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Employee Legislation

Paper Code : MBHR 3005

MBA - HUMAN RESOURCE MANAGEMENT

III Semester

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Employee Legislation

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- To make the students understand the importance and ideology of legal structure prevailing in India

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UNIT - I

Learning Objectives

- To understand about the labour legislation
- To know about the Indian Labour conference
- To understand the evolution of labour legislation in India
- To know about the agencies and parties involved in the labour legislation and administration

Unit Structure

Lesson 1.1 - Labour Legislation

In the past, one of the main components missing in development strategies in many developing countries was good governance of the labour market. In fact, the quality of governance is a major factor which determines whether countries are successful or not in reducing their poverty levels; it is vital to sustaining or enhancing productivity and competitiveness, particularly in the face of mounting pressure from government policies to open up markets in order to meet the challenges of globalization.

One of the most important institutions of governance of the labour market is the labour administration system. Labour administration is entrusted with the broad responsibility of responding to the diverse forces driving economic, social and technological change in the labour market. Its responses must be rapid, flexible and able to anticipate challenges and bring suitable changes and amendments to various labour legislations to bring change in the mindsets of employees.

Law is an instrument to control, restrain and guide the behaviour and courses of action of individuals and their groups living in a society. Law is a dynamic concept. It changes whith the growing needs of the society. Law is a universal phenomena, having presence in all the societies of the world. Law also requires refurbishing at regular intervals. Every one should have the basic knowledge of various laws who are involved in business and industry.

Labour Legislation refers to all laws of the Government which have been enacted to provide social and economic security to the labour or workers. The evils of industrial revolution have led to the labour legislation. Now the state has a direct interest in the industrial peace and prosperity. These acts are aimed at reduction of production losses due to industrial disputes and to ensure timely payment of wages and other minimum amenities of the workers.

Need of labour Legislation

The basic principle of industrial legislation is to ensure social justice to the workers. The object of legislation is the equitable distribution of profits and benefits accruing from industry between industrialists and workers and affording protection to the workers against harmful affects to their health, safety and morality. In a developing country like India, Labour legislation becomes especially important because of the following reasons:

1. Labour organizations are relatively weak and in most of the cases, they depend merely on the mercy of the employers. Individual worker is economically very weak and is unable to bargain his terms with the employers. Now the prior payment of wages lay off, dismissal, retrenchments etc, are all governed by legislation. The economic insecurity of the workers is removed to a great extent.
2. In many organizations, workers may feel occupational insecurity. The workers may not be given by amount in case of accidents, death, occupational Act, Employees State Insurance Ac, certain benefits have been statutorily given to workers which the employees otherwise may not get from their employers.
3. In any factories, there important working conditions on account of which the employees health and safety is always in danger. The factories Act contains a number of provisions relating to health safety and welfare of workers. Special provisions have been made for the women.
4. Labour legislation is also necessary from the view point of law and order situation and national security of the country. State plays a vital role in the continuing of production. It helps in the economic development of the country. The idea of Welfare State is embodied in the Directive Principles of the constitution and for reason, various labour laws have been enacted to protect the sections of the society.
5. Labour Legislation is one of the most progressive and dynamic instruments for achieving socio-economic progress:

Objectives of Labour Legislation

The main objectives for various labour laws are as follows:

1. To protect the workers from profit seeking exploiters.
2. To promote cordial industrial relations between employers and employees.
3. To preserve the health safety and welfare of workers.
4. To protect the interests of women and children working in the factories.

Principles of Labour Legislation

There are four principles on which the labour legislation is based viz,

1. Social Justice
2. Social and Economic Justice
3. National economy
4. International conventions

Social Justice

The concept of social justice refers to providing justice to everyone in the society so that the poor are not exploited by the rich. It is an in the interest of both employers and employees that they should consider themselves as two wheels of a cart and firmly believe that one cannot exist without the other.

