, PURPOSE AND APPLICATION

This Chapter is discussed under the following *four* heads:

A. Introduction
B. Object and Purpose
C. Application and Scope
D. Act at a Glance.

Questions:
What is the object of the E.C. act 1923? (2 Marks) M.U. May 2012, Nov 2013
Explain the objects Explain reasons and features of the W.C. Act. B. u. Apr. 2011

A. INTRODUCTION

In the olden days, employees were generally at the mercy of their employers, and payment of compensation to them for injury or to their dependents on account of death, while at work, largely depended on the generosity of the employer. However, with the enactment of the Workmen's Compensation Act, 1923 the payment of compensation to an employee on account of injury, *or* such payment to his dependents on account of his death owing to injury arising out of an accident, is *no longer* dependent on the *will, generosity* or *whim* of the employer. It is also not *any more* restricted to liability for payment only in the event of the injury or death being caused by the employer's negligence.

Today, the Act grants a statutory right to the workers to recover compensation for injuries caused by accident arising *out of, and in the course of, employment.*

Vide an Amendment of the Act in 2009, which came into force on 18th January, 2010, the name of the Act was changed to "The Employee's Compensation Act". The rates of compensation have also been enhanced by *the 2009 Amendment Act* and other minor changes have been effected in the Act. *In view of this Amendment, any reference in this book to a 'workman' should be read as a reference to an 'employee'.*

B. OBJECT AND PURPOSE

The *object* of the Act is to provide for payment, by certain classes of employers, to their employees, of compensation for *injury by* accident arising out of and in the course of their employment.

The Allahabad High Court, in *Works Manager, E.I. Railway* v. *Mahavir,* A.I.R. 1954 All. 132, analysed the *principle on which the Act is based* thus

A person is responsible for the consequences arising out of a situation wherein he, on his own responsibility and for his own profits, sets in motion, agencies which create risks for others. Liability, in the context of the Act, arises out of the fact of the employer-employee relationship.

It will be seen that the Act is, in a way, a recognition of the fact of a mechanised industrial age, where the worker can no longer be looked upon as a mere cog in the industrial machine. The Act provides for the payment of compensation concomitant with the risk he undertakes by the fact of his employment.

An extract from the *Statement of Objects and Reasons* of the Act highlights this aspect as follows:

"The growing complexity of industry, with the increasing use of machinery and consequent danger to the employee, along with comparative poverty of the employee themselves, renders it advisable that they should be protected, as far as possible, from hardships arising out of accidents. This Act provides for cheaper and quicker disposal of disputes relating to compensation through special tribunals than was possible under the Civil Law."

It has rightly been said that the *object* of the Act is to provide for *social security* and to ensure *social justice,* and *not to punish* the employer. The Act is intended to ensure that the employer compensates his employee in the event of injury or death arising out of, and in the course of, employment. The Act is *not punitive* in nature. It seeks to provide *justice* for the employee and *not punishment* for the employer.

The Act is a beneficial statute enacted for the welfare of employees. A well-deserved warning was sounded in *Rengasamy v. Amalraj* (2002 (4) Lab. L. J., 852, where the court observed as under:

"The Act is a beneficial piece of legislation that has been enacted to compensate the workmen and their dependents in the event of accidents during the course of employment. It is *not* to be used to exhort money from people with whom there is no nexus of employment. It is unfortunate that a beneficial enactment such as this is misused by some persons."

C. APPLICATION AND SCOPE

Section 1 states that the *Employee's Compensation Act, 1923* which came into force on 1st July, 1924, extends to the whole of India

Moreover, the provisions of this Act do *not* apply to persons covered by the provisions of the *Employees' State Insurance Act.*

D. THE ACT AT A GLANCE

Section 2, the interpretation clause, is important, as it contains the definitions of terms like *employee, dependent, employer, wages, partial and total disablement, etc.,* which are vital to understand the scheme of the Act.

Section 3 is undoubtedly the most important section of Act. It lays down the *basis* for the liability to pay compensation. It is exhaustive, as it *not only* provides the principle on which compensation is payable *but also* specifies when compensation is *not payable,* and when contracting an occupational disease is deemed to be an injury arising out of accident. This section must be read with Schedules I, II, III, and IV of the Act (which are set out in Chapter VIII of Part I of the book). It is this section that enables the injured employee to recover compensation on account of injury arising out of accident, and also entitles dependents of such employee to recover compensation when the injury results in his death.

Section 3(5) of the Act prescribes that a compensation claim under this Act is an *alternative* to a civil suit for damages, and, therefore, the exercise of either of the two options, bars the other. Failure to pay compensation when due, also renders an

employer liable to a penalty.

As the concept of compensation is linked with wages, the Act also prescribes the modes of calculating wages. (S. 5)

Under S. 10, the Commissioner appointed under the Act entertains a claim when notice has been given in the prescribed form and manner. The employer has to give notice to the Commissioner of fatal accidents and serious injuries. Medical examination is provided for by *Section 11.*

Section 12 lays down the conditions under which the employer has to pay compensation to employees employed by a contractor.

S. 15 then makes provision for payments of compensation to masters and seamen.

As in other beneficent labour statutes, "*contracting out"* is of no effect in law. *Section 17,* therefore, lays down that any agreement that an employee may have entered into with the employer by which the employee *waives or abandons* his rights under this Act, is *void* and of no effect.

A reference under *Section 19* may be made to the Commissioner appointed under the Act in respect of any question relating to payment of compensation.

Section 19(2) bars the Civil Courts' jurisdiction in respect of matters within the purview of the Commissioner. The subsequent provisions relate to the form of the application to be filed before the Commissioner, the procedure to be followed in such proceedings and the appearance of parties. The Commissioner may submit any question of law to the High Court, and pass orders in keeping with the High Court's decision. Under *Section 30,* an appeal against the Commissioner's order lies to the High Court in the cases and under the circumstances specified therein.

Section 28 deals with the registration of agreements in respect of payment of compensation and *Section 29* prescribes the effects of non registration of agreements.

S. 32 enables the State Government to make Rules to carry out the Act's purposes, and matters incidental thereto.

[NOTE : The above is only a gist of *some* of the important provisions of the Act. A detailed study of the Act commences with the next Chapter.]

CHAPTER II

SOME BASIC CONCEPTS

The following definitions are dealt with in this Chapter:

A. **Dependent**
B. **Employer**
C. **Employee**
D. **Wages**
E. **Disablement: Partial & Total**
F. **Other terms defined:**
(1) **Commissioner**
(2) **Compensation**
(3) **Managing Agent**
(4) **Minor**
(5) **Seaman**
(6) **Prescribed**
(7) **Qualified Medical Practitioner**

Questions:

Can widowed mother claim compensation under E.C. Act? (2 Marks) B.U. Nov 2015
Write a short note on Workmen (now employee) under the W.C. Act M.U. Nov 11, Apr 2014
Who is an employee under the E.C. Act 1923? Illustrate your answer with cases B.U. Apr 2013
What does "Wages" under the W.C. Act. include? (2 marks) B.U. Apr. 2011
Define 'partial disablement' under the W.C. Act. (2 marks) M.U. May 2012 Apr. 2014 Nov. 2014 Apr. 2017
*Define permanent partial disablement. (2 marks)*M. U. May 2018
What is meant by White partial disablement relates to reduction of the employee's under the W.C. Act (2 marks) may 2012, Apr 2014, Non 2014, Apr 2017
Define permanent partial disablement (2 Marks) M.U. May 2018
What is meant by total disablement under the W. C. Act? (2 marks) B.U. Nov. 2011
Write a short note on: *Permanent disability* .B.U. Apr. 2015 Apr. 2017
What is 'Permanent Total Disablement' under W. C. Act. 1923? (2 marks) B.U. Apr. 2016
*Write a short note on: Permanent Total Disablement under E. C. Act.*B.U. Jan. 2017
Define commissioner under the Act (2 Marks) M.U. Apr 2016, Jan 2017, Jan 2018
Who is a seaman under the W,C. Act? (2 marks) B.U. Apr 2011

A. DEPENDANT [Section 2(1)(d)]

A **dependent"* means any of the following relations of a deceased employee, namely:
(i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, or a widowed mother;
(ii) if *wholly dependent* on the earnings of the employee at the time of his death - a *son or a daughter* who has attained the age of 18 years, and who is infirm;
(iii) if *wholly* or *in part dependent* on the earnings of the employee, at the employee time

of his death, -

(a) a widower;
(b) a parent other than a widowed mother;
(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter, legitimate or illegitimate or adopted, if married and a minor, or if widowed and a minor;
(d) a minor brother or unmarried sister, or a widowed sister, if a minor;
(e) a widowed daughter-in-law;
(f) a minor child of a pre-deceased son;
(g) a minor child of a pre-deceased daughter, where no parent of the child is alive; *or*
(h) a parental grand-parent, if no parent of the employee is alive.

The above definition of the term “dependent” lists *three* broad categories of dependents, namely, (i) *direct* dependents, like the widow, (ii) *major* dependents, like a son or daughter, and (iii) *other* dependents who are (wholly or partially) dependant on the employee, as for instance, parents.

This definition is important, as in the case of an employee’s death on account of injury arising out of accident, as contemplated in Section 3, the claimant must be a “dependant" within the meaning of the term as defined above. *Whether or not* a person is a dependant in the light of the above definition, is entirely a *question of fact.*

It has been *held* in *Ravuri Kapayya* v. *Basavi Magavara-bhananna,* AIR 1962 AP 42, that a re-marriage by the widow of a deceased employee does *not* disentitle her to claim compensation under the Act.

The Rajasthan High Court has also affirmed that a widow who is entitled to claim compensation at the time of the death of her husband is *not* disentitled to do so by her subsequent marriage. *(R. B. Moondr? & Co.* v. *Mst. Bhanwari,* AIR 1970 Raj. 111)

In *Ram Sarup and Another* v. *Gurdev Singh and Another* (1968 (I) L.L.J.), the Punjab High Court *held* that *minor brothers* of the deceased are “dependants” within the meaning of this section.

In *Ganga Devi* v. *N. H. Ojha & Co.* (1966 (II) L.L.J.) it was *held* that an *adopted daughter,* validly adopted under the Hindu Adoption and Maintenance Act, 1956, by an employee, so long as she remains unmarried, is deemed to be an “unmarried legitimate daughter” under this section.

The question whether a “*widowed mother"* or a *“parent other than a widowed mother"* would include a step-mother came up for consideration before the Calcutta High Court, and it was *held* that a step-mother is *not covered* by those expressions. (*Manada Debi* v. *Bengal Bene Mills,* AIR 194 Cal.)

In *Addl. Dy. Commr., Sinbhum* v. *Smt. Laxmibai Naidu* (ILR 1935 Nagpur-AIR 1945 Nagpur), it was *held* that the expression *“widowed mother"* would include an adoptive widowed mother also.

In *Saraswati Devi* v. *Binapani Mahantini & Others* (1968 (II) L.L.J.) it was *held* that a *widowed mother* would be entitled to claim compensation, irrespective of her dependency on the earnings of the deceased employee. The *purpose* of the Act is *not* to give solatium to a relative of any person who is an employee and has been fatally

injured, but something to replace the actual loss which he or she has suffered.

A *paternal uncle* of the deceased is however, *not* a “dependant”. (P. *N. Vellaichamy* v. *Union of India,* 1991 II C.L.R. 151)

When a dependant who preferred a claim dies during the pendency of proceedings, his or her legal heirs can prosecute the claim for compensation. (*Kaveri Structural Ltd.* v. *Smt. Bhagyam,* 1978, 52 FJR, 59)

B. EMPLOYER (Sec. 2(1)(e))

An employer *includes:*

(a) any body of persons, whether incorporated or *not,*
(b) any managing agent of an employer;
(c) the legal representative of a deceased employer; *and*
(d) when the services of an employee are temporarily lent or let out to another person by the person with whom the employee has entered into a contract of service or apprenticeship, - *means* such other person while the employee is working for him.

The importance of the definition of the term “employer” lies in the fact that it is the *employer* who is liable to pay compensation under the Act. Only a person who satisfies the definition of the term “employer”, or one who is expressly made liable, is responsible to pay compensation. The latter part of the definition relates to cases under Section 10 of the Act, which oblige a “borrowing employer” to pay compensation under the circumstances mentioned therein.

In *Baijnath Singh* v. *O. T. Railway* (AIR 1960 All. 362). it was *held* that a General Manager of a Railway is an “employer”.

In *Municipal Board, Almora* v. *Jasod Singh* (AIR 1960 All. 468), the State was executing the electrification scheme of a town on behalf of the Municipal Board, and during the construction, an employee of the state engaged in such construction, suffered permanent partial injury. It was *held* that the state was *liable* to pay compensation under the Act.

C. EMPLOYEE [Sec. 2(1) (dd)]

Section (1) (dd) defines the term ‘employee’ (formerly ‘workman’) as follows:

An “employee" is a person who is:

(i) a *railway servant,* as defined in Section 2(34) of the Railways Act, 1989, *not* permanently employed in any administrative district or sub divisional office of a railway, and *not* employed in any such capacity as is specified in Schedule II; *or*
(ii) (a) a master, seaman or other member of the crew of a ship,
(b) a captain or other member of the crew of an aircraft,
(c) a person recruited as a driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
(d) a person recruited for work abroad by a company,
and who is employed outside India in any such capacity as is specified in Schedule II, and the ship, aircraft or motor vehicle or company, as the case may be, is registered in India; or
(iii) employed in any such *capacity* as is specified in *Schedule II,* whether the contract of

employment was made before or after the passing of this Act, and whether such contract is expressed or implied, oral or in writing. (A reference may be made to Schedule I I in Chapter VI11 of the book, which contains dozens of categories of persons falling within the definition.)

However, the Central or State Government has been empowered, to add to Schedule II, any class of persons employed in any occupation, which it is satisfied is a hazardous occupation, and the provisions of the Act thereupon apply within the state to such class of persons also. Further, when making such an addition, the Central or the State Government may also direct that the provisions of the Act shall apply to such classes of persons in respect of specified injuries only.

However the term “employee" does *not* include any person working in the capacity of a member of the Armed Forces of the Union

Moreover, any reference to an employee who has been injured, includes, when the employee is dead, a reference to his *dependants* (or any of them).

The definition of the term ‘employee’ is exhaustive, as it *not only* contains what it includes, *but also not* include. It grants an extended meaning to the expression in the case of employees who are dead following an injury by accident.

In *Ramaswamyv. Poongavanam* (AIR 1959 Madras, 286), a man was employed for transport of goods from place to place. The employers were engaged in purchase and sale of oil. When the employee suffered injuries during employment, it was *held* that the employers were liable to pay compensation.

The Gujarat High Court has *held* that a Forest Guard, whose duties are to preserve and protect the forest is a 'workman' (now, an 'employee'). *(State of Gujarat* v. *Rajendra,* 1991 C.L.R. 582)

[NOTE: It may be noted that the above case, as also some other cases referred to below, were decided prior to 2010. Hence, the courts made a reference to “workman” (and *not* “employee”) in these judgments. After 2010, the name of the Workmen’s Compensation Act was changed to the Employee's Compensation Act and the word “workman” was replaced by the word “employee” throughout the Act.]

The Punjab and Haryana High Court has *held* that thrashing of wheat is a process of farming, and a person employed in such a process would be covered by the definition of the term ‘workman’ (now, an 'employee'). *(S.Singh* v. *M. Singh,*1992 I C.L.R., 704).

In one case, a person was employed as a mechanic for installing a cotton ginning machine and a chaff cutting machine on daily wages. Three days later, when taking the trial of the chaff cutting machine, he sustained an injury. It was *held* that fixing the machines and taking the trials were all part of the business of the employer. The mere ground that the employee was employed to install the machine and *not* for taking trials could *not* take him out of the purview of the definition and therefore the employer was *liable* to pay compensation (*Madan Mohan Verma* v. *Mohan Lai,* 1983, li LLJ All. 322)

It has also been *held* that a regular Government servant who is employed as a *“mahout"* in the Forest Department is a workman (now, an employee) as defined in the Act, even if

he is covered by family pension, general provident fund and family benefit schemes of the State Government. (*State of Kerala* v. *Khadeeja Beevi,* 1988 II CLR Ker. 333)

It has also been *held* that an agricultural labourer employed in a farm with a well fitted with an electric motor is a 'workman' (now, an 'employee') under the Act. (*Bapusingh* v. *Pyaribai & Others,* 1990, II LLJ, M. P. 311)

Likewise, a person who is employed in premises where the actual manufacturing process has *not* yet started is also a "workman" (now, an employee) for the purposes of the Act. The reason for this is that if a person is employed in a factory, he should *not* be deprived of the protection of the Act, only because the manufacturing process has *not* yet commenced in such a factory. *(Juthi Devi* v. *Pine Chemicals Ltd.,* 1991 II L.L.J. 386)

The Kerala High Court has *held* that a "badli" worker employed for the trade *or* business of an employer *is* a workman (now, an employee). (*Secretary, Trivandum Port and Headload Workers Co-op. Society Ltd.,* v. *V. Dhaneshkumar,* 2001, I LLJ 1629)

It has also been *held* that a retired worker of an Electricity Board, doing petty work for the Board is a workman (now, employee) of the Board. {*Kunjoon-jamma Daniel* v. *Kerala State Electricity Board,* 2001 II LLJ 778) The Karnataka High Court was faced with the interesting question of whether a teacher is covered by the definition. In that case, a stipendiary teacher died of renal failure and heart attack on account of high blood-pressure while in service. It was *held* that a combined reading of the definition of a "employee" and Schedule II would show that only those persons who are engaged in manual and skilled activities are treated as employee, and imparting of education is *not* covered. Hence, it was *held* that the teacher was *not* covered, and was thus *not* entitled to any compensation under the Act.

Problems

1. An agriculturist engages employee for digging up a well. In an explosion during the work of digging, an employee lost one arm upto the elbow, and three fingers of the other arm. Is the employer liable for compensation?

Ans.—*Yes,* because the employee satisfies the test given above. (It is presumed that the other conditions are also satisfied.)

2. A bank gave a contract to build a building. A man working for the contractor got injured during the construction. Is the Bank liable?

Ans.: The Bank is *not liable* to pay compensation to him, because it is *not* a trade or business of a bank to build buildings. However, compensation can be claimed by the worker from the Contractor.

D. WAGES (Sec. 2(1)(m))

The term "wages" is defined to *include* any privilege or benefit which is capable of being estimated in money

The following items are however, *expressly excluded* from the scope of the word "wages":

(i) travelling allowance *or* the value of any travelling concession;

(ii) a contribution paid by the employer towards any pension or provident fund; *and*

(iii) a sum paid to an employee to cover any special expenses entailed on him by the nature of his employment.

The importance of the definition of 'wages' lies in the fact that the *amount of compensation* depends on the wages of the employee The scale is provided by Schedule IV of the Act (which is given in Chapter VIII of this book).

In *Godavari Sugar Mills* v. *Shakuntaia,* (AIR 1948 Born. 158), it was *held* that overtime wages, bonus, free meals and dearness allowance must be included in the computation of wages.
In another case, the Court did *not* accept the contention that earned annual leave could be added to a employee's total income for the purpose of computation of his monthly wages. (A.I.R. 1959 M.P. 119)

In yet another case, it was *held* that if the employee is entitled to a profit-sharing bonus, the same should be included in the computation of wages under the Act. (A.I.R. 1946 Pat. 437)

In a case decided by the Kerala High Court, it was *held* that if any employer provides *free* meals to his employees, and that forms part of the terms and conditions of service, the cost of such free meals is to be included in his "wages", while assessing the amount of compensation. *(Sampuran Singh* v. *Mukhtiar Singh,* 1992 I C.L.R. 704)

E. **DISABLEMENT: PARTIAL & TOTAL**

The dictionary meaning of the word "*disablement"* is "to deprive of some ability" However, the Act does *not* define the word "disablement"; it only defines partial and total disablement. These definitions dearly show that "disablement" is a *loss of earning capacity,* which, depending on the nature of injury and percentage of loss of earning capacity, can be partial or total.

The Act classifies "disablement" into *two* categories, namely, partial disablement and total disablement.

PARTIAL DISABLEMENT (Sec. 2(1)(g))

The term "partial disablement" is defined in Section 2(1)(g) of the Act as follows:

'Partial disablement" *means:*
(a) where the disablement is of a *temporary nature*—such disablement as *reduces* the *earning capacity* of an employee in any employment in which he was *engaged* at the time of accident resulting in the disablement; and
(b) 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.

The test of such disablement is the *reduction in the earning capacity* of the employee. However, every reduction in earning capacity will *not* make the employer liable to pay compensation. Under the Act, the employer is *not* liable to pay compensation if the injury does *not* result in partial or total disablement of the employee for a period of *three days or more.*

However, *every injury* specified in *Part II of Schedule I* is deemed to result in *permanent partial* disablement, as for instance, loss of thumb, amputation through the shoulder joint, *etc.* (See Chapter VIII for Schedule I.)

Partial disablement is of *two types: Temporary* partial disablement and *permanent partial* disablement.

Temporary partial disablement: This involves disablement of a temporary nature, which reduces the employee's earning capacity in any employment in which he was engaged at the time of the accident resulting in the disablement.

Thus, temporary partial disablement results in reduction of earning capacity of the employee only in *that* employment in which he is employed at the time of accident. It does *not* affect his earning capacity in relation to any other employment.

Permanent partial disablement: Where the disablement is of a permanent nature, the employee is deemed to suffer permanent partial disablement, if such disablement reduces his earning capacity in *every employment which he was capable of undertaking at that time.* Every injury specified in *Part II of Schedule I* is deemed to result in permanent partial disablement. (Reference may be made to Part II of Schedule I for the details of injuries deemed to result in permanent partial disablement, as for instance, loss of a thumb, loss of partial vision of one eye, *etc.)*

The definition of partial disablement is used for interpreting Section 4 of the Act in order to determine the amount of compensation payable to an employee.

Loss of earning capacity, or its extent, is a *question of fact,* to be determined by taking into account the destruction of physical capacity as disclosed by the medical evidence. Further, it is to be seen to what extent such destruction could reasonably be taken to have disabled the affected employee from performing the duties which a employee of his class ordinarily performs.

The following propositions are helpful in deciding the nature of disablement:

(1) *Earning* is *not* the same as *earning capacity.* There is a difference between *earning* of a person and his *capacity to earn.*
(2) Loss of physical capacity is *not* co-extensive with loss of earning ir- capacity.
(3) Loss of physical capacity may be relevant in assessing the extent to which there is loss of earning capacity for every employment which the employee was capable of undertaking at the time of the accident.

General Manager G.I.P. Rly., Born. v. *Shankar:* A railway servant on a grade A-1 post lost one eye and two teeth as a result of collision between two engines. He was declared by the Medical Officer as unfit for grades A-1 and B jobs, but fit for C-2 jobs, because of his defective vision. A job falling under grade C-2 was offered to him by the Railway Administration. He, however, refused the offer and claimed compensation on the basis of total disablement. It was *held* the employee was entitled to compensation, *not* on the basis of total, *but* partial, disablement.

Pratap Narain Singh Deo v. *Srinivas,* 1976 1 LLJ 235 : A carpenter suffered an injury in the course of his employment which resulted in the amputation of his left arm from the elbow. It was *held* by the Supreme Court that this was a total disablement, as the carpenter could *not* carry his work with one hand, and that this was *not a* case of a

partial permanent disablement.

Shukhai v. *Hukmchand Jute Mills Ltd:* In this case, it was observed that if an employee suffers as a result of an injury from a physical defect which in fact does *not* reduce his capacity to work, but at the same time, makes his labour un saleable in any market reasonably accessible to him, either there will be total incapacity to work *or* partial incapacity to work. The capacity of an employee may remain quite unimpaired, but at the same time, his eligibility as an employee may be diminished or lost. If such a result was due to an accident, although the accident has *not* really reduced the capacity of the employee to work, he can establish a right for compensation. But, in such cases, he has to prove that he has applied to a reasonable number of likely employers for employment, and had been refused on account of the results of the accident visible on his person.

TOTAL DISABLEMENT [Section 2(1)(1)]

"Total disablement means such disablement, whether of a *temporary or permanent nature, as incapacitates a employee for all work* which he was capable of performing at the time of the accident resulting in such disablement. It is to be *note*d that incapacity for *all* work is different from incapacity *for the work* which a employee was engaged in at the time of the accident

While partial disablement relates to reduction of the employee's earning capacity, total disablement refers to the incapacity of an employee to do all work which he was capable of doing (/.e., 100% *loss of earning capacity).*

It is also provided that permanent total disablement is deemed to *result from every injury* specified in *Part* / *of Schedule* /, or from any combination of injuries specified in part II thereof where the aggregate *percentage of loss of earning capacity as specified in the said Part II against those injuries* amounts to hundred per cent or more, A reference may be made to *Schedule I Parts I and II* in Chapter VIII

Temporary total disablement is disablement of a temporary nature which incapacitates an employee for *all* work which he was capable of performing at the time of the accident resulting in such disablement.
Permanent total disablement is disablement of a permanent nature which incapacitates a worker for *all* work which he was capable of performing at the time of the accident resulting in such disablement.
In Ball v. William Hunt & sons Ltd 1912 AC 496 (500) the expressions "incapacity *for* work" and "incapacity *to* work", were distinguished, It was pointed out that a person is incapable *for* work when he has a defect of a physical nature which renders his labour "unsaleable in any market reasonably accessible to him".

In *General Manager, G.I.P. Railway v. Shankar,* AIR 1950 Nagpur 201, the Court *held* that the person should be unable to do *any* work, and not only the work for which he was employed at the time of the accident. Only then can the disablement that he has suffered be regarded as total disablement under the Act. The words used in the section are "all work which he was *capable of performing* at the time of the accident". These words *cannot* be construed to mean that the incapacity should relate only to the work which he was actually performing at the time of the accident.

It has been *held* that a driver of a truck who lost his right hand fingers, right elbow and right thigh in an accident in the course of employment *cannot* be expected to drive with

his left hand. This is, therefore, a case of *total, not partial,* disablement. (*Parmar* v. *G.K. Construction,* 1985 I ILJ, 98)

In one case, the employee, who worked as a driver of a truck, was injured in the accident. The doctor certified that the physical impairment and loss of physical function was to the extent of 50 per cent only, but due to such injury, he was *not* fit to drive a heavy vehicle. The Court *held* that although he was capable of doing some other work, since there was incapacity to do the work which he was capable of performing before the accident, it was a case of *total disablement. (National Insurance Co. Ltd.* v. *M. Saleem Khan,* 1992 I C.L.R. 44)

While partial disablement relates to reduction of the employee's earning capacity, total disablement refers to the incapacity of an employee to do all work which he was capable of doing (*i.e.,* 100% loss of earning capacity).

It is also provided that permanent total disablement is deemed to result from every injury specified in *Part I of Schedule I,* or from any combination of injuries specified in Part II thereof, where the aggregate percentage of the loss of earning capacity as specified in the said Part II against those injuries, amounts to hundred per cent or more, A reference may be made to *Schedule I. Parts I and II* in Chapter VIII of the book.

Temporary total disablement is disablement of a temporary nature which incapacitates an employee for *all* work which he was capable of performing at the time of the accident resulting in such disablement.

Permanent total disablement is disablement of a permanent nature which incapacitates a worker for *all* work which he was capable of performing at the time of the accident resulting in such disablement.

In *Ball* v. *V. William Hunt & Sons Ltd.,* 1912 AC 496 (500), the expressions "incapacity *for* work" and "incapacity *to* work", were distinguished, It was pointed out that a person is incapable *for* work when he has a defect of a physical nature which renders his labour "unsaleable in any market reasonably accessible to him".

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since there was incapacity to do the work which he was capable of performing before the accident, it was a case of *total disablement. (National Insurance Co. Ltd.* v. *M. Saleem Khan,* 1992 I C.L.R. 44)

In a case decided by the Supreme Court, a carpenter lost his left arm above the elbow due to an accident, rendering him unfit for the work of carpentry. It was *held* that the disablement incapacitated the workman from performing work which he was capable of performing at the time of the accident, and hence, it was a case of *permanent total disablement (Pratap Narain Singh Deo. Sriniwas Sabata.* 1976 I LLJ 235)

The Act is *not* concerned with physical injury as such, nor with the *mere effect* of such injury on the physical system of the workmen. It is concerned only with the effect of such injury of the diminution of physical power caused thereby, on the *earning capacity of the person.* It is *not* a matter of medical opinion, but its extent is a question of fact. It has to be determined by taking into account the following factors:

(1) The diminution or destruction of physical capacity, as disclosed by the medical evidence.
(2) To what extent such diminution or destruction could reasonably be taken to have disabled him from performing the duties which an employee of his class ordinarily performed.
(3) To what extent such diminution or destruction could reasonably be taken to have disabled the employee from earning the normal remuneration paid for such duties.

Additionally, the court must keep in mind:

(4) The nature of injury.
(5) The nature of the work which the employee was capable of undertaking.
(6) *The availability* of such work to him.

F. OTHER TERMS DEFINED

(1) **Commissioner [S. 2(1)(b)]**

A "*Commissioner"* means a Commissioner for Employee's Compensation appointed under *Section 20.*

(2) **Compensation [S. 2(1)(c)]**

"Compensation", as defined in *Section 2(1)(c),* means compensation as provided for by this Act.

(3) **Managing Agent [S. 2(1)(f)]**

"Managing agent" means any person appointed for 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.

(4) **Minor [S. (2)(1)(ff)]**

A *"minor""* means a person who has not attained the age of 18 years

(5) **Seaman [S. 2(1)(k)]**

"Seaman" means any person forming part of the crew of any ship, but *does not include* the master of the ship.

(6) **"Prescribed" [S. 2(1)(h)]**

"Prescribed" means prescribed by Rules made under this Act.

(7) **Qualified Medical Practitioner** [S. 2 (1) (i)]

Qualified Medical Practitioner means any person registered under any Act providing for the maintenance of the Register of Medical Practitioners *or* in any area where no such 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 purpose of this Act.

CHAPTER III

LIABILITY AND COMPENSATION

The following *twelve* topics are discussed in this Chapter:¦

A. Basis of liability (Section 3)
B. Amount of compensation (Section 4)
C. Penalty for default (Section 4A)
D. Computation of wages (Section 5)
E. Review (Section 6)
F. Commutation of half-monthly payments (Section 7)
G. Distribution of compensation (Section 8)
H. Freedom from encumbrance (Section 9)
I. Notice and claim (Section 10)
J. Power to obtain statements regarding fatal accidents (S. 10-A)
K. Report of fatal accidents (S. 10-B)
L. Medical examination (Section 11)

Questions:
Discuss The employer's liability to pay Compensation under the Workmen's Compensation Act. 1923 .B.U. Nov. 2011 Nov. 2015 Apr. 2016
Write a short note on. Employer's liability for compensation under the Employee's Compensation Act .B.U. May 2012 Nov. 2013 Nov. 2015
When is an employer liable to pay compensation under the E.C. Act? What are the defenses available to the employer? B.U. Nov 2012
What is employment injury? (2 Marks) B.U. Apr. 2015
What is meaning of arising out of and in course of employment? (2 marks) M.U. Apr 2015, Jan 2018
State and explain the concept of arising out of and in the course of employment under the W.C. Act. M.U. May 2012, Nov 2013
Write a short note on: arising out of and in the course of employment M.U. Apr 2014, Nov 2014, Apr 2016
Explain the concept of arising out of and in the course of employment used in the workmen's compensation Act 1923. M.U May 2018
Write a short note on: Occupational diseases. M.U. Nov 2014
Which schedule of E.C. Act specifies occupational diseases (2 marks) M.U. Nov 2012
What is an occupational disease? What is the extent of liability of an employer in such a case? M.U. Apr. 2014, Apr. 2016, Apr 2017, Jan 2018
*What is the compensation payable under the W.C. Act where death of a workman results from injury in the course of his employment? (2 marks)*B.U. Nov. 2011
What is the minimum compensation payable in case of permanent disablement under the E.C. Act? M.U. Apr 2013
Can compensation be claimed under the E.C. Act injuries not for resulting in death? (2 Marks) M.U. Nov 2015
Write Short Note on: Employer's liability for compensation under the workman's compensation Act?

What is the period of limitation for filing a claim under the Employees' Compensation Act? (2 marks) B.U. Nov. 2012 Nov. 2013 Apr. 2017
Write a short note on: Medical examination under the E.C. act B.U. Nov 2012

A. BASIS OF LIABILITY (Section 3)

The provisions of Section 3 are discussed below under the following *three heads:*
I. Employer's liability [Section 3(1)]
II. Occupational diseases [Sections 3(2) to (4)]
III. Bar to claim [Section 3(5)]

I. Employer's liability

If *personal injury* is caused to an employee by an *accident arising out of,* and *in the course of,* his employment, his *employer* is *liable to pay compensation* in accordance with the provisions of Ss. 3 to 18A of the Act.

However, the employer is *not* so liable:
(a) in respect of any injury which *does not result in the total or partial disablement of* the workman for a period *exceeding three days. (So,* if total or partial disablement continues for a period of say, two days, the employer will *not be liable.)*
(b) in respect of any *injury, not resulting* in death or permanent total disablement, caused by an accident which is *directly attributable* to:
(i) the workman having been at the time thereof under the *influence of drink or drugs; or*
(ii) the *wilful disobedience* of the workman to an order *expressly given* or to a *rule expressly framed,* for the purpose of securing the safety of workmen; *or*
(iii) the wilful *removal* or *disregard* by the workman of any WyJl *safety guard* or other *device* which he knew was provided for the purpose of securing the safety of workmen.

The above defences are, however, *not* available to an employer in the case of the *death* of a workman, in the event of death, *even if* the deceased workman had been negligent, the employer is bound to pay compensation to his dependants if the accident which caused the injury resulting in his death, arose out of, and in the course of, his employment.

Even if the injury arising out of the employment does *not* directly result in death, but it is shown that it has contributed to, or accelerated the death of the workman, the case will fall within S. 3 of the Act. (*Kalavati* v. *Mahindra Ugine Steel Co. Ltd.,* 1988 I.C.L.R. 507)

Even in case where death is *not* caused, and the employer seeks to escape liability, mere negligence on the workman's part is *not sufficient.* The workman's act, referred to in clause (b) above, must be deliberate, as the word *'wilful'* is used in this clause.

On an analysis of the above provisions, it is apparent that an employer is liable to pay compensation when :
(i) there is *personal injury* caused to a workman;
(ii) such injury is caused by an accident; *and*
(iii) the accident has arisen out of, and in the course of, his employment.

Personal injury: There must be a personal injury caused to the workman, Normally, the

word “injury” means physical or bodily injury, caused by an accident, However, the scope of the word “injury” under the Act is *not* restricted to mere physical or visible injury. It also includes *nervous breakdown* or *mental strain.*

In one case, a workman had to go frequently to a heating room from a cooling plant. He contracted pneumonia, which resulted in his death. The Court *held* that the injury under the Act is *not confined* to *physical injury,* and the injury in the instant case was that he contracted a disease due to his working and going from a heating room to a cooling plant as it was indispensable to his duty. (*Indian News Chronicle* v. *Mrs. Luis Lazarus,* AIR 1961 Pun 102)

“Accident”: In the popular use of the expression “accident”, what is indicated is an unforeseen mishap or an event which is *not* expected or designed: *Indian News Chronicle Ltd.* v. *Mrs. Luis Lazarus,* 3 FJR 190. Such an accident may involve physical injury, or even a shock to the nervous system.

The High Court of Madhya Pradesh has clarified the difference between “accident” and “injury”. It explained that an *“accident”* is an untoward mishap, which is *not* expected or designed by the workman. *“Injury”* means physiological injury. Accident and injury are distinct in cases where the accident is an event happening externally to a man, as for instance, where a workman falls from the ladder and suffers injuries. But an accident may be an event happening internally to a man and in such cases, accident and injury may coincide. Such cases are illustrated by heart failure and the like whilst the workman is doing his normal work. The burden of proof, of course, will be on the workman to prove the connection between the employment and the injury. *(Smt. Sunderbai* v. *The General Manager, Ordnance Factory, Khamaria, Jabalpur,* 1976 LOC I.L. MP 1163)

“Arising out of, *and* in the course of, his employment”: The *onus* is always on the claimant to prove that the accident arose out of, and in the course of, the employment.

In *Janki Ammal* v. *Div. Engineer, Highway, Kozhikode,* (1956 II ILJ 233), it was *held* that the employee must show that he was, at the time of the injury, engaged in the employer’s business or in furthering that business, and was *not* doing something for his own benefit of accommodation.

The *question to be considered* is whether the workman was required or expected to do the thing which resulted in the accident, though he might have imprudently or disobediently done the same.

In *Bai Shakri* v. *New Manek Chowk Mills Ltd.,* (21 FJR 19), it was *held* that an accident, in order to give rise to a claim for compensation “must have some causal relation to the workman’s employment or be incidental to that employment". If a person dies while on duty, it can be said that he died in the course of his employment. However, this does *not* mean that he died due to an injury arising “out of his employment”, *unless* it can be established that his death was due to any factor connected with or directly attributable to his employment.

It is to be noted that the relationship of the accident and the employment should be *proximate* and *not remote.* It was *held* in *Davis and Co.* v. *Kesta* (AIR 1968 Cal. 129), that an injury suffered by the employee at the workplace while he was *not* actively working, but was busy chewing tobacco is deemed to be an injury received out of and in

the course of his employment.

This shows that even when a person is *not* strictly doing anything connected with his normal duty but is doing something personal (chewing tobacco, in the above case), and he receives a personal injury at the workplace, the same can be considered to be an injury out of, and in the course of, his employment.

Thus, it has been *held* that where death was the result of drinking water which was provided by the employer (the Railway authorities) for the workmen to drink, it *can be* said that such death arose out of, and in the course of, his employment. *(Div. Personnel Officer S. Rly.* v. *Karthiayani.* 1987 IC.L.R. 244)

The Gujarat High Court has observed that it is well-understood that a workman, during the course of his duty hours, will have to excuse himself for a while for taking a cup of tea, for smoking, for drinking water or for attending the normal pursuits of life. An injury sustained during such an interval is also "arising out of, and in the course of his employment" *(Natawarlal* v. *Shah,* 1991, I C.L.R. 957)

In *Executive Engineer, Department of Industry & Commerce* v. T. L. *Tyagarajan and Ors* (AIR 1965 Mad. 373), where an inspector died in an accident on the way to office to follow up the directions of the executive engineer to prepare a site plan, it was *held* that he died during the course of his employment.

In, *Saurashtra Salt Manufacturing Co.* v. *B.V. Raja* (AIR 1958 SC 881), if was laid down that although the place and time of employment are subject to a *notional extension,* the same *cannot* always be extended to the whole journey between the workman's residence and the place of work. If an accident occurs on a public road in a public transport vehicle on the way to or from work, the workman is like any other member of the public, and it *cannot* be said that it was an accident "arising out of, and in the course of, his employment."

In *Saurashtra Salt Manufacturing Co. 's case* (above), the salt works of the company was situated near a creek opposite the town of Porbander, and for going to work from the town, the workman had to go over a road reaching the creek, had to cross the creek by getting into a boat at point *A,* then alight from the boat at point *B,* then go over a sandy area, and finally go over a public footpath before reaching the works. One evening, the public ferry which was carrying some workmen from the salt works to their homes capsized due to bad weather and overloading, and some of the workmen were drowned.

It was *held* by the Supreme Court that, as a rule, the employment of a workman does *not* commence until he has reached the place of employment and does *not* continue after he has left the place of employment; the journey to and from the place of work is thus excluded from the notion of employment. However, it is now well-settled that this is subject to the *theory of notional extension* of the employer's premises, so as to include in it an area which the workmen passes and re passes in going to and in leaving the actual place of work, so that there may be some reasonable extension in both time and place of work. Thus, a workman may be regarded as being in the course of his employment, even though he had *not* reached *or* had left the actual premises where he was employed. The fact and circumstances of each case have to be examined carefully in order to determine whether the accident arose out of and in the course of employment of

a workman, keeping in view at all times this *theory of notional extension.*

The words “arising out of and in the course of his employment” are taken from the English Act of 1987. In *McCullum* v. *Northumbrian Shipping Co. Ltd.,* (1932) 147 LT 361, the following observations were made: “Few words in the English language have been subject to more microscopic judicial analysis than these, and in the effort to expound them, many criteria have been proposed and many paraphrases suggested. But it is manifestly impossible to exhaust their content by definition, for the circumstances and incidents of employment are of almost infinite variety. This at least, however, could be said that an accident, in order to give rise to a claim for compensation, must have some *relation* to the workman’s *employment* and must be due to a *risk incidental* to that employment, as *distinguished from risk* to which all members of the *public were alike exposed."*

The *conflict* between the strict and the liberal construction of the words “arising out of and in the course of his employment” may be resolved in the following oft-quoted words of *Halsbury.* “An accident _ arises *out of* the employment if it is due to a danger to which the workman is exposed by *reason of the nature, conditions, obligations and incidents of employment."*

In *Kamlabai* v. *Divisional Superintendent, Central Railway* (AIR 1971 Born. 212), the Court *held* that the *crucial test* is whether the employment contributed to the injury or death, and only if it did, will the workman or his dependents be entitled to compensation. In this case, the deceased workman was an engine driver who suffered a heart attack and died while on duty. The materials on record did *not* indicate that the heart failure was caused by any strain involved in his employment, and therefore, the employer was relieved of the obligation to pay any compensation.
In *Parvatibai* v. *Rajkumar Mills* (1956 L.L.J. P. 56 M.P.), the medical report said that the workman died due to cardiac failure. This was *not* connected with his work and so, the employer was *held not* liable for the compensation. Here also, there was no evidence to show that heart attack was due to the work done.

As far as the liability of the employer is concerned, it does *not* make a difference if the death is caused due to the deceased workman’s negligence *or* that the work he was performing was done improperly, *provided that* the accident arose out of and in the course of his employment.

In *Mackinnon Mackenzie & Co.* v. *Issak* (AIR 1970 SC 1906), the Court *held* that there was no evidence to indicate that the seaman's death occurred out of “an accident arising out of and in the course of his employment.” While the employer would have been liable if the workman died out of an injury caused by a risk which is necessarily incidental to his employment, the employer escapes liability when it is established that the workman by his own “imprudent act” caused an added peril which resulted in the accident.

In *Golden Soap Factory* v. *M. C. Mandal,* (1963) II LLJ 580, the Court *held* that if it is probable that the workman would have escaped the accident had it *not* been for the fact of his employment, he is deemed to have suffered the consequences of such accident as a result of his employment. In such circumstances, the employer is liable to pay compensation.

As weather conditions are a risk to which all are alike exposed, the Court *held* in

Mariambaiv. Mackinnon Mackenzie & Co. (AIR 1968 Born. 187), that an accident does *not* arise "out of and in the course of one's employment" if the death was the result of exhaustion caused by hot weather.

In *Mohanlal* v. *Fine Knitting Co.* (AIR 1960 Born. 357), it was *held* that compensation was payable to the dependants of the deceased worker when his death was caused by an attack on him by anti-social elements at the instance of the employer.

Burden of Proof: The Supreme Court, in *Mackinnon Mackenzie & Co.* v. *Issak,* (AIR 1970 SC 1906), considered the question of the burden and standard of proof in a claim for compensation under the Act. The *burden* of proving that the accident arose out of and in the course of the workman's employment lies on the person asserting the same, and the *standard* of proof required is that which will cause "a *reasonable man",* in the circumstances of the case, to believe in the existence of the facts alleged.

PROBLEMS

1. Mr. *X,* a Supervisor working in a company engaged in stone quarrying, suffered from reeling of the head and fell down unconscious in the quarry. He died the next day. When Mrs. *X* claimed compensation under the Act, the company contended that his death was *not* due to any accident arising out of and in the course of his employment. It was argued that the nature of the work of a Supervisor does *not* warrant any risk of an attack of hypertension (high blood pressure). Decide.

   Ans.: As per the Orissa High Court, a Supervisor in a stone quarry *does* work under stress and strain, and therefore, in the present case, it *can* be said that the death of Mr. X was due to an accident arising out of and in the course of his employment. *(Swamlata Samal* v. *Choudhri K. C. Das,* 1996 1 CLR 295)

2. *A,* a railway servant went, after finishing his duty, *not* to his house but to another place where his family was staying. In so going he met with an accident. Is the Railway Company liable under the Act in such a case?

   Ans.: *No.* In Such a case, *A cannot* be said to be performing any duty *for* which he had been employed, and therefore, the accident in question *cannot* be said to arise in the course of employment. He would, therefore, *not* be entitled to receive any compensation.
   (The General Manager, Northern Rly. v. *R. R. Verma* (1979) LIE 1099)

3. *B,* a workman, was sent to a nearby tea shop to fetch two glasses of tea. Later, he was sent there again to return the empty glasses. While on his way back after returning the glasses, he was stabbed to death by an assailant. Would the employer be liable under the Act?

   Ans.: The Kerala High Court has *held* that, in these circumstances, it *can* be said that the accident arose in the course of the deceased workman's employment and his employer would be liable. The fact that the stab injuries were *not* "accidental", in as much as they were designed and intended by the assailant was *held* to be irrelevant. *(Varkeyachan* v. *Thomman Thamas,* (1979) 38 FLR 441)

II. Occupational Diseases

As compensation is payable under the Act on account of injury arising out of accident, it

was considered necessary to specify that *occupational diseases* are to be *regarded as injuries* arising out of accident. It was essential to clarify this, as ordinarily, a disease is *not* included in the concept of 'injury arising out of accident.'

An *occupational disease is* one which arises out of the workman's occupation or employment, and is peculiar to that employment. The *object* of making the employer liable to pay compensation on account of the workman contracting an occupational disease is apparent. When a particular occupation or employment involves a risk of contracting certain diseases which are peculiar to that employment or occupation, there arises a need to protect the workmen from the risk of contracting such a disease.

Schedule III (given in Chapter VIII) contains a list of employments together with the diseases peculiar to each employment specified therein. The employments mentioned in Schedule III are divided into Parts A, B and C.

The provisions of Section 3(2) to (4) may be *outlined as* follows: (A) If a workman -

(a) employed in any employment specified in *Part A of Schedule III* contracts any disease specified therein as an occupational disease peculiar to that employment; *or*

(b) whilst in the service of an employer in whose service he has been employed for a continuous period of *not less than six months (not including* a period of service under any other employer in the same kind of employment) in any employment specified in *Part B of Schedule III,* contracts any disease specified therein as an occupational disease peculiar to that employment; *or*

(c) whilst in the service of one or more employers in any employment specified in *Part C of Schedule* ///for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, -

the contracting of that disease is deemed to be an injury by accident within the meaning of S. 3, and *unless the contrary is proved, the accident* is deemed to *have arisen out of, and in the course of, the employment.* (S. 3(2))

(B) The contracting of such disease is deemed to be an injury by accident within the meaning of this section, *if it is proved:*

(i) that the workman, whilst in the service of one or more employers in any employment specified in *Part C of Schedule III,* has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the specified period (as stated above) for that employment; and

(ii) that the disease has arisen out of, and in the course of, the employment.

(C) Further, if it is proved that a workman, who having served under any employer in any employment specified in *Part B of Schedule III or* who having served under one or more employers in any employment specified in *Part C* of *that Schedule,* for a continuous period specified under this sub-section for that employment, and he has after the cessation of service, contracted any disease specified in the said *Part B* or *Part C,* as the case may be, an occupational disease peculiar to that employment and that such disease arose out of the employment, the contracting of the disease is *deemed Ho* be an *injury by accident* within the meaning of this section.

(D) If a workman employed in any employment specified in *Part C* of *Schedule III* contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and

such employment was under more than one employer, *all* such employers become *liable* for the payment of the *compensation* in such proportion as the Commissioner may, in the circumstances, deem just.

(E) The State Government in the case of employments specified in *Parts A and B of Schedule III,* and the Central Government in the case of employments specified in *Part C* of that Schedule, after *notification in* the Official Gazette of its intention so to do, may, add any description of employment to the employments j specified in Schedule III, and specify in the case of employments so added, the diseases which are deemed, for the purposes of this section, to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of *sub-section* (2) apply within the State or the territories to which this Act extends, as the case may be, as *if* such disease had been declared by this Act to be occupational diseases peculiar to those employments.

(F) Except as stated above, no compensation is payable to a workman in respect of any disease, *unless* the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

When a workman claims compensation for contracting a disease which is *not* mentioned in Schedule III, the workman has to establish his case under Section 3(1), and *not* under sub-section (2) to (4).

In *Lakshmibai Karangatkar* v. *The Bombay Port Trust* (55 BLR 924), the Bombay High Court *held* that if the employment is a contributory factor *or* has accelerated the death of the workman, it *can* be said that death was caused *not merely* by the disease, *but by* the disease together with the employment, and the employer becomes liable to pay compensation. In such a case, it will amount to a death arising out of, and in the course of, the employment of the deceased workman.

On the same reasoning, in *Imperial Tobacco Co.* v. *Solana Bibi* (AIR 1956 Cal. 458), and *Mangal Chand* v. *Mumtaz and Anr.* (AIR 1952 Nag. 20), it was *held* that if the disease occurs independently of the accident, the employer will *not* be liable to pay compensation.

(A reference may also be made to the topic, “Occupational disease” under S. 10, discussed later.)

III. Bar to claim

Under Section 3(5), a claim for compensation under the Act is barred *inter alia* by a prior civil suit for damages on account of the injury.

Section 3 does *not* confer *any* right to compensation on a workman in respect of any injury if he has *instituted a suit* in a Civil Court for damages in respect of the injury against the employer or any other person. Likewise, *no suit for* damages is *maintainable* by a workman in any Court of law in respect of any injury:

(a) if he has instituted a *claim* to compensation in respect of the injury before a Commissioner; *or*

(b) if an agreement has been arrived at between the workman and his employer, *providing* for the *payment* of compensation in respect of the injury in accordance with the provisions of this Act.

Thus, a civil suit (against an employer *or* any other person for damages in respect of an injury) operates as a bar to a claim for compensation under this Act.

Similarly, once a claim for compensation has been preferred under this Act, a civil suit for damages in any Court in respect of such injury is *not maintainable.*

Further, an agreement between the workman and his employer for payment of compensation in respect of the injury in accordance with the provisions of the Act, operates as a bar to a claim for compensation.

The bar contemplated above is against the possibility of *"double recovery",* namely, that a workman *cannot* twice claim compensation for the *same* injury.

Once the workman has exercised his option, he is bound by the choice as to the forum of his claim. Even if the workman is unsuccessful in his earlier civil suit for damages, he *cannot* claim compensation again.

It is *not* all agreements purporting to pay compensation on account of injury that bar a subsequent claim of compensation under the Act. In order to prevent a claim under the Act, the agreement must necessarily be in keeping with the provisions of the Act and must *not* be opposed to its object and policy. Thus, for instance, if there is an agreement which appears to pay compensation in respect of an injury, but in fact has the effect of the workman *"contracting out"* of his right under the Act, the agreement is *void* and *cannot* be a bar to an application under the Act.

Under Section 17 of the Act, an employer *cannot* 'contract out' of his liability under the Act and any agreement would be null and void. (A reference may be made to the provisions of Section 17 discussed in the next Chapter.)

B. AMOUNT OF COMPENSATION (Sec. 4)

The provisions relating to the *quantum of compensation* are contained in Section 4. These provisions may be divided into separate contingencies contemplated by the section:

(a) Death;
(b) Permanent total disablement;
(c) Permanent partial disablement; *and*
(d) Temporary disablement - whether total or partial.

(a) Death
If *death* result from the injury, the amount of compensation is :
(i) an amount equal to 50% of the monthly wages (of the deceased employee) multiplied by *the relevant factor;*
Or
(ii) Rs. 120000-
whichever is more.
[Earlier, the above amount was *Rs. 80,000.* This was increased to *Rs. 1,20,000* by *the 2009 Amendment*.]

(The *"relevant factor"* is a mathematical figure calculated with reference to the age of the employee, which is contained in Schedule IV, given in this book in Chapter VIII.)

The first necessary condition to invoke the application of the above provision is that the *death* should necessarily have resulted from the injury received by the employee. There must, therefore, be a *causal relationship* between the death and the injury.

The English Courts have been divided on the interpretation of the words *"results from". In Dunham* v. *Clare,* (1902) 2 KB 292, the Court allowed payment of compensation even though the cause of the death was *not* the direct or natural result of the injury. However, in later cases, courts in England have *not* followed the ratio of this case.

In an Indian case, a Division Bench of the Calcutta High Court approved the ratio of *Dunham v. Clare* and *held* that the wording used by legislature follows the English law of compensation. The disablement must *result* from the injury, though it is *not necessary* that the disablement should be *attributable* to the injury. The *correct test* according to the Court, is *not* whether the disablement was a direct result of the injury. The question rightly is whether "the disablement can be traced to the injury even as an unusual, but *not* unconnected, result thereof.'" *(Ashutosh Seal v. Gauripure Ltd.,* AIR 1927 Cal. 286)

(b) Permanent total disablement

If the injury results in permanent total disablement, the amount of compensation is:
(i) an amount equal to 60% of the monthly wages (of the injured employee) multiplied by the relevant factor; or
(ii) Rs. 140000 — *whichever is more.*

[Earlier, this amount was *Rs. 90,000.* This was increased to *Rs. 140000* by *the 2009 Amendment.]*

The amount of compensation bears relation to the monthly wages of the workman. According to this table, an employee who is injured and suffers permanent total disablement as a result thereof, is entitled to *more compensation* than what the dependents of such workman would have received had he died as a result of the injury. This indicates that the Act has taken into consideration the fact that a person who has suffered permanent total disablement is at a great disadvantage and is a serious liability to his family. The higher rate is to compensate for the total and permanent loss of his earning capacity in respect of all work he was capable of doing at the time of accident.

According to Section 2(1)(l), "total disablement" is disablement of a permanent and total nature, which incapacitates the employee in respect of *all work* he was capable of performing at the time of the accident. Permanent total disablement is deemed to result from every injury specified in Part I of Schedule I or 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.
(Note: For the *"relevant factor",* see the mathematically calculated figure appearing in Schedule IV, reproduced in Chapter VIII of the book.)

(C) Permanent partial disablement

Where permanent partial disablement results from the injury, the amount of compensation is as follows:

(i) in the case of an *injury specified in Part II of Schedule I* - such *percentage* of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the *percentage of the loss of earning* capacity caused by the injury; *and*

(ii) in the case of an *injury not specified* in Schedule I such percentage of the compensation payable in the case of permanent total disablement as is *proportionate to the loss of earning capacity permanently caused* by the injury.

Where *more injuries than one are caused by the same accident,* the amount of compensation payable under this head is to be aggregated, but the same *cannot* exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Permanent partial disablement is a disablement of a permanent nature which reduces the earning capacity of the employee in *every employment* which he was capable of undertaking at the time of the accident. However, every injury specified in Part II of Schedule I is also deemed to result in permanent partial disablement : *Section 2(1)(g).*

It may be noted that wording of Section 4(1)(c) discussed above, relate to loss of *"earning capacity".* Loss of earning capacity should be distinguished from loss of *"physical capacity".* This distinction was pointed out in *two cases* decided by the Calcutta High Court, *viz. Agent, Estern India Rly. v Maurice C. Ryan,* (AIR 1937 Cal. 526), and *Commissioner,* , *Port of Calcutta* v. *Prayag Ram,* (AIR 1967 Cal. 7.) Thus, incapacity on account of physical injury, without proof of loss of earning capacity, will *not* entitle an employee to claim compensation under this clause.

In the last mentioned* case, the Court cautioned that the question of the loss of earning capacity *cannot* be determined solely on medical evidence, as such evidence is restricted to a deposition regarding physical injury and does *not* take into consideration loss of earning capacity.

(d) Temporary disablement

Where temporary disablement, whether total or partial, results from the injury, the compensation payable will be *half-monthly payment* of the sum equivalent to 25% of the monthly wages of the employee, to be paid on the *sixteenth day:*

(i) from the *date of disablement* - where such disablement *lasts* for a period of *twenty-eight days or more; or*

(ii) after the *expiry of a period of three days* from the date of the disablement, - where such disablement lasts for a period of *less than twenty-eight days a*nd thereafter, half-monthly *during* the *disablement* or during a period of *five years,* whichever period is *shorter.*

However, the above provisions are *subject to* the following *two* conditions:

(a) From any lump sum or half-monthly payments, one must deduct the amount of any payment of allowance which the employee has received from the employer by way of compensation (other than payment for medical treatment) during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be.

(b) No half-monthly payment can, in any case, exceed the amount, if any, by which half the amount of the monthly wages of the employee before the accident exceeds half the amount of such wages which he is earning after the accident.

An employer can validly make a deduction *only if* an amount has been paid by him to the employee *"by way of compensation"* prior to the receipt of the lump sum or the first half-monthly payment. Thus, in *Brahma Metal Factory* v. *Bahadur Singh* (AIR 1955 All. 182), when it was pointed out that the amount paid was an advance towards salary, it was *held* that no deduction could be claimed.

Cessation of Disablement : It is also provided that on the ceasing ° of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month, a sum proportionate to the duration of the disablement in that half-month.

Whether compensation higher than what is claimed can be awarded.— The Karnataka High Court has *held* that, under the Act, the Commissioner has jurisdiction to award compensation higher than what is asked for in a claim petition, if according to law, the claimant is entitled to a higher compensation than what he has claimed. *(National Insurance Co. Ltd.* v. *R. Vishnu,* 1991, II C.L.R. 442)

Payment for funeral expenses : It is also provided that if the injury of the employee results in his death, the employer, must, in addition to the compensation referred to above, also deposit with Commissioner, a sum of Rs. 5,000, for payment of the same to the eldest surviving dependent of the workman towards funeral expenses of the workman. (The 2009 Amendment increased the amount payable for funeral expenses from Rs. 2,500 to Rs. 5,000. The said Amendment has also provided that this amount (Rs. 5,000) can be enhanced by the Central Government, from time to time, by a Notification in the Official Gazette.)

Reimbursement of medical expenses : By a new provision added by the 2009 Amendment, it is now provided that an employee is entitled to get a full reimbursement of the actual medical expenses incurred by him for treatment of injuries caused to him during the course of his employment.

The provisions of the Act, and not sympathy or generosity, to be the determining factor: The Kerala High Court has observed that I the case of injuries falling under Schedule I, the compensation payable under S. 4 is to be calculated only as provided in the said Schedule. The courts *cannot* ignore the statutory mandate and act as benevolent kings; sympathy and generosity cannot be exercised at the expense of others. *(Oriental Insurance Co. v. Mohammed,* (2002) 1 Lab. L. J. 922)

C. PENALTY FOR DEFAULT (Sec. 4A)

In order to ensure the quick payment of compensation, Section 4A provides that compensation should be paid as soon as it is due. This section also prescribes a penalty for default in payment.

Under Section 4A

(1) Compensation should be paid as *soon as it falls due.*

(2) In cases where the employer does *not* accept the liability to the extent claimed, he is bound to make *provisional payment* based on the quantum which he accepts, and such payment must be *deposited* with Commissioner *or* made to the employee,

without prejudice to his right 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 on which it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest at the rate of 12% per annum, or at such higher rate as may be specified, on the amount due, such higher rate *not* to exceed the maximum lending rate of any Scheduled Bank as may be specified by the Central Government; *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 50% of such amount by way of *penalty.* (However, no order for the payment of penalty can be passed without giving a *reasonable opportunity* to the employer to show why penalty should *not* be imposed.)

In *Dalip Kaur* v. *Northern Railway* (1992 ILLJ 762 [P & H]), it was *held* that even if there is no claim for penalty in the application, the *Commissioner is bound to impose* penalty if the conditions of the Act are satisfied.

D. COMPUTATION OF WAGES (Sec. 5)

For the purposes of the Act, 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.

(1) **Twelve months or more continuous service**: Where the employee has, during a continuous period *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 will 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.

(2) **Less than one month**: Where the whole of the continuous period of service immediately preceding the accident during which the employee was in the service of the employer was *less than one month,* the monthly wages of the workman will be *the average monthly amount* which during the twelve months immediately preceding the accident, was being earned by an 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.

(3) **In other cases**: In other cases, including cases in which it is *not* possible, for want of necessary information, to calculate the monthly wages, the monthly wages will 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.*

It is also clarified that a period of service shall, for this purpose, be *deemed to be continuous* which has *not* been interrupted by a period of absence from work exceeding *fourteen days.*

Thus, under Section 5, monthly wages imply the amount of wages "deemed to be payable for a month's service." Such wages which are deemed to be payable are *not,* therefore, synonymous with the wages *actually* paid to the workman. As compensation under the Act is payable on the basis of the monthly wages, this distinction should be borne in mind.

In Chopra Printing Press v. *D. Raj* (25 FJR 345), an interesting question came up for the

Court's consideration. In this case, the workman received a sum lower than the minimum wage prescribed for employment in that industry. On an application for compensation under the *Act, the employer contended that compensation to the workman should be computed on the basis of the wages which he actually drew.* On an interpretation of Section 5, the Court *held* that the section takes into account the wages "deemed to be payable for a month's service" and *not* what was actually paid to the workman. In the circumstances, the minimum wage prescribed was therfore, treated as the monthly wage for determining the quantum of compensation.

In *Alimohamed* v. *Shanker Pote* (ILR 1946 Born. 209), the Court *held* that absence owing to holidays or illness *cannot* be taken into account while deciding the point of continuous service under Section 5 of the Act.

E. REVIEW (Sec. 6)

Under *Section 6,* any half-monthly payment payable under the Act may be reviewed by the Commissioner under certain circumstances.

Such a review can be made on an application filed *either* by the employer *or* the employee. The application must be accompanied by a certificate of a qualified medical practitioner that there has been a change in the condition of the employee. A review is also envisaged on an application made *without* such a certificate.

Under this Section, an application must:
(i) *either* be accompanied by a medical certificate stating that there has been a change in the employee's condition; *or*
(ii) be made *without such certificate, if* the ground on which the application is made is one of the grounds specified in Rule 3 of the Workmen's Compensation Rules. 1924
.
This Section only applies in the case of temporary disablement, whether of a partial or total nature, as it relates to the review of halfmonthly payments. (Half-monthly payments are made *only* in the case of temporary disablement.)

