

Unit – I
General Introduction

INDUSTRIAL LAW

Industrial Jurisprudence –

During the twentieth century a new branch of jurisprudence known as Industrial Jurisprudence has developed in our country. Industrial jurisprudence is a development of mainly post-independence period although its birth may be traced back to the industrial revolution. Before independence it existed in a rudimentary form in our country. The growth of industrial jurisprudence can significantly be noticed not only from increase in labour and industrial legislation but also from a large number of industrial law matters decided by the Supreme Court and High Courts. It affects directly considerable population of our country consisting of industrialists, workmen and their families. Those who are affected indirectly constitute a still larger bulk of the country's population. This branch of law modified the traditional law relating to master and servant and had cut down the old theory of laissez faire based upon the freedom of contract in the larger interest of the society because that theory was found wanting for the development of harmonious and amicable relations between the employers and employees. Individual contract have been in many respects substituted by a standard form of statutory contract through legislation and judicial interpretation. The traditional right of an employer to hire and fire his workmen at his will has been subjected to many restraints. Industrial Tribunals can by their award make a contract which is binding on both the parties creating new right and imposing new obligations arising out of the award. There is no question of the employer agreeing to the new contract; it is binding even though it is unaccepted to him. The creation of new obligations is not by the parties themselves. Either or both of them may be opposed to it, nevertheless it binds them. Thus, the idea of some authority making a contract for the workmen and employer is a strange and novel idea and is foreign to the basic principle of the law of contract.

Similarly there is change in the concept of master and servant. One who invests capital is no more a master and one who puts in labour is no more a servant. They are employer and employees, the former may hire the latter but he can no more fire them at his will. The interest of the employees is in many respects protected by legislation. Both are now parties in an enterprise, without one yielding to the higher status of another but as co-sharer in the partnership. Even the right of labour participation in the management has been given legislative recognition to the utter despair of the capitalist. Most of the benefits claimed by a workman are not part of his bargain with the employer when the latter employed him or are not due to them on account of any contract but of "status". The industrial society all over the world has been moving during the present century from contract to status and the status is a politico-socio-economic juristic status.

What were the factors that lead to this departure from the old theories of the law of contract, and the law of Master and servant? Industrialization in India, as in other countries, brought with it some new socio-economic problems. Those who control the industry have a natural tendency of multiplying their wealth and if this tendency is not checked the rich grows on richer and the poor becomes poorer day by day.

Democratic ideas have also grown simultaneously with the growth of industrial in our country. These democratic ideas have pleaded for and have also helped in mass awakening and consciousness for greater power amongst the working class. Out of the struggle between workers, demanding for better share in the production and profit of the industry and the employers' hesitation to part with it beyond a certain limit, have grown the recognition of certain principles which are considered to be fundamental in almost all developed countries of the world.

The basic principles are

The right of workmen to combine and form associations or unions.

The right of workmen to bargain collectively for the betterment of their considerations of service.

The realization that economic struggle is inevitable because it is but natural that labour would agitate for better conditions.

A shift from the doctrine of “Laissez faire” to a “welfare state”.

Tripartite consultations i.e., solution of the industrial or labour disputes through the participation of workers, employers and the Government.

The State can no more be a neutral onlooker but must interference as the protector of the social good.

Minimum standards must be guaranteed through State legislation.

The concept of industrial jurisprudence in our country developed only after independence. Until independence the change in attitude of the government and the benevolent labour legislation only aimed amelioration of the conditions of labour and it could hardly be said to be a deal in social justice to the working class. The birth of industrial jurisprudence in our country may be ascribed to the Constitution of India which made more articulate and clear the industrial relations philosophy of the Republic of India. This philosophy has afforded the broad and clear guideline for the development of our industrial jurisprudence and has thus taken India one step forward in her quest for industrial harmony. The parliament and the Supreme Court have helped in shaping industrial jurisprudence, the former through legislation and the latter as interpreter of the labour laws.

Industrial jurisprudence is of great importance to all developed or developing countries of the world because it is concerned with the study of problems relating to human relations arising out of a large scale development of factory system which has emerged in consequence of industrial revolution proper regulation of employer-employee relationship is a condition precedent for planned, progressive and purposeful development of any society. As an instrument of social policy in the present day body-politic the role of industrial jurisprudence has still gained importance. Industrial workers and their families are directly concerned with it.

Labour Policy in India

After independence it was largely felt that the labour policy must emphasis upon self-reliance on the part of the workers. Since independence till 1954, the period when V.V. Giri was the labour Minister, all official pronouncements emphasized that labour should become self-reliant. An equally forceful view had been to prefer reliance upon the Government. This cross-current of approach of the labour policy gave place to a new approach known as “Tripartism”. Thus “Tripartism” became the central theme in the so-called “Nanda-period” that began in 1957. During this period the Government paid

reliance on three party approaches, namely the trade union representing the workers, the employers, and the Government. In this kind of approach the representatives do not decide anything but their role is mainly advisory. They meet together, discuss the points in dispute and strive to reach a consensus and if they agree they make recommendations. Out of the three, the role of the Government is more important. Annual Labour Conferences and the permanent standing Labour Committees served as the chief instrument of Tripartism. These conferences advocated, amongst many things; workers participation in management, workers education works, committees, and minimum wage legislations. At the sixteenth conference held in 1958 a momentous advancement was made by adopting a Code of Discipline in industry. The code pledged the parties to avoid strikes and lock-outs without notice, and to eschew unilateral actions, and to rely on settlement of disputes by discussion by voluntary arbitration or by adapting to such measures as the law may provide. It also pledged them to avoid coercion and victimization, to avoid partial strikes and lock-outs, and to follow grievance procedure. Tripartism is an approach which lays stress on the identity of interests between labours and capital i.e., they are partners in the maintenance of production and the building up of the national economy. The labour policy has proceeded on a realization that the community as a whole, as well as individual employers are under an obligation to protect the welfare of workers and to secure to them their due share in the gains of economic development. This led to enacting of the Payment of Bonus Act, 1965 which aimed at providing for the payment of bonus on the basis of profits or on the basis of production or productivity.

The main postulates of

The right of workmen to combine and form associations or unions.

Recognition of the State as the custodian of the interest of the community, as the catalyst of “change” and welfare programmes.

Recognitions of the right of workers to peaceful direct action if justice is denied to them.

Encouragement to mutual settlement, collective bargaining and voluntary arbitration.

Intervention by the State in favour of the weaker party to ensure fair treatment to all concerned.

Primacy to maintenance of industrial peace.

Evolving partnership between the employer and employees in a constructive endeavour to promote the satisfaction of the economic needs of the community in

Ensuring fair wage standards and provisions of social security.

Co-operation for augmenting ‘production’ and increasing ‘productivity’.

Adequate enforcement of legislation.

Enhancing the status of the worker in industry.

Tripartite consultation.

Industrial Revolution of India

Industrialization in India as in any other country implies the growth of a factory system with employers and wage earners in varying circumstances and with varying characteristics, yet having some common features and it is the common features that are of interest. As a consequence of the introduction of factory system production became concentrated in a few selected places, resulting in the increase of labour towns because of the difficulty of finding adequate livelihood in their native place. This resulted in disappearance of the popular village handicraft system because they could not compete with machine made goods. The goods produced on a mass scale with the help of machines in the industries were cheaper than the goods produced by handicraft method. But the development of industry in India brought with it a great evil inasmuch as it changed the status of a craftsman into wage-earner. Therefore, the craftsmen had to migrate from village to industrial cities in search of employment in factories.

EVILS OF INDUSTRIALIZATION

Economic Evils

1. The artisan who in the handicraft system had the psychological satisfaction of producing the goods himself became in the factory system only a tender of the machine. He had to produce the goods with the help of tools and raw materials supplied by his employer and in the workshop of the employer. In the factory system of production only a part of goods were produced by a certain category of workers. Different categories of workers produced different parts of the same goods, thus, the goods came in the final shape by the composite labour of many categories of workers. The workman in this system did not get full psychological satisfaction of manufacturing a product by himself and this indirectly arrested his mental development and creative talents.
2. The wages paid to factory workers were quite inadequate to meet their barest needs in the new environment which was different from their rural life.
3. The employment of factory workers was not secure in the beginning.

They had to suffer occasionally from periodic unemployment and under-employment as a consequence of over-production or trade cycles. A worker could be discharged by his employer at any time without assigning any reasons there for.

Social Evils

The factories were sick not only economic evils but also of social evils. Overcrowded cities with insanitary slums, and acute housing shortage because of large scale migration of village population to industrial towns had its natural effect on health, morality and social life of workers.

Work in factories was very hazardous and strenuous with long hours duty, no rest, and no facility for recreation. Machines were taken care of by the factory owner who had little regard for the safety and welfare of the workers.

Workers were exposed to serious accidents because machines were not properly screened. Accidents were considered as normal risk incidental to employment in a factory and the worker who was unfortunate victim of an accident lost his employment and had no right to compensation.

The wages paid to the worker were very low. Wages were the only source of their income. The workers found it extremely difficult to live with the wages so earned by them. Therefore, they had to find out ways and means to supplement their earnings. Consequently the wives and children of workmen started seeking employment. The factory owners exploited this situation and employed them in large numbers at extremely low wages without any regard to their physical conditions.

The workers found it difficult to adjust with these conditions. These evils of industrialization and the lack of adjustment and harmonious relationship between the employer and the labour created problems in the industry, which we call labour problems.

Labour Problems

Labour problems constituted a serious menace to the society, and needed solution, if not to eradicate then at least to mitigate them in the very beginning. Employers paid their sole attention to the maintenance of machines and the improvement of the technical knowhow to the utter neglect of the human hands employed to man the machines because they were readily available and could be easily replaced. Workers were illiterate and poor and therefore unconscious of their rights. The socio-economic status of the worker was far below the status of their employer. As such they could not exercise their free will in negotiating with the employer for employment. The employer taking advantage of the door condition of the workers dictated their own terms and conditions with regards to wages, hours of work, leave, etc. The workers were left with no choice but to accept such terms because services was the sole means of earning their livelihood.

Neither the government not the law courts took special notice of these problems because they laid too much emphasis on the policy of the non-interference and freedom of contract. Thus, with the lapse of time the situation turned out to be so worse and ht society became so much adversely affected that the government was compelled to take some action to remedy these problems.

Ultimately some philanthropic agencies like Servants of India Society, Social Service League and some industrial social workers raised their voice against these problems. They were successful in mobilizing the public opinion in support of their view point. Workers also started to form their own organization to fight against exploitation at the hands of industrialists. In the beginning the effort of the workers was not very successful because of their weak bargaining power and lack of resources on which they could rely for their livelihood in the absence of wages.

Some employers also realised the seriousness of the problem and the necessity of mitigating these evils for they affected the production of the industry, they felt that investment on labour welfare was a policy worth pursuing because a contended worker would produce better yields and would increase the efficiency.

The government too later on realized the gravity of the problem and could not remain a spectator for the workers constituted a large section of the society. Moreover, the government had to intervene to settle he disputes in the interest of national economy and the welfare of the society at large. If some key industry is thrown out of gear, the whole system is paralysed. Frequent break downs of even a part of the economic system tend to impoverish role in national policy and the State, therefore, cannot afford to remain indifferent to the problems leading to industrial conflict.

After independence the national government paid much attention to the improvement of the conditions of labour in industry, for the prosperity of a country depends upon the development and

growth of industry. No industry can flourish unless there is industrial peace and co-operation. Industrial peace is possible only with the co-operation of labour and capital. To ensure better co-operation the wage earner who is a partner in the production should be allowed to have his due share of the profit for increased production. Therefore, we have to shape our economic policy in such a manner as to give labourer his due status by offering him reasonable working conditions and due share in production. That means social justice and social security has to restore to the labourer. Our Constitution guarantees social-economic objectives. Labour legislation is one of the most progressive and dynamic instruments for achieving socio-economic progress. "There is no other branch of law which embraces such a wide and effective role in social engineering and social action. It is here that the industrial law distinguishes itself from other branches of law and awaits the development of wholly different jurisprudence to explain and expound it."

Collective Bargaining

- Employer & employee with different interest must work together, if they want to achieve their respective goals.
- Good relations between employer and employee are essential for the success of industry, in order to maintain good industrial relations, it is necessary that industrial disputes are settled quickly and amicably. One of the efficient means of resolving industrial disputes and deciding employment conditions is collective bargaining
- The phrase collective bargaining is said to have been coined by Sydney and Beatrice Webb of Great Britain which is said to be the home of C.B. This idea emerges as a result of industrial conflict.
- According to encyclopedia of social sciences - C.B is a process of discussion and negotiation between two parties. The resulting Bargain is an understanding as to the terms & conditions under which a continuing service is to be performed.
- C.B is made up of two words - Collective + Bargaining. Here the meaning of collective means both employers & employee act as a group rather than as individuals or you can say that it is a group action through its representatives and bargaining means - the method of reaching an agreement by negotiations which involves proposal and counter proposal, offer & counter offer or give and take between the parties. So, C.B. is a bi-partite and dynamic process.

Objective of C.B.:-

- To maintain cordial relation between employer/ employee
- To protect the interest of workers through collective action
- To insure the participation of Trade union in industry
- To avoid the need for Government intervention as C.B. is a voluntary process.
- To promote industrial democracy

Characteristics of C.B.:-

- It is a group action as opposed to individual action.
- It is flexible and notice and not fixed or static.
- It is bi-parties process.
- It is a continuous process
- C.B. is the technique that has been adopted by T.V. & Mgt to reconcile the conflicting interest
- C.B. plays a significant role in improving labour-mgt relations and insuring ind. Harmony.