National Economy

Labour legislation ensures industrial peace and helps in the industrialization of the country. The Directive principles of the constitution contain the idea of welfare state. It is a fundamental of a welfare state to look after the interest of workers who are the weakest section of the society and satisfy their physical needs with the increase in productivity the benefits are shared with the workers, resulting ih their prosperity. Thus for the growth of economy and development of the country, labour legislation acts as guiding principle.

International Conventions

International labour originations aims at securing the minimum standard of living for the workers throughout the world. If any convention is passed by govt, it becomes binding if it is ratified by any country. Thus, labour legislation is guided by these conventions.

India is a founder member of the International Labour Organization, which came into existence in 1919. At present the ILO has 175 Members. A unique feature of the ILO is its tripartite character. The membership of the ILO ensures the growth of tripartite system in the Member countries. At every level in the Organization, Governments are associated with the two other social partners, namely the workers and employers. All the three groups are represented on almost all the deliberative organs of the ILO and share responsibility in conducting its work. The three organs of the ILO are:

International Labour Conferences: General Assembly of the ILO – Meets every year in the month of June.

Governing Body: Executive Council of the ILO. Meets three times in a year in the months of March, June and November.

International Labour Office: A permanent secretariat.

The work of the Conference and the Governing Body is supplemented by Regional Conferences, Regional Advisory Committees, Industrial and Analogous Committees, Committee of Experts, Panel of Consultants, Special Conference and meetings, etc.

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Lesson 1.2 - International Labour Conference

Except for the interruption caused by the Second World War, the international Labour Conference has continued, since its first session in 1919 to meet at least once a year. The Conference, assisted by the Governing Body, adopts biennial programme and budget, adopts International Labour Standards in the form of Conventions and Recommendations and provides a forum for discussing social economic and labour related issues. India has regularly and actively participated in the Conference through its tripartite delegations.

The Conference has so far had 4 Indian Presidents viz., Sir. Atul Chatterjee (1927), Shri Jagjivan Ram, Minister for Labour (1950), Dr. Nagendra Singh, President, International Court of Justice (1970) and Shri Ravindra Verma, Minister of Labour and Parliamentary Affairs (1979). There have also been 8 Indian Vice Presidents of the International Labour Conference, 2 from the Government group, 3 from the Employers and 3 from the Workers' Group. Indians have chaired the important Committees of the Conferences like Committee on Application of Standards, Selection Committee and Resolutions Committee.

Governing Body

The Governing Body of the ILO is the executive wing of the Organization. It is also tripartite in character. Since 1922 Indian has been holding a non-elective seat on the Governing Body as one of the 10 countries of chief industrial importance. Indian employers and workers' representatives have been elected as Members of the Governing Body from time to time.

Four Indians have so far been elected Chairman of the Governing Body. They are Sir Atul Chatterjee (1932-33), Shri Shamal Dharee Lall, Secretary, Ministry of Labour (1948-49), Shri S.T. Merani, Joint Secretary, Ministry of Labour (1961-62) and Shri B.G. Deshmukh, Secretary, Ministry of Labour (1984-85).

The Governing Body of ILO functions through its various Committees. India is a member of all six committees of the Governing Body viz. (i) Programme, Planning & Administrative; (ii) Freedom of Association; (iii) Legal Issues and International Labour Standards; (iv) Employment & Social Policy; (v) Technical Cooperation and (vi) Sectoral and Technical Meetings and Related issues.

The International Labour Office

The International Labour Office, Geneva provides the Secretariat for all Conferences and other meetings and is responsible for the day-to-day implementation of decisions taken by the Conference, Governing Body etc. Indians have held positions of importance in the International Labour Office. Special mention must be made of Shri S.K. Jain who retired as Deputy Director General of the ILO. Shri Gopinath is currently the Director International Institute of Labour Studies, Geneva.