Commissioner's power to review: In an application for review, the Commissioner may, subject to the provisions of this Act, —
(i) continue, increase, decrease or end any half-monthly payment; *or*
(ii) if permanent disablement is found to have resulted from the accident, convert the half-monthly payment into a lump sum, after deducting such amount as has already been received by the workman by way of half-monthly payments.

F. COMMUTATION OF HALF-MONTHLY PAYMENTS (Sec. 7)

Under Section 7, any right to receive half-monthly payments may 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, if,—
(i) there is an agreement between the parties to that effect, *or*
(ii) on the application of either party to the Commissioner, if the parties *cannot* agree and the payments had been continued for at least *six months.*

The *object* of these provisions is explained by the Statement or Objects and Reasons of the Act. It is observed that these provisions are designed "to protect an employer when a

workman with a comparatively trifling injury declines to return to work, and to assist a j workman who wishes to return to his home when the employer refuses to come to a final settlement".
Section 7 relates to partial disablement in respect of which half monthly payments are payable. The commutation contemplated by this section is in the form of redemption of any right to receive any such half-monthly payment by the payment of a lump sum.

As the words *"lump sum*" have *not* been defined under the Act, it is necessary to consider their implication. According to the judgement in *Gani. v. Dhapuri* (AIR 1957 Raj. 246) there is no warrant for granting a restricted meaning to these words as, in the absence of a definition in the Act itself, the general dictionary meaning has to be relied upon. The term *"lump sum"* was *held* to indicate a *"down payment" or* a payment made in one lump or lot, that is, *not* paid in instalments but together at one time.

G. DISTRIBUTION OF COMPENSATION (Sec. 8)

The provisions of the Act relating to distribution of compensation are contained in Section 8 of the Act, and can be discussed under the following *seven* heads:

(1) When the amount is to be deposited
(2) Discharge
(3) Procedure on deposit
(4) Apportionment
(5) Payment: General provisions
(6) Payment: Special provisions
(7) Variation of orders.

(1) **When the amount is to be deposited**

Under Section 8(1), payment of compensation must, in the case of a person covered thereby, be deposited with the Commissioner in the following cases:
(1) when the compensation is in respect of an employee who had died as a result of the injury;
(2) in the case of a *woman or a person under a legal disability,* if compensation is payable in lump sum.

The Act thus *prohibits direct payment by an employer* in the abovementioned cases. However, in the case of a deceased employee, an employer may give an advance to his dependent of an amount equal to 3 months' wages of such employee, and so much of that amount as does *not* exceed the compensation payable to that dependent, is to be deducted when compensation is paid by the Commissioner, and refunded to the employer.

When any amount *not* less than Rs. 10 is payable as compensation, the same may be deposited with the Commissioner on behalf of the person entitled thereto.

Any *ex-gratia* amount paid directly to the dependant *cannot* be deducted from any amount later awarded as compensation under the Act. *(Mrs. K. Dias* v. *H.M. Coria and Sons,* AIR 1951 Cal. 513)

(2) **Discharge**

The receipt of the Commissioner is a sufficient discharge in respect of any compensation deposited with him. *[Sec. 8(3)]*

(3) Procedure on deposit

Sec. 8(4) prescribes the procedure to be followed by the Commissioner on the deposit of any money as stated above. This provision, however, applies *only* to deposits made as compensation in the case of a *deceased workman.*

On the deposit of the compensation referred to above, the Commissioner should, if he thinks necessary, cause notice to be published or served on each dependant in the manner he thinks fit. The notice must call upon the dependants to appear before him on such date as may be fixed by him for the purpose of determining the distribution of the compensation.

After such inquiry as the Commissioner may consider necessary, should the Commissioner be satisfied that no dependent of the deceased employee exists, the balance of the money deposited by the employer is to be re-paid to him. On the employer's application, the Commissioner is bound to furnish him with a statement detailing all the disbursements made by him from the amount deposited.

Only a "dependent", as defined under the Act, is entitiled to such compensation. The non-existence, therefore, of any person who answers the description of a "dependent" leaves the Commissioner with no option but repay the balance to the employer.

(4) Apportionment

The following provisions apply *only* in the case of compensation deposited in respect of a *deceased employee.* Prior to the apportionment among the dependants, the amount paid in respect of the employee's *funeral expenses* may be *deducted.*

After such deduction, the Commissioner may:

(i) apportion the compensation deposited *among* the dependants of the deceased employee, or any of them, in such proportion as he thinks fit; *or*

(ii) in his discretion, *allot* the compensation to *any one* dependent.

(5) **Payment: General provisions**

In cases where the person to whom the compensation is payable is *not* a woman or a person under a legal disability, the Commissioner *shall,* where any compensation deposited with him is payable to such person, pay the money to the person entitled thereto.

(6) Payment: Special provisions

Section 8(7) makes special provisions in the case of payment of I compensation when it is payable to a woman or a person under a legal I disability.

Where any lump sum deposited with the Commissioner is payable to a *woman or a person under a legal disability,* such a sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person, during his or her disability, in such

manner as the Commissioner may direct. 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 dependent of the workman *or* to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

The above provisions are *enabling* provisions in respect of a special category of persons, namely, women and persons under the legal disability. The *object* is obviously to ensure that the interests of women and persons under a legal disability are protected.

(7) Variation of orders

The circumstances which justify a *variation* of the order of the Commissioner are contained in Section 8(8). An order of the Commissioner regarding payment of compensation may be varied if the Commissioner is satisfied that:

(i) children are being neglected by a parent; *or*
(ii) there is a variation of circumstances of any dependent; *or*
(iii) there is any other sufficient cause.

Such a variation may be made on an application or even *suo motu* (i.e. by the Commissioner, on his own.) The variation may involve or affect:

(a) the distribution of any compensation, *or*
(b) the manner of investment, application or dealing of the same.

Natural *justice* requires that all persons should be given a fair opportunity of being heard, and this rule is incorporated in the proviso to sub-section (8) which grants such an opportunity to the person who would be affected by the variation.

Where the order is varied on the ground that it was obtained by fraud, impersonation or other improper means, any amount paid may be recovered by the mode provided for under Section 31.

H. FREEDOM FROM ATTACHMENT (Sec. 9)

Except as provided by this Act, no lump sum or half-monthly *payment* payable *under* this Act is, in any way, 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 can any claim be set off against the same.

The *Statement of objects* and *Reasons* mentions that Section 9 has been enacted to save payments of compensation from the grasp of persons like money-lenders.

I. NOTICE AND CLAIM (Sec. 10)

The following topics are discussed under Section 10:

(1) General bar to claim
(2) Occupational diseases
(3) Certain defects: No bar
(4) Commissioner's discretion: Absence of notice or delay
(5) Contents of notice

(6) Notice book
(7) Mode of Service.

(1) General bar to claim

The requirement as to a notice of accident and the making of a claim before the Commissioner, as well as the time limit within which such claim should to made, are contained in the first part of Section 10(1).

It is necessary for the claimant to:
(i) give notice of the accident in the prescribed manner, as soon as is practicable after the occurrence of the accident; *and*
(ii) prefer a claim before the Commissioner within:
(a) 2 years of the occurrence of the accident; *or*
(b) 2 years from the date of death-in the case of an accident that has caused the employee's death.

Under the general provisions contained in the first part of Section 10(1), the failure to give the prescribed notice and to make the claim before the Commissioner within the stipulated period, operates as a bar to the consideration of the claim by the Commissioner.

As will be seen below, S.10 also enables the Commissioner to entertain claims despite defective notices, or even in their absence, in certain cases. In the case of such exceptions which are expressly provided for, the Commissioner has the power to entertain any application in the absence of notice *or* even if the claimant does *not* make his claim within the prescribed period. This, however, is a discretionary power of the Commissioner. These exceptions and other provisions are discussed below under separate heads.

In *Ahmedabad Victoria Iron Works* v. *Maganlal* (43 B.L.R. 611), the Bombay High Court *held* that when the consequences of an accident are trivial at inception, the need to give notice under Section 10 will arise only when more serious consequences subsequently develop.

In *Alimohamed* v. *Shanker Pote* (AIR 1946 Born. 169), the Court *held* that there was no justification for requiring that the notice should necessarily contain details of the accident.

While the time-limit for making a claim is specified, no such limit is laid down in the case of the notice of the accident. Courts have, therefore, *held* that all that is required under the section is that the notice should be given "as soon as is practicable after the occurrence of the accident."

(2) Occupational disease

As the general provisions governing notice and claim relate to the date of the occurrence of the accident, it is also clarified as to when the accident is deemed to have occurred in the case of occupational diseases. These rules may be briefly stated as under:
(i) When the accident is the contracting of a disease - the accident is to be deemed to have occurred on the first of the days during which the employee was continuously

absent from work in consequence of the disablement caused by the disease.

(ii) In the case of partial disablement due to the contracting of any such disease and which does *not* force the employee to absent himself from work - the period of two years is to be counted from the day the workman gives notice of the disablement to his employer.

(iii) If an employee who, having been employed in an employment for a continuous period specified under Section 3(2) in respect of that employment, ceases to be so employed and develops symptoms of any occupational disease peculiar to that employment within two years of the cessation of the employment - the accident is deemed to have occurred on the day on which the symptoms were first detected.

(3) Certain defects, no bar

It is also provided that the *want of or any defect, or irregularity* in a notice *shall not be a bar* to the entertainment of a claim, if:

(a) the claim is preferred in respect of the *death of the* employee resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or any other person employed by him, and the employee died on such premises, or at any such place or any premises belonging to the employer or died without having left the vicinity of the premises or place where the accident occurred; *or*

(b) the employer or any one of the several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed, had knowledge of the accident at or about the time when it occurred.

(4) Commissioner's discretion : Absence of notice or delay

The Commissioner *may entertain* and decide any claim to compensation in any case *even if:*

(a) the notice *has not been given, or*

(b) the claim has *not* been preferred in time - if he is satisfied that such failure was due to *sufficient cause.*

What constitutes *"sufficient cause"* in a particular case is a matter within the Commissioner's discretion Such discretion should be exercised *judicially,* and *not capriciously,* What is "sufficient cause" for the condonation of the delay, or failure to give notice, is *question of fact* depending upon the facts and circumstances of each case.

This discretionary power conferred on the Commissioner is in keeping with the spirit of the Act, which is essentially to enable employees or their dependents to obtain compensation under the Act. This discretionary power is intended to enable the Commissioner to prevent injustice and grant relief in exceptional cases.

In this connection, Courts and Tribunals should keep in mind that a refusal to condone a delay may result in injustice on account of a meritorious claim being thrown out without trial. On the other hand, condonation of delay would, at the highest, result in deciding a case (which was *not* filed in time) on its merits.

(5) Contents of notice

Every notice of an accident should contain the following *particulars:*

(i) the *name* and *address* of the person injured;
(ii) a statement, in ordinary language, as to the *cause* of the *injury; and*
(iii) the *date* on which the accident occurred

It is also necessary that such notice of injury should be in *writing.* Although the same is *not* specifically stated, it is necessarily implied by the fact of the requirement of the "*service"* of the notice on the employer.

While scrutinizing a notice or accident, it is essential to ensure that too technical a view is *not* adopted as it should be borne in mind that often such a notice is given by an employee or a person dependant on him, in a state of mental or physical distress. Ajl that is required is an indication in plain language, of the cause of the injury. Once the notice discloses this, no further details, apart from those mentioned above, are required.

On whom served: The notice of accident should be served:
(i) on the *employer; or*
(ii) upon *any one of the several employers; or*
(iii) upon *any person responsible* to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(6) Notice Book

The State Government may require that any prescribed class of employers should *maintain,* at their premises at which employee 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 ride* on his behalf.

(7) Mode of Service

A notice under the section may be served by *delivering* it 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 notice book is maintained, by an *entry* in the notice book.

J. POWER TO OBTAIN STATEMENTS REGARDING FATAL ACCIDENTS (S. 10-A)
(This topic is discussed in the next Chapter.)

K. REPORT OF FATAL ACCIDENTS (S. 10-B)
(This topic is also discussed in the next Chapter.)

L. MEDICAL EXAMINATION (Sec. 11)

Section 11 of the Workmen's Compensation Act prescribes a medical examination for an injured employee pursuant to a notice of accident.

Submission for medical examination: An employee is expected to submit himself for medical examination under *two* circumstances contemplated by Section 11, namely, -
(a) **On giving notice of accident**: On giving a notice of accident, an employee should submit to a medical examination, if the employer, *within three days* of the service of such notice, offers to have the employee examined free of charge by a qualified medical practitioner.
(b) **Recipient of half-monthly payment**: When an employee is in receipt of half-

monthly payments under the Act, he is bound, if so required, to submit himself for such medical examination by a medical practitioner from time to time. However, an employee *cannot* be compelled to submit himself to such examination otherwise than in accordance with the rules made under this Act *or* at more frequent intervals than what has been prescribed.

In *A. Jeram* v. *Hazarat & Co.* (AIR 1962 Guj. 162), the Court *held* that the burden of proving that the free services of a medical practitioner were offered to the employee and that the employee, despite such offer, refused to avail of the same, is upon the employer. The employer *cannot* escape liability by contending that the employee did *not* avail of the treatment, without the employer having established that he first offered free medical service as required by Section 11.

Refusal by the employee: If an employee refuses to submit himself for examination by a medical practitioner, he exposes himself to the risk of the *suspension of his right to compensation in* the period of the continuance of his refusal or obstruction, *unless* he is able to establish that there was sufficient cause which prevented him from submitting himself for such examination. An employee is thus *not* penalised in *all* cases of refusal to submit to medical examination.

The penalty imposed by this section applies only when employee's refusal is without **sufficient cause"* and when the submission to such examination is required under section 11 or by the Commissioner. Thus, refusal on reasonable grounds may be justified. What constitutes “sufficient cause" is mainly a *question of fact* depending upon the circumstances of each case

“Voluntarily leaves”: When an employee *voluntarily* leaves the vicinity of the place of employment within the period he is liable to be medically examined, without such examination, his right to compensation is suspended until he returns and offers himself for the examination.

As the word “voluntarily” is used, it is clear that when the employee is obliged to leave such place due to factors or circumstances beyond his control, he *cannot* be penalised by the suspension of his right to compensation.

Commissioner’s discretion in cases of death: The Commissioner also has the discretion to direct the payment of compensation to the dependants of a deceased employee, *even if* he had died without submitting himself for medical examination, *and notwithstanding* that the employee’s right to compensation had been suspended under the above provisions. The Commissioner may direct such payment of compensation *“if he thinks fit".* The discretion is granted to the Commissioner to enable him, in deserving cases, to grant relief to the dependents when the workman dies.

Aggravation of injury on employee’s default: When the injury suffered by an employee has been aggravated by any of the circumstances listed below, the injury and resulting disablement are of the same nature and duration as they might reasonably have been expected to be, if the employee has been regularly attended to by a qualified medical practitioner whose instructions he had followed, and compensation, if any, is payable accordingly.

The circumstances referred to above are the following:

(i) If the injured employee had refused to be attended to by a qualified medical practitioner provided to him free of charge, by the employer; *or*

(i) If the employee had accepted such medical assistance, but deliberately disregarded the instructions of such medical practitioner; *and*

(ii) It is proved that the employee has *not* thereafter been regularly attended by a qualified medical practitioner, *or* if so attended, the employee has deliberately failed to follow his instructions, and that such refusal, disregard or failure was *unreasonable* in the circumstances of the case.

CHAPTER IV

EMPLOYER'S OBLIGATIONS

This Chapter is discussed under the following *five* heads:

A. **Statements regarding fatal accidents (Sec. 10A)**
B. **Reports of fatal accidents and serious bodily injuries (Sec. 10B)**
C. **Returns regarding compensation (Sec. 16)**
D. **Contracting out (Sec. 17)**
E. **Penalties (Sec. 18A)**

Question:
Write a short note on: contracting out under the workmen's compensation Act
M.U. Apr 2013, May 2018

A. STATEMENTS REGARDING FATAL ACCIDENTS (Sec. 10 A)

Section 10A deals with the power to require from employers statements regarding fatal accidents .This section applies only to *fatal* accidents. It imposes an obligation on the employer to provide the Commissioner with statements regarding accidents that have caused the death of employee's out of, and in the course of, such workmen's employment.

When the Commissioner *receives information, from any source* that an employee has died in consequence of an accident arising out of, and in the course of, his employment, the Commissioner *may send a* notice to the employee's *employer,* requiring him to provide the *details* mentioned in the sub-section.

The *requirements* of this sub-section are:
(i) The notice should be sent by registered post to the employee's employer.
(ii) The notice should call upon the employer to submit, within *thirty days* of the service of the notice, a statement in the prescribed form.
(iii) The statement should indicate:
(a) the circumstances concerning the employee's death; *and*
(b) whether, in the employer's opinion, the employer *is* or *is not* liable to deposit compensation on account of the death.

According to the *Statement of Objects and Reasons* of the Act, the provisions of *Section 10A* are intended to ensure that, in as many cases as possible, fatal accidents are brought to the Commissioner's notice, so that where the employer admits liability, compensation is promptly deposited, and where he disclaims liability despite good grounds for believing that compensation is payable, the dependents get the information which is essential to help them decide whether or *not* to make a claim.

Employer's opinion on his liability

If the employer feels that he is liable to deposit compensation, he must make a deposit *within thirty days* of the service of the notice on him.

If the employer feels that he is not liable to deposit compensation, he should, in his statement, set out the grounds on which he has disclaimed liability.

When an employer disclaims liability to deposit compensation, the Commissioner may make such inquiry as he thinks fit, to determine whether the employer was entitled to disclaim liability, and may thereupon:
(i) inform any of the dependents that it is open to them to make a claim for compensation; *and*
(ii) provide them with such further information as he thinks fit.

The powers of the Commissioner, immediately on receipt of a disclaimer, are limited by the provisions of *Section 10.* The Commissioner *cannot,* therefore, on the employer's disclaimer, award compensation. He must follow the above provisions, and after inquiry, inform the dependents of the course of action to be adopted by them. Thus, in *Mohansing* v. *Chandra Das* AIR 1950 Assam 116, it was *held* that failure to observe the prescribed procedure renders the order liable to be struck down

B. REPORTS OF FATAL ACCIDENTS AND SERIOUS BODILY INJURIES (Sec. 10B)

Where 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 notice must *within seven days* of the *death* or *serious bodily injury,* send a *report* to the Commissioner specifying the circumstances attending the death or serious bodily injury.

However, where the State Government has so prescribed, the person required to give the notice may, instead of sending such report to the Commissioner, send it to the authority to whom, he is required to give the notice.

The State Government may, by notification in the Official Gazette extend the above provisions to any class of premises other than those coming within the scope of the above, and may, by such notification, specify the persons who shall send the report to the Commissioner.

The above provisions do *not* apply to establishments to which the Employees' Sate Insurance Act, 1948 applies.

This Section applies *only* to fatal accidents and serious bodily injuries. While the former covers cases where deaths have occurred "serious bodily injury" has been defined as under:

Serious bodily injury: Serious bodily injury, for the purposes of this section, means an injury which involves, or in all probability, will involve,—
(i) the permanent loss or use, or permanent injury to any limb; *or*
(ii) the permanent loss or injury to sight or hearing; *or*
(iii) the fracture of any limb; *or*
(iv) the enforced absence of the injured person from work for a period exceeding *twenty days.*

Requirement of a report: When the law requires that the employer should give, to any authority, notice of any accident occurring on his premises which results in death or

serious bodily injury, he should also send to the Commissioner, a report containing *the circumstances relating to such death or serious bodily injury.*

C. RETURNS REGARDING COMPENSATION (Sec. 16)

The State Government may, by gazetted notification, *direct* that every person employing employees, shall send at the prescribed time and in the prescribed form to such authority, *a correct return specifying* the following details:

(i) the *number* of injuries in respect of which compensation has been paid by the employer during the previous year;
(ii) the *amount of* such compensation; *and*
(iii) such *particulars* as to the compensation as the said Government may direct.

Failure to comply with the provisions of *Section 16* is an *offence* punishable with penalty under *Section 18A.*

D. CONTRACTING OUT (Sec. 17)

Section 17 prohibits *"contracting out".* Any contract or agreement, whether before or after the commencement of this Act, whereby an employee *relinquishes any* right of compensation from the employer, for personal injury arising out of or in the course of the employment, is declared to be *null and void,* in as far as it purports to *remove or reduce* the liability of any person to pay compensation under this Act.

As the *object and purpose of this Act* is to enable employees or *write a short note* their dependents to recover compensation from their employer, it is *on* against the policy of the Act to allow a workman to give up his right of compensation for personal injury arising out of, and in the course *Act.*

In the absence of the provisions contained in *Section 17,* it would have been easy for unscrupulous employers to obtain, from helpless and ignorant employees, agreements by which they give up their claim to compensation.

According to the *Statements of objects of Reasons* of the Act, the provisions contained in *Section 17* are necessary to guarantee to the employee, "the benefits of this Act". What the section states in essence, is that the benefit and protection granted by the Act *cannot* be taken away or waived by private arrangement.

There is hardly any doubt that an employee is usually under the employer's influence because of the latter's position of authority and, therefore, any act which has the effect of the workman giving up his justified claim to compensation, is forbidden.

In *Mrs. K. Dias* v. *H.M. Coria & Sons,* AIR 1961 Cal. 513, the Court was called upon to consider the question of whether a receipt issued by the deceased employee's widow accepting a lesser amount of compensation that she was entitiled to, amounted to a contract relinquishing her claim. The Court *held* that such a contract was hit by the provisions of *Section 17* which prohibits contracting out. In such a case, therfore, the acceptance of *lesser* compensation does *not* bar a claim for the *whole* amount in view of the protection of this section.

However, if the employee agrees to abide by the decision of the Commissioner, thus

impliedly agreeing *not* to appeal from his decision, S. 17 is *not* attracted. (*Mackinnon Mackenzi & Co.* v. S. *Velma.* A.I.R. 1964 Cal. 954)

[See also, *"Contracting Out"* under S. 23 of the Payment of Wages Act, discussed later in the book.]

E. PENALTIES (Sec. 18A)

(a) Penalties

Whoever—

(i) *fails to maintain a notice-book* which he is required to maintain; *or*

(ii) *fails to send to the Commissioner a statement* which he is required to send; *or*

(iii) *fails to send a report* which he is required to send; *or*

(iv) *fails to make a return* as to compensation (which he is required to make under S 16),—

is made punishable with *fine* which may extend to five thousand rupees.

(b) Institution and cognizance

(i) Sanction: The Commissioner's sanction is required prior to the institution of any prosecution under this section.

(ii) Cognizance: A Court can take cognizance of an offence under this section only on a complaint in respect thereof.

(iii) Limitation: The complaint referred to above must be made within a period of *six months* from the date on which the alleged commission of the offence came to the Commissioner's knowledge.

CHAPTER V

SPECIAL LIABILITIES

The following topics are discussed here:

A. Employers and Contractors (Section 12)
B. Employer's Remedies Against Strangers (Section 13)
C. Employer's Insolvency (Section 14)
D. First Charge on Assets (Section 14A)
E. Special provisions relating to Masters and Seamen (Section 15)
F. Special provisions relating to Captains and other members of crews of aircrafts (S. 15A)
G. Special provisions relating to workmen abroad of companies and motor vehicles (S. 15B)

A. EMPLOYERS AND CONTRACTORS (S. 12)

The general liability of the employer in respect of payment of compensation to employees engaged by a contractor for the former's trade or business is covered by the provisions of *Section 12.* These provisions may be discussed under the following heads:
(1) Employer's liability: Contractor's workmen
(2) Indemnity by contractor
(3) Workman's option

(1) Employer's liability: Contractor's Employees

An employer is *liable* to pay compensation to an employee employed by his contractor *in the following circumstances:*
(i) When a person (the principal) in the course of, or for the purpose of, his trade or business, *contracts* with *any* other person (the contractor); *and*
(ii) such *contract* is *for* the *execution* by or under the contractor for the whole or any part of the *work* which is ordinarily part of the principal's trade or business.

Exception: The above provisions do *not* apply where the accident occurred *elsewhere* than on, in, or about, the premises:
(a) on which the principal has undertaken, or usually undertakes, to execute the work; *or*
(b) which are otherwise under his control or management.

Nature of liability: The principal is liable, in the above circumstances, to pay to the employee, *compensation* which he *would have been liable to pay if* such employee had been *employed by him.*

The above provisions incorporate the principle of *constructive or vicarious liability* of the principal for the injuries sustained by his contractor's employees. Such liability arises *only if* the conditions specified above are satisfied.

In *Trustees of the Port of Madras* v. *Bombay Co (P) Ltd.* AIR 1967 Mad. 318, the Court

observed; “One sees in this provision, the view that a person who employs others to advance his own business or interests, should be a more promising and certain source of recompense to the injured workman than the intermediary who may be a man of straw.”

“In the course of, or for the purposes of, his ‘trade or business’: These words are of utmost importance in determining the principal’s liability. If the work which is entrusted to the contractor is *not* in the course of, or for the purposes of, the principal’s usual trade or business, the principal may escape liability. As this section imposes a special vicarious liability, it is essential that the provisions of the section be *strictly construed.*

In ft *M. Tahir* v. *G.I.P. Rly.* (ILR 53 Born. 203), the Court *held* that the engagement by a railway company of a contractor for the purpose of setting up a transmission line was *not* for work which is a part of the ordinary trade or business of the railways. In this case, the claim was also negative on the ground that, in laying such a cable, the railway was discharging an obligation imposed by a statute.

In *S.M. Ghose* v. *National Sheet and Metal Work Ltd.,* and Anr. (AIR 1950 Cal. 548), the Court *held* that the employee has to establish that the work for which the contractor was engaged was work which ordinarily formed “the whole or part of the principal’s business.”

(2) Indemnity by a contractor

Where the principal is liable to pay compensation under this section, he is entitled to be indemnified by the contractor or any other person from whom the employee could have recovered compensation.

Where a contractor who is himself a principal is liable to pay compensation *or* to indemnify a principal under this section, he is entitled to be indemnified by any person standing to him in the relation of a contractor from whom the employee could have recovered compensation.

All questions as to the right to and the amount of any such indemnity, in default of agreement, are settled by the Commissioner.

The above provisions may be divided into *two* parts: Indemnity by a contractor to a principal, and indemnity to a contractor, when such contractor is in the position of a principal, by a person who stands in relation to him as a contractor, In the *former* case, it is the contractor who is liable to indemnify the principal. In the *latter* case, the contractor’s principal is liable to be indemnified by the person who is the contractor.

(3) Employee’s option

Despite the above provisions, an employee can recover compensation from the contractor instead of from the principal: S. *12(3).*

Although S. 12, in substance, renders the employer liable to pay compensation to an injured employee engaged by such employer's contractor, sub-section (3) enables a workman to exercise his *option* of proceeding against the contractor instead of against the principal. An employee is *not,* therefore, bound to claim compensation from the

employer when he is engaged by such employer's contractor.

B. EMPLOYER'S REMEDIES AGAINST STRANGERS (S. 13)

Section 13 deals with the *liabilities* of third parties to an employer or an indemnifier in respect of compensation paid to an injured employee. This provision applies when:

(i) the injury creates a *legal liability* to pay damages for some person other than the person by whom the compensation was paid; *or*

(ii) on payment of such compensation, any person has been called upon to pay under an indemnity, is entitled to be indemnified under S. 12.

In such circumstances, the person who was paid compensation and any person who has paid the indemnity, are entitled to be indemnified by the person liable to pay damages as aforesaid.

This section deals with the remedies of employers and indemnifiers *against third parties.*

Creation of a "legal liability": These words indicate that when the circumstances reveal that a third party was responsible or liable to pay damages for the injury arising out of the accident, such third party is, by virtue of this provisions of S. *13,* liable to indemnify the person who has paid compensation *or* who has been called on to pay an indemnified amount under S. 12.

C. EMPLOYER'S INSOLVENCY (S. 14)

The *object* of S. 14 is to grant protection to an employee in the event of the insolvency of his employer. The provisions of Section 14, enable an employee to have priority in respect of his claim when his employer becomes insolvent.

The section contemplates two contingencies: *firstly,* the insolvency of the employer or making a composition pr a scheme of arrangement with the employer's creditors; *secondly,* if the employer is a company, the commencement of winding up of the company.

In either case, if the employer has entered into a contract with any insurers in respect of the payment of compensation to an employee, the provisions of Section 14(1) will apply.

Effect: In the above circumstances, notwithstanding anything in the law relating to insolvency or the winding-up of a company, the rights of the employers against the insurers in respect of the liability to the workman are transferred to and vest in the employee. Upon such transfer, the insurers are placed in the position of the employer as far as liability is concerned. The insurers are *not* however, under greater liability to the employee than they would have been to the employer.

Difference in liability: If the liability of the insurers to the employee is less than the liability of the employer to the employee, the employee is entitled to "*prove for the balance*" in insolvency proceedings or liquidation. In other words, he can recover the balance in such proceedings.

Void or voidable contracts: When a contract referred to above is *void* or *voidable* on account of the employer's default, the above provisions will still apply, *as if* such contract

was *not* void or voidable. In such an event, the insurers *are* entitled to *'prove',* in insolvency proceedings *or* liquidation, for the amount paid to the employee. However, if the employee fails to give a notice to the insurers of the occurrence of the accident and resultant disablement, as soon as possible after he has knowledge of the institution of insolvency or liquidation proceedings, he is deprived of the benefit of these provisions which save void or voidable contracts.

Priority to compensation payment: In the distribution of the property of the insolvent, or the assets of a company being wound up, the compensation payable to an employee ranks as a *priority debt.* It is, however, necessary that the amount due in respect of such compensation should be on account of liability which accrued *prior to* the date of the order of adjudication of the insolvent or the date of the commencement of the winding up proceedings, as the case may be.

Exception: The provisions of *Section 14 do not apply* where a company is wound up voluntarily *only for* the purpose of amalgamation with, or reconstruction of, *another* company.

D. FIRST CHARGE ON ASSETS (S. 14A)

Section 14A prevents an employer from transferring his assets in order to defeat an employee's claim for compensation. This section makes the payment of compensation a *first* charge on assets which have been transferred by the employer *provided:*

(i) the transfer has been effected before any amount due as compensation has been paid; *and*
(ii) if the *liability* in respect of payment of such compensation *accrued prior to the date of the transfer.*

The provisions of this section apply "*notwithstanding* anything contained in any other law for the time being in force."

However, such a first charge relates only to assets which consist of *immovable property.*

E. SPECIAL PROVISIONS RELATING TO MASTERS AND SEAMEN (S. 15)

Section 15 of the Act contains special provisions relating to masters and seamen.

"Master": As this word is *not defined* in the Workmen's Compensation Act, its meaning has to be taken from the General Clauses Act, 1897.

Section 3(32) of the General Clauses Act defines a "master" as follows: "Master" with reference to a ship, means any person (except a pilot or harbour master) having, for the time being, control or charge of the ship.

"Seamen": This word is defined in the Act. *Section 2(1)(k)* states that "seamen" means any person forming part of the crew of any ship, but does *not* include the master of the ship.

Section 15 states that this Act applies in the case of employees who are masters of ships or seamen, but subject to the *modification* mentioned in the said section. The

section applies only in the case of employees who are masters and seamen as defined above.

Notice-to whom to be given: Notice of an accident and the claim for compensation are required to be served on the master of the ship as if he were the employer. This provision does *not,* -however, apply *when the master is himself the person injured.*

Notice-When *not* required: Notice of an accident is *not* required when:
(i) the accident has occurred on board the ship, *and*
(ii) the disablement has commenced on board the ship.

Time within which claim to be made: The period within which claims for compensation should be made is prescribed. This section classifies claims into two categories:
(a) *Claims in the case of death:* In such a case, the claim should be made within *one year* of the receipt by the claimant of the news of the death.
(b) *Where the ship is lost:* Where the ship has been or deemed to be lost with all hands, the claim must be made within a period of *eighteen months* from the date on which the ship was, or was deemed to have been, so lost.

Commissioner's discretion: The Commissioner is entitled to entertain a claim for compensation in any case despite *the fact* that the claim had *not* been made within the time specified above. While exercising his discretion, the Commissioner must be satisfied that the failure to make the claim within the specified time was on account of *"sufficient cause."*

Failure to give notice or make a claim-No bar: Failure to give a notice or make a claim or to commence proceedings within the stipulated time is *not a bar* to the maintenance of proceedings in respect of any personal injury, if the following *conditions are* fulfilled:
(a) An application for payment has been made under any scheme, such as the War Pension Scheme.
(b) The State Government certifies that the application was rejected because the injury was *not* covered by the scheme, although it was made in the reasonable belief that it was covered.
(c) Proceedings under this Act were commenced within one month from the date on which The State Government furnished such a certificate.

Denial of compensation: Compensation is, however, *not* payable under this Act in respect of any injury regarding which provision is made for payment of gratuity, allowance or pension under the following Schemes made by the Central Government:
(i) The War Pensions and Detention Allowances (Indian Seamen) Scheme. 1939;
(ii) The War Pensions and Detention Allowances (Indian Seamen) Scheme, 1941, made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939;
(iii) The War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942.

Depositions: Where an injured master or seaman is discharged or left behind in any part of India or in any foreign country, any depositions taken by any judge or Magistrate in that part or by any Consular Officer in the foreign country, and transmitted by the person by whom they are taken to the Central Government or any State Government are, in any proceedings for enforcing the claim, admissible in evidence:
(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity, by himself or his agent to cross-examine the witness; *and*
(c) if the deposition was made in the course of a criminal proceeding - on proof that the deposition was made in the presence of the accused person.

It is *not necessary,* in any case, to prove the signature or official character of the person appearing to have signed any such deposition. A certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness, and that the deposition, if made in a criminal proceeding, was made in the presence of the accused person, is unless the contrary is proved, sufficient evidence that the he had that opportunity *and* that it was so made.

No payments in certain cases : No such payments are payable in respect of a period during which a ship's owner is, under any law relating to merchant shipping, liable to defray the expenses of the maintenance of any injured master or seaman.

F. SPECIAL PROVISIONS RELATING TO CAPTAINS AND OTHER MEMBERS OF CREW OF AIRCRAFTS (S. 15A)

It is provided that the provisions of the Act are to apply to workmen who are captains or other members of the crew of aircrafts, subject to the following modifications, namely,—

1. The notice of the accident and the claim for compensation may be served on the Captain of the aircraft, *as if* he was the employer.
2. However, if the person injured is himself the Captain of the aircraft, such notice is *not necessary.*
3. Such notice is also *not necessary* if the accident or the disablement takes place on board the aircraft.
4. In case of death of the Captain or other member of the crew, the claim for compensation is to be made *within one year* from the date on which the news of the death is received by the claimant. If the aircraft is deemed to be lost with all crew members, such a claim is to be made *within eighteen months* from the date on which the aircraft is deemed to have been lost.

In such cases, the Commissioner may entertain a claim even after these periods, if *sufficient cause* is shown.

Provisions are also made for dealing with depositions made in cases where an injured Captain or other member has been discharged or left behind in any part of India, or in any other country.

G. SPECIAL PROVISIONS RELATING TO WORKMEN ABROAD OF COMPANIES AND MOTOR VEHICLES (S. 15B)

The Act also applies to employees recruited by companies registered in India, but employed as employees abroad, and to persons sent to work abroad along with motor vehicles registered in India, as drivers helpers, mechanics, cleaners, *etc.,* subject to the following modifications, namely,—

1. The notice of the accident and the claim for compensation may be served on the local agent of the Company, *or* the local agent of the owner of the motor vehicle, as the case may be.

2. In case of death of the employee, the claim for compensation is to be made *within one year* from the date on which the news of the death is received by the claimant - or such other extended time as the Commissioner may allow, if *sufficient cause* is shown.

Provisions are also made for dealing with depositions made in cases where the injured employee has been discharged *or* left behind in any part *of* India or in any other country.

CHAPTER VI

COMMISSIONER OF EMPLOYEE'S COMPENSATION

The following topics are discussed in this Chapter:

A. Reference to Commissioners
B. Appointment of Commissioners
C. Venue of Proceedings
D. Form and Occasion of Application
E. Commissioner's Power: Further Deposit
F. Powers and Procedure
G. Appearance of Parties
H. Method of Recording Evidence
I. Time-frame for disposal of compensation cases
J. Costs
K. Power to Submit Cases
L. Registration of Agreements
M. Effect of Failure to Register Agreements
N. Appeals
O. Withholding Payments pending Appeal
P. Recovery
Q. Summary of Powers and Functions of the Commissioner

Questions
To which authority is the claim to recover money due from an employer is filed? (2 marks) M. U. May 2018
Briefly explain how the commissioner is appointed under the compensation Act 1923
What is the period of limitation for filing an appeal to the High Court under the E C Act (2 marks) B.U. Apr 2013
Write a *short note on: Powers and functions of the Commissioner under the Workmen's Compensation Act.*
Discuss the appointment powers and functions of the commissioner under the W.C. Act.
Write a short note on: Appointment and powers of a commissioner under the W.C. Act. M.U. Apr. 2011 Apr. 2017 Jan. 2017
What are the functions & powers of a Commissioner under the Workmen's Compensation Act?

A. REFERENCE TO COMMISSIONERS (S. 19)

Under S. 19(1), the Commissioner (who is appointed under the Act by the State Government) has power to settle any question which has *not* been settled by agreement between the parties, *if such question arises* in any proceeding under this Act—

I. *as to the liability of any person to pay compensation* (including a question as to whether an injured person *is, or is not* an employee); *or*
II. *as to the amount or duration of compensation,* including any question as to the nature or extent of the disablement.

Under the above provisions, if the matter is *not* settled by agreement of the parties, the question is to be settled by a Commissioner. It is *not* a necessary condition that there

should be proof of efforts in arriving at an agreement, which subsequently failed. What is indicated is merely that on the failure to arrive at a settlement, the Commissioner's jurisdiction may be invoked.

In Ramaivat v. *Mirian* (AIR 1951 Pat. 260), the Court *held* that the Commissioner's jurisdiction is ousted when there is an agreement between the parties in respect of the questions referred to in *Section 19(1).* However, it *cannot* be laid down that the Commissioner has, in such a case, no power to go into the question of whether the person claiming compensation is, in fact, an employee under the Act.

In *Rajiyabai* v. *M.M. and Co.,* (AIR 1970 Born. 278), the Commissioner was *held* to be a Court while deciding a claim under the Act. The Commissioner's decision is *not an award, but a judgment.*

In *Swarnambiga Motor Service* v. *Muthuswami* (AIR 1959 Mad. 559) the Court *held* that it is within the Commissioner's jurisdiction to determine the loss of earning capacity of an employee who has been injured by an accident arising out of and in the course of his employment. It is the Commissioner's duty to determine the loss of earning capacity. Medical evidence is *not conclusive,* as it is merely the opinion of the deponent.

In *Laxmibai* v. *Chairman and Trustees, Bombay Port Trust* (AIR 1954 Born. 180), the Court dealt with the question of causation between the work done and an employee's death, when he was suffering from some disease, and observed, relying upon the dictum in an old English case (reported in 1910 AC 242) : What must be considered is whether it was *"the disease that did it, or the work that he was doing that helped it in a material degree."*

Civil Court's jurisdiction barred: Under *Section 19(2),* a Civil Court's jurisdiction is ousted in respect of the following *two* matters:

(i) Settlement, decision or dealing with any question which is, by or under this Act, required to be settled, decided or dealt with by a Commissioner; *and*

(ii) The enforcement of any liability incurred under this Act.

Thus, once the employee has elected to avail of the forum and provisions of this Act, a Civil Court's jurisdiction is barred.

In *Port Trust, Madras,* v. *Bombay Company* (AIR 1967 Mad. 318), the Court made the following pertinent observations: "It should be noticed that a workman has an option to either claim compensation under the Act *or* have recourse to the Civil Court for damages in respect of the injuries. If he has exercised his option, and gone to a Civil Court, he forfeits his right to compensation under the Act. Similarly, he *cannot* maintain a suit for damages in a Civil Court if he had instituted a claim for compensation before the Commissioner. The workman has the liberty to elect and avail of remedy in tort for damages. The Act does *not* purport to exclude the jurisdiction of the, Civil Court generally in all matters relating to compensation. Section 19 provides only for the settlement, by the Commissioner, of any question that may arise in any proceeding under the Act. *Section 19,* therefore, applies only to proceedings under the Act and the bar of the Civil Court's jurisdiction is limited to matters which, under the Act, are required to be disposed of by the Commissioner."

Re-affirming the above principle, the Kerala High Court has *held* that if an employee

chooses a Civil Court as the forum for claiming damages (in tort), he forfeits his right to compensation under the Act. *(Minerals & Chemicals Ltd.* v. *Thevan* 1991, II C.L.R. 834)

B. APPOINTMENT OF COMMISSIONERS (S. 20)

Section 20 contains provisions relating to the appointment of Commissioners, as follows:

(1) The State Government may, by *Gazetted notification, appoint* any person to be a Commissioner for Employee's Compensation for a specified

(2) The State Government may, by general or special order, regulate the *distribution of business between* more than one commissioner for the *same area.*

(3) *Any Commissioner may, for the purpose of deciding any matter* referred to him for decision under this Act, *choose* one or more *persons the Commissioner possessing special knowledge or any matter relevant to the matter under* inquiry to *assist* him in holding the inquiry.

(4) Every Commissioner is deemed to be a *public servant* within the meaning of the Indian Penal Code.

C. VENUE OF PROCEEDINGS (S. 21)

Section 21 deals with venue of proceedings before a Commissioner, and the *transfer of* such *proceedings.*

Venue of Proceedings: Under S. 21, the proceedings should be before the Commissioner for the area in which—

a) the accident took place; *or*
b) the employee (or the dependent, in case of the employee's death) ordinarily resides; *or*
c) the employer has his Registered Office.

However, in the case of an employee working on a ship or an aircraft or in a Motor vehicle, meeting with an accident outside India, the proceedings are to be filed before the Commissioner for the area in which —

a) the owner or agent of the ship, aircraft or motor vehicle resides or carries on business; or
b) the Registered Office of the company is situated.

Transfer of Proceedings: The provisions relating to transfer of proceedings may be summarised as follows:

(i) The *main* consideration for the transfer of proceedings is the Commissioner's satisfaction that the matter can be *"more conveniently dealt with by any other Commissioner."*
(ii) If the Commissioner is so satisfied, the transfer can be effected to another Commissioner, *inrrespective of whether or not such Commissioner is in the same State.*
(iii) He may, subject to the rules made under the Act, order such matter to be *transferred* to such other Commissioner either:
(a) *for report; or*
(b) *for disposal*
(iv) On making such an order, the Commissioner who transfers the proceedings should

immediately forward to the other Commissioner, *all the documents* which are relevant for the decision of such matter.

(v) Where the proceedings are *transferred* for the purpose of *disposal,* the Commissioner who makes the transfer, should *transmit* in the prescribed manner, *any money* remaining in his hands, or invested by him for the benefit of any party to the proceedings.

However, the Commissioner *cannot,* where any party has appeared before him, order a *transfer* relating to the distribution among dependents of a lump sum, *without giving such party an opportunity of being heard.*

(vi) The Commissioner to whom the matter is transferred, subject to the rules under the Act, *inquires* into the same, and -

(a) *if* the matter was *transferred* for report returns his report thereon; *and*

(b) *if* the matter was *transferred for disposal,* continues the proceedings *as if* they had originally commenced before him.

(vii) When a matter had been transferred for the report of another Commissioner, on the receipt thereof, the Commissioner who had transferred the matter should *decide* the matter *in conformity with the report.*

(viii) The State Government has the *power to transfer* any matter from any Commissioner to any other Commissioner.

D. FORM AND OCCASION OF APPLICATION (S.22)

Occasion for application: The application contemplated by Section 22 is one *other than* an application by a dependent or dependents for compensation. The application referred to is an application for *the settlement of any matter* by a Commissioner. Such application can be made when:

I. some *question has arisen* between the parties in connection with the settlement of a matter, *and*

II. such matter has *escaped settlement by agreement.*

It has been *held* that it is *not* correct to say that the Commissioner has no jurisdiction unless it is proved that the question was raised and that attempts at settlement had failed. In *Sakiragram Rice Mils* v. *Ramu Indu* (AIR 1950 Assam 188), the Court *held that* the provisions of *Section 22* merely indicate that the Commissioner has jurisdiction if the matter is *"not settled by agreement*", and that these provisions *cannot* be construed to mean that there must be some proved unsuccessful efforts to arrive at an agreement before the Commissioner can entertain an application.

As observed in *Makhan Lai* v. *A Behari* (AIR 1956 All. 586) "all that the Section requires is that had actually arisen between the parties was *not* settled by private agreement."

Form and content of application: While the *form* of the application and the *fee* to be paid in respect thereof are governed by the rules made under the Act, the contents of the application are prescribed in S. 22(2). The following *particulars* are required to be mentioned *in the application:*

(a) A concise statement of the circumstances in which the application is made and the relief or order which the applicant claims.

(b) In the case of a claim for compensation against an employer, the date of the service of notice of the accident on the employer and, if such notice has *not* been served or

has *not* been served in due time, the reasons for such omission.

(c) The names and addresses of the parties.

(d) Except in the case of the dependant's application for compensation, a concise statement of matters in which agreement has, and of those on which agreement has *not* been arrived at.

Illiterate applicants: The Commissioner is also entitled to *aid an illiterate applicant* or one who is unable to furnish the requisite written information. This provision enables illiterate applicants and others to avail of the Commissioner's assistance. Such applicants may approach the Commissioner and seek his help and guidance in the preparation, under his directions, of their applications.

CASES

In *B.M. & G. Engineering Factory* v. *Bahadur Singh* (AIR 1955 All, 82), the Court *held* that an applicant's claim should *not* be rejected on the ground that he did *not* follow the form prescribed in that behalf. The Court distinguished between an *irregularity* and an *illegality,* and pointed out that the failure to make an application in the prescribed form is *not* a fatal defect, as it is a mere *irregularity* and *not* an illegality. It pointed out that the failure to make an application in the prescribed form is not a *fatal defect,* as it is a mere irregularity which can be overcome.

In *Angus Company Ltd.* v. *Chouthi* (AIR 1955 Cal. 616), it was *held* that when by an award or settlement, compensation has been settled, a second application *cannot* be made on the plea that the injuries have been aggravated.

E. COMMISSIONER'S POWER: FURTHER DEPOSIT (S. 22A)

Under *Section 22A,* the Commissioner has, in the case of a *fatal* accident, the power to require a *further deposit,* when the original deposit is insufficient in the opinion of the Commissioner.

This Section has application only in case of death caused by injuries to an employee.

According to the *Statement of Objects and Reasons* of the Act, the purpose of this Section is to enable the Commissioner to require employers to make further deposits when the original deposits are inadequate.

Under this section, an employer who has made an insufficient deposit may be given a written notice by the Commissioner, calling upon him to show cause as to why he should *not* be made to make a further deposit within the time specified in the notice. It is only when the employer fails to show cause to the Commissioner's satisfaction, that the Commissioner is entitled, by means of an award, to determine the total amount payable, and to require him to deposit the deficiency.

F POWERS AND PROCEDURE (S. 23)

The Commissioner has all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of:

(a) taking evidence on oath (which such Commissioner is empowered to impose);

(b) enforcing the attendance of witnesses; *and*

(c) compelling the production of documents and material objects.

The Commissioner is deemed to be a Civil Court, for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure 1973.

The Commissioner must act judicially as a Court for the purposes mentioned in the Section. Rules 23 to 43 of the Workmen's Compensation Rules, 1924, govern the procedure that the Commissioner should adopt in proceedings before him.

In certain cases, an appeal lies to the High Court against his orders. Similarly, a revision application may be preferred against his order if it is illegal *or* without jurisdiction.

However, the Commissioner does *not* have the power to review his earlier order.

G. APPEARANCE OF PARTIES (S. 24)

The provisions relating to appearance of parties may be divided into *two parts:*
(I) **Appearance without the Commissioner's permission**: Any appearance, application or act which is required to be made or done by any person (other than as a witness) may be made or done, on behalf of such persons by:
(a) a legal practitioner; *or*
(b) by a official of an insurance company; *or*
(c) by an official of a trade union; *or*
(d) by an Inspector appointed under the Factories Act, 1948; *or*
(e) by an Inspector appointed under the Mines Act; *or*
(f) by any other officer specified by the State Government in this behalf, authorising him in writing to do so.
(ii) **With the Commissioner's permission**: Such an appearance can also be by any person so authorised, *provided* the Commissioner's permission is obtained.

This section recongises the fact that the employees or their dependents often might *not* be in a position to effectively participate or otherwise act in proceedings before the Commissioner This section, therefore, enables them to be represented by any other person mentioned in the section.

It has been *held* that when a trade union applies to represent an injured employee, the application should be allowed, despite the fact that the union had no signed authority from the workman.

The provisions enabling appearance on behalf of others do *not* apply in the case of an appearance which is required for examination as a witness. This is because one person *cannot* give evidence in place of another.

H. METHOD OF RECORDING EVIDENCE (S. 25)

Section 25 prescribes the rules to be followed by the Commissioner while recording evidence in proceedings before him.

The provisions of *Section 25* may be *summarised* as follows:
(i) The evidence should be recorded in the nature of a *brief memorandum* of the substance of the deposition of each witness, as his examination proceeds.

(ii) Such memorandum should be *written by* the *Commissioner* in his *own handwriting* and should be *signed* by him.
(iii) The memorandum forms *part of the record* of the proceedings.
(iv) If the Commissioner is unable, for any reason to make the memorandum, he must *record written reasons* for the same. In such a case, the memorandum should be reduced to writing *from his dictation* and must bear his signature. In such an event also, the memorandum forms part of the record.
(v) However, in the case of the evidence of a *medical witness,* it should be taken down, *as nearly as may be, word for word.*

Medical certificate: A medical certificate *cannot* be admitted in evidence without the witness being examined in support thereof. The inadmissibility of a medical certificate is obviously on the ground that the same is hearsay if it is *not* supported by evidence on oath and without affording an opportunity for cross-examination. It has been *held* that in the absence of the examination of medical witness, medical certificates *cannot* be taken on record or read in evidence.

I. TIME-FRAME FOR DISPOSAL OF COMPENSATION CASES (S. 25A)

S. *25 A was inserted in the Act by the 2009 Amendment* to provide for an expenditious disposal of compensation cases by the Commissioner. It is now provided that the Commissioner must dispose of such cases *within a period of three months* from the date of the reference and must intimate his decision in respect thereof to the emloyee within this period of time.

J. COSTS (S. 26)

All costs incidental to any proceedings before a Commissioner are, subject to rules made under this Act, in the discretion of the Commissioner.

The provision for the award of costs is salutary one in as far as the Commissioner has the discretion, in keeping with the rules made under the Act, to award costs in proper cases. Often, employees or their dependents are driven to litigation to recover what is justly due to them. In the process, they have to incur expenses which could have been avoided had the employer *not* driven them into instituting such proceedings. In such cases, the award of costs operates as a measure of much required relief.

K. POWER TO SUBMIT CASES (S. 27)

Under *Section 27,* the Commissioner may, if he thinks fit, *submit* any *question* of *law* for the *decision* of the *High Court,* and if he does so, he must decide the question in *conformity* with such decision.

This section envisages a situation wherein the Commissioner is faced with a doubt on a point of law. When the Commissioner desires that such a question be decided by the High Court, he may submit the same to the High Court for its decision. The question may concern the proper interpretation of the provisions of the Act or Rules, *or* of any other question of law which has arisen in the case. Once such a reference has been made, the High Court's decision on the point binds the Commissioner, and he is, thereafter, required to decide the point in keeping with such decision.

L. REGISTRATION OF AGREEMENTS (S. 28)

Section 28 deals with the registration of agreements, and provides as under:
The memorandum of an agreement of settlement *must be sent* by the employer to the Commissioner *for* the *registration* of the same, *where*—

(i) the amount of *any lump sum* payable as compensation has been *settled by agreement,* whether by way of redemption of a half-monthly payment or otherwise; *or*
(ii) any compensation has been so settled by agreement as being *payable to a woman or a person under a legal disability.*

Registration: The memorandum of the agreement of settlement is deemed to be registered when the Commissioner, on being *satisfied as to its genuineness,* records the memorandum in a register in the prescribed manner. The act of registration is *not a formality,* and the Commissioner must exercise his right of registration *very cautiously.*

Seven days period: The Commissioner *cannot,* however, record such memorandum *until seven days after notice has* been *communicated* by him to *the parties concerned.* Thus, the Commissioner may *record* a memorandum only on the seventh (or later) day after communication of the notice.

Rectification of register: The Commissioner is also given the power to *rectify the register at any time.* This power has been granted to enable him to correct mistakes or inaccuracies that may have crept in inadvertently.

Refusal to register: Power is also conferred on the Commissioner to *refuse to record* the memorandum of any agreement, *if* it appears to him that:

(i) an agreement as to the payment of a lump sum, whether by redemption of half-monthly payment or otherwise : or
(ii) an agreement as to the amount of compensation payable to a woman or a person under a legal disability, should *not* be *registered by reason of* —

(a) the *inadequacy of the amount or sum; or*
(b) by reason of the agreement having been obtained by the use of *fraud, undue influence of other improper means.*

If the Commissioner is satisfied that, on account of any of the circumstances mentioned above, he is entitled to refuse to record such memorandum, he may refuse to record the same, and thereupon make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances of the case.

Overriding effect of registered agreement: Once an agreement for the payment of compensation has been registered under *Section 28,* it is enforceable under the Act, despite anything contained in the Indian Contract Act, 1872 *or* in any other law for the time being in force.

Section 28 gives an *overriding effect* to agreements registered under the Act, This effect pertains only to enforceability under the Act, and *cannot* override the provisions of any other law for any purpose *other than* such enforceability. If, for instance, a registered agreement under the Workmen's Compensation Act contains provisions which would otherwise have rendered the agreement void under the Indian Contract Act, such agreement is saved, for the purpose of the Employee's Compensation Act only by virtue of the overriding effect given to it by Section 28.

Objects of registration: The *Statement of Objects and Reasons* of the Act, points out that the registration of every agreement is *not compulsory* as it will result in plethora of unimportant matters before the Commissioner. It was, however, considered necessary to make *registration of certain types of agreements compulsory,* because, in the absence of their registration, they could *not* have been relied upon to invoke protection from liability to pay compensation. The Act has recognised the danger posed by the fact that a workman would, *unless* protected by the provisions relating to registration, be exposed to pressure to agree to an inadequate sum instead of proper compensation. Where the Commissioner finds that the sum mentioned in an agreement is inadequate, he is entitled to refuse registration. The provisions governing registration are, therefore, essentially *in the interests of the workmen.*

The *effect* of failure to register an agreement, which is required to be registered is dealt with by *Section 29* which is discussed below.

M. EFFECT OF FAILURE TO REGISTER AGREEMENTS (S. 29)

Where a memorandum of any *agreement,* required to be registered under Section 28, is *not sent* to the Commissioner *for registration,* the *employer* is bound to pay the full amount of compensation which he is liable to pay.

Section 29 serves as deterrent to an employer who fails to forward a, memorandum of agreement for registration under *Section 28.* The failure to forward to the Commissioner a memorandum of agreement renders the employer liable under *Section 29,* for the payment of *full compensation.* Thus, an employer, who has *not* sent an agreement of settlement in respect of compensation for registration *cannot* rely on such an agreement to prove the quantum purported to have been agreed under a settlement.

Section 29 also provides that, despite anything contained in *Section 4(1),* the employer *cannot,* unless the Commissioner so directs, deduct more than half of an amount paid by such an employer to the employee by way of compensation, whether under the agreement or otherwise. The *object* of this provision is, in the words of the *Select Committee* appointed to draft the Act, to avoid the main provisions from being "*unduly severe."*

N. APPEALS (S. 30)

The provisions of S. 30 relating to appeals, may be set out as under:
(i) No appeal under the Act lies- *unless* the same is *expressly provided for* by *Section 30.*
(ii) An *appeal lies to the High Court* from the following *orders* of the Commissioner, namely,-
(a) an order awarding or refusing a *lump-sum compensation;*
(b) an order awarding *interest or penalty* under S. 4A;
(c) an order refusing *redemption of a half-monthly payment;*
(d) an order of *distribution of compensation* among dependants, or of disallowing a claim of an alleged dependent;
(e) an order allowing or disallowing any *indemnity claim* under S. 12(2);
(f) an order refusing to register a memorandum of agreement or registering the same subject to conditions.

(iii) No appeal, however, lies, even in the above cases—
(a) unless a *substantial question of law* is involved in the appeal; *and*
(b) except in the case of clause (c) above (an order refusing redemption of a half-monthly payment), *unless* the amount in dispute in the appeal is *not less than Rs. 300.*
(iv) No appeal also lies in any case in which—
(a) the parties have *agreed to abide by the Commissioner's decision; or*
(b) the Commissioner's *order* gives *effect to an agreement* arrived at between the parties.
(v) *No appeal* by an employer is *maintainable, unless* the appeal memo is *accompanied* by the Commissioner's *certificate* to the effect that the *appellant* has *deposited* with him, the amount payable under the order appealed against.

The Orissa High Court has held that this provision is *not* violating of Art.14 or Art. 19 of the Constitution of India (*Banto Bhaskar Rao v. Puma Suna,* (2003) 1 Lab. L. J. 920)
(vi) An appeal should be preferred *within a period of 60 days.*
(vii) Section 30(3) of the Act extends the provisions of *Section 5 of the Indian Limitation Act* to appeals under this section. As a result, an appeal may be admitted even after the prescribed period *if* the appellant or applicant *satisfies* the Court that he had *sufficient cause* for *not preferring* the appeal, *or* filing the application *within* such *period.*

"Substantial question of law": It is *not* any question of law that attracts the appellate jurisdiction created by this section. The question must necessarily be a *substantial one, relating* to *law,* and *not* to facts or the appreciation of evidence. Questions of fact and appreciation of evidence, which are totally unconnected with a substantial question of law, are outside the purview of this section.

In *Ebrahim Haji Jusab* v. *Jainini Anuddin* (AIR 1833 Born. 270), a Division Bench of the Bombay High Court *held* that the question of whether a particular employee *was or was not* employed in a casual capacity, is essentially a question of evidence. The appellate jurisdiction of the High Court *cannot* be invoked to disturb the Commissioner's decision if there is nothing wrong with his application of the law to the facts of the case.

The credibility or trustworthiness of the evidence of a particular witness is *not* to be tested by the High Court while exercising appellate powers under this section.(*1959 Ker L.R. 47 (D.B.)*

In *Bhagwandas* v. *Pyarelal* (AIR 1954, Madh Bha. 59), it was observed that a question of law would be regarded as *substantial* only if there was some doubt or difference of opinion as to the interpretation of some provision of the Act *or* as to its application.

Thus, the question of determination of the *age* of a deceased workman is a *question of fact,* and *not* a question of law. *(New India Assurance Co. Ltd. V. Sankar,* 1988 II C.L.R. 279)

When the Commissioner's decision is *not* supported by any evidence, in the sense of there being a total absence of evidence, it can be said that a substantial question of law arises in an appeal challenging such decision: *Bhushan Chandra Ghose* v. *George Henderson & Co.* AIR 1929 Cal. 774.

Similarly, when the Commissioner has refused to admit material evidence *or* totally ignored material evidence on record, the appellate Court is justified in interfering with the Commissioner's order.

In *Ahmedabad Victoria Iron Works Ltd.* v. *Maganlal Panchal* (AIR 1941 Born. 296), the Court came to the conclusion that the question of *whether or not* there was any evidence before the Commissioner on which he had based his finding that there was "sufficient cause" for *not* giving notice within the prescribed time, is a question which *can* be probed in appeal.

Likewise, the question whether an accident had arisen out of, and in the course of, employment is a *substantial question of law. (Natwarsinh* v. *N. K. Shah,* 1991 I C.L.R. 957)

In *Jwali* v. *Babu Lai* (AIR 1958 All, 56), the Court negative the contention that the word "substantial question of law" has the same meaning as the expression used in *Section 110* of the Code of Civil Procedure. The words "substantial question of law" as used in *Section 30* must be given a wider construction than is to be attributed to it in *Section 110* of the Code of Civil Procedure, and that the phrase should be construed to cover a case in which the Commissioner has clearly misdirected himself on a question of law

Deposit of Compensation amount: In *G. R. Sale* v. *Sonawane & Co.* (AIR 1946 Born. 110), the Court pointed out that the *object* of the provisions relating to the deposit of the compensation amount prior to filing an appeal, is mainly to ensure that the compensation awarded to poor dependants should be available to them at the earliest, so that they may use it for providing themselves with the necessities of daily life.

O. WITHHOLDING PAYMENTS PENDING APPEAL(S. 30A)

Where an employer prefers an appeal, the Commissioner *may,* and if so directed by the High Court *shall,* pending the decision of the appeal, withhold payment of any sum in deposit with him.

The *object* of this section is to confer the necessary authority on the Commissioner to withhold the payment of the compensation pending the decision of the appeal.

In *G. R. Sale* v. *Sonawane & Co.* (AIR 1946 Born. 110), a Division Bench of the Bombay High Court *held* that the discretion conferred by this section should be exercised very carefully having regard to the circumstances of the case.

P. RECOVERY (S. 31)

The Commissioner may *recover,* as an *arrear of land-revenue,* any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a *public officer* within the meaning of Section 5 of the Revenue Recovery Act, 1890.

In *Century Flour Mill.* v. *Amir Baksh* (AIR 1937 Sind 6), the Court *held* that as the section itself provides that the Commissioner is a public officer under the Revenue Recovery Act, the Commissioner is *not* bound to collect arrears of compensation through the

Collector. Under Section 31 of the Act, the Commissioner is expressly authorised to recover the same himself.

Q. SUMMARY OF POWERS AND FUNCTIONS OF THE COMMISSIONER

The *powers* and *functions* of the Commissioner appointed under the Act may be summed up as under:

(i) The Commissioner has the *power to review* half-monthly payments payable under the Act. (See S. 6, discussed in Chapter III.)

(ii) The Commissioner has *power to commute* half-monthly payments. (See S. 7, discussed in Chapter III.)