- C.B. is a process of negotiation to determine the terms and conditions of employment.
- The process of C.B. is a democratic and peaceful process.
- The C.B. is a direct bi-partite negotiation to be conducted in an atmosphere of amity & goodwill.
- The successful C.B. always ends with an agreement between the parties and usually C.B. agreements are long term agreements to ensure industrial peace.
- C.B. agreements always emerge as a package deal in an atmosphere of mutual give & take.
- C.B. facilitates better implementation of decisions taken, because of involvement of both the parties. ;

Forms of C.B.:-

- Single plans-bargaining - Prevails in United States & India - negotiation with T.V.
- Multiple Plans-bargaining - C.B. agreements can be grouped under following categories -
 - ❖ Working conditions, labour welfare, Mgt matter (Safe) organizational matters -

Condition essential for successful C.B.

- A favorable political climate
- Presence of strong T.U.
- Recognition of T.U. by the mgt or law.
- Willingness to give & take.
- In an atmosphere of amity & good will.
- Right attitude
- Continuous dialogues
- Availability of data
- Negotiation/ Settlement

Identification of problems

Preparing dialogue & ready for settlement -

IR Overview highlighting Labor Management Relations, Legal Framework & Constitutional Provisions, ILO Conventions
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**Industrial Relations
Labor Management Relations**

The field of labor relations looks at the relationship between management and groups of workers represented by a union are more harmonious and cooperative than confliction. It creates an environment conducive to economic efficiency, motivation, productivity, development of the employee and generates employee loyalty and mutual trust.

Parties Involved in Labor Management Relations



Legal Framework & Constitutional Provisions

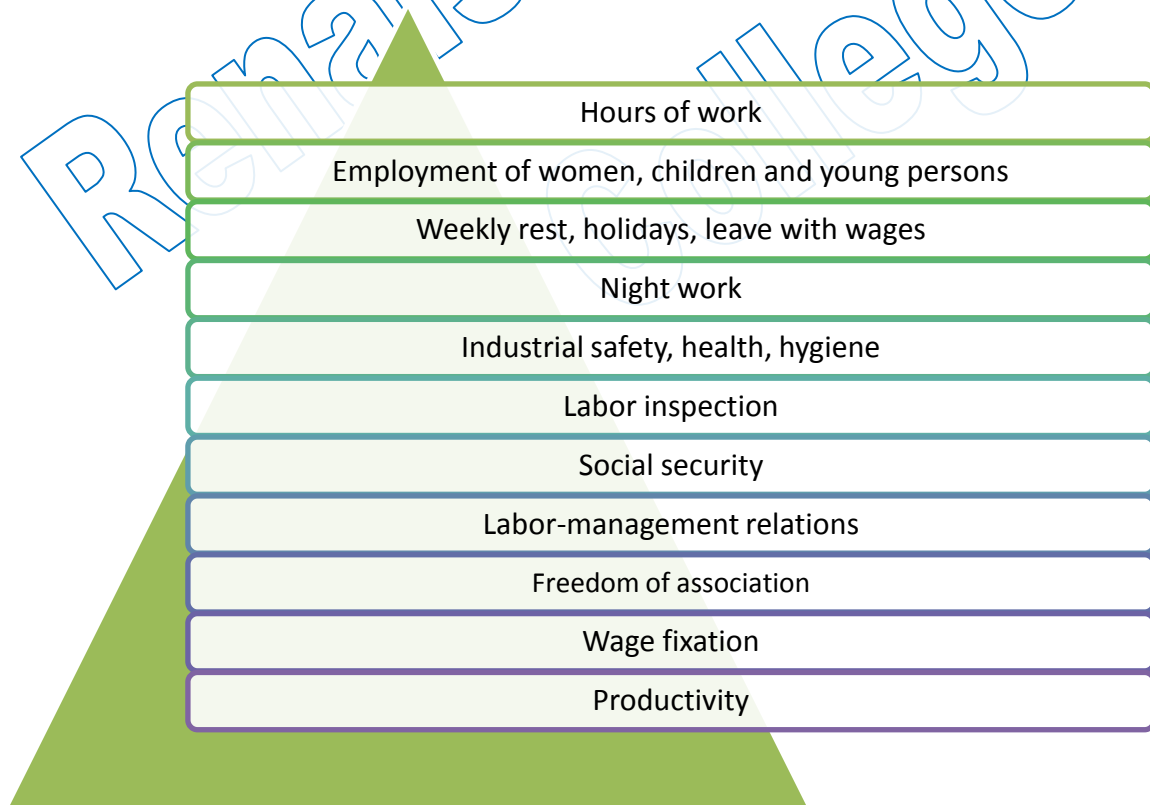
- Labor is in the concurrent list of the Constitution on which both the Centre as well as the States have the power to make laws.
- Article 254 has been enacted to clarify the position.
- Normally, as laid down in Clause (1), in case of any repugnancy between the Union and the State legislation, the legislation of the Union shall prevail.
- Articles 39, 41, 42 and 43 have a special relevance in the field of industrial legislation and adjudication.

Articles 39, 41, 42 and 43

- Article 39: Equal pay for both men and women.
- Article 41: Secures the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
- Article 42: Secures just and humane conditions of work and for maternity relief.
- Article 43: Ensures a decent standard of life and full enjoyment of leisure and social and cultural opportunities to all workers.

ILO Conventions

The ILO set-up in 1919 is the international labor organization which adopted a series of Conventions and Recommendations covering



Out of 183 Conventions adopted by ILO, India has ratified 39 Conventions.

ILO and India have common aims, common goals and common destiny, as both of them are committed to world peace, freedom and social justice.

Both are striving for the socio-economic betterment of the poverty stricken and under-privileged people

INDUSTRIAL RELATION

The concept of industrial relation is very simple. It is a relationship in any industry between workers and their employer. We can call it broadly labour management or employer employee relations. The phrase industrial relation contemplates maintenance of relations in industry. Such relations can be cordial and harmonious. They can be strained also due to constant strife. Every effort is made to ensure co-operation and not conflict between these two important partners in the working of any undertaking in any industry. The industrial establishment can have a small manpower or very big as well. Industry can belong to a private employer, co- operative society, partnership firm, corporate bodies like private public sectors. It may be run by central/ state Government. They are normally known as central/ state Govt. public sector undertakings. Ownership is immaterial it is of a diverse nature but management factor is always common. No enterprise runs without exercising proper control by the management over the persons employed. Thus, it is now clear to us that employer employee relations or industrial relations exists in every industrial unit.

Now after understanding the conceptual position of industrial relations we have to find out how they can be maintained in a manner which will contribute to an uninterrupted production or rendering of service. The first and foremost is mutual co-operation and understanding. This is secured by giving a fair deal to the workers. This is possible by providing proper wages and other fringe benefits as far as possible. The employer in return expect maintenance of discipline on shop floor and due obedience. The other part is to regulate industrial relations by a legal frame work. Ours is a socialistic democratic republic where welfare of labour is of paramount importance. Central/ state legislatures have enacted various labour laws and it is obligatory on the part of management to abide by such a frame work.

These laws pertain to condition of service of workers, payment of wages to them etc. it is not unusual for workers to demand more and more wages, facilities etc. Involving financial burden which employer resists and deny because of financial constraint and because they make an inroad into their share of profit. Non settlement of the demands made by the workers gives rise to unrest which ruptures industrial relations. Causing disruptions due to stoppage of work, strike, lock out etc. The interest of the general public and national economy get affected. Law therefore provides a machinery for settlement of disputes the industrial dispute Act, 1947 is the first law on the subject in this field. It is applicable throughout India in all the states. Labour being on the concurrence list of the constitution of India, some of the states have made their own laws in this field and with the assent of the president of India, they all are applicable in those states to the exclusion of the central I.D. Act. In this context a mention can be made of such laws known as Industrial relation law, in place of industrial dispute prevailing in the state of Gujrat, Maharashtra and Madhya Pradesh. The object is common namely to provide a machinery for the settlement of disputes through modality of agreement/settlement/awards, which are legally enforceable. In dispute resolving mechanism, an individual worker is always helpless but united force of labours together add strength to the collective bargaining.

Constitution of India

Labour Laws

Court Judgments

International Labour Organization (ILO) Standards

Purpose- Social Justice Origin-Labour Law, Sources

- Constitution of the ILO (Based on Declaration of Philadelphia (1944)-Preamble
- Whereas universal and lasting peace can be established only if it is based upon social justice;
- Implications of Sustainable Development:

- And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures; Globalization
- Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;
- The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization:

Social Justice

- Equal treatment to everyone
- State assistance to the weak
- Reducing pockets of extreme poverty
- Eliminating exploitation
- Role of the State

Commitment to social justice confers a very heavy responsibility on the state for upliftment of the weak

CONSTITUTION OF INDIA

- Preamble
- Fundamental Rights
- Directive principles
- PREAMBLE
- Socialist Democratic Republic;
- Justice ,social, economic and political;
- Liberty of thought, expression, belief, faith and worship;
- Equality of status and opportunity;
- Fraternity, assuring the dignity of the individual

FUNDAMENTAL RIGHTS

- Equality before the law. Art. 14- State shall not deny to any person equality before the law or the equal protection of the laws.
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth or any of them (S 15)

- Equality of opportunity in matters of public employment- no citizen shall, on grounds only of religion, race, caste, sex, descent, and place of birth, residence or any of them, be discriminated against in respect of any employment under the State. (Art 16)
- Right to freedom of speech and expression and to form associations or unions. (Art. 19-1-c);
- Right to practice any profession, trade or business
- Prohibition of traffic in human beings, begar and other similar forms of forced labour (Art. 23);
- Prohibition of employment of children, below 14 yrs., in any factory, mine or other hazardous employment (ART.24).

DIRECTIVE PRINCIPLES OF STATE POLICY

- Right to adequate means of livelihood, prevention of concentration of wealth, equal pay for equal work for both men and women, prevention of abuse of health and strength of workers and the tender age of children, etc. (Art. 39);
- Right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Art. 41)

Meaning of Directive Principles

- These principles are directives of the Constitution to the state.
- The state has to take these principles into consideration while making regulations and in the course of governance
- Directive principles of state policy cannot be enforced through courts, unlike Fundamental Rights. They are not justiciable.
- Provision for just and humane conditions of work and maternity relief (Art. 42);
- Living wage for workers (Art.43);
- Participation of workers in management of industries (Art.43A w.e.f. 3.1.97)

Freedom

- Speech and expression
- To assemble peaceably and without arms
- To form association or unions
- To move freely throughout India
- To reside and settle in any part of India
- To practice any profession, occupation, trade or business.

Reasonable Restrictions

- In the interest of public order, decency and morality
- Power of Parliament to modify fundamental rights in their application to forces
- Restriction on rights while 'martial law' is in force in any area.

IR Overview highlighting Labor Management Relations, Legal Framework & Constitutional Provisions, ILO Conventions

Industrial Relations

- Labour Management Relations
- Parties Involved in Labor Management Relations
- Features of Labor Management
- Objectives of Labor Management
- Legal Framework & Constitutional Provisions
- Articles 39, 41, 42 and 43

- ILO Conventions.
- Industrial Relations.

Labour Management Relations

The field of labour relations looks at the relationship between management and groups of workers represented by a union are more harmonious and cooperative than conflict. It creates an environment conducive to economic efficiency, motivation, productivity, development of the employee and generates employee loyalty and mutual trust.

Parties Involved in Labour Management Relations

- Employees
- Employers
- Government
- Employers Association
- Trade Unions
- Courts and Tribunals

Legal Framework & Constitutional Provisions

- Labour is in the concurrent list of the Constitution on which both the Centre as well as the States have the power to make laws.
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- Article 43: Ensures a decent standard of life and full enjoyment of leisure and social and cultural opportunities to all workers.

ILO Conventions

- The ILO set-up in 1919 is the international labour organization which adopted a series of Conventions and Recommendations covering
 - Hours of work
 - Employment of women, children and young persons
 - Weekly rest, holidays, leave with wages
 - Night work
 - Industrial safety, health, hygiene
 - Labor inspection
 - Social security
 - Labor-management relations
 - Freedom of association
 - Wage fixation
 - Productivity
- Out of 183 Conventions adopted by ILO, India has ratified 39 Conventions.
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INDUSTRIAL DISPUTE ACT, 1947

INDUSTRIAL DISPUTE ACT, 1947

- Introduction (scope, coverage & object).
- Important definitions.
- Authority under the act.
- Notice of change (section 9-A).
- Reference of disputes (section 10).
- Strike and lock-out (provisions related to both).
- Lay-off/ retrenchment (Definition, comp.)

Industrial Dispute Act, 1947

- **Introduction:**-The act was enacted to secure industrial peace and harmony by providing machinery and procedure for the settlement of industrial dispute by negotiations instead of trial of strength through strikes and lock-outs.
- This legislation is calculated to ensure social justice to both employers and employees and there by promote industrial progress.
- The act provides for payments for payment of compensation on a/c of retrenchment, lay-off and closure.

The object, scope and extent of the Act

- **The main objects of the Acts are-** To secure industrial peace by preventing and settling industrial disputes between two wheels of the industry called the employer and the workmen.
- To maintain good relations between the employer and workmen by preserving amity and cordial relations by way of collective bargaining through an internal works committee.
- To ameliorate the condition of workmen in industry and for redressal of grievances a statutory machinery is been set up externally by way of conciliation and adjudication by labour court. The Act extends to the whole of India and it applies to all industries.

It also lays down procedure for prior permission of the appropriate govt.for laying off or retrenching the workers or closing down an industrial establishment in which not less than 100 workmen were employed on an average per day for the preceding 12 months.

This act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanism of dispute resolution and setup the necessary infrastructure so that the energies of partners in production may not be dissipated in counterproductive battles and assurance of industrial peace& justice may create a congenial climate.

Important definitions

- **Closer**:-sec.2 (cc) permanent closing down of a place of employment or part thereof.
- **Conciliation officer**:-sec.2 (d) Appointment u/s 4 of the act to mediate in and promoting the settlement of industrial dispute.
- **Lock out**:-sec.2 (l) means the (temporary closing down of a place of employment) or the suspension of work or discontinuation to employ number of persons employed by him.
- **Average pay** {section 2 (aaa) It means the average of the wages payable to a workman---
 1. In the case of monthly paid workman, in the 3 complete calendar months,
 2. In the case of weekly paid workman, the 4 complete weeks, and
 3. In the case of a daily paid workman, in the 12 full working days.In all the above given cases the period of time given must precede the date on which the average pay becomes payable to the workman, provided he had worked during this period as the case may be.