International Labour Standards - ILO Conventions

The principal means of action in the ILO is the setting up the International Labour Standards in the form of Conventions and Recommendations. Conventions are international treaties and are instruments, which create legally binding obligations on the countries that ratify them. Recommendations are non-binding and set out guidelines orienting national policies and actions.

Pakistan (34), Japan (45), Australia (57), China (20), Malaysia (14), Sri Lanka (39) and USA (14).

The approach of India with regard to International Labour Standards has always been positive. The ILO instruments have provided guidelines and useful framework for the evolution of legislative and administrative measures for the protection and advancement of the interest of labour. To that extent the influence of ILO Conventions as a standard for reference for labour legislation and practices in India, rather than as a legally binding norm, has been significant.

Ratification of a Convention imposes legally binding obligations on the country concerned and, therefore, India has been careful in ratifying

Conventions. It has always been the practice in India that we ratify a Convention when we are fully satisfied that our laws and practices are in conformity with the relevant ILO Convention. It is now considered that a better course of action is to proceed with progressive implementation of the standards, leave the formal ratification for consideration at a later stage when it becomes practicable. We have so far ratified 39 Conventions of the ILO, which is much better than the position obtaining in many other countries. Even where for special reasons, India may not be in a position to ratify a Convention, India has generally voted in favour of the Conventions reserving its position as far as its future ratification is concerned.

Core Conventions of the ILO: The eight **Core Conventions** of the ILO (also called fundamental/human rights conventions) are:

- Forced Labour Convention (No. 29)
- Abolition of Forced Labour Convention (No.105)
- Equal Remuneration Convention (No.100)
- Discrimination (Employment Occupation) Convention (No.111)

(The above four have been ratified by India).

- Freedom of Association and Protection of Right to Organised Convention (No.87)
- Right to Organise and Collective Bargaining Convention (No.98)
- Minimum Age Convention (No.138)
- Worst forms of Child Labour Convention (No.182)

(These four are yet to be ratified by India)

Consequent to the World Summit for Social Development in 1995, the above-mentioned Conventions (Sl.No. 1 to 7) were categorised as the Fundamental Human Rights Conventions or Core Conventions by the ILO. Later on, Convention No.182 (Sl.No.8) was added to the list.

As per the Declaration on Fundamental Principles and Rights at Work and its Follow-up, each Member State of the ILO is expected to give effect to the principles contained in the Core Conventions of the ILO,

irrespective of whether or not the Core Conventions have been ratified by them.

Under the reporting procedure of the ILO, detailed reports are due from the member States that have ratified the priority Conventions and the Core Conventions every two years. Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, a report is to be made by each Member State every year on those Core Conventions that it has not yet ratified.

Reasons for Non-Ratification

Conventions No.87 and 98

Convention No.87 provides for the right of workers and employers, without any distinction to establish and join organizations of their own choosing without previous authorisation. Their organizations have the right to form or join federations and confederations, including on the international level. These organizations or federations may not be liable to arbitrary dissolution or suspension by an administrative authority. The only exception provided for in the Convention to the right to organise, "without distinction whatsoever" are the armed forces and the police, to whom special rules and regulations may apply.

Convention No.98 aims to protect the exercise of the right to organise and to promote voluntary collective bargaining. The guarantees provided for under these two Conventions are by and large available to workers in India by means of constitutional provisions, laws and regulations and practices.

The main reason for our not ratifying these two Conventions is the inability of the Government to promote unionisation of the Government servants in a highly politicised trade union system of the country. Freedom of expression, freedom of association and functional democracy are guaranteed by our Constitution. The Government has promoted and implemented the principles and rights envisaged under these two Conventions in India and the workers are exercising these rights in a free and fare democratic society. Our Constitution guarantees job security, social security and fair working conditions and fair wages to the Government servants. They have also been provided with alternative

grievance redressal mechanisms like Joint Consultative Machinery, Central Administrative Tribunal etc. Hence, our stand has been that this section of the workforce cannot be said that have been deprived of the right of association.