(iii) S. 8 of the Act lays down detailed provisions regarding *deposit of compensation* with the Commissioner, and the procedure to be followed thereafter. Ife requires the Commissioner to reimburse the workman's funeral expenses, cause a notice to be served on the workman's dependents, make the necessary inquiries, and apportion the compensation amongst the workman's dependents. He also has the *power* to *vary* his order, when such variation is justified. (See S. 8, which is discussed at length in Chapter III.)

(iv) The Commissioner has the *power to entertain and decide any claim,* even if the notice under S. 10 has *not* been given *or* if the claim is *not* preferred within the prescribed period (See S. 10, discussed in Chapter III.)

(v) S. 10A deals with the obligations of an employer to file a statement of fatal accidents with the Commissioner, and the Commissioner's *power to send notices to the employer,* calling for certain details (See S. 10A, discussed in Chapter IV.)

(vi) S. 10B (also discussed in Chapter IV) requires the *employer to report to the Commissioner,* fatal accidents and serious bodily injuries to its workmen.

(vii) Under S. 11, the Commissioner has *the power and discretion to direct payment of compensation to the workman's dependents,* even in cases where the workman has died without submitting himself for medical examination, as required by that section. (See. S. 11 discussed in Chapter III.)

(viii) Under S. 19 (above), the Commissioner has the *power to settle any question* as regards the liability of the employer to pay compensation, and the amount and duration of such compensation, if such question has *not* been settled by an agreement between the parties.

(ix) The Commissioner has the *power to transfer the proceedings,* if he is satisfied that the matter can be more conveniently dealt with by any other Commissioner (See S. 21, discussed above.)

(x) S. 22 (above) confers on the Commissioner, *the power to deal with an application* for settlement of any matter. The section also gives him *the power to aid and assist illiterate applicants* in the matter of preparing such applications.

(xi) Under S. 22-A (above), the Commissioner has the *power to call for a further deposit,* in case of a fatal accident, when he is of the opinion that the original deposit is *not sufficient.*

(xii) S. 23 lays down that *the Commissioner has all the powers of a Civil Court,* as regards matter specified therein. (See. S. 23, above.)

(xiii) Under S. 24 (above), certain persons can appear before the Commissioner, *only with his permission.*

(xiv) S. 25 lays down *the procedure to be followed* by the Commissioner *when recording evidence* in proceedings before him. (See S. 25, above.)

(xv) The Commissioner has *the power to award costs* in any proceedings before him.

(See S. 26, above.)

(xvi) The Commissioner has *the power to submit any question of law for the decision of the High Court.* (See S. 27, above.)

(xvii) Under S. 28 (above), when a memorandum of an agreement of settlement is sent to the Commissioner for registration, it is his *function* to scrutinize the same, and register it, if he is satisfied about its genuineness. In a specified case, he also has the power to refuse to record such a memorandum. He also has *the power to rectify the register at any time.*

(xviii) An appeal by the employer is *not maintainable, unless* the Commissioner certifies that the employer has deposited with him, the amount payable under the Commissioner's Order (See S. 30, above.)

(xix) When the employer has filed an appeal, the Commissioner has the *power to withhold payment* of any sum deposited with him, pending such appeal. (See. S. 30A, above.)

(xx) Under S. 31 (above), the Commissioner has the *power to recover any amount payable by any person under the Act.*

CHAPTER VII

RULES

This Chapter is dealt with under the following heads:

A. **State Government's power to make rules (Ss. 32 & 36)**
B. **Publication of Rules (S. 34)**
C. **Transfer of Money: Rules (S. 35)**
D. **Rules to be placed before Parliament.**

A. STATE GOVERNMENTS POWER TO MAKE RULES (Ss. 32 & 36)

Section 32 confers power on the State Government to make rules to carry out the purposes of the Act.

In particular and without prejudice to the generality of the above, such rules may provide for all or any of the following matters, *namely-*

(a) for prescribing the intervals at which, and the conditions subject to which, an application for review may be made under Section 6, when *not* accompanied by a medical certificate;
(b) for prescribing the intervals at which, and the conditions subject to which, an employee may be required to submit himself for medical examination under Section 11(1);
(c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act, and by the parties in such cases;
(d) for regulating the transfer of matters and cases from one Commissioner to another *and* the transfer of money in such cases;
(e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of deceased employee, and for the transfer of money so invested from one Commissioner to another;
(f) for the representation, in proceedings before Commissioners, of parties who are minors *or* are unable to make an appearance;
(g) for prescribing the form and manner in which memoranda of agreements should be presented and registered;
(h) for the withholding by Commissioners, whether in whole or in part, of half-monthly payments, pending decision on applications for review of the same;
(i) for regulating the scales of costs which may be allowed in proceedings under the Act;
G) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under the Act;
(k) for the maintenance by Commissioners of registers and records of proceedings before them;
(I) for prescribing the classes of employers who should maintain notice-books under Section 10(3) and the form of such notice- books;

(m) for prescribing the form of statement to be submitted by employers under Section 10A;
(n) for prescribing the cases in which the Report referred to in Section 10B may be sent to an authority other than the Commissioner;
(o) for prescribing abstracts of this Act and requiring the employers to display notices containing such abstracts;
(p) for prescribing the manner in which diseases may be diagnosed;
(q) for prescribing the manner in which diseases may be certified for any of the purposes of the Act;
(r) for prescribing the manner in which, and the standards by which, incapacity may be assessed

The principles governing the provisions of an Act and Rules made thereunder are well-settled, and may be outlined as under:
(i) Once rules are validly made under an Act, they are deemed to be part of the Act itself.
(ii) Delegation of powers enables Government to frame rules under the statute.
(iii) In case of any conflict between the provisions of the Act and those of the Rules, the former must have precedence over the latter.
(iv) A rule *cannot* widen the scope of the Act; it must be within the ambit of the main legislation, as it is the latter that lays down the limits of the rule-making power in consonance with the provisions of the Act.
(v) As pointed out in *State of Bombay* v. *United Motors (India) Ltd.* (AIR 1953 SC 252), rules which are *ultra wires* either the provisions of the Act or the authority to frame such rules, are liable to be struck down.
(Vi) In *P.C. Bhat* v. *K. R. Nath* (AIR 1954 Born. 518), the Court *held* that when there is a difficulty in construing the provisions of an Act, the Rules
made thereunder may be referred to, to throw light on the former's proper interpretation. When a statutory provision is ambiguous or is susceptible of different interpretation, a reference may be made to the Rules for guidance.

B. PUBLICATION OF RULES (S. 34)
Section 34 provides as follows:
(1) The power to make rules is subject to the condition of the rules being made after previous publication.
(2) The date to be specified in accordance with S. 23(3) of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under Section 32 will be taken into consideration, should *not* be less than three months from the date on which the draft of the proposed rules was published for general information.
(3) Rules must be published in the Official Gazette, and on such publication, have effect *as if* enacted in the Act.

C. TRANSFER OF MONEY: RULES (S. 35)
(1) The Central Government may, by Gazetted Notification, make rules for the transfer, to any foreign country, of money deposited with a Commissioner under the Act, which has been awarded to or may be due to any person residing or about to reside, in such foreign country and for the receipt, distribution and administration in any State of any money deposited under the law relating to workman's compensation in any foreign country, which has been awarded to, or may be due to, any person

residing or about to reside in any State.

However, no sum deposited under this Act in respect of fatal accidents can be transferred without the employer's consent until the Commissioner receiving the sum has passed orders determining its distribution and apportionment under S. 8.

(2) Where money deposited with a Commissioner has been transferred in accordance with the rules, any other provision elsewhere contained in this Act regarding distribution by the Commissioner of compensation deposited with him, ceases to apply in respect of any such money.

D. Rules to be placed before Parliament (S. 36)

Every rule made under this Act by the Central Government is to be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of *thirty days,* which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree to make any modification in the rule or both Houses agree that the rule should *not* be made, the rule thereafter takes effect only in such modified form or is no effect, as the case may be, However, any such modification or annulment would be without prejudice to the validity of anything previously done under that rule.

CHAPTER VIII

THE SCHEDULES

As stated in earlier Chapter, the Workmen's Compensation Act contains *four* Schedules, as under

A. SCHEDULE I: List of injuries
B. SCHEDULE II: List of persons included in the definition of “workman"
C. SCHEDULE III: List of occupational diseases
D. SCHEDULE IV: List of compensation payable All the four Schedules are reproduced below.

A. SCHEDULE I

(See Section 2(1) and 4)

PART I
LIST OF INJURIES DEEMED TO RESULT IN PERMANENT TOTAL DISABLEMENT

Serial no	Description	Percentage of loss of earing capacity
1	**Loss of both or amputation at higher sites**	**100**
2	**Loss of a hand and a foot**	**100**
3	**Double amputation through leg or thigh or amputation through leg or thigh on one side and loss of other foot**	**100**
4	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential	**100**
5	Very severe facial disfigurement	**100**
6	Absolute deafness	**100**

PART II
LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIALDISABLEMENT
Amputation cases-upper limbs (either arm)

Serial no	Description	Percentage of loss of earning capacity
1	Amputation through shoulder joint	90
2	Amputation below shoulder with stump less than 20.32 cms. from tip of acromion	80
3	Amputation from 20.32 cms from tip of acromion to less than 11.43 cms. below tip of olecranon	70
4	Loss of a hand or of the thumb and four fingers of one hand or amputation from 11.43 cms. below tip of olecranon	60
5	Loss of thumb	30
6	Loss of thumb and its metacarpal bone	40
7	Loss of four fingers of one hand	50
8	Loss of three fingers of one hand	30
9	Loss of two fingers of one hand	20
10	Loss of terminal phalanx of thumb	20
10A	Guillotine amputation of tip of thumb loss of bone	10
	Amputation cases—lower limbs	
11	Amputation of both feet resulting in end-bearing stumps	90
12	Amputation through both feet proximal to the metatarsophalangeal joint	80

13	Loss of all toes of both feet through the metatarsophalangeal joint	40
14	Loss of all toes of both feet proximal to the proximal inter-phalangeal joint	30
15	Loss of toes of both feet distal to proximal inter-phalangeal joint	20
16	Amputation at hip	90
17	Amputation below hip with stump not exceeding 12.70 cms. In length measured from tip of great trenchanter	80
18	Amputation below hip with stump exceeding 12.70 cms. in length measured from tip of great trenchanter but not beyond middle thigh	70
19	Amputation below middle thigh to 8.89 cms. below knee	60
20	Amputation below knee with stump exceeding 8.89 cms. but not exceeding 12.70 cms.	50
21	Amputation below knee with stump exceeding 12.70 cms.	40
22	Amputation of one foot resulting in end-bearing stump	30
23	Amputation through' one foot proximal to the metatarsophalangeal joint	30
24	Loss of all toes of one foot through the metatarso-phalangeal joint	20
	Other injuries	
25	Loss of one eye, without complications, the other being normal	40
26	Loss of vision of one eye, without complication or disfigurement of eye-ball, the other being normal	30
26A	Loss of partial vision of one eye	10
	Loss of A. Fingers of right or left hand Index finger	
27	Whole	14
28	Two Phalanges	11
29	One Phalanx	9
30	Guillotine amputation of tip without loss of bone	5
	Loss of A Middle finger	
31	Whole	12
32	Two Phalanges	9
33	One Phalanx	7
34	Guillotine amputation of tip without loss of bone	4
	Loss of A Right or little finger	
35	Whole	7
36	Two Phalanges	6
37	One Phalanx	5
38	Guillotine amputation of tip without loss of bone	2
	B-Toes of right or left foot Great Toe	
39	Through metatarsophalangeal joint	14
40	Part, with some loss of bone	3
	Any other toe	
41	Through metatarsophalangeal joint	3

42	Part, with some loss of bone	1
	Two toes of one foot, excluding great toe	
43	Through metatarsophalangeal joint	5
44	Part, with some loss of bone	2
	Three toes of one foot, excluding great toe	
45	Through metatarsophalangeal joint	6
46	Part, with some loss of bone	3
	Four toes of one foot, excluding great toe	
47	Through metatarsophalangeal joint	9
48	Part, with some loss of bone	3

(Note: Complete and permanent loss of the use of one limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member.)

B. SCHEDULE II

[See Section 2(1)(n)]

LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF SECTION 2(1)(n), ARE INCLUDED IN THE DEFINITION OF "WORKMAN"

The following persons are employees within the meaning of Section 2(1)(n) subject to the provisions of that section, that is to say, any person who is-

(i) employed in railways, in connection with the operation, repair or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; *or*

(ii) employed in any premises wherein or within the precincts whereof a manufacturing process, as defined in clause (k) of Section 2 of the Factories Act, 1948, is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, *whether or not* employment in any such work is within such premises or precincts, and steam, water, or other mechanical power or electrical power is used; *or*

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises.

Explanation.— For the purposes of this clause, persons employed outside such premises or precincts, but in any work incidental to or connected with, the work relating to making, altering, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within such premises or precincts; *or*

(iv) employed in the manufacture or handling of explosives in connection with the employer's trade or business; *or*

(v) employed, in any mine as defined in clause (f) of Section 2 of the Mines Act, 1952, in any mining operation or in any kind of work incidental to or connected with, any mining operation or with the mineral obtained, or in any kind of work, whatsoever below ground; *or*

(vi) employed as the master or as seaman of—

(a) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled; *or*

(b) *(Omitted by the 2009 Amendment)*
(c) any sea-going ship *not* included in sub-clause (a) provided with sufficient area for navigation under sails alone; *or*
(vii) employed for the purpose of—
(a) loading, unloading, fueling, construction repairing demolishing, cleaning or painting any ship of which he is *not* the master or a member of the crew, or handling or transport within the limits of any port subject to the Indian Ports Act, 1908, or the Major Port Trusts Act, 1963, or goods which have been discharged from or are to be loaded into any vessel; *or*
(b) warping a ship through the lock; *or*
(c) mooring and unmooring ships at harbour wall berths *or in* pier; *or*
(d) removing or replacing dry dock caisoons when vessels are entering or leaving dry docks; *or*
(e) the docking or undocking of any vessel during an emergency; *or*
(f) preparing splicing coir springs and check wires, painting depth marks on locksides, removing or replacing fenders whenever necessary, landing or gangways, maintaining life-buoys up to standard or any other maintenance work of a like nature; *or*
(g) any work on jolly-boats for bringing a ship's line to the wharf; *or*
(viii) employed in the construction, maintenance, repair or demolition of—
(a) any building which is designed to be or is or has been more than one storey in height above the ground or 36.576 metres or more from the ground level to the apex of the roof; *or*
(b) any dam or embankment which is 36.576 metres or more in height from its lowest to its highest point; *or*
(c) any road, bridge, tunnel or canal; *or*
(d) any wharf, quay, sea-wall or other marine work including any mooring of ships; *or*
(ix) employed in setting up, maintaining, repairing or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard or fittings and fixtures for the same; *or*
(x) employed in the con-struction, working, repair or demolition of any serial ropeway, canal, pipeline or sewer, *or*
(xi) employed in the service of any brigade; *or*
(xii) employed upon a railway as defined in S. 2(31) and S. 197 (1) of the Indian Railways Act, 1989, either directly or through a subcontractor, by a person fulfilling a contract with the railway administration; *or*
(xiii) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service or a telegraphist or as postal or railway signaller, or employed in any occupation ordinarily involving outdoor work in Indian Posts and Telegraphs Department; *or*
(xiv) employed in connection with operations for winning natural petroleum or natural gas; *or*
(xv) employed in any occupation involving blasting operations; *or*
(xvi) employed in the making of any excavation in which on any one day of the preceding *twelve months* more than *twenty-five persons* have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds 36.576 metres; *or*
(xvii) employed in the operation of any ferry boat capable of carrying more than *ten persons; or*
(xviii) employed on any estate which is maintained for the purpose of growing

cardamom, cinchona, coffee, rubber or tea, and on which on any one day in the preceding *twelve months twenty-five* or more persons have been so employed; *or*

(xix) employed in the generating, transforming or supplying of electrical energy or in the generating or supplying of gas; *or*

(xx) employed in a light-house as defined in clause (d) of Section 2 of the Indian Light-house Act, 1927; or

(xxi) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures; *or*

(xxii) employed in the training, keeping or working of elephants or wild animals; *or*

(xxiii) employed in the tapping of palm trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forest fires; *or*

(xxiv) employed in observation for the catching or hunting of elephants or other wild animals; *or*

(xxv) employed as a diver; *or*

(xxvi) employed in the handling or transport of goods in or within the precincts of,—

(a) any warehouse or other place in which goods are stored, *or*

(b) any market; *or*

(xxvii) employed in any occupation involving the handling and manipulation of radium of X-rays apparatus, or contract with radioactive substances; *or.*

(xxviii) employed in or in connection with the construction, erection, dismantling, operation, or maintenance, of an aircraft as defined in Section 2 of the Indian Aircraft Act, 1934; *or*

(xxix) employed in farming by tractors or other contrivances driven by steam or other mechanical power or by electricity; *or*

(xxx) employed, in the construction, working, repair or maintenance of a tube-well; *or*

(xxxi) employed in the maintenance, repair or renewal of electric fittings in any building; *or*

(xxxii) employed in a circus; *or*

(xxxiii) employed as watchman in any factory or establishment; *or*

(xxxiv) employed in any operation in the sea for catching fish; *or*

(xxxv) employed in any employment which requires handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous animal or insects; *or*

(xxxvi) employed in handling animals like horses, mules and bulls; *or*

(xxxvii) employed for the purpose of loading or unloading any mechanically propelled vehicle or in the handling or transport of goods which have been loaded in such vehicles; *or*

(xxxviii) employed in cleaning of sewer lines or septic tanks within the limits of a local authority; *or*

(xxxix) employed on surveys and investigation, exploration or gauge or discharge observation of rivers including drilling operations, hydrological observations and flood forecasting activities, groundwater surveys and exploration; *or* (xl) employed in the cleaning of jungles or reclaiming land or ponds; *or*

(xli) employed in cultivation of land or rearing and maintenance of livestock or forest operations or fishing; *or* ,

(xlii) employed in installation, maintenance or repair of pumping equipment used for lifting of water from wells, tube wells, ponds, lakes, streams and the like; *or*

(xliii) employed in the construction, boring or deepening of an open well, or dug well, bore well, bore-cum-dug well, filter point and the like; *or*

(xliv) employed in spraying and dusting of insecticides or presticides in agricultural

operations or plantations; *or*

(xlv) employed in mechanised harvesting and threshing operations; *or*

(xlvi) employed in working or repair or maintenance of bulldozers, tractors, power tillers and the like; *or*

(xlvii) employed as artists for drawing pictures on advertisement boards at a height of 3.66 meters or more from the ground level; *or*

(xlviii) employed in any newspaper establishment as defined in the Working journalists and Other Newspaper Employees (Condi-tions of Services) and Miscellaneous provisions Act, 1955 (45 of 1995) and engaged in outdoor work.)

(xlix) employed as divers for work under water.

C. SCHEDULE III

(See Section 3)

Question:

Which Schedule of the E.C. Act specifies occupational diseases? (2 marks) B.U. Nov. 2012

LIST OF OCCUPATIONAL DISEASES

Sr No	Occupational Disease	Employment
	Part A	
1	Infections and Parasitic diseases contracted in an occupation where there is a particular risk of contamination.	(a) All work involving exposure to health or laboratory work;
		(b) All work involving exposure to veterinary work;
		(c) Work relating to handling animal, animal carcasses, part of such carcasses, or merchandise which may have been contaminated by animals or animal carcasses;
		(d) Other work carrying a particular risk of contamination.
2	Diseases caused by work in compressed air.	All work involving exposure to the risk concerned
3	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned
4	Poisoning by nitrous fumes	All work involving exposure to the risk concerned
5	Poisoning by organphosphorous compounds	All work involving exposure to the risk concerned
	Part B	
1	Diseases caused by phosphorous or its toxic	All work involving exposure to the

	compound	risk concerned
2	Diseases caused by mercury or its toxic compounds	All work involving exposure to the risk concerned
3	Diseases caused by benzene or its homologues	All work involving exposure to the risk concerned
4	Diseases caused by nitro and amido toxic derivatives of benzene or its homologues	All work involving exposure to the risk concerned
5	Diseases caused by chromium or its toxic compound	All work involving exposure to the risk concerned
6	Diseases caused by arsenic or its toxic compound	All work involving exposure to the risk concerned
7	Diseases caused by radioactive substances and ionizing radiation	All work involving exposure to the action of radioactive substances or ionizing radiations
8	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene or the compounds, products or residues of these substances	All work involving exposure to the risk concerned
9	Diseases caused by the toxic halogen derivatives of hydrocarbons of the aliphatic and aromatic series	All work involving exposure to the risk concerned
10	Diseases caused by carbon disulphide	All work involving exposure to the risk concerned
11	Occupational cataract due to infrared radiations.	All work involving exposure to the risk concerned
12	Diseases caused by manganese or its toxic compounds	All work involving exposure to the risk concerned All work involving exposure to the risk concerned
13	Skin diseases caused by physical, chemical or biological agents *not* included in other items.	All work involving exposure to the risk concerned
14	Hearing impairment caused by noise	All work involving exposure to the risk concerned
15	Poisoning caused by dinitrophenol or a homologue or by substituted dinitrophenol or by the salts of such substances	All work involving exposure to the risk concerned
16	Diseases caused by heryllium or its toxic compounds.	All work involving exposure to the risk concerned
17	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk concerned
18	Occupational asthma caused by recognised sensitising agents inherent to the work process.	All work involving exposure to the risk concerned
19	Diseases caused by fluorine or its toxic compounds.	All work involving exposure to the risk concerned
20	Diseases caused by nitroglycerine or other nitroacid asters	All work involving exposure to the risk concerned
21	Diseases caused by alcohols and ketones.	All work involving exposure to the risk concerned
22	Diseases caused by asphyxiants: carbon	All work involving exposure to the

	monoxide, and its toxic derivatives, hydrogen sulphide.	risk concerned
23	Lung cancer and mesothe-liomas caused by asbestos.	All work involving exposure to the risk concerned
24	Primary neoplasm of the epitholial lining of the urinary bladder or the kidney or the ureter.	All work involving exposure to the risk concerned
	Part c	
1	Pneumoconioses caused by sclerogenic mineral dust (Silicosis, anthracosilicosis asbestosis) and silicotuberculosis *provided that* a silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned
2	Bagassosis	All work involving exposure to the risk concerned
3	Bronchopulmonary diseases by cotton, flaxhemp and sisal dust (Byssinosis).	All work involving exposure to the risk concerned
4	Extrinsic allergic alveelitis caused the inhalation or organic risk concerned dusts.	All work involving exposure to the risk concerned
5	Bronchopulmonary deseases hard metals.	All work involving exposure to the risk concerned

D. SCHEDULE IV
(See Section 4)

Factors for working out lump sum equivalent of compensation amount in case of permanent disablement and death.

Completed years of age on the last ft. birthday of the employee immediately ¦ preceding the date on which the ft compensation fall due.		Factors
Not more than	16	228.54
	17	227.49
	18	226.38
	19	225.22
	20	224.00
	21	222.71
	22	221.37
	23	219.95
	24	218.47
	25	216.91

26	215.28
27	213.57
28	211.79
29	209.92
30	207.98
31	205.95
32	203.85
33	201.66
34	199.40
35	197.06
36	194.64
37	192.14
38	189.56
39	186.90
40	184.17
41	181.37
42	178.49
43	175.54
44	172.52
45	169.44
46	166.29
47	163.07
48	159.80
49	156.47
50	153.09
51	149.67
52	146.20
53	142.68
54	139.13
55	135.56
56	131.95
57	128.33
58	124.70
59	121.05
60	117.41
61	113.77
62	110.14
63	106.52
64	102.93
65 or more	99.37

PART II

THE PAYMENT OF WAGES ACT, 1936

[The Payment of Wages Act has been prescribed for study by some, but *not* all, Universities. Students are requested to verify if this Act is included in their Syllabus for study.]

CHAPTER I
OBJECT, PURPOSE AND APPLICATION OF THE ACT

This Chapter is discussed under the following four heads:

A. Introductory
B. Object and Purpose
C. Application and Scope
D. The Act at a Glance

A. INTRODUCTORY

The background of the *Payment of Wages Act, 1936* may be traced to the "*Weekly Payment Bill,* introduced in the Legislative Assembly by a private member. As the Government assured the House that matters contained therein were under the Government's consideration, the member withdrew the Bill.

The practices widely prevalent at the time were withholding payment of wages, irregular wage periods and arbitrary imposition of fines.

These issues were subsequently referred to the *Royal Commission of Labour.* The Commission recommended control and regulation of the payment of fines and other deductions from wages. The *Payment of Wages Act,* 1936, is based on these recommendations.

B. OBJECT AND PURPOSE

Labour is paid for its work. Apart from the question of whether it is paid adequately or *not,* the mode of payment of wages should *not* depend upon the employer's whim. The right of workmen to receive their wages in a particular manner, at specified times, and without any unauthorised deduction, has been granted by the *Payment of Wages Act, 1936.* The Act states that its object is *to regulate the payment of wages to certain classes of persons employed in industry.* The Act thus regulates the *mode* and *time* of payment of wages to such persons, and permits only those deductions from wages as are authorised by or under the Act. The Act therefore, is a weapon in the hands of the employee to ensure that, in matters relating to wage payment and deductions therefrom, the employer's conduct is governed by the provisions of law. It enables a speedy recovery of wages by the use of the machinery under the Act, and spares the employed person from the trouble and expense of having to take recourse to ordinary Civil Courts.

C. APPLICATION AND SCOPE

S. 1 provides that the *Payment of Wages Act, 1936,* extends to *the whole of India.* It came into force on 28th March, 1937.

It applies:

(a) to persons employed in any factory;
(b) to persons employed (otherwise than in a factory), upon any railway by any railway administration;
(c) either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration; *and*
(d) to persons employed in a *"industrial or other establishment,* specified in clauses (a) to (g) of S. 2(ii) (See the next Chapter.)

An *important point* to be noted is that the Act applies only when wages payable in respect of each wage-period average less than Rs. 6,500 per month (or such higher figure as may be notified by the Central Government). The Act is, to that extent, restricted in its application.

The Act has been *extended* by notification to cover shops and establishments in Greater Bombay and Ahmedabad and certain other areas of Maharashtra and Gujarat States.

D. THE ACT AT A GLANCE

The object, purpose and application of the Act has already been discussed above. S. *2* is the definition section, and term "wages" is the most important concept defined therein. It is an exhaustive definition as it states *not only* what it means and includes, *but also* what is excluded. (See the next Chapter.)

The S. *3* fixes liability on the employer to pay wages, while *S. 4* provides for fixation of wage periods. S. *5* prescribes the time for the payment of wages, and S. *6* states that wages can be paid either in current coin or currency notes, or both. *No other mode of payment is permitted by the Act.*

Ss.7 to 13 deal with the question of deductions from wages. Only those deductions which are authorised by these sections are permissible. All deductions, other than the specified authorised deductions, are *illegal deductions.* The employer *cannot* make any unauthorised deduction. Moreover, even authorised deductions are to be made in the manner, form and upto the extent permitted by the Act. Any unauthorised deduction exposes the employer to a fine under *S. 20,* in addition to his liability to return the deducted amount if the employee makes a claim under *S. 15.*

S. *15* provides for adjudication of claims before the Authority under the Act. A claim may be on account of a delay in wage payment or a wrongful deduction. The Authority's jurisdiction extends to granting relief in the cases mentioned in Section 15. In *Athani Municipality* v. *Labour Court, Hubli* (AIR 1969 SC. 1355), it was observed that the Authority *cannot* grant relief when wage rates are in dispute. It is *not* within the Authority's powers to stipulate *what* the wage rate should be.

An appeal *may be* preferred under *S. 17* against the Authority's orders.

In keeping with the beneficial nature of the statute, S. *23* prohibits *"contracting out'.* While an employed person can, by agreement with the employer, obtain better conditions regarding his wage payment, an agreement by which his rights under the Act are excluded is *void* and of *no effect.*

The Act was amended in 2005 to increase the threshold limit of the monthly salary of the employee (for the application of the Act) *from Rs. 1,600 to Rs. 6,500.* The penal provisions of the Act have also been made more stringent by increasing the penalties prescribed for various offences committed under the Act.

CHAPTER II

APPLICATION AND BASIC CONCEPTS

The following *six* topics are discussed in this Chapter:

A. Application of the Act j
B. 'Employed person' and 'employer'
C. Factory
D. Industrial establishments
E. Wages
F. Other terms defined:
(1) Mine
(2) Legal Representative
(3) Plantation
(4) Prescribed
(5) Railway administration
(6) Appropriate Government.

Questions
*Explain *Employer under the payment of Wages Act.*

A. APPLICATION OF THE ACT (S. 1)

Section 1 of the Act covers the extent, commencement and application of the Act.

The Payment of Wages Act 1936, came into force on 28th March, 1937.

Application: The Act applies to the payment of wages:
(i) to persons *employed* in any *factory* : Such factory should be one that satisfies the definition of the term contained in Section 2(ib) of the Act;
(ii) to persons *employed* (otherwise than in a factory) upon any *railway* by a *railway administration* or either directly or indirectly (through a sub-contractor) by a person fulfilling a contract with the railway j administration; *and*
(iii) to person employed in industrial and other establishments covered by clauses (a) to (g) of S. 2(ii), below.

However, the Act applies *only if* the wages payable in respect of any | wage period average *less than* Rs.6,500 over such a wage period.

The appropriate Government is authorised to *extend* the provisions of this Act to any industrial establishment or to any class or group of industrial establishments. However, this power is *subject* to the following *restrictions***:**
(a) It must give 3 *months notice* of its proposed action.
(b) Such action must be *notified* in the *Official Gazette.*
(c) When the Act is extended to any industrial establishment owned by the *Central Government,* the concurrence of the Central Government is necessary.

In *Srikantiah V. Puttaswamy* (AIR 1966 Mys. 133), the Court *held* that a dry-cleaning shop is *not* a “factory”, and, therefore, the Act does *not* cover such a shop. An employee of such a shop *cannot,* therefore, take recourse to the provisions of this Act.

In *Hindustan Jouranals* v. *Dinesh Awasthi* (AIR 1957 Madh. Bha. 125), the Court *held* that, while it is essential that the person referred to in the first part of Section 1(4) should be employed in a “factory” as defined in the Factories Act, it is *not necessary* that he be actually engaged in any ‘manufacturing process’. In the same case, it was *also held* that merely because the employer keeps his goods in a factory, it *cannot* be said that persons are employed in a factory. The Court laid down the proposition that if an employee is not employed in a factory, mere “proximity” to a factory does *not* attract the application of the Act.

A Division Bench of the Gujarat High Court has *held* that when a person is designated an editor of a paper, but his duties involve the work of reporting, proof-reading, translating and similar work, he is within the provisions of Section 1(4), and is covered by the Act. (A.I.R. 1960 Guj. 10)

In *Ramaswami* v. *Gemini Studios* (AIR 1968 Mad. 49), it was *held* that while it is necessary that the employed person be employed in a “factory” as defined in the Factories Act to fall within the first part of Section 1(4), it is *not essential* that such person should be a employee as defined by Section 2(1) of the Factories Act.

It has been *held* that a person employed by the railway authorities need *not* employed on the railway tracks. It is sufficient if the person is employed by a Railway administration. (1970, Lab. I.C. 165)

When the Authority under the Payment of Wages Act holds that the Act does *not* apply to the applicant by reason of the applicant drawing wages higher than what is prescribed under the Act, the Authority must specify reasons for arriving at such a finding.

B. EMPLOYED PERSON AND EMPLOYER [S. 2(i) and (ia)]

Section 2(i) and (ia) contain the definitions of the words “employed person” and “employer”, respectively.

An **“employed person”** *includes* a legal representative of a deceased employed person.

Likewise, an “employer” *includes* the legal representative of a deceased employer.

It will be seen that the words “employed person” and “employer” are *not* really defined in the Act, as the definitions are only *inclusive* definitions, under which legal representatives of the employer and the employee are covered. By an *amendment of the Act applicable only in the State of Maharashtra,* the term *legal representative* has also been defined to mean "the person who, in law, represents the estate of a deceased employed person.”

When a term is *not* fully defined in a statute, its normal meaning should be gathered from the General Clauses Act, and failing that, from its dictionary meaning. As neither of the expressions have been defined in the General Clauses Act the ordinary meanings of "employed person” and “employer” will have to be taken into account. The words “employed person” and "employer” involve the relationship between master and servant.

While these tests are borne in mind by Courts while determining the existence or absence of a master-servant relationship, *no hard and fast rule can be laid down* and the

circumstances of each case will decide this question.

C. FACTORY [S. 2(ib)]

A. "factory", for the purposes of the Payment of Wages Act:

a) means a factory as defined in Section 2(m) of the Factories Act, 1948; *and*

b) includes any place to which the provisions of that Act have been applied under Section 85(1) thereof

As the definition of the term "factory" adopts the definition of the word in the Factories Act, it is necessary to refer to the definition in that Act.

Section 2(m) of the Factories Act, 1948, is as follows:

A "factory" *means any* premises, including the precincts thereof,-

(i) whereon *ten or more workers* are 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, or a railway running shed.

It is to be remembered that in addition to the definition of a "factory" in the Factories Act, a "factory" under the Payment of Wages Act *includes* any place to which the provisions of that Act have been applied under Section 85(1) of the Factories Act. The State Government has the power, under that section, to extend the application of the Act to premises which may *not* otherwise qualify to be a "factory" as defined under the Factories Act.

The "manufacturing process' referred to in the definition of a "factory" in the Factories Act, is itself defined in Section 2(k) of the Factories Act, to which a reference may be made.

D. INDUSTRIAL ESTABLISHMENT [S. 2 (ii)]

Section 2(ii) defines "industrial or other establishments" as follows:

(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 of the Civil Aviation Department 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 produced, adapted or manufactured, with a view to their use, transport or sale;

(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals or relating to operations

connected with navigation, irrigation or the supply of water, or relating to the generation transmission and distribution of electricity or any other form of power is being carried on; *and*

(h) any other establishment, or class of establishments, which the appropriate Government, may notify in the Official Gazette.

It has been *held* that the Act does *not apply* to an *insurance company,* as it is *not* an industrial establishment. *(K. L Garg. New India Assurance Co. Ltd.* 1991, I.C.L.R. 457)

E. WAGES [S. 2(vi)]

The word "wages", which is undoubtedly the most important concept for the purposes of the Payment of Wages Act, has been defined by Section 2(vi).

The definition of "wages" contained in Section 2(vi) is an exhaustive one, in as far as it states what the word *means,* what it *includes,* and what is *excluded.*

What It means: According to the definition, the term "wages" *means:*

(i) *Payment of remuneration,* whether by salary, allowance or otherwise.

(ii) Such remuneration should be *expressed in terms of money or capable of being so expressed,* which would, if the terms of employment, either express or implied, were fulfilled, be *payable* to the person employed *in respect of*

(a) his *employment, or*

(b) *work done* in such employment.

Although there is no uniform rule as to what is a salary, it generally means payment in respect of the work done by a higher class of employees. The periodicity of payment is also taken into account in determining whether the payment is as salary *or* as wages. For the purposes of the definition of "wages" under Section 2(vi) of the Payment of Wages Act, a salary is one of the accepted modes of wages.

What Is Included*:* The inclusive part of the definition of "wages" contained in section 2 specifies the following *five* items:

(a) Any *remuneration* that is *payable* to the employed person:

(i) *under any award, or*

(ii) *settlemen* between the parties, *or*

(iii) *order* of a Court.

(b) *Any remuneration* which is *payable* to the person employed in *respect of*

(i) *overtime work, or*

(ii) holidays, *or*

(iii) *any leave period.*

(c) Any *additional remuneration,* whether called, 'bonus' or by any other name, payable under the terms of employment. (It is to be noted that such bonus or other payment is included *only if* it is payable *'under the terms of employment.' and not otherwise.)*

(d) Any sum which is payable by reason of the *termination* of employment, under any law, contract or instrument (whether such payment is made with or without deduction) which does *not* provide for the time limit within which the payment is to be made.

(e) Any sum to which the person employed is entitled by virtue of any *scheme* framed under any law in force.

What Is excluded: The definition of “wages” under the Act expressly *excludes* certain items. The definition provides, *inter alia,* that wages do *not* include:

(1) Any *bonus,* whether under a profit-sharing scheme or otherwise, which-

(a) *does not form part of the remuneration payable* under the terms of employment, or

(b) *is not payable under any award or settlement between the parties or order* of a Court.

(2) The *value of services and facilities* such as :

(a) any *house accommodation,* or

(b) *supply of light,* or

(c) *supply of water, or*

(d) *medical attendance,* or

(e) *any service excluded from the computation* of wages by a general or special order of the appropriate Government.

(3) The *employer’s contribution* to any *bonus or provident fund* and *interest* accrued thereon.

(4) Any *travelling allowance* or *value of any travelling concesston.*

(5) Any *sum* paid to an employed person to *defray special expenses incurred by him by the nature of his employment.*

(6) Any *gratuity* which the employed person is entitled to *on termination of his employment,* in cases other *than* when the gratuity is payable under any law, contract or instrument which provides for the payment of such a sum, but does *not* specify the period within which the payment is to be made.

As the expression “remuneration” occurs frequently in the definition of “wages", it is necessary to understand the exact import of this expression. In an English case R *V. Postmaster General,* (1978)3 QBD 428, the word *“remuneration was* equated with a “*quid pro quo"',* it is the basis or consideration for which an employed person offers his services or work to another.

In A. *Vithal* v. *Mehta* (AIR 1960 Born. 201), a Division Bench of the Bombay High Court described “remuneration” as a payment on account of the rendering of services by an employed person or payment for the performance of work.

As the remuneration should necessarily be expressed in terms of money, or be capable of being so expressed, such remuneration must actually be payable in money or in kind. Although the latter is covered by the expression “capable of being so expressed", Section 6 requires that before actual payment, the same should be converted into money in keeping with the value, and payment be made in *“current coin or currency notes or in both"*

In A. *Vithal v. Mehta* (AIR Born. 201), a Division Bench of the Bombay High Court *held* that compensation paid or payable in respect of a period *when no work was done by the employed person cannot be* taken into account, as the same is *not* the result of work done by him.

In *Anakapalla Agricultural Co-operative Society* v *Its Employee* (1962 II LLJ. 621, SC), the Supreme Court *held* that compensation paid to employee on transfer of an undertaking is, by virtue of a fiction of law, treated as a benefit of retrenchment. In such an event, the amount of compensation paid to the employee *cannot* be termed “wages”.

However, in *Payment of Wages Inspector* v. S. *Mehta* (AIR 1969 S.C. 590), the

Supreme Court *held* that retrenchment compensation payable to an employee is covered by the provision which includes payment on termination of employment, when the same is under a law, contract or instrument. Retrenchment compensation is *not* paid on the basis that any work is done, as in fact, it is for work *not* done. The Supreme Court has, therefore, apparently decided that case on the basis that the requirement of the payment of any amount to a employee has to be considered in the light of whether payment bears relation to the employment or the work performed in such employment, irrespective of *whether or not* the work is actually done by the employee.

In *Purshottam* v. *B. V. Potdar, Payment of Wages Authority* (AIR 1966 S. C. 856), the Court *held* that the word "instrument", used in the definition of wages, includes *an award.*

In *Amba Prasad,* v. *J. S. Mills* (AIR 1967 All. 146), the Court *held* that! an allowance paid to persons during a season in which such persons were *not* required to work, is *not* included in the concept of "wages."

When house rent allowance is *not* specifically included in the remuneration payable under the terms of the contract of service, the same is *not covered* by the term "wages" (*Divisional Engineer G.I.P. Railway* v. *Mahadeo Raghoo,* AIR 1955 S.C. 295)

In *La! a Co.* v. *R. N. Kulkami a Ors.* (1968) II LU. 518 (Born), the Court considered the question of whether "wage" in respect of weekly holidays, allowed under labour legislation, can be claimed as money due from an employer under the Industrial Disputes Act. The Court *held* that, as such claim is by means of an application under the Industrial Disputes Act and *not* under a suit, the recovery thereof is *not* barred by Section 22 of the Payment of Wages Act.

In *Madhya Pradesh State Road Transport Corporation* v *Industrial Court, M. P. and Ors* (1971, I LU. 447, the Court *held* that the employees' demand for footwear to which they were entitled, under the M. P. Motor Transport Workers' Rule, 1963, is a claim for "wages' as defined in j the Act.

In *K. P. Mushran* v. *B. C. Patil and An.* (AIR 1952 Born. 235), the j Court *held* that despite an order suspending an employee, the contract of employment and the employer-employee relationship subsists. Payment made to such persons, even during a period of suspension, are "wages" under the Act.

An increment in "wages" falls within the scope of the term "wages", if it is the result of an agreement between the employers and the employed person. It is remuneration payable to an employed person. (*Managing Director, T.S.T. Co.* v. *R.P. Naidu,* AIR 1958 Mad. 25)

In *N Venkatavaradan* v *Sembiam Saw Mills* (AIR 1955 Mad. 597), the Court *held* that when an employed person is suspended pending an inquiry, on account of unauthorised absence from work, the amount claimed by

him in respect of such period is really by way of damages for wrongful dismissal, and *not* as “wages”, under the Act.

The grant of dearness allowance is *not* an amenity, but a payment at a specified rate, covered by the definition of “wages.”

In *D. P. Kelkar Amalner* v. *A. K. Bajaj* (AIR 1971 Born. 124), the Court *held* that “wages”, as defined under the Act, are *not* restricted to remuneration payable under a contract of an agreement. In the same case, the Court *held* that bonus payable under the provisions of Payment of Bonus Act, falls under the term “wages.”

As leave salary is a benefit conferred by statute, it amounts to “wages” under Section 2(vi) of the Act. *(Manager Hindustan Journals* v. *Govind Ram Sawal Ram,* AIR 1963 M.P. 25)

In *New Prajapat Tiles* v. D. L. *Himatlal* (AIR 1964 Guj. 22), the Court *held* that damages claimed on account of an alleged breach of contract of employment, are *not* “wages’ under the Act.

In *Moh. Quasim Lary* v. *Samsuddin* (164 II LLJ. P. 430), it was *held* that wages fixed by any award are *wages,* and such an award constitutes a fresh contract between the employer and the employee.

As regards *bonus,* the Courts have *held* that -

(a) bonus payable as an implied term of contract *is wages;*
(b) bonus based on profits and paid voluntarily is *not wages;*
(c) bonus paid as “Pooja Bonus” every year (even when the Company was in loss) *is wages.*

F. OTHER TERMS DEFINED

(1) Mine

A “mine” has the meaning assigned to it in Section 2(1)(j) of the Mines Act. 1952.

In *K. J. Coal Company* v. S. *Merchant,* (1965 II LLJ 302), the Patna High Court *held* that unless the house in which a company’s director resides is connected with any process incidental to or connected with getting, dressing of preparation of minerals, it *cannot* be treated as a *mine* as defined in the Mines Act.

(2) Legal representative

According to the Maharashtra Amendment, a legal representative means the person who, in law, represents the estate of a deceased employed person.

(3) Plantation

The term *plantation* is defined as having the same meaning as the one assigned to it in Section 2(f) of the Plantation Labour Act, 1951.

The Plantation Labour Act, 1951, defines a plantation, in Section 2(f) thereof, as any

plantation to which the Plantation Labour Act wholly or in part applies, and *includes* hospitals, dispensaries, schools and other premises used for any purpose connected with such plantation, but does *not include* any factory or the premises to which the provisions of the Factories Act, 1948, apply.

As per the *Maharashtra Amendment* of the Act, the term "*plantation'* is defined to mean:
(a) any *estate,* which is maintained for the purpose of growing cinchona, rubber, coffee or tea; *or*
(b) any *farm* which is maintained for the purpose of growing sugarcane and attached to a factory established or maintained for the manufacture of sugar :*Provided that twenty-five* or more persons are engaged on such estate or farm.

(4) Prescribed
According to *Section 2(iv),* "prescribed" means prescribed by Rules made under this Act.

Section 26 of the Payment of Wages Act contains the rule-making power of the State and the Central Government.

(5) Railway Administration

The term *railway administration* has the same meaning assigned to it in Section 3(6) of the Indian Railways Act, 1809.

(6) Appropriate Government

The term "appropriate Government", as used in this Act, means:
-in relation to railways, air transport services, mines and oil fields - *the Central Government,* and
- in relation to all other cases, - *the State Government.*

CHAPTER III

EMPLOYER'S OBLIGATIONS

The following topics are discussed in this Chapter:
A. Responsibility for wage payment (Sec. 3)
B. Fixation of wage periods (Sec. 4)
C. Time for wage payment (Sec. 5)
D. Mode of payment (Sec. 6)
E. Maintenance of registers (Sec. 13A)

Questions:
Define wages under the payment of wages act. Who are the persons responsible for the payment of wage?
What provisions are under the payment of wages act for fixing the responsibility for

payment of wages?
Explain: Employer's responsibilities under the Payment of Wages Act.
Write a note on Wage Period.
What is wage Period?

A. RESPONSIBILITY FOR WAGE PAYMENT (S. 3)

The liability for the payment of wages is fixed by Section 3, which lays down that every *employer* is responsible for the payment to persons employed by him, of all wages required to be paid under the Act.

The importance of Section 3 lies in the fact that it is this section which fixes the liabilities for wage payment.

It is also clarified that:

(a) **In Factories**: The person named as the Manager under Section 7(1) (f) of the Factories Act is responsible for such payment.
(b) **In industrial and other establishments**: The person, if any, responsible to the employer for the supervision and control of the industrial or other establishment is responsible for such payment.
(c) **Upon railways (other than in factories)**: The person nominated in this behalf, for the particular area, by the railway administration, if such administration is the employer, is responsible for such payment.
(d) **In case of contractor**: The person designated by such a contractor who is directly under his charge is responsible for the payment.
(e) **In any other case**: The person designated by the employer as the person responsible for complying with the provisions of the Act is responsible for the payment.

(Under a *Maharashtra Amendment,* as regards clauses (a) and (b) above, the responsibility of the person mentioned in the clauses *and* the employer is *joint* and *several.)*

It will thus be seen that the main responsibility *for* wage payment *is always on the employer.* Even in cases where the section makes other persons responsible, the section speaks of such persons *"also"* being responsible, Hence, the employer *cannot* escape responsibility even ii such cases.

In *G. Laxaman* v. *L. Holland* (A.I.R. 1955 Born. 431) the Court *held* that such responsibility should exist at the time of the application *for* payment, even though the same may *not* have been in existence at the time of the accrual of the wages.

The section *excludes* liability of the persons mentioned in Section 3 ir cases where the employment is through a contractor.

As the definition of an "employer" in Section 2(ia) merely states wha the word includes, the ordinary meaning of the expression will apply. Ai employer is a person who engages the services of the employed person; by means of an expressed or implied contract of service.

In *Bhalgora Coal Co.* v. *Indrajit Singh* (A.I.R. 1964 Pat, 292) the Court *held* that in the case of private limited company, directors are liable as “employers” when there is no person appointed to be responsible for tin supervision and control of the establishment.

In *G. Laxman* v. *L. Holland* (A.I.R. 1955 Born. 431), the Court *held* that the non-existence of a factory, in this case, at the time when the application was made, would take the case out of the provision which makes a factory manager liable.

Under *Section 20,* the persons responsible for payment of wages under Section 3 are made liable for certain offences, on default of compliance with the provisions of the Act.

B. FIXATION OF WAGE-PERIODS (S. 4)

Under S. 4, every person responsible for the payment of wages under Section 3, must fix *wage-periods* in respect of which such wages are) payable. No wage-period can, however, exceed *one month.*

This section lays down that while wage-periods may be fixed by the person responsible for payment of wages, the *maximum* wage-period is that of *one month.* Fixation of the wage-period that exceeds one month will, therefore, be illegal, in view of the express prohibition contained in Section 4(2)

“Wages-period”: A wage-period is the span of time in respect of which wages are payable to the employed person. The wage-period may, for instance, be a day, a week, or a month. It *cannot,* however, exceed a month.

“Month”: As the word “month” used in this section, is *not* defined in| the Payment of Wages Act, the definition contained in the *General Clauses Act* will apply. According to *Section 3(34)* of the *General Clauses Act,* a "month” means a month reckoned according to the British calendar.

C. TIME FOR WAGE PAYMENT (S. 5)

The provisions of *Section 5,* which deal with the time for the payment of wages, may be analysed as follows:

(i) **Time for payment**: Wages of every employed person *must be paid within the time mentioned in relation to each of the following cases:*

(a) Employment in a factory, railway or other industrial establishment employing *less than 1,000 persons:* Before the expiry of the *seventh day* after the wage-period,

(b) Same as above, but where, *1,000 or more persons employed:* Before the expiry of the *tenth are day* after the wage-period.

(c) Employment on a *dock, wharf jetty or* mine: Before the expiry of the *seventh day* after completion of final tonnage account of the ship or wagons, loaded or unloaded.

(d) On *termination of employment:* (d) Before the expiry of the *second working day* from the date of termination. (If the termination is due to closure *of* the establishment, then, within *two days* from the date of termination of service)

(ii) **Payment on a working day**: Except in the case of a closure of an establishment which results in the termination of the services of an employed person, *all wage payments must be made on a working day.*

(iii) **Power to exempt**: Section 5(3) confers on the appropriate Government, the *power*

to exempt from the provisions of this section, *any* employer or person responsible for wage payment or any class of such persons, in the following cases:

(a) *employment upon any railway (other than* in a factory);

(b) *employment of daily rated workers in the Public Works Department of the State or Central Governments :* In this case, no such order can be passed except in consultation with the Central Government.

D. MODE OF PAYMENT (S. 6)

S. 6 provides that all wages are to be paid in *current coin or currency notes* or in both.

However, if the employer has obtained the written authorisation of the employed person, he may pay him such wages *either* by cheque or by crediting the wages to his bank account. (*Proviso* to S. 6)

By an amendment effective in Maharashtra and Gujarat, the above Proviso has been deleted, and in its place, it has been provided that when the amount of any bonus payable to the employed person exceeds one- fourth of his earning (including dearness allowance), such excess may be paid or invested in the prescribed manner.

This section specifies the *mode* of payment of wages. Wages under the Act, may be paid only in one of the modes permitted by this section. In other words, a purported payment of wages by any other mode is *illegal.*

Thus, under Section 6, wages can be paid *only.*

(i) in current coin; *or*

(ii) in currency notes; *or*

(iii) in both.

In *M.R.A. Nath* v. *State of Punjab* (A.I.R. 1964 Punj. 513), the Court pointed out that this section specifies that wages are to be paid only in cash, so as to exclude any other forms of payment.

It will be seen that in the absence of the provisions of Section 6, the employer might have escaped liability to make cash payment of wages on the plea that they were being paid in other forms *(e.g.* bags of rice), whose value might have been difficult, if *not* impossible, to quantify.

Section 6 of the Act is a benefit conferred on employees and payment of wages in any form other than one prescribed by Section 6, is declared to be an offence under the Act.

E. MAINTENANCE OF REGISTERS (S. 13A)

Section 13A *casts a duty* on the employer in respect of the maintenance of registers and records.

According to this section, *the employer must*

(a) maintain *the prescribed registers and records in the prescribed form,* which provide the following *particulars:*

(i) persons employed by him;

(ii) the work performed by such persons;

(iii) the wages paid to them;

(iv) the deductions made from their wages;
(v) the receipts given by them; *and*
(vi) such other particulars as may be prescribed;

(b) *preserve such registers and records for a period of 3 years* from the date of the last entry therein.

Section 20(3) prescribes a penalty on the employer's failure or refusal to maintain such registers and records.

CHAPTER IV

DEDUCTIONS FROM WAGES

The following topics are discussed in this Chapter:

A. Authorised deductions (S. 7)
B. Fines (S. 8)
C. Deductions for absence from duty (S. 9)
D. Deductions for damage or loss (S. 10)
E. Deductions for services rendered (S. 11)
F. Deductions for recovery of advances (S. 12)
G. Deductions for recovery of loans (S. 12A)
H. Deductions for payment to co-operative societies and insurance schemes (S. 13)

Questions
The payment of wages Act provides that wages are to be paid in a particular form at a particular time and without unauthorized deductions. Discuss
State the provisions of Wages Act 1936, relating to fixation of wages & deductions from wages.
State the deductions which may be made from wages under the Payment of Wages Act.
What are the provisions of the Payment of Wages Act, 1936, relating to authorised deductions from the wages of an employed person?
Enumerate the provisions in respect of Authorised Deductions under the Payment of Wages Act, 1936.
What are the provisions of the Payment of Wages Act for imposition of fines?
Explain the following deductions from wages: (a) *Fines,*(b) *Absense from duty,*(c)*Damage or loss.*

A. AUTHORISED DEDUCTIONS (S. 7)

The provisions of *Section 7* are discussed below, under the following six heads:

(1) Wage payment with authorised deductions
(2) What constitutes a 'deduction'
(3) What does *not* constitute a 'deduction'
(4) Authorised deductions

(5) Quantum and limits of deductions
(6) Employer's right under other laws.

(1) Wage payment with authorised deductions

Section 7(1) provides that the wages of an employed person must be paid to him *without deductions of any kind, except those authorised by or under this Act.*

Thus, what the above rule lays down is that an employed person should be paid his full wages, namely, his wages without any kind of deduction, except those deductions *expressely* permitted by or under this Act. Deductions that are permitted or authorised by or under the Act are covered by *Section 7(2)* and *Sections 8 to 13,* which are dealt with separately hereunder.

The need to prohibit unauthorised deductions is becuase if arbitrary deductions were to be permitted, employers might have left their employees with nothing in hand as wages. In keeping with the object of the Act, this section *permits only those deductions which are allowed by or under the Act,* Moreover, these provisions have effect, notwithstanding the provisions of Section 47(2) of the Indian Railways Act, 1890.

Any deduction which is *not* permitted by or under the Act is an *illegal deduction* irrespective of the nature of such deduction. In *A. C. Arumugham* v. *Manager, Jawahar Mills Ltd.* (AIR 1956 Mad. 79), the Court *held* that the deductions mentioned in Section 7(2) are the *only deductions* permitted under the Act, and therefore, *no other deductions are permitted.*

(2) What constitutes a 'deduction'

Every payment made *by* the employed person to the employer or his agent is deemed to be a deduction from wages for the purpose of the Act: *Explanation* I *to Sec. 7(1)*

As Section 7 does *not* permit any deduction other than an authorised one, it is necessary to consider the meaning of the word "*deduction*s". As the Act does *not* contain the definition of the word 'deduction', the usual and ordinary meaning of the word will apply, The word 'deduction' implies a *reduction or subtraction of an amount from a greater amount* while Explanation I deals with the meaning of the word "deduction'' for the j purposes of the Act, Section 7(2) contains as exhaustive list of those deductions which are authorised by or under the provisions of the Act. All payments, except those listed in *Section 7(2),* made by an employed person to the employer or his agent, are prohibited.

(3) What does *not* constitute a 'deduction'

Explanation II to Section 7(1) specifies what does *not* amount to a 'deduction.'

Where there is any loss of wages resulting from:
(i) the *withholding* of an increment or promotion (including the stoppage of increment at an efficiency bar);
(ii) the *reduction* to a lower post or time scale or to a lower stage in the time scale; *or*
(iii) *suspension;*
the same should *not* be regarded as a deduction, if:

(a) the imposition of such penalty is *for good* and *sufficient cause; and*
(b) the *rules* framed by the employer for the *imposition of such penalties conform* to the notified Government requirements in this behalf.

For instance, when for good and sufficient cause, an employed person is reduced to a lower post, if the other conditions of Explanation II are observed the employed person *cannot* claim that any loss of wages he has suffered thereby amounts to an unauthorised deduction. In such a case, it will *not* be regarded as *dedutction at* all

(4) Authorised deductions

Section 7(2) contains an *exhaustive list* of deductions from wages which are authorised under the Act, *Section 7(2)* provides as follows:

Deductions from wages of an employed person may be made *only in accordance* with the *provisions* of this Act, and *may be of the following kinds only, namely:*
(a) *fines*
(b) deductions for *absence* from *duty;*
(c) deductions for *damage* to *or* loss of *goods expressly entrusted* to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly *attributable* to his *neglect* or *default;*
(d) deduction *for house-accommodation supplied* by the employer or by Government *or* any housing board set up under any law for the time being in force (whether the Government or the board is the employer or *not) or* any other authority engaged in the business of subsiding house-accommodation as may be notified by the appropriate Government;
(e) deductions for such *amenities* and *services* supplied by the employer, as the State Government or an officer specified by it in this behalf, may, by general or special order, authorise;
[Explanation : The word “services" in this sub-clause, does *not* include supply of tools and raw materials required for the purposes of employment.]
(f) deductions for *recovery* of *advances* of whatever nature (including advances for travelling allowance or conveyance), *and* the interest due, in respect thereof or for adjustment of over-payments of wages;
(ff) deductions *for recovery* of *loans* made *from* any *fund* constituted for the welfare of labour in accordance with the rules approved by the appropriate Government *and* the interest due in respect thereof;
(fff) deduction for *recovery* of *loans* granted for *house-building* or other purposes approved by the appropriate Government *and* the interest due in respect thereof;
(g) deductions of *income-tax* payable by the employed person;
(h) deductions required to be made by *order of a Court or* other authority competent to make such order;
(i) deductions for *subscriptions* to, and for repayment of advances from, any *provident fund* to which the Provident Funds Act, 1925, applies *or* any recognised provident fund as defined in S. 2(38) of the Income-tax, 1961, or any provident fund approved in this behalf by the appropriate Government during the continuance of such approval,
(j) deductions for *payments* to *co-operative societies* approved by the appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office;

(k) deductions made with the *written authorisation* of the person employed, for payment of any *premium* on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 or for the *purchase* of *securities* of the *Government* of India or of any State Government *or* for being *deposited* in any *Post Office Savings* Bank in furtherance of any savings scheme of any such Government.;

(kk) deductions made with the written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer for the welfare of the employed persons or the members of their families, or both, and approved by the appropriate Government or any officer specified by it in that behalf, during the continuance of such approval,

(kkk) deductions made with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act. 1926.

(i) deductions for payment of *insurance premia* on Fidelity Guarantee Bonds;

(m) deductions for recovery of *losses* sustained by a *railway* administration on account of *acceptance* by the employed person of *counterfeit* or base *coins* or *mutilated* or *forged* currency *notes;*

(n) deductions for recovery of *losses* sustained by a railway administration on account of the *failure* of the employed person to *invoice,* to *bill,* to *collect* or to *account for* the appropriate charges due to that administration, whether in respect of fares, freight, demurrage, wharfage and cranage or in respect of sale of commodities in grain shops or otherwise;

(o) deductions for recovery of *losses* sustained by the Railway administration on account of any *rebates* or *refunds incorrectly granted* by the employed person, where such loss is directly attributable to his neglect or default;

(p) deductions made with the written authorisation of the employed person, for contributions to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may by notification in the Official Gazette specify;

(q) deductions for contribution to any insurance scheme framed by the Central Government for the benefit of its employees.

While *Section 7(1)* states that an employed person should be paid his wages without any deduction, other than the ones authorised by or under the Act, *Section 7(2)* contains a list of such deductions as are authorised by the Act.

In *A. C. Arumugham* v. *Manager, Jawahar Mills Ltd.* (A.I.R. 1956 Mad. 79) the Court *held* that the list of deductions provided in Section 7(2) is a *exhaustive* one, and hence no deduction other than those contained in Section 7(2) is authorised under the Act.

Section 7(2) not only contains a list of authorised deductions, *but also* lays down that deduction from wages of an employed person may be made *only* in accordance with the provisions of this Act. Thus, a deduction which is authorised must *not only* be one of those specified in *Section 7(2), but must* also satisfy the provisions relating to the precribed *procedure* in respect of making such deduction.

While causes (a) to (q) above contain a list of deductions which are permitted under the Act, some of these deductions, as for instance, those referred, to (a) to (fff), (j) and (k) are further dealt with under Sections 8 to 13.

Onus: In *K. S. Gokavi* v. *Doiphode,* (1968, II LLJ 80), the Court *held* that the onus (*i.e.*

burden) of proving that a particular deduction is covered by one of the causes of *Section 7(2)* is upon the employer. When the employer has purported to make a deduction from wages, he must conclusively establish that the deduction is an authorised one.

Fines: While fines constitute authorised deductions by virtue of Section 7(2)(a), the same are subject to Section 7(3) and Section 8 of the Act,
(These provisions are discussed later in this Chapter.)

Absence from duty: The restrictions contained in Section 7(3) apply to deductions on account of absence from duty. (These provisions are also discussed at length later in this Chapter.)

Damage or loss: An employer can also make a valid deduction from wages on account of damage to or loss of goods or loss of money, caused by the employed person. (This is discussed at length later in this Chapter.)

Case Law

In *Divisional Supdt G.I.P. Railway* v. *Mahadeo Raghoo* (AIR 1955 SC.295), the Court *held* that house rent allowance is *not* the same thing as the 'value of house accommodation mentioned in the definition of "wages" and in Section 7(2)(d). This is because the definition of "wages" expressly excludes "the value of any house accommodation.

In *Kundan Lai* v. *Union of India and Anr.* (AIR 1961 All. 567), the wordings of clause (h) were scrutinized by the Court. The Court *held* that the words *"or* other authority" appearing therein should *not* be construed *'ejusdem generis'* with the preceding word "Court". In other words, what is indicated by the words, "other authority" is any authority competent to make an order requiring a deduction It need *not* be akin to a Court or a judicial authority having similar powers. As the principle of *'ejusdem generis'* does *not* apply to this sub-clause, the words "other authority" are *not* restricted in their meaning to the preceding word "Court.'

In *Divisional Supdt, Northen Rly.* v. *Satyander Kapur Chand and Anr.* (AIR 1964 Punj. 242), an order passed by a Divisional Superintendent of Railway requiring a deduction by way of a punitive measure, was *held* to be an unauthorised deduction under Section 7(2)(h), as it *was* not passed by a authority competent to make such order.

In *Union of India* v. *Triioki Nath Bhushan* (1961 II L.L.J. 62), it was *held* that costs awarded by a Court *cannot* be deducted from wages, as such a deduction is *not* one that is *required* to be made by an order of "Court" within the meaning of clause (b).