Procedure for settlement of Industrial Disputes and Authorities under the Act

- Sec.3 works committee
- Sec. 4 conciliation officers
- Sec. 5 Board of conciliation
- Sec. 6 court of inquiry
- Sec.7 Labour courts
- Sec. 7-A Tribunals
- Sec. 7-B National Tribunals

Works committee

- Any industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding 12 months, may be required by the appropriate government to constitute a works committee comprising of equal number of representatives of labour and management.
- The main functions of the works committee are to preserve amity and establish cordial relations between workers and employers and to resolve differences of opinion in matters of common interest through negotiations. (**section 3**)

Conciliation officers

- The Appropriate Government may, by notification in the official Gazette, appoint such number of persons as thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes
- A conciliation officer may be appointed for a specified area or for specified industries in a specified area or one or more specified industries and either permanently or for a limited period. (**Section 4**).

Board of conciliation

- The appropriate Government may as occasion arises by notification in the official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.
- A Board shall consist of a chairman and two or four members, as the appropriate Government thinks fit.
- The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party.
- A board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number. **(Section 5)**

Court of inquiry

- The appropriate Government may as occasion arises by notification in the official Gazette, constitute a court of inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.
- A court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a court consists of two or more members, one of them shall be appointed as the chairman.
- A board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number. **(Section 6).**

Labour courts

- The appropriate Government may, by notification in the official Gazette, constitute one or more Labour courts for the adjudication of industrial disputes relating to any matter specified in the **second schedule** and for performing such other functions as may be assigned to them under this Act.
- A Labour court shall consist of one person only to be appointed by the appropriate Government. **(Section 7).**

Tribunals

- The appropriate Government may, by notification in the official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter specified in the **second schedule** or third schedule and for performing such other functions as may be assigned to them under this Act.

An Industrial Tribunal shall consist of one person only to be appointed by the appropriate Government. The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it. **(Section 7-A).**

National Tribunals

- The central Government may, by notification in the official Gazette, constitute one or more National Industrial tribunals for adjudication of industrial disputes which, in the opinion of the central Government, involve questions of national importance or are of such a nature that industrial establishment situated in more than one state are likely to be interested in, or affected by, such disputes.
- A National Tribunal shall consist of one person to be appointed by the central Government.

Conciliation proceedings

- If the employer and the workmen fail to achieve a settlement through negotiation, the conciliation officer may intervene as a mediator, Endeavour to concile the differences of opinion and help the labour and management in achieving a successful settlement.

Intervention by the conciliation officer is mandatory in case an industrial dispute has arisen in a public utility service and a notice of strike or lockout (u/s 22) has been served.

- The conciliation officer shall send a report of proceedings to the government, as to whether a settlement has been achieved or not, within the prescribed time and in the prescribed manner. **(section 11)**

Voluntary Arbitration

- Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10, to a Labour court or Tribunal or National Tribunal, refer the dispute to any person or persons of their choice, by means of a written arbitration agreement. Such reference may include the presiding officer of a labour court, Tribunal or National Tribunal also.
- Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.
- A copy of the arbitration agreement, signed by representatives of both the parties representing majority of each party, should be forwarded to the government and the conciliation officer. The arbitrator or arbitrators shall investigate the dispute and submit the arbitration award to the government. The same shall be published in the official Gazette within one month from the date of the receipt of such copy. **(section 10 A)**
- An award under section 10-A is not only invulnerable but more sensitively susceptible to the writ being a quasi-statutory bod's decision. Such an award be upset if an apparent error of law stains its face.

“Rohtas Industries v/s Its Union AIR, 1976 S.C. 430.

Reference of Disputes for Adjudication

- If a dispute is not settled by negotiations or conciliation, and the parties do not agree to refer the dispute to arbitration, the government may on its own discretion or on an application by the parties to the dispute, separately or jointly, refer the dispute to the Labour Court or Industrial Tribunal for adjudication. If a dispute involves a question of national importance or is likely to affect interest of more than one state, the Central Government shall refer the dispute to the National Tribunal **(Section 10)**
- An order of reference shall specify the period within which the award is to be submitted to the Government.
- The Government may also prohibit continuance of any strike or lock-out in connection with a dispute which has been referred for adjudication to a Labour Court or tribunal.

Procedure and powers of Labour Court and Tribunal

- A Labour Court or Tribunal shall confine its adjudication only to the points specified in the order of reference and shall follow such procedure as it may think fit. They shall have the same powers as that of any civil court with regard to examination of witnesses, evidence , compelling the production of documents and material objects, issuing commissions for the examination of witnesses and in respect of other matters as may be prescribed etc. **[section 11(3)]**
- Every inquiry or investigation by a Board, Court, Labour court, Tribunal or National Tribunal, shall be deemed to be a judicial proceedings within the meaning of **Sections 193 and 228 of the IPC**. All Authorities under the act shall be deemed to be public servants within the meaning of **Section 21 of the IPC**.

- All the Adjudicating Courts may impose cost on the parties subject to the rules made in this behalf and to the discretion of the court dealing the matter.
- Where an industrial dispute relating to the discharge or dismissal of workman has been referred to a L.C., Tribunal or National Tribunal for adjudication and, in the course of adjudication proceedings, the court is of the opinion and satisfied that the order of the discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and condition, if any, as it thinks fit, or give such other relief to the workman including the award of lesser punishment, in lieu of discharge or dismissal as the circumstances of the case may require.
- The award of labour court or tribunal shall be in writing and signed by its presiding officer, and shall be submitted to the government. (**Section 15 and 16**)
- The award shall then be published by the government and shall come into force, generally, after 30 days from the date of its publication (**Section 17 and 17-A**)
- The award of the labour court or tribunal shall be final and not appealable. However, a writ petition before the high court and thereafter an appeal before the supreme court can be filed

Duties of conciliation officers (Section 12)

- Where an industrial dispute exists or apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall hold conciliation proceedings in the prescribed manner.
- The Conciliation officer shall for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right and do all possible efforts to persuade the parties to come to a fair and amicable settlement of the dispute.
- If a settlement of the dispute or any of the matters in dispute is arrived at in the course of conciliation proceedings he shall send a report to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.
- If no settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send a complete report to the appropriate Government, stating the all efforts made by him to bring a settlement in the given circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at.
- If, on a consideration of the report forwarded by the conciliation officer the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where it does not make any reference it shall record and communicate to the parties concerned its reasons thereof.
- A report under this section shall be submitted within 14 days the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Govt.

Duties of Board (Section 13)

- Duties of the Board are same as conciliation officer.
- The Board shall submit its report under this section within 2 months of the date, on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government.

Duties of courts (Section 14)

- A court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of 6 months from the commencement of its inquiry.

Duties of Labour Courts, Tribunals and National Tribunals (Section 15)

- Where an industrial dispute has been referred to anyone of these authorities for adjudication, it shall hold its proceedings expeditiously and shall submit its report within the time fixed in the order of reference or any extended time frame to the appropriate Government.

Form of report or Award (Section 16)

- The report of the Board or court shall be in writing and shall be signed by all the members of the Board or court, as the case may be.
- The Award of the Labour Court, Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer.

Publication of reports and awards (Section 17)

- Every report of a Board or court together with any minute of dissent recorded therewith, every arbitration award and every award of the Adjudicating authorities shall, within a period of 30 days from the date of its receipt by the appropriate Government, be published in such manner as think fit by the Government.
- Subject to the provisions of Section 17-A, the award published under section 17(1) shall not be called in question by any court in any manner whatsoever.

Section 17-A Commencement of the award

- An award (including an arbitration award) shall become enforceable on the expiry of 30 days from the date of its publication under Section 17.

Section 17-B- Payments of full wages last drawn to workman pending proceedings in higher courts.

Section 18- Persons on whom settlement and awards are binding

- A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement.
- **Subject to the provisions of sub-section (3),** -An arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.
- **A settlement arrived at in the course of conciliation proceedings under this act or an arbitration award in a case where a notification under sub-section (3-A) of Section 10-A or an award of Adjudicating Authorities which has become enforceable shall be binding on-**
- All parties to the industrial dispute and all other parties summoned to appear in the proceedings as parties to the dispute (employer his heirs, successors etc. and all other workmen in respect of the establishment in which the dispute relates.
- Section 18 (3) of the Act depart from the ordinary law of contract and give effect to the principle of collective bargaining.

Section 19- Period of operation of settlement and awards

- A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.
- **Such settlement shall be binding for such period as is agreed by the parties, and if no such period is agreed upon, for a period of 6 month and further for a period of 2 months after the expiry of the notice period which is mandatory for cancelling the settlement.**

- A award shall, subject to the provisions of this section, remain in operation for a period of 1 year from the date on which the award becomes enforceable under Section 17-A. The appropriate Government may reduce the period and fix such period as it think fit, Govt. may also extend it for a further period of 1 year and it may do it up to 3 years and not beyond that.

Section 20- Commencement and conclusion of proceedings

- A conciliation proceeding shall be 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 shall be deemed to have concluded-
- Where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute.
- Where no settlement is arrived at or report of the Board is published under section 17, as the case may be.
- When a reference is made to adjudicating authorities under section 10 by the appropriate Government.
- When the award becomes enforceable under section 17-A.

NOTICE OF CHANGE

- **SECTION 9-A-** 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 Forth Schedule, shall effect such change,--
- (a) without giving 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 affected, or
- (b) Within 21 days of giving such notice.
- However, no such notice shall be required if the change is to be effected in pursuance of any settlement, award or decision of the Appellate Tribunal constituted under the act, or if the workmen are governed by some civil service rules or the Indian Railway establishment code etc.

Strike and lock-outs

Strikes and Lock-Outs (Sections-22 to 25)

- Strike means suspension or cessation of work by a group of employees whereas; lock-out is temporary shutting down or closing the place of business by the employer.
- Strike and lockout are two coercive measures resorted to by the employees and employers, respectively, for compelling the employers or employees to accept their demands or conditions of service.
- **Sections 22-25** aim at restricting the right to strike or lock-out which is to be exercised under certain conditions only and after peaceful measures have been exhausted.

A strike or lockout is prohibited in any establishment, in the following cases:-

- (a) During the pendency of conciliation proceedings before a board and 7 days after the conclusion of such proceedings,
- (b) During the pendency of arbitration proceedings or proceedings before a labour court, Tribunal or National Tribunal, and 2 months after the conclusion of such proceedings,
- (c) During the period in which settlement or award is in operation.

Strike {sec 2(q)} --

It means – a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal of any number of persons (who have been so employed) to continue to work or to accept employment, or refusal under a common understanding of any number of such persons to continue to work or accept employment.

Strike is the best tool in the toolbox of the workmen which they use to pressurize to the employer to succumb to their demands.

Restriction on Strike/lock-out in Public utility services

- **Notice-**The employees or the employers shall give a notice of strikes or lockouts respectively, to the other party. The strike or lockout shall commence from the date specified in the notice, which shall in no case, be earlier than 14 days and later than 6 weeks.
- The employer shall intimate the government in the prescribed manner, within 5 days of receiving any notice of strike or giving any notice of lockout.
- The employees or the employers shall not go on a strike or declare lockout, during the pendency of any conciliation proceedings and 7 days after the conclusion of such proceedings. **(Section 22)**
- The notice of strike or lock-out under this section shall not be necessary where there is already in existence a strike or lock-out as the case may be in the public utility service, employer must send aintimation of such strike or lock-out on the day on which it is declared, to such authority as may be prescribed by the appropriate Government.

Section 23- General prohibition of strike and lock-outs

- No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out----
- During the pendency of conciliation proceedings before a board and 7 days after the conclusion of such proceedings,
- During the pendency of Adjudicating proceedings before Labour Court, Tribunal or National Tribunal and 2 months after the conclusion of such proceedings,
- During the pendency of the arbitration proceedings before an arbitrator and 2 months after the conclusion of such proceedings , where a notification has been issued under sub-section (3-A) of section 10-A,
- 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.

Illegal Strikes and Lock-Outs

- Any strike or lockout commence or declared or continued in contravention of any of the restrictions laid down or any prohibitory order of the government under section 10 or 10-A, shall be illegal (**section 24**). No person should knowingly finance any illegal strike or lockout.
- The workmen are entitled to wages for the period of strike/lockout, if it is legal and as well as justified. If the strike is illegal, workmen are not entitled to wages but are liable to punishment by way of discharge or dismissal.

Lay-off{sec 2(kkk)} } lay-off means the failure, refusal or inability of an employer to give employment to a workman- whose name is borne on the muster rolls of his industrial est. and-who has not been retrenched. The failure, refusal or inability to give employment may be due to -

1. Shortage of coal, power or raw materials, or
2. The accumulation of stocks, or
3. The break- down of machinery, or
4. Natural calamity or for any other connected reasons.

Difference B/W lock-out and lay-off

Lock-out is resorted to by employer to pressurize the employees to accept his demands, whereas the lay-off is given for trade reasons beyond the control of the employer. Lock-out is due to an industrial dispute and continues during the period of dispute, whereas lay-off is not connected with a dispute with the workmen.

Difference between lock-out and closer

In the case of lock-out it is only the place of business which is closed and not the business itself. While in the case of closer of the place of business not only the place of business but the business itself is closed. Lock-out is the weapon of coercion in the hands of the employer, whereas closer is generally for trade reasons. In closer the relation between employer and employee comes to an end, whereas in the case of lock-out no such things takes place but relation between the two is suspended for the particular time period of dispute between both of them. A lock-out is caused by the apprehension of an Ind. Dispute whereas a closer need not be in consequence of an industrial dispute.

Retrenchment {sec 2(oo)}-- It means 'to end, conclude or cease'. In the terms of the I.D. Act, 1947 it means--- Retrenchment is the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action.