Convention No.138

As of now, there is no omnibus provision in our labour laws prohibiting children below certain age from doing any work whatsoever. For ratifying Convention No.138, enactment of a suitable all encompassing Central Legislation for minimum age of entry to employment would need to be enacted to have provisions for:

(a) fixing a minimum age of 14 years for admission to employment or work in all occupations, employment and work but excluding agriculture in family and small holdings producing for own consumptions and not regularly employing hired workers; and

(b) fixing a minimum age of not less than 18 years for admission to any type of employment or work which by its nature or circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons.

The definition of 'child' in all concerned existing legislations would then need to be determined in accordance with the provisions of the Central Legislation on minimum age for admission to employment. Thus, the Bill on the above lines on its enactment was to replace or supersede the concerned existing legislations like the Child Labour (Prohibition and Regulation) Act, 1986 etc.

Fixing of minimum age for admission to employment needs to be preceded by creation of suitable enforcement machinery and measures as would warrant the children not being compelled by circumstances to seek employment. The setting up of such machinery, particularly, for the unorganised sector in agriculture, cottage and small-scale industries etc., (except for those industries which are covered under the Factories Act) becomes a difficult task in a developing country like India.

In the background of the above position, consultations have been held with the concerned Ministries/Departments and State Governments

to examine the existing provisions of national laws and practices on the subject vis-à-vis the provisions of the Convention. Since there is no omnibus law on minimum age for entry into employment and the existing laws prescribe different minimum ages for different sectors, the process is likely to be long drawn.

Convention No.182

Ratification of Convention No.182 which concerning 'Worst Forms of Child Labour' is being pursued by ILO with all member countries. The ILO has also initiated a concerted campaign for this purpose. India is examining the feasibility of ratifying this convention in consultation with the concerned Central Ministries and State Governments. This is also to be discussed in a tripartite forum with the participation of the Employers and Workers Representatives.

Action taken so far

- **Consultation meeting taken by Secretary (Labour) on 3rd July, 2001 with the representatives of Central Ministries/Departments and selected State Governments**: In this meeting it was felt that there would not be any objection to agreeing to the elimination of worst forms of child labour is defined in Article 3(a), (b) and (c). In this connection, the concerned Ministries have been approached and they have also agreed to amend the existing Acts in such a manner as to bring them in line with the definitions in Convention No.182. It was felt that Article 3(d) of the Convention was more omnibus and less definitive in its nature. The work defined under this clause would need to be decided through the tripartite mechanisms as defined in Article 4 of the Convention.

- **Tripartite meeting of the Tripartite Committee on Conventions on 19th October, 2001**: The meeting decided that the provisions of Article 3(a),(b)&(c) of Convention No.182 were acceptable as given in the text. As far as the provision of Article 3(d) was concerned, wherein the Tripartite consultation mechanism was required to identify hazardous occupations and processes, the Technical Advisory Committee constituted under the Child Labour (Prohibition and Abolition) Act would be requested to examine

the list of hazardous activities and identify the occupations and processes that were likely to harm the health, safety and morals of children as defined in Article 3(d) of Convention No.182. The matter would then be placed before the next tripartite meeting, by which time the report of the Second National Labour Commission was also expected to be available. The views of the social partners on the list of hazardous occupations identified by the Technical Advisory Committee would also be elicited before the next meeting is convened.

Ilo Area Office, New Delhi

An ILO Branch Office was set up in New Delhi in 1929. The work of the Branch Office consisted of collecting and disseminating information and maintaining links with the Government of India and the Organizations of Employers and Workers and generally to publicise the work of ILO among the Indian audience. With the planned programme of decentralisation, the Branch Office became an Area Office of ILO in 1970. The Area Office at New Delhi has been changing in its jurisdiction over the years. It now coordinates technical assistance activities in diverse focus as such as rural Labour, women workers, employment generation, occupational safety and health, population control, family welfare, etc. in India and Bhutan.