In *Majoor Sahakari Bank* v. *J. Gopal* (A.I.R. 1966 Guj. 67), the Court *held* that a deduction should be disallowed when the same is purported to be made under clause (j) if there was a mere claim by a co-operative society, for payment of a debt by an employed person. The Court *held* that in the absence of an adjudication *order* in respect of the claim, no deduction can be made by the employer under that clause.

(5) Quantum and limits of deductions

In order to ensure that the provisions relating to authorised deductions are *not* abused,

Section 7(3) prescribes the *limits* of the total amount of such deductions in any wage period. In the absence of the limits being so specified, the employer would have been able to deprive an employed person of his full wages, on the pretext of making authorised deductions.
The limits of such deductions are laid down by this sub-section as follows:

(i) *In the case of payment to co-operative societies:* The total amount of deduction in any wage-period should *not* exceed *seventy-five per cent* of such wages in the wage-period.

(ii) *In any other case:* In any case of an authorised deduction, other than on account of payment to a co-operative society, the total amount of the deduction in a wage-period should *not* exceed *fifty per cent* of such wages in the wage-period.

It is further provided that when the deductions authorised under the section exceed the permitted limits, the excess may be recovered in such manner as may be prescribed by Rules made under this Act.

(6) Employer's rights under other laws

It is also laid down that S. 7 does *not* preclude the *employer* from *recovering* from the wages of the employed person or otherwise, any *amount payable* by such person *under any law for* the time being in force, *other than* the Indian Railways Act, 1890.

In other words, if any law, other than the Indian Railways Act, entitles an employer to recover any amount from the wages of an employed person, the provisions of Section 7 will *not* come in the way.

B. FINES (S. 8)

The *essential* contents of Section 8, relating to fines, may be *analysed* as follows:

(i) A fine may be imposed on *any* employed person - *except* a person *under* the age of 15 *years.*

(ii) Such fine may be levied *only when* the employed person is *responsible* for some act or *omission,* which has been *specified by notice* to give rise to the liability of a fine.

(iii) Such act or omission should be *specified* by notice by the employer with the approval of the *appropriate Government or the prescribed authority.* The notice should be displayed or exhibited, as stated below.

(iv) A notice which specifies such acts and omissions should be *displayed* in the prescribed manner *on premises:*

(a) *in which* the employment is *carried on; or*

(b) *where* the employment is *upon a railway* (otherwise than in a factory), at the *prescribed place or places.*

(v) *Prior* to the imposition of a fine, the employed person must be provided with an *opportunity of showing cause* against the fine. Further, the imposition of a fine must be in accordance with the prescribed *procedure.*

(vi) The total amount of fine which can be imposed in any one wage period on any employed person *cannot* exceed 3% of the wages payable to him in respect of that wage-period.

(vii) Every fine is *deemed* to be *imposed on the day* on which the *act or omission* took place.

(viii) A fine *cannot be recovered after the expiry of 90 days* from the date of its

imposition.

(ix) *No fine* can be recovered from an employed person in *instalments.*

(x) All fines and recoveries thereof must be *recorded* in a *register* to be kept by the person responsible for wage payment.

(xi) The amount recovered by means of imposition of fines *can only be used for such purposes* as are *beneficial* to the person employed and which are *approved* by the prescribed authority. Such realisations of fines *may be credited* to a *common fund* for the entire staff employed under the same management, provided that the fund is applied to purposes which have been *approved* by the prescribed authority. *(In Maharastra,* in case of any factory or establishment to which the Bombay Labour Welfare Fund Act applies, all realisations are to be paid into the Fund constituted under that Act.)

In *Bombay Dyeing & Mfg. Co. Ltd.* v. *State of Bombay & Ors.* (AIR 1958 S.C. 328), the Court *held* that employers are merely trustees in respect of fines that have been recovered from the employed persons.

In *K. P. Mushran* v. *B.C. Patil & Anr.* (AIR 1952 Born. 235), The Division Bench of the Bombay High Court *held* that as the fines | permitted under the Act are only those covered by Section 8, when a suspended employee is paid a lesser amount than his full wages, the deduction amounts to the imposition of a fine which is *not* permitted under the Act. The Court *held* that the deduction was an illegal one- irrespective of the fact that the employer did *not* lable the deduction as the imposition of a fine.

If an act or omission is *not* specified by notice to give rise to a liability of a fine, the employer *cannot* impose a fine in respect thereof. The notice under Section 8 must, therefore, clearly specify that the employed person would be liable to a fine *if* he commits certain acts or omits to do certain things.

In *Mahomed Haji Umar* v. *Divisional Superintendent, North-Western Railway* (AIR 1941 Sind 191), the Court *held* that when the employer deducts particular sums every month from a future salary of an employed person by way of a punitive measure for certain acts or omissions for which he was responsible, the same are *illegal deductions* from wages,

The failure to observe the provisions of this section renders the employer liable to a *penalty* under Section 20 of this Act.

C. DEDUCTIONS FOR ABSENCE FROM DUTY (S. 9)

Section 9 covers deductions on account of absence from duty, and provides as follows:
(1) Deductions may be made under Section 7(2)(b) *only* on account of the *absence* of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.
(2) The amount of such deduction *cannot,* in any case, bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a *larger proportion* than the period for which he was absent bears to the total period within such wage-period, during which by the terms of his employment, he was required to work.

However, subject to any rules made in this behalf by the appropriate Government, *if ten or more employed persons* acting in concert absent themselves without due notice (that

is to say, without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any person may include such amount *not* exceeding his wages for eight days as may, by any such terms, be due to the employer *in lieu* of due notice.

For the purposes of S.9, an employed person is to be deemed to be absent from the place where he is required to work, if, although present in such place, he refuses, in pursuance of a stay-in-strike, or for any other cause which is *not reasonable* in the circumstances, to carry out his work.

In *Managing Director, Mining & Allied Machinery Corporation* v. *R.K. Battacharya* (1971 Lab. I.C. 1339 Cal.), the Court *held* that a strike in which the employed persons put down their tools and working equipment without reasonable cause amounts to the employee being *"absent from duty."* In such circumstances, the employer is entitled to make deduction from wages under *Section 9* of the Act.

An employer is entitled to make a deduction from the wages of an employed person on account of such employed person's absence from duty. In order to make such a deduction, the employed person should be *voluntarily* absent from the place or places where he is required to work by virtue of the terms of employment. The absence contemplated by this section could be for the whole or any part of the period in which he is required to work. The *quantum* of the deduction permitted by this section should be *proportionate to the period of his absence.*

When an employee is forced to proceed on compulsory leave on the payment of half his wages, there is an *unauthorised deduction,* as the same does *not* fall within the purview of a permitted deduction on the ground of "absence from duty". *(K. P. Mushran* v. *B. C. Patil & Anr.* A.I.R. 1952 Born. 235)

In *Jawahar Mills* v. *Industrial Tribunal* (A.I.R. 1965 Mad. 92), the Court discussed the provision relating to absence due to *'reasonable cause'* and laid down that in the case of a *public utility service,* a strike is illegal *even if* there is a reasonable cause. So, in such a case, the criterion of reasonable cause need *not* even be applied, as the strike is already an illegal one.

Tension and panic among employed persons are *not* "reasonable cause" within the meaning of Section 9, when such employed persons stay away from work by means of a concerted action. *(National Textile Workers' Union* v. *Sree Meenakshi Mills,* (1951) II LLJ. 16)

In *Jerry Sebastian Periera* v. *Badshah,* (1960 II LLJ. 99), the Court *held* that when the employer has purported to declare a lock-out which is illegal, the employees are entitled to make a claim under this Act for unauthorised deductions from their wages in respect of such a lock-out.

As already discussed under *Section 7,* the "absence from duty" referred to in *Section 7(2) (b)* and *Section 9* should be a *voluntary absence,* and, therefore, an absence on account of factors beyond the control of the employed persons *or* due to a compelling act of the employer is *not covered* by either of these sections.

In *Anant Ram* v. *District Magistrate* (A.I.R. 1956 Raj. 145), the Court *held* that a person

cannot be said to be “absent from duty” within the meaning of Section 9, *if* he is *not permitted* to attend work as a result of his dismissal. On reinstatement, he can claim back wages for the intervening period and the employer *cannot* claim any deduction in respect of this period.

The Karnataka High Court has *held* that a deduction of wages for the period of an illegal strike is *valid. (Mineral miners' Union* v. *Kudhremukh Iron Ore Co.,* 1989 I LLJ, 277)

It is clear that an employer is entitled to deduct an employee's salary if the latter is absent from his place of work for the period during which he is required to work. Therefore, employees who absent themselves from duty with a view to participate in a *bandh are not* entitled to wages. *(Nagammal Mills Ltd.* v. *Nagercoil Kur ari NTM Sangam, Negercoil,* 1999 I LLJ, 502)

D. DEDUCTIONS FOR DAMAGE OR LOSS (S.10)

Under *Section 10:*

(i) The deduction on account of damage or loss *should not exceed the amount of damage or loss* caused to the employer by the *neglect or default* of the employed person. Thus, if the damage or loss is *not* caused on account of the neglect or default of the employed person, the employed person is *not liable* to be fined. If there has been neglect or default which results in damage or loss, the employer's right to deduct is limited to the extent of the amount of the actual loss or damage.

(ii) No deduction can be made under clauses (c), (m), (n) or (o) of S. 7(2) (-seen earlier-) *before giving the employed person an opportunity of showing cause* against the deduction and otherwise following the provisions prescribed in respect of such deduction.

(iii) The employer is *bound to* keep a register in the prescribed *form, in* which all deductions and realisations in respect thereof, are recorded.

However, before a valid deduction can be made, the following *two conditions* must be satisfied:

(i) The damage or loss must be *directly attributable* to the *neglect* or *default* of the employed person; *and*

(ii) Such damage or loss should have arisen *in respect of:*

(a) goods expressly *entrusted* to the employed person for the purpose of custody; *or*

(b) *loss of money,* for which such employed person is required j to account.

By necessary implication, therefore, when goods are *not* expressly entrusted to an employed person for the purpose of custody, he is *not* responsible for damage or loss to them. Similarly, when an employed person is *not* required to account for money, a loss of money *cannot* justify a deduction from wages. In any case, as the damage or loss should be directly attributable to the employed person's neglect or default, in the absence of such neglect or default, no deduction can be made even if the goods have been expressly entrusted to the employed person for the purpose of custody. On the same principle, when there is a loss of money for which the employed person is expected to account, no deduction is permissible on this ground *unless* there is a *direct connection* between the loss and neglect or default on the part of the employed person.

In *State of Madras* v. *Ramaswami* (A.I.R. 1958 Mad, 585), the words *“expressly entrusted"* were explained by the Court to indicate *clear* entrustment, involving no doubt as to the entrustment. In other words, if it is clear or apparent that there is an

entrustment, it is 'express entrustment' for the purpose of clause (c). In this case, a bus was *held* to be "expressly entrusted" to the driver when the vehicle was placed in the charge of the driver for the purpose of being driven.

In *Rampur Engineering Co. Ltd.* v. *City Magistrate* (AIR 1956 All. 544), the Court *held* that there is 'entrustment for custody' when the employed person is given equipment and tools for the purpose of use.

E. DEDUCTIONS FOR SERVICES RENDERED (S. 11)

S. 11 provides that deductions under clause (d) or (e) of S. 7(2) *cannot* be made from the wages of an employed person, *unless* the house-accommodation, amenity or service has been *accepted* by him as a *term of employment or* otherwise. Moreover, such a deduction *cannot* exceed an amount equivalent to the *value* of the house-accommodation, amenity or service supplied and, in the case of a deduction under clause (e), it is subject to such conditions as the State Government may impose.

F. DEDUCTIONS FOR RECOVERY OF ADVANCES (S. 12)

Under S. 12, deductions under clause (f) of S. 7(2) are subject to the following rules:

(1) Recovery of an advance of money given *before* employment began, is to be made from the *first* payment of wages in respect of a complete wage-period. However, no recovery can be made of such advances given for travelling expenses.

(2) Recovery of advances of money given *after* employment began, are subject to such conditions as the State Government may impose.

(3) Recovery of advances of wages *not* already earned are subject to any rules made by the State Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

It will be seen that the advances contemplated by *Section 12* are of *three types:* Advances before employment, advances after employment and advances against future wages:

(a) **Advances before employment**: Recovery in respect of such advances is from the *first payment of wages* in respect of a complete wage-period. There is, however, a *restriction* on such recovery, in as far as there can be no recovery in respect of advances, which were given prior to employment, for the purposes of travelling expenses.

(b) **Advances after employment commenced**: The recovery of money advanced after the commencement of the employment is *subject to such conditions* as the State Government may impose.

(c) **Advances against future wages**: The recovery of such advances is also *subject to any rules* made by the State Government to regulate the extent to which such advances may be given and the instalments by which the same may be recovered.

G. DEDUCTIONS FOR RECOVERY OF LOANS (S. 12A)

Deductions for recovery of loans granted under *Clause* (fff) of S. 7(2) *are subject* to any *rules* made by the appropriate Government regulating the extent to which such loans may be granted and the rate of interest payable thereon.

Section 7(2)(fff), which is referred to in *Section 12A,* covers deductions for recovery of loans granted for house building or other purposes approved by the State Government, and the interest due in respect thereof.

H. DEDUCTIONS FOR PAYMENT TO CO-OPERATIVE SOCIETIES AND INSURANCE SCHEMES (S. 13)

Under S. 13, deductions under clauses (j) and (k) of S. 7(2) are subject to such *conditions* as the State Government may impose.

The deduction covered by this section relate to payment to cooperative societies and insurance schemes. Clauses (j) and (k) of Section 7(2) are quoted below for ready reference:

Deductions-Section 7(2)(j) : Deductions for payments to cooperative societies approved by the State Government *or* any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office.

Deductions-Section 7(2)(k) : Written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India, *or* for the purchase of securities of the Government of India or any State Government, *or* for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government.

In *Majoor Sahakari Bank Ltd.* v. *jasmat Gopal* (A.I.R. 1966 Guj. 67), the Court *held* that a deduction should be disallowed when it is purported to be made on just a claim, as opposed to an established debt, in respect of an amount due from the employed person to a co-operative society.

CHAPTER V

INSPECTORS, AUTHORITY, APPEALS

The following *six* topics are discussed in this Chapter :

A. Inspectors
B. Authority and claims
C. 'Same unpaid group'
D. Appeals
E. Attachment of property
F. Powers of the authority.

Questions:
Explain: Inspector under the Payment of Wages Act.
Discuss the functions of an Inspector under the Payment of Wages Act.
What provisions are made under the Payment of Wages Act for authorities to whom a complaint may be made for non-payment of wages?
Write a short note on : 'Same Unpaid Group.'
Explain: Appellate provisions under the Payment of wages Act.
Write a short note on: Right of Appeal under the Payment of Wages Act.

A. INSPECTORS (Ss. 14 & 14A)

Appointment: An Inspector of Factories appointed under Section 8(1) of the Factories Act. 1948, is an Inspector for the purposes of the Payment of Wages Act, h respect of all factories within the local limits assigned to him.

The appropriate Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

The appropriate Governmental may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

Main functions and duties: The main function of Inspectors under the Act is to keep a check on the employers to ensure the observance of the provisions of the Act and the Rules made thereunder.

Sub-section (4) of S. 14 specifies the duties of Inspectors. These *duties* may be *summarised* as follows:

I. examination and inquiry to determine whether the employer is observing the provisions of the Act and the Rules;
II. entry, inspection and search of any premises of any railway, factory or industrial or other establishment, at any reasonable time, for carrying out the objects of the

Act;

III. supervision of wage payment;

IV. requiring by written order, the production of registers, records or statements which are considered necessary for the purposes of this Act;

V. seizure or taking copies of registers, and documents of all relevant portions thereof in respect of which he believes an offence has been committed;

VI. exercising all other prescribed powers.

However, an Inspector acting under the section-

(a) *cannot* compel a person to answer incriminating questions; *and*

(b) *must observe* the provisions contained in the Criminal Procedure Code relating to search and seizure made under an authority of a warrant.

In order to enable an Inspector to exercise his functions freely, Section 14(5) treats him as a *'public servant'* within the meaning of the definition of the word contained in the I.P.C.

The provisions of the *Code of Criminal Procedure* relating to 'search and seizure' apply in the case of a search or seizure by an Inspector.

In *State* v. *Mansharam* (A.I.R. 1965 Raj. 168), the Court *held* that Section 14 and Section 24 of the Act should be read together, so that even a person appointed by the Central Government to act as an Inspector under Section 24 can act as such for the purposes of this Act.

Section 14A provides that every employer must *afford* an Inspector all *reasonable facilities* for making any entry, inspection, supervision, examination or inquiry under this Act.]

This section in intended to ensure that Inspectors under the Act are *not* hampered in the performance of their duties and functions It enjoins on the employer, the duty to provide reasonable facilities to Inspectors, who are performing their functions under the Act.

The employer is, however, *not* bound to accede to an unreasonable facility demanded by an Inspector. Moreover, such reasonable facilities which are required to be afforded to an Inspector are limited to the' following purposes:

(a) entry;
(b) inspection;
(c) supervision;
(d) examination; or
(e) inquiry under the Act.

Failure to observe the provisions of the section makes the employer liable to a *penalty* under Section 20(4).

B. AUTHORITY AND CLAIMS (S.15)

Section 15 of the Payment of Wages Act covers claims arising out of the deductions or delays in payment of wages or penalty for malicious or vexatious claims.

'Authority' under the Act: Under Section 15(1), the appropriate Government may, by gazetted notification, *appoint* an authority to hear and decide, for any specified area, all claims arising out of:
(a) *deductions* from wages;
(b) *delay* in *payment of* wages; *and*
(c) all matters *incidental* to such claims.

The *person who may be so appointed* may be:
(a) any Commissioner for Workmen's compensation, *or*
(b) any officer of the Central Government exercising functions as -
(i) Regional Labour Cmmissioner; *or*
(ii) Assistant Labour Commissioner with at least two years of experience, *or*
(iii) any other officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years of experience, *or*
(iv) any other officer with experience as a Judge of a civil court or a Judicial Magistrate.

If the appropriate Government considers it necessary to appoint more than one authority for any specified area, it may provide for more than one authority, and, by general or special order, distribute the work among them.

In Hasan v. *Mahomed Shamsuddin,* (1951, II LLJ 6), a Division Bench of the Patna High Court *held* that the authority appointed under Section 15 of the Payment of Wages Act is a Court which is "subordinate to the High Court" *for the purposes* of the exercise *of* the High Court's powers of revision under Section 115, C.P.C. It is *not,* however, a Court for *all* purposes.

In *Kishan Chand* v. *City Magistrate* (1973 Lab. I.C. 716), the Court ruled that the authority under the Payment of Wages Act is a *quasijudicial* one, and for this reason, must provide reasons for its orders passed under Section 15.

As the authority is expected to reach a conclusion after making an inquiry, the authority has to observe the *principles of natural justice.*

Application for direction: An application for a direction under this Section *may be made,* in respect of deductions or delayed payment, *by-*
(i) the person himself; *or*
(ii) any legal practitioner; *or*
(iii) any official of a registered trade union, having written authorisation to act on behalf of the employee; *or*
(iv) any Inspector under the Act; *or*
(v) any other person, with the permission of the authority.

The limit: The application should be made *within twelve months from the date-*
(i) on which *deduction* from the wages was *made; or*
(ii) on which the *wages* ware *due* for payment.

However, any such application may be admitted even after the said period of 12 months, *if* the Applicant satisfies the Authority that he had sufficient cause for *not* filing such application within the prescribed period.

In *Thakorji Maharaj Dharamshala Trust* v. *Ram Mohan Das* (AIR 1965 Born. 185), a Full Bench of the Bombay High Court *held* that when the employed person has failed to apply *for* the wages within 12 months from the date on which they were due, or when he applies after the period, and does *not* establish that he had "sufficient cause" for the delay, he is thereafter debarred from suing for the same.

Condonation of delay: As stated above, the authority has the *discretion to condone delay,* if the applicant *satisfies* the *authority* that he had *"sufficient cause" for not* preferring the application within the specified period of twelve months.

It is settled law that when a party seeks condonation of delay, he must satisfactorily explain the reasons for the continuance of the same throughout the period of the delay. Thus, an explanation which relates only to a short span out of the total period *cannot* amount of "sufficient cause".

While deciding whether there was "sufficient cause", the authority must apply its judicial mind, and should *not* condone delay as though it were a matter of course. (*Haji Latif Ghani* v. *Abdul Rashid,* 65 BLR 401)

In *Prem Narain* v. *Divisional Traffic Manager* (AIR 1954 Born. 78), and *Haji Latif Ghani* v. *Abdul Rashid* (65 BLR 401), the Court *held* that an application *for* condonation should be first disposed of, and should *not* be reserved for consideration together with the main application under Section. 15.

Procedure: On an application being entertained, the authority:

(a) must *hear* the applicant and the employer; or
(b) give them a *opportunity* of being heard.

Order: On following the prescribed procedure, the authority, without prejudice to the penalty which the employee may have to pay, may direct the refund of a deduction, *or* the payment of the delayed wages, with such compensatory payment as the authority deems fit. Any such compensation should *not* exceed *ten times* the amount deducted, when the claim refers to a deduction, and should *not* exceed Rs. 3,000 (but may *not* be less than Rs. 1,500) when the claim is in respect of delayed payment of wages. The payment of compensation may be ordered by the authority despite the fact that during the pendency of the application the deduction was refunded or delayed wages were paid. In such cases however, *not more than* Rs. 2,000 may be awarded as compensation

Moreover, a direction *cannot be made* in respect of payment of *compensation in the case of delayed* wages *if* the *authority is convinced* that the *delay* was due to:

(a) a *bona ride error or dispute* regarding the *amount payable to* the employed person; *or*
(b) the occurrence of an emergency or the existence of exceptional circumstances of such a nature that the person responsible for the payment was unable to make prompt payment, despite exercise of reasonable diligence; *or*
(c) the *employed person's failure to apply for and to accept the payment.*

Malicious or vexatious claims: The authority is entitled to impose a penalty in the following *two* cases:

(i) *If he is satisfied that the application was malicious or vexatious;* in such a case, a penalty extending upto Rs. 375 may be imposed on the applicant, and may be directed to be paid to the employer or other person responsible for wage payment.
(ii) *If he is satisfied that the applicant should not have been compelled to seek redress under the section.* When a direction is granted by the Commissioner, he may order the payment of a penalty, *not* exceeding Rs. 375 to be paid to the State Government by the employer or other persons responsible for such payment. Such payment is directed if the authority is satisfied that the applicant ought *not* to have been compelled to seek redress *under* this section.

Decision on legal representative: If there is any dispute as regards the persons who are *legal representatives* of the employer or of the employed person, the decision of the authority on such a question is to be *final.*

"Judicial proceeding": The enquiry conducted by the authority under the Act is regarded as a 'judicial proceeding' *for the purpose of Section* 193, 219 and 228 of the I.P.C.

Recovery of amount: Amounts directed to be paid under this Section, may be recovered:
(a) *if the authority is a Magistrate :* by the authority as *if* it was a fine imposed by him as a Magistrate; *and*
(b) *if the authority is not a Magistrate :* by any Magistrate to whom the authority makes an application in this regard, *as if* it was a fine imposed by such Magistrate.

In *Payment of Wages Inspector* v. *Surajmal Mehta* (AIR 1969 S. C. 590), the Supreme Court pointed out that the authority's powers to consider applications under Section 15 are restricted to:
(i) deductions other than those authorised under Sections 7 to 13;
(ii) delay in wage payment in contravention of the provisions of Sections 4 and 5; *and*
(iii) matters incidental thereto.

Case law

In *Bombay Dyeing & Mfg. Co.* v. *State of Bombay & Ors.* (AIR 1958 S.C. 328), the Court observed that the protection conferred by Sections 15 on the employer, in respect of delayed claims by employed persons, is *not* an absolute power. It was *held* that, even if such claim was barred under Section 15 of the Act, the same could be raised in the from of an industrial dispute under the Industrial Disputes Act.

In *K. P. Mushran* v. 8. *C. Patil & Ors.* (AIR 1952 Born. 225) and *Upper India Paper Mills Ltd.* v. *J. C. Mathur* (A.I.R. 1959 All. 664), it was *held* that the word "deductions" contained in Section 15 is *not restricted* to the deductions mentioned under the Act. The deductions under the Act are merely those deductions which are authorised thereunder. Thus, where an employee's whole salary is withheld by the employer, the employee is entitled to make an application under the Section 15 for recovery of the same.

In *William Goodacre & Sons Ltd.* v. *Mathan* (AIR 1957 Ker. 16), if was *held* that unascertained bonus *cannot* be claimed by means of an application under section 15.

In *Sitaram Ramchandran & Ors.* v. *M. N. Nagrashana* (AIR 1960 S. C. 260), the Court observed that while condoning delay, the authority must be satisfied that the applicant has established *"sufficient cause"* for the delay, which cause should extend to the *entire period* of the delay.

Delay on account of ignorance of the provisions entitling one to make a claim *cannot* be condoned as it is a well recognised principle that *"ignorance of the law is no excuse".* In such a case, the authority *cannot* hold that there was "sufficient cause" for the delay. (*Sitaram Ramchandran & Ors.* v. *M. N. Nagrashana and Anr.,* AIR 1954 Born. 537)

In *A.* V. *D'Costa* v. 8. *C. Patil & Anr.* (AIR 1955 Sc 412), the Court described the authority under the Act as "a *tribunal of limited jurisdiction"* which obtains its power from the specific provisions of the statute. Such a creature of the statute *cannot,* therefore, decide a question which is *not* within the scope and provisions of the powers conferred by the Act.

In *A. R. Sarin* v. 8. C. *Patil & Anr.* (AIR 1955 SC 423), the Supreme Court reiterated the well-known proposition that when a special authority having quasi-judicial powers is established, which excludes the jurisdiction of the ordinary Civil Courts, such authority's powers and jurisdiction should be *"strictly construed".* In other words, what the Act does *not* provide for by express provision or necessary implication, *cannot* be gone into by the authority.

On the principles mentioned above, the Supreme Court in *A.* V. *D'Costa* v. 8. *C. Patil & Anr.* (AIR 1955 SC 412) *held* that the authority under Section 15 is *not competent* to decide an issue relating to "potential wages." While the authority can, and must, decide the question of illegal deductions of delayed wages, it *cannot* adjudicate on what the wages of employed persons should be. (*Imperial Tabacoo Co. Ltd.* v. *Authority, Payment of Wages Act,* AIR 1971 Cal. 109)

In *Payment of Wages inspector, Ujjain* v. *Surajmal Mehta* (AIR 1969 SC 590), the Court *held* that compensation payable on the transfer of an undertaking, under the provisions of *Section 25FF* of the Industrial Disputes Act, falls within the definition, of "wages" under the Payment of Wages Act, and, therefore, an application under Section 15 of the Payment of Wages Act in respect thereof is maintainable.

In *Gopi Chanda* V. *Western Railway* (AIR 1967 Guj. 27), the Court *held* that the refund of an authorised deduction specified in Section 7(2) *cannot* be claimed in an application under Section 15, if the employer has established that the same is authorised. If the question arises as to whether the person demanding such a deduction is competent to do so, the authority's inquiry should be restricted to the question of such competency.

In *Lakpatrai* v. *Om Prakash* (AIR 1966 Raj: 99), the Court *held* that the question of legality or propriety of an employee's dismissal *cannot* be probed by the authority under the Payment of Wages Act.

In *J. N. D'Cruz* v. *Travancore Minerals Ltd.* (AIR 1968 Ker. 121), it was laid down that a retrenched employee is *not* entitled to claim wages by an application under this Act. This is because of his retrenchment subsists until it is set aside and is reinstated with a right to arrears of wages.

In *P. Dorai Kannu* v. *Prop., Hotels Savoy* (AIR 1963 Mad. 201), the Court upheld the contention that an illegally suspended employee is entitled to make a claim under Section 15, despite the fact that he was *not* permitted to work during the period in which he was suspended.

In *Registrar, High Court* v. S. *K. Irani* (AIR 1963 Born. 245), the Court *held* that the authority under Section 15 of the Payment of Wages Act was a Court subordinate to the High Court for the *purpose of the Contempt of Courts Act.*

The Allahabad High Court has *held* that a *bona ride* and serious controversy of facts and law, such as a dispute about the earning of wages by a worker *cannot* be settled in summary proceedings under S. 15 of the Act. (*Muir Mills* v. *Appellate Authority,* 1998 II LLR 5)

The Madhya Pradesh High Court has *held* that under S. 15 of the Act, the authority can call upon any Director of a company to make payment of back wages. (*J. C. Mills Ltd* v. *Payment of Wages Authority,* 2000 I LLJ 47)

The Supreme Court has *held* that the authority under the Payment of Wages Act has no jurisdiction to decide a claim for over-time wages, as it does not come within the definition of "wages" under the said Act.*(Orissa Police Co-op. Syndicate* v. *Binoy Kumar.* A.I.R. SC 1335)

STATE AMENDMENT: Under S. 15A introduced in the erstwhile State of Bombay (and now applicable in the States of Maharashrta and Gujarat), in any proceeding under S.15, the applicant need *not* pay any court-fees, except process fees. In case the applicant is an, inspector, he need *not* pay the process fees also.

Individual Application: The application contemplated by Section 15 is an individual application made by the affected person or by or under his authority. Section 16 which permits a single application in respect of *"the same unpaid group"* is discussed below

C. SAME UNPAID GROUP (S. 16)

Section 16 provides as follows:

(1) Employed persons are said to belong to the *same unpaid group* if they *(i.e.* their names) are borne on the same establishment, and if deductions have been made from their wages in contravention of this Act for the same cause and during the same wage-period or periods, *or* if their wages for the same wage-period or periods have remained unpaid after the day fixed by Section 5.

(2) A *single application* may be presented under Section 15 on behalf j of or in respect of any number of employed persons belonging to j the same unpaid group, and in such case, every person on whose behalf such applications is presented may be awarded maximum compensation to the extent specified in Section 15.

(3) The authority may deal with any number of separate pending applications, presented under Section 15 in respect of persons belonging to the same unpaid group, as a single application presented under Section 15.

While Section 15 deals with application by an affected person or by or under his authority, Section 16, contemplates a *single application* in respect of claims from the

same unpaid group. Such an application is, in reality, an application for and on behalf of the persons belonging to that group and obviates the necessity of each member of such group having to make separate applications.

This section is an *enabling provision* and, therefore, it is *not necessary the* persons who *are* entitled to take advantage of this section, must do so. In other words, while persons constituting the same unpaid group *can* make a single application jointly, there is nothing to prevent an individual member from making a separate individual application under Section 15, if he does not join in a single application under Section 16.

"Same unpaid group": As the right to make a single application under Section 16 is granted to persons belonging to *"the same unpaid group",* it is necessary to consider the meaning of the words *"the same unpaid group."*

As stated above, persons who are employed under an employer belong to the same unpaid group, if:

(i) their *names* are *borne on the muster* rolls of the *same establishment; and*

(ii) *deductions* from their wages *in contravention* of the Act have been *made for the same reason* and *during* the *same wage- period* or *periods; or*

(iii) their *wages* for the *same wage-period or periods* has *remained unpaid* after the day fixed by Section 5.

[Section 5 specifies the time of payment. Reference may be made to that section for the purpose of determining the day fixed for the payment of wages.]

Separate applications treated as single: Under Section 16, when separate applications have already been filed by persons who are entitled to make a single application by virtue of constituting the same unpaid group, the authority *may consider* the separate applications jointly as though they are together, a single application under Section 16.

In *Laxman Pundu* v. *Engineer, Wastern Railway* (AIR 1955 Born. 283), it was pointed out that although Section 16 treats such applications as a single application by members of the same group, the authority must, in his discretion, make separate orders in respect of each individual employee.

In *Bennet Coleman & Co* v. *Pathak* (AIR 1960 S. C. 619) the Court upheld the consolidation of separate applications of persons who constitute "the same unpaid group", and *held* that one trial in respect of such applications is *valid.*

Section 16 does *not* specify that the authority can treat separate applications as a single application only on the application of the persons belonging to the same unpaid group. It follows therefore, that the authority has the power to act on his own initiative in this regard. All that is required to attract the above provisions is the pendency of separate applications *and* the fact that the persons who have made such applications belong to the same unpaid group. The authority may then, on his own initiative, treat the separate applications as though the same were a *single application* made by persons belonging to an unpaid group.

D. APPEALS (S. 17)

The provisions of Section 17, which cover appeals under the Act, may be discussed

under the following *heads:*

(1) Orders which can be appealed against
(2) Limitation
(3) Appellate Authority
(4) Employer's appeals
(5) Employed persons' appeals
(6) Other persons' appeals
(7) Certificate of deposit
(8) Finality of order
(9) Withholding payments
(10) Submission to High Court.

(1) Order which can be appealed against *Section 17(1)* provides for an *appeal against-*

(i) an *order dismissing,* either wholly or partially, an *application* made under Section 15(2); *or*
(ii) A *direction* under Section 15(3) or 15(4).

In *Madras Prov. Type foundry Workers' Union* V. *Ramalinga Mudaliar & Anr.* (AIR 1957 Mad. 68), the Court *held* that an appeal lies when the authority delivers a finding on *merits.* Hence, *no* appeal is maintainable when the authority has *not* decided on the merits of the case, but has merely dismissed the application on the ground of want of jurisdiction.

(2) Limitation

The appeal provided for by this section should be preferred *within* a period of *thirty days from the date of the order or direction.* An appeal which is *not* preferred within the prescribed period of limitation is therefore, *not* maintainable.

(3) Appellate Authority

Under Section 17(1) the *Appellate authority* is:

(i) In a Presidency-town: the *Court of Small Causes;* and
(ii) Elsewhere: the *District Court.*

The aggrieved party must, therefore, appeal against the impugned order or direction either before the Court of Small Causes or District Court, as the case may be, depending upon the place at which the order or direction was made. :

(4) Employer's Appeals

An employer or person responsible for wage payment, is *entitled* to *appeal* under section 17(a); *if:*

(i) the appeal is *against an appealable order or direction; and*
(ii) the *total sum directed to be paid as wages* and *compensation exceeds three hundred rupees; or*
(iii) the *impugned direction involves* the *imposition* of a *financial liability exceeding one thousand rupees.*

An employer can appeal if the challenged direction requires a payment or more than Rs. 300. An appeal, however, is maintainable even though the amount appealed against is Rs. 300 or less, if the total amount directed by the authority to be paid exceeds Rs. 300. *Divisional Superintendent Western Railway* v. *N. L. Dubey,* (1966) II LLJ 700 All.)

(5) Employed person's appeals

Who may appeal : Under Section 17(1)(b), an appeal may be made by or on behalf of an employed person. The *persons competent to appeal* in such a case, are:

(i) the employed person himself; *or*
(ii) any legal practitioner; *or*
(iii) any official of a registered trade union having written authorisation to act on behalf of the employed person; *or*
(iv) *any* inspector under this Act; *or*
(v) any other person allowed by the authority to make an application under Section 15.

Maintainability: Such an appeal is *maintainable if-*

(a) the appeal is against an order which is *appealable under* the provisions of *Section 17; and*
(b) the *total amount* of wages claimed to have been withheld from the employer exceeds *twenty rupees;*

Or

(b) the *total amount of wages* claimed to have been withheld from the *same unpaid group* to which he belongs or belonged *exceeds fifty rupees.*

(6) Other persons' appeals

Under Section 17(1)(c), *any person* who has been *directed to pay penalty* under Section 15(4) may appeal, provided that the appeal is against an appealable order or direction.

(7) Certificate of deposit

In order to ensure that an employer does *not* delay a payment which has been ordered or directed under Section 15, Section 17 provides that an employer must *file,* with the memorandum of appeal, the *authority's certificate* testifying that the employer has *deposited* with him the *amount payable under his direction.* This provision ensures that the employer does *not* take recourse to frivolous appeals with the intention of gaining time to makepayment, *or* to harass his employee.

(8) Finality oforder

Under Section 17(2), except as provided under Section 17(1), an order dismissing wholly or partially the application under Section 15(2) or a direction under Section 15(2) or (4) is *final.*

(9) Withholding payment

Once the employer files an appeal against an order or direction of the authority under the Act, such authority-

(a) *may* withhold payment for any sum, deposited, pending the disposal; *and*
(b) *shall* withhold such payment during the appeal's pendency, if so directed by the Appellate Court.

(10) Submission to High Court

Section 17(4) enables the Appellate Court to *refer* any question of *law* to the *High Court for its decision* thereon. This enables the Appellate Court to have the authoritative finding of the High Court on any question of law that needs to be interpreted or decided. Once such a submission to the High Court has been made, the Appellate Court is *bound* to decide the question in keeping with the High Court's decision.

While only those appeals which are permitted under the provisions of Section 17 are maintainable, parties who fall under the provisions of Section 17 are *not* precluded from obtaining relief from the High Court in the exercise of its powers of revisions or under Articles 226 and 227 of the Constitution.

While the Authority under Section 15 is a *'persona designate,* the Appellate Court is *not* so, and is, in fact, regarded as a Civil Court under the jurisdiction of the High Court, and subordinate to the latter. *(North Eastern Railway* v. *Paras Nath,* AIR 1967 All. 576)

In *Jaswant Sugar Mills* v. *The Authority, Payment of Wages Act* (AIR 1962 All. 77), the Court *held* that if the order under challenge is *not* in respect of "wages" as defined in the Act, the provisions relating to appeals under Section 17 are *not* attracted.

As there is no provision for the condo nation of delay in preferring the appeal, the question of urging "sufficient cause" for the purpose of condoning delay does *not* arise. *(Armugham* v. *Jawahar Mills,* AIR 1956 Mad. 79)

It was also *held* in the above case, that for the purpose of limitation, *time begins* to *run* from the date on which the authority's order was *effectively made known* to the aggrieved party.

In *Bennett Coleman & Co.* v. *Pathak* (AIR 1960 S.C. 619), the Court *held* that in the case of an appeal arising out of the authority's order on a single application by the same unpaid group, the requirement of the direction involving more than Rs. 300 is *not* to be construed to mean that the direction should involve more than Rs. 300 in the case of *each* of the members of such group.

In *Parimi Veenkanna* v. *Modern Spun Pipe Co.* (1974) II L.L.J. 347, A.P.), it was pointed out that when a statute confers appellate powers on a Court, the same are strictly conditioned and restricted to the provisions relating to the same. Thus, an Appellate Court *cannot,* in appeal, purport to exercise powers *not* granted or contemplated by the provisions of the Act.

In *Municipal Council, Udaipur,* v. *Khubilal,* 1991 (62) F. L. R. 688, it was *held* that no appeal under S. 17 is maintainable *only against the grant of compensation.* Grant of compensation is a matter of discretion, which the Appellate Court will *not* interfere with.

A strict compliance with the provisions of S. 17 is *necessary,* and no *appeal* will lie unless the procedure prescribed by S. 17 is followed. *(Executive Engineer, UPSEB* v. *Prescribed Authority,* 20002 II LLR 759)

The Andhra Pradesh High Court has clarified that the period of 30 days' limitation starts from the date on which the Order is communicated and *not* from the date on which the

Order is made. *(Gram Panchayat Committee* v. *Gaddam Lingaiah,* 1997 (3) LLN 811)

E. ATTACHMENT OF PROPERTY (S. 17A)

The provisions of Section 17A grant the power to the Authority and the Appellate Court to order *conditional attachment* of the property of the employer or person responsible for payment of wages, in the circumstances mentioned in the section.

Object: This section intends to prevent evasion by the employer or person responsible for wage payment, of payment directed to be paid by the Authority or Appellate Court.

Time of making attachment: The conditional attachment may be ordered:
(a) *at any time after an application* has been made to the Authority under Section 15(2); *or*
(b) *at any time after an appeal has been filed* before the Appellate Court under Section 17.

Satisfaction: The Authority or the Appellate Court must be *satisfied* that the employer or person responsible for wage payment is *"likely to evade payment of any amount"* directed by the Authority or Appellate Court to be paid to the employed person.

It is settled law that in the absence of any restraining words in this section, the action contemplated by this section may be initiated *suo motu or* on application of a party apprehending such evasion.

Opportunity of being heard: S. 17A requires that the employer or other person responsible for wage payment be given an *opportunity of being heard* prior to making the order of conditional attachment. This is intended to enable the person who is likely to be affected by the proposed order to *have his say,* and is, therefore, in consonance with the principle of *natural justice* that requires that *no person should be condemned unheard.* However, the provision lor giving such an opportunity may be dispensed with in cases where the ends of justice would be defeated by the delay.

It is submitted that the words *"cases where the ends of justice would be defeated by the delay"* appearing in the section, qualify the provisions requiring that the employer or other person responsible for wage payment be given an opportunity to be heard. There is a difference of opinion on this point as some feel that the words quoted above enable the Authority or the Appellate Court to refuse to order an attachment on these grounds. It is submitted that the correct view is that these words relate to the opportunity of being heard, as the same is susceptible of causing delay.

Powers conferred by Section 17A: After being satisfied as stated above, and on following the specified procedure, the Authority or Court is entitled to *direct attachment of so much of the property* of the employer or person responsible for wage payment as is, in the opinion of the Authority or the Appellate Court, sufficient to *cover the quantum of the amount directed to be paid.* Thus, the Authority or Appellate Court *cannot* order attachment of more property than is required, in its opinion, to satisfy the amount directed to be paid.

In *Kishan Chand* v. *City Magistrate* (1973 Lab. I. C. 716 All.), it was *held* that an attachment under Section 17A *cannot* be ordered in respect of *all* the property of the

employer without reference to the amount directed to be paid.

As the word "*attachment"* has *not* been defined in the General Clauses Act, its ordinary dictionary meaning is applicable. *"Attachment**- implies the seizure by means of legal process or order of property in order to secure the payment of any amount due.

Attachment before judgment: Section 17A also makes the provisions of the Civil Procedure Code relating to attachment before judgement applicable to an attachment order made under Section 17A.

F. POWERS OF AUTHORITY (S. 18)

Section 18 of the Act prescribes the powers of the Authority appointed under Section 15, for the purposes mentioned therein.

Every Authority appointed under Section 15(1) has been conferred with all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of:

(a) taking evidence,
(b) enforcing the attendance of witnesses, *and*
(c) compelling the production of documents.

Every such Authority is deemed to be Civil Court for all the purposes of Section 195 and of Chapter XXXVI of the Code of Criminal Procedure, 1973.

This section grants to the Authority, the powers of a Civil Court only I for the *purpose specified* in Section 18. Thus the Authority's powers I as a Civil Court are *restricted* to the said purposes.

The fact that this section confers on the Authority certain specified powers enjoyed by a Civil Court should *not* lead to the *error* of equating the status of the Authority with that of a Civil Court for *all* purposes. As *held* in *Noor Ali* v. *Omnibus Service Ltd.,* (AIR 1955 All. 707), the Authority under the Payment of Wages Act is *not* a Civil Court for the purposes of Section 14 of the Limitation Act. The Authority is *not* a Civil Court for purposes *other than* specified by Section 18 of the Payment of Wages Act, as it is well settled that the Authority is a *"persona designata."*

The Authority is regarded as a "Civil Court" *under Section 195* and *Chapter XXXVI* of the *Criminal Procedure Code.* This merely means that the protection granted by these provisions of the Criminal Procedure Code is extended to the Authority under the Payment of Wages Act.

SUMMARY OF POWERS & FUNCTIONS OF AN AUTHORITY APPOINTED UNDER S. 15

(1) He can hear and decide all claims arising out of *deductions from wages, delays in payment,* and all *incidental matters.*
(2) As the authority exercises *quasi-judicial functions,* he must:
(a) *give reasons* for Orders passed under S. 15;
(b) observe the *principles of natural justice.*
(3) He has the *discretion to condone delay,* in filing an application, if sufficient cause is shown.
(4) When an application is filed, the authority must hear the parties, *follow the prescribed*

procedure, and if satisfied, must *direct the refund of the deduction or* the *payment of the delayed wages.*

(5) He can also grant *compensatory payments* within the prescribed limits.

(6) He can *impose a penalty—*

(a) if he is satisfied that the application was malicious or vexatious; *or*

(b) if he is satisfied that the applicant should *not* have been compelled to seek redress under the Act.

(7) He has to decide disputes regarding the person who are the *legal representatives* of the employer or the employed person. (His decision in this regard is *final.)*

(8) An inquiry conducted by an authority is regarding is a “judicial proceedings” for the purposes of Ss. ’93, 9a,228 of the Indian Penal Code.

(9) If an employer files an *appeal* against an order passed by the authority,-

(i) he *may* withhold payment of any sum deposited with him, pending disposal of such appeals; *and*

(ii) he *must* withhold such payment, pending such disposal, if so directed by the Appellate Court.

(10) The authority can order the *conditional attachment* of the employer's property, following the procedure prescribed by S. 17A.

(11) The authority has all the *powers of a civil court* under the Code of Civil Procedure Code, for the purpose of (a) taking evidence, (b) enforcing the attendance of witnesses, *and* (c) compelling the production of documents.

(12) The authority is deemed to be a *civil court* for the purposes of S. 195 and Ch. XXXVI of the Code of Criminal Procedure.

[Note: All the above *functions* and *powers* of an authority have been discussed above in detail.]

CHAPTER VI

MISCELLANEOUS PROVISIONS

The following miscellaneous topics are discussed in this Chapter:

A. Offences (S. 20)
B. Procedure in trial (S. 21)
C. Bar of suits (S. 22)
D. Action in good faith (S. 22A)
E. Contracting out (S. 23)
F. Delegation of powers (S. 24)
G. Display of abstracts of the Act (S. 25)
H. Rule-making power (S. 26)

A. OFFENCES (S. 20)

S. 20 of the Act provides for penalties for offences under the Act. It lays down as follows:

(1) Whoever, being responsible for payment of wages to an employed person, contravenes any of the provisions of sections 5 (except sub-section (4) thereof), 7, 8 (except sub-section (8) thereof), 9, 10 (except sub-section (2) thereof) and sections 11 to 13 (both inclusive), becomes punishable with fine, which *cannot* be less than Rs. 1,500, but which may extend to Rs. 7,500.

(2) For contravention of the provisions of sections 4 5(4), 6, 8(8), 10(2) or 25, the punishment is fine upto Rs. 3,750.

(3) Whoever being required to nominate a person under section 3 fails to do so, becomes punishable with fine which may extend to Rs. 3,000.

(4) if any person required under the Act to maintain any records or registers or to furnish any information or return-

(a) fails to maintain such register or record; or
(b) wilfully refuses or without lawful excuse, neglects to furnish such information or return; *or*
(c) wilfully furnishes or causes to be furnished, any information or return which he knows to be false; *or*
(d) refuses to answer or wilfully gives a false answer to any questions necessary for obtaining any information required to be furnished under this Act,

he is made punishable, for *each* such offence, with fine which *cannot* be less than Rs. 1,500, but which can extend to Rs. 7,500.

(5) Whoever—

(a) wilfully obstructs an inspector in the discharge of his duties under this Act; *or*
(b) refuses or wilfully neglects to afford an inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorised by or under this Act in relation to any railway, factory, or industrial establishment; *or*
(c) wilfully refuses to produce on the demand of an inspector, any register or other document kept in pursuance of this Act; *or*
(d) prevents or attempts to prevent, or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act,

becomespunishable with fine which *cannot* be less than Rs. 1,500, but which can extend to Rs. 7,500.
(6) If any person who has been convicted of any offence punishable under this Act is *again guilty* of an offence involving contravention of the same provision, he is punishable on a subsequent conviction, with imprisonment for a term which *cannot* be less than 1 month, but which may extend to 6 months, and with fine which *cannot* be less than Rs. 3,750, but which can extend to Rs. 22,500.

However, no cognizance can be taken of any conviction made more than *two years* before the date on which the commission of the offence which is being punished came to the knowledge of the inspector.
(7) If any person fails or willfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall, without prejudice to any other action that may be taken against him, be punishable with an *additional fine* which may extend to Rs. 750 for each day for which such failure or neglect continues.

B. PROCEDURE IN TRIAL (S. 21)
Under *Section 21:*
(1) No Court can take cognizance of a complaint against any person for an offence under Section 20(1), *unless* an application in respect of the facts constituting the offence has been presented under S. 15, and has been granted wholly or in part, and the authority empowered under S. 15 or the Appellate Court granting such application has *sanctioned* making of the complaint.
(2) Before *sanctioning* the making of a complaint against any person for an offence under Section 20(1), the authority empowered under Section 15 or the Appellate Court, as the case may be, must give such person an *opportunity of showing cause* against granting of such sanction, and the *sanction is not to be granted if* such person *satisfies* the Authority or Court that his *default* was *due to:*
(a) a *bona ride* error or *bona ride* disputes as to the amount payable to the employed person; *or*
(b) the *occurrence* of an *emergency* or the existence of *exceptional circumstances,* such that the person responsible for the payment of the wages was unable, though exercising responsible diligence, to make prompt payment; *or*
(c) the *failure* of the employed person to *apply* for or *accept* payment.
(3) No Court can take cognizance of a contravention of Section 4 or 6, or of a contravention of rules made under Section 26, *except* on a *complaint* made by or with the *sanction* of an Inspector under this Act.
(3A) *No Court* can take cognizance of any offence punishable under Section 20(3) or (4), except on a *complaint* made *by* or *with* the *sanction* of an Inspector under this Act.
(4) In imposing any fine for an offence under Section 20(1), the Court must *take into consideration* the amount of any *compensation* already awarded against the accused in any proceedings taken under Section 15.

Opportunity to show cause: An order of sanction for prose-cution *cannot* be passed -
(i) *without* the party proposed to be prosecuted being given an *opportunity* to *show cause against* the *sanction, and*
(ii) *if* such party *satisfies* the *Authority* of the *Appellate Court* that his *default* was on *account of any* of the *factors mentioned* in clauses (a) to (c) of Section 21(2).

Certain Offences: In the case of *certain offences* referred to in subsection (3) and (3A) of Section 21, the complaint must be made *by or with the sanction of an Inspector* under

the Act.

It may be noted that where *sanction is required,* the same must be obtained or ordered *prior* to the Court taking cognizance of the offence. Where a previous sanction is essential, the failure to obtain the same is fatal to the prosecution case.

In *H.N. Risbud.* v. *State of Delhi* (AIR 1955 S. C. 196), the Court *held* that when prior sanction is prescribed by an imperative provision relating to cognizance of the offence, the absence of such sanction is an illegality which strikes at the root of the case. In such a case, the trial and conviction is liable to be set aside.

In *Jaswant Singh* v. *State of Punjab* (AIR 1958 S. C. 124), it was pointed out that when sanction is required for prosecution in respect of offences, such sanction should be obtained in respect of *each* of the offences. Thus, it *cannot* be contended that because sanction has been obtained in connection with one offence, the same should be extended to the other offences as well.

In short, the requirements as to sanction should be strictly construed and failure to comply with the same should necessarily be *held* against the prosecution.

Quantum of fine: When any compensation has already been granted against the accused in any proceedings under Section 15, the provisions of Section 20(4) bind the Court to *take the same into account while ordering* the payment of any *fine* on conviction of an offence under Section 20(1) of the Act.

C. BAR OF SUITS (S. 22)

Vide S. 22, *no Court can entertain any suit* for the *recovery* of wages or of any deduction from wages in so far as the sum so claimed-

(a) forms the *subject* of an *application* under Section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that Section, or of an appeal under Section 17; or
(b) has formed the *subject* of a *direction* under Section 15 in favour of the plaintiff; *or*
(c) has been *adjudged,* in any proceeding under Section 15 *not* to be owed to the plaintiff; *or*
(d) *could have been recovered* by an application *under Section 15.*

As the *Payment of Wages Act, 1936,* provides a special forum and remedy for recovery of wages and other reliefs mentioned in Section 22, this section excludes the jurisdiction of ordinary Civil Courts in respect of the same.

The bar to an ordinary Civil Court's jurisdiction is attracted when the suit relates the recovery of wages or of any deduction from wages, in so far as such sum claimed is covered by any of clauses (a) to (d) of Section 22.

The *object* underlying the provisions of Section 22 is the *need to avoid multiplicity of proceedings.* As the ordinary Court's jurisdiction is excluded by this section, the bar operates *strictly in relation to matters covered* by the provisions of this section. In other words, a civil suit will lie in the case of a question which is *not* covered by this section. The provisions of this section should be strictly limited to what is expressly barred thereby.

When jurisdiction not barred: As stated above, the jurisdiction of an ordinary Civil Court is *not barred* if the subject-matter of such suit is outside the scope of the matters referred to in Section 22.

If a person files a civil suit in respect of an amount which *cannot* be recovered by an application under Section 15 of the Payment of Wages Act, the suit is maintainable, as the bar under Section 22 will *not* be attracted.

Thus, in *Simplex Manufacturing Co. Ltd.* v. *Alla-ud-Din* (AIR 1945, Lah. 195), the Court *held* that as the Commissioner does *not* have the jurisdiction to decide a dispute regarding the quantum of wages, a suit regarding the same is *not* hit by the provisions of Section 22.

Further a suit for the recovery of any amount which does *not* fall within, or is expressly excluded from, the definition of "wages" contained in Section 2(vi), *cannot* be barred by Section 22. On this reasoning, a civil suit, in relation to items (1) to (6) excluded by the definition of "wages" in Section 2 (iv) will lie in an ordinary Civil Court.

Bar: **When application "could have been" made**: The bar created by Section 22 applies *not only* when the subject-matter of this suit is the subject-matter of an application under the Act, *but also* when the amount claimed in the suit **could have been recovered* by an application under Section 15".Thus, when an application to recover an amount under Section 15 lies, the omission, failure or neglect to make such an application disentitles the claimant from filing a civil suit.

Strict Construction: It is settled law that when a special authority is set up to decide questions in respect of which the jurisdiction of the ordinary Civil Courts is excluded, the powers and functions of such Authority should be restricted to the provisions of the Act that creates it. Such an authority has been often described as a "*creature of the statute*" that creates it, and is, therefore, strictly conditioned by its provisions. The authority has exclusive jurisdiction in respect of matters allotted to by or under the provisions of the Act. Matters *not* falling within the purview of its jurisdiction *cannot* be entertained by it; nor can the jurisdiction of the ordinary Civil Courts be excluded in respect thereof.

In A. *R. Sarin* v. *B. C. Patil* (63 B. L. R. 674), the Court observed that the jurisdiction exercised by such an authority must be strictly limited to the provisions of the statute that establishes it.

In *William Goodacre & Sons* v. *Mathan* (AIR 1957 Ker. 16), the Court *held* that as bonus is *not* within the scope of "wages" as defined in Section 2(iv), a suit to recover the same is *not* barred by the provisions of Section 22.

In *Kuttappa* v. *Dharamchand,* (1967 II LLJ 603) a suit for arrears of salary was *held* to be maintainable, as the provisions of Section 22 of this Act do *not* operate as a bar in view of the fact that the nature of the claim was *not* one which is required by the Act to be made exclusively before the authority under Section, 15 of the Act.

In Inder *Singh* v. *Labour Court* (AIR 1969 Punj. 310), a Division Bench of the Court *held* that a employee is entitled to make an application for recovery of *money* from an employer under Section 33(2) as the same is *not* a "suit", and Section 22 of the Payment of Wages Act *cannot* be applied to bar the same.

D. ACTION IN GOOD FAITH (S. 22A)

No suit, prosecution or other legal proceeding will lie against the Government or any officer of the Government for anything which is in *good faith done or intend* to be done under this Act. (Section 22A)

As the words *"good faith"* are *not defined* in the Act, the definition in Section 3 (21) of the General Causes Act will apply : "A thing shall be deemed to be done in 'good faith', where it is, in fact, done *honestly,* whether it is done negligently or *not."*

E. CONTRACTING OUT (S. 23)

Any *contract or agreement,* whether made before or after the commencement of this Act, whereby an employed person *relinquishes* any right conferred by this Act is declared (by S. 23) to be *null and void,* in so far as it purports to *deprive* him to such right.

The *object* of the provisions of *Section 23* is to prevent unscrupulous employers from taking advantage of the ignorance or helplessness of employees. This Section prohibits any contract or agreement which has the effect of the employed person relinquishing any right which is conferred by the Act. Any such agreement is rendered *null and void,* in so far as it seeks to deprive an employed person of his rights under the Act.

In the absence of the provisions contained in Section 23, employers, by means of pressure or undue influence, would have managed to obtain from the employees, agreements under which the latter give up their rights.

This provision against 'contracting out' is in keeping with the beneficent nature of the statute. It is against the object and policy of the Act to allow such 'contracting out', because had the same *not* been forbidden, the very purpose of the provisions of the Act would have been defeated.

In *Rashtriya Mill Mazdoor Sangh* v. *B. A. Ekbote* (AIR 1971 Born. 31), the Court *held* that a *bona ride* agreement between the employer and the employed person in respect of a dispute regarding the quantum of illegal deduction is *not* hit by Section 23, as the same does *not* have the effect of depriving the employed person of his rights.

The application of the prohibition against contracting but is attracted when a person for whose benefit the legislation has been enacted purports to waive his rights under the law by means of an agreement or contract.

The High Court of Karnataka has observed that S. 23 does *not prevent an* employee from entering into an agreement which is *advantageous or beneficial* to him. It was, therefore, *held* that the trade union subscription deducted by the employer from the monthly salary of the employee under an agreement entered into by the bank (employer) with its employee was *not* hit by S. 23 of the Act. (*Karnataka Bank Employees Association* v. *Commissioner of Labour,* 1980 1 LLJ, 97)

In another case, an employer revised the wage structure of his workers under a Scheme where under the basic wages and dearness allowance were increased, but the servant allowance was abolished, the net result being that the total wages were *not* reduced. The court *held* that this arrangement *cannot be* said to violate S. 23, observing that a

valid contract between an employer and an employee, under which the contract of service is modified as regards the wage amount, is *not* by S. 23 of the Act. *(Dinaram Chutiya* v. *Divisional Manager,* AIR 1958, Assam)

In *Maharaja Mills* v. *Collector of Pali* (1960 II LLJ 364), a Division Bench of the Rajasthan High Court *held* that when a change in the wage structure, which may have been necessitated by the circumstances prevailing in a specified industry is brought about by an agreement between the employer and the employed person, the same is *not invalid* by virtue of the provisions of *Section 23,* as the Payment of Wages Act does *not* create any right in the employed persons to receive any specified wage without reference to an agreement between the parties.

In the *Union of India* v. *Kundan Lai* (AIR 1957 All. 363), it was *held* that when, by an agreement, an employed person relinquishes his right to make an application under Section 15 of the Act, the agreement *cannot* be enforced, as it is one that is prohibited by Section 23.

[See also, 'Contracting Out' under S. 17 of the Employee's Compensation Act, discussed in an earlier Chapter.]

F. DELEGATION OF POWERS (S. 24)

S. 24 *(as amended in 2005)* lays down that the appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under the Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be also exercisable -

(a) where the appropriate Government is *the Central Government* - by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government as may be prescribed in the Notification;
(b) where the appropriate Government is *a State Government* - by such officer or authority subordinate to the State Government as may be specified in the Notification.

In *State of Rajasthan* v. *Mansharam* (AIR 1965 Raj. 168), it was *held* that an Inspector appointed under the Act in respect of the railways or other categories mentioned in the Section, can legally be so appointed to discharge his duties as an Inspector, if appointed by the Central Government.

G. DISPLAY OF ABSTRACTS OF THE ACT (S. 25)

Under *Section 25,* the person responsible for the payment of wages to persons employed in a factory shall *cause to be displayed* in such factory, a *notice containing* such *abstracts* of this *Act* and of the Rules made thereunder in English and in the language of the majority of the persons employed in the factory, as may be prescribed.

The *purpose* of this Section is to enable employees to know the basic provisions of the Act. As the Act has been enacted for the benefit of employees, it is essential that they be conversant with its provisions in order to enable them to avail of their rights thereunder. According to the requirements of Section 25, a *duty* is cast on the person responsible for

payment of wages to cause to be displayed in the factory, a notice containing the abstracts of the Act and rules in English and the majority local language.

H. RULE-MAKING POWER (S. 26)

Section 26 confers *rule-making power* on the State and Central Government respectively, as specified in the section.

(1) The appropriate Government may make rules to regulate the procedure to be followed by the authority and Courts referred to in Section 15 and 17.

(2) The appropriate Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, the rules made under sub-section (2) may-

(a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act, prescribe the form thereof, and the particulars to be entered in such registers or records;
(b) require the display in a conspicuous place on premises where employment is carried on, of a notice specifying rates of wages payable to persons employed on such premises;
(c) provide for the regular inspection of weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;
(d) prescribe the manner of giving notice of the days on which wages will be paid;
(e) prescribe the authority competent to approve under Section 8(1) of acts and omissions in respect of which fines may be imposed;
(f) prescribe the procedure for imposition of fines under Section 8 and for the deductions referred to in Section 10;
(g) prescribe the condition subject to which deductions may be made under the proviso to Section 9(2);
(h) prescribe the authority competent to approve the purposes for which the proceeds of fines shall be expended;
(i) prescribe the extent to which advances may be made and the instalments by which they may be granted with reference to Section 12(b);
(ia) prescribe the extent to which loans may be granted and the rate of interest payable thereon with reference to Section 12A;
(ib) prescribe the powers of inspectors for purposes of this Act;
(j) regulate the scales of costs which may be allowed in proceedings under this Act;
(k) prescribe the amount of *ad valorem* or fixed court-fees payable in respect of any proceeding under this Act;
(I) prescribe the abstracts to be contained in the notice-required by Section 25;
(la) prescribe the form and manner in which nominations may be made for the purposes of S. 25A(1), the cancellation or variation of any such nomination or the making of any fresh nomination in the event of the nominee predeceasing the person making nomination and other matters connected with such nominations;
(lb) specify the authority with whom amounts required to be deposited under Section 25A (1)(b) shall be deposited and the manner in which such authority shall deal with the amounts deposited with it under that clause; *and*
(m) provide for any other matter which is to be, or may be, prescribed.

(4) In making any rule under this Section, the appropriate Government may provide that a contravention of the rule shall be punishable with fine which *cannot* be less than Rs. 750 but which may extend to Rs. 1,500.