It affects only some of the workmen.

In retrenchment the services of the workmen are terminated on account of surplus labour.

The formula of last come first go is applied in the case of retrenchment.

Retrenchment compensation payable to a workman on account of retrenchment shall be equivalent to 15 days average pay for every completed year of continues service or any part thereof in excess of 6 months.

Retrenchment however does not include---

VRS, superannuation, termination of the employment as a result of non-renewal of the contract of employment on its expiry, or on the ground of continued ill-health.

LAY-OFF AND RETRENCHMENT (CHAPTERS V-A AND V-B, SECS. 25-A TO 25-S)

- The provisions as to 'lay-off' and "retrenchment" are contained in :--
- (a) chapter V-A (Secs. 25-A to 25-J) and
- (b) chapter V-B (Secs. 25-K to 25-S)
- The provisions as to lay-off and retrenchment of workmen as embodied in secs. 25 –C to 25-E shall apply only to industrial establishment in which 50 or more workmen on an average per working day have been employed in the preceding calendar month .

- These provisions shall not apply to industrial establishment---
 - a. To which chapter V-B applies, or
 - b. In which less than 50 workmen on an average per working day have been employed in the preceding calendar month; or
 - c. Which are of a seasonal character or in which work is performed only intermittently {sec25-A (1)}

LAY-OFF

An employee is said to have been laid off on any day, if the employer fails, refuses or is unable to provide him employment on that day on account of reasons beyond his control, such as shortage of raw materials, coal, power or accumulation of stock, break down of machinery or natural calamity or for any such other reason. **(Section 2kkk)**.

In case of lay-off factories, mines and plantation establishments employing 100 or more workers on an average per working day in the preceding 12 months, the employer cannot lay-off any workman without prior approval of the government, except when such lay-off is due to shortage of power or natural calamity, and in case of mines due to fire, flood, excess of inflammable gas or explosion.

Permission can be obtained by submitting an application in the prescribed manner, stating the reasons for the intended lay-off. A copy of the application should be served on the workmen also. In case of mines, the application should be made within 30 days from the date of commencement of lay-off, for permission to continue lay-off. (Sec.25 M)

Lay-off compensation

- The right of a workman to lay-off compensation is designed to relieve the hardship caused by unemployment due to no fault of the workman. It is based on humane public policy. The employer of any Factory, mine or plantation establishment, employing 50 or more workmen on an average per working day, is required to pay compensation to the workmen being laid-off. The compensation shall be payable @ 50% of basic wages and dearness allowance for all days of lay-off.(except weekly holidays)

Condition for entitlement to compensation :- A worker (other than badli or casual worker) who is on the muster rolls of the establishment and who has been in continuous service under an employer for at least one year, shall be entitled to compensation on being laid-off. **(Sec. 25 –C)**

A worker is said to have been in continuous service:-

1. For a period, if he has been in uninterrupted service, including service interrupted by sickness, authorized leave, accident. Strike (legal), lock-out on cessation of work not due to employee's fault,
2. For one year, if he has actually worked for at least 240 days (190 days in case of mine) during the preceding 12 months,
3. For six months, if he has actually worked for at least 190 days (95 days in case of mine) during the preceding 12 months. **(Section 25-B)**

A laid-off worker is, however, not entitled to any compensation:-

(a) If he refuses to accept to an alternative employment in the same establishment or in any other establishment of the same employer situated within 5 miles, and such alternative employment does not involve any loss of pay or require any special skill,

(b) If he fails to present himself for work at the establishment, at the appointed time during normal working hours at least once in a day,

(c) If such lay-off is due to a strike or go slow on the part of the workmen in another part of the establishment.

- The employer of any factory, mine or plantation establishment, employing 50 or more workmen on an average per working day, is required to pay compensation to the workmen being laid off. The compensation shall be payable @ of 50 % of basic wages and dearness allowance, for all days of lay-off except weekly holidays. (**Section.25-C**) .

Retrenchment

Retrenchment means termination by the employer, of the service of a workman for any reason what so ever, but excludes:-

- a) Dismissal inflicted by way of disciplinary action,
- b) Voluntary retirement of the workman,
- c) Retirement on reaching the age of superannuation,
- d) Termination as a result of non-renewal of contract of employment, and
- e) Termination due to continued ill-health of the workman

In case of factories, mines and plantation establishments employing 100 or more workers on an average per working day in the preceding 12 months, the employer cannot retrench any workman without obtaining prior approval of the government, by submitting an application in the prescribed manner, stating the reasons for the intended retrenchment. A copy of the application should be served on the workman also. (Sec 25)N

If any worker is retrenched without obtaining the permission or the permission for the retrenched has been refused, then such retrenched shall be deemed to be illegal and the workman shall be entitled to all the benefits under law from the date of such retrenchment, as if no notice had been given to him.

Notice Pay - The employer of every factory, mine or plantation establishment, employing 50 or more workers on an average, is required to serve 1 months' notice of his intension to retrench the workman, in the prescribed form to every workman who has been in continues service for at least 1 year & who is being so retrenched. A copy of the notice is to be sent to the government or prescribed authority also.

Compensation -

Employer is liable to pay compensation to each workman who is been retrenched which shall be equal to 15 days average pay for every completed year of continues service or any part thereof in excess of 6 months [sec. 25 (F)]

Example - Mr. X was retrenched on 5th Jan., 2013. He drew wages of Rs.10, 000 p.m. during the period October to December 2012. He completed 26th year of his continues service on 10th march 2012

Solution: Average Pay = Total wages for the Months Oct., Nov., & Dec. 2012 ÷ 3 = Rs. 10,000
15 days average pay = Rs. 5,000-
No. of completed years of continues service or part thereof in excess of 6 months = 27 years

Retrenchment Compensation = $27 \times 5000 = 1,35,000$

The formula of last come first go is being adopted before giving retrenchment Sec. 25 G

Closure of an Undertaking-

Closure means the permanent closing down of a place of employment or part thereof. An employer who intends to close down an undertaking, wherein 50 or more workman are employed or were employed during the preceding 12 months, has to serve a notice on the government, at least 60 days before the date of the intended closure, stating reasons for the same.(sec. 25(FFA)

In case an undertaking employing 10 or more workers on an average in the preceding 12 months, has to obtain prior approval of the government, at least 90 days before the date of the intended closure, stating in the application, the reasons for the same. (Sec. 25 (O))

However, undertakings engaged in the construction of buildings, bridges, roads, canals, dams, etc. are not required to serve the notice or obtain the approval of the government, as required in other cases.

Note: Every employee who has been in continuous service for at least 1 year, shall be served notice and paid compensation same as paid in the case of retrenchment.

Obligations of the employers

Obligations of Employers

The obligations of the employers under the provisions of the act are as follows:---

- (1) Not to make any change in the service conditions of the workmen, without giving a notice as prescribed under section 9A.
- (2) To constitute works committee and to ensure that it works properly.
- (3) To assist the conciliation officer/ board and the arbitrator in reconciling any disputes.
- (4) To implement all agreements, settlements and awards.
- (5) to maintain a muster-rolls of the workmen employed in the establishment, even at the time when workmen have been laid off, and to ensure that the names of the workmen who present themselves for work at the appointed hours, are entered therein, section 25-D.
- (6) Not to declare, support or finance an illegal lock-out, in the establishment.
- (7) Not to lay-off or retrench any workman or close down an undertaking, without obtaining prior approval of the government if so required.
- (8) To pay lay-off, retrenchment and closure compensation, and compensation to workmen for illegal lock-out, as prescribed under the provisions of the Act.
- (9) Not to indulge in unfair labour practices.

Obligations of Employees

Obligations of Employees

- The workmen of an establishment are obliged:---
- (1) To assist and co-operate with the conciliation officer/ Board, arbitrator and other authorities, in resolving any industrial dispute.
 - (2) Not to participate in, support or finance an illegal strike.
 - (3) To abide by all agreements, settlements and awards.
 - (4) Not to indulge in unfair labour practice.

Rights of Employers

- The important rights of the employers are:--
 - (1) Right to retrench or lay-off workers declare lock-out and close down an undertaking, in accordance with the provisions of the act.
 - (2) Right to appeal against the awards of the labour court or industrial Tribunal, before the High court.

Rights of Employees

- The important rights of the employees are :--
 - (1) Right to be informed by means of a notice, before any change is made in the service conditions, or before lock-out, lay-off, retrenchment or closure of the undertaking.
 - (2) Right to receive compensation for lay-off, retrenchment or closure, in accordance with the provisions of the Act.
 - (3) Right to recover any legal dues under an agreement, settlement, award or under any provisions of the Act, through the government, section 33 C (2).
 - (4) Right to be represented by an officer of a registered trade union or any other workman, in relation to any industrial dispute, section 36.
 - (5) Right to appeal against an award of the labour court or industrial tribunal.

Factories Act, 1948

Introduction:-

The Factories Act, 1948, is divided into several chapters comprising of a total 141 sections and supplemented by three schedules. The First Factories Act in India was passed in 1881. It was designed primarily to protect children and to provide for some health and safety measures. It was followed by new Acts in 1891, 1911, 1922 and 1934. Since then, it has been amended from time to time. In view of the large and growing industrial activities in the country a radical overhauling of the law relating to factories was necessary. Hence the Factories Act 1948 was passed by the central Government. The factories (amendment) Act, 1987 have brought in some drastic changes in the factories Act, 1948 and has given it a new complexion. It provides safeguards against use and handling of hazardous substances and procedures for setting up hazardous industries were laid down.

The act has been promulgated, primarily to provide safety measures and to promote the health and welfare of workers employed in factories. Overall main objective of the factories Act are:--

1. To regulate working conditions in factories, and
2. To ensure that basic minimum requirements for the safety, health and welfare of the factory workers are provided.
3. Besides, the Act envisages regulating the working hours, leave, holidays, overtime, employment of children, women and young persons, etc.

Scope and coverage

The factories Act, 1948 came into force on the 1st day of April, 1949 and extends to the whole of India and unless otherwise provided, it is applicable to all factories including Government factories. (Section 116).

A "Factory" as per section 2 (m) of the Act, means 'any premises including the precincts thereof-

- (i) wherein 10 or more workers are employed or were employed on any day of the preceding 12 months and a manufacturing process is carried on with the aid of power, or
- (ii) wherein 20 or more

workers are employed on any day of the preceding 12 months and a manufacturing process is carried on without the aid of the power’.

Thus, factory is a premises where a manufacturing process need not end in a substance being manufactured but it essentially involves transformation, so that the article becomes commercially known as another and different from that at which it began its existence.

Factory, however, does not include a mine covered under the mines Act, 1952, a mobile unit of the armed forces, a railway shed or a hotel, restaurant or eating place.

The state governments are empowered to make the rules for ensuring the administration of the provisions of the Act in their respective states. (Section 76).

The Act covers all workers directly or through or by any agency including a contractor, with or without the knowledge of the principal employer, whether for wages or not, in any manufacture process or any kind of work incidental or connected thereto. There must be nexus between the employment of the worker concerned and the manufacturing process.

Administrative set up

The state Government is the chief administrative authority that ensures enforcement of the Factories Act, in its state through the inspectorate. The inspectorate is headed by a chief inspector who is assisted by such additional chief inspectors, deputy, joint inspectors, inspectors and other officers, as may be appointed by the state Government. The state Government also appoints doctors or surgeons for certifying children's and adolescents as fit for work in factories. On the direction of the central Government the state Government has powers to---

1. apply all or any of the provisions of the Act to any factory employing less than the required workers,
2. exempt any factory or public institution from any or all of the provisions of the act, except section 67, for not more than 3 months at a time,
3. Make rule for enforcement of the Act, registration and licensing of factories and collection of license fee.

Obligations of the employers

Chapter I (Approval, Registration and licensing of the Factory)

1. Compulsory Approval (section6) -- Prior approval of the State Government by the occupier of the factory for the purpose of any construction or extension of any factory.
2. Registration/ license and notice by occupier (section 6&7) --- The occupier of the factory is also require to get the factory registered for obtaining a license for operating it and send a notice of occupation to the chief inspector of factories, at least 15 days before he begins to occupy the factory. The application for the registration and notice of occupation shall be submitted in triplicate in the prescribed form along with the proof of payment of the prescribed fees and such other information as may be required by the licensing authority.
3. The application cum notice generally contains the name and situation of the factory, name and address of the owner, occupier and manager of the factory; address to which communication relating to the factory may be sent; nature of the manufacturing process; total rated horse power installed; number of workers likely to be employed in the factory, etc. All establishments which come within the scope of the Act for the first time are required to send the notice within 30 days from the date of Act becomes applicable to them. Besides, factories which carry on manufacturing process for less than 180 working days during the year are required to send such notice at least 30 days before resuming work. If the CIF is satisfied about

the particulars submitted in the application, the license for operating factory shall be granted which shall be valid up to next 31st December. It is subject to renewal every year in the prescribed form at least 30 days before its expiry, along with the prescribed fees which is same as for grant for license

4. **Notice of change of manager:** -- whenever a new manager is appointed, the occupier must intimate the inspector and the chief inspector in the prescribed form, within 7 days from the date he takes over the charge.

Chapter-II (Inspecting staff-Appointment of Inspectors, their powers and appointment of certifying surgeons- Section 8,9and 10)

Section 8 of the Act provides for the appointment of the Chief-Inspector, Additional chief Inspectors, Joint Chief Inspectors, Deputy Chief Inspectors, and Inspectors. According to this section, the state Government may, by notification in the official Gazette, appoint any person to be a Chief Inspector to exercise the powers conferred on him by the Factories Act. It may assign to the Inspectors such local limits as it may think fit.

All such Inspectors and officers appointed by the state Government under section 8 of the act is deemed to be a public servant within the meaning of the Indian penal code, 1860.