Ilo Committee of Experts

Prominent Indians have served on the ILO Committee of Experts on Application of Conventions and Recommendations, which is an independent body to oversee the implementation of the ILO Conventions by Member countries. The Members of the Committee of Experts are appointed in their individual capacity from among persons of independent, standing and are drawn from all parts of the world. Indian who have been members of the Committee include:

1. **Justice P.N. Bhagwati, Retd. Chief Justice of India - Since 1978.**
2. **Justice P.V. Gajendragadkar - 1972-1977**
3. **Shri A. Ramaswamy Mudaliar - 1959-1970**
4. **Shri R.M. Bannerjee - 1956-1988**
5. **Shri Atul Chatterjee - 1936-1938 & 1945-1955.**

Active Partnership Policy & Multi-Disciplinary Team

One of the major reforms initiated recently is the launching of the "Active Partnership Policy" whose aim is to bring ILO closer to its constituents. The main instrument for implementation of the policy – is the multi-disciplinary team, which will help identify special areas of concern and provide technical advisory services to member States to translate ILO's core mandate into action. The multi-disciplinary team for South-Asia is based in New Delhi. It consists of specialists on employment, industrial relations, workers and employers' activity, small-scale enterprises and International Labour Standards.

ILO and Child Labour

ILO's interest in child labour, young persons and their problems is well known. It has adopted a number of Conventions and Recommendations in this regard. In India, within a framework of the Child Labour (Prohibition and Regulations) Act, 1986 and through the National Policy on Child Labour, ILO has funded the preparation of certain local and industry specific projects. In two kanor projects, viz. Child Labour Action and Support Programmes (CLASP) and International Programme on Elimination of Child Labour (IPEC), the ILO is playing a vital role.

The implementation of IPEC programmes in India has certainly created a very positive impact towards understanding the problem of child labour and in highlighting the need to elimination child labour as expeditiously as possible. A major contribution of the IPEC programme in India is that it has generated a critical consciousness among all the 3 social partners for taking corrective measures to eliminate child labour.

Decent Work

The concept of 'Decent Work', is being propagated by the ILO andit encompasses four strategic objectives –

I. **Promotion of Rights at Work** - It calls for renewed attention to ILO's standards, as well as a fresh look at complimentary means and instruments for achieving this goal.

II. **Employment** - Creation of greater employment and income opportunities for women and men as a means to reduce poverty and inequality.

III. **Social Protection** – This section emphasises expansion of social security schemes.

IV. **Social Dialogue** – This emphasises examining ways of strengthening the institutional capacity of ILO constituents as well as their contribution to the process of dialogue.

The concept of Decent Work emphasises that the quantity of employment should not be divorced from quality of work and stresses that a social and economic system should be evolved to ensure basic security and employment without compromising workers' rights and social standards in a highly competitive world.

Although India agrees that the four strategic objectives are necessary for decent work, this has no meaning unless we can provide an opportunity to work. Therefore, employment generation should be the focus of the all ILO programmes and activities. The basic requirement of Decent Work should be to first ensure work to any potential worker and then all other elements of the decent work concept will automatically follow. This stand of India was appreciated by other nations as well. India also made it clear in the meetings of the ILO that the concept of decent work has to be fixed keeping in mind the conditions of work in the social, economic and cultural context of each country. It cannot be made applicable uniformly to every country.

Linkage Between Trade and Labour Standards:

The issue of linkage between trade and labour standards was first raised at the conclusions of the Uruguay Round at Marrakesh in 1994 by the USA. India and other developing countries had taken the position that labour standards at the international levels can be appropriately addressed only in the ILO, not in the WTO. The social clause is not within the mandate of the WTO. In response, India had countered that the relationship between trade and immigration policies may also be examined in the WTO. The issue was not pursued seriously by the US for sometime thereafter.