(5) All rules made under this section are subject to the condition of previous publication, and the date to be specified under Section 23(3) of the General Clauses Act, 1897, should *not* be less than *three months* from the date on which the draft of the proposed rules was published.
(6) Every rule made by the Central Government under this section is to be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions; if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree that the rule should *not* be made, the rule thereafter has effect, only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment is without prejudice to the validity of anything previously done under that rule.
(7) All rules made under section 26by the State government are to be laid, as soon as possible after they are made, before the State Legislature.

The principles governing the provisions of an Act and Rules made thereunder are well-settled, and may be summed up as follows.

(i) Once rules are validly made under an Act, they are deemed to be part of the Act itself. The learned author, *Maxwell,* has observed that such rules are of statutory effect for the purposes of construction and obligation.
(ii) Delegation of powers enables the Government to frame rules under the statute.
(iii) In the case of a conflict between the provisions of the Act and those of the Rules, the *former* must have precedence over the latter.
(iv) A rule *cannot* widen the scope of the Act. It must be within the ambit of the main legislation, as it is the latter that lays down the limits of the rule-making power in consonance with the provisions of the Act.
(v) As pointed out in *State of Bombay* v. *United Motors (India) Ltd.* (A.I.R. 1953 S.C. 252), rules which are *ultra wires,* either the provisions of the Act or the authority to frame such rules, are liable to be struck down.
(vi) In *P. C. Bhatv. K. R. Nath* (A.I.R. 1954 Born. 518), the Court *held* that in the event of a difficulty in construing any provision of an Act, the Rules made thereunder may be referred to, to throw light on their proper interpretation. When a statutory provision is ambiguous or is susceptible of different interpretations, reference may be made to Rules for guidance.

PRT III

THE INDUSTRIAL DISPUTES ACT, 1947

(As amended by the Industrial Disputes (Amendment) Act, 2010)

CHAPTER I

PRELIMINARY

The following four topics are discussed in this Chapter:

A. Background
B. Object and Purpose
C. Extent, Scope and Application
D. The Act at a glance.

Questions:
What is the object of the Industrial Dispute Act? (2 marks) B. U. Nov. 2011 Apr. 2016
Name two objects of the I. D. Act, 1947. (2 marks) B. U. Apr. 2014

A. BACKGROUND

Starting with the Bengal Regulation VII of 1819, Labour Law has come a long way with the enactment of the Industrial Disputes Act, 1947, and other labour legislation. The main labour laws prior to the Industrial Disputes Act, 1947, were the following:

(1) The Workmen's Breach of Contract Act, 1859
(2) The Employments & Workmen's (Disputes) Act, 1860
(3) The Trade Disputes Act, 1920
(4) The Indian Trade Unions Act, 1926
(5) Trade Disputes Act, 1929
(6) Bombay Trade Disputes (Conciliation) Act, 1934
(7) The Trade Disputes (Amendment) Act, 1938.

The *major shortcoming* of these Acts was that settlements or awards under these Acts were *not binding or conclusive.* Whilst the Trade Disputes Act, 1929 banned strikes, it did *not* provide an alternative mode of redressing the grievances of workmen. Moreover, under this Act, relief was given *only* to a few categories of workmen. The provisions of this Act provided for reference of existing or apprehended disputes to a Board of Conciliation or a Court of Enquiry, but if the conciliation proceedings failed, then there was no further provision for settlement of disputes. .

During World War II, the Defence of India Rules were promulgated, under which, for the first time, Rule 81-A made a provision for the enforcement of awards. This principle of

compulsory enforcement of awards has now been incorporated in the Industrial Disputes Act.

Under the *Bombay Trade Disputes (Conciliation) Act, 1934* standing machinery, including a permanent cadre of conciliators, was provided to promote industrial peace and harmony.

Rule 81-A of Defence of India Rules, 1939, empowered the Government to prohibit strikes and lockouts, and refer existing and apprehended disputes for conciliation and compulsory enforcement of awards. This rule was made permanent, as the Industrial Disputes Act was drawn on the lines of this Rule and the Trade Disputes Act, 1929.

B. OBJECT AND PURPOSE

(1) According to the Preamble, the Industrial Disputes Act makes provision for the *investigation and settlement of industrial disputes,* and certain other purposes.
(2) The *object* of the Act is to achieve the promotion of harmony in labour-capital relationship.
(3) It provides a machinery for the settlement of industrial disputes by *arbitration or adjudication.*
(4) It attempts to ensure social justice and economic progress, by fostering *industrial harmony.*
(5) It enables workmen to achieve their demands by means of the legitimate weapon of strikes, and thus facilitates collective bargaining.
(6) It prohibits illegal strikes and lockouts.
(7) It provides relief of workmen in the event of a lay-off or retrenchment.
(8) It enables the State to play a constructive role in employer- workmen relationship, in keeping with the concept of a Welfare State.

In *Claridge & Co. Ltd.* v. *Industrial Tribunal, Bombay,* it was *held* that the *purpose of the Act* is to provide machinery for a *just and equitable settlement by* adjudication by independent Tribunals, by negotiations and by conciliation of industrial disputes. It substitutes arbitration and fair negotiation, instead of trial of strength by strikes and lockouts.

As observed in *Hari Prasad Shivshankar* v. *A. P. Divelkar,* the *purpose* of all labour legislation is to provide fair wages and to prevent disputes, so that production might *not* be adversely affected.

In *Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estate* (AIR 1958 SC 353), the Court observed that the *main purpose of this Act* is to enable collective bargaining and to observe industrial peace by providing for recourse to the machinery and processes under the enactment.

As observed by the Supreme Court, the present Act was enacted for investigation and settlement of industrial disputes. It envisages collective bargaining and settlement between the union representing the workmen and the management. Industrial peace and harmony is the ultimate pursuit of the Industrial Disputes Act, having regard to the underlying philosophy involved therein. *(Steel Authority of India v. Union of India,* AIR 2006 SC 3229)

Accordingly to the Supreme Court, the *object* of the Act is to ensure social justice both to

the employers and the employees and also to advance the progress of industry by bringing about harmony and cordial relationship between the parties. It is a piece of legislation providing and regulating the service conditions of the workers. (*Ajaib Singh v. Sirhind Coop Marketing Service Society Ltd.,* AIR 1999 SC 1351)

C. EXTENT, SCOPE AND APPLICATION

The Act came into force on 1st April, 1947, and extends to *the whole of India.* It applies to the State of Jammu and Kashmir only to the extent to which the Act applies to Government of India workmen.

Although *Section 1* provides that the Act applies to the whole of India, it may be noted that the subject-matter of the Act is in the Concurrent List of the Indian Constitution, and therefore, the States are also entitled to make their own laws on the subject.

As "TradeUnions, Industrial Labour Disputes" are in the Concurrent List, the States have their own labour laws as well. In case of repugnancy between Central and State laws, Article 254 of the Indian Constitution applies and the Central law will prevail.

In *Ahmedabad Millowners' Association* v. *I. G. Thakur, President, Industrial Court* (5 Guj. L. R. 705), the Court considered the relationship between the Industrial Disputes Act and the Bombay Industrial Relations Act, and *held* that there is no conflict between the two, as long as the Central legislation did *not* provide for all that is covered by the State legislation. On a harmonious construction, both the Acts can exist and operate side by side.

D. THEACT AT A GLANCE

The Act relates to all the relevant aspects of the Industrial relations ' machinery, namely, collective bargaining, mediation and conciliation, arbitration, adjudication and matters incidental thereto.

Section 2 deals with the definition of important concepts, such as industry, industrial dispute, workmen, employer, wages, appropriate government, the conciliation, arbitration and adjudication authorities under the Act, strike, lockout, retrenchment, lay-off, *etc.*

Section 2A was introduced by an Amendment in 1965, and makes provision for cases when the dismissal of an individual workmen is deemed to be an industrial dispute.

Chapter II, comprising of Sections 3 to 9, deals with the authorities under the Act, namely, the Works Committees, Conciliation Officers, Boards of Conciliation, the Court of Inquiry, the Labour Courts, Industrial Tribunals and National Tribunals.

Chapterll-A relates to the obligations of the employer to give notice of change before effecting a change in respect of certain matters specified in the Fourth Schedule.

The Act provides for reference, by the appropriate Government, of I industrial disputes to a Board, Court, Tribunal, or National Tribunal under *Section 10.* Under *Section 10(2)* the appropriate Government is obliged to make a reference on joint or separate application of the parties to the dispute, if the necessary conditions are satisfied *Section 10A* deals

with voluntary references of disputes to arbitration.

Chapter IV (Sections 11 to 21) covers the procedure, powers and duties of the authorities under the Act.

Chapter V (Sections 22 to 25) deals with strikes and lockouts. While Section 22 prohibits strikes and lockouts in *public utility services* if the provisions of that section are *not* complied with, *Section 23* lays down the conditions which *must* be observed before there can be a strike or lockout in *any industry.*

Section 24 specifies the circumstances under which strikes and lockouts are *illegal. Section 25* prohibits financial aid to illegal strikes and lock-outs.

Chapter VA (Sections 25A to 25J) may be divided into two parts: (1) *Sections 25A* to *25E* cover lay-off and (2) *Sections 25F* to *25J* deal with retrenchment.

Chapter VB contains *Sections 25K* to *25S,* which relate to special provisions governing *lay-off* and *retrenchment* in certain industrial establishments.

Sections 26 to 31 deal with penalties under the Act.

Chapter VII deals with miscellaneous subjects. The most important of them is contained in *Section 33,* which provides that conditions of service are to remain unchanged under certain circumstances during the pendency of conciliation, arbitration or adjudication proceedings. This Section also deals with the important topic of “protected workmen”.

The Act has *five Schedules:*
The First Schedule specifies industries which may be declared public utility services.

The Second Schedule covers matters which are within the Labour Court’s jurisdiction.

The Third Schedule deals with matters within the Industrial Court’s jurisdiction.

The Fourth Schedule indicates matters regarding which the employer is required to give a *notice of change.*

The *Fifth Schedule* contains a list of Unfair Labour Practices.

All these Schedules have been reproduced at the end of the book.

CHAPTER II

SOME BASIC CONCEPTS

The following topics are considered in this Chapter:
A. Industry
B. Industrial Dispute
C. Employer
D. Workman
E. Other terms defined:
(1) Appropriate Government
(2) Arbitrator
(3) Average pay
(4) Award
(5) Banking company
(6) Board
(7) Closure
(8) Conciliation Officer
(9) Conciliation Proceedings
(10) Controlled industry
(11) Court
(12) Executive
(13) Industrial Establishments or Undertakings
(14) Insurance company
(15) Khadi
(16) Labour Court
(17) Lay-off
(18) Lockout
(19) Public utility service
(20) Retrenchment
(21) Settlement
(22) Strike
(23) Trade Union
(24) Tribunal
(25) Unfair labour practice
(26) Village industries
(27) Wages.

Questions:
Define industry under the I D Act 1947 illustrate your answer with case laws M.U. Apr 2013
Explain the term industry under the industrial disputes Act 1947 M.U. Nov 2011, May 2012, Nov 2013.
Write a short note on: Industry under the industrial Disputes Act M.U. Nov 2014, Apr 2016
Explain the concept of industry under the industrial Disputes Act, Disputes Act, Discuss with special reference to Bangalore Water Supply case.
Write a short note on: industrial Dispute M.U. Nov 2011

Explain industrial Dispute under the industrial Dispute Act with case laws. M.U. Apr 2011, Apr 2016, Apr 2017
Is a written demand necessary for raising an industrial dispute under the ID Act? M.U. Apr 2015, Nov 2015.
Define industrial dispute, can individual workman's dispute be industrial dispute? M.U. Nov 2012, Nov 2014, May 2018
Who is an "employer" under the I.D. Act? (2 marks) B.U. Apr. 2011 Nov. 2013 Jan. 2017
Define: "Workman" under the I.D.Act and state who are not workmen, with case laws. M.U. Apr. 2014 May 2016
Analyse the definition of "workmen" under the Industrial Disputes Act. M.U. May 2012
*Write a short note on: Workmen under I.D. Act.*M.U. Apr. 2011 May 2012 *Nov.* 2013 Jan. 2018
*Who is not "Workman" as per the I.D. Act? (2 marks)*B.U. Nov. 2011 Nov. 2014
Write a short note on: Appropriate government under i. d. Act, 1947. B.U. Apr. 2013
What is average pay? (2 Marks) B.U. Jan 2017
What is meant by "award" under the I.D. Act? (2 marks) B.U. Nov 2011
What is "closure" under the I.D. Act 1947? (2 marks) B.U. Nov. 2013 Apr 2014 Apr 2017
Define the term Lockout' under I. D. Act (2 marks) B.U. Apr. 2016 Jan. 2017
Define the term Lockout' under I. D. Act (2 marks) B.U. Apr. 2016 Jan. 2017
Write a short note on Public Utility Services under the industrial Dispute Act
Write a short note on Retrenchment
Define retrenchment under I.D. Act 1923 (2 Mark) M.U. Apr 2018
What does not include wages under I.D. Act? (2 marks) M.U. Jan 2017
What are wages under I.D. Act? (2 marks) M.U. Apr 2011

A. INDUSTRY [S. 2 (j)]

The Industrial Disputes Act has defined industry as under: "Industry means any business, trade, undertaking, manufacture or calling of employers, and includes any calling, service, employment, handicraft or industrial occupation or avocation of workman."

However, this definition was amended in 1982 (by the Industrial Disputes Amendment Act, 1982), *but the amended definition has not yet been brought into force.* Under the amended definition, "industry"—
(a) **means**: any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services, with a view to satisfy human wants or wishes *(not* being wants or wishes which are merely spiritual or religious in nature), *whether or not,-*
(i) any capital has been invested for the purpose of carrying on such activity; *or*
(ii) such activity is carried on with the motive to make any gain or profit;
(b) and includes ;
(i) any activity of the Dock Labour Board established under Section 5A of the Dock Workers (regulation of Employment) Act, 1948; *and*
(ii) any activity relating to the promotion of sales or business or both carried on by an establishment;
(c) but does *not* include : any agricultural operation, except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

For the above purpose, “agricultural operation” does *not* include-

(i) any activity carried on in a plantation as defined in Clause (f) of Section 2 of the Plantation Labour Act, 1951; *or*

(ii) hospitals or dispensaries; *or*

(iii) educational, scientific, research or training institutions; *or*

(iv) institutions owned or managed by organisations wholly *or* substantially engaged in any charitable, social or philan-thropic service; *or*

(v) *Khadi* or Village industries; *or*

(vi) any activity of the Government relatable to the sovereign function 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*

(vii) any domestic service; *or*

(viii) any activity being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than *ten; or*

(ix) 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.*

As will be apparent from the foregoing definition of the term *“industry",* the amended definition provides for an exhaustive definition of the term, divisible into three parts, namely, (a) what it means; (b) what it includes; and (c) what it *excludes.*

Pursuant to the decision in the *Bangalore Water Supply and Sewage Board* v. *Rajappa* (A. I. R. 1978 S. C. 548), the ambit of the term *“industry"* was widened. Institutions like hospitals and dispensaries, educational, scientific research and training institutes, institutes engaged in charitable, social and philanthropic services *etc.* were included *if* such institutions carried on any industrial activity. The Legislature, however, keeping in mind the special environment and nature of the above referred institutions, and in an attempt to distinguish the environment of the said institutions from those prevailing in regular industrial and commercial undertakings, has redefined the term *“industry",* so as to exclude from its scope the said institutions. It may further be noted that certain functions of the Government such as activities relating to atomic energy, space and defence research have also been *excluded.*
(Note: As stated earlier the 1982 Amendment has however *not* been enforced)

Bangalore Water Supply Case : The Supreme Court had, in this judgment of far-reaching importance, given a very wide interpretation to the word “industry”.

In this judgment, the Supreme Court had brought within the scope of the definition of ‘Industry”, clubs, educational and research institutions and charitable projects. It laid down tests to help determine whether an activity is an “industry” as defined in the industrial Disputes Act.

The *tests,* as laid down in the judgment, are broadly as follows:

(1) Where *systematic activity* is organised by *co-operation* between *employer and employee,* for the *production* and *distribution* of *goods* and *services to satisfy human wants* and wishes (*not* spiritual or religious, but inclusive of material things or services geared to celestial bliss, such as making, on a large scale, *prasad* or food), *prima facie,* there is an “industry” in that enterprise.

(2) The absence of the *profit motive* or gainful objective is *irrelevant,* irrespective of whether the venture is in the public, joint, private or any other sector.

(3) The true test is *functional,* and the decisive aspect is the nature of the activity, with special emphasis on the employer-employee relationship.

(4) If the organisation engages in activity in the nature of trade or business, it *does not cease* to be an "*industry" because* of the *philanthropy* animating its objects.

It has been stressed that even though the activity is *not* itself trade or business, it will be treated as an "industry", if it resembles activity in the nature of trade or business.

The effect of this judgment was to bring within the scope of the term "industry", almost all undertakings, callings and services, analogous to the carrying on of trade or business.

The scope of "industry" was considerably enlarged by this judgment. However, *not* all activity would fall within its ambit. For instance, a *restricted* category of professions, clubs, co-operatives and small research laboratories *may qualify* for *exemption* if, in keeping with the dominant nature criterion, such activity involves marginal employment for minimal purposes, without destruction of the non-employee character of the unit.

Attributes of an Industry

Upon a proper construction of the definition, the following *inter alia,* are the *tests* of an industry:

(a) The activity must involve the habitual or systematic production or distribution of goods or the rendering of material services to the community at large or a part thereof : *State of Bombay* v. *Hospital Mazdoor Sabha* (1960) II LLJ 251 (258-59) S.C.

(b) The actjvity must be similar in nature to the organisation of business or trade : *D. N. Banerjee* v. *P. R. Mukherjee,* (1953) I LLJ 195 S.C.)

(c) In *Hospital Mazdoor Sabha's case* (above), it was also pointed out that the activity should *neither* be only for pleasure or for oneself alone, - *nor* be of a casual nature.

(d) It should necessarily involve employer-workmen co-operative effort : *National Union of Commercial Employee* v. *M. R. Meher* (1962)

I LLJ 720 (S.C.) However, a mere employer-employee relationship by itself does *not* result in an industry.

(e) In *Corporation of City of Nagpur* v. *Its Employees,* II LLJ 523 (534) S. C., it was *held* that- the activity should involve the satisfaction of material needs, and *not* of spiritual needs.

(f) In the abovementioned *Nagpur Corporation case,* it was also *held* that the activity should *not* be in exercise merely of governmental functions.

(g) The activity must, in the first instance, fall within the first part of the definition of the industry, and the second part will indicate what is included from the workmen's angle: *D. N. Banerjee* v. *P. R. Mukherjee,* (1935) I LLJ 195 (S.C.)

(h) The employment must *not* be personal, such as in the case of domestic servants.

(i) In *Palace Administration Board* v. *State of Kerala,* (AIR 1960 Ker. 151), it was observed that once the above attributes are found, it is immaterial whether the activity is carried on by an individual, corporation, local body or the State.

The Scope of "Industry"

The *scope* of the term industry has been discussed in several leading cases. In *Bhowra Colliery* v. *Its Workmen* (1962, I LLJ 378 S.C.), it was *held* that though a domestic

servant has a calling or occupation, he is *not* employed in an industry, as a personal employment is counter posed to the concept of industrial avocation.

Though, normally, an industry is associated with the idea of the profit motive, it is *not,* strictly speaking, so restricted, In *Hospital Mazdoor Sabha* v. *State of Bombay* (1959 I LLJ 55), it was *held* that the concept is *not* confined to commercial activity. The words *"undertaking or calling*" of employees indicate any work or project which a person engages in, even if the same has a philanthropic motive. This view has been approved by the Supreme Court in the *Bangalore Water Works case.*

In *Madras Gymkhana Club Employees Union* v. *Gymkhana Management,* (AIR 1968 S.C. 554), the Court had *held* that if the employer's work *cannot* be regarded an "industry", the persons he *[* employs *cannot* be industrial workmen, and nor can a dispute between him and his employees be treated as an industrial dispute. In that case, the Court had *held* that a club is *not* an industry. However later, in the *Bangalore Water Works case,* the Supreme Court has *held* that even a club is an industry.

Where an establishment carries activities of *different types,* it is the *dominant purpose* that will determine whether it is an "industry" In *Bombay Panjrapole, Bhuleshwar* v. *Its Workmen,* (AIR 1971 S.C. 2422), the Court *held* that although the object of the institution was to look after cattle, the sale of milk was a regular activity which brought in profits, and therefore, the undertaking was treated as an industry. While agreeing with the conclusion that such an institution is an industry, the Supreme Court has, in *Bangalore Water Supply case* (above), disagreed with the reasoning behind it. The Court pointed out that *panjrapoles* are industries *not because* they have commercial motives, *but because,* despite compassionate objectives, they share business-like orientation and operation. The Amendment Act, 1982 has excluded institutions owned or managed by organisation wholly or substantially engaged in [any charitable, social or philanthropic service.

In *Safdarjung Hospital* v. *Their Workmen,* (AIR 1970 S.C. 1407) the Supreme Court had overruled its earlier decision in the *Hospital Mazdoor Sabha case* and *held* that a hospital is *not* an industry. It was observed that if the employer does *not* carry on any business, trade, undertaking manufacturing or calling, there is no industry, If a hospital is run as a business or on commercial lines, it is an industry rather than a place for treating patients.

The Supreme Court had overruled its decision in the *Safdarjung case,* in the *Bangalore Water Supply case,* and *held* that a hospital *cannot* be excluded from the purview of the term "industry". The *Amendment Act,* 1982, has now expressly provided that a hospital is excluded from the scope of the term "industry".

Professions

In respect of *professions* such as those of doctors and lawyers, it was hitherto settled law that they do *not* fall within the ambit of the term "industry", as services rendered in such professions are of a personal and individual nature. On this point, the following cases may be referred to : *National Commercial Employees* v. *M. R. Meher,* AIR 1962 S. C. 1080; *Dunderdale* v. *G. P. Mukherjee and others,* (158) II LLJ 183 (Cal).

However, in the *Bangalore Water Supply case,* the Supreme Court had laid down that

professions *cannot* be excluded if the following tests of “industry” are fulfilled: Systematic activity; organised employer-employee co-operations; and activity for distribution of services.

The *Amendment Act,* 1982 has excluded professions if practised by an individual or body of individuals if the number of persons employed is less than *ten.*

Clubs

In the *Madras Gymkhana Club case,* (1968) I S.C.R. 742, and the *Cricket Club of India* v. *Bombay Labour Union,* AIR 1969 SC 276, it had been *held* that where a *club* renders services to its members, the same *cannot* be regarded as an industry. These judgments, have been overruled by the Supreme Court in the *Bangalore Water Supply case.* A club is an industry *if* the tests specified above are satisfied, However, the Amendment Act 1982 excludes a club if it employs less than *ten* persons.

Educational Institutions

Originally, *educational institutions* were excluded from the definition of an “industry”, as the predominant activity of such institution is to spread education and *not* to run a business or trade. The employment of staff was *held* to be incidental to the main purpose.

In *University of Delhi* v. *Ramnath,* (AIR 1963 S. C. 1873), the Supreme Court had earlier *held* that a University was *not* an industry, on the ground that its main purpose was to impart education and that it was *not* run as a business or trade for profit.

The Supreme Court expressly overruled the above view, in its decision in the *Bangalore Water Supply* case. However, the *Amendment Act, 1982* (which has *not* been brought into force) clearly *excludes* educational institutions from the scope of "industry".

Government Departments

Earlier, departments of the Government which carried on ‘regal’ or sovereign functions, were totally *excluded* from the purview of the term “industry”. However, the Supreme Court in the *Bangalore Water Supply case,* laid down the following propositions:

(i) Where sovereign functions are alone involved, there may *not* be an “industry”.
(ii) Even in those departments which discharge ‘regal’ functions, the units thereof which satisfy the attributes of an industry may be covered by Section 2(j).

The *Amendment Act, 1982* (which has *not* been brought into force) has excluded from the purview of “industry", any activity of the Government relating to the sovereign functions of the Government, including all activities carried on by the department of the Central Government dealing with defence, research, atomic energy and space.

Municipal Corporations

As far as *Municipal Corporations and their departments* are concerned, the Courts have drawn a line of distinction between delegated “regal” functions and rendering of services to the public generally. While in the exercise of delegated regal functions, the Municipal Corporation is *not* an industry, it is an industry; when its departments render service to

the public at large, such as constructing, lighting, *etc.*

In *D. N. Banerjee* v. *P. R. Mukherjee,* (AIR 1953 SC 58) a dispute relating to employees working in the sanitary department of Budge Budge Municipality was regarded an industrial dispute, as both the definitions of "industry" and "industrial dispute" were attracted. It was *held* that departments such as those dealing with sanitation, water and electricity fall within the definition of "industry."

In *Corporation of the City of Nagpur* v *Its Employees* (1960 I LLJ 523), the test of the predominant nature of the activity was applied to various activities carried on in the Municipal department.

Agricultural Operations

The Supreme Court, in *Hari Nagar Cane Farm* v. *State of Bihar* (1963 I LLJ 692) *held* that the Hari Nagar Sugar Mills and Motipur Jamindari Factory were both industries, because both carried on trade and business for profits as well as production and distribution of agricultural products. However, the Supreme Court has *not* yet considered the question of what would have been the position had the activity been restricted to agricultural operations alone.

Domestic Servant: The engagement of a domestic servant is *not* an industry, as his occupation or engagement is, by its very nature, a personal one. In *Bhowra Colliery* v. *Its Workmen,* (1962 I LLJ 378, SC), the Court *held* that a domestic servant is *not* one engaged in an industry as defined in the Act. Domestic service is also expressly excluded by the *Amendment Act. 1982.*

Standards Institution: In the *Workmen of Indian Standards Institute* v. *Indian Standards Institute* (AIR 1976 SC 145), the Court *held* that the Indian Standards Institute is an industry covered by the definition of the term contained in Section 2(j). The *reason* for arriving at this conclusion was that the Institute's work was similar in nature to that of trade or business.

Fire Brigade: In *Workmen Faridabad Municipality* v. *K. L. Gosain* (AIR 1970 Punj. 287), a municipality fire brigade service was *held* to be an industry, as the same falls within the meaning of the words "service" and "undertaking" contained in the definition of the an "industry".

Chamber of Commerce & Industry: In *Federation of Indian Chamber of Commerce & Industry* v. *Their Workmen,* (AIR 1972 SC 763), the Court *held* that on a consideration of the aims, objects and the character of the activities engaged in by the Federation, the same was an industry under Section 2 (j) of the Act. It was *held* that the mere fact that the Federation's work did *not* directly involve the making or distribution of profit did *not* make a difference.

Government Project: If a project undertaken by or on behalf of the Government is *not* involved in purely administrative or regal functions, it is an industry if the other ingredients of the definition of an "industry " contained in *Section 2* (j) of the Act are satisfied. In one case, the Chambal Hydel Irrigation Project of the Government of

Madhya Pradesh was *held* to be an industry: *Madhya Pradesh Irrigation Karmachari Sangh* v. *State Madhya Pradesh* (1972 I LLJ 374 (MP).

Charitable Economic Enterprises: The Supreme Court's decision j in the *Bangalore Water Supply case (above)* had laid down certain principles governing the question of whether charitable institutions are industries. It was *held* that it is only when an institution is motivated by a humane mission manned by persons who work mainly out of a passionate zeal for the work that the institution is *not* an industry. However, when the establishment makes profits like any other, but the same are channelised for "altruistic objects", *or* when the institution makes no profit but produces goods and sells them, although at a controlled or reduced rate, there is an 'industry'. This is so because it matters little to the workmen whether the profits are utilised for noble objects, or the goods are distributed free or at a lower price to the poor. In such a case, for the workmen, a charitable employer is the same as a commercial minded one. In short, the Court was of the view that noble and charitable motivation is irrelevant in considering whether the activity is an "industry."

B. INDUSTRIAL DISPUTE [S. 2 (k) and S. 2A]

The definition of the 'industrial dispute', as contained in Section 2(k) of the Act, may be *analysed* as follows:
An industrial dispute *means any dispute or difference between:*

(a) employers and employers, *or*
(b) employers and workmen, *or*
(c) workmen and workmen, - which is *connected with :*
(i) the employment or non-employment, *or*
(ii) the terms of employment, *or*
(iii) the conditions of labour, *of any person.*

An industrial dispute presupposes the existence of an industry. There can be no industrial dispute in the absence of any 'industry' as defined above.

On a scrutiny of the above definition, the following points have to be noted:
(1) A *dispute* or *difference* must exist.
(2) Such a dispute or difference should *be between any of the classes of persons mentioned* in the definition.
(3) The dispute *must relate to,* or *be connected with,* the *employment* or *non-employment* or *the terms of employment* or *conditions of labour of any person.*

In *Workmen of Dimakuchi Tea Estate* v. *The Management of Dimakuchi Tea Estate* (AIR 1958 SC 353), the term *"any person"* was interpreted to mean a person in whose employment, non-employment or terms of employment or conditions of labour, the workmen, as a class, have a *direct and substantial interest* and in whose work they have a *community of interest.* It was *held* in this case that workmen had no community of interest with a doctor whose services had been terminated due to alleged incompetence.

In the *first instance,* there must be *dispute* or *difference.* In *Bombay Union of Journalists* v. *The Hindu,* (1961 I LLJ 436), it was *held* that an industrial dispute must be in existence or apprehended on the date of the reference.

The Supreme Court, in a later case, *Sindhu Resettlement Corporation Limited* v. *Industrial Tribunal,* (1968 I LLJ 834), *held* that a mere demand made to the appropriate Government, without a dispute being raised by the workmen with their employer, *cannot* become an industrial dispute. However, it appears that a few points remained to be canvassed in this case. It is submitted that as the words in Section 10(1) include the word *"apprehended",* a wider interpretation would have been more appropriate.

The *second important aspect* of an industrial dispute is that it should be between the *parties* mentioned in the definition, namely, between employers and employers, employers and workmen, workmen and workmen. With a view to widen a scope of the term "industrial dispute", the words ''between workmen and workmen" have been also included.

The *third essential* point is that the dispute or difference must be *"connected with the employment or non-employment, the terms of employment or with condition of labour or any person."* The scope of the words *"of any persons"* has already been discussed above

Having dealt with the important aspects of the definition, a brief discussion on the scope of the term *"industrial dispute"* is essential.

According to strict theory, *an individual dispute is not per se,* an industrial dispute.

In *Bombay Union of Journalists* v. *The Hindu,* (9161 II LLJ 436, S.C.), it was pointed out that the test of an *industrial dispute,* as distinguished from an *individual dispute,* is whether, on the date of the reference, the dispute was supported by the union of the workmen *or* by an appreciable number of workmen.

Thus, an individual dispute becomes an industrial dispute when it is taken up by the union or a substantial number of workmen. It is, however, *not essential* that a majority of workmen take up the cases the workmen. What is required is that the workmen must be directly and substantially concerned in the dispute.

Subsequent support of the union *cannot* convert an individual dispute into an industrial one. On the other had, continuous support from the union is also *not* essential.

While the support of an outside trade union is irrelevant, in *Workmen* v. *Indian Express* (AIR 1970 S. C. 737), it was *held* that where newspaper employees had no union of their own, but 25% of them were members of a general union, that union's support to the cause of 2 newspaper employees was sufficient to convert it into an industrial dispute.

As pointed out in *Workmen of Dimakuchi Tea Estate* v. *Management of Dimakuchi Tea Estate* (AIR 1958 S.C. 353), *the real test* is the existence of a community of interest, and *not* whether the dismissed member was a member of the union at the time of his dismissal.

The principle of strict theory, namely, that an individual dispute is *not* an industrial dispute is, to a great extent *eroded* by the *amendment of 1965,* by which *Section 2A* has been incorporated, which reads as follows:

“Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute, notwithstanding that no other workman nor any union of workman is a party to the dispute.”

The incorporation of this *legal fiction* has enabled an aggrieved workman to seek justice under the Act.

Under the 2010 Amendment of the Act, such an aggrieved workman can make an application directly to the Labour Court or Tribunal for adjudication of the dispute after the expiry of 45 days from the date of his application to the Conciliation Officer for conciliation of the dispute. The Labour Court or Tribunal can then adjudicate upon such a dispute, as if it were a dispute referred to it by the appropriate government under the provisions of the Act.

However, such an application *cannot* be made after the expiry of a period of 3 years from the date of discharge, dismissal, retrenchment or other termination of service.
Conclusion
In *conclusion,* reference may be made to the fact that as the definition states that the dispute may refer to the *“employment or non-employment"* apart from the terms of employment and conditions of labour, it is also clear that even when the person directly affected by a dispute is *not,* at the relevant time, a workman under the employer, the dispute is an industrial dispute, if it is raised by the union or by a body of the workmen.

Cases
On the subject of what constitutes an industrial dispute in relation to matters referred to in the definition, *some important cases* may now be referred to.

In *Workmen of Dahingeapar Tea Estate* v. *Dahingeapar Tea Estate* (AIR 1958 S.C. 1026), a tea estate had been sold, and the question of retaining the vendor’s workmen was left to the purchaser. As a few clerks were *not* taken into service by the purchaser, a dispute had been raised by the workmen. It was *held* that as the workmen had a community of interest with the persons who had *not* been taken into service, a reference was compentent, although the persons in respect of whose employment the dispute was raised were *not* really “workmen."

In *Standard Vacuum Refining Company of India Limited* v. *Their Workmen,* (1960 II LLJ 233, S.C.), the decision in the above-cited case was followed, and it was *held* that the dispute raised by the workmen, namely, that a particular contract system in the company should be abolished and the contractor's employees should be absorbed into the service of the company, was an industrial dispute. On the principle that there was a community of interest, it was *held* that there existed an industrial dispute, and hence, the reference was valid.

In *Workmen of Dadri Roadways* v. *Labour Court, Rohtak,* (1967 II LLJ 552, Punj.), the Court *held* that when a sizable number of workmen are dismissed from service, a dispute involving such dismissal is an industrial dispute even in the absence of the cause of such workmen being taken up by the union or any number of workmen.

In *Muller and Philips India Ltd.* v. *Their Workmen* (1966, I LLJ 254 Delhi), the Court *held* that where a union of the workmen takes up the cause of some of the workmen, the same is on the basis that there is a community of interest between them. As a union of workmen in an establishment comprises of the workmen themselves, they have a direct interest in the dispute affecting the workmen concerned, and such a dispute is an industrial dispute.

In *Workmen of Jamadoba Colliery* v. *Jamadoba Colliery,* (1967 II LLJ 663, Pat.), the Court *held* that if the union was in existence at the time of the reference, a dispute concerning the workmen, who became members of such union, although *after* the date of the dispute, *but before* the reference, was an industrial dispute.

In *D. C. Dewan Mohideen Sahib & Sons* v. *Bidi Workers Union, Salem* (AIR 1966 SC 370) if was *held* that persons employed by the employer's contractors to make *bidis* out of leaves and tobacco are workmen under the Act, and that a dispute in relation to such persons' wages is an industrial dispute.

C. EMPLOYER [S. 2(g)]

Under Section 2 (g), an "*employer"* means:

(i) in relation to an industry *carried on by* or *under* the authority of any department of the *Central or State* Government *:* the authority prescribed in this behalf or where no authority is prescribed, the head of the department;

(ii) in relation to an industry *carried on by or on behalf of a local authority :* the Chief Executive Officer of that authority.

This definition only indicates what the term means in relation to an industry run under the authority of State and Central Governments and local bodies. As the definition is neither inclusive nor exhaustive, the ordinary dictionary meaning of the term becomes applicable, namely that an employer is a person who employs someone to do something for him.

Labour law regards *not only* the person who engages another to work for him, as an employer, *but also* such person's legal representatives and successors.

In *Bombay Garage Ltd.* v. *Industrial Tribunal,* (1953 I LLJ 14), the Court *held* that an alteration of management does *not* affect the rights of the workmen in respect of the services rendered under the former management. The new management is liable as an "employer", even in respect of such services.

In *Kays Construction Co. (Pvt.) Ltd.* v. *Its Workmen* (II LLJ 660 S.C.), it was reiterated that if there is continuity of service and identity of business, the rights and obligations which existed between the old management and their workers continues to exist *vis-a-vis* the new management after the transfer. The new management will, for this purpose, be regarded as the employer.

D. WORKMAN [S. 2(s)]

Under Section 2(s) of the Industrial Disputes Act, a *"workman":*

(1) Means: any person (including an apprentice) employed in any industry to do any-
   (a) skilled or unskilled work,
   (b) manual work
   (c) supervisory work,
   (d) technical work,
   (e) clerical work, *or*
   (f) operational work
   for hire or reward, whether the terms of employment be *express* or *implied;* and
(2) Includes : for the purposes of any proceeding under this Act, in relation to an industrial dispute, any such person who has been dismissed, discharged or retrenched in connection with, or as consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute; but
(3) Does not include any such person-
(i) who is subject to the Army Act, 1950, or the Air Force Act, 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 capacity draws wages exceeding Rs. 10,000 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 which are mainly of a managerial nature. [The amount mentioned in clause (iv) above was increased from Rs. 1,600 to Rs. 10,000 by the *2010 Amendment.]*

The term “employee", as used in ordinary *parlance,* does *not* coincide with the expression “workman”, as defined in the Act. For the purposes of the Act, only an employee who falls within the definition of the term “workman” will be so treated. Thus, *all employees are not workmen, but all workmen are employees.*

The definition of a workman may be *analysed* from three angles : *What the term means, what it includes, and which persons are not included.*

It is now settled law that in determining whether any particular person *is* or *is not* a workman, the Court considers the nature of the person’s work and functions, as well as his status, and *not merely his designation.* Even if a person’s designation or label suggests that he is in the managerial cadre, if the nature of his function brings him within the purview of the definition of a workman, the Court is bound to treat him as a workman under the law.

The *first part* of the definition determines the question of who is a workman by referring to the persons included, namely, persons employed in an industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward. It is essential that the person be “*employed in industry".* The industry must be such as is covered by the definition of the term in the Act. Moreover, the employment must necessarily be for hire or reward. The terms of his employment may be *expressed or implied.*

Before a person can be regarded as a workman, there must be the *fact of employment.* In other words, there must be a contract of employment.

In *Dhrangadhra Chemical Works Limited* v. *State of Saurashtra* (I LLJ 477 S.C.) Bhagwati J., as he then was, observed that the essential conditions are that the person

should be employed to work in an industry, that there should be employment of the person by the employer, *and there* must be in existence, an employer-employee relationship. Such relationship must arise out of a contract, express or implied. While in the case of an independent contractor, the element of the right to control the employees of the contractor does *not* lie with the employer, it exists in the case of a direct employer-workmen relationship. An essential element in employer- employee relationship is the right to control the work of the employee. The *main question* to be considered is *not* whether, in fact, control over a person's work is exercised. What is important is whether the right to control his work exists.

In the above case, it was observed that the test of supervision and control may be regarded as the test that determines the relationship of master and servant. The test is whether there was in existence the right in the master to supervise and control the work done by the servant *not only* in respect of what work the servant was to do, *but also* as regards the manner in which he should do the work. The degree of control required necessarily varies from business to business.

In *Chintamani Rao* v. *State of Madhya Pradesh* (1858 II LLJ 253 ^ S.C.), the Court's view in the *Dhrangadhra Chemical case* was reaffirmed. On the fact of this particular case, it was *held* that the persons engaged by the contractors for rolling bidis were *not* workmen.

In *State* v. *Shanker Balaji Waje* (1961 I LLJ 8), the Bombay High Court *held* that the scope and extent of supervision and control in a given case must necessary depend upon factors such as nature of the work, the circumstances in which the persons were asked to do the work, and the number of persons employed.

The Supreme Court, in *Gopala Rao* v. *Public Prosecutor,* (1970 II LLJ 69), observed that the question of the existence of a master-servant relationship is a *question of fact.* Keeping in mind the basic requirements, the contract of service must imply some right in the master to control, *"in some reasonable sense",* the method of doing work.

The *nature* of the work must be skilled or unskilled, manual, supervisory, technical or clerical. In *Burmah Shell Oil Storage & Distribution Company* v. *Burmah Shell Management Staff Association.* (1970 II LLJ 590 S.C.), it was *held* that if the work is *not* of such a nature as specified above, the person concerned will *not* be a workman. It was *further held* that if all employees other than those mentioned in the exceptions in the definition, were to be regarded as workmen, then there would have been no need to specify in such definition the nature of the work.

Thus, persons engaged to canvass sales for the company will *not* be workmen as defined above, as they are *not* engaged in work of the type specified in the definition.

Where an employee is doing more than one type of work, his *main work* will determine whether he is a workman, in the *Burmah Shell case* (referred to above) it was reiterated that the real test is to determine the main work that the employee is required to do, although he may be incidentally doing other types of work.

Skilled or unskilled manual work: In manual work, there must be physical exertion arising out of manual efforts. However, if the manual work is merely incidental to the real work that the employee does, then he will *not,* on this ground alone, be regarded as a

workman.

Supervisory work: The term “supervisory” is *not* one of precise import; it covers overseeing and direction of the work of others, namely the power of instruction and superintending over the work of others. *Whether or not* a person performs supervisory functions will depend on the nature of the work done. Again, it needs to be stressed that the designation that a person goes by is *not* material; what is important is the nature of his duties and functions. In *Punjab National Bank* v. *Their Workmen,* (1961 I LLJ 18 S.C.), Gajendragadkar, J. observed that even the fact that the work performed by the workman is of a responsible and onerous nature is immaterial in determining whether the work is of a supervisory character.

In *Ananda Bazar Patrika* v. *Its Workmen,* (1969 II LLJ 670), the Supreme Court *held* that the nature of a person’s functions depends upon his main and principal duties. If a person does *mainly* supervisory work, and *incidentally* clerical one, he is employed in a supervisory capacity.

A person employed in a supervisory capacity is *not* a “workman”
if—
(a) either, by the nature of his duties *or* by reason of powers vested in him, he performs mainly managerial functions; *or*
(b) he draws “wages” exceeding Rs. Rs. 10,000 per month

While a person performing both supervisory functions and clerical duties will be regarded as workman within the meaning of the term, the distinction between the two types of functions, is important because should the wages of the person performing supervisory functions exceed Rs. 10,000/- per month, he will *not* be regarded as “workman” under the Act, Thus, the person engaged as a member of the supervisory staff is a “workman” only if he draws wages which do *not* exceed Rs. 10,000 per month. Such “wages” should be computed in accordance with the definition of the word, and *cannot* include bonus and other items expressly excluded by the definition.

Technical work: One doing technical work must possess technical knowledge. Once there is an application of such knowledge in the execution of one’s work, there is employment in a technical capacity, irrespective of the fact that the work *also* involves manual exertion.

Clerical work: No matter what a persons’ job may be styled as, a person doing work of a clerical nature, is a “workman” for the purposes of this Act. The general and common import of the term "clerical work” is more or less routine desk work whether such work is skilled or unskilled does *not* make a difference. However, much will depend upon the facts of each case in order to determine the real nature of the work.

In *several cases,* the Supreme Court has *held* that even if a person is described as a "manager”, he will be treated as workman, if his duties are only of a clerical nature. Some leading cases on determining the test of the nature of work are *Punjab National Bank Ltd.* v. *Certain Workmen,* (1953) I LLJ 368: *Bank of Cochin Management* v. *P. K. Favoo,* (1955) II LLJ 595; *Chintaman Salvekar,* v. *Phaltan Sugar Works Limited,* (1954) I LLJ 449. It has been *held* that though chemists employed in a sugar mill, together with the work of chemical analysis did incidental work of typing they were *not* performing work of a clerical nature.

The *second portion* of the definition deals with persons *included* within its purview. *For the purposes of any proceeding under the Industrial Disputes Act in relation to an industrial dispute, a workman includes any person who has been dismissed, discharged or retrenched in connection with or as a consequence of such a dispute, or whose dismissal, discharge or retrenchment has led to such dispute.*

The above-mentioned category of persons is included so as to enable them to raise a dispute under the Act in the event of their being dismissed, discharged or retrenched.

The *third part* of the definition deals with those persons who are specifically *excluded* from the scope of the definition, The categories which are excluded have been mentioned above.

As the words *"managerial or administrative capacity"* have *not* been defined in the Act, the same have to be understood in their ordinary sense. It is *not essential* that the person should be in the managerial cadre. It is *also not necessary* that the person be designated in this capacity. If he is in a position to oversee or supervise the work of his subordinates, and if he has the responsibility to ensure that work entrusted to his charge is effectively carried out, and he is in a position to take action in respect of matters entrusted to his charge, it can be said he is employed in a managerial capacity.

In *Standard Vacuum Oil Company* v. *Commissioner of Labour,* (1959 II LLJ 771, Madras), it was *held* that if the above conditions are fulfilled, an inference of the position of management would be justified.

In *Anand Bazar Patrika* v. *Its Workmen.* (1969 II LLJ 670 S.C.), it was stressed that even if the person is designated in a particular capacity, it is *not conclusive* of his status, as the law requires the Court to consider the nature of the person's duties in order to determine his status. It has further been *held* that it is *not necessary* that the person has the power to appoint or dismiss in order to be regarded as a member of the managerial administrative cadre.

While persons performing supervisory functions are ordinarily regarded as workmen, they are expressly excluded from the definition if, being employed in a supervisory capacity, they-

(i) draw a salary exceeding Rs. 10,000/- per month, *or*
(ii) perform functions mainly of a managerial nature.

This restriction is applicable only to supervisory personnel, and *not* to technical staff. For instance, an Airline pilot drawing Rs. 4,000 per month is still a "workman" under the Act, as the work is of a technical nature.

Non-worker's case: In *The Workmen* v. *Greaves Cotton & Co. Ltd.,* (1971 II LLJ 479 S.C.), the Court *held* that while a dispute can be raised even in respect of persons who are *not* workmen, provided a community of interest exists, the workmen *cannot* do so, if the dispute is in respect of non-workmen, in whose terms of employment those workmen have no direct interest or concern

Medical representative: In *J. & J. Dechane* v. *State of Kerala,* (1974 II LLJ 9, Ker.), the Court relied on the judgment of the Supreme Court reported in AIR 1971 SC 952, and

held that a medical representative is *not* a workman under the Act. A medical representative's duties and functions relate to salesmanship in respect of the company's products. His functions, therefore, are *not* covered by any of the categories specified in *Section 2(s)* of the Act.

Temporary Workman: In *Chief Engineer, Chepauk* v. *N. Natesan,* (1973 LLJ 446 Mad.), the Court *held* that it is well-settled that even a temporary workman is a "workman" as defined in the Act. In this case, the workman was *held* to be entitled to retrenchment compensation and other benefits.

E. OTHER TERMS DEFINED

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

"Appropriate Government" means:

(i) The Central Government: in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such *the* controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under Section 5A of the Dock Workers (Regulation of Employment) Act, 1948 or the Industrial Finance Corporation of India established under Section 3 of the Industrial Finance Corporation Act, 1948 or the Employees' State Insurance Act, 1948 or the Board of Trustees constituted under Section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act 1948 or the Central Board of Trustees and the State Board of Trustees constituted under Section 5A and section 5B respectively of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 or the 'Indian Airlines' and 'Air- India' Corporations established under Section 3 or the Air Corporation Act. 1953 or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 or the Oil and Natural Gas Commission established under section 3 of the Oil and Natural Gas Commission Act. 1959 or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporation Act, 1962, or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 or the Food Corporation of India established under Section 3 or a Board of Management established for two or more contiguous states under Section 16 of the Food Corporations Act, 1964 or the international Airports Authority of India constituted under Section 3 of the International Airports Authority of India Act 1971 or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited or a banking or an Insurance Company, a mine, an oilifield, a Cantonment Board, major port, any company in which not less than fifty-one per cent of the paid up capital is held by the Central Government, or any corporation not being a corporation referred to in this clause, established by under any law made by Parliament or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government.

(ii) **The State Government**: in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government.

It is also clarified (by the 2010 Amendment) that in case of a dispute between a

contractor and the contract labour employed through the contractor in any industrial establishment where such a dispute first arose, the “appropriate government” shall be the Central Government or the State Government, as the case may be, which has control over such an industrial establishment.

By virtue of the 1976 *Amendment,* the above definition, though *not* directly amended, has been altered by the insertion of *Section* 25L(b), which provides that for the purposes of the special provision relating to retrenchment, lay-off and closure in connection with certain establishments, contained in Chapter VB (comprising of *Section* 28K to 28S), the Central Government shall be the appropriate Government notwithstanding anything contained in sub-clause (ii) of clause (a) of Section 2 :

(i) in relation to any company in which *not* less than fifty-one per cent of the paid-up capital is *held by* the Central Government; *or*

(ii) in relation to any Corporation *not* being a Corporation referred to in sub-clause (i) of clause (a) of Section 2, established by or under any law made by Parliament.

If such establishments are covered by the provisions of *Section 25K* relating to the application of Chapter VB, as also the provisions of *Section 25L(b),* the Central Government will be the appropriate Government.

Under the *Amendment Act of 1982,* several new establishments have been added to the list under this definition.

In *Hindustan Aeronautics* v. *Their Workmen* (AIR 1975 SC 1737), the Court *held* that the State Government is the appropriate Government in respect of a separate unit of company within its jurisdiction, even though it may be functioning under the directions of its Head Office situated elsewhere.

In *Workmen of Sri Ranga Vilas Motors* v. S. *R. V. Motors* (AIR 1967 SC 1040), the Court upheld the competence of the Mysore State Government to make a reference in respect of a dispute relating to a transfer of a workman employed at Bangalore, though the Head Office of the Company was situated in Madras State. The Court *held* that there should be some connection between the dispute and the territory of the State where the concerned workman was working at the time of dispute, and “not necessarily between the territory of the State and the industry, concerning which the dispute arose.” The conclusion was based on the view that if the workman was working at a place in a State different from that in which the Head Office was situated, the employment would be in separate unit or establishment, and hence, the appropriate Government would be the Government of the State in which the workman was employed.

(2) Arbitrator [S. 2 (aa)]

Arbitrator includes an umpire.

(3) Average Pay [S. 2(aaa)]

According to Section 2(aaa), *“average pay"* means the average of the wages payable to a workman:

(i) in the case of a *monthly paid workman,* - in the three complete calendar months;

(ii) in the case of a *weekly paid workman,* - in the four complete weeks; and

(iii) in the case of *daily paid workman,* - in the twelve full working days, preceding the date on which the average pay becomes payable, if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be; and, where such calculation *cannot* be made, the average of the wages payable to a workman during the period he actually worked.

In *Indian Home Pipe Co. (P) Ltd.* v. *Palaniswami,* (1968 I LLJ 89 Mad.), a Division Bench of the Court rejected a challenge to a single Judge's finding that when a workman is paid on the basis of a day's work but paid the same fortnightly, the average pay is to be calculated under Section 2(aaa) (iii) and *not* under the residual provision.

(4) Award [S. 2(b)]

"Award" means an interim or a final determination of any industrial dispute or of any question relating thereto, by any Labour Court, Industrial Tribunal or National Industrial Tribunal, and includes an arbitration award made under Section 10A.

(5) Banking Company [s. 2(bb)]

"Banking company" means a banking company as defined in section 5 of the Banking Companies Act, 1949, having branches or other establishments in more than one State, and includes the Industrial Development Bank of India, the Reserve Bank of India, the State Bank of India, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of a Undertakings) Act, 1970 and any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959.

(6) Board [S. 2(c)]

"Board" means a Board of conciliation constituted under this Act.

(7) Closure [S. 2 (cc)]

"Closure" is defined to mean the *permanent closing down* of a place of employment *or* a part thereof.

(8) Conciliation officers [S. 2(d)]

"Conciliation officer" means a conciliation officer appointed under this Act.

(9) Conciliations proceedings [S. 2(e)]

"Conciliation proceedings" means any proceedings *held* by a conciliation officer *or* Board under this Act.

(10) Controlled industry [S. 2(ee)]

"Controlled industry" means any industry, the control of which by the Union has been declared to be expedient in the public interest, by a Central Act.

(11) Court [S. 2(f)]

"Court" means a Court of Inquiry constituted under the Act.

(12) Executive [S. 2(gg)]

"Executive", in relation to a trade union, means the body (by whatever name called) to which the management of the affairs of the trade union is entrusted.

(13) Industrial Establishment or Undertaking
The term *"industrial establishment or undertaking"* means an establishment or undertaking in which any *industry* is carried on (See the definition of "industry", discussed above)

But if several activities are carried on in an establishment or undertaking, and only *one* or *some* of such activities is, or are, an industry or industries, then—
(a) if *any* unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking - such unit shall be deemed to be a separate industrial establishment or undertaking;
(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is *not* severable from and is, for the purpose of carrying on, or aiding the carrying on of such predominant activity or activities - the entire establishment or undertaking or, as the case may be, unit thereof, shall be deemed to be an industrial establishment or undertaking.

The above further clarifies what institutions may constitute a part or the whole of any industry. As will be seen, the basic requirement is that the institution must be an *industry.*

(14) Insurance Company [S. 2 (kk)]
"Insurance Company" means an insurance company as defined in S. 2 of the Insurance Act, 1938, having branches or other establishments in more than one State.

(15) Khadi [S. 2(kka)]
"Khadi" has the same meaning as is assigned to it in S. 2(d) of the Khadi and Village industries Commission Act, 1956.

(16) Labour Court [S. 2(kkb)]
"Labour Court" means a labour Court constituted under Section 7.

(17) Lay-off [S. 2(kkk)]
"Lay-off" (with its grammatical variation and cognate expressions) means the failure, a 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 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, or on account of discontinuance or reduction of the supply of power to the Industrial Establishment for contravention of any provisions of the Bombay Electric Space Powers Act, 1946, or of any order or direction issued thereunder 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 establish-ment and who has *not* been retrenched.

It is also clarified that every workman whose name is borne on the muster-rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is *not* given employment by the employer within two hours of his so presenting himself, shall be deemed to have been laid-off for that day within the meaning of this clause.

It is further provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day.

It is also clarified that if he is *not* given any such employment even after so presenting himself, he shall *not* be deemed to have been laid- off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.
[The provisions relating to "Lay-off are discussed in detail in a later Chapter.]

(18) Lock-out [S. 2(1)]
"Lock-out" *means* the *temporary* closing of a place of employment, *or* the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.
[Provisions relating to 'lock-out' are discussed in a later Chapter.]

(19) Public Utility Service [S. 2(n)]
"Public utility service" means—
(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) an 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 official Gazette declares to be a public utility service for the purposes of this Act, *for such period as may be specified in the notification.*
However, the *period* so specified *cannot,* in the first instance, exceed six months, but - may, by a like notification, be extended for six months, at any one time if in the opinion of the appropriate Government, public emergency or public interest requires such extension.

(20) Retrenchment [S. 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 or reaching the age of superannuation if the *contract of* employment between the employer and the workman concerned contains a stipulation in that behalf; *or*
(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; *or*
(c) termination of the service of a workman on the ground of continued ill-health.
[Retrenchment and provisions relating thereto have been dealt with at length in a

separate Chapter.]

(21) Settlement [S. 2(p)]
"Settlement" means a settlement arrived at in a course of conciliation proceedings, and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings, where such agreement has been signed by 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.

(22) Strike [S. 2(q)]
Section 2(q) of the Industrial Disputes Act defines a *strike* 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 the common understanding, of any number of persons who are or have been so employed to continue to work *or* to accept employment.
[The concept of a "strike" and all the provisions concerning strikes have been discussed in a subsequent Chapter.]

(23) Trade Union [S. 2(qq)]
"Trade Union" means a trade union registered under the Trade Unions Act, 1926

(24) Tribunal [S. 2(r)]
"Tribunal" means an Industrial Tribunal constituted under Section 7- A, and *includes* an industrial Tribunal constituted before 10th March, 1957, under the Act.

(25) Unfair labour practice [S. 2(ra)]
"Unfair labour practice" means any of the practices specified in the Fifth Schedule.
[A reference may be made to the Fifth Schedule reproduced in a later Chapter.]

(26) Village Industries [S. 2(rb)]
Village industries has the same meaning as is assigned to it in S. 2(h) of the Khadi and Village Industries Commission Act, 1956.

(27) Wages [S. 2(rr)]
Section 2(rr) defines *"wages"* as all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and *includes*-
(a) such allowance (including dearness allowance) as the workman is for the time being entitled to;
(b) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
(c) any travelling concession;
(d) any commission payable on the promotion of sale or business or both;
but does *not* include—
(i) any bonus;
(ii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
(iii) any gratuity payable on the termination of his service.

CHAPTER III

AUTHORITIES UNDER THE ACT

The following *seven* authorities under the Industrial Disputes Act are discussed below :

A. Works Committee
B. Conciliation Officer
C. Board of Conciliation
D. Courts of Inquiry
E. Labour Courts
F. Industrial Tribunal
G. National Tribunals.

Questions:
What are the different authorities under the Industrial Disputes Act? Briefly explain the powers and duties of these authorities. M.U. Nov 2011, Apr 2014, Nov, 2014, Apr 2017
Explain in details the Authorities under I.D. Act 1947. M.U. Apr 2016, Jan 2017, Jan 2018
State any two duties of a work committee. M.U. Nov 2014, Apr 2017
What are the duties of the Conciliation officer under the I.D. Act? (2 Marks) Apr 2011, May 2012, Apr 2017
What does the conciliation officer have to do when an industrial dispute is not settles? (2 marks) M.U. Nov 2015
Briefly explain the procedure and powers of conciliation officer under the I.D. Act. M.U. Apr 2011
Briefly explain procedures and procedures and power of the Board under I.D. Act. B.U. Apr. 2011
Write a short note on Labour court under the I. D. Act.B.U. Nov. 2013 Apr. 2014 Apr. 2017
Briefly explain powers and procedures of the court and tribunals under the I.D. Act B.U. 2011
Write a short note on Industrial Tribunals B.U. Nov. 2008 Nov. 2015
Define "Industrial Tribunal" (2 marks) B.U. May 2012

Sections 3 to 9 of the Act deal with the authorities under the Act, stated above. Sections 11 to 17 prescribe the duties, procedure and powers of such authorities.

A. WORKS COMMITTEE

S. 3 provides that in industrial establishments in which 100 or more workmen are employed (or have been employed on any day in the last 12 months), the appropriate Government may, by general or special order, require the employer to constitute a Works Committee in the prescribed manner.

Constitution: Such Works Committee consists of representatives of employers and workmen employed in the establishment. Workmen's representatives should *not* be *less* than the number of employer's representatives. The workmen's representatives are to be chosen in the prescribed manner, from among the workmen engaged in the industry and

in consultation with the registered trade union, if any.

Under a *Maharashtra Amendment,* where there is a recognised union for any undertaking, the recognised union should appoint its nominees to represent the workmen who are engaged in such undertaking.

Duties: The Works Committee has to deal with measures to preserve amity and cordial relations between the employer and the workmen, to comment upon issues of common interest or concern and to attempt to settle any material difference of opinion in such matters.

In *Kemp & Co.* v. *Its Workmen* (1955 I LLJ 48 SC), it was *held* that although the decisions of the Works Committee are *not conclusive* they do have great weight.

B. CONCILIATION OFFICERS

Appointment: The appropriate Government may, by gazetted notification, appoint Conciliation Officers. A Conciliation Officer may be appointed for a specified area, *or* for any specified industries in a specified area, *or* for specified industries either permanently or temporarily.

Duties: (i) To mediate in the settlement of industrial disputes, and (ii) to promote the settlement of industrial disputes.

The Conciliation Officer:
(a) *may* hold conciliation proceedings where an industrial dispute exists *or* is apprehended: *and*
(b) *shall* hold conciliation proceedings when a public utility service is involved and a notice under Section 22 has been given.

The Conciliation Officer should investigate the dispute without delay. He can go into all matters affecting the merits and the right settlement thereof, and is authorised to do all things necessary to secure a fair and amicable settlement.

The Conciliation Officer must thereafter send a Report to the appropriate Government or authorised officer, together with a memorandum of the settlement, if any, signed by the parties to the dispute.

If no *such settlement is arrived at,* the Conciliation Officer must, as soon as is practicable, send to the appropriate Government, a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the disputes and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement, could *not* be arrived at. This report is known as a *'Failure Report'* and is taken into consideration by the appropriate Government while deciding on the question of *whether or not* to make a reference.

If, on a consideration of the same, the appropriate Government is satisfied that there is a case for a reference, such a reference is made. Where the appropriate Government does *not* make a reference, it must record and communicate its reasons to the concerned parties.

A report under this section should be submitted within *fourteen days* of the commencement of the conciliation proceedings, *or* within such shorter period as may be fixed by the appropriate Government, Time may, however, be extended by the written consent of all concerned.

The *Jaswant Sugar Mills* v. *Laxmi Chand,* (1963 I LLJ 524, S.C.), it was *held* that the Conciliation Officer's duties are administrative and *not* judicial and that, therefore, he is *not* required to observe the formalities of a judicial trial.

Further, it is settled law that a settlement by a Conciliation Officer is *neither* an order passed by him *nor* is it a decision recorded by him.

Procedures and Powers : Conciliation Officer

(i) Under Section 11, a Conciliation Officer may, for inquiring into any existing or apprehended industrial dispute, enter any establishment' premises after giving reasonable notice.
(ii) He may call for, and inspect, any document relevant to the industrial dispute, or for verifying the implementation of any award, or any other duty imposed on him under the Act. For this purpose, he has the same powers as are vested in a Civil Court under the Code of Civil Procedure, in respect of the production of documents.
(iii) The Conciliation Officer is a public servant as defined in the I.P.C.

Conciliation Proceedings

"Conciliationproceedings" meanany proceedings *held* by a Conciliation Officer or Board under this Act. *[Section 2(e)]*

Conciliation proceedings are, therefore, the machinery or means of promoting the settlement of industrial disputes. The powers of the authorities in conciliation proceedings are separately dealt with in this Chapter. The principle underlying conciliation is that it is better to arrive at an amicable settlement of industrial disputes than to have recourse to strikes and lockouts, which should be weapons of the last resort.