Section 9 of the Act prescribe the powers of the Inspectors. As per this an Inspector may, within the local limits for which he is appointed--

- He can enter into the premises of any Factory along with assistants who are in the service of the Government or any or other public authority or with an expert,
- He can make examination of the premises, plant, machinery, article or substance,
- He can inquire into any accident or dangerous occurrence (whether resulting in bodily injury, disability or not) and can record statement of any person on the spot or otherwise,
- He can demand the production of any prescribed register or any other document relating to the factory,
- If he is of opinion which he has reason to believe, that any offence has been committed under the Act, he can take copies of any register, record or other document and also seize them,
- He is empowered to direct the occupier that any premises or any part thereof or anything lying therein shall not be disturbed for the purpose of examination,
- He can also take photographs, recording and measurements of anything which he consider appropriate for the purpose of examination and inquiry,
- He can order for the medical examination of the young person working in a factory, (Sec.75)
- He can take sample of any substance used or intended to be used, in a factory for the purpose of finding out if the substance is injurious to the health of the workers (Sec.91).

According to section 10 of the state Government may appoint qualified medical practitioners to be certifying surgeons for specified local limits or factories.

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

- The examination and certification of young persons,
- The examination of persons engaged in factories in dangerous occupations or processes, and
- The exercising of such medical supervision as may be prescribed for any factory where- it is likelihood that occupational disease may occur to the workers due to any substance or of any manufacturing process, or young persons are likely to be engaged and are likely to be effected by it.

To provide Health Measures

Chapter-III

5. The occupier of factory is obliged to undertake following measures for good health and physical fitness of workers—(**section 11 to 20 of the act**)

- (a) **Cleanliness and disposal of waste and effluents**—The occupier is required to keep the factory premises clean and free from waste and effluvia. He shall make arrangement for sweeping and removing dirt and refuse daily, cleaning with disinfectant, effective treatment and disposal of wastes and effluents and maintaining proper drainage. All inside wall, partitions, staircases and roofs shall be white washed once in 14 months, or painted once in 3 years with washable paint or once in 5 years with non-washable paint. Besides, all doors, windows frames, other wooden or metallic framework and shutters should be painted at least once in 5 years. **The dates of white washing, painting or varnishing etc. should be recorded in the prescribed register. (Section 11&12)**
- (b) **Ventilation, Temperature and Humidity**: -- The factory premises should be adequately ventilated by circulation of fresh air and comfortable temperature should be maintained in every work room. Besides, artificially increased humidity should be controlled by use of purified water. **(Section 13)**
- (c) **Prevent Dust and Fumes**: - Accumulation and inhalation of dust and fumes injuries to health of workers should be prevented by use of exhaust fans and other safeguards. **(Section 14). Artificial humidification -Section 15.**
- (d) **Avoid overcrowding**: -- The work place should not be over crowded by workers and minimum space of 14.2 c.mtrs, per worker in a new factory and 9.9 c. mtrs. Per worker in an existing factory should be prepared. **(Section 16)**
- (e) **Lighting and drinking water** :-- Sufficient and suitable natural and artificial lights, wholesome drinking water at suitable points and cool water in factories employing 250 or more workers during hot season, should also be provided. **(Section 17 &18)**
- (f) **Wash rooms and spittoons**: -- Every factory should provide adequately lighted and ventilated wash rooms and urinals for male and female workers separately, and spittoons at suitable locations. All wash rooms and spittoons should be kept washed and cleaned with detergents and disinfectants. **(Section 19 & 20)**

To undertake safety measures

Chapter-IV

5. :-- Every factory must take appropriate safety measures as provided under the Act, or the rules framed there under, viz,;--**(section 21 to 41)**

(a) Fencing of all dangerous and moving parts of the machinery while in motion or use, providing sufficient space for workers to operate self-acting machines. Young persons are not supposed to work on any dangerous machine without adequate training and supervision. Besides, no woman or child is to be employed in any part of a factory for pressing cotton in which is a cotton opener is at work. No person shall be employed to lift, carry or move excessive loads.

(b) Keeping floors, stairs, steps, etc, free from obstructions and slippery substances and provided with substantial handrails, covering of all dangerous pits, sumps, opening in floors etc.

(c) Taking necessary precautions and providing screens or goggles for protection of eyes, precautions to prevent exposure to dangerous fumes, gases or dust and measures to prevent accumulation of such gases, fumes and dust.

- (d) Inspection or examination of all transmission machinery must be conducted by a trained adult worker and their names to be entered in a register kept for the same purpose.
- (e) Providing safe means of escape in case of fire, necessary firefighting equipment and training workers about use of such equipment.
- (f) Appointing safety officers in factories employing 1000 or more workers, or where workers are exposed to risks of bodily injury poisoning or disease or any other hazard to health.
- (g) The inspectors are empowered to inspect any factory building, plant or machinery and ensure that these are maintained in safe conditions and are not detrimental to the health of workers.

Welfare amenities

Chapter-V

6. **(section 42 to 50) :- Every factory shall provide adequate and suitable facilities for**
- (a) Washing and drying of wet clothes and storing of clothes not worn during working hours;**(Section 42,43)**
 - (b) Sitting arrangements for employees who are requires to work in standing position for long duration;**(Section 44)**
 - (c) First- Aid boxes or cupboards equipped with the prescribed contents (at least one box for every 150 workers) shall be maintained under the charge of a person certified for the same and readily available during working hours in the factory;**(Section 45)**
 - (d) Ambulance room (when ordinarily 500 or more workers are employed in the factory). The ambulance room shall be of the prescribed size, having equipment's and medical and nursing staff, which shall be available during working hours ;**(Section 45(4)).**
 - (e) A canteen (when ordinarily 250 or more workers are employed in the factory). The canteen shall be suitably located and sufficiently lighted and ventilated. It shall be of the prescribed size, equipped with necessary furniture, utensils, etc. and operated on non-profit basis.**(Section 46)**
 - (f) Rest-rooms/shelters and lunch rooms with provision for drinking water (when ordinarily 150 or more workers are employed in the factory). The rest rooms and lunch rooms should be sufficiently lighted and ventilated, suitably furnished and kept in a clean condition.**(Section 47)**
 - (g) Crèches (when 30 or more women workers are employed in the factory) which should be sufficiently ventilated and adequately furnished and equipped. Provision for a washroom and supply of milk and refreshment for children, shall also be ensured. Besides, if in a factory ordinarily 500 or more workers are employed, the employer shall appoint such welfare officers as may be prescribed.The state Government may prescribe the duties, qualifications and conditions of service of welfare officers **(Section 48& 49).**
 - (h) The state Government is empowered to make rules as regards to all these welfare provisions.

Working Hours, Holidays and overtime

Chapter-VI--

7. **Working Hours, Holidays and overtime:--**
- (a) **Restriction on employment of children and adolescent----** No child below the age of 14 is to be employed in any factory (sec.67). Besides, a child between 14th

and 15th year of age or an adolescent (below 18 years) is not to be employed unless he is certified to be fit for work in a factory by a certifying surgeon. This certificate is valid for a period of one year and it should be kept in safe custody with factory manager and the child or adolescent has to carry with him while at work a token giving reference to such certificate (sec.68 & 69).

- (b) **No dual Employment**--- No worker whether adult or child, is to be employed on any day on which he has already worked in any other factory (sec.60 & 71(4)).
- (c) **Working Hours** --- The working hours for an adult worker or an adolescent certified to work as an adult, should not exceed 48 hours in a week and 9 hours in a day, while for a child the working hours should not exceed 4-1/2 hours in a day (sec. 51, 54 and 70 (1A)). women workers, female and male adolescent below 17 years, should not be engaged in any work between 7 p.m. and 6 a.m. (sec.66 & 70(1A)). Further, no child is to be engaged in any work during the night or between 10 p.m. and 6 a.m. (sec. 71 (1)).
- (d) **Rest intervals and spread over**—every worker is to be allowed at least half-an-hour rest interval after a maximum working of 5 hours at a stretch. The total hours of work and rest are to be spread over not more than 10-1/2 hours in a day for adult and not more than 5 hours/ one shift in a day for children (sec. 55, 56 & 71 (2)).
- (e) **Weekly Holidays**-- Every worker has to be allowed one holiday in a week, on any day so that it does not result in more than 10 days continuous work without a holiday. Whenever a worker is required to work on a weekly holiday he is to be allowed a compensatory holiday for each holiday so lost within the same month or within two months immediately following that month (section 52, 53 and 71 (3)). A record of compensatory holidays shall be maintained in the prescribed attendance register.
- (f) **Overtime** --a worker working for more than 9 hours any day or for more than 48 hours in a week, shall be entitled to wages in respect of such overtime work at twice the ordinary rate of wages (Sec.59). A register of overtime muster roll is also to be maintained in the prescribed form.
- (g) **Notice of period of work. (Section 61)**- A notice of period of work for adult workers shall be displayed and correctly maintained in every factory. It shall show clearly for every day the periods during which adult workers may be required to work. The notice shall be in English and in a language understood by the majority of the workers in the factory. It shall be displayed at some conspicuous and convenient place at or near the main entrance to the factory and shall be maintained in a clean and legible condition (Section 108(2))
- (h) **Registers of workers.**
- (i) **Leave with wages**--- Secs.78 to 84 (Chapter VIII) provide for the grant of a certain period of leave with wages to workmen. According to section 78 of the Act, the provisions relating to annual leave with wages as contained in chapter VIII from secs.78 to 84 of the Act shall not prejudice any rights of workers under any law, award or agreement (including settlement) or contract of service. When all these things provides for a longer period of leave with wages than under the provisions of secs.78 to 82, the worker shall be entitled to such annual- Leave of 1 day for every 20 days of work performed by him during the previous calendar year, if he/she is an adult and leave of 1 day for every 15 days of work performed by him during the previous calendar year, if he/she is a child. All leave are allowable with wages and shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

For computing the period of 240 days, the days of lay-off, maternity leave to a female worker not exceeding 12 weeks, and the leave earned in the previous year shall be included in this period of 240 days, but he/she shall not earn leave for these days.

Leave not availed of during the year, can be carried forward up to 30 days in case of an adult and up to 40 days in case of a child. However, refused leave can be carried forward to next year without any limit. Leave not availed cannot be used for giving notice of discharge/dismissal.

A worker may apply in writing to the manager of the factory, except in case of illness, at least 15 days before the date on which he wishes to avail any or all of the leave allowable to him. In case of public utility service the application shall be likewise be made at least 30 days before the date on which the worker wishes his leave to begin. But the number of times the leave may be taken during any year shall not exceed 3 time.

A worker who has been allowed leave for more than 4 days in case of an adult and more than 5 days in case of a child, are entitled to advance payment of wages of the leave allowed.

All the workers and their nominee are entitled to wages in lieu of leave in situation like discharge, dismissal, quitting employment, dies while in service. Where the worker is discharged or dismissed or quits employment, he shall be paid wages before the expiry of the second working day from the date of such discharge, dismissal or quitting, and where the worker is superannuated or dies while in service, he shall be paid wages before the expiry of the 2 months from the date of such superannuation and to his nominee in case of his death. The manager of the factory is required to maintain leave register.

8. **Display notices, Maintain registers and submit Returns**
9. **Notice of Accidents, Dangerous occurrences and Diseases**

Penalties and Procedure

10. **Penalties and Procedure:** -- Section 92 to 106 (chapter X) provide for certain offences and procedural matters. These penalties serve as a deterrent for the commission of offences.

General penalty for offences U/S 92 of the Act—If in any Factory there is any contravention of any of the provision of the Act or of any rules made there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with jail for a term up to 2 years or with fine up to Rs. One lakh or with both. If the contravention is continued after conviction, they shall be punishable with a further fine which may extend to Rs. 1000/ for each day on which the contravention is so continued.

In case of contravention of any of the provisions of chapter IV (dealing with safety) or under section 87(dealing with dangerous operations) or any rule made there under, has resulted in an accident causing death or serious bodily injury, the fine shall not be less than Rs. 25 thousands in case of an accident causing death and Rs. 5 thousand in the case of an accident causing serious bodily injury. (Proviso to sec.92).

Enhanced penalty after conviction, if the same person is found guilty of the same offence, he shall be punishable on a subsequent conviction with jail for a term which may extend to 3 years

or with fine which shall not be less than Rs. Ten thousand but which may extend to Rs. Two lakh or both.

TRADE UNION ACT, 1926

Introduction

“United we stand, divided we fall” is a common in the field of working class which is required to deal with the Employer for securing their demands. It is a matter of simple knowledge that the Employer is generally more powerful as compared to the wage earning workers. The workers fulfill their deficiency by forming themselves into an organization. It is this organization which makes them strong.

Trade union is a voluntary organization, there can be no compulsion from any source, even by law. The TU Act, 1926 is a procedural law.

The TU, Act, 1926 is one of the old enactments in the field of labour laws, but it is a conservation piece of legislation inasmuch as it deals only with the registration of the trade union and the legal status of a registered trade union. Registration makes it a corporate person and confers a legal status.

The Growth of the trade unions: The setting up of large-scale industrial units involving widespread use of machinery, changes in working and living environment of workers, concentration of industries in large towns, and the exploitative tendencies of the employers brought the workers together to maintain and improve their bargaining power against the employers. The consequence was trade unions which have now come to symbolize—

- Workers right to organise,
- Their right to press their demands collectively and to go on strike if their demands are not accepted.

The establishment in 1919 of the International Labour Organisation had its influence on the growth of unions in India. While some unions chose to operate independently and confine their activities to an industrial Centre or unit, others felt the need for coordination of their activities at the national level.

The formation in 1920 of the All India federation, namely All India Trade Congress, was the result of these urges. The passing of the Trade Unions Act, 1926 gave formal recognition to the workers right to organise.

History of Trade union law in India

- Trade union and their activities were not considered lawful in the beginning anywhere in the world. This was so in India also. Until 1926, there was no law in India for registration and protection of trade unions.
- In the year 1920, when a suit was filed against the officials of the **Madras Textile labour union** by **Binny & company**, the High court of Madras, following the common in England, granted an injunction restraining the union officials from influencing the workmen to break their contracts with employers by striking. It was then they felt that some legislative protection of trade union was necessary. Mr. N.M. Joshi, then General Secretary of All India Trade union congress, successfully moved a resolution in the central legislative Assembly seeking introduction of some law by the government for protection of Trade unions. But this Act was enforced only from 1st June 1927.