The issue again came up at the First Ministerial Conference of the WTO in Singapore in 1996. In this Conference, developing countries including India once again rejected the proposal of the US to include labour standards as an agenda in the WTO. The final Ministerial Declaration at Singapore endorsed the stand of the developing countries and reiterated the following:

i. ILO is the competent body to set and deal with core labour standards and WTO affirms its support in promoting such standards.

ii It rejected the use of labour standards for protectionist purposes and agreed that the comparative advantage of countries, particularly low wage developing countries, must in no way be put into question.

iii. It noted that the WTO and ILO Secretariats would continue their existing collaboration.

The Ministerial Declaration at Singapore was seen by the developing countries as a successful heading off of further moves towards linkage between trade and labour standards and confining discussions within the ILO.

In the Third WTO Ministerial Conference held at Seattle in 1999, the US had proposed establishment of a Working Group on Trade and Labour, which would deal with issues such as trade and employment, trade and social protection, core labour standards, forced and child labour, etc. and submits a report for consideration at the Fourth Ministerial Conference. The European Union proposed the establishment of a joint ILO-WTO Working Forum on trade, globalisation and labour issues to promote better understanding of the issues involved through a substantial dialogue between all interested parties including governments, employers, trade unions and other international organizations. There was no conclusive outcome from this Conference, which attracted much criticism and demonstrations by NGOs and other activist groups.

The Fourth Ministerial Conference of the WTO, which was held in Doha from 9th to 14th November 2001, reaffirmed the Declaration made at the Singapore Ministerial Conference of the WTO that ILO is the appropriate forum to set and deal with the issues of core labour standards.

India's Future Stands on Linkages Issue

India will continue to adhere to the stand that all matters related to international labour standards are to be agitated only in the relevant forum of the ILO and that the comparative advantage of countries, particularly developing countries, must in no way be put into question. India will continue to reject the use of labour standards for protectionist purposes and any attempt to link labour standards with trade will be vehemently opposed invariably, even if isolated by other countries.

Labour Law

As per "workmen's" compensation act -1923 what are the privileges and benefits those are included in wage, also state employer's obligation and rights towards employees.

The following are the privileges and benefits included in the wages:

- Free accommodation
- Maternity benefit payable to women delivering a child
- Dearness allowances
- Overtime allowance
- Overtime pay
- Benefits in the form of food or clothing
- Value of any other concessions, benefits or privileges capable of being estimated in money
- Gratuity payable to a workman on retirement
- Bonus earned in the date of accidents
- Employer's obligations and rights towards employees:
- The obligation and rights of employers and employees under the workmen's compensation act given below

Section 3: Employer's Liability for Compensation

If personal injury is caused to a workman by accident arising out of and. in the course of his employment, his. Employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable

- In respect of any injury which does not result in the total or partial disablement of the workmen for a period of exceeding [three] days.
- In respect of any [injury, hot resulting in death [30] [or permanent total disablement], caused by an accident which is directly attributable tothe workman having been at the time thereof under the influence of drink or drugs, orthe willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, orthe willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen,

Provided that if it is Proved

That a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this subsection for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.]

Save as provided by [37] [sub-sections (2), (2A)] and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is [38] [***] directly attributable to a specific injury by accident arising out of and in the course of his employment. Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury if he has instituted a claim to compensation in respect of the injury before a Commissioner; or if

an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

Section 4: Amount of Compensation

Subject to the provisions of this Act, the amount of compensation shall be as follows, namely: where death results from the injury an amount equal [fifty] per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or

An amount of [39b] [eighty] thousand rupees, whichever is more; where permanent total disablement results an amount equal to [sixty] per cent of the monthly wages of the injured jury workman multiplied by the relevant factor; or

An amount of [ninety] thousand rupees, whichever is more.