Theimportance of conciliation can be gathered from the fact that the Act provides, *inter alia, as under:*

(i) Settlements in the course of conciliation proceedings are binding on all parties to the dispute, all parties summoned to appear, the heirs, successors and assigns of employers, and all persons employed in the establishment as well as all persons who are subsequently employed.
(ii) Strikes and lock-outs are prohibited during the pendency of conciliation proceedings and specified periods thereafter.
(iii) The appropriate Government may make a reference on the Report of the Conciliation Officer.
(iv) every Report of a Board of Conciliation is to be published as specified under Section 17.
(v) A breach of binding settlement is an offence under Section 29.
(vi) The powers of the employer to alter conditions of service or punish workmen during the pendency, *inter alia,* of conciliation proceedings, are restricted by Section 33.

Commencement end conclusion of Proceedings

Section 20(1) and (2) deal with the commencement and conclusion of conciliation proceedings.

Commencement: The conciliation proceeding is deemed to have commenced, as the case may be, on:

(a) the date on which a notice of strike or lock-out under Section 22 is received by the Conciliation Officer; *or*

(b) the date of the order referring the dispute to a Board : *Section*, *20(1).*

Conclusion: A conciliation proceeding is deemed to have concluded—

(a) where a *settlement* is *arrived* at - when a memorandum of the settlement is signed by the parties to the dispute; *or*

(b) where *no settlement* is arrived at-when the appropriate Government receives the report of the Conciliation Officer, *or* when the report of the Board is published under Section 17, as the case may be; or

(c) when a *reference* is *made* to a Court, Labour Court, Tribunal or National Tribunal under Section 10 during the pendency of conciliation proceedings : *Section 20(2).*

C. BOARD OF CONCILIATION

Under Section 5, the appropriate Government may, as occasion arises, by gazetted notification, constitute a Board of Conciliation for promoting the settlement of an industrial dispute. Such Board consists of a Chairman and between two and four other members.

Such Board has an independent person as Chairman, and the remaining members are to equally represent the parties to the dispute. Such representatives are appointed on the recommendation of the parties concerned. If any party fails to make a recommendation within the stipulated time, the appropriate government may make the appointment, If there is sufficient quorum, the Board can act even in the absence of the Chairman or any of its members, or any vacancy in its number. However, if the appropriate government notifies the Board that services of the Chairman or any member have ceased to be available, the Board *cannot* act until a new Chairman or member has been appointed.

No order of the appropriate government appointing a Chairman or member of Board and no act or proceeding before any Board, can be called in question in any manner, on the ground merely of the existence of any vacancy of defect in the constitution of such Board, If a report of settlement of the Board is duly signed by all members and the Chairman, no such settlement is invalid on account of the casual or unforeseen absence of any member or the Chairman during any stage of the proceedings.

Duties: The Board's main duty is to promote the settlement of industrial disputes. The appropriate government may, at any time, by a written order, refer a dispute to the Board for the purpose.

Once a dispute has been referred to the Board, the Board should endeavor to bring about a settlement, and for this purpose, the Board must, without delay, investigate the dispute and all matters affecting the merits and the right settlement of the dispute. It has the power to do all such things as it thinks fit for purpose of inducing the parties to come to a fair and amicable settlement.

If a settlement is arrived at, the Board should send a report thereof to the appropriate

government, together with memorandum of the settlement signed by the parties to the dispute.

If no such settlement is arrived at, it is the duty of the Board to send, after the close of the investigation, to the appropriate government,a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute, and for bringing about a settlement, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which in its opinion a settlement could *not* be arrived at, and its recommendations for the determination of the dispute.

If the dispute relates to a public utility service, and the appropriate government does *not* make a reference under Sector 10 despite the Board's report, the Government is bound to record and communicate, to the parties concerned, its reasons therefor.

The Board is expected to submit its report to the appropriate Government *within two months* of the date on which the dispute was referred to it *or* within such shorter time as may be fixed by the appropriate Government.

The appropriate government may extend the time for submission of the report by a further period, but *not* exceeding two months in the aggregate. The time for the submission may also be extended by written agreement of all the parties.

Procedure and Powers (S. 11)

(i) A Board of Conciliation is to follow such procedure as it thinks *the* fit, subject to any rules that may be made in this behalf

(ii) For the purposes of inquiry into any existing or apprehended *the* industrial dispute, a Board member may, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

(iii) A Board of Conciliation has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters:

(a) enforcing the attendance of any person and examining him on oath

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examinations of witnesses;

(d) such other matters as may be prescribed.

(iv) Every inquiry or investigation before a Board is deemed to be a *judicial proceeding within* the meaning of Section 193 and 228,1.P.C.

(v) Members of the Board are deemed to be public servants under Section 21 of the I.P.C.

(vi) Every award made, order issued or settlement arrived at by or before the Labour Court or Tribunal or National Tribunal is to be executed in accordance with the procedure laid down in the Civil Procedure Code for execution of orders and decrees of a civil court. (Clause (vi) above was introduced by the *2010 Amendment.]*

Report of the Board

The Board's report should be in writing and is to be signed by all the members of the Board. Any member of the Board may also record a minute of dissent from a report or from any recommendations made therein: *Section 16.*

Publication

Section 17 provides that every report of a Board, together with any minute of dissent

recorded therewith, is to be published in such manner as the appropriate government thinks fit, *within 30 days* of its receipt, by appropriate government.

D. COURTS OF INQUIRY

The appropriate government may, as occasion arises, by gazette notification, constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to any industrial dispute: *Section 6.*

Constitution: A Court of Inquiry may consist of one or more independent person or persons. Where it consists of two or more members, one of them is appointed as the Chairman. If it has the prescribed quorum, it can act despite the absence of the Chairman or any of its members or any vacancy in its numbers. However, if the appropriate government notifies the Court that the services of the Chairman are no longer available, the Court *cannot* act until a new Chairman has been appointed.

Section 8 provides *inter alia* that if, for any reason, a vacancy, other than a temporary absence, occurs in the office of the Chairman or any other member, the appropriate government must appoint a person in accordance with the Act to fill the vacancy, and the proceedings may be continued from the stage at which the vacancy is filled.

Under Section 9, no order appointing any person as the Chairman or member can be called in question in any manner. Similarly, no act or proceedings can be questioned in any manner merely on account of the existence of any vacancy in, or defect in the constitution of, such Court of inquiry.

In *Lilavati Bai* v. *State of Bombay* (A.I.R. 1967 S.C. 521), it was pointed out that although Section 9 provides for finality in respect of orders passed constituting conciliation boards and Courts of Inquiry, constitutional remedies under Articles 32, 226, and 227 are *not excluded.*

Duties of Courts of Inquiry

Courts of Inquiry are expected to inquire into matters referred to them, and to report thereon to the appropriate government, ordinarily within a period of 6 months from the commencement of the inquiry. Under Section 6, the duty of the Court of Inquiry is *not only* to inquire into matters referred, *but also* into such matters as appear to be connected with or relevant to an industrial dispute.

Powers and Procedure

The provisions relating to powers and procedure are substantially the same as those which pertain to Boards of Inquiry. Reference may, therefore, conveniently be made to the same.

In *addition,* a Court of Inquiry may appoint one or more persons having special knowledge of the matters under consideration, as *assessors* to advise it.

Report of the Court of Inquiry

Section 16 requires that the Court's report must be *in writing,* and should be *signed* by *all* the *members.* Any member is free to record a minute of dissent.

Publication: The report, with any minute of dissent, must be published in the manner thought fit by the appropriate government *within 30 days* from the date of its receipt by it: *Section 17.*

Confidential Matters
If a trade union, firm, company or person makes a written request to the Court of Inquiry that any information obtained by the Court in the course of any inquiry or investigation as to a trade union or as to any individual business, which is *not* available otherwise than through the evidence given before such Court, be treated as confidential, the same is *not* to be included in any report under the Act. No member of the Court or any person present should disclose any such information without the written consent of the Secretary trade union, person, firm or company, as the case may be. However, these provisions do *not* apply to a disclosure of any information for the purpose of a prosecution under Section 194, I.P.C.

E. LABOUR COURTS

Constitution: The appropriate government may, by gazette notification constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule, and for the performance of other functions as may be assigned to them under the Act: *Section 7.* (Matters given in the Second Schedule are listed later on.)

Composition and Qualifications: A Labour Court consists of one Person only, appointed by the appropriate government. The prescribed *Qualifications* for appointment as the Presiding Officer of a Labour Court are as follows:
(i) The person should be, or must have been, a Judge of a High Court; *or*
(ii) He should have been a District Judge or an Additional Distinct Judge for a period not less than 3 years; *or*
(iii) He should have *held* any judicial office in India for *not* less than 7 years; *or*
(iv) He must have been the Presiding Officer of a Labour Court constituted under any provincial or State Act, for *not* less than 5 years.

In the *State of Maharshtra* in addition to the above, the following *further criteria* are also prescribed, and a person would be eligible for appointment *also if:*
(a) He has practised as an advocate or attorney for *not* less than 7 years in the High Court, *or* any Court subordinate thereto, or any Industrial Court or Tribunal or Labour Court, constituted under any law for the time being in force; *or*
(b) he holds a law degree of an Indian University and holds or has *held* an office *not* lower in rank than that of a Deputy Registrar or any such Industrial Court or Tribunal for not less than 5 years; *or*
(c) he holds a law degree or any Indian University and holds or has *held* an office *not* lower in rank than that of a Assistant Commissioner of Labour under the State Government, for not less than 5 years.

Disqualifications: Section 7-C lays down that no person can be appointed to, or continue in, the office of the Presiding Officer of a Labour Court, *if*
(a) he is *not* an independent person; *or*
(b) he has attained the age of 65 years.

Filling of Vacancies
If, for any reason, a vacancy other than a temporary absence, occurs in the office of the Presiding Officer of a Labour Court, the appropriate Government appoints a person in accordance with the Act, to fill the vacancy, and the proceedings may be continued from

the stage at which the vacancy is filled.

Finality of order constituting a Labour Court
Section 9 states that an order of the appropriate government appointing any person as the Presiding Officer of a Labour Court, *cannot* be called in question in any manner.

Duties of Labour Courts
Where an Industrial dispute has been referred to a Labour Court for adjudication, it is bound to hold its proceedings expeditiously and thereafter as soon as it is practicable on the conclusion thereof, to submit its award to the appropriate government: *Section 15.*

Under Section 10, the appropriate government is authorised to make a written reference for adjudication to a Labour Court *if* it is satisfied that an industrial dispute exists or is apprehended. Such reference may relate to the dispute or any matter appearing to be connected with or relevant to the dispute if it relates to any matter specified in the Second Schedule to the Act.

Section 10 also provides that even if the dispute relates to any matter specified in the Third Schedule, and which ordinarily should be referred to an Industrial Tribunal, it may be referred to a Labour Court, if the dispute is *not* likely to affect more than one hundred workmen, and the appropriate government thinks it fit to refer the same to a Labour Court.

For the purposes of understanding the functions of the Labour Court, it is necessary to refer to the *matters within the jurisdiction of the Labour Court.* These matters are specified in the SECOND SCHEDULE, as follows:
(i) the propriety or legality of an order passed by an employer under the standing orders;
(ii) the application and interpretation of standing orders;
(iii) discharge or dismissal of workmen, including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
(iv) withdrawal of any coustomary concession or privilege;
(v) illegality or otherwise of a strike or lock-out; *and*
(vi) all matters other than those specified in the Third Schedule.

Powers and Procedure
The powers and procedure prescribed under Section 11 are the *same* as apply to Boards of Conciliation and Courts of Inquiry. In *addition,* the following provisions apply in the case of a Labour Court:

1. The Labour Court has the discretion, subject to any rules made under the Act, to award costs of, an incidental, to any proceedings before it. It has full power to determine the award of costs and payment thereof and to give all necessary directions in connection with the same.
2. Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, and in the course of the adjudication proceedings, the Labour Court is satisfied that the discharge or dismissal was *not* justified, it may, by its award, set aside the same and direct reinstatement of the workman, whether on any terms and conditions, or give such other relief, including the award of any lesser punishment.

   However, for this purpose, the Labour Court can only rely upon the * materials on record and *cannot* take any fresh evidence in relation to the matter: *Section 11 A.*

3. *Under Section 10A,* there can be a voluntary reference to arbitration to any person including the Presiding Officer of a Labour Court. In such circumstance, the Presiding Officer of the Labour Court acts as an Arbitrator pursuant to a written agreement of the parties to the dispute.
4. A Labour Court is a Civil Court for the purposes of the Criminal Procedure Code.

Award: Form and Publication
Under Section 16(2), the award of the Labour Court must be in writing and must be signed by its Presiding Officer.

Every Arbitration award any every award of the Labour Court must be published within a period of 30 days from the date of its receipt by the appropriate government. Subject to the provision regarding the commencement of the award contained in Section 17A, the award of the Labour Court published as provided in Section 17(1) is final, and *cannot* be called in question by any Court in any manner whatsoever.

Confidential matters
The provisions of Section 21, relating to confidential matter discussed in relation to Courts of Inquiry, *also apply* in the case of a Labour Court.

In *Garment Cleaning Works* v. *Babulal* (A.I.R. 1962, S. C. 673), it was *held* that once a party has exercised a privilege in respect of requesting certain matters to be kept confidential, he *cannot* thereafter complain of a non-consideration of such matters in the award.

F. INDUSTRIAL TRIBUNAL
"Tribunal" means an industrial Tribunal constituted under Section 7A and includes an Industrial Tribunal constituted before the 10th day of March, 1957, under this Act: *Section 2(r).*

Constitution
The appropriate government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act: *Section 7A.*

A Tribunal consists of one person only, to be appointed by the appropriate government.

Qualifications
A person cannot be appointed as the Presiding Officer of a Tribunal unless:
(a) he is, or has been a Judge of the High Court or a District Judge, or is qualified for appointment as a Judge of a High Court; *or*
(b) he has been a District judge or an Additional District Judge for at least three years.

The appropriate government is also authorised to appoint, if it thinks fit, two persons as assessors to advise the Tribunal in respect of the proceedings before it.

In the *State of Maharashtra,* in addition to the above, a person will *also* be qualified for appointment if -
(i) he has *for not* less than five years been a Presiding Officer of Labour Court; *or*

(ii) he holds a law degree of an Indian University or has *held* an office *not* lower in rank than that of Assistant Commi-ssioner of Labour under the State Government for *not* less than ten years.

Disqualifications
Section 7C provides inter alia that no person can be appointed to or otherwise continue in the office of the Presiding Officer of a Tribunal *if*—

(i) he is *not* an independent person; *or*
(ii) he has attained the age of 65 years.

Filling of vacancies & finality of orders
The same provisions under Section 8 as apply to Labour Courts in this regard apply to Industrial Tribunals.

Duties of Tribunals
Section 15 prescribes that where an industrial dispute has been referred to a Tribunal for adjudication, it should hold its proceedings expeditiously and must, as soon as is practicable on the conclusion thereof, submit its award to appropriate government.

Under *Section 10,* the appropriate government may make a written order of reference to a Tribunal when the dispute relates to any matter appearing to be connected with or relevant to any matter specified in the Second or Third Schedule. Although matters referred to in the Third Schedule are ordinarily to be referred to a Tribunal, the same may be referred to a Labour Court if the appropriate government thinks fit and if the dispute is *not* likely to affect *more than one hundred workmen.*

Further, when the parties to the dispute jointly or separately make an application for reference to a Tribunal, the appropriate government is *bound* to make the reference accordingly, if it is satisfied that the applicants represent the majority of each party.

Once an order of reference to a Tribunal is made, such Tribunal should confine its adjudication to those points referred and matters incidental thereto.

In a voluntary reference for the arbitration of the Presiding Officer of the Tribunal, the arbitrator has to investigate the dispute and submit to the appropriate government, the arbitration award duly signed by him.

Second and Third Schedules
As an Industrial Tribunal has the power to adjudicate on matters relating to the Second and Third Schedules to the Industrial Disputes Act, it is necessary to refer to the matters listed in the said Schedules.

These matters are as follows:
THE SECOND SCHEDULE

1. The propriety or legality of an order passed by an employer under the standing orders
2. The application and interpretation of standing orders
3. Discharge or dismissed or workmen including reinstatement of, or grant or relief to, workmen wrongfully dismissed
4. Withdrawal of any customary concession or privilege
5. Illegality or otherwise of a strike or lock-out

6. All matters other than those specified in the Third Schedule.

Although matters listed in the Second Schedule are normally within the jurisdiction of Labour Courts, under Section 7A(1), the appropriate government may refer a dispute to an Industrial Tribunal *even if* it relates to a matter listed in the Second Schedule.

THE THIRD SCHEDULE

1. Wages, including the period and mode of payment
2. Compensatory and other allowances
3. Hours of work and rest intervals
4. Leave with wages and holidays
5. Bonus, profit sharing, provident fund andgratuity
6. Shift working, otherwise than in accordance with standing orders
7. Classification by grades
8. Rules of discipline
9. Rationalization
10. Retrenchment of workmen and closure of an establishment
11. Any other prescribed matter.

Powers and Procedure

The provisions relating to powers and procedure of an Industrial Tribunal are the same as that of a Board of Conciliation with the *additional provisions* discussed in relation to Courts of Inquiry and Labour Court, under the heading 'Powers and Procedure'. The same are, for the sake of brevity, *not* repeated here. Reference may, therefore, be made to the abovementioned provisions.

Form & Publications of Award

A Tribunal's award must be in writing, and must be signed by its presiding officer.

Publication: Under Section 17, every arbitration award and every award of a Tribunal must be published in such manner as the appropriate government thinks fit, within a period of 30 days from the date of its receipt by the appropriate government. Subject to the provision regarding the commencement of the award contained in Section 17A, the award published as provided in Section 17(1) is final and *cannot* be called in question by any court in any manner whatsoever.

Confidential matters

[A reference may be made to the same heading under *Labour Courts,* as the provisions are *identical.]*

G. NATIONAL TRIBUNALS

Section 2(11) defines a *National Tribunal* as a National Industrial Tribunal constituted under Section 7B.

Constitution

The Central Government may, by gazette notification, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government : (a) involve questions of national importance, *or* (b) are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes: *Section 7B.*

A National Tribunal is to consist of one person only, to be appointed by the Central Government.

In relation to a dispute involving questions of national importance and where industrial establishments situated in more than one State are interested or affected, the Central Government may make a reference even *if* it is *not* the appropriate government.

Qualification of Presiding Officer
According to *Section 7B(3),* a person shall *not* be qualified for appointment as the Presiding Officer of a National Tribunal *unless* he is, or has been, a Judge of a High Court.

Disqualifications
Section 7C specifies that *no* person can be appointed to, or continue in, the office of the Presiding Officer of a National Tribunal, *if:*

(a) he is *not* a independent person; *or*
(b) he has attained the age of 65.

Filling of Vacancies and Finality of Order Constituting a National Tribunal
[The provisions in this regard are *identical* to those relating to Industrial Tribunals, to which a reference may be made.]

Duties of National Tribunal
Under *Section 15,* once an industrial dispute is referred to a National Tribunal, the same must be disposed of expeditiously. A National Tribunal is, therefore, expected to conduct its proceedings accordingly and is bound to submit its award to the appropriate government as soon as it is practicable.

A reference may be made to a National Tribunal irrespective of whether the matter relates to the Second or Third Schedules.

When the parties to an industrial dispute apply, in the prescribed manner, whether jointly or separately, for a reference to a National Tribunal, the appropriate government, if satisfied that the persons applying represent the majority of each party, is *bound* to make the reference accordingly.

Once an order of reference to a National Tribunal is made, the National Tribunal is bound to confine its adjudication to those points and matters incidental thereto, which have been specified in the order of reference.

It may be *noted* that:

(a) Once a reference has been made to a National Tribunal, no Labour Court or Tribunal shall have jurisdiction upon any matter which is under adjudication before it. Similarly, pending proceedings before a Labour Court or Tribunal shall be deemed to have been quashed once a reference is made to National Tribunal.
(b) A matter once referred to a National Tribunal *cannot* thereafter be referred to a Labour Court or a Tribunal.

Section 10(7) provides that where any industrial dispute in relation to which the Central Government is *not* the appropriate Government is referred to a National Tribunal then, notwithstanding anything contained in this Act, any reference in Sections 15, 17, 19,

33A, 33B and 36A to the appropriate government in relation to such dispute is to be deemed to be a reference to the Central Government, but except as aforesaid, and as otherwise expressly provided in this Act, all other references to the term “appropriate government" shall be construed as reference to the State Government.

Powers and Procedure
[A reference may be made to the powers and procedure of Industrial Tribunals as the provisions in this respect are *identical* to those relating to National Tribunals]

Form of Award & Publication
[The provisions covering this topic are the *same* as those relating to Industrial Tribunals.]

Confidential Matters
[Section 21 deals with this subject, and the *same provisions* apply as in the case of Labour Courts.]

CHAPTER IV

NOTICE OF CHANGE

This Chapter is discussed under the following *four* heads:

A. Notice of Change : When required
B. Matters in the Fourth Schedule
C. When Notice *not* required
D. Power to exempt.

Questions:
Write a short note on: Notice of change. B.U. Apr. 2013 Nov. 2013 Nov. 2014

A. NOTICE OF CHANGE: WHEN REQUIRED

Section 9A requires the employer to give a *notice of change before effecting* any *change* in the *conditions of service* of the workmen under certain circumstances and in respect of certain matters.

It is provided that *no employer,* who proposes to effect any change in the conditions of service applicable to any workman *in respect of any matter specified in the Fourth Schedule can effect such* change unless the following *two requirements* are complied with, namely, —

(a) he must give to the workmen likely to be affected by such change, a *notice* in the prescribed manner of the nature of the change proposed to be effected; and
(b) he can put the change into effect *only after 21 days* from the date of such notice.

However, *no notice of change is required in certain cases* which are separately discussed in this Chapter under the heading "When notice *not* required."

It is to be noted that *both* the conditions required for making a change are *mandatory* in nature. *Both* need to be satisfied before any change in relation to matters specified above can be effected.

The *object* of the above provisions is to enable the workmen to have sufficient time after the notice to show cause against the proposed change. In *Northbrook Jute Company* v. *Their Employees* (AIR 1960 S.C. 879), it was stressed that the change *cannot* come into effect until the prerequisite conditions specified in Section 9A are fulfilled.

In *Indian Oxygen Ltd.* v. *Udaynath Singh* (C.A. No. 724 of 1966), the Supreme Court *held* that the question of notice of change arises only if there is a condition of service which is changed. In the instant case, the company had, on its workmen's request, agreed to sell carbide drums to its workmen at concessional rate. There was no bligation on the company to provide such drums at concessional rate, and there was no right vested in the workmen to compel the management to sell the drums to them. When the company refused to sell the drums, it was *held* that there was no change in the service conditions, although the workmen had contended that the sale had become a part of the conditions of the workmen's service.

In *Tamil Nadu Electricity Workers' Federation* v. *Madras Electricity Board,* (1964 II LLJ 392 Mad.), the Court *held* that when there is a change by consent between the employer and certain workmen which did *not* affect the rest of the workmen in the industry, the trade union was *not* entitled to urge that the change was invalid without a notice of change.

Further, it has been *held* that a notice of change is required *only when* the proposed change is *prejudicial* to the conditions of service hitherto enjoyed by the workmen, and *not otherwise.*

In *Management of Indian Oil Corporation Ltd.* v. *Its Workmen* (1975 II LLJ 319 SC), the grant of a "compensatory allowance" by the Corporation to its workmen was *held* to be an implied term of service and, therefore, a unilateral withdrawal of the same could *not* be effected without following the procedure prescribed under *Section 9A.*

In *Assam Match Company* v. *Bijoi Lai Sen* (AIR 1973 2155), the Court *held* that when, at the instance of a majority of workmen, the Diwali holiday was changed by one day, there was no change which required notice of change under *Section 9A,* as the same did *not* involve any alteration in the conditions of service of workmen. The Court observed that there was no deprivation of a holiday; but had there been total cancellation instead of an alteration of the date, the management might have been liable to observe the provisions of *Section 9A* before effecting the change.

In *the Workmen of Sur Iron & Steel Co. Pvt. Ltd.* v. *Sur Iron & Steel Co. Pvt. Ltd.* (1971 I LLJ 570 SC), the Court *held* that when as a result of an electricity cut, a weekly off day is altered from Sunday to Saturday, the provisions of *Section 9A* will *not* apply, as the list contained in the Fourth Schedule does *not* contain any entry relating to weekly-off.

Similarly, in *Bhiman Textile Mills* v. *Their Workmen,* (1969 II LLJ 739 SC), the Court *held* that when the workmen were called upon to work on a Sunday and provided another day off in the week, the change effected thereby does *not* required observance of the provision of *Section 9A,* as it was *not* a change covered by the Fourth Schedule of the Act.

In *Shalimar Paints Limited* v. *Third Industrial Tribunal, Calcutta* (1971, II LLJ 58 Cal.), it was *held* that when the employer changed his place of business there is, by the mere fact of that change, no alteration in service conditions of the workmen. No notice under *Section 9A* is necessary in such a case.

In *Krishnarajendra Mill Workers Union* v. *Assistant Labour Commissioner,* (1968 I LLJ 504 Mys.), the Court observed that the Section does *not* apply to a change effected as a result of an agreement arrived at in conciliation proceedings.

B. MATTERS IN THE FOURTH SCHEDULE

A notice of change is required under *Section 9A* when the employer seeks to change to conditions of service applicable to workmen in respect of any matter specified in the *Fourth Schedule.* The eleven matters in respect of which notice of change is required are as follows:

1. Wages, including the period and mode of payment
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force.

3. Compensatory and other allowances
4. Hours of work and rest intervals
5. Leave with wages and holidays
6. Starting, alteration or discontinuance of shift-working, otherwise than in accordance with standing orders
7. Classification by grades
8. Withdrawal of any customary concession or privilege or change in usage.
9. Introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders.
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen
11. Any increase or reduction (other than casual) in the number of persons employed, or to be employed, in any occassion, or process or department or shift, *not* occasioned by circumstances over which the employer has no control.

C. WHEN NOTICE *NOT* REQUIRED

Section 9A expressly provides that *no notice* of change shall be *required:*

(a) where the change is effected in pursuance of any settlement or award; *or*

(b) where to workmen likely to be effected by the change are persons to whom any of the following Rules apply : The Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rule, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules, or the Indian Railway Establishment Code, or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette.

In addition, the appropriate government is authorised under *Section 9B* to *exempt* industrial establishments from the provisions of Section 9A. (See below.)

D. POWER TO EXEMPT

Under *Section 9B* where the *appropriate government* is of the *opinion* that the application of the provisions of Section 9A to any class of workmen employed in any industrial establishment would *affect* the employer in relation thereto so *prejudicially* that such application *may cause serious repercussion* on the industry concerned and that *public interest* so requires, the *appropriate government* may, by notification in the Official Gazette, direct that the provisions of the said section *shall not apply or shall apply subject* to such *conditions* as may be specified in the notification, *to that class of industrial establishment* or that *class of workmen employed* in any industrial establishment.

CHAPTER V

REFERENCE OF DISPUTE TO BOARDS, COURTS OR TRIBUNALS

The following topics are discussed in this Chapter:

A. Reference of individual disputes to Grievance Redressal Committee
B. Reference of disputes under Section 10 to Boards, Courts or Tribunals
C. Effect of an Order of Reference
D. Voluntary references to arbitration under Section 10A
E. Workmen's Death.

A. REFERENCE OF INDIVIDUAL DISPUTES TO GRIEVANCE REDRESSAL COMMITTEE

Under a new provision *introduced by the Industrial Disputes (Amendment) Act, 2010,* every industrial establishment employing 20 or more workmen must establish one or more *Grievance Redressal Committee* for the resolution of disputes arising out of *individual grievances.* (S. 9C)

Such a Committee is to consist of *not more than six members* and must have an equal number of members from the employer and the workman. The Chairperson of the Committee is to be elected from the representatives of the employer and those of the workmen alternatively on a rotation basis every year.

As far as may be practical, if the Committee has two members, it must have one woman member, and incase the strength *of* the Committee is more than two, the number of women members may be increased proportionately.

The Committee may complete its proceedings within thirty days of the receipt of a written application by or on behalf of the aggrieved party.

If a workman is aggrieved by the decision of the Committee, he may file an appeal before the employer, who must, within a period of one month from the receipt of such an appeal, dispose of the same and send a copy of his decision to the concerned workman.

B. REFERENCE OF DISPUTES UNDER SECTION 10 TO BOARDS, COURTS AND TRIBUNALS

For the purpose of convenience, the types of references under *Section 10* may be discussed under the following *five* heads:

a) where a dispute exists or is apprehended;
b) disputes relating to Public Utility Services;
c) disputes involving national importance, etc;
d) joint/separate application of the parties;
e) period for submitting award.

(a) Where an industrial dispute exists or is apprehended

Section 10(a) provides that where the appropriate government is of the opinion that any industrial dispute exists, or is apprehended, it *may,* at any time, by a written order:

(i) refer the dispute to a Board for promoting a settlement thereof; *or*

(ii) refer any matter appearing to be connected with or relevant to the dispute to a Court of inquiry; *or*

(iii) refer the dispute or any matter appearing to be connected with or relevant to the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; *or*

(iv) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second or Third Schedule, to a Tribunal for adjudication.

The section however expressly provides that even if the dispute relates to any matter specified in the *Third Schedule,* the appropriate government *may,* in its discretion, make the reference to a Labour Court *if* the dispute is *not* likely to affect more than *one hundred workmen.* (Matters covered by the Third Schedule have been listed in the last Chapter, to which a reference may be made.)

The wordings of *Section 10* make it clear thaf before the appropriate government can make a reference, either an *industrial dispute must exist* or must *be apprehended* (in the opinion of the appropriate government).

It is by now well-settled that although the power to make a reference is essentially an *administrative* power, it does *not* involve either an unfettered or arbitrary discretion. The question necessarily involves the formation of an “opinion” by the appropriate government, and therefore, the appropriate government must apply its mind before forming the necessary opinion.

In *Barium Chemicals* v. *Company Law Board* (A.I.R. 1967 S.C. 295), it was *held* that it is essential that the requisite opinion must be formed by the appropriate government, and it is implicit that the opinion must be an honest one. An order of reference unsupported by a material dispute, existing or apprehended, will be improper.

As the appropriate government’s power is essentially an administrative one, it is *open to* it to *review* its earlier decision of refusal of a reference. *(Shambhunath Goyal* v. *Bank of Baroda Jullundar)*

The general provisions relating to making a reference under Section 10(1) are *not mandatory* in nature. The provisions mainly confer on the appropriate government the *discretionary power* to make a reference, although it is expected that if the requisite conditions exist, the appropriate government will make the reference. The only obligation cast on the appropriate government in the event of its refusal to make a reference is contained in Section 12(5), which provides that if the appropriate government does *not* make a reference, it is bound to record and communicate to the parties concerned its *reasons* for the same.

In *State of Punjab* v. *Gondhara Transport Co. Pvt. Ltd.* (A.I.R. 1975 S.C. 531), the Court *held* that a reference under Section 10(1) may be made only when an “industrial dispute” is *existing* or is *apprehended.* Thus, a reference *cannot* be made when no industrial dispute is existing or is apprehended. In this case, the cause of the concerned workmen was taken up by a small fraction of the workmen employed in the industry. On account of

this fact, the dispute was *not* an industrial one and hence, no reference could be validly made.

In *India Paper & Pulp Co.* v. *Workers' Union* (52 B.L.R. 76), the Court stressed the need for the order of reference to indicate the existence or apprehension of an industrial dispute. The use of the words “or is apprehended” clearly indicates that the appropriate government’s power to make a reference is *not* restricted only when an industrial dispute is *actually in existence.*

In *Workmen, Mysore Paper Mills* v. *Mysore Paper Mills,* (A.I.R. 1970 Mys. 212), the Court considered the scope of the words “any matter appearing to be connected with, or relevant to the dispute”, and stressed that what is indicated thereby is that such matter be incidental to the main dispute. Thus, if a matter is a separate issue, the same *cannot* be covered under the terms of reference in respect of the main dispute.

In *Engineering Staff Union* v. *The State of Bombay* (A.I.R. 1960 Born. 144), the Court *held* that a *partial reference* is competent and that the appropriate government is *not* bound to refer *all* the aspects of a dispute.

In *Workmen of S.R.V. Motors* v. *S.R.V. Motors,* (A.I.R. 1967 S.C.. 1040), the Court upheld the competence of the Mysore Government tb make a reference in respect of a dispute relating to the transfer of a workman employed at Bangalore, though the head office of the company was situated in Tamil Nadu. There should be some nexus between the territory of the State where the concerned workman was working at the time of the dispute, and “*not necessarily* between the territory of the State and the industry concerning which the dispute arose” This view was based on the ground that if the workman was working at the place in a State different from that in which the head office was situated, the employment will be in a separate unit or establishment, and hence, the appropriate government will be the Government of the State in which the workman was employed.

In *Good Year India Ltd.* v. *Industrial Tribunal* (A.I.R. 1969 Raj. 95), the Court pointed out that even when there had been an earlier refusal, supported by reasons, to refer the dispute under Section 10(1), the appropriate government can validly make a reference later, even though it did *not* specify reasons for the same.

The adjudicating authority *cannot,* by means of its award, enlarge the area of scope of the reference made by the appropriate Government (*Indian Oxygen Ltd.* v. *Their Workmen* A.I.R. 1969 S.C. 306)

In *U. P. Electric Supply Co. Ltd.* v. *Their Workmen* (A.I.R. 1971 S.C. 254), the Court *held* that closure of the industry or the transfer of its management during the pendency of adjudication proceedings does *not* render such proceedings infructuous.

In *Abdul Rahman Sahib* v. *State of Mysore* (I LLJ 61 Mys.), it was *held* that when the order of reference did *not* indicate that the dispute was likely to affect *"not* more than one hundred workmen”, a reference to a Labour Court was invalid if the dispute related to a matter specified in the First Schedule.

As *Sec. 10(1)* provides *inter alia* that the appropriate government *“may at any time"* refer an existing or apprehended industrial dispute, it is clear that the appropriate government

may do so without waiting for conciliation proceedings to commence or be completed.

The other formal requisite of an order of reference is that it should be *in writing,* although it need *not* conform to any particular form.

(b) Disputes relating to public utility services
Where the dispute:
(i) relates to a public utility service, *and*
(ii) a notice under Section 22 has been given,
the appropriate Government *must, unless* it considers that
(i) the notice is frivolous or vexatious, *or*
(ii) it is inexpedient to do so,
make a reference, *even if* any other proceedings in respect of the dispute may have commenced: *Second Proviso to Section 10.*

The above provisions are *mandatory in nature.* Not only has the appropriate government the *power* in the above terms, but the provisions also *cast a duty* on the appropriate government to make a reference in such circumstances.

If the appropriate government refuses to make a reference under either of the two contingencies mentioned above, it is bound to *record* and *communicate* its written reasons to the parties concerned, as required by *Section 12(5).* A Court can, under its writ jurisdiction, consider whether the reasons recorded under Sec. 12(5) conform to permissible contingencies.

It is also provided that where the dispute in relation to which the Central Government is the appropriate government, it is competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

(c) Disputes involving national importance, etc.
Where the Central Government is of the opinion-
(a) that an industrial dispute which exists *or* is apprehended—
(i) involves any *question of national importance, or*
(ii) is of such a nature that *industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute, and*
(b) that the dispute should be adjudicated by a National Tribunal, the Central Government may, *whether or not* it is the appropriate government in relation to that dispute, at any time, by a written order, refer the dispute, or any matter connected with, or relevant to the dispute, whether it relates to any matter specified in the Second or Third Schedule, to a National Tribunal for adjudication: *Section 10(1 A).*

While the above provisions confer a discretionary power, they do *not* impose an obligatory duty. The Central Government may, even if it is *not* the appropriate government, make such a reference at any time. Thus, even if a matter is before a Labour Court or an Industrial Tribunal, the Central Government may make a reference to a National Tribunal.

Effect of reference: National Tribunal
1. *Section 10(6)* provides that where any reference has been made to a National

Tribunal, *no* Labour Court or Tribunal would have jurisdiction to adjudicate upon any matter which is before the National Tribunal. Accordingly,—

(a) If the matter is pending before a Labour Court or Tribunal, the matter is deemed to be *quashed* on a reference to the National Tribunal.

(b) The appropriate government *cannot refer* the matter before a National Tribunal *to any Labour Court or Tribunal* during the *pendency* of the matter before the National Tribunal.

2. Where an industrial dispute has been referred to a National Tribunal, the appropriate government *may prohibit,* by an appropriate order, the continuance of any strike or lock-out in connection with such dispute, as may be in existence on the date of the reference.

3. On an order of reference, the National Tribunal is bound to *confine its adjudication* to such points of dispute as have been referred and matters incidental thereto.

4. On a reference to a National Tribunal, the appropriate government may, at the time of making the reference, or at any time thereafter, before submission of the award, *include* in the reference, any *other establishment, a group* or class of establishments of a *similar* nature likely to be *interested in,* or *affected* by, the dispute, irrespective of whether there is an existing or apprehended dispute, if the appropriate government, on an application made to it or otherwise, *thinks it fit so to do.*

(d) Joint/separate application of the parties

Where the parties to an industrial dispute apply in the prescribed manner, whether *jointly or separately,* for a reference of a dispute to a Board, Court, Labour Court or National Tribunal, the appropriate government, *if satisfied* that the persons applying represent the *majority* of each party, must make the reference accordingly: *Sec. 10(2).*

According to a *Maharashtra amendment,* when an application is made by a recognised union, the appropriate government is bound to make the reference.

The duty cast by Section 10(2) is of a *mandatory* nature, in the sense that the appropriate government is *bound* to make the order of reference if:

(i) the parties to an industrial dispute *apply jointly or separately* to the appropriate government for a reference; *or*

(ii) the application is in the *prescribed* manner; *and*

(iii) the appropriate government is *satisfied* that the applicants *represent* the *majority* of each party; *or (in Maharashtra State)* the applicant is a recognised union.

(e) Period for submitting award

An order referring an industrial dispute to a Labour Court or Tribunal or National Tribunal under this section must specify the period within which such Labour Court, Tribunal or National Tribunal must submit its award on such dispute to the appropriate government.

In cases where such industrial dispute is connected with an individual workman, no such period can exceed *three months.*

Furthermore, if the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for an extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

It may also be noted that, in computing the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court is to be *excluded.*

It is further provided that no proceedings before a Labour Court, Tribunal or National Tribunal would lapse *merely* on the ground that any period specified under this sub-section had expired without such proceedings being completed.

The provision made under this sub-section provides for the early disposal of labour disputes to prevent hardship being caused to the workmen due to pendency of litigation.

C. EFFECT OF AN ORDER OF REFERENCE GENERALLY

The *effect* of an order of reference to a National Tribunal has been dealt with separately above. The *effect of an order of reference* under Section 10 is generally as follows:

(i) Where an industrial dispute has been referred for adjudication, the appropriate Government may, by order, *prohibit the continuance of any strike or lock-out* in connection with such a dispute, which may be in existence on the date of reference : *Section 10(3).*

(ii) Where in an order of reference, the appropriate government has specified the points of dispute for adjudication, the same is to be confined *to those points and matters incidental thereto: Section 10(4).*

(iii) Where a dispute concerning any establishment or establishments has been, or is to be, referred to adjudication, and the appropriate government is of the opinion, whether on application or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate government may, at the time of making the reference, or at any time thereafter, but before the submission of the award, *include in the reference such establishment, group or class of establishments, whether or not* at the time of such inclusion, any dispute exists or is apprehended in the establishment, group or class of establishments: *Section 10(5).*

D. VOLUNTARY REFERENCE TO ARBITRATION UNDER SECTION 10A

Section 10A provides that where —

(a) any industrial dispute exists or is apprehended, *and*

(b) the employer and the workmen agree to refer the dispute to arbitration,

they may, at any time before the dispute has been referred under section 12 to Labour Court or Tribunal or National Tribunal by a written agreement, refer the dispute to arbitration, and the reference *shall* be to such person or persons (including the Presiding Officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators, as may be specified in the arbitration agreement.

Under an *amendment* applicable in the *State of Maharashtra,* a recognised union may agree with the employer to refer such dispute, and the same may be referred accordingly.

The reference to arbitration under Section 10A is the result of a written agreement between parties to refer the dispute to arbitration.

The *essential* elements of a valid reference to arbitration by agreement are:

(i) There must be an *existing* or *apprehended* industrial dispute.
(ii) The *agreement* to refer the dispute to arbitration must be *in writing.*
(iii) Such agreement should be arrived at *prior to any reference* being made under Section 10 to a Labour Court or Tribunal or National Tribunal.
(iv) The agreement must *specify* the *names* of the *arbitrator* or *arbitrators.* Even the Presiding Officer of a Labour Court or Tribunal or National Tribunal may be an arbitrator under Section 10A.
(v) An arbitration agreement should be in the *prescribed form* and should be *signed* by the parties thereto in the prescribed manner.
(vi) Where an arbitration agreement provides for an *even number* of arbitrators, it should also provide for an *umpire,* whose award prevails if the arbitrators are equally divided.
(vii) It is essential that a *copy* of arbitration *agreement* be *forwarded* to the *appropriate government* and the *Conciliation Officer,* and the *appropriate government should publish* the same in the Official Gazette within a month of the *receipt* of such copy.

Opportunity to non-parties
Under *Section 10A(3A),* the appropriate government is authorised, if it is satisfied that the applicants to an agreement of arbitration represent the majority of each party, to issue a notification in the prescribed manner, within *one month* of receipt of the copy of the arbitration agreement, and thereupon employers and workmen *who are not parties* to the agreement, but are concerned in the dispute, are entitled to have an opportunity of presenting their case before the arbitrator or arbitrators.

A *Maharashtra Amendment* provides that the above shall *not* apply to a dispute which has been referred to arbitration in pursuance of an agreement between the employer and the recongnised union under Section 10(1).

Arbitration Procedure
The arbitrator or arbitrators should submit, to the appropriate government, the arbitration award, signed by the arbitrator or all the arbitrators, as the case may be: *Sec. 10A(4).*

Power to prohibit strike or lock-out
Once a dispute has been referred to arbitration and a notification has been issued under Section 10(3A), the appropriate government may, by order prohibit the continuance of a strike or lock-out in connection with such dispute as may be in existence on the date of the reference : *Section 10A(4A).*

Under a *Maharashtra Amendment,* the continuance of a strike or lock-out may be prohibited by appropriate government, when there is a recognised union for the undertaking *and* an industrial dispute has been referred to arbitration.

Arbitration Act *not* applicable
An arbitration pursuant to an arbitration agreement is *not* governed by the provisions of the Arbitration Act, as *Section 10A(5)* specifically states that *nothing in the Arbitration Act will apply to arbitrations under this section.*

Cases
In *(AIR Corporation Employees Union* v. *D.V. Vyas* 64 B.L.R 1), the Court observed that arbitrators appointed by agreement under this section are bound to act according to law, as they are appointed by virtue of the statute and are within the High Court's powers of

superintendence. The fact that the parties to the dispute can choose the arbitrators does *not* make a difference as far as the duties and functions of such arbitrators are concerned.

In *Rohtak Industries* v. *Rohtak Industries Union* (AIR 1976 SC 425), the Court *held* that the remedy available to an employer on account of an illegal strike *cannot* be exercised through an arbitration award, and has to be sought under the relevant provisions concerning penalties for such a strike.

E. WORKMAN'S DEATH

Under Section 10(8), it has been provided that no proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute would lapse *merely* by reason of the death of, any of the parties to the dispute being a workman. Such Labour Court, Tribunal or National Tribunal has to complete such proceedings and submit its award to the appropriate government.

CHAPTER VI

AWARDS AND SETTLEMENTS

The following topics are discussed in this Chapter:

A. Form of Report and Award (Sec. 16)
B. Publication of Reports and Awards (Sec. 17)
C. Commencement of an Award : "Enforceability" and "Operation" (Sec. 17)
D. Persons on whom Settlements and Awards are binding (Sec. 18)
E. Period of Operation of Settlements and Awards (Sec. 19)
F. Commencement and Conclusion of Proceedings (Sec. 20)
G. Penalty for Breach of Settlement or Award (Sec. 29)

Questions:
Who must sign the Award of the Labour Court or Tribunal as per the I.D. Act, 1947 (2 marks) M.U. May 2012 Apr. 2014
What is an "award" under the Industrial Disputes Act? (2 marks) M.U. Nov. 2012
What are the two types of settlements under the *Act, 1947? (2 marks)* B.U. Apr. 2013
Write a short note on: Persons on whom settlements and awards are binding. B.U. Nov 2012
Explain conciliation and settlement under the ID Act B.U. 2015

A. FORM OF REPORT AND AWARD (S. 16)

(1) The *report* of a Board or Court should be *in writing* and must be *signed by all* the members of the Board or Court, as the case may be, However, any member may record any *minute of dissent* from a report or from any recommendations made therein.
(2) The *award* of a Labour Court, Tribunal or National Tribunal must be *in writing* and should be *signed* by its presiding officer.

While the final order of a Board of Conciliation or Court of Inquiry is called a *report,* the final order of a Labour Court, Industrial Tribunal or National Tribunal is *called* an *award.*

What is an award— an award, as defined in Sec. 2(b), *is* an interim or a final determination of any industrial dispute or of any question relating thereto, by any Labour Court, Industrial Tribunal or National Tribunal, and *includes* an arbitration award made under Section 10A.

While an award can be *interim* or *final,* it must be a *"determination"* of any industrial dispute *or* of any question relating thereto, In view of this, an *interlocutory order cannot* be regarded even as an interim award if it does *not* involve a determination of an industrial dispute or any question in relation thereto. Similarly, there can be an award only if there is an adjudication involving determination *on merits* of an industrial dispute *or* related questions. An order passed when a dispute is withdrawn *cannot* amount to an award in law, although it is sometimes loosely described as one.

The essentials of a report of a Board or Court of Inquiry are:
(i) the report should be in *writing;* and
(ii) the report should be *signed* by all members of the Board or Court, with a minute of dissent, if any. *[Section 16(1)]*

The essentials of an award of a Labour Court, Industrial Tribunal or National Tribunal are:
(i) the award should be*in writing;* and
(ii) the award should be*signed* by its Presiding Officer *[Section16(2)]*

Apart from the above, the award must, of course, satisfy the definition of an "award" contained in Section 2(b), which has already been dealt with.

B. PUBLICATION OF REPORTS AND AWARDS (S. 17)
Under Section 17(1), every *report* of a Board of Court, together with any minute of dissent (if any) recorded therewith, every arbitration *award* and every award of a Labour Court, Tribunal, or National Tribunal *must, within* a period of *thirty days* from the date of its receipt by the appropriate government, be *published* in such manner as the appropriate government thinks fit.

The requirements *of Sec. 17(1)* may be summarized as follows:
(i) the report or award should *be published* by the appropriate government in such manner as it thinks fit; *and*
(ii) such report or award should be published by the appropriate government *within thirty days of its receipt.*

The provisions of *Section 17* are *mandatory,* as the appropriate government is bound to publish the report or award. In *Sirsilk Ltd.* v. *Government of Andhra Pradesh* (1963 II LLJ 647 SC), the Supreme Court observed: "It is clear therefore, reading Sec. 17 and 17A together, that the intention behind Sec. 17(1) is that a duty is cast on the Government to publish the award within 30 days of its receipt and the provision for its publication is *mandatory* and *not* merely directory."

However, the Supreme Court later modified its view of Section 17(1), and *held* in

Remington Rand of India Ltd. v. *Its Workmen,* (1967 II LLJ 866 SC) that while the provisions regarding publication of the report or award are *mandatory,* the provisions concerning the time period of publication are *directory* in nature.

Finality of an award: Sec. 17(2) provides that subject to the provisions of Sec. 17A:
(i) an award that is published under S. 17(1) is *final; and*
(ii) such award *cannot be called in question* in any Court in any manner whatsoever.

From the above, it is clear that while an award is otherwise final, it is subject to the provisions of Section 17A, under which it is open to the appropriate government to reject or modify an award under certain circumstances. Moreover, it is well settled that while the appellate or revisional jurisdiction of Courts is barred by the provisions of *Section 17(2),* the *writ jurisdiction* of the High Court *cannot be excluded.* Similarly, the jurisdiction of the Supreme Court under Article 136 of the Constitution is also *not affected.*

The provisions regarding the finality of award must be viewed in the context of a valid award, and *not* one which is a nullity, In *Digamber Ramchandra* v. *Khandesh Spinning and Weaving Mils* Co. Ltd. (AIR 1950 Born. 174), a Division Bench of the Bombay High Court *held* that if the original reference itself was null and void, the award was a *nullity.* It such an event, the bar of Section 17(2) will *not* be attracted and the parties will *not* be precluded from approaching a Court of law for obtaining relief.

Further, in *T.I. Textiles* v. *Its Workmen* (AIR 1972 SC. 1933), this Supreme Court *held* that when the Tribunal arbitrarily refuses permission to a party to lead evidence, the injustice caused may vitiate the award and require judicial intervention.

C. COMMENCEMENT OF AN AWARD (S. 17A)
The topic is discussed under the following heads:

1. Enforceability of an award
2. Power of Government in respect of awards
3. Operation of awards
4. Distinction between “enforceability" and “operation” of awards.

1. Enforceability of an award
An award (including an arbitration award) becomes *enforceable* on the expiry of thirty days from the date of its publication under Section 17: *Section 17 A (1).*

Subject to the power of the appropriate government or the Central Government, as the case may be to declare that an award shall *not* become enforceable after the expiry of *thirty days,* and thereafter to reject or modify the award, an award *normally* becomes enforceable on the *expiry of thirty days* of the date of *its publication.*

By necessary implication, till thirty days have passed from the date of publication, the award is *not enforceable.* Moreover, it is only after an award has become enforceable as above, that there can be a breach of such award, punishable under Section 29 of the Act.

[The *distinction* between *enforceability* and *operation* of an award dealt with later in this Chapter.]

2. Power of Government in respect of awards: Consequent change in date when awards become enforceable

The normal provision regarding the enforceability of awards is subject to the following:

(a) *if,* the *appropriate government* is *of* the *opinion,* in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party;

(b) *if,* the *Central Government* is *of the opinion,* in any case where the award has been given by a National Tribunal,—

that it will be *inexpedient on public grounds affecting national economy or social justice* to give effect to the whole or any part of the award, - the appropriate government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award will *not* become enforceable on the expiry of the said period of thirty days: *Sec. 17 A (1).*

Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate government or the Central Government may, *within ninety days* from the date of publication of the award, make *an order rejecting* or *modifying* the award and shall, on the first available opportunity, lay the award, together with a copy of the order, before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government: *Sec. 17A(2).*

Where any award, rejected or modified by an order made under subsection (2), is laid before the Legislature of a State or before Parliament, such award shall become *enforceable* on the *expiry of fifteen days* from the date on which it is so laid; and where *no order* under sub-section (2) is made in pursuance of a declaration under the provision to sub-section (1), the award shall become enforceable on the *expiry* of *ninety days* referred to in sub-section (2): *Sec. 17A(3).*

It may benoted that the provisions contained in Sec. 17(2) *t*regarding the finality and non-justiciability of an award are subject to the provisions contained in Sec. 17A.

The Government is authorised if it feels that it is *inexpedient* on public ground affecting national economy or social justice to give effect to an award, to *declare* by notification, that the *award shall not become enforceable* on the expiry of 30 days from the date of its publication under Sec. 17.

Rejection or modification of an award: Once a declaration under sub-sec. (1) has been made, the appropriate government or Central Government, as the case may be, *within 90 days of the publication* of the award under *Sec. 17, may reject or modify* the award, and on the first available opportunity lay a copy of the order before the State Legislature or Parliament, as the case may be.

Where no order of modification or rejection Is made: Where no such order as referred to above is made after a declaration under the proviso to sub-sec. (1), the award becomes enforceable on the expiry of *90 days* from the date of its publication under *Sec. 17.*

Where an order of rejection or modification is made: In such a case, the award becomes enforceable on the expiry of *15 days* from the date on which it was laid before

the State Legislature or Parliament, as the case may be.

Summary of when an award becomes enforceable

(i) *Normally,* an award becomes enforceable on the expiry of *30 days* from the date of its publication under *Sec. 17.*

(ii) When the appropriate government or the Central Government makes a *declaration* under the proviso to Sec. 17A (1), the award *shall not become enforceable* on the expiry of the said period of *30 days.*

(iii) Where an award has been *rejected* or *modified* within 90 days of its publication under *Sec. 17,* the award becomes *enforceable on the expiry of 15 days* from the date on which it is laid before the State Legislature or Parliament, as the case may be.

(iv) Where *no order* of rejection or modification is made within 90 days of its publication under *Sec. 17,* although a declaration under the proviso to Sec. 17A(1) has been made, the award becomes *enforceable on the expiry of the period of 90 days* from the date of its publication under *Sec. 17.*

3. Operation of Awards

Subject to the provisions of sub-sec. (3) regarding the enforceability of an award, the award *comes into operation:* (a) *with effect from such date as may be specified therein,* but (b) *where no date is so specified,* it comes into operation on the date when the *award becomes* enforceable under sub-sec. (1) or sub-sec. (3), as the case may be. From the above, it is clear that an award becomes operative, *either-*

(i) from such *date as may be specified* in the award itself; *or*

(ii) *if no such date is specified,* on the *date when* the *award becomes enforceable* under sub-sec. (1) or sub-sec. (3) of *Sec. 17A.*

Thus, the date when an award becomes enforceable and when it becomes operative *may coincide, only if* no specified date is mentioned in the award itself as the date on which the award becomes operative.

The wordings of *sub-section (4) of Section 17A* are wide enough to cover a *retrospective operation* of an award. It is provided *inter alia* that an award shall come into operation from *"such date* as *may be specified therein".* Thus, if an award specifies a date which is before the date of its passing, as the date from which the award is operative it will result in retrospective operation of the award. Even in such a case, the date on which the award becomes enforceable will *not* be the date specified as the date from which it becomes operative, but the date of enforceability as specified in *Section 17A (1) and (3).*

4. Distinction between “enforceability" and "operation” of awards

As discussed above, the date of *enforceability* is the date of the expiry of the period specified in Section 17A(1) and (3), while the date on which the award becomes *operative* is, *either* the date specified in the award itself as the date on which the award becomes operative *or* if no such date is specified, the date on which the award becomes enforceable.

Care should be taken *not* to confuse the date when the award becomes *enforceable* and the date on which it becomes *operative.* The two dates may coincide in the event of no date being specified in the award as the date when the award becomes operative. In such a case the date when the award becomes *enforceable* will be regarded as the date on which the award becomes *operative.*

Thus, if an Industrial Tribunal by its award declares that 1st June is the date on which the award comes into operation, and the award is published on 1st July, the date of operation or the award is 1st June, while the date when the award becomes enforceable is 31st July, *i.e.,* on the expiry of 30 days from the date of its publication under Section 17. However, if the award had *not* specified that the award was to be operative from 1st June, and the award had been published on 1st July, the date of operation and the date on which the award becomes enforceable would have been 31st July.

While it is clear that a Tribunal can grant a retrospective operation to its award, the Supreme Court has held, in *Jhagrakhand Colieries (P) Ltd.* v. *Central Government Industrial Tribunal* (1960 II LLJ 71 SC), that no retrospective operation can be given to an award for any period previous to the date on which the demands in question were made.

It is also provided that where, in any case, a Labour Court, Tribunal or National Tribunal, by its award, directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer becomes liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule, if the workman had *not* been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court.

However, if it is proved to the satisfaction of the High Court or the Supreme Court that such a workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court must order that no wages would be payable under this Section for such period or part, as the case may be.

The *Amendment Act of 1982* has, in several of its new provisions, made laudable efforts to ameliorate the lot of the workmen. It is well- known that the workman who litigates is normally *not* tolerated by the management, and all efforts are made by it to ease the workman out of the establishment. It is to protect the workman from these hardships that are inflicted upon him during the pendency of litigation that the Legislature had made these provisions.

D. PERSONS ON WHOM SETTLEMENTS AND AWARDS ARE BINDING (S. 18)

The following *three topics* are discussed here:

1. “Settlement” defined
2. “Award” defined
3. Settlements and awards: On whom binding.

1. “SETTLEMENT” DEFINED

“Settlement" means a settlement *arrived at in the course of conciliation proceedings,* and includes a *written agreement* between the employer and workmen arrived at *otherwise than in the course of conciliation proceedings,* 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: *Sec. 2(p)*

Although the definition of a “settlement" covers both settlement arrived at in course of

conciliation proceedings and written agreements otherwise than in the course of conciliation proceedings, the binding effects of these *two types of settlements* are separately dealt with under different provisions of *Section 18.*

2. "AWARD" DEFINED

Under Section 2(b) an award means an *interim* or a final *determination* of any industrial dispute or of any question relating thereto, by any Labour Court, Industrial Tribunal or National Industrial Tribunal and Includes an *arbitration award* made under *Section 10A.*

3. SETTLEMENTS AND AWARDS: **ON WHOM BINDING**

Section 18 specifies the persons on whom settlements are binding. For the sake of clarity, the subject is divided into *three* categories:

(a) Settlements by agreement otherwise than in the course of conciliation proceedings.
(b) Arbitration awards.
(c) Settlements arrived at in the course of conciliation proceedings, or an arbitration award in cases where a notification is issued under Sec. 10 A(3A), or an award of a Labour Court, Tribunal or National Tribunal.

(a) Settlement by agreements otherwise than in the course of conciliation proceedings [S. 18(1)]

A settlement *arrived at by agreement between the employer and the workmen otherwise than* in the course of *conciliation* proceedings are *binding on the parties to the agreement: Section 18(1).*

According to an *amendment* applicable in the *State of Maharashtra,* where there is a recognised union for any undertaking, such agreement *not* being an agreement in respect of dismissal, discharge, removal retrenchment, termination of service or suspension of an employee, is to be arrived at between the employer and the recognised union only; and such agreement is binding on *all* the persons referred to in clause (c) and clause (d) of sub-section (3) of this Section.

Before a settlement can be binding on the parties to the agreement, it is essential that the above requirements are satisfied. Although *Section 18(1)* permits settlements by agreement arrived at otherwise than in the course of conciliation proceedings, the Supreme Court, in *Workmen of Delhi Cloth and General Mills* v. *Delhi Cloth & General Mills Ltd.* (1972 I LLJ 99 (SC), *held* that, *during* conciliation proceedings *or after* the failure thereof, the parties *cannot* arrive at a private settlement and clothe it with a binding effect, even on the members of the union which entered into the settlement. The Supreme Court observed that the settlement has to be in compliance with statutory provisions.

It may be noted that the decision in the *Delhi Cloth Mills* case, referred to above, is contrary to the Supreme Court's earlier decision in *Sirsilk Ltd.* v. *Government of Andhra Pradesh.* (1963) II LLJ 647 (SC), in which it was *held* that a private settlement *can* be arrived at *even after* adjudication proceedings are concluded, *but before* the award is published

In *Workmen of Sur Enamel & Stamping Works Pvt. Ltd.* v. *State of West Bengal* (AIR 1972 SC 1895), a settlement by agreement regarding bonus, arrived at otherwise than in the course of conciliation proceedings, was *held not to be binding* on all the workmen. Such an agreement can, by virtue of Section 18(1), bind *only* the parties to the dispute.

In *Dunlop India Ltd.* v. *Its Workmen* (AIR 1972 SC 2326), the Court *held* that a union enjoying sectional support among the workmen *cannot* bind all the workmen by means of a settlement outside conciliation proceedings. Such a settlement is binding only on the workers who are members of the union.

(b) Arbitration Awards [S. 18(2)]
Subject to the provisions of Section 18(3), an *arbitration award, which has become enforceable, is binding on the parties to the agreement who referred the dispute to arbitration: Section 18(2).*

However an arbitration award where a notification has been issued under Section 10A(3A) is *not* covered by the provisions of *Section 18(2).*

(c) (i) Settlements arrived at in the course of conciliation proceedings
(ii) Arbitration award in case where a notification is issued under Section 10A(3A)
(iii) Award of a Labour Court, Tribunal or National Tribunal [Sec. 18(3)]

Section 18(3) specifies the persons on whom the above *three* subcategories are binding: A settlement arrived at in the course of conciliation proceedings under this Act, *or* an arbitration award in a case where a notification has been issued under sub-section (3A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable is *binding on—*
(a) *all parties* to the industrial dispute;
(b) all *other parties summoned* to appear in the proceedings as parties to the dispute - *unless* the Board, Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, *records* the *opinion* that they were so *summoned without proper cause;*
(c) where a party referred to in clause (a) or clause (b) is an *employer,*- his heirs, *successors* or *assigns* in respect of the establishment to which the dispute relates;
(d) where a party referred to in clause (a) or clause (b) is composed of *workmen - all persons* who were *employed* in the establishment *or* part thereof, to which the dispute *and all persons* who *subsequently* become *employed* in that establishment or part thereof.

The provisions of Section 18(3) have been amended by a *Maharashtra Amendment* to apply also to "an arbitration award in a case where there is recognised union for any undertaking under any law for the time being in force."

Even person who is summoned to appear is bound by the settlement, award or arbitration award. In *Hotchtef Gammon* v. *Industrial Tribunal.* (1964 II LLJ 460 SC), the Supreme Court *held* that while *Section 18(3)(b)* implies the power to summon and add other parties to a dispute, the same *cannot* be construed to enable addition of parties *if* the same leads to enlargement of the scope of reference.

Clauses (a) and (b) of Section 18(3) have been given an *enlarged meaning* by clauses (c) and (d). In *Anakappalla Co-operative Agricultural and Industrial Society* v. *Its Workmen,* (1962 II LLJ 621 SC), it was *held* that where local cane-growers constituted themselves into a cooperative society and purchased the machinery and business of a sugar' company which had been running at a loss, such co-operative society is a “successor-in-interest" of the company and, therefore, covered by Section 18(3)(c).

In the same case, the Supreme Court laid down the *tests for* determining whether a transferee is a successor or an assignee for the above purpose. These tests may be *summarised* as follows:

(i) whether the *whole business* was *purchased* by the transferee;
(ii) whether the business was being carried on *at the same place* even after the purchase;
(iii) whether the business was purchased as a going concern;
(iv) whether the *nature of business* was *the same* or *similar* after the purchase;
(v) whether the *goodwill* of the business was also purchased;
(vi) whether there was *continuity* in the business *or* if there was a break what the length of such break was;
(vii) if the purchaser had bought some part of the business whether he had added some *new part or parts* to it and started a similar business, though *not* the old one.