Object of the Act

- The object of passing this act was to make necessary provisions in regard to the registration of trade unions and to define the law relating to registered trade unions. The act was passed to regulate:--
- (1) Conditions governing the registration of trade unions,
- (2) Obligations imposed upon a registered trade unions , and
- (3)Rights and liabilities of registered trade unions.

Scope and coverage

- The Act applies to registered trade unions. It extends to the whole of India including the state of J&K.
- **Section 14 of the act** provides that the following acts shall not apply to the registered trade unions—
- (a) The societies registration act, 1860,
- (b) The cooperative societies act, 1912,
- (c) The companies Act, 1956.

Meaning of Trade union

- In common terms, trade union means an association of workers in a particular trade or industry.
- As ordinarily understood, trade union means a combination formed for the purpose of regulating relations between workmen and employer. The definition of a trade union given in the T.U. Act 1926, however, includes a combination formed for the purpose of regulating the relations not only between employer and workmen but also between workmen and workmen or Employers and Employers or for imposing restrictive conditions on the conduct of any trade or business and includes a federation of two or more trade unions. (section 2(h))

Registration of Trade union

- At least 7 members of the Trade union have to make an application in the prescribed form, with prescribed fees, to the registrar of the trade unions where the H.O. of the union is located, for its registration. The application must be accompanied by a copy of rules of the trade union, normally known as its “constitution”, and should give particular about its name, address, its members and its office bearers. **(Section 4&5)**The certificate of registration will be conclusive evidence that the trade union has been duly registered under the Act. **Section 9.**
- As per amendment made to the act, it is now necessary that a regd. Trade union shall at all times continues to have not less than 10% or 100 of the workmen, whichever is less, subject to a minimum 7, engaged or employed in an establishment or industries with which it is connected, as its members, **Section 9-A.**
- As per section 14 of the act there is a bar of registration under other law.
- The registrar may call for further information for the purpose of satisfying himself that an application for registration complies with the provisions of section 5, or that the trade union is entitled to registration under section 6. He may refuse to register the trade union until such information is supplied.
- The registrar may also ask the person making application for registration to change the name so proposed of the trade union if in his opinion, is identical or so nearly resembles with existing trade union as likely to deceive the public or the members of either trade union. He shall not register the trade union unless such alteration in the name has been made. **(Section 7).**

- The registrar, on being satisfied that the trade union has complied with all the requirements of this Act in regard to registration, shall register the trade union by entering in a register, to be maintained in such form as may be prescribed. **(Section 8).**
- The registrar, on registering a trade union under section 8, shall issue a certificate of registration in the prescribed form and such certificate shall be the conclusive evidence that the trade union has been duly registered under the Act. **(Section 9).**
- All communications and notices to a registered trade union may be addressed to its registered office. Notice of change in the address of the head office shall be given within 14 days of such change to the registrar in writing, and the changed address shall be recorded in the register maintained by the registrar under section 8. **(Section 12)**

Cancellation of Registration and appeal

- The RTU can withdraw or cancel a certification of a trade union if – the trade union applies for the cancellation or the registrar is satisfied that the certificate was obtained by fraud or mistake, or the trade union has ceased to exist, or the trade union has willfully contravened any provisions of the act, in all such situations RTU may after giving 2 months' notice and hearing to the union. **(Section 10).**
- In cases of obtaining the registration by fraud or mistake and where the trade union has ceased to exist, the registrar has to give to the trade union not less than 2 months previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate of registration. No such notice is required in case if the application has been moved by the trade union for the cancellation of the certificate of registration.
- If the registration of a trade union is refused or if a certificate of registration is withdrawn or cancelled, any person aggrieved or the trade union may appeal to the court within the prescribed period. **(Section 11)**

Provisions to be made in the rules: - A trade union is entitled to registration if its executive is constituted in accordance with the provisions of the Act and its rules provide for the following matters:-

- **As per section 6 of the act the following things must be included in the rules of a trade unions:-**
- The name of the trade union,
- The whole of its objects,
- The whole of the purposes for which the general funds of the trade union shall be applicable under section 15,
- The maintenance of a list of the members of the trade union and adequate facilities for its inspection thereof by the office-bearers and members of the trade union,
- admission of ordinary members actually engaged in industry, admission of honorary members,
- The payment of subscription by the members of the trade union which shall be not less the prescribed fee,
- The conditions under which any members shall be entitled to any benefits assured by the rules and conditions under which fines may be imposed on the members,
- The manner in which its constitution can be amended or rescinded, appointment and removal of office bearers, safe custody of funds, annual audit of accounts and the manner in which the union can be dissolved.

Utilization of funds

- Utilization of funds can be made only for payment of salaries and allowances to the office bearers, payment of expenses on administration of the union, prosecution or defense of any legal proceedings, conduct of any trade disputes, allowances to members or their dependents on account of death, old age, sickness, accident or unemployment, provisions of education, social or religious benefits for members, periodical publications etc. (section 15).
- A separate political fund can also be constituted, as per section 16 of the act. The office bearer be above the age of 18 years and he should not be a convict for any offence involving moral turpitude during the period of last 5 years, (section 21-A)

Advantage of registration or legal status of a trade union

- Although it is not legally necessary for a trade union to be registered, registration does bring with it certain advantages. Some of the advantages gained by registration as given in **sections 13,17, 18 and 19 of the act are as follows :-**
- It becomes a body corporate by the name under which it is registered and becomes a legal entity distinct from the members of which it is composed.
- It has perpetual succession and a common seal.
- It can acquire and hold moveable and immovable property and can enter into a contracts.
- It can sue and be sued by its own name.
- Its office bearers or members cannot be prosecuted for criminal conspiracy for following its legitimate objects. It enjoys immunity from civil suits in respect of acts of a trade union.
- Any agreement between its members is not void or voidable even if its objects are in restraint of trade.

Members of a registered trade union (Section 21) Any person who has attained the age of 15 years may be a member of a registered trade union. This is subject to any rules of the trade union to the contrary. Subject to the rules of the trade union such member may enjoy all the rights of a member, but he cannot be an office-bearer of the trade union until he attains the age of 18 years **(Section 21-A(1) (i))**.

Dissolution of Trade Union

- A registered trade union can be dissolved in accordance with the rules of the union. A notice of dissolution signed by any seven members and the secretary of the union should be sent to the Registrar within 14 days of the dissolution.
- On being satisfied, the Registrar shall register the notice and the union shall stand dissolved from that date.
- The funds of the union shall be divided by the Registrar amongst its members in the manner prescribed under the rules of the union or as laid down by the Government.**(Section 27)**.

Amalgamation of Trade Unions

- Any registered trade union may amalgamate with any other unions, provided that at least 50 % of the members of each such union record their votes and at least 60 % of votes so recorded are in favor of amalgamation. **(Section 24)**.
- A notice of amalgamation signed by the secretary and at least seven members of each amalgamating union, should be sent to the registrar, and the amalgamation shall be in operation after the registrar registers the notice. **(Section 25)**.

Obligations of Registered Trade Unions

- Utilization of funds can be made only for payment of salaries and allowances to the office bearers, payment of expenses on administration of the union, prosecution or defense of any legal proceedings, conduct of any trade disputes, allowances to members or their dependents on account of death, old age, sickness, accident or unemployment, provisions of education, social or religious benefits for members, periodical publications etc. (section 15).
- A separate political fund can also be constituted, as per section 16 of the act.
- The office bearer be above the age of 18 years and he should not be a convict for any offence involving moral turpitude during the period of last 5 years, (section 21-A)
- Every registered trade union has to submit its audited statement of accounts in the prescribed form to the registrar intimating changes in its rule, office bearers, and amalgamation etc. failure to do so entails cancellation of registration. The regulations made under the Act also require that the changes made about in the name of the union, office bearers, rules of the union are to be intimated to the registrar for making entry in his official records. **(Section 28)**.
- The account books and membership register of the trade union should be kept open for inspection by any of its members or office bearers **(Section 20)**.
- A copy of every alteration made in the rules of the union should be sent to the registrar within 15 days of making the alteration **(Section 28(3))**.
- A trade union has a right to appeal against an order of the Registrar either refusing or cancelling registration, to the Industrial Tribunal/ High Court **within** the prescribed time **(Section 11)**.

Submission of annual returns

- Every registered trade union has to submit its audited statement of accounts in the prescribed form to the registrar intimating changes in its rule, office bearers, and amalgamation etc. failure to do so entails cancellation of registration. The regulations made under the Act also require that the changes made about in the name of the union, office bearers, rules of the union are to be intimated to the registrar for making entry in his official records.

Problems of trade unions

- Multiplicity of unions, paucity of funds, want of membership and instability due to intra-union rivalry, lack of understanding and leadership among its office bearers to promote interest of members through collective bargaining while dealing with the Employer or Government officials/ court requiring to adopt negotiation and representation. Lastly its affiliation with central organizations like--- INTUC / AITUC / CITU / BMS /HMS etc. having political leaning affect solidarity, collective bargaining, industrial peace.

The Payment of Wages Act, 1936

Introduction: In a country where even living wages are not paid to workers, the need to protect wages earned by them can hardly be over- emphasized. Before the payment of wages Act, 1936 was passed, evil of withholding wages; delays in paying wages and making unreasonable deductions out of wages were quite prevalent.

The payment of wages Act, 1936 was passed to regulate the payment of wages to certain classes of persons employed in industry. It is essentially meant for the benefit of industrial employees not getting very high salaries and the provisions of the Act were enacted to safeguard their interest. It also

ensures payment of wages in a particular form and at a regular interval without unauthorized deductions.

Object of the Act: -- The payment of wages Act, 1936 regulates the payment of wages to certain classes of persons employed in industry and its importance cannot be under-estimated. The Act guarantees payment of wages on time and without any deductions except those authorized under the Act. The Act provides for the responsibility for: ---

- Payment of wages,
- Fixation of wage period,
- Time and mode of payment of wages,
- Permissible deductions from the wages,
- To seek the approval of the Government for the acts and,
- Permission for which fines may be imposed by the employer.

The Act also provides for a machinery to hear and decide complaints regarding the deductions from wages, or in delay in payment of wages, penalty for malicious and vexatious claims.

Extent and application of the Act: -- The Act extends to the whole of India. The Act applies to Railways, Factories, mines and following establishments: ----

- (a) tramway or motor transport service engaged in carrying passengers or goods or both by road for hire or reward,
- (b) dock or jetty,
- (c) mine, quarry or oil-fields,
- (d) plantation,
- (e) workshop or other establishment in which articles are produced, adapted or manufactured with a view to their use, transport or sale,
- (f) establishment in which any work relating to the construction, development or maintenance of building, road, bridges or canals or relating to operations concerned with navigation, irrigation or other supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power, is being carried on,
- (g) Any other establishment covered by central/ state Government through notification in official gazette.

Definition of wages:-- Wages means all remuneration(whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of the employments, expressed or implied, were fulfilled, be payable to a person employed in respect of his employment or work done in such employment.

Simply stated, wages “means all remuneration due to any worker or employee if the terms of contract of employment are fulfilled. It also includes the following expressions:--

- (a) any remuneration payable under any award or settlement b/w the parties,
- (b) remuneration in respect of overtime, holiday, or any leave period,
- (c) additional remuneration payable under terms of employment(whether called a bonus or by any other name),
- (d) sum payable under any law by reason of termination of employment but not providing any time limit,
- (e) sum under the scheme if any, but does not include---
- (h) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under term of employment or which is not payable under any award or settlement b/w the parties or orders of a court,

- (i) value of HRA, or the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the state Government,
- (j) provident fund,
- (k) traveling allowance or value of traveling concession,
- (l) special expenses on account of the nature of his employment,
- (m) Gratuity.

Rules for payment of wages (section 3 to 6)

Responsibility for payment of wages (sec. 3):--

- It is the responsibility of the every employer for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed-----
- In factories the factory manager, who has been nominated under section 7 of the factory Act, 1948,
- In industrial or other establishment, person who is responsible to the employer for the supervision and control of the industrial or other establishment,
- Upon railways, if the employer is the railway administration and nominated a person for the disbursement of payment for the local area concerned,
- In the case of contractor, a person designated by such contractor who is directly under his charge, and
- In any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, shall be responsible for such payments.

Time of payment of wages (section 5):- wages must be paid--

- (a) before the expiry of the 7th day after the last day of the wage—period, if less than 1000 workers are employed and in other cases on the 10th day;
- (b) in current coins or currency notes and by cheques or by crediting the wages in the employees bank account after obtaining his written authority, (section 6)
- (c) on a working day,
- (d) before the expiry of the 2nd day, to the person whose employment is terminated.
- (e) No wage -period should exceed one month.

Deductions from wages (section 7 to 13):-- Section 7 of the Act provides that the wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under the payment of wages Act, 1936.

The following are the main deductions as allowed:--

- Deduction for fines,
- Deduction for the absence from the duty(actual period of absence),
- Deduction for damage 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 attributed to his negligence or default,
- Deduction for house- accommodation,
- Deduction for amenities and services supplied by the employer as agreed by to between employer and the employed person. However, the services do not include the supply of tools and raw materials required for the purpose of the employment,
- Deductions for recovery of advance and interest, and for adjustment of over-payment of wages,
- Deduction for recovery of loans from any fund constituted for the welfare of labour as agreed to between the employer and the employed person,
- Deduction for income- tax,
- Deduction for subscription and repayment of advance from any provident fund,
- Deduction for payment to co-operative societies as agreed to between employer and the employed person,

- Deduction of premium for LIC policy on written authorization of the employed person, or for post office savings scheme,
- Deduction on written authorization by the employee for contribution to any fund constituted by the employer or trade union for welfare of employed person as agreed to between employer and employed person,
- Deduction for the payment of fees for membership of trade union as agreed between the parties,
- Deduction made on written authorization of the employed person, for contribution to the prime minister's national relief fund etc.