Explanation I: For the purposes of clause (a) and clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II: Where the monthly wages of a workman exceed [39e] [four] thousand rupees, his monthly wages for the purposes of clause

(a) and clause

(b) shall be deemed to be [39e] [four] thousand rupees only;

(c) where permanent partial disablement results from the injury

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

Explanation I: Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall

be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

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

(d) Where temporary disablement, whether total or partial, results from the injury a half monthly payment of the sum equivalent to twenty-five per cent of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which 3 the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.

(2A) The half-monthly payment referred to in clause (a) of sub-section (1) shall be payable on the sixteenth day

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

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

Labour Legislation Part-I

How do you visualize the need for a labour legislation in the industrial world? Give out the classification and principles of labour laws.

Labour legislation is necessary for the following reason:

- The workers were financially weak and had little bargaining power.
- The wages paid to factory workers were quite inadequate to meet their barest needs.
- If workers exposed to serious accidents because machine lost their employment and had no right to compensation.
- The employment was not secured.
- Worker would be discharged suspended or dismissed at any time without assigning any reason.
- Children and women were taking to work under hazardous conditions

It establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy by providing a framework within which employers, workers and their representatives can interact with regard to work-related issues; it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy.

It provides a clear and constant reminder and guarantee of fundamental principles and rights at work that have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced. Labour legislation is widely used both to regulate individual employment relationships and to establish the framework within which workers and employers can determine their own relations on a collective basis, for example through collective bargaining between trade unions and employers or employers' organizations or through mechanisms of worker participation in the enterprise. Regulation of the collective relations of workers and employers typically includes laying down legal guarantees of the right of workers and employers to organize in occupational organizations, to bargain collectively and the right to strike, as well as mechanisms for worker participation at the enterprise level

The legislative regulation of the individual employment relationship typically entails the enactment of provisions governing the formation and termination of the relationship (that is, the conclusion of contracts of

employment, their suspension and termination) and the rights and obligations relating to the different aspects of the relationship (such as the minimum age for admission to employment of work, the protection of young workers, equality at work, hours of work, paid holidays, the payment of wages, occupational safety and health and maternity protection). Provision also has to be made for enforcement procedures and supporting institutions (such as labour inspection services and courts or tribunals).

Classifiaction of Labours Laws

1. General laws, which are applicable to all establishments not otherwise provided for, e.g factories act, 1948; the industrial employment act 1946.
2. Specific laws, which are applicable to specific, industry-the mines act, 1962. The plantation labour act, 1948, Indian merchants shipping act 1923. Working journalist's newspaper employees and miscellaneous provisions act, 1955. Laws relating to specific matters, namely wages.
3. Welfare
4. Housing
5. Leave the payment of wages act 1936,the minimum wages act 1948,the worker men compensation act 1923, the employees compensation act 1923; the employment provident act 1952, the employees state insurance act 1948 the bonded labour and system act, 1976.

Laws relating to association of workers e.g. the trade unions act, 1926, the industrial dispute act.

Laws relating to social insurance are: The workmen compensation act 1923, the maternity benefits act, 1961 and the employee's state insurance act 1948

Principle of Labour Laws

Labour legislation in any country should be based upon-

1) Social justice (2) Social Equity (3) International Uniformity and 4) National Economy

Social Justice

Ideal condition in which all members of a company that have the same basic rights, security, opportunities, obligations and social benefits. * Social legislation: Laws aimed at promoting the social functioning of individuals and groups and at protecting their rights.

Social Equity

legislation based on social justice prescribes a definite standard for adoption in future. Such standard is forced after taking into consideration the past and present circumstances. Once this standard is fixed by legislation it cannot be changed unless the circumstances and conditions so warrant.

International Uniformity

International uniformity is another principle on which labour laws are based. This important role played by international organization in this connection is praiseworthy. This organization aims at securing minimum uniform standard in respect of all labour matters.

National Economy

While framing the labour law the general economic situation of the country has to be kept in mind so that object may not be defeated.

Labour Legislation Part-II

(a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

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

Explanation: Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of [two thousand and five hundred