Section 18(3)(d) covers *past and future workmen,* irrespective of whether workmen are members of the union which was a party to the dispute, all persons employed in the particular industry are covered by this clause. However, unlike the provisions of clause (c), the heirs, successors and assigns of workmen are *not covered.*

On a proper analysis of the wording of clause (c) of Section 18(3) it will be seen that the expressions used are “all persons who were employed” and “all persons who subsequently become employed'. If the legislature had intended only those persons who fall within the meaning of the term “workmen” to be covered, it would have used the word “workmen” instead of using the words “all persons”. It is submitted that on a proper construction, the words “all persons" must be given a wider interpretation than the expression “workmen”.

In *Monthly Rated Workmen of Pearce Leslie & Co. Ltd.* v. *Labour Commissioner & Anr.,* (1966 I LLJ 503 Ker.), it was *held* that a settlement arrived at with the majority union, in the course of conciliation proceedings, binds the minority union and its members as well.

In *Anthony Gomes* v. *State of West Bengal,* (1974 II LLJ 94 Cal.), the Court *held* that when there is a settlement, in the course of conciliation proceedings, between a discharged workman and the management, the settlement is binding on him, irrespective of *whether or not* he had ceased to be a member of the workmen’s union. The Court *held* the settlement to be binding on him under Section 18(3)(d).

In this case, the discharged workman had at first objected to the union arriving at settlement with the management, and thereupon resigned membership of the Union. In conciliation proceedings, at his instance, he had arrived at a settlement with the management, and had thereafter made an application under Section 33A alleging contravention of Section 32(2)(b) of the Act. One of the points urged by him was that, as he had resigned from the union, the settlement in the course of conciliation proceedings was *not* binding on him. As stated above, this contention was negatived by the Court, which observed that settlements under Section 18(3) were binding on all persons employed at the time of the dispute and all persons who were subsequently employed.

E. PERIOD OF OPERATION OF SETTLEMENT AND AWARD (S. 19)

The following *three* topics will be discussed here:

1. Settlements : Period of Operation

2. Awards : Period of Operation
3. Powers of the Appropriate Government

1. Settlements: Period of Operation

Under Section 19(1), a settlement *comes into operation:*

(a) on such *date as is agreed* upon by the parties to the dispute; and
(b) *if no date is agreed upon,* on the *date on which the memorandum of settlement is signed by the parties* to the dispute.

Such a settlement is *binding:*
(i) *for such period as is agreed upon* by the parties; and
(ii) *if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties* to the dispute.

It *continues to be binding* on the parties *after the above period, until expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.*

A *Maharashtra Amendment* has inserted sub-section (2A) which provides that, notwithstanding anything contained in this section, where there is a recognised union, it is lawful to terminate the settlement after giving *two months written notice* to the employer.

No notice given under sub-section (2) *can have effect unless it is given by a party representing the majority of persons bound by the settlement: Section 19(7).*

While it is necessary to give a written notice of intention to terminate a settlement, the Supreme Court held, in *Indian Link Chain Manufactures Ltd.* v. *Their Workmen* (AIR 1972 SC 343), that such a notice may also be inferred from the correspondence between the parties.

From the above provisions, it is clear that the period of operation of settlement does *not* automatically come to an end in the absence of the requisite written notice. By virtue of clause (7), such notice, to be effective, must be given by a party representing the majority of the persons bound by the settlement. The Supreme Court has *held* that there *cannot* be any *waiver,* by conduct or implication, of the requirement of a written notice, which must be an express, and *not* a tacit, representation in the form of writing terminating the settlement.

In *South Indian Bank* v. *Chacko* (AIR 1972 SC 343), the Court observed that the purpose of the provisions of Section 19 is to permit settlements to have their full run unless specifically rejected by one of the parties.

In *Garment Cleaning Works* v. *D. M. Aney* (AIR 1970 Born. 209), an award based on a settlement was *held* to be governed by the provision of Section 19(2), and, therefore, construed to be in operation for the period agreed to between the parties,

However,in *Indian Detonators* v. *Worker's Union* (AIR 1970 A.P 432), it was *held* that the fusion of a settlement with an award render the former as award, and should be treated

as such for the purpose of determining the period of its operation.
In *Narayanswamy* v. *Labour Court, Madras,* (1971, I LLJ 310 Mad.) the Court considered the consequences of the termination of a settlement, as far as payment of gratuity is concerned. It was *held* that notwithstanding such termination by notice, a benefit such as gratuity granted under the settlement could be claimed *until* the same was replaced by a new settlement.

2. Awards: Period of Operation
Under S. 19(3), subject to the other provisions of that section, *an award remains in operation for a period of one year from the date on which the award becomes enforceable under Section 17A.*

This provision is *subject to the appropriate government's power to reduce or extend* the period of operation, or to *refer the award* to a Labour Court or Tribunal for a decision on shortening the period of operation. *[Section 16(4)*

The provisions regarding the period of operation of an award do *not apply to any award* which, by its nature, terms or other circumstances, *does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award. [Section 19(5)]*

Notwithstanding the expiry of the operation of an award it *continues to be binding* on the parties *until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award. [Section 19(6)]*

No notice of termination has any effect unless it is given by a party representing the majority of persons bound by the award. [Section 19(7)]

On a correct interpretation of the words "subject to the provisions of this section" occurring in *Section 19(3),* it may be noted that the provisions contained in that sub-section are subject to the other provisions relating to awards alone. The provisions relating to settlements contained in *Section 19(1) and (2) cannot* apply to awards. Hence, it is improper to construe sub-section (3) to enable a settlement in the course of adjudication to have a period of operation for more than a year, as in substance, such a settlement is an award and thus governed by sub-section (3) as regards the period of its operation. However separate Division Benches of the Bombay High Court have adopted conflicting views on this question.

Thus, an award remains in operation for a period of *one year* from the date on which the award becomes enforceable under *Section 17A.* The question as to when an award becomes enforceable under *Section 17A* has already been discussed in detail in the commentary under that section.

In the case of an award that does *not* involve any continuing obligation, there is no question of any period of operation. For instance, an award concerning the reinstatement of a dismissed workman does *not* cast any continuing obligation, and hence, does *not* involve any question of the period of operation.

As in the case of settlement, a notice is essential in relation to an award. An award *does*

not cease to be binding automatically on the expiry of the period of operation. It continues to be *binding until the expiry of two months from the date a notice is given* by one party to the other or others expressing an inten-tion to terminate the award. Furthermore, such notice must be given by a party who represents the majority of the persons bound by the award.

It is pertinent to note that while an award remains *"in operation"* for the period mentioned in *sub-section* (3), it continues to be **binding"* for the period *specified in sub-section* (6). Unlike in the case of a settlement covered by *sub-section* (2), the provisions of *sub-section* (6) relating to an award *do not* contain the word **written"* to qualify the word "notice". On an application of the rules of construction of statutes, nothing can be inferred or read into a statutory provision unless the context directly requires it, *or* it leads to some manifest ambiguity or unreasonableness. It is said that it is better to look hardship in the face rather than break down the rules of law.

Moreover, it is another canon of interpretation that if in otherwise identical provisions in the same enactment, certain expressions are used in one but *not* in the other, it must be assumed that the exclusion was a deliberate act. Various High Courts have expressed conflicting views regarding the necessity of a written notice, but it is submitted that the view that no written notice is contemplated is the correct one.

While an award ceases to be binding after the expiry of the specified period, it does *not* extinguish the rights, obligations or benefits that have accrued therefrom.

Cases
Thungabhadra Industries v. *Its Workmen* (A.I.R. 1973 S.C. 2272): It is necessary to clearly determine the date of the notice of termination, as Section 19(6) provides that the award shall continue to be binding on the parties until the lapse of a period of two months from the date when such notice is given by one party to the other. The mere fact that the workmen's union has raised demands does *not* indicate the termination of an award. Similarly, it is irrelevant that there was a strike thereafter *or* that there was participation by the employer in conciliation proceedings.

Brunton & Co. Engineers Ltd. v. *Francis,* (1966 II LLJ 219 Ker.): Although the period specified in an award has expired and the award terminated by notice, an obligation, such as the one relating to the payment of gratuity, continues.

Workmen of New Elphinstone Theatre v. *New Elphinstone Theatre,* (1961 I LLJ 105 Mad.): The benefit granted and the obligations conferred continue, notwithstanding the termination of an award, *until* a new contract or award replaces the award that has been terminated.

South Indian Bank v. *K.R. Chako* (AIR 1964 S.C. 1522) : An award which has ceased to be operative, continues to be effectual regarding matters such as wage-scales, until the award is replaced by a new award.

3. Powers of the appropriate government in relation to awards.
As stated earlier, the appropriate government has the power to reduce or extend the period of operation of an award or to refer the award to Labour Court or Tribunal, as the case may be, for a decision on shortening the period of operation.

The general provision that an award remains in operation for a period of one year from the date on which it becomes enforceable is *subject to the following:*

(i) The appropriate government may reduce this period and fix such period as it thinks fit. *[First Proviso to Section 19(3)]*

(ii) The appropriate government *may, before* the *expiry* of the said period, *extend* the period of operation *by any period not exceeding one year at a time as it thinks fit, but the total period should* not *exceed three years from the date when it came into operation. [Second Proviso to Section 19(3)]*

(iii) When the appropriate government, whether of its own motion *or* on the application of any party bound by the award, considers that since the award was made, there has been a *material change* in the *circumstances on* which it was based, the appropriate government *may refer the award, or* part of it *to the Labour Court,* if the award was of a Labour Court, or to a Tribunal if the award was of a Tribunal or a National Tribunal, *for a decision* on whether the period of operation should *not,* by reason of such change, *be shortened,* and such decision on the reference shall be *final. [Section 19(4)]*

On an analysis of the above, the question arises as to whether the appropriate government can reduce the period of the operation of an award under *the first Proviso to sub-section (3),* without recourse to the procedure specified in *sub-section* (4). It must be borne in mind that the provisions of *sub-section* (3) in their entirety are *"subject to the provisions of this section* " The first *Proviso* to *sub-section* (3) is necessarily part of that sub-section, and hence the provisions contained in the said *Proviso* are *subject to the provisions of subsection* (4). The appropriate government is bound to follow the procedure specified in *sub-section* (4) before it can act under the first Proviso to *sub-section* (3).

F. COMMENCEMENT AND CONCLUSION OF PROCEEDINGS (S. 20)

This topic is dealt with under the following heads:

1. Conciliation Proceedings
2. Arbitration and Adjudication Proceedings.

1. Conciliation Proceedings

Commencement: *Section 20(1)* provides that conciliation proceedings shall be deemed to have *commenced:*

(a) on the *date on which a* not*ice of strike or iock-out under Section 22 is received by the Conciliation Officer; or*

(b) on the *date of the order referring the dispute to a Board.*

As Section 22 relates to public utility services, the *first part* of Section 20(1) relates to conciliation proceedings in respect of *public utility* services alone. The *second part* covers *both* public utility services and non-public utility services. The use of the words "deemed to have commenced" indicates that by a fiction of law, conciliation proceedings in relation to a public utility service commence when a notice is received as specified in the first part of sub-section (1), irrespective of whether negotiations had taken place prior thereto.

Conclusion of proceedings: *Section 20(2)* states that a conciliation proceedings *is deemed to have concluded:*

(a) *where a settlement is arrived at* - when a memorandum of settlement is signed by the

parties to the dispute; or
(b) *where no settlement is arrived at* - when the report of Conciliation Officer is received by the appropriate government or when the report or the Board is published under Section 17, as the case may be; *or*
(c) *when a reference is made to a Court, Labour Court, Tribunal or National Tribunal* under Section 10 during the pendency of conciliation proceedings.

Pendency of Conciliation Proceedings: A Conciliation proceeding is said to be pending between the date of its commencement under Section 20(1) and the date of its conclusion under Section 20(2).

2. Arbitration and Adjudication Proceedings
Commencement: According to *Section 20(3),* proceedings before an arbitrator under Section 10A, or before a Labour Court, Tribunal or National Tribunal are *deemed* to have *commenced* on the *date of the reference of the dispute* to arbitration or adjudication.

In *Associated Cement Co. Ltd.* v. *Their Employees,* (1953, II LLJ 369), the Court pointed out that as, under Section 20(3), a proceeding before an industrial Tribunal is deemed to have commenced "on the date of the reference of the dispute" for adjudication, a strike after the date of the reference is *illegal,* even though it has been launched prior to the date when the order of reference comes to the hands of the Tribunal or the parties to the dispute.

Conclusion of proceedings: *Section 20(3)* further provides that - such proceedings are *deemed* to have *concluded on the date on which the award becomes enforceable under Section 17A.*

The general rule is that an«award becomes enforceable on the expiry of *thirty days* from the date of its publication under Section 17". This rule is subject to the exceptions mentioned in S. 17.

Thus, normally, arbitration proceedings under Section 10A, and adjudication proceedings before a Labour Court, Tribunal or National Tribunal are deemed to have concluded on the expiry of *thirty days* from the date of the publication of the award under Section 17.

Pendency of proceedings: The arbitration or adjudication proceedings referred to above are deemed to be pending between the date of the reference and the date on which the award becomes enforceable under Section 17A.

G. PENALTY FOR BREACH OF SETTLEMENT OR AWARD (S. 29)
Any person who commits a breach of any term of any settlement or award which is binding on him under this act is punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Where the breach is a continuing one, the Court may impose a further fine extending to Rs. 200 for every day during which the breach continues.

The Court fining the offender may direct that the whole, or any part, of the fine realised from him should be paid by way of compensation, to any person who, in its opinion, has

been injured by the breach.
This offence can be taken cognizance of, only on a complaint made by, or under the authority of, the appropriate government. No Court inferior to that of a Metropolitan Magistrate or Magistrate of the first class can try any offence under the Act: *(Sec. 34).*

It has been *held* that *mens rea* is *not* an essential ingredient of the offence under Section 29.

CHAPTER VII

STRIKES AND LOCK-OUTS

The following topics are discussed in this Chapter:

A. 'Strike' and 'Lock-out' defined (Section 2(q) and 2(j))
B. Prohibition of strikes and lock-outs in public utility services (Section 22)
C. General prohibition of strikes and lock-outs (Section 23)
D. Illegal strike and lock-out (Section 24)
E. Prohibition of financial aid to illegal strikes and lock-outs and penalty in respect thereof (Sections 25 and 28)
F. Penalty for illegal strikes and lock-outs (Section 26)
G. Penalty for instigation of illegal strikes or lock-outs (Section 27)

Questions:
Define strike under the industrial Dispute Act.(2 marks) M.U. Nov 2014
Write a short note on: Strike and lock-out under the I.D. Act M.U. Apr 2011, Apr 2014, Apr 2017
Write a short note on Strike under the I.D. Act M.U. May 2012
Who declares strikes and who declares lock out? (2 marks) M.U. Apr 2015, Jan 2018
Explain fully strike and lock-out under the I.D. Act M.U Jan 2018
Define strike and lock-out. Explain the provisions relating to strike and lock-out under the I.D. Act 1947. M.U. Jan 2017
*Define lock-out. (2 marks)*M.U. Nov. 2012
State one point of difference between lock-out and layoff (2 marks) M.U. May 2012
*Who declares strikes and who declares lock-outs? (2 marks)*M.U. Apr. 2015 Jan. 2018
*Write any two points of difference between lockout and closure.*M.U. Jan. 2017
Discuss lock-out under the I.D. Act. M.U. Nov. 2015
Define "strike". Enumerate the statutory provisions prohibiting strikes in the public utility services.
Write a short note on: Public utility service .M.U. Nov. 2014
Give any two grounds for illegal lockouts under I. D. Act, 1947. (2 marks)B.U. Apr. 2017
What is the penalty for a person who instigate illegal strike under the I.D. Act? (2 marks) B.U. Apr 2011

A. STRIKE AND LOCK-OUT DEFINED [S. 2(q) & (j)]

Strike

A strike is a weapon used by the workmen as a last resort in the process of collective bargaining.

Under S. 2(q) of the Act, a *strike* means -

(i) the *cessation* of *work* by a body of persons employed in any industry *acting in combination; or*

(ii) 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 accept employment.*

On an *analysis* of the definition of a strike, the following essential elements may be noted:

(a) It is an action by a body of persons employed in an industry.

(b) Such action involves *either.*

(i) a cessation of work by such body of persons employed, acting in combination; *or*

(ii) a concerted refusal; *or*

(iii) refusal under a common understanding of any number of persons who are or have been employed to continue to work or to accept employment.

While a concerted refusal to do work required to be done amounts to a strike, the Supreme Court has *held,* in *Northbrook Jute Co. Ltd.*v. *Their Workmen,* (1960, I LLJ 580 SC), that when the workmen are *not* bound to do particular work, refusal to do that work does *not* amount to a strike, despite the fact that their refusal is concerted or under a common understanding.

Ludwig Teller in Labour Disputes and Collective Bargaining has rightly pointed out that in both strike and lock-out, although the work comes to a stop, *"the employment relation is deemed to continue, albeit in a state of belligerent suspension."*

A perusal of the definition of a "strike" reveals that it involves a cessation of work by persons employed in an industry "acting in combination, or a concerted refusal under a common understanding of any number of persons to continue to work or to accept employment". Thus, the concept of *combined or joint action* is an *essential ingredient* of the definition of a strike under the Act.

In *Buckingham & Carnatic Mills Ltd.* v. *Their Workmen,* (1953, I LLJ 181 SC), it was *held* that once there is a cessation of work as aforesaid, the mode of duration of the stoppage is immaterial and of no consequence.

In *Punjab National Bank Ltd.* v. *Their Workmen,* (1959, II LLJ 666 SC), the Court *held* that a "pen-down" stoppage of work was a *strike* within the meaning of Section 2(q) of the Act.

In *Ram Sarup* v. *Rex* (AIR 1949 All. 218), the Court *held* that as the cessation of work must necessarily have been effected by a concerted refusal to work or a refusal under common understanding, when two workmen were absent on a particular day, it could *not,* in the absence of any evidence to establish concerted action, be said that they had gone on strike.

Types of strikes: There are several well-known types of action by workmen which amount to strikes. Instances of these are “go-slow”, “pen-down”, “sit-in”, “tool down" and “sit down” strikes.

Another broad division of strikes is between principal (primary) and secondary strikes. In the former, the workmen’s action is directed against the employer, whilst in the latter, there is an indirect action against the employer.

Justified and Unjustified Strikes. - While a strike may be legal in the sense that it is *not* in contravention of the Act, it may *not* be justified because of the unreasonableness of the demands for which the action is launched. Thus, a distinction should be drawn between *unjustified* and *illegal* strikes. While all illegal strikes may be described as unjustified ones, in the sense of the same being in contravention of the law, without reference to the justness of the demands, it *cannot* be said that all legal strikes are justified ones, in so far as the demands may *not* be reasonable. The Act, however, concerns itself only with whether a strike is *legal* or *illegal.*

In *India General Navigation & Railway Co. Ltd.* v. *Their Workmen* (1960, I LLJ 13 SC), the Court *held* that while the Act recognises the distinction between a legal and illegal strike, “it has *not* made any distinction between legal and illegal strike which may be said to be justifiable and one which is *not* justifiable.” The Court further observed: “This distinction is *not* warranted by the Act, and is wholly misconceived, especially in the case of employees in a public utility service.”

In *Iron Moulders Union* v. *Allies Chalmers* (20 L.R.A. (US) 315), it was pointed out that a strike does *not* terminate the contract of employment which subsists despite the strike.

In *Express Newspapers Pvt. Ltd.* v. *Michael Mark,* (1962, II LLJ 220 SC), the Court *held* that the abstinence from work on account of a strike can not be equated with abandonment of employment and that, therefore, there is a subsisting contract of employment despite the strike.

The continuity in the workmen’s service is not disturbed by the mere fact of a strike. In *Jairam Sonu Chogle* v. *New Indian Rayon Mills Co. Ltd.* (1958 I LLJ 28 Born.), a Division Bench of the Court *held* that it is only if the workman is dismissed on account of participation in an illegal strike that it can be said that there is a break in the service of such employee on account of the strike.

Lock-out

A *lock-out means:*

(i) the *closing of a place* of employment; *or*
(ii) the suspension of work; *or*
(iii) the *refusal* by an employer to *continue to employ* any number of persons employed by him : *Sec. 2(j).*

It is well-settled, as pointed out by the Supreme Court, in *Express Newspapers* v. *Their Workmen,* (1962 II LLJ 227 SC), that a lock-out involves merely the closing of the *place* of business, and *not* of the business itself This distinction is also the test of the difference between a lock-out and a closure, as the latter involves the closing down of the business itself.

In *Feroz Din* v. *State of West Bengal,* (1960 I LLJ 244 SC), the Court interpreted the

definition of a “lock-out" to mean the employer’s refusal to permit any number of persons employed by him to attend to their duties, *without* effecting a *termination* of service.

In *Singareni Collieries Co. Ltd.* v. *Their Mining Sirdars,* (1967 II LLJ 465 Tr.), it was *held* that the words “any number” of persons, used in Section 2(j) should be interpreted to mean more than one person. In this case, it was *held* that there *cannot,* therefore, be a lock-out when only one person is affected by the employer’s action.

Distinction between a *lock-out* and *closure*: While a closure involves a final close down of the very *business* engaged in by the employer, a lock-out is only the closure of the *place of* the business.

No termination of employment: Just as in the case of a strike, the declaration of a lock-out does *not ipso facto* result in a termination of the contract of employment The contract of employment is merely suspended.

B. PROHIBITION OF STRIKES AND LOCK-OUTS IN PUBLIC UTILITY SERVICES (S. 22)

Prohibition of strikes

Section 22(1) provides that *no* person employed in a *public utility service shall go on strike* in breach of contract:

(a) *without giving* the employer, a notice of strike, as hereinafter provided, *within 6 weeks* before striking; *or*
(b) *within 14 days* of giving such not/ce; *or*
(c) *before* the *expiry* of the *date* of the strike specified in any such *notice* as aforesaid; *or*
(d) *during* the *pendency* of any *conciliation* proceedings before a Conciliation Officer, and 7 *days after the* conclusion of such proceedings.

Prohibition of lock-outs

Sec. 22(2) provides that *no* employer carrying on any *public utility service* shall *lock-out* any of his workmen:

(a) *without* giving them a not/ce of lock-out *within 6 weeks* before locking out; *or*
(b) *within 14 days* of giving such not/ce; *or*
(c) *before the expiry of the date* of the *lock-out* specified in any such notice; *or*
(d) during the pendency of any *conciliation* proceedings before a Conciliation Officer and 7 *days after* the conclusion of such proceedings.

What is a public utility service

Sec. 2(n) describes a ‘public utility service’ as follows:

A public utility service *means:*

(i) any railway service, or any transport service for carriage of passengers or goods by air;
(ii) any section of an industrial establishment, on the working of which, the safety of the establishment or the workmen employed therein depends;
(iii) any postal, telegraph or telephone service;
(iv) any industry which supplies power like air or water to the public;
(v) any system of public conservancy or sanitation;
(vi) 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 purpose of this Act, for such period as may be specified in the notification;

(vii) any service in or in connection with the working of major port or dock.

The period so specified *cannot* in the first instance, exceed *6 months,* but may, by a like notification, be extended from time to time by any period *not* exceeding 6 months, at any one time, if in the opinion of the appropriate government, public emergency or public interest requires such extension.

The *First Schedule* of the Industrial Disputes Act specifies the industries which may be declared to be “public utility services". These are transport, other than railways, for the carriage of passengers and goods by land or water, banking, cement, coals, cotton textiles, foodstuffs, oil and steel, **defence** establishments, service in hospitals and dispensaries, fire brigade service, oxygen and acetylene, mineral oil (crude oil, motor and aviation spirit, diesel oil, kerosene oil, diverse hydrocarbon oil and their blends including synthetic fuels, lubricating oil and the like), vaccines, seria, antibiotics, catgut and chemical fertilizer industries and others mentioned in the First Schedule.
(A reference may be made to the First Schedule reproduced at the end of the book.)

When notification of Lock-out or Strike is *not necessary*
A notification of lock-out or strike under this section is *not necessary* when there is already in existence a strike, or a lock-out in a public utility service. The employer should, however, send intimation of such lock-out on the day on which it is declared to the authorities specified by the appropriate Government, either generally or for a particular area, or a particular class of public utility service. *[Section 22(3)]*

Other Requirements of Notice
A notice of strike referred to in Section 21(1) must be given *by* such *number* of persons and *to such person* or persons and in such *number* as may be prescribed. A notice of lock-out referred to in Section 22 (2) must be given in such manner as may be prescribed. *[Section 22(4) & (5)]*

Employer’s Responsibility
By virtue of *Section 22(6):*

(i) *when* on any day, an employer *receives* from any person employed by him any not *ice of strike; or*

(ii) if the *employer gives* to any person employed by him any not/ce of *lock-out*,— he must, *within 5 days* thereof, *report* to the *appropriate government* or to such *authority* as that Government may prescribe, the number of such notices received or given on that day.

In order to ensure the smooth functioning of public utility services, the Industrial Disputes Act has enacted special provisions governing strikes and lock-outs in public utility services. From the wordings of Section 22, it is clear that these provisions are *mandatory.* These provisions *must* be followed prior to the strike or lock-out. Failure to observe these special conditions renders the strike or lock-out *illegal.*

If the provisions of Section 22(1) are on a proper analysis of the wording form, a person employed in public utility service can go on strike only when the same is *not* in breach of contract, and —

(1) *after* he has given the employer, notice of strike within *6 weeks* before striking;

(2) *after 14 days* have elapsed after giving such notice;
(3) *after* the expiry of the date of strike specified in such notice;
(4) *when no* conciliation proceedings before a Conciliation Officer are pending, or *7 days* have elapsed since the conclusion of such proceedings.

Pendency: As a strike in a public utility service is prohibited during the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conclusion of such proceedings, it is essential to consider the question of when a conciliation proceeding is deemed to be *'pending'. Section 20* provides that conciliation proceedings are *deemed to have commenced* 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 case may be.

A conciliation proceeding is deemed to have *concluded:*
(a) *where a settlement is arrived at* - when a memorandum of settlement is signed by the parties to the dispute;
(b) *where no settlement is arrived at* - when the report of the Conciliation Officer is received by the appropriate government or when the report or the Board is published under Section 17, as the case may be; *or*
(c) *when a reference is made to a Court, Labour Court, Tribunal or National Tribunal under Section 10,* - during the pendency of conciliation proceedings.

The period between the commencement and conclusion of proceedings is the period when the proceedings are deemed to be *pending.*

The provisions contained in Section 22(2) are almost identical to the provisions of Section 22(1), the only difference being that subsection (2) does *not* contain the requirement that the employer's action should *not* be "in breach of contract".

General Provisions also apply

While the provisions of Section 22 are special in nature, in the sense that they apply to strikes and lock-out *only* in public utility service, the general provisions of Section 23 apply to *all* industrial establishments, including public utility services. Thus, while Section 22 applies only to public utility services, Section 23 covers all establishments including public utility services. In other words, the provisions of Sections 22 and 23 have to be satisfied before the legality or otherwise of a strike or lock-out in a public utility service can be decided. The additional requirements specified by Section 23 are that no employer can declare a lock-out or no workmen employed in an industrial establishment shall go on strike in breach of contract –
(1) *during* the pendency of adjudication proceedings before a Labour Court, Tribunal or National Tribunal and *2 months* after the conclusion of such proceedings; *or*
(2) *during* the pendency of arbitration proceedings before an arbitrator and *2 months* after the conclusion of such proceeding where notification has been issued under sub-section (3A) of Section 10A; *or*
(3) *during* any period in which a settlement or award is in operation in respect of any of the settlement or award.

(A detailed discussion of Section 23 appears later in this Chapter.)

Cases

In *Swadeshi Industries Ltd.* v. *Their Workmen* (A.I.R. 1960 S.C. 1258), it was *held* that when the employer claims that the concerned workmen were employed in the public

utility section of the establishment, the burden of proving the same is on the employer.

In *Municipal Committee, Pathankot* v. *Industrial Tribunal, Punjab,* (1971 II LLJ 52 Punj.), the Court *held* that a failure to observe the provisions contained in Section 23 renders the strike illegal. The genuineness of the workmen's demands *cannot* justify a strike which is otherwise illegal.

As observed by the Supreme Court in *India General Navigation and Railway Co. Ltd.* v. *Their Workmen,* (1960 I LLJ 13 S.C.), the Act has *not* made any distinction between an illegal strike which is justifiable and one which is *not.* The Court is only concerned with the legality or otherwise of the strike.

C. GENERAL PROHIBITION OF STRIKES AND LOCK-OUTS (S. 23)

No workman who is employed in any industrial establishment can go on *strike* in breach of contract, and *no employer* or any such workman can *declare* a *lock-out* —

(a) *during* the *pendency* of proceedings before a Board and *7 days* after the conclusion of such proceedings;

(b) *during* the *pendency* of conciliation proceedings before a Labour Court, Tribunal or National Tribunal and *2 months* after the conclusion of such proceedings;

(bb) *during* the *pendency* of arbitration proceedings before an arbitrator and *2 months* after the conclusion of such proceedings, where a notification has been issued under subsection (3A) of Section 10A; *or*

(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: *Section 23.*

In a non-public utility service, the general prohibition of strikes and lock-outs is covered by *Section 23.* Not only is a strike or lock-out prohibited during the pendency of conciliation, adjudication and arbitration proceedings, but also for the specified period after the conclusion of such proceedings. During any period in which a settlement or award is in operation, there cannot be a legal strike or lock-out in respect of any of the matters covered by the settlement or award.

The question of when conciliation, adjudication and arbitration proceedings are deemed to be pending is covered by *Section 20,* which has already been dealt with. The provisions governing the period of operation of settlements and awards are dealt with by the provisions of *Section 19,* which have already been discussed. By necessary implication, as a strike or lock-out in respect of a matter *not* covered by a settlement or award, even during the period of its operation, is *not* governed by the provisions of *Section 23,* a strike or lock-out connected therewith is *not* prohibited, if it does *not* infringe the other provisions of Section 23.

Unlike the provisions of *Section 22, Section 23* does *not* require any notice of strike or lock-out. While it is provided that no workman can, “in breach of contract” go on strike, it has been *held* that merely because a person goes on strike in breach of contract, it is *not* by itself sufficient to make the strike illegal.

As pointed out earlier, while employers and workmen in public utility services are bound to observe the provisions of both Sections 22 and 23, the provisions of Section 22 have no application whatsoever to a non-public utility service.

In *Balarpur Collieries* v. *Presiding Officer, Central Government Industrial Tribunal* (AIR 1972 SC 1216), the workmen of a colliery had gone on a strike during the pendency of a reference to the Tribunal. The Court *held* that this was sufficient ground to hold that the strike was illegal, as it was in contravention of *Section 23(b).* The challenge on the ground of a violation of section 25(c) was *not* justified as the strike was *not* in breach of a matter covered by a settlement, though it may have occurred during the pendency of the agreement.

In *Workers of Motor Industries Co.* v. *Motor Industries Co. Ltd.* (AIR 1969 SC 1280), the Court had to consider a situation wherein the workmen had gone on strike despite a settlement which provided that they would *not* go on strike without giving four days' notice. The Court *held* that notwithstanding the Standing Orders and the settlement mentioned above, the strike was *not illegal* as being in contravention of *Section 23(c),* as the subject-matter of the strike related to workman's suspension, and was *not* "in respect of any of the matters covered by the settlement". Going on strike without notice in violation of the settlement may render the workmen liable under *Section 29* of the Act, but will *not* make the strike illegal under *Section 23 (c).*

D. ILLEGAL STRIKE AND LOCK-OUT

Sec. 24(1) provides that a strike or lock-out is *illegal if—*

(1) it is *commenced* or *declared in contravention of* Section 22 or Section 23; *or*

(2) it is *continued in contravention* of an order made under sub section (3) of Section 10 or of Section 10A(4A).

Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance thereof is *not* deemed to be illegal, if such strike or lock-out was *not,* at its commencement, in contravention of the provisions of the Act, or the continuance thereof was *not* prohibited under sub-section (3) of Section 10 or sub-section (4A) of Section 10A.

Section 23(3) explains that a lock-out declared in consequence of an illegal strike or a strike in consequence of an illegal lock-out is *not* deemed to be illegal.

On an *analysis* of the provisions of Section 24, it will be seen that in the case of a strike or a lock-out in a *public utility service,* provisions of Sections 22 and 23 have to be followed by the workmen or the employer, respectively. In a *non-public utility service,* the workers or employers, before declaring a strike or lock-out respectively, are bound to follow the provisions of Section 23. Section 24(1) (i) states that a strike or lock-out shall be illegal if it commenced or declared in contravention of Sec. 23 or 24.

In addition, Section 24(1)(ii) prescribes that a strike or lock-out shall be illegal if it is continued in contravention of an order made under Section 10(3) or Section 10A(4A). Section 10(3) states that where an industrial dispute has been referred to a Board Labour Court, Tribunal or National Tribunal under this section, the appropriate government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute as may be in existence on the date of the reference. Section 10A(4A) lays down that where an industrial dispute has been referred to arbitration and a notification has been issued under subsection (3A) the appropriate government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute as may be in existence on the date of reference.

Thus, it is only when an order has been made or referred to in clause (ii) of Section 24(1), that the continuance of a strike or lock-out may be rendered illegal. However, where a strike or lock-out in pursuance of an industrial dispute is already pending at the time of reference of a dispute for conciliation, arbitration or adjudication, the continuance of such strike or lock-out does *not,* by itself, render it illegal if it was *not,* at its commencement, in contravention of the provisions of this Act, or its continuance had *not* been prohibited by an order under Section 10(3) or Section 10A (4A).

When an illegal strike is already in existence, a lock-out declared in consequence thereof does *not* make the lock-out illegal. Similarly, a strike declared in consequence of an illegal lock-out which is already in operation, will *not* render the strike illegal.

In one case, the workmen went on an *illegal strike,* which was subsequently called off. However, the workmen continued their disruption within the factory premises, as a result of which the management declared a lock-out. It was *held* that such a lock-out could *not* be regarded as an illegal lock-out *even if* the provisions of S. 22 of the Act were *not* complied with, and the workmen would *not* be entitled to wages. *(HMT Ltd.* V. *HMT Office Employees' Association 1997,* AIR S.C. 585)

Illustrations

(a) If during the pendency of an illegal strike, the appropriate government refers the dispute to adjudication, the mere reference does *not* make the strike illegal, if *no* order has been made under Section 10(3).

(b) If a legal strike is pending on the date of the reference and the appropriate government makes an order under Section 10(3), namely, that the continuance of the strike relating to such dispute is prohibited, the continuance of the strike despite such order renders the strike *illegal* by virtue of clause (ii) of Section 24(1).

(c) In a non-public utility service, the employer declares a lock-out without following the provisions of Section 23. In consequence of such an illegal lock-out, the workmen employed in the industry go on strike without observing the provisions of Section 23. The employer contends that the workmen's strike is illegal as the provisions of Section 23 have *not* been followed. By reason of Section 24 (4), the strike by the workmen is *not* illegal, as it is in consequence of an illegal lock-out.

E. PROHIBITION OF FINANCIAL AID TO ILLEGAL STRIKES AND LOCK-OUTS AND PENALTY IN RESPECT THEREOF (Ss. 25 & 28)

Section 25 relates to the prohibition of financial aid to illegal strikes and lock-outs and provides that no person shall knowingly expend or apply any money in direct furtherance of an illegal strike of lock-out.

While deciding whether a strike or lock-out is illegal, the provisions of Sections 22, 23 and 24 have to be taken into account. Once it is determined that the strike or lock-out is illegal with reference to the above provisions, the question to be decided is whether the concerned person had, in fact expended or applied any money in direct furtherance or support of such illegal strike or lock-out. Furthermore, it is vital to establish that he had done it knowingly. When a person unknowingly expends money for the aforesaid purpose, the prohibition contained in this section is *not* attracted. Hence if the donor is *not* aware that a strike or lock-out is illegal, Section 25 does *not* apply.

Under Sec. 28, any person who *knowingly* expends or applies money in direct furtherance or support of an illegal strike or lock-out is *punishable with imprisonment for a term extending to 6 months, or with fine which may extend to Rs. 1,000 or with both.*

F. PENALTY FOR ILLEGAL STRIKES AND LOCK-OUTS (S. 26)

Illegal Strikes
Section 26(1) states that any workman who commences, continues or otherwise acts in furtherance of an illegal strike is punishable with *imprisonment for a term extending to 1 month or with fine upto Rs. 50 or with both.*

Illegal Lock-outs
Any employer who commences, continues or otherwise acts in furtherance of an illegal lock-out is punishable with *imprisonment for a term extending to 1 month or with fine up to Rs. 1,000 or with both: Section 26(2).*

Cognizance: Under *Section 34,* cognizance of offences can be taken only on a *complaint* made by, or under the authority of the appropriate government. No Court inferior to that of Presidency (now Metropolitan) Magistrate or a Magistrate of the First Class may take cognizance of an offence under the Act.

G. PENALTY FOR INSTIGATION OF ILLEGAL STRIKES OR LOCK-OUTS (S. 27)
Any person who *instigates* or *incites* others to take part in, or *otherwise acts in furtherance* of an illegal strike or lock-out, is punishable with imprisonment for a *term which may extend to 6 months or a fine up to Rs. 1,000 or with both : Section 27.*

Nothing short of 'instigation', 'incitement' or acting in 'direct furtherance', will attract the penal provisions of this section. It is a settled principle of the interpretation of statutes that penal provisions should be strictly construed in favour of the accused. Hence, when a worker merely requests a co-worker to join a strike, it *cannot* be said that he has either instigated or incited the other worker into joining the strike.

CHAPTER VIII

LAY-OFF AND RETRENCHMENT

The following topics are discussed in this Chapter:

A. Introduction
B. Lay-off and retrenchment defined
C. General Provisions: Lay-offs (Sections 25A-25E)
D. General Provisions: Retrenchment (Sections 25F, 25G & 25H)
E. Special Provisions: Transfer of undertaking (Section 25FF)
F. General Provisions: Closing down (Sections 25FFA & 25FFF)
G. Effect of inconsistent laws (Section 25J)

H. Special provisions: Lay-off, retrenchment & closure in certain establishments (Sections 28K-28S)
I. Unfair Labour Practices (Sections 25T and 25U)

Questions:
What is meant by lay off under I.D. Act (2 marks) M.U. Nov 2010, May 2018
Give two grounds for declaring a lay off (2 marks) M.U. Apr 2015, Apr 2017
Write a short note on: Lay-off and retrenchment under I.D. Act B.U. Nov 2011
Give one point of difference between lock-out and lay-off (2 marks) B U May 2012
Define r*etrenchment under the I.D. Act (2 marks) .M*.U. Nov 2018
State one of the conditions precedent to retrenchment (2 marks) M.U. May 2012
Discuss termination of workman under the I.D. Act M.U. Nov 2015
Write a short note on: Retrenchment under the I.D. Act .M.U. Nov 2014
Define retrenchment under the I.D. Act. What are the provisions regarding retrenchment under the said Act? M.U. Apr 2013, Nov 2013
*Write a short note on: Lay-off and retrenchment under the I.D. Act .*B.U. Nov 2011
Write a short note on: Continuous Service (S. 25B).
Write a Continuous Service? (2 marks) M.U. Nov. 2012
Write a short note on: Lay-off compensation under the I.D. Act BU Apr 2015
Write a short note on: "Last come, first go." M.U. Nov. 2012 May 2018
Write short note on: Closure compensation under the I.D. Act B.U. Nov 2015
Can an establishment be restarted after its closure is effected under the I.D. act (2 marks) B.U. Apr 2015
What is the penalty for closes down without notice under I.D. Act? (2 marks) b.u. Nov. 2011
What are unfair labour practices? What is the procedure for filing a complaint against an unfair labour practice? M.U. Nov. 2012
Write a short note on: Unfair labour practice on the part of a Trade Union.
*Discuss the kinds of unfair labour practices by an employer.*M.U. Nov. 2015

A. INTRODUCTION
The Section 25A to 25J are contained in *Chapter VA* of the Act, and relate to the general provisions regarding lay-off and retrenchment. *Chapter VB* of the Act deals with special provisions relating to lay-off, retrenchment and closure in certain establishments and covers *Sections 28K to 28S.* Unfair labour practices are dealt with in Chapter V-C (Section 25T and 25U).

B. LAY-OFF AND RETRENCHMENT DEFINED [Ss. 2(kkk) and 2(00)]

Lay-off
Section 2(kkk) defines a lay-off as follows:
A *lay-off* means the *inability* of an employer on *account of:*
(i) *shortage* of coal, power or raw materials or the accumulation of stocks, *or*
(ii) the *breakdown* of machinery, *or*
(iii) for *any other reason,*

To *give employment* to a workmen
(a) whose name is *borne* on the *muster-roll* of his industrial establishment, *and*
(b) who has *not* been *retrenched.*

It is also provided that a workman whose name is borne on the muster-roll of the establishment is to be *deemed* to have been laid off for the day *if* he presents himself for work at the establishment at the time appointed for the purpose, during normal working hours on *any* day, and is *not* given employment within 2 hours of his so presenting himself.

The above provision is *subject* to two *modifications:*

(a) If the workman, instead of being given employment at the commencement of any shift for any day, is asked to present himself for the purpose during the *second half of the shift* for the day, and given employment, he is deemed to have been laid off only for *one half of the day.*

(b) If he is *not* given such further employment even after so presenting himself, he is *not* deemed to have been laid off for the second half of the shift for the day and is entitled to *full basic wages and dearness allowance* for that part of the day.

Under a *Maharashtra Amendment,* workers can be laid off also on account of discontinuance or reduction of power supply to a particular industrial establishment for contravention of any provision of the Bombay Electricity Act or any orders or directions issued under the Act.

Necessary ingredients of a lay-off

(1) There must be failure, refusal or inability on the employer's part to give work to the workman concerned.
(2) Such failure, refusal or inability should necessarily be on account of shortage of coal, power or raw materials, or accumulation of stocks or breakdown of machinery or any other reason.

As the provisions of Section 2 (kkk) restrict the right of an employer to declare a lay-off on account of the specified factors detailed therein, a lay-off declared by an employer for reasons *not* covered by the specified conditions will be an illegal and *mala ride* one. The expression "for *any other reason"* is *not* to be construed widely so as to cover any reason *not* akin to the specific reasons detailed in the definition.

It is now settled law that the words *"any other reason" are* to be construed *"ejusdem generis"* The Supreme Court in *Kairbetta Estate.* v *Raja Manickam,* (1960 II LLJ 275 SC), and in *Workmen of Dewan Tea Estate* v- *Their Management,* (1964 I LLJ 358 SC), has *held* that the words "any other reason" relate to reasons which are *similar* to the reasons already specified in the definition.

According to the principle of *'ejusdem generis',* when general words are preceded by particular words, the general words are restricted to the meaning of the particular words if the particular words are species of the same genus or have some common characteristic. In the former case, the Supreme Court observed that while the principle of *ejusdem generis* had to be applied to the expression "for any other reason", if there is a strike or slowing down of production in one of the parts of the establishment, and the lay-off is in consequence thereof, the reason for which the lay-off has been effected is undoubtedly similar to the reasons specified in the definition. In the latter case, the Supreme Court did *not* finally decide the question whether financial difficulties of an employer entitle him to lay off a workman.

In *Tatanagar Foundry Co.* v. *Their Workmen* (1962 I LLJ 382 SC), the Court *held* that

when the employer's action is *not bona ride,* the lay-off is illegal if the workman affected thereby *cannot* be adequately compensated by the payment of lay-off compensation.

In *Raj Saheb Spg. & Wvg. Mills* v. *Labour Commissioner, Maharashtra* (AIR 1968 Born. 161), on a proper construction of the definition of "lay off", the Court *held* that there can be a lay-off for even less than two hours.

Retrenchment

Section 2(oo) deals with the definition of the term "retrenchment". Retrenchment *means* the *termination* by the employer of the service of the workman for *any reason whatsoever, otherwise than as a punishment* inflicted by way of *disciplinary* action. Thus, retrenchment does *not* include —

(a) termination by way of punishment inflicted pursuant to disciplinary action; *or*
(b) *voluntary* retirement of the workman; *or*
(c) *retrenchment* of the workman on reaching the age of *superannuation,* if the contract of employment between the employer and the workman contains a stipulation in that behalf;
(d) *termination* of the service of a workman on the ground of *continued ill-health.*

As observed in *Haji Ismail Said & Sons Pvt. Ltd.* v. *First Industrial Tribunal,* (1966 II LLJ 59 Cal.), *all retrenchment* is *termination* of service, but *all termination* of service is *not retrenchment.* While the section provides that termination of service by means of retrenchment can be for "any reason whatsoever", termination without a reason *cannot* amount to retrenchment. There must be valid and proper reasons for the termination of service by means of retrenchment.

In *Barsi Light Railway Co. Ltd.* v. *Joglekar,* (1957 I LLJ 243 SC), it was *held* that the legislature, in using the expression "any reason whatsoever", intended to indicate that it does *not* matter why the employer discharges the surplus, if the other requirements of the definition are fulfilled.

The Courts, in a series of cases, have *held* that the employer is justified in retrenching *"the dead weight of uneconomic surplus"* provided that the employer acts *bona ride,* and *not* for the purpose of victimization of his employees.

In *Workmen of Subong Tea Estate* v. *Subong Tea Estate,* (1964 I LLJ 333 SC), the Supreme Court *held* that while it is in the discretion of the management to decide the strength of its labour force, the management can retrench workmen only for proper reasons. If the management's action is motivated by an intention to victimize the workmen or to indulge in any other unfair labour practice, the action will *not* amount to retrenchment. Thus, the word "reason" necessarily requires a consideration of propriety and validity. The power of retrenchment is to be used reasonably only for the purpose of rationalization of surplus and uneconomic labour.

The definition does *not* contemplate a capricious or *mala ride* order purporting to retrench the service of workmen.

In *Modern Stores* v. *Krishanadas* (AIR 1970 M.P. 16), the Court *held* that if the employer's act is *not mala ride,* he may retrench his workmen for the purpose of effecting economy as an ordinary right to restructure his business organisation.

In *Management of Willcox Buckwell (India) Ltd.* v. *Jagannath* (AIR 1974 SC 1166), the Court reiterated the well-known legal position that even a temporary worker can claim retrenchment compensation if he is retrenched and is covered by the provisions of Section 25F.

In *State Bank of India* v. *N. Sundaramony* (AIR 1976 SC 1111), the Court *held* that as the definition of 'retrenchment' includes termination of service "for any reason whatsoever", the Bank's contention that the termination was *not* retrenchment but ordinary termination of the temporary services, was *not* sustainable.

In *G. J. Reddy* v. *Railways, Guntakal Divn.* (1975 I LLJ 351 A.P.), it was *held* that even casual workers are temporary workmen, and on retrenchment, are entitled to the benefits conferred by Section 25F, if they are in continuous service for *not* less than one year.

L. *Robert D'Souza,* v. *Executive Engineer, Southern Railway,* (1982 I LLJ 330 SC), it was *held* that the definition of the expression "retrenchment" in S. 2(oo) is so clear and unambiguous that no external aids are necessary for its proper construction. The well-settled position in law is that if the termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment, except if the case falls within any of the *four* excepted categories. Once the case does *not* fall in any of the excepted categories, the termination of service, even if it be according to automatic discharge from the service under agreement, would nonetheless be retrenchment within the meaning of the expression in S. 2(oo). It must, as a corollary, follow that if the name of the workman is struck off the roll, that itself would constitute retrenchment, as *held* in *Delhi Cloth & General Mills Ltd.'s case (1978 I LLJ 1).*

Distinction : *Lay-off* and *retrenchment*

(1) Lay-off does *not* involve the termination of services, while retrenchment necessarily *involves* such termination.

(2) *Lay-off* is the failure, refusal or inability of an employer to give employment to a workman on *account of:*
   (i) shortage of coal, power or raw materials; *or*
   (ii) the accumulation of stocks; *or*
   (iii) the breakdown of machinery; *or*
   (iv) any other reason.

Retrenchment is the termination of the workman's services "for any reason whatsoever" but does *not* include:

(i) punishment by way of disciplinary action; *or*
(ii) voluntary retirement; *or*
(iii) retirement at the age of superannuation, if the contract of employment contains a provision in that behalf; *or*
(iv) termination bn grounds of continued ill-health.

(3) A retrenched workman *cannot* be laid off, as the definition of lay-off states that the workman who is to be laid off should be one "whose name is borne on the muster-rolls of his industrial establishment, and *who has not been retrenched".* A workman who has first been laid off *may subsequently be retrenched* by virtue of the second proviso to Section 25C. In such a case, the provisions of Section 25F will have to be observed by the employer.

(4) While an employer may lay off a workman only on account of the *factors* mentioned in Section 2(kkk), an employer is entitled to retrench a workman on the ground that his services are *not* required for "any reason whatsoever". In the case of a *lay-off,* the words "for any other reason" are to be construed *ejusdem generis* with the preceding factors mentioned in Section 2(kkk). Such reasons must be akin or similar to the preceding factors. In the case of *retrenchment,* the words "for any reason whatsoever" have to be read *subject to:*
(i) those reasons expressly excluded by the definition;
(ii) the necessity of there being some valid and proper reasons.

Thus, retrenchment without a reason is no retrenchment, but once the conditions contained in the definition are satisfied, it does *not* matter why the employer chose to discharge the surplus.

(5) While the right to receive lay-off compensation is *subject* to the *restrictions* specified in the Act, the right to retrenchment compensation is *absolute.* The restrictions in the case of layoff are specified in Sections 25C and 25E. (These restrictions have been discussed separately in this Chapter.) Section 25F, which deals with the conditions precedent to retrenchment, contains no such restrictions

C. GENERAL PROVISIONS: LAY-OFFS (Ss. 25A, 25B, 25C, 25D & 25E)
The following topics are discussed here:
(1) Application of general provisions (S. 25A)
(2) Definition of "industrial establishment" (S. 25A) and "continuous service" (S. 25B)
(3) Laid-off workman's right to compensation (S. 25C)
(4) Employer's duty to maintain muster-roll (S. 25D)
(5) When workman *not* entitled to lay-off compensation (S. 25E)

(1) Application of general provisions (S. 25A)
According to *Section 25A,* the general provisions relating to lay-offs contained in *Section 25C* to 25E do *not* apply:
(a) to industrial establishments to which the provisions of Chapter V B apply; *or*
(b) to industrial establishments in which *less than* 50 workers on an average per working day have been employed in the preceding calendar month; *or*
(c) to industrial establishments which are of a *seasonal character or* in which work is performed only *intermittently.*

If the question arises as to whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the *decision* thereon of the appropriate *government* is *final.*

Thus, the general provisions regarding lay-off and retrenchment contained in *Sections 25A-25E* will *apply* only *if.*
(1) the workers employed on an average per working day number 50 or more, but less than 300;
(2) the industrial establishment is *not* of a seasonal character or is *not* one in which work is performed only intermittently.

In the case of industrial establishments in which 300 or more workers are employed, the

special provisions contained in Chapter VB of the Act will apply.

(2) Definition of "Industrial establishment" (S. 25A) and "continuous service" (S. 25B)

For the purpose of *Sections 25A, 25C, 25D and 25E,* an industrial establishment means:
(i) a factory as defined in *Section 2(m)* of the Factories Act, 1948;
(ii) a mine as defined in *Section 2(j)* of the Mines Act, 1952; *or*
(iii) a plantation as defined in *Section 2(f)* of the Plantation Labour Act, 1951.

Continuous Service: *Section 25B* defines continuous service, for the purpose of Chapter VA, as follows:

(1) A workman is said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is *not illegal,* or a lockout or a cessation of work, which is *not* due to any fault on the part of the workman.

(2) Where a workman is *not* in continuous service within the meaning of clause (1) for a period of one year *or* 6 months, he is deemed to be in continuous service under an employer:

(a) for a period of 1 year, if the workman, during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked for an employer for *not less than:*
(i) *190 days,* in the case of a workman employed below the ground in a mine; *and*
(ii) *240 days* in any other case;
(b) for a period of 6 months, if the workman during a period of 6 calendar months preceding the day with reference to which calculation is to be made, has actually worked under the employer for *not less than:*
(i) *95 days,* in the case of a workman employed below the ground in a mine; *and*
(ii) *120 days* in any other case

It is also to be noted that, for the above purpose, the number of days on which a workman has actually worked under an employer *will include* the days on which:
(1) he has been laid off under an agreement or as permitted by Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act, or under any other law applicable to the industrial establishment;
(2) he has been on leave with full wages, earned in the previous years;
(3) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employ-ment; and
(4) in the case of a female, she has been on maternity leave, provided that the total period of such leave does *not* exceed *12 weeks.*

Significance of continuous service - Compensation for lay-off, retrenchment as well as leave with pay, gratuity, *etc.,* are available to a workman, *only if* he has put in *continuous service.* If the workman satisfies the above conditions of continuous service, then he is liable to get all the above mentioned benefits under the Act. Thus, the term 'continuous service' creates a very good defence to the employer, as, if it is *not* complied with by the workman, the employer can avoid his liability of payment of compensation, *etc, p*rescribed under the Act. *(Surendra Kumar Varma* v. *The Central Govt. Industrial Tribunal-cum- Labour Court & Anr.,* AIR 1981 SC 422)

It is *not* specified in the definition of term 'continuous service' that the workman should

have been employed for the whole period of *12 months.* A workman who has worked for *240 days* in a period of *12 months* is also deemed to have been in continuous service for the whole year.

When calculating the period of 240 days in a year (above), holidays and Sundays are to be *included. (Workmen of American Express International Banking Corporation,* v. *The Management,* AIR 1986 S. C. 458)

(3) Laid-off workman's right to compensation (S. 25C)
On analysing *Section 25C,* it is clear that, except for such weekly holidays as may intervene, a laid-off workman is entitled to be paid compensation for *all days during which* he is *laid-off.* The compensation should be *equal to fifty Per cent* of the total of the basic wages and dearness allowance that would have been payable had he *not* been laid-off, *if* the following *conditions* are satisfied:

(1) the workman is one *other than a 'badli'* or 'casual' workman;
(2) his *name* is borne on the *muster-roll* of the industrial establishment;
(3) he has *completed not less than one year of continuous service* under the employer.
(4) It is *not material* of whether he has been *laid-off continuously* or *intermittently.*

The *provisos* to Section 25C contain the following provisions:

(a) If the lay-off is on account of discontinuance or reduction of the supply of power to the Industrial establishment for contravention of any provisions of the *Bombay Electric (Special Powers) Act, 1946,* or of any order or directions issued thereunder, the compensation payable to the workman is equal to 100% of the total of the basic wages and dearness allowance that would have been payable to him had he *not* been laid-off.
(b) If during any period of *12 months,* a workman is so laid-off for more than *45 days,* he is *not* entitled to lay-off compensation after the expiry of the first *45 days,* if there is an agreement to that effect between the workman and the employer.
(c) It is lawful for the employer in any case falling within the foregoing provisos to retrench the workman in accordance with the provisions contained in *Section 25F* at any time after the expiry of the first *45 days of* the lay-off, and when he does so, any compensation paid to the workman for having been laid- off during the 12 preceding months may be set off against the compensation payable for retrenchment.

Badli workman: The *Explanation* to Section 25C *defines* a *'badli'* workman as a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster- roll of the establishment. However, such a person ceases to be regarded as such for the purposes of this Section, if he has completed one year of continuous service in the establishment.

As *Section 25C* binds the employer to pay compensation for all days *during* which a workman is laid-off, such workman must be paid lay-off compensation even for a part of a day in respect of which he is laid-off. It has been *held* that the payment of compensation for layoff under *Section 25* is *not* a condition precedent to a valid lay-off. All that *Section 26C* provides is that on the conditions specified therein being fulfilled the workman becomes entitled to payment of lay-off compensation. This does *not* mean that lay-off is *not valid* or effective prior to payment of such compensation.

Section 25C has to be read together with *Section 25E,* (discussed below), which mentions the circumstances under which workmen are *not* entitled to compensation.

In *Northern Dooars Tea Co. Ltd.* v. *Workmen of Dimdima Tea Estate* (AIR 1966 SC 540), the Court considered the effect of a settlement by which the management had consented to lift a lock-out if the redundant labour was laid-off according to law. The company had claimed that it was *not* bound to pay lay-off compensation on the strength of the agreement by which the workmen had consented to the lay-off. The Court rejected the employer's contention as what had, in fact, been agreed to was lay-off "in accordance with law". The law enjoins upon the employer the liability to pay lay-off compensation.

(4) Employer's Duty to maintain Muster-roll (S. 25D)

Despite the fact that workmen in an industrial establishment have been laid-off, it is the *duty* of the employer to *maintain,* for the purposes of this Chapter, a *muster-roll* and provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during the normal working hours. *(Section 25D)*

Failure to observe this mandatory provision for the maintenance of muster-rolls has the following *implications:*

(a) It is an offence under Section 31(2), which provides that whoever contravenes any of the provisions of this Act or any Rule made thereunder, if no other penalty is elsewhere provided by or under this Act for such contravention, is punishable with fine which may extend to Rs. 100.

(b) *Section 25E(ii)* states that a workman is *not* entitled to lay-off 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. If the employer has *not* maintained a muster- roll that he is bound to maintain under *Section 25D,* the employer *cannot* take advantage of the provisions of *Section 25E (ii).*

(5) When workman *not* entitled to lay-off compensation (S. 25E)

Section 25E provides that *no compensation* is to be paid to a workman who has been laid-off:

(i) *if* he *refuses* to accept any *alternative* employment:

(a) in the same establishment from which he has been laid-off, *or*

(b) in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of 5 miles from the establishment to which be belongs, —

if, in the opinion of the employer, such alternative employment does *not call for* any *special skill* or previous *experience,* and can be done by the workman, *provided that* the *wages* which would *normally* have been *paid* to the workman are *offered* for the alternative employment also; *or*

(ii) *if* he *did not present* himself for work at the establishment at the *appointed time* during normal working hours at least once a *day; or*

(iii) *if* the *lay-off* is *due* to a *strike* or *slowing down* of the production on the part of the workmen in another part of the establishment; *or*

(iv) If there is an agreement between the workman and the employer that if during a period of *12 months,* a workman is laid off for more than *45 days,* no such compensation will be payable in respect of any period of the lay-off after the expiry of the first *45 days.*

In *Marvin Alter Velyra* v. *C.P. Fernades* (1959-56-9-FJR-449), it was *held* that when there is a temporary breakdown of business, there is no breakdown of contract between

the employer and the employee. The contract is only *suspended,* and the employee is entitled to join the service and receive his wages as soon as the temporary stoppage comes to an end.

(v) If he is employed in an industrial establishment in which less than 50 workers on an average per working day have been employed in the preceding calendar month.

(vi) If he is employed in industrial establishment which is of a seasonal character or in which work is performed only intermittently.

A workman is *not entitled* to lay-off compensation if he does *not* present himself for work at the establishment at the appointed hour during normal working hours at least once a day. If, however, the employer has failed to maintain a muster-roll of workmen (that he is bound to maintain under *Section 25D),* the employer *cannot* take advantage of the provisions of *clause* (ii) of *Section 25E.* In other words, the muster-roll contemplated under *Section 25D* is the main evidence of whether the workman has presented himself for work as required.

In *Associated Cement Co. Ltd.* v. *Their Workmen* (1960 I LLJ 49 SC), the court laid down certain tests to determine whether one establishment is part and parcel of another, for the purpose of section 25E (iii), These *tests* may be summarised as follows:

Proximity in distance; unity of management; control and ownership; unity of employment and service conditions; functional inter-depen-dence of the concerned units; likeness of purpose of the activity

While the above tests were up *held* by the Supreme Court in *Pradip Press* v. *Their Workmen* (1950 I LLJ 497 SC) it was observed that it was *not possible* always to lay down an absolute and infallible test in *all* such cases.

D. GENERAL PROVISIONS: RETRENCHMENT (Ss. 25F, 25G & 25H)

(1) Conditions precedent to retrenchment (S. 25F)
(2) Procedure for retrenchment (S. 25G)
(3) Re-employment of retrenched workmen (S. 25H)

(1) Conditions Precedent to Retrenchment (S. 25F)

No *workman* employed in an industry, who has been *in continuous service* for *not* less than *one year* under an employer be *retrenched* by the employer, *until* –

(a) (i) the workman has been given *one month's written notice* indicating the reasons of retrenchment and the *period* of notice has *expired, or*

(ii) the workman has been paid, *in lieu* of such notice, wages for the period of the notice. However, such a notice is *not necessary if* the retrenchment is under an agreement which specifies a date for the termination of service.

(b) the workman had been *paid,* at the *time* of *retrenchment, compensation* which is equivalent to *15 days average pay for every completed year of continuous service* or any part thereof, in excess of 6 months; *and*

(c) *notice* in the prescribed manner is *served* on the *appropriate government* or such authority as it may specify by Gazetted notification.

A workmen is entitled to the protection of *Section 25F only if* he is:

(1) *employed* in an *industry, and*

(2) he has been in *continuous service* for *not* less than *one year* under the employer.

"Continuous service' has been defined by S. *25B,* which has already been dealt with

above.

The notice required to be given under *Section 25F(c)* to the appropriate government is *not* a pre-condition or condition precedent to retrenchment. Similarly, *Section 25F* only prescribes the necessary procedure prior to retrenchment. It is well-settled that it does *not,* by itself, confer any right on the employer to retrench a workman. On the other hand, if the requisites of the definition are satisfied, an order purporting to retrench a workman is *not* valid and effective *until* the conditions specified in *Section 25F* have been observed.
The Supreme Court has observed that the definition of "retrenchment" is comprehensive, and covers all action of the management to put an end to the service of the employees for any reason whatsoever, except those expressly excluded in the section, (above). (D. *K. Yadav* v. *J.M.A. Industries Ltd.,* 1993 3 SEE 259)

The Supreme Court has *held* that even if a temporary workman is retrenched, he has a right to claim retrenchment compensation (*Management, W. B. India Ltd. v. Jayannath,* AIR 1974 SC 1166)

While the Supreme Court, in earlier cases, was inclined to hold that even the notice to the appropriate government was in the nature of a condition precedent, it *held*, in *Bombay Union of Journalists* v. State *of Bombay,* (1964 I LLJ 351 SC), that unlike *clauses (a) and (b), clause (c)* relating to such notice, is *not* intended to protect the workman's interest and, as such, is only designed to intimate the appropriate government about the retrenchment. The provision relating to notice to, the appropriate government is thus *not* a condition precedent to retrenchment. However, this does *not* mean that the provisions of *clause* (c) are *not* mandatory in nature.