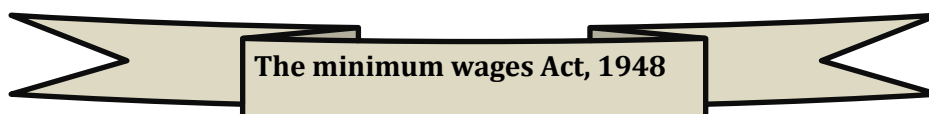
Levy of fines: -- Fines can be imposed only for acts and omission the list of which has been approved by the appropriate. Fines should not exceed 3% of the wages in a month, be recovered within 90 days of the date of the act or omission, be imposed after a proper show cause procedure and cannot be imposed on an employed person of less than 15 years of age.

Deduction for damage and loss: -- If any employee causes damage or loss to the employer due to his negligence the employer may deduct such damage or loss after giving the employee an opportunity of showing cause.

Claims: --- Claims arising out of deduction from wages or delay in payment of wages and penalty for malicious claims will be heard and decided by the authority appointed by the appropriate Government for any specified area. Employees of the same unpaid group may file joint application for realization of the dues and compensation.

Employer of obligations

1. To fix the wage period not exceeding one month (sec.5)
2. To pay wages in cash or by cheque after taking written authorization of the employed person (sec.6)
3. To pay wages on working day.
4. To make deduction permissible only under section 7 from the wages of the employed person.
5. To ensure that deductions do not exceed 75 % where payment to a co- operative society is to be made, and in other cases, deductions do not exceed 50 %.
6. To seek, before imposing fines, approval of list of acts and omissions from the prescribed authority.
7. Not to impose fines exceeding 3% of the wages on the employee.
8. To give show cause notice to the employed person before imposing fines.
9. To recover fines within 60 days of the date of offence.
10. To afford facilities to inspectors for entry, inspection, supervision, examination or inquiry under the Act.
11. To display abstract of the Act and the rules in English and in a language understood by the majority of workmen.
12. To maintain following registers in the prescribed forms:--
 - (i) Register of wages, fines, deduction for damages or loss and advances.



Objective

The minimum wages Act envisages to provide minimum statutory wages for scheduled employments with a view to obviate the chances of exploitation of labour through payment of very low and sweating

wages. The Act also provides for the maximum daily working hours, weekly rest day and overtime. Rates fixed under minimum wages Act prevail over the rates fixed under award/agreement. The object of the Act is to secure the welfare of the workers in a competitive market by fixing the minimum rates of wages in certain employments. The legislature undoubtedly intended to apply the Act to those industries or localities in which wages paid to workers were inadequate, due to causes such as unorganized labour or absence of machinery for regulation of wages.

Scope and coverage

The minimum wages Act was passed in 1948 enabling central and state Governments to fix minimum rates of wages payable to employees in a selected number of 'sweated' industries. The Act extends to the whole of India and applies to all establishments employing one or more persons and engaged in any of the scheduled employments.

Employees Entitled

The Act covers every employee engaged in any scheduled employment, including an "out worker" to whom the materials are given out for manufacturing or processing at his own premises.

Administrative Authority

The minimum wages Act is a central legislation, however, its enforcement is administered by the central and state Governments in their respective spheres. The state Government shall fix the minimum rates of wages in respect of the various scheduled employments, make the rules, and appoint inspectors and an authority to decide claims relating to non- payments on minimum wages.

Wages—Definition & meaning

As per section 2(h) of the Act:--- Wages means all remuneration capable of being expressed in terms of money, which would if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment and includes HRA, but does not include---

(i) the value of---

(a) any house accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government,

(ii) any contribution paid by the employer to any pension fund or P.F. or under any scheme of social insurance,

(iii) any traveling allowance or the value of any traveling concession,

(iv) any sum paid to the person employed to defray special expenses entitled on him by the nature of his employment,

(v) any gratuity payable on discharge.

In other words—“ wages means all remuneration expressible in money terms and payable to an employee including house rent allowance but excluding value of any house accommodation, supply of light, water, medical attendance or any other amenity, contribution to any pension or P.F., traveling allowance, reimbursement of any special expense and gratuity.

Scheduled Employment (Sec.2 (g)):- It means an employment specified in the schedule to the Act, or any process or branch of work forming part of such employment. **(It include Section 27 of the Act also**, which provides power to appropriate Government to add to schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed, it may do so by giving 3 months' notice of its intention so to do, after notification in the official Gazette.)

Schedule -I contains the list of various employments in different industries, mines and authorities etc. **(They are Approx. 45 in number)**, and **Schedule -II includes** employment in agriculture, dairy farming, horticultural etc.)

Fixation of minimum rates of wages

The state Government is empowered to fix minimum rates of wages for different classes of employees—**skilled, unskilled, clerical, supervisory, etc.; employed in any scheduled employment and to review and revise the same from time to time considering the change in price index and dearness allowance (Sec. 3).**

The Appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole state less than 1,000 employees engaged in such employment. As soon as it comes to know after an inquiry that the number has increased to more than 1,000, it shall fix minimum rates of wages in that employment (Sec.3(1-A).

Minimum rates: - The Appropriate Government may fix --

- A minimum rate of wages for time rate (referred to as 'a minimum time rate'),
- A minimum rate of wages for piece work (referred to as 'a minimum piece rate),
- A minimum rate of remuneration to apply in the case of such employees employed on piece work for purpose of securing to such employees a minimum rate of wages on a time work basis (referred to as 'a guaranteed time rate'),
- A minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (referred to as 'overtime rate') **Section 3(2).**

Different minimum rates: - In fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for—

- Different scheduled employments,
- Different classes of work in the same scheduled employment,
- Adults, adolescents and apprentices,
- Different localities.

It may be fixed by any one or more of the following wage-period, namely-

- By the hour,
- By the day,
- By the month, or
- By such other larger wage-period as may be prescribed.
- By providing the manner of calculating wages, as the case may be, indicated properly.

Minimum rates of wages: - Any minimum rates of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3 may consist of—

- A basic rate of wages and a special allowance- to be known as the 'cost of living allowance' The rate of such allowance shall be adjusted at such intervals and in such manner as the appropriate Government direct.
- A basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorized,
- An all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any. Section 4(1).

Procedure for fixing and revising minimum wages (Section 5):- Section 5 provides two separate modes of procedure for fixing and revising minimum rates of wages and the primary object of both the procedure is to enable the Government to reach a balanced conclusion with regard to fixation of a minimum wage. It may be fixed either by appointing a committee or also by notification method by inviting suggestions and objections to it.

In fixation of minimum rates of wages in respect of scheduled employments for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following two methods:-

By appointment of committees method or by publication of proposals in the official Gazette-

The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise in respect of fixation or revision of minimum rates of wages, as the case may be (Section 5(10(a), (Known as advisory body).

Where the appropriate Government proposes to revise the minimum rates of wages by this mode U/s 5 of the Act, it shall also consult the Advisory Board (constituted under section 7).

Government is not bound to accept the recommendation of the committee appointed under section 5(10(a).

The appropriate Government shall, by notification in the official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification (Section 5(10(b)).

After considering the advice of the committee or committees (Under section 5(1) (a) or all representations received by it before the date specified in the notification (under section 5(1) (b), the appropriate Government shall, by notification in the official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides.

As per section 10 of the Act, appropriate Government may, at any time, by notification in the official Gazette, may correct any clerical, arithmetical mistakes in any order fixing or revising minimum rates of wages under the Act, or errors arising therein by accidental slip or omission, be placed before the Advisory Board for information.

Obligation of Employers

1. **Payment of minimum wages:** -- The employer is bound to pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rates of wages fixed for that class to employees in that employment, without making any deductions therefrom except those permitted under the payment of wages Act. (**Section 12**). Even if an employee is employed on piece- work basis, the employer shall pay to him, wages at not less than the minimum time rate (**section 17**).
2. **Wages in cash/kind:** -- As a rule, the wages payable under the act should be paid in cash. The appropriate government may, however, permit the payment of wages wholly or part in kind, and also allow the supply of essential commodities at concessional rates (**section 11**).
3. **Fixing hours for a normal working day:** - In regard to any scheduled employment where minimum rates of wages have been fixed, the appropriate Government may- fix the number of hours of work inclusive of intervals constituting a normal working day, provide a day of rest with wages, called a weekly holiday and if someone works on that day of off, be entitled to overtime wages. **Section 13**.
4. **Overtime wages:** -- If an employee works on any day in excess of the normal working hours, the employer shall pay to him overtime wages for every hour or for part of an hour so worked in excess, at the rate prescribed under the act or any other law, whichever is higher (**section 14**). As per Factory Act, overtime wages are to be paid at twice the normal rate of wages.
5. **Wages for two or more classes of work:** - Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages as applicable to such work and according to minimum rates in force. **Section 16**.
6. **Minimum time rate wages for piece work:**- Where an employee is employed on piece work for which time rate and not a minimum piece rate has been fixed under the Act, the employer shall pay to such employee wages at not less than the minimum time rate. **Section 17**.
7. **Register and records:** -- The employer should maintain the prescribed register and records giving particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them, etc. The employer shall also issue wage books or wage slips to the employees, if required by the government and make authenticated entries therein (**section 18**).
8. **Appointment of Inspectors and their powers:**_- The appropriate Government may, by notification in the official Gazette, appoint inspectors for the purpose of the Act, and define the local limits within which they shall exercise their functions.
9. **Claims , appointment of Authorities and their powers etc.:-** The Appropriate Government may, by notification in the official Gazette, appoint an Authority to hear and decide for any specified area all claims—arising out of payment of less than the minimum rates of wages, remuneration in respect of work on rest days and also of overtime wages etc. **The Authority under the Act may be** – any commissioner for workmen’s compensation, any officer of the central/state Government functions as a Labour commissioner, or any other officer with experience as a judge of a civil court, or a judge of a labour court. **A claim application may be filed by any person before the Authority under the Act for hearing and deciding the case--** They may be either employee himself, any legal practitioner, any official of a registered trade union authorized in writing to act in his behalf, any inspector or any person acting with the permission of the Authority. The Authority shall have all the powers of the civil court. They may order 10 times payment in case of payment less than the minimum rates of wages so fixed. **A single application may be filed in respect of a number of employees – Section 21.**

10. **Payment of undisbursed amount:**-- If any amount payable to an employee as wages or otherwise under this Act, remains undisbursed on account of death of the employee or his whereabouts not being known, then the same shall be deposited by the employer with the prescribed authority (section 22-D).
11. Right of employees to file claims in cases of less payment than fixed under the minimum rates of payment etc.
12. **Offences and penalties:** ---- In case of payment of wages at less than the minimum rates fixed or amount due under the Act--- Imprisonment **up to 6 months or fine up to Rs.500 or both.** Contravention of any rule or order made u/s 13 in respect of normal working hours-- **same as above. (Section 22).**

The Employees State Insurance Act, 1948

Introduction

The Act is a landmark in the history of social security in India. The Main Objectives of the ESI Act 1948 was to provide to the workers medical relief, sickness cash benefits, maternity benefits to women workers, pension to the dependents of deceased workers and compensation for fatal and other employment injuries including occupational diseases, in an integrated form through a contributory fund.

The Act is one of compulsory state insurance providing for certain benefits. These benefits are secured by financial contributions to the scheme both by employers and employees.

Scope and coverage

The act extends to the whole of India. It applies to all factories (including government factories but excluding seasonal factories) and such other establishments as the Government may specify. Generally, establishments, wherein 20 or more persons are employed, such as hotels, restaurants, clubs, cinemas, newspaper establishments and shops are also covered by the provisions by the provisions of the E.S.I. Act. The Act cannot be applied voluntarily. All establishments, to which the Act applies, shall continue to be governed by the provisions even if the number of workers employed therein falls below the specified limit, subsequently.

Employees Entitled

Every employee (including casual and temporary employees), whether employed directly or through a contractor, who is in receipt of wages up to Rs. 15,000 P.M.(W.E.F.1-5-2010) is entitled to be insured under the E.S.I. Act.

Administrative Authority

The provisions of the ESI Act are administered both by the central and the state governments. The ESI scheme is administered by an autonomous body constituted by the central government, namely the Employees state Insurance Corporation. It is headed by the Directorate general appointed by the

central government. It provide its services through Regional Offices, Local committees and Regional and local medical benefit councils.

The central government is the main rule making authority. The ESI Corporation shall make regulations for the administration of its affairs and for carrying out the provisions of the Act.

Salient provisions

1. **Registration of Establishment:** -The employer should get the establishment registered with the ESI Corporation as its appropriate Regional office within 15 days of the applicability of the ESI Act. It should be done by giving all relevant and essential particulars through a declaration form and obtain a ESI code number of the establishment.
2. **Registration of the employees:** - The employer should determine the employees who are covered under the act and then obtain a declaration form from each of them, the female forms should be rubber stamped "FEMALE". All the declaration forms shall be countersigned by the employer.
3. **Identity cards:** - Every member employee shall be provided permanent identity card, such card shall carry details of the insured person along with the photograph.
4. **Contributions:** - The ESI Act requires employer and the employees to make a contribution as specified. All these contributions collected by the employer to be deposited with the ESI authorities within 21 days of the close of the wage period. The amount of contribution for the employer is at the rate of 4.75% of the wages paid in respect of every wage period and the employees are also to contribute at the rate of 1.75% of their wages.
5. **Registered to be maintained by the employer:** -The employer is to maintain registers such as wage register, contribution, attendance, accident book and inspection book.
6. **Contribution and benefit period:** -The period, during which an employee is entitled to or avails of a benefit, is called the benefit period.

Contribution period

1. 1st April to 30th September
2. 1st October to 30th March of the Following year.

Benefit period

- 1st January of the following year to 30th June.
- 1st July to 31st December.