In *National Iron & Steel Co. Ltd.* v. *State of West Bengal* (1967 II LLJ 23 SC), it was *held* that subsequent payment of compensation *cannot* validate an order of retrenchment which is vitiated by a failure to observe a condition precedent.

The Supreme Court has *held* that encashment of a cheque by a retrenched employee does *not* debar him from challenging the order of termination of his service. *(Nur Singh Pal* v. *Union of India,* AIR 2001 S.C. 1401)

The provisions governing notice to workmen on payment of retrenchment compensation, contained in *Section 25H,* also apply w *Section 25FF* and *Section 25FFF,* which cover workmen employed in undertakings which are transferred and closed, respectively. The provisions contained in these last mentioned sections are dealt with separately in this Chapter.

(2) Procedure for Retrenchment (S. 25G)
Section 25G embodies the principle of *"last come, first go".* Where any workman in an industrial establishment, who is a citizen of India is to be retrenched and belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer must *ordinarily retrench* the workman who was the last person to be *employed in that* category, *unless* for *reasons* to be recorded, the employer *retrenches any other* workman.

The maxim of "last come, first go" relates to the procedure governing retrenchment. The need to observe this principle is the *rule* while a departure from the same is the

exception.

This principle applies *only when:*
(1) the employee is a workman in any industrial establishment;
(2) he is a citizen of India;
(3) he is to be retrenched;
(4) he belongs to a particular category of workmen in that establishment; *and*
(5) there is no agreement between the employer and the workman providing for any arrangement to the contrary.

The above rule is qualified by the use of the word "*ordinarily*", as also the provision that if the employer retrenches any other workman, he has to record reasons for the same.

In *Swadesamitran Ltd.* v. *Their Workmen* (AIR 1960 S. C. 762), it was *held* that reasons such as inefficiency, habitual irregularity in the discharge of duties, and untrustworthiness are sufficient and valid reasons to deviate from the rule of "last come, first go".

The well-known principle of "last come, first go" has been incorporated into *Section 25G* as a devise to ensure that under the guise of retrenchment, workmen are *not* victimized or otherwise discriminated against. While the employer can, in exceptional cases, depart from this rule, the burden is upon the employer to conclusively justify such departure by means of reliable evidence. An unjustified departure from the rule entitles the workman to reinstatement.

Moreover, it needs to be noted that the provisions in *Section 25G* refer only to workmen employed in an "industrial establishment", as opposed to an industry, and also to workmen belonging to "a particular category of workmen in that establishment" as against all persons employed in that industrial establishment. In other words, the principle of "last come, first go" is restricted to the particular industrial establishment to which the retrenched workman belongs, and that too, only within the limits of the category to which he belongs.

(3) Re-employment of Retrenched Workman (S. 25H)
Section 25H prescribes that where any workmen are retrenched, and the employer proposes to take into his employment any persons, he must give an *opportunity* to the *retrenched workmen* (who are citizens of India) to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment have *precedence* over other persons.

The above provisions admit of no exceptions, once the qualifications specified therein are satisfied.

There has been a conflict of decisions of the various High Courts as to whether the expression "re-employment" contemplates reemployment on the previous or same terms and conditions.

In *Industrial Hume Pipe Co. Ltd.* v. *Baliram & Gujbhiya* (1965 II LLJ 402), the Bombay High Court expressed the view that there is nothing in *Section 25H* or any of the provision of the Act, which gives a workman the right to secure re-employment on his previous terms and conditions.

E. SPECIAL PROVISIONS: TRANSFER OF UNDERTAKINGS (S. 25FF)
Section 25FF states that where the ownership of management of an undertaking is transferred, whether by agreement or by operation of law, to a new employer, *every workman* who has been in *continuous service* for not less than *one year* in that undertaking immediately before such transfer is *entitled to notice* and *compensation* in accordance with the provisions of Section 25F, as if the workman had been retrenched.

The above provisions do *not* apply to a workman in any case where there has been a change of employers by reason of the transfer, *if* —
(a) the *service* of the workman has *not* been *interrupted* by such transfer;
(b) the *terms* and *conditions* of service applicable to the workman after the transfer are *not in any way less favourable* to the workman than those applicable to him immediately before the transfer; *and*
(c) the *new employer* is, under the terms of such transfer or otherwise, *legally liable* to *pay* to the workman, in the event of his *retrenchment, compensation* on the basis that his service has been continuous and has *not* been interrupted by the transfer.

When a workman is entitled to compensation
The following conditions must be fulfilled before a workman is entitled to compensation under *Section 25FF* in accordance with the provisions of *Section 25F* as if he had been retrenched:
(1) The claimant must be a 'workman' as defined in *Section 2(s)* of the Act.
(2) Prior to the transfer, the workman must have employed in an undertaking which is an 'industry' as defined in *Section 2(j)* of the Act.
(3) There must be a transfer of the ownership or management of such undertaking. Such transfer as contemplated by *Section 25FF may* be either by agreement or operation of law.
(4) The transfer must b^ from the employer of that undertaking to a new employer.
(5) Such workman must have been in continuous service for *not* less than one year in that undertaking immediately before such transfer.

In *addition* the workman's rights in this regard should *not* have been excluded by the proviso to *Section 25FF.*

While a workman is entitled, on the transfer of the undertaking, to notice and compensation in accordance with Section 25F "as if he had been retrenched", the Supreme Court in *Payment of wages Inspector* v. *Surajmal Shah* (1969 I LLJ 762 SC), *held* that though *Section 25F* applies for quantifying compensation, the payment thereof is *not* a condition precedent under Section 25FF, as it is under Section 25F.

In *Madras Electricity Board Union* v. *South Arcot Electricity Distribution Co. Ltd.* (1960 I LLJ 380), it was *held* that compensation under this section can be claimed against the previous employer, and *not* the new employer.

When a workman is *not* entitled to Notice & Compensation
There are *three circumstances* under which a workman is *not* entitled to such notice and compensation:
(a) The transfer has *not* resulted in the *interruption of* the workman's *service.*
(b) The transfer has *not* caused the *terms* and *conditions* of service applicable to him to

be in any way *less favourable* to him; *and*

(c) The *new employer* is, under the terms of such transfer or otherwise, *liable* to *pay* to the workman, in the event of his *retrenchment, compensation* on the basis that his *service* has been *continuous* and has *not* been interrupted by the transfer.

F. GENERAL PROVISIONS : CLOSING DOWN (Ss. 25FFA & 25FFF)

This topic is considered under the following *three* heads:

(1) Notice to appropriate government (S. 25FFA)
(2) Compensation to workmen in case of closing down (S. 25FFF)
(3) Penalty (S. 30A)

(1) Notice to appropriate government (S. 2SFFA)

An employer, who intends to close down any undertaking as is referred to above, must serve, *at least 60 days before* the date of the intended *closure,* a *notice,* in the prescribed manner, on the appropriate government, *stating* clearly the *reasons* for the intended closure.

The Proviso to *Section 25FFA* provides that *nothing* in this section applies to:

(a) an undertaking in which:
(1) less than *50 workmen* are employed;
(2) more than *150 workmen were* employed on an average per working day in the preceding 12 months;
(b) an undertaking set up for construction of buildings, bridges, roads, canals, dams or for other construction works or projects.

While the provisions relating to notice to the appropriate government contained in Section *25FFA* apply only to those undertakings specified above, those undertakings which are excluded for the purpose of *Section 25FFA* are covered by the provisions of *Section 25FFF* relating to compensation to workmen in the case of the closing down of undertakings. Where 300 or more workmen were employed on an average per working day for the preceding 12 months, the special provisions contained in the Chapter VB of the Act will apply. In that case, the provisions of *Section 25FFA* and *Section 25FFF* will have no application at all.

On an *analysis* of the above, it is clear:

(1) That the undertaking should be one covered by *Section 25FFA,* namely, it should *not* be one that is excluded by virtue of the proviso referred to above.
(2) An employer intending to close down an undertaking is *bound* to *serve,* on the appropriate government, a notice in the prescribed manner.
(3) Such service of notice should be at least *60 days* before the date on which the intended closure is to become effective.
(4) The notice must contain a clear statement of the reasons for the intended closure.

The Supreme Court has *held* that the workmen *cannot* question the *motive* of the closure once it has in fact been effected. However, the legal position is different if in the guise of closure, the establishment is actually carried on in some other shop other shop or from or at a different place and closure is only a ruse or pretense. (*Workmen v. Straw Board Manufacturing Company,* AIR 1974 SC 1132)

Appropriate government's power to exempt: Under *Section 25FFA (2),* the

appropriate government may, if it is satisfied that, owing to such *exemptional circumstances* as an accident in the undertaking or death of the employer of the like, it is *necessary* so to do, by order, direct that the above provisions are *not* to apply to any undertaking for such period as may be specified in the order.

(2) Compensation to workman in case of closing down (S. 25FFF)
As the newly inserted Chapter VB covers closing down of undertaking in which 300 or more workmen are employed, the provisions contained in Section *25FFF* apply only to those undertakings in which less than 300 persons are employed.

Where an undertaking is closed down for *any reason whatsoever,* every workman who has been in *continuous service for not less than one year* in that undertaking *immediately before* such closure, is, *subject to the provisions of sub-section (2),* entitled to notice and compensation in accordance with the provisions of *Section 25F, as if* the workman had been retrenched: *Sec. 25FFF(1).*

A workman's right to notice and compensation is restricted or excluded in the following cases:

(1) Where the undertaking is closed down on account of *unavoidable circumstances beyond the employer's control,* the compensation to be paid to the workmen under *Section 25(b) cannot exceed the average pay of 3 months.*
(2) The right provided by *sub-section (1)* is excluded in certain circumstances, where an undertaking engaged in mining operations is closing down by reason merely of exhaustion of minerals in the areas in which such operations are carried on.

No workman referred to in *sub-section (1)* is entitled to any notice or compensation in accordance with the provisions of *Section 25F, if* –
(a) an employer provides a workman with *alternative employment* with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service, as were applicable to him, immediately before the closure;
(b) the *service* of the workman has *not been interrupted by* such alternative employment; *and*
(c) the employer is, under the terms of such alternative employment or otherwise, *legally liable to pay* to the workman, in the event of his *retrenchment, compensation* on the basis that his service has been *interrupted* by such alternative employment.
(3) Another instance of the exclusion of a workman's right to notice and compensation is contained in *Section 25FFF (2).* Where an undertaking set up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of work within 2 years form the date on which the undertaking had been set up, no workman employed therein is entitled to any compensation under *Section 25F(b),* and if the construction work is *not* completed within 2 years, he is entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of 6 months.

The completion of such an undertaking's work within 2 years operates as an absolute bar to the workmen's right to compensation. It is only when the work is *not* completed within the stipulated period that a workman is entitled to notice and compensation.

What are "unavoidable reasons":

The Explanation which follows the proviso contained in *Section 25FFF(1)* answers, in a *negative* manner, the question as to what are deemed to be *"unavoidable reasons*" It provides that an undertaking which is closed down by *reason merely of—*

(i) *financial difficulties* (including financial losses); *or*
(ii) *accumulation* of undisposed *stocks; or*
(iii) *expiry* of the period of *lease* or *licence* granted to it; *or*
(iv) in case where the undertaking is engaged in mining operations, *exhaustion* of the *minerals* in the area in which such operations are carried on; — is *not* to be *deemed* to be closed down on account of unavoidable circumstances beyond the control of the employer.

While discussing the circumstances under which the right to receive compensation is restricted, it was pointed out that where the undertaking is closing down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman shall *not* exceed his average pay for 3 months. The above explanation specifies certain circumstances which will *not* render the closing down of the undertaking "on account of unavoidable circumstances beyond the control of the employer"'. This explanation is merely illustrative, and *not* exhaustive.

Case Law

In *Hathising Manufacturing Co.* v *Union of India.* (1960 II LLJ 1 SC), it was *held* that just as an employer has the fundamental right to carry on business, he has the corresponding right to close down the business. If the employer complies with the provisions of Section *25FFF,* there is no further obligation or restriction relating to his right to closing down the undertaking. While in the case of ordinary retrenchment, the conditions relating to notice and compensation are in the nature of the conditions precedent, the same is *not* the case under *Section 25FFF.*

In *John* v. *Coir Yarn Textiles,* (1960 I LLJ 304), it was *held* that events like natural calamities beyond the control of the employer are included in the scope of the expression "unavoidable circumstances' so as to enable the employer to restrict the payment of compensation to an amount *not* exceeding the workman's average pay for 3 months.

In *India Hume Pipe Co. Ltd.* v. *Its Workmen* (AIR 1968 SC 1002), it was pointed out that once the factum of closure was established, the Tribunal *cannot* go behind the same to explore the motive for the same

In *Tatanagar Foundry,* v. *Their Workmen* (AIR 1970 SC 1960), the difference between a lock-out and a closure was indicated by the Court When there is only the closing down of the *place of business,* a lock out is effected. A closure, on the other hand, involves the closing dowi of the *business itself* in this case, the Court *held* that the management had imposed closure and *not* a lock-out, and workmen could claim compensation under *Section 25FFF.*

In *Radio Electricals Ltd. Madras* v. *Industrial Tribunal, Madras* (197(II LLJ 206 Mad.), it was *held* that closure of even a *section of* an undertaking will attract the provisions of Section 25FFF. However, the workman employed in such a section *cannot* claim that payment of compensation on closure is a condition precedent. The Court pointed out that although, by a fiction of law, the workmen employed in I closed undertaking are entitled to notice and compensation, as though they were terminated, the payment of compensation is *not* a condition precedent in the case of closure.

(3) Penalty
Section 30A specifies that any employer who closes down any undertaking without complying with the provisions of *Section 25FFA* is punishable with imprisonment for a term up to 6 months, or a fine which may extend Rs. 5,000, or with both.

G. EFFECT OF INCONSISTENT LAWS (S. 25J)
S. 25J clarifies that:
(1) The provisions of this Chapter have effect notwithstanding anything inconsistent therewith contained in any other law, including Standing Orders. However, where under the provisions of any other Act or Rules, order or notifications issued thereunder or under any Standing Order or any award, Contract of service or otherwise, a workman is entitled to *more favourable benefits* than under this Act, the workman continues to be entitled to the same *even if* he receives benefits in respect of other matters under this Act.
(2) Nothing contained in this Chapter is deemed to affect the provisions of any law in force in any State, in so far as the law provides for the settlement of industrial disputes, but the rights and liabilities of the employers and workmen in relation to layoff and retrenchment, are to be determined in accordance with the provisions of this Chapter.

H. SPECIAL PROVISIONS: LAY-OFFS, RETRENCHMENT & CLOSURE IN CERTAIN ESTABLISHMENT (CHAPTER VB) (Ss. 28K to 28S)
The following topics are discussed here:
(1) Application (Section 25K)
(2) Definitions (Section 25L)
(3) Prohibition of lay-offs (Section 25M)
(4) Conditions precedent to retrenchment (Section 25N)
(5) Close down of undertakings (Section 25 O)
(6) Re-starting of certain undertakings (Section 25P)
(7) Penalty: Lay-offs and retrenchments without permission (Section 25Q)
(8) Penalty for closure (Section 25R)
(9) Certain general provisions of Chapter VA applicable (Section 25S)

(1) Application (S. 25K)
The special provisions contained in Chapter VB, are applicable *if* the industrial establishment first satisfies the definition of the term “industrial establishment” contained in the *new Section 25L.* Moreover, such establishment must *not* be—
(i) of a seasonal character; *or*
(ii) one in which work is performed only intermittently.

If these requirements are satisfied, the other consideration is whether the undertaking employed 100 or more workmen on an average per working day for the preceding 12 months.

Vide an *amendment applicable only in Maharashtra,* it is provided that, without prejudice to the provisions of sub-section (1), the appropriate government may, from time to time by notification in the official Gazette, apply the provisions of Section 25-o and Section 25-R in so far as it relates to contravention of sub-section (1) or (2) of Section 25-o, also

to an industrial establishment (*not* being an establishment of seasonal character or one in which work is performed only intermittently) in which such number of workmen, which may be less than 300 but *not* less than 100, as may be specified in the notification, were employed on an average per working day for the preceding twelve months.

The decision of the appropriate government is final in determining whether the industrial establishment is of a seasonal character, or the work performed therein is only intermittent. For this purpose, the definition of the "appropriate government" has been extended by virtue of *Section 25L (b),* discussed below.

(2) Definitions (S. 25L)
"Industrial Establishment'': Under *Section 25L(a),* an "industrial establishment", for the purpose of Chapter VB, *means:*
(i) a factory as defined in *Section 2(m)* of the Factories Act, 1948;
(ii) a mine as defined in *Section 2(1)(i)* of the Mines Act, 1932; or
(iii) a plantation as defined in *Section 2(s)* of the Plantation Labour Act, 1951.

"Appropriate Government": The definition of appropriate government, contained in *Section 2(a)* of the Act, is qualified by *Section 25L* for the purposes of Chapter VB. *Section 2L (b)* provides that notwithstanding anything contained in *Section 2(ii) (a),* the *Central* Government will be the *appropriate* government:
(i) in relation to any company in which *not less than* 15% of the paid up share capital is *held* by the Central Government; *or*
(ii) in relation of *any corporation, not* being a corporation referred to in Section 2(a)(i), established by or under any law made by Parliament.

The definition of "appropriate government" is qualified as above only for the purposes of Chapter VB, which deals with special provisions in relation to a lock-out, retrenchment and closure in certain establishments. While *Section 2(a)(1)(H)* provides that in relation to all industrial disputes other than those specified in *sub-clause (1) of Section 2(a),* the *State Government* is the appropriate government, *Section 25L(b)* provides that for the purposes of the Chapter VB, the *Central Government* would be the appropriate government, despite the provisions contained in *Section 2(a)(1)(H)* if the company is one which is covered by Section 25L(b).

(3) Prohibition of Lay-offs (S. 25M)
While all the provisions relating to lay-offs contained in Chapter VA do *not* apply to establishments covered by Chapter VB, *some* of them do. *Section 25C* (other than the second proviso thereto) applies to cases of lay-offs referred to in this section. Moreover, *Section 25F* provides *inter alia* that the provisions of *Sections 25B, 25D & 25J* contained in *Chapter VA* shall, so far as may be, apply also in relation to an industrial establishment to which the provisions of *Chapter VB* apply. Thus, in an establishment to which *Chapter VB* applies, the employer is bound to maintain a muster-roll of workmen as provided by *Section 25B.*

Special provisions
Section 25M contains special provisions relating to lay-offs in certain cases. These provisions may be analysed under the following heads:

To whom applicable: These provisions apply in the case of workmen, other than *badli* or casual workmen, whose names are borne on the muster-rolls of an industrial

establishment to which Chapter VB applies.

To whom *not* applicable: These provisions do *not* apply –
(a) to a *badli* or casual workman;
(b) a person whose name is *not* borne on the muster-rolls of the industrial establishment and is *not* a "workman";
(c) to industrial establishments to which Chapter VB does *not* apply, namely, to an industrial establishment which does *not* fall within the definition of the term contained in Section 25L and, in which, less than 300 workmen were employed on an average per working day for the preceding 12 months;
(d) if the lay-off is due to a shortage of power, or natural calamity; *and*
(e) in the case of a mine, if such lay-off is due to fire, flood, excess of inflammable gas or explosion.

It is also provided that where the workmen (other than *badli* workmen *or* casual workmen) of an industrial establishment being a mine have been laid off *for* reasons of fire, flood or excess of inflammable gas or explosion, the employer in relation to such establishment shall, within a period of thirty days from the date of commencement of such lay-off, apply to the authority for permission to continue the lay-off.

Conditions to be observed when provisions are applicable
In all industrial establishments to which Chapter VB applies, if the above conditions are satisfied, the employer is bound to seek in respect of a lay-off, the *previous permission* of such *authority* as the appropriate government specifies by notification in the Official Gazette. Failure to do so renders the lay-off illegal, and the employer will be liable to a penalty under Section 25Q.

Grant or refusal of permission: On an application for permission, the authority may make such *inquiry* as it thinks fit, and thereafter may *grant* or *refuse* the permission. In either case, such authority must record *written reasons* for its decision. Further, *if* the authority *does not communicate* permission or refusal *within* a period of *2 months* from the date of the application, the permission is deemed to have been granted on the expiry of the said period of 2 months.

Date of illegality of Lay-off: A lay-off is deemed to be illegal, on the date on which the workman has been laid-off, if:
(a) no *application,* for permission has been made by the employer;
(b) when the *application* for permission for the lay-off, or its continuance, as the case may be, has been refused by the authority specified.

From such date, the workman is entitled to the benefits under law, as *if* he had *not* been laid-off.

Section 25C partly applicable: Under the provisions of Section 25M(6), it is made clear that Section 25C *(other than* the Second proviso thereto) applies to cases of lay-offs referred to in this section.

In other words, when an employer acts in accordance with Section 25M (6), in respect of an industrial establishment to which the provisions of Chapter VB apply, the workman who has been laid off is entitled to the benefits of all the provisions regarding lay-off compensation provided for by Section 25C.

The right of workmen for lay-off compensation under Section 25C has been exhaustively dealt with earlier. The second proviso to Section 25C, which does *not* apply to cases governed by Section 25M, provides that it is lawful for the employer in any case falling within the foregoing proviso, to retrench the workmen in accordance with the provisions contained in Section 25F, at any time after the expiry of the first 45 days of the lay-off. When he does so, any compensation paid to the workmen for having been laid-off during the preceding 12 months may be set off against the compensation payable for retrenchment. Thus, in the case of an establishment defined in Section 25L and covered by Chapter VB, the employer *cannot* retrench a workman any time after expiry of the first *45 days* of the lay-off.

When workman is not deemed to be laid-off: A workman is *not* deemed to be *laid-off* for the purpose of Section 25M, *if the employer offers* him, at the *same wages, alternative employment* which, in the employer's *opinion, does not require any special skill or previous experience,* and can be done by the workman in question:
(1) in *the same establishment,* from which he has been laid-off; *or*
(2) *in* any other *establishment* belonging to the *same employer,* which is *situated* in the *same town or village or* within such distance from the establishment to which he belongs, that such transfer will *not* involve undue hardship to the workman, having regard to the facts and circumstances of the case.

(4) Conditions precedent to retrenchment (S. 25N)
S. 25N applies only to an industrial establishment in which 100 pr *more* workmen were *employed* on an average per working day for the preceding 12 months and which otherwise satisfies the definition of an "industrial establishment" contained in Section 25L. The benefits of this section are available to workmen who have been in *continuous service* in such establishment for *at least one year*.

The provisions of Section 25N may be analysed under the following heads:
(i) Necessary conditions for retrenchment
(ii) Grant or refusal of permission
(iii) Pending retrenchment notice.
(iv) Absence of permission.

(i) Necessary conditions for retrenchment: Section 25N(1) lays down certain conditions precedent to retrenchment in the case of industrial establishments mentioned above.

No workman employed in any industrial establishment to which Chapter VB applies, who has been in continuous service for *not* less than *one year* under an employer, can be retrenched by that employer *until*,—
(a) the workman has been given *three months'* written notice indicating the *reasons* for retrenchment, and the *period* of notice has *expired* or the workman has been *paid in lieu of such notice, wages* for the period of the notice. However, no such *notice* is *necessary* if the retrenchment is under an *agreement* which *specifies the date for termination of service;*
(b) the workman has been *paid, at the time of retrenchment, compensation* which *is equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
(c) notice, in the *prescribed* manner is *served* on the *appropriate government* or such

authority as is specified by the appropriate government by gazetted notification, and the *permission* of such government or authority is *obtained : Section 25N(1).*

(ii) Grant or refusal of permission : On receipt *of the notice, the appropriate government* or authority may, after making such inquiry as it thinks fit, *grant* or *refuse,* for reasons to be *recorded* in *writing,* the *permission* for the retrenchment: *Section 25N(2).*

If the *Government* or authority does *not communicate* the permission or the *refusal* to the employer *within three months* of the date of service of the notice, the Government or authority is *deemed* to have *granted permission* for such retrenchment *on the expiry of the period of three months.*

(iii) Pending retrenchment notice:

(a) Where at the commencement of the Amendment Act, 1976, the *period of notice* for retrenchment *has not expired,* the employer should *not* retrench the workman, but must, *within a* period of *fifteen* days from such commencement, *apply* to the appropriate government or to the authority for *permission* to retrench : *Section 25N(4)*

(b) Where an application for permission has been made as above and the appropriate government or the authority, *does not communicate* the permission or the *refusal* to the employer *within* a period of two *months* from the date on which the application is made, *permission* is *deemed* to have been *granted* on the *expiry* of the *two months : Section 26N(5).*

(iv) Absence of permission: Where—

(a) there is *no application* for permission under-sub-section 1(c); *or*

(b) an *application* for permission under sub-section (4) is not made *within the period specified; or*

(c) the permission has been refused,—

the retrenchment is deemed to be illegal from the date on which the notice of retrenchment was given to the workman, and the workman is entitled to all the benefits under the law *as if* no notice had been given to him : Section 25N (6).

Effects: The absence of permission as aforesaid has the following effects:

(a) the retrenchment is deemed to be *illegal* from the *date* of the *notice* of retrenchment; *and*

(b) the workman is *entitled to all benefits as if* no notice had been given to him.

(5) Close down of undertaking (S. 25-O)

Application : This section contains special provisions regarding closure of an undertaking of certain industrial undertakings.

The undertakings *covered* by Section 25-o are:

(a) those in which 100 *or more* workmen were employed on an average per working day for the preceding 12 months; *and*

(b) those which *satisfy* the *definition* of “an industrial establishment" contained in Section. 25L.

90 days’ Notice: An employer who intends to close down an undertaking such as is described above must serve, for *previous approval,* at least *ninety days before* the date on which the intended closure is to become effective, a notice in the prescribed manner, *on the appropriate government,* stating clearly the *reasons* for the *intended closure* of

the undertaking: *Section 25-o(1).*

The above provision is subject of a Proviso which is discussed separately below.

Requirements: (i) The notice referred to above must be served on the appropriate Government *at least 90 days prior to the date* when the *intended closure is to take effect.*

(ii) The notice must *seek* the appropriate government's prior *approval for* the intended closure.

(iii) The notice must be *served* in the *manner prescribed.*

(iv) The notice must *clearly state* the *reasons* for the *intended closure.*

When notice seeking approval *not* necessary: (1) The Proviso to Section 25-0 (1) states that this section does *not* apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) The appropriate government may, if it is satisfied, that owing to *exceptional circumstances* such as:

(a) accident in the undertaking, or (b) death of the employer, or (c) the like, it is necessary so to do, by order, direct that provisions relating to seeking *approval* of the appropriate government are *not* to *apply* in relatiorr to such an undertaking for a specified period : *Section 25-0 (6).*

Refusal of permission: Section 25-0 (2) provides that on receipt of a notice under sub-section (1), the appropriate government may, if it is *satisfied* that the *reasons* for the intended closure of the undertaking are *not*-

(i) *adequate* and sufficient; *or*

(ii) such closure is prejudicial to public interest, direct the employer *not* to close such undertaking.

When permission deemed to be granted: Under Section 25-0 (3), the permission applied for is to be *deemed* to have been *granted* on the *expiry of 2 months* from the date of the application if the appropriate government does *not* communicate to the employer permission or refusal within such period.

Appeal: Sub-section (4) of Section 25-0 provides for an appeal to the Industrial Tribunal within 30 days from the date of the order. The Industrial Tribunal must, within 30 days of filing of an appeal, pass an order either affirming or setting aside the order of the appropriate government or the permission deemed to be granted, as the case may be. Sub-section (5) provides that the permission granted and the order of the Industrial Tribunal is final and binding on all parties concerned. Sub-section (6) provides that an order refusing to grant permission for closure remains in force for a period of one year from the date of such order.

When closure deemed illegal: A closure is deemed to be illegal from the date of such closure when an *application* for permission under sub-section (1) or (3) is *not made within time* or where *permission* has been refused. The *effect* of the *closure* being deemed *illegal* is that the workman shall be entitled to all benefits under *law as if no notice* had been *given* to him : *Section 25-0(7).*

Apart from the above, the employer who fails to comply with these provisions is liable to a penalty under Section 25-R which is discussed later.

Section 25-o (8) provides that, under exceptional circumstances such as accident in the undertaking or death of the employer, the application of the provisions of sub-section (1) may be excluded for a specified period.

Benefits to workmen on closure: Section 25-o (9) provides that when an undertaking is approved or permitted to be closed down, every workman in the undertaking who has been in *continuous service* for *not* less than one year immediately before the date of the application for permission is *entitled to notice and compensation* as specified in Section 25N *as if* the said workman had been *retrenched* under that section.
As a result, such a workman is entitled to demand an advance 3 months' written notice indicating reasons for retrenchment or wages in lieu thereof, as also payment of compensation amounting to 15 days' average pay for every completed year of continuous service, or any part thereof, in excess of 6 months.

(6) Re-starting closed down undertakings (S. 25-P)
The appropriate government has the power to *order* the *re-starting* of undertakings of an industrial establishment to which Chapter VB applies, and which were closed down *prior* to the commencement of the Amendment Act, 1976. If, however, there has been a valid closure after the 1976 Act, the appropriate government has no power to order the re-starting of such an undertaking.

Under Section 25P, the appropriate government can order the *re-starting* of an undertaking of the type above referred to if it is of the opinion—
(a) that such undertaking was closed down *otherwise than on account of* unavoidable circumstances, beyond the control of the employer;
(b) that there are *possibilities* of *re-starting* the undertaking;
(c) that it is *necessary for the rehabilitation* of the *workmen* employed in such undertaking before its closure, or for the *maintenance* and *supplies* of *services essential* to the life of the community, to re-start the undertaking, or both;
(d) that the *re-starting* of an undertaking *will not result* in hardship to the employer in relation to the undertaking.

Procedure: Section 25P specifies, *inter alia,* that *before ordering* that such undertaking should re-start, the appropriate government is bound to give an *opportunity* to the employer and workmen, and only thereafter, it satisfied, it may direct, by an order published in the Official Gazette, that the undertaking shall be re-started within the time (not less than one month from the date or the order) as may be specified in the order.

(7) Penalty for lay-off & retrenchment without permission (S. 25Q)
Any employer who contravenes the provisions of Section 25N(1)(c) or 25N(4) is punishable with imprisonment for a term which may extend to one month or with fine which may extend to Rs. 1,000 or with both.

The above provisions relate to the penalty for a lay-off retrenchment declared without the previous permission of the appropriate government.

(8) Penalty for illegal closure (S. 25R)
Penalties for illegal closure are governed by the following provisions:
(1) An employer who *closes down* an undertaking without complying with sub-section (1) of Section 25-O is, on conviction punishable with imprisonment for a term extending

to 6 months, or fine up to Rs. 5,000 or with both.

(2) Any employer who *contravenes a direction* given under subsection (2) of Section 25-O or Section 25P is punishable with imprisonment for a term extending to 1 year, or with fine up to Rs. 5,000, or with both; and when the contravention is a continuing one, with a further fine up to Rs. 2,000 for *every day* during which the contravention continues, after the conviction.

The abovementioned penalties are prescribed in respect of failure, on the employer's part, to observe the provisions relating to closure as covered by sub-section (2) of Section 25-O, as well as failure to comply with a direction to re-start a closed undertaking in keeping section 25P.

(9) Certain general provisions of Chapter VA to apply (S. 25-S)

Section 25-S states that Sections 25B, 25D, 25F, 25G, 25H & 25J of Chapter VA of the Act apply, as far as may be, *also* in relation to an industrial establishment to which the provisions of Chapter VB apply.

In other words:

(i) The definition of "continuous service" contained in Section 25B applies to all the provisions contained in Section 25E to 25R.

(ii) Provisions relating to the duty of an employer to maintain muster-rolls of workmen are also applicable to industrial establishments covered by Chapter VB.

(iii) The special provisions contained in Section 25FF concerning women employed in undertakings which are transferred equally apply to Chapter VB of the Act.

(iv) As Section 25G is applicable to Chapter VB, the procedure for retrenchment prescribed therein, namely, the principle of *"last come, first go",* must be followed.

(v) The provisions governing the re-employment of retrenched workmen, contained in Section 25H, are also applicable to the provisions of Chapter VB.

I. UNFAIR LABOUR PRACTICES (S.s 25T and 25U)

Section 25T provides that no employer or workman or a trade union, whether registered under the Trade Unions Act, 1926, or not, shall commit any unfair labour practice. Section 25U provides that any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1,000, or both.

The provisions of Section 25T and 25U newly inserted by the *Amendment Act, 1982* provide for a restriction on unfair labour practices.

The Supreme Court has pointed out that what S. 25-T prohibits is the "committing" of an unfair labour practice, whereas the corresponding provisions of the MRTU & PULP Act, 1971, prohibit "engaging" in such a practice. According to the Supreme Court, the word "engage" is more comprehensive than the word "commit", which would include only the final acts of such commission. (*Hindustan Lever Ltd. v. Ashok V. Kate,* AIR 1996 SC 285)

The expression '*unfair labour practice"* has been defined by Section 2(ra) as any of the practices specified in the Fifth Schedule, which is set out in the last Chapter

Some instances of unfair trade practices are given below.

Unfair trade practices on the part of the employer

- Establishing employer-sponsored trade unions of workmen
- Transferring a workman mala ride from one place to another, under the guise of following management policy
- Insisting on individual workmen who are on a legal strike, to sign a good conduct bond as a presentment-condition to allowing them to resume work
- Showing favoritism or partiality to one set of workers, regardless of merit
- Failure to implement an award, settlement or agreement
- Indulging in acts of violence or force

Unfair trade practices on the part of the employee

- Advising or actively supporting or instigating any strike deemed to be illegal under the Act
- Indulging in coercive activities against certification of a bargaining representative
- Staging, encouraging or instigating such forms of coercive action as willful 'go slow', squatting on the work premises after working hours or a 'gherao' of any of the members of the managerial or other staff
- Staging demonstrations at the residence of the employer or other managerial staff members
- Inciting or indulging in willful damage to the employer's property connected with the industry
- Indulging in acts of force or violence or holding out threats of intimidation against any workmen with a view to prevent him from attending work.

CHAPTER IX

PROTECTION TO WORKMEN DURING PENDENCY OF PROCEEDINGS

In this Chapter, the following topics are discussed:

A. Service conditions to remain unchanged [Section 33 (1), (2) & (5)]
B. Special provisions relating to "protected workmen" [Section 33(3) & (4)]
C. Adjudication as to whether service conditions changed [Section 33A]
D. Penalty for contravention of Section 33 [Section 31(1)]

Questions:

Write a short note on protected workman

Who is protected workman under the industrial Dispute Act? Explain the appropriate provisions of the Act.

A. SERVICE CONDITIONS TO REMAIN UNCHANGED (S. 33)

Although Section 33 is contained in the Chapter titled "*Miscellaneous",* in the *Industrial Disputes Act* the same is one of the most important sections in the Act, as it grants protection to workmen in respect of conditions of service during the *pendency of the proceedings.* In its absence, an employer could have victimised workmen for raising disputes in connection with the industry. The period of *pendency* of a proceeding is governed by *Section 20,* and is generally the period between the commencement and

conclusion of such proceedings.

In *Punjab National Bank* v. *All India Punjab National Bank Employees' Federation* (AIR 1960 SC 160), the Supreme Court noted that the *object* of Section 33 is to provide a peaceful atmosphere and maintain the *status quo* pending the disposal of an industrial dispute.
The Supreme Court has held that S. 33 is applicable to educational institutions established and administered by minorities which are protected by Art. 30(1) of the Constitution of India (C.Af.C.H. *Employees' Union v. C. M. College, Vellore,* AIR 1988 SC 37)

For a proper understanding of the contents of Section 33(1) & (2), the same may be conveniently sub-divided into *two parts:*

(1) Matters connected with the dispute
(2) Matters *not* connected with the dispute.

(1) Matters connected with the dispute [S. 33(1)]
During the pendency of any conciliation, arbitration, or adjudication proceeding or any other proceeding before a Labour Court, Tribunal or National Tribunal, in respect of an industrial dispute, the employer is *prohibited* —

(i) in respect of *any matter connected with* the dispute - from altering, to the workmen's prejudice, their service conditions which have been applicable to them immediately prior to the commencement of such proceedings; *or*
(ii) in relation to *any misconduct connected with the dispute,* - from discharging or punishing, in the form of dismissal or otherwise, any workman concerned in such dispute,-

save with the express written permission of the authority before which the proceeding is pending.

In *Air India Corporation* v. *V. A. Rebello* (1972, I LLJ 501 S.C.), the Court considered the words "save with the express permission in writing of the authority" appearing above. Prior permission is required when the action is connected with misconduct of the workmen in relation to the dispute. Such action may involve discharge or punishment, whether by dismissal or otherwise. The employer, without such prior permission, is *not* entitled to alter the conditions of service applicable to the workmen.

In *Tata iron & Steel Co.* v. S. *N. Modak,* (1965 II LLJ 128 S.C.), the Court *held* that the provisions of Section 33 are attracted *only when* the proceedings referred to in Section 33(1) are pending. It can thus be said that such pendency is a condition precedent to the application of the provisions of Section 33. As the bar created by the section in only during the pendency of such proceedings by necessary implication, it follows that once such proceedings are over, the employer's rights of termination and suspension of the workmen's service are *not* fettered or barred by the provisions of Section 33.

As the bar created by Section 33 operates during the pendency of proceedings, Section 20 must be referred to in order to determine the period of such pendency. That Section deals with the commencement and conclusion of proceedings. The period between the commencement and conclusion of proceedings is, therefore, the period of pendency of proceedings for the purposes of Section 33.

It needs to be noted that when action is intended to be taken by the employer in relation

to a matter *connected* with the dispute, the previous and explicit sanction of the authority is required, in contrast, when the action contemplated by the employer is in relation to a matter *not connected* with the dispute, and covered by Section 33(2), all that is required is an application for approval. In the latter case, subsequent approval by the authority is sufficient to validate the action of the employer.

Although Section 33(1)(a) speaks of "the conditions of service", these words are *not* defined in the Act. The Courts have, however discussed the scope of these words in several cases.

In *Natural Coal Co.* v. L. *P. Dave* (1958 I LLJ 84 Pat.), the Court *held* that a wage cut is an alteration in service conditions which is to the prejudice of workmen.

In *Santly Mendex Giovanola Binny Ltd.,* (1968 II LLJ 470 Ker.), the Court *held* that non-confirmation of the services of a probationer at the expiry of his period of probation does *not* amount to an alteration in the terms and conditions of such person's service.

In *Lakshmi Devi Sugar Mills* v. *Ram Sarup,* (1957 I LLJ 17 S.C.), the Court negatived the contention that a lock-out was either an alteration in service conditions or punishment or discharge of the workmen.

(2) Matters not connected with the dispute

Section 33(2) provides that dur ng the pendency of any such proceedings in an Industrial dispute, the employer may, in accordance with the relevant standing orders applicable to the concerned workman, or, in the absence of such standing orders, in accordance with the terms of the express or implied contract between him and the workman:

(a) alter, in regard to any matter *not connected with the dispute,* the conditions of service applicable to that workman, immediately before in commencement of such proceeding; *or*

(b) for any misconduct *not* connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman.

In the case of a discharge or dismissal of a workman in regard to any matter or misconduct *not* connected with the dispute, it is essential that –

(i) the workman be paid *wages* for *one month, and*

(ii) the employer makes an *application* to the authority before which the proceeding is pending for approval of the action taken.

In *Murugan Mill Ltd.* v. *Industrial Tribunal* (AIR 1965 SC 1946), the Supreme Court *held* that the authority can go into the question of whether the grounds for termination of the workman's service are justified.

In *Lord Krishna Textile Mills* v. *Its Workmen,* (1961 I LLJ 420 SC), it was pointed out that while in the case of a matter or misconduct connected with the dispute, *prior approval* of the authority is essential, in the case of Section 33(2), all that is required for the workman's discharge or dismissal is the *prior payment* of one month's wages, and the making of an application for approval for the action *already taken.*

When an application for approval has been made, it is the duty of the authority to hear and dispose of such applications *without delay* and as *expeditiously as possible.*

B. SPECIAL PROVISIONS RELATING TO PROTECTED WORKMEN [S. 33(3) & (4)]

Who is a protected workman?

The *Explanation* to Section 33(3) defines a **protected workman*" as follows: A protected workman, in relation to an establishment, means a workman who, being a *member of the executive or other office-bearer*

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(b) for any misconduct *not* connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman.

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When an application for approval has been made, it is the duty of the authority to hear and dispose of such applications *without delay* and as *expenditiously as possible.*

B. SPECIAL PROVISIONS RELATING TO PROTECTED WORKMEN [S. 33(3) & (4)]

Who is a protected workman

The *Explanation* to Section 33(3) defines a *"protected workman*" as follows: A protected workman, in relation to an establishment, means a workman who, being a *member of the executive or other office-bearer*

of a *registered t(ade union* connected with establishment, is *recognised as such in* accordance with the rules made in this behalf.

In every establishment the number of protected workmen must be *one per cent* of the total number of *workmen* employed therein, subject to a *minimum* number of *five* and a *maximum* number of *one hundred* protected workmen. The appropriate Government is authorised to make *rules* providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen : Section 33(4)

Procedure in respect of protected wqrkman

Notwithstanding anything contained in sub-section (2). during *pendency* of any such *proceeding* in respect of industrial disputes, no employer can *take any action against any protected workman* concerned in such disputes:

(a) by *altering* to the prejudice of such protected workman, the *conditions of service applicable to him* immediately before the commencement of such proceeding; *or*

(b) by *discharging or punishing,* whether by *dismissal* or *otherwise,* such protected workman,—

save with the express written permission of the authority before which the proceeding is pending: *Section 33(3).*

These special provisions are necessary to enable trade union officials to function *fearlessly and independently.* These provisions make no distinction between matters or misconduct connected with the dispute or unconnected with it. In the case of a protected workman, the employer is bound in every case to obtain the express written permission of the authority before which the proceeding is pending, before the employer can alter service conditions or discharge or punish, whether by dismissal or otherwise, such a protected workman.

C. ADJUDICATION AS TO WHETHER SERVICE CONDITIONS WERE CHANGED DURING PENDENCY OF PROCEEDINGS (S. 33A)

According to section 33A, where an employer contravenes the provisions of Section 33 during the pendency of the proceeding before a Conciliation Officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention may make a *complaint in writing* in the prescribed manner, (a) to such Conciliation Officer or Board, and the Conciliation Officer or Board shall take such complaint into account in mediating in, and promoting the settlement of such industrial disputes; and (b) to such arbitrator Labour Court Tribunal or National Tribunal

On the receipt of such complaint, the Labour Court, Tribunal or National Tribunal shall *adjudicate* upon the complaint as *if* it were a dispute referred to or pending before it, in accordance with the provisions of the Act, and shall submit his or its *award* to the appropriate Government, and the provisions of this Act apply accordingly.

In *Authomobile Products of India Ltd.* v. *Ramji Bala,* (1955 SCR 124), it was *held* that the authority's jurisdiction is *not* restricted only to an inquiry whether the necessary permission has been obtained. The authority can go into the merits of the case and grant appropriate relief. Under Section 33-A, the authority's main function is to determine whether there has been a contravention by the employer of any of the provisions of Section 33. Once the authority comes to the conclusion that there has been a contravention, the authority has to hear and dispose of the complaint on merits. The authority adjudicates on the complaint as *though* the same were a dispute referred to it, or pending before it, in accordance with the provisions of the Act. The authority is thereafter expected to submit its award to the appropriate Government.

In addition to the remedy provided by Section 33A, the Act also prescribes a penalty for the contravention of Section 33, as given below.

D. PENALTY FOR CONTRAVENTION OF SECTION 33 [S. 31(1)]
Any employer who contravenes the provisions of Section 33 is punishable with imprisonment for a term which may extend to six months, or with fine up to Rs. 1,000 or with both: *Section 31(1).*

Under Section 34, a Court can take cognizance of an offence under the *Act only on a complaint* made by or under the authority of the appropriate Government. No Court inferior to that of a *Metropolitan Magistrate, or* a Magistrate of the *first class,* can try offences punishable under this Act.

CHAPTER X

MISCELLANEOUS TOPICS

This Chapter deals with the following miscellaneous topics:

A. Grievance Settlement Authority (Section 9C)
B. Penalty for Disclosing Confidential Information (Section 30)
C. Offences by Companies (Section 32)
D. Appropriate Government's Power to Transfer Proceedings (S. 33B)
E. Recovery of Money due from an Employer (Sec. 33C)
F. Congnizance of Offences (S.34)
G. Protection of Persons (S. 35)
H. Representation of Parties (S. 36)
I. Power to remove Difficulties (S. 36A)
J. Power to exempt (S. 36B)
K. Protection of action taken under the Act. (S. 37)
L. Power to make Rules (S. 38)
M. Delegation of Powers (S. 39)

Questions:
Before which authority should an application under Section 33-c be fiiled? (2 marks) B.U. Apr 2013

A. GRIEVANCE SETTLEMENT AUTHORITY (S. 9C)
Section 9C provides for reference of certain individual disputes to *Grievance Settlement Authorities* and the setting up of such *Grievance Settlement Authorities,* and has been dealt with in Chapter V.

B. PENALTY FOR DISCLOSING CONFIDENTIAL INFORMATION (S. 30)

Any person who *willfully discloses any* such information as is referred to in section 21, in contravention of the provisions of that Section can, on a complaint made by or on behalf of the trade union or individual business affected, be publishable with imprisonment for a term which may extend to six months, or with fine up to Rs. 1,000 or with both: *Section 30.*

C. OFFENCES BY COMPANIES (S. 32)

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof is, unless *he* proves that the offence was committed without his knowledge or consent, deemed to be guilty of such offence: Sec. *32.*

D. APPROPRIATE GOVERNMENT'S POWER TO TRANSFER PROCEEDINGS (S. 33B)

Under Section 33B, the appropriate Government is authorised to withdraw, by an *order in writing* and *for reasons to be recorded therein,* any proceeding under this Act pending before a Labour Court, Tribunal or National Tribunal, for the disposal of the proceeding, and the authority to which the proceeding is so transferred may, subject to a special direction in the order of transfer, proceed either *de novo* or from the stage at which it was so transferred.

It is also provided that any Tribunal or National Tribunal, if so authorised by the appropriate Government, may *transfer* any proceeding under Section 33 or 33A pending before it to any one of the Labour Courts specified for the disposal of such proceedings, and the Labour Court to which the proceeding is so transferred must then dispose of the same.

E. RECOVERY OF MONEY DUE FROM AN EMPLOYER (S. 33C)

Where any money *is due to a* workman *from an employer under a* settlement or an award, or under the provisions of Chapter VA or VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of workman, his assignee or heirs, may, without prejudice to any recovery, make an *application* to the *appropriate government* for the *recovery* of the money due to him, and if the appropriate government is *satisfied* that any money is so due, it shall issue a *certificate* for that amount to the Collector, who shall proceed to recover the same in the same manner as an arrear of land revenue.

Monies due under Chapters VA and VB relate to lay-off and retrenchment compensation, while the monies covered by Section 33C are those due to workmen under any settlement or award.

Every application for recovery of money under this section should be made *within one year* from the date on which the money became due to workman from the employer. An application after the prescribed period may be considered by the appropriate government, if it is *satisfied* that the applicant had *sufficient cause* for *not* making the application *within* the said period.

Any question of the computation of a benefit may be decided by the specified Labour Court within a period *not* exceeding three months, which period may be extended on

reasons to be recorded in writing. Such Court may appoint a Commissioner for the purpose of taking evidence. On recording a report from him, the Labour Court should determine the amount, after studying the report and the other circumstances of the case.

The Labour Court's decision should be forwarded by it to the appropriate government, and any amount found due by it may be recovered in the manner indicated above.

Where workmen employed under the same employer are entitled to receive from him any money or benefit capable of being computed in terms of money, then, subject to rules made in this behalf, a *single application* for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

In *State Bank of Hyderabad* v. *V. A. Bhide* (AIR 1970 S.C. 196), it was *held* that Article 137 of the Limitation Act does *not* apply to an application made by a workman under Section 33C(2), as no time limit or limitation is prescribed.

A workman who is no longer in employment can prefer an application under Section 33C in respect of any benefit capable of being computed in terms of money, which accrued to him by virtue of his employment. This section provides a quick and effective remedy to workmen to recover money which is due from an employer. Had it *not* been for the provisions of Section 33C, workmen would have been driven to civil suits to recover their dues from employers. The vexation and delay involved in such civil suits is well-known and the workmen, who necessarily come from economically weaker sections, would have been at a great disadvantage.

F. COGNIZANCE OF OFFENCES (S. 34)

Section 34 provides as under:

(i) No Court can take cognizance of any offence punishable under this Act or of the abetment of any such offence, except on a *complaint* made by or under the authority of the appropriate government.

(ii) No Court inferior to that of *Metropolitan Magistrate,* or a *Judicial Magistrate of the First Class,* can try any offence punishable under this Act.

G. PROTECTION OF PERSONS (S. 35)

Under S. 35, *no person* refusing to take part or to continue to take part in an illegal strike or lock-out can, by reason of such refusal or by reason of an action taken by him under this section, be subject to *expulsion* from any trade union or society, or to any *fine* or *penalty,* or to *deprivation* of any *right* or *benefit* to which he or his legal representatives would otherwise be entitled to, or be liable to be placed in any respect, either directly or indirectly, under any *disability* or at any *disadvantage* compared with other members of the union or society. The above provisions have effect despite anything to the contrary in the rules of a trade union or society.

Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner applies to any proceeding for enforcing any right or exemption secured by this section, and in such proceeding, the Civil Court may, in *lieu* of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society, such sums by way of compensation or damages as that Court thinks just.

H. REPRESENTATION OF PARTIES (S. 36)

A *workman* who is a party to a dispute is entitled to be *represented* in any proceeding under this Act by —

(a) an *officer* of a *registered trade union* of which he is a member;

(b) any *member of the executive* or *other office-bearer* of the *federation* of trade unions to *which* the trade union referred to in clause (a) is affiliated;

(c) where the workman is *not* a member of any trade union, by any *member* of the executive or other office-bearer of any trade union connected with, or, by any *other workman* employed, in the industry in which the worker is employed, and authorised in such manner as may be prescribed.

Employer's representation

An *employer* who is a party to a dispute, is entitled to be *represented* in any proceeding under this Act *by:*

(a) an *officer* of an *association* of employers of which he js a member;

(b) an *officer* of a *federation* of associations of employers to which the association, referred to in clause (a), is affiliated;

(c) where the employer is *not* a member of any association of employers, by any *officer* of any association of employers connected with, or by any other *employer* engaged in the industry in which the employer is engaged, and authorised in such manner as may be prescribed.

Lawyer *cannot* appear as of right

No party to a dispute is entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or any proceedings before a Court.

However, in any proceedings before a Labour Court, Tribunal or National Tribunal, a party to the dispute *may* be represented by a legal practitioner (a) with the *consent* of *the other parties* to the proceeding and (b) with the *leave* of the Labour Court, Tribunal or National Tribunal, as the case may be.

Thus, while there is a complete bar to a lawyer appearing in conciliation proceedings before a Conciliation Officer, or a Board of Conciliation, a lawyer can appear in adjudication proceedings before a Court or a Tribunal *provided:*

(a) he has the *consent* of the *other parties* to the dispute; *and*

(b) the *Court or Tribunal grants leave* to the lawyer to appear.

In *Bagchi & Co.* v. *Second Industrial Tribunal* (1959 I LLJ 605), the Calcutta High Court *held* that if a lawyer happens to be an officer of a registered trade union, he can appear as of right under Section 36(1) (a) or (b).

I. POWER TO REMOVE DIFFICULTIES (S. 36A)

According to Section 36A:

(1) If, in the opinion of the appropriate government, any *difficulties* or *doubts* arise as to the *interpretation* of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal, as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred, must, after giving the parties an *opportunity of being heard, decide* such question, and its decision shall be *final and binding* on all such parties.

J.POWER TO EXEMPT (S. 36B)

Section 36B provides that where an appropriate government is satisfied, in relation to

any industrial establishment or undertaking or any class of industrial establishment or undertaking carried on by a department of Government, that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workmen emplyed in such establishment or undertaking or class of establishments or undertakings, it may, by notification in the official Gazette, exempt, conditionally or unconditionally, such establishment or undertaking or class of establishments or undertakings from *all* or *any* of the provisions of this Act.

K.PROTECTION OF ACTION TAKEN UNDER THE ACT (S. 37)

Section 37 protects action taken in good faith, done or intended to be done under the Act or rules made thereunder. This section provides that no suit, prosecution or other legal proceeding lies against any person for anything which in good faith done, or intended to be done, in pursuance of this Act, or any rules made thereunder.

L.POWER TO MAKE RULES (S. 38)

Section 38, which deals with the above power, provides as follows:

(1) The *appropriate goverr.-^ent* may, subject to the condition of previous publication, make rules for the purpose of giving effect of the provisions of this Act.

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

(a) the powers and procedure of Conciliation Officers, Boards, Courts, Labour Courts, Tribunals and National Tribunals including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or of investigation, the number of persons necessary to form a quorum and the manner of submission of reports and awards; .3.

(aa) the form of arbitration agreements, the manner in which such agreements may be signed by the parties, the manner in which a notification may be issued under Section 10A(3A), the powers of the arbitrator named in the arbitration agreement, and the procedure to be followed by him;

(aaa) the appointment of an assessor in proceedings under this Act;

(b) the constitution and functions of, and the filling of vacancies in Works Committees, and the procedure to be followed by such committees in the discharge of their duties;

(c) the salaries and allowances and the terms and conditions for appointment of the presiding officers of *the Labour Court,* Tribunal and the National Tribunal, including the allowances admissible to members of courts, Boards and to assessors and witnesses;

(d) the ministerial establishment, which may be allotted to Courts, Boards, Labour Courts, Tribunals or National Tribunals and their salaries and allowances payable to members of such establishments;

(e) the manner in which, and the persons by, and to whom, notice of strike or lock-out may be given, and the manner in which notices shall be communicated;

(f) the conditions, subject to which, parties may be represented by legal practitioners in proceedings under this Act, before a Court, Tribunal or National Tribunal;

(g) any other matter which is or may be prescribed.

(3) The Rules may provide that a *contravention* thereof will be *punishable* with a fine *not* exceeding Rs. 50.

(4) All rules should, as soon as possible after they are made, be *laid before* the State Legislature, or where the appropriate government is the Central Government, before both Houses of Parliament.

(5) Every rule made by the Central Government under this section, must be laid as soon as may be after it is made, before each House of Parliament while it is in session for

a total period of thirty days, which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should *not* be made, the rule will thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment is without prejudice to the validity of anything previously done under that rule.

M. DELEGATION OF POWERS (S. 39)

The *appropriate government* may, by Gazette notification, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in direction, be *exercisable, also —*

(a) where the *appropriate* government is the *Central* Government : by such officer or authority subordinate to the Central Government as may be specified in the notification; *and*

(b) where the *appropriate* government is a *State* Government : by such officer or authority subordinate to the State Government as may be mentioned in the notification.

CHAPTER XI

THE SCHEDULES

Question:
Write a short note on: Unfair labour practices on the part of a Trade Union.
B.U. Nov. 2008

The Schedules to the Industrial Disputes Act are given below.

A. THE FIRST SCHEDULE
While Section 2(m) contains the definition of a *"Public Utility Service",* the definition itself states that an industry specified in the First Schedule is a Public Utility Service. This Schedule, as amended up to date with Central and Maharashtra State amendments, is reproduced below:

The following industries may be declared *'Public Utility* Services' under Section 2(n)(vi):
1. Transport (other than railways) for the carisge of passengers or goods by land or water
2. Banking
3. Cement
4. Coal
5. Cotton Textiles
6. Foodstuffs
7. Iron and Steel
8. Defence establishment
9. Service in Hospital and Dispensaries
10. Fire Brigade Service
11. India Government Mints
12. Indian Security Press
13. Copper Mining
14. Lead Mining
15. Zinc Mining
16. Iron Ore Mining
17. Service in any oil-field
18. (Omitted)
19. Service in uranium industry
20. Pyrites mining industry
21. Security Paper Mill, Hoshangabad
22. Services in Bank Note Press, Dewas
23. Phosphite mining
24. Magnesite mining
25. Currency Note Press
26. Manufacture or production of mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends, including synthetic fuels, lubricating oils and the like
27. Service in the International Airports Authority of India
28. Industrial establishments manufacturing or producing Nuclear Fuel and Components, Heavy Water and Allied Chemicals and Atomic Energy.

B. THE SECOND SCHEDULE

Section 7 of the Act states *inter alia* that the appropriate government may by gazetted notification, 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.

The matters that fall within the jurisdiction of the Labour Court are, therefore, specified under the Second Schedule.
These matters are as follows:

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal or workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

C. THE THIRD SCHEDULE

Under Section 7A, and Industrial Tribunal is to adjudicate on industrial disputes relating to any matter, whether specified in the *Second or Third Schedule.* The matters contained in the Second Schedule have already been dealt with above. The matters specified in the Third Schedule are listed below:

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit-sharing, provident fund and gratuity;
6. Shift working, otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishments and
11. Any other matter that may be prescribed.

Although normally, the matters specified in the Third Schedule fall within the jurisdiction of Tribunals, Section 10 contains a proviso which states that whether the dispute relates to any matter specified in the Third Schedule, and the same is *not likely* to *affect more than 100 workmen,* the appropriate *government* may, if *so thinks fit,* make the reference to a Labour Court under Section 10(1)(c).

D. THE FOURTH SCHEDULE

Under Section 9A, an employer who proposes to effect any *change* in the *conditions of service* applicable to any workman in respect of *any matter specified* in *this Schedule,* is bound to give notice of *change* and *observe* the requirements of Section 9A before he can effect such change. The matters, in respect of which notice of change is required under Section 9A, are specified in the Fourth Schedule, the contents of which are listed below:

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund

or for the benefit of the workmen under any law for the time being in force;

3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alteration or discontinuance of shift working, otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration of existing rules, except, in so far as they are provided in standing orders;
10. Rationalisation, standardisation or improvement of plant or technique, which is likely to lead to retrenchment of workmen;
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, *not* occasioned by circumstances over which the employer has no control.

E. THE FIFTH SCHEDULE

[See Section 2(ra)]

Unfair Labour Practices

I. On the part of employer and trade unions of employers

(1) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say-

(a) threatening workmen with discharge or dismissal, if they join a trade union;

(b) threatening a lock-out or closure, if a trade union is organised;

(c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union oragnisation.

(2) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say:

(a) an employer taking an active interest in organising a trade union of his workmen; *and*

(b) an employer showing partiality or granting favour of one of several trade unions attempting to organise his workmen or to its members, where such a trade union is *not* a recognised trade union.

(3) To establish employer sponsored trade unions of workmen.

(4) To encourage or discourage membership in any trade union by discrimination against any workman, that is to say—

(a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union;

(b) discharging or dismissing a workman for taking part in any strike *(not* being a strike which is deemed to be an illegal strike under this Act);

(c) changing seniority rating of workmen because of trade union activities;

(d) refusing to promote workmen to higher posts on account of their trade union activities;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

(5) To discharge or dismiss workmen—

(a) by way of victimisation;

(b) *not* in good faith, but in the colourable exercise of the employer's rights;
(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
(d) for patently false reasons;
(e) on untrue or trumped up allegations of absence without leave;
(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;.
(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.
(6) To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
(7) To transfer a workman, *mala ride* from, one place to another, under the guise of following management policy.
(8) To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.
(9) To show favouritism or partiality to one set of workers regardless of merit.
(10) To employ workmen as **badlis",* casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen
(11) To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
(12) To recruit workmen during a strike which is *not* a illegal strike.
(13) Failure to implement award, settlement or agreement.
(14) To indulge in acts of force or violence.
(15) To refuse to bargain collectively, in good faith with the recognised trade unions.
(16) Proposing or continuing a lock-out deemed to be illegal under this Act.

II. On the part of workmen and trade unions of workmen

(1) To advise or actively support or instigate any strike deemed to be illegal under this Act.
(2) To coerce workmen in the exercise of their right to self organisation or to join a trade union or refrain from joining any trade union, that is to say:
(a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places,
(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
(3) For a recognised union to refuse to bargain collectively in good faith with the employer.
(4) To indulge in coercive activities against certification of a bargaining representative.
(5) To stage, encourage or instigate such forms of coercive actions as wilful 'go slow', squatting on the work premises after working hours or *"gherao"* of any of the members of the managerial or other staff.
(6) To stage any demonstration at the residence of the employers or the managerial staff members.
(7) To incite or indulge in wilful damage to employer's property connected with the industry.
(8) To indulge in acts of force or violence or to hold out threats of intimidation against any workman, with a view to prevent him from attending work.

F. POWER TO AMEND SCHEDULES (S. 40)

Section 40(1) states that if the *appropriate government* is of the *opinion* that it is *expedient or* necessary in the *public interest* so to do, *it may,* by *notification* in the *Official Gazette, add* to the First Schedule any industry, and on any such notification being issued, the First Schedule shall be deemed to be amended accordingly.

The Central Government may, by notification in the Official Gazette, add to or *alter* or *amend* the *Second* Schedule or the *Third* Schedule, and on such notification being issued, the Second Schedule or the Third Schedule, as the case may, be, shall be deemed to be amended accordingly.

Every such notification must, as soon as possible after it is issued, be laid before the Legislature of the State, if the notification has been issued by a State Government, or before Parliament, if the notification has been issued by the Central Government.

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