Benefits under the Act

Freedom from economic fear is the basis of all social security legislation. The various benefits conferred by the Act attack this fear and seek to remove it.

The Act provides for 6 type of benefits to which the insured persons, their dependent's or certain other persons are entitled.

7. Benefits under the Act are as follows

Sickness Benefit-Every insured employee is entitled to the cash benefit for the period of sickness occurring during any benefit period and certified by a duly appointed medical practitioner. Sickness benefit is available up to 91 days; extended sickness benefit is available up to 124 days and in chronic cases up to 309 days.

The benefit is, however, not payable for the first two days of sickness and for any day on which the employee works, remains on leave. But if the spell of sickness recurs within 15 days he shall be entitled to recover the benefit even for the first two days also.

Any person in receipt of sickness benefit,

- Shall remain under medical treatment at the ESI dispensary or hospital and carry out the instructions of the medical officer,
- Shall not do anything which retards or reduces his chances of recovery,
- Shall not leave the area where medical treatment is provided without medical officer's permission,
- Shall get himself examined by the medical officer **(Section 64)**.

Maternity Benefit: -

An insured woman shall be entitled to maternity benefit in case of confinement, miscarriage, sickness arising out of pregnancy, premature birth of a child, etc.

It is only available to insured women employee during the period of pregnancy on certification by duly registered medical practitioner, for a period of 12 weeks. Comprising of 6 weeks before the expected date of delivery and 6 weeks after that. It can be extended in case of any complication related to pregnancy when certified by the doctor.

It is a cash benefit with leave. During the period of maternity leave she should not work in any other establishment and must remain on leave and take proper rest for which the leave is granted. A periodical cash benefit is payable to a woman employee, in case of all sorts of problem related to her pregnancy and death during her confinement for a maximum period of 12 weeks, at twice the standard benefit rate. The benefit is payable only if the woman employee does not work during the said period, and the prescribed medical certificates and other information are furnished.

Disablement Benefit:-

“Disablement is a condition resulting from employment injury means a personal injury to an employee”.

Disablement benefit shall be payable to an insured person suffering from disablement as a result of an employment injury sustained as an employee if he is certified to be eligible for such payment by an authority specified in this behalf.

It is payable in the form of cash in instalments, to an insured employee who is injured in the course of his employment and is, permanently or temporarily, disabled, or contracts any occupational disease. The person claiming any disablement benefit is required to furnish a medical certificate as prescribed under the regulations.

‘For the purpose of this Act, an accident arising in the course of an employee’s employment shall be presumed as to accident arising in course of employment, in the absence of evidence to the contrary’(Section 51-A).

Accident happening while acting in breach of regulations, etc. (Section 51-B) -Such accidents come within the term ‘Employment injury’.

Accident’s happening while travelling in employer’s transport (Section 51-C) -An accident happening while an employee is with the express or implied authority of his employer, travelling as a passenger by any vehicle to or from his place of work shall be deemed to arise out of and in the course of his employment.

Accident’s happening while meeting emergency- (Section 51-D) -An accident happening to an employee in or about any premises at which he is for the time being employed for the purpose of his employer’s trade or business shall be deemed to arise out of and in the course of his employment. The

accident should however happens while the employee is taking steps, on an actual or supposed emergencies at those premises, to rescue persons injured or to minimize serious damage to property.

Occupational disease (Section 52-A) -The occupational diseases have been specified in the Third scheduled to the Act. So the contracting of any occupational disease by an employee shall, unless the contrary is proved, be deemed to be an 'employment injury' arising out of and in the course of employment.

Dependents Benefit: -If an insured employee dies as a result of an injury sustained in the course of his employment or an occupational disease, his dependents shall be entitled to a benefit in the form of pension. A claim for the dependents benefit should be submitted in the prescribed form to the appropriate local office, with the documents showing that the death was due to an employment injury and that the claimant is the dependent as specified in the Act.

In the case of death of the insured person, the dependent's benefit shall be payable to his widow and legitimate children's.

It is payable to widow during life or until remarriage. If there are two widows, the amount shall be divided equally between the widows (it is equivalent to 3/5ths of the full rate.

To each legitimate or adopted son, an amount equivalent to 2/5ths of the full rate until he attains 18 years of age.

To each legitimate or adopted unmarried daughter, an amount equivalent to 2/5ths of the full rate until she attains 18 years of age or until marriage, whichever is earlier.

In case the deceased person does not leave a widow or legitimate or adopted child, dependents benefit shall be payable to the other dependents, that is to parent or grand parent, for life and to any other male or female dependents, until they attains 18 years of age and until marriage in the case of female dependent.

Section 55-A, provides for review of dependents benefit. On a review, the ESI Corporation may directs that the dependents benefit be continued, increased, reduced or discontinued.

Medical Benefit:- An insured employee and his family members, who require medical treatment and attendance, is entitled to receive medical benefit in the form of treatment and attendance at the ESI hospital, dispensary or clinic as an OPD patient.

Arrangement for medical treatment in a particular state is the administrative responsibility of the state Government. This is because health is a state subject. As such the state Government shall provide for insured persons and their families in the state reasonable medical, surgical and obstetric treatment. It may, with the approval of the E.S.I. Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.

The ESI Corporation may enter into an agreement with a state Government in regard to—

- The nature and scale of medical treatment that should be provided to insured persons and their families,
- Provisions of buildings, equipment's, medicines and staff,
- The sharing of the cost of medical treatment and infrastructure facilities,
- The sharing of any amount spent in excess of the all-India average.
- ***In default of agreement between the ESI Corporation and any state Government, the matters and dispute shall be determined by an arbitrator (High court Judge of the state) appointed by the chief justice of India. The award of the arbitrator shall be binding on the ESI Corporation and the state Government. (Section 58(4))***
- An insured person and his family shall be entitled to receive medical only of such kind and on such scale as may be provided by the state Government or ESI Corporation.

- They shall have no right to claim any medical treatment except such as is provided by the dispensary, hospital, clinic or other institution to which they are allotted. (**Section 57**).
- Section 59 of the Act makes provisions for the establishment and maintenance of hospitals, dispensaries and the medical and surgical services by the ESE Corporation, with the approval of the state Government, for the benefit of insured person and their family members.
- As per section 59-B- provides for establishment of medical colleges, nursing colleges and training institutes for its para-medical staff and other employees with a view to improve the quality of services provided under the ESI scheme.
- There is a provision of medical benefits to insured persons who cease to be in an insurable employment on account of permanent disablement and on account of retirement. This benefits are available to insured person and his spouse, if he makes a lump-sum payment of Rs, 120 for one year at a time or Rs, 10 per month.

Funeral Expenses: -If an insured employee dies, the eldest surviving member of his family member or the person who incurs the expenditure of the funeral (known as 'funeral expense') of the deceased employee, is entitled to reimbursement of Rs. 5000. (W.E.F. 01.9.2009)

The Maternity Benefit Act, 1961

Objectives

The Maternity Benefit Act, 1961, envisages at regulating the employment of women employees in certain establishments for certain period before and after the child birth and providing maternity and other benefits. Some state governments Acts also provide for additional benefits such as free medical aid, maternity bonus, provision of crèches, additional rest intervals etc.

Scope and Coverage

The Act extends to the whole of India, and is applicable to every factory, mine or plantation (including those belonging to Government) or circus and to every shops or establishment wherein 10 or more persons are employed.

However, the Act does not apply to any factory or other establishment, to which the provisions of the ESI Act apply.

Employees

Every women employee, whether employed directly or through a contractor, who has actually worked in the establishment **for a period for 80 days during the 12 months** immediately preceding the date of her expected delivery, is entitled to receive maternity benefit.

Administrative Authority

The administration of the provisions of this Act in respect of mines, circus and establishments engaged in exhibition of equestrian, acrobatic and other performances, is controlled by the central government, whereas in respect of other establishments it is looked after by the state governments.

The central/ state Governments shall appoint competent authority and inspectors and shall make rules for enforcing the provisions of the act.

Salient provisions of the Act

Salient provisions of the Act are as follows:-

- 1. Restriction on Employment of pregnant women:** - No Employer should knowingly employ a women during the period of 6 weeks immediately, following the day of her delivery or miscarriage. Besides, no women should work in any establishment during the said period of 6 weeks. Further, the employer should not require a pregnant women employee to do an arduous work involving long hours of standing or any work which is likely to interfere with her pregnancy or affect her health. **(Section 4(1) & (2).**
- 2. Discharge or Dismissal to be void:-**when a pregnant women absents herself from work in accordance with the provisions of this act, it shall be wrongful for her employer to discharge or dismiss her during or on account of such absence. **(Section 12)**
- 3. Payment of maternity benefit:** -The employer is liable to pay the amount of maternity benefit for the period preceding the date of her expected delivery, in advance on production of the proof of pregnancy. The balance of the amount due after pregnancy should be paid within 48 hours on production of proof of delivery. **(Section 5)**
In case of death of the employee, amount due to be paid to her legal nominee or legal representative, as the case may be.
- 3. Medical Bonus & Nursing Breaks:** -Every women entitled to maternity benefit, shall also be allowed a medical bonus of Rs. 3000/, if no pre-natal confinement and post-natal care is provided for by the employer free of charge. **(Section 8)**. She is also allowed to have two nursing breaks for feeding the child, apart from her normal breaks. **(Section 11)**
- 4. Forfeiture of Maternity Benefit:-** If any women, who has been allowed to go on maternity leave, works in any other establishment for any period during the authorized leave, then her claim to the maternity benefit for such period worked shall be forfeited. **(Section 18)**
- 5. Leave for miscarriage:-** In case of miscarriage, a woman shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks immediately following the date of miscarriage.
- 6. Other leave:** - A woman suffering from illness arising out of pregnancy, delivery, premature birth of a child or miscarriage shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit for a maximum period of 1 month. This leave is in addition to the period of absence allowed to her under section 6 or under section 9.
- 7. Appointment of Inspectors:** - The appropriate Government may by notification in the official Gazette, such officers as it thinks fit to be inspectors for the purpose of this act and also define their local limit within which they shall exercise their function under the act. **(Section 14)**. **Powers and duties are provided under Section 15. As per section 17 of the Act he is empowered to direct payments to be made, any person aggrieved by the decision of the inspector may appeal to the prescribed authority within 30 days from the date of communication of the order.**
- 8. Offences and penalties:-** Failure to pay maternity benefit as provided under the act- Imprisonment up to one year and fine up to Rs. 5000(minimum 3 months and Rs. 2000 respectively).

Dismissal or discharge of a women employee in contravention of the Act—same as above
(Section 21)

Penalty for obstructing Inspector:- (Section 22)- As per this section whoever fails to produce the required registers or documents when demanded by the inspector or prevents any person from appearing before an inspector, shall be punishable with imprisonment which may extent to 1 year or with fine which may extend to Rs. 5,000, or with both.

THE EQUAL REMUNERATION ACT, 1976

OBJECTIVE

The equal remuneration act provides for payments of equal remuneration to the men and women workers, for the same work or the work of similar nature.

SCOPE AND COVERAGE

The act extends to the whole of India and applies to the establishments or employments notified by the central Govt. {Now the act is, applicable to every kind of establishments.}

EXEMPTIONS

The provisions of the act shall not apply under following circumstance:--

- (a) When special treatment is given to employment of women under any law or in connection with birth of a child, retirement, marriage or death of the women, section 15.
- (b) When the central or state govt. declares that in a particular establishment or employment the difference in regard to the remuneration of men and women workers is based on a factor other than sex, section 16

EMPLOYEES ENTITLED

The act covers all employees employed in an establishment to which this act applies.

ADMINISTRATIVE AUTHORITY

The act is a central legislation but it is administered by central and state Government in their respective spheres. The central or state Government appoints officers for hearing and deciding the complaint and claims for payment of wages at equal rates. It shall also appoint inspectors to enforce the provisions of the act. {Section 7 and 9}

POWER TO MAKE RULES

The central Govt. has powers to make rules and prescribe forms etc. for the purpose of this Act. It may also give directions to a state Govt. as to the carrying into execution of the act in that state. {Section 13 and 14}

DEFINITIONS

Remuneration – means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled. {Section 2 (g)}

Same work or work of similar nature—means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the difference, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and condition of employment. {Section 2 (h)}

Obligation of Employers

(1)**Equal wages for equal work**--- The employer should pay equal wages to men and women employees of his establishment, for promoting same work or work of a similar nature. And for this purpose, the employer should not reduce the wages of any worker.{ section 4 }

(2) **No discrimination while recruitment of employees**--- The employer should not make any discrimination against women while recruitment of employees for same work of a similar nature, or in respect of their promotion, training or transfer, etc. { section 5 }

(3)**Maintenance of register**--- Every employer should maintain an up- to- date register in relation to the workers employed by him, in the prescribed form. This register contains particulars such as category of workers, nature of work, number of men and women employed, rate of remuneration paid, etc. {Section 8}

Rights of employees

- (1) Right to complaint against the employers contravention of any provisions of the Act.
- (2) Right to file claims arising out of non- payment of wages at equal rates to men and women workers for the same work. The complaint/ claim should be filed in the prescribed form (in triplicate) by the worker himself or through a legal practitioner or official of the trade union.{ section 7 }

- (3) Right to appeal against an order of the authority in respect of a claim or complaint, within 30 days of such order. {section 7(6) }
Under same circumstances employer has also got the same right of appeal within the same period of time

Offences and penalties

{Section 10}---

- (1) Failure to maintain the prescribed register or other documents or to produce them on demand.
Imprisonment up to 01 month or fine up to Rs. 10,000 or both
- (2) Discrimination against women in recruitment, etc. or payment of unequal wages to men and women.

Fine up to Rs. 20,000 (minimum Rs. 10,000) or

Imprisonment up to 01 year (minimum 03 months) or both.

Failure to carry out any direction of the Government u/s 6 (5). Punishments Same as above.

Failure to produce before an inspector, any register or document or information. Fine up to Rs. 500.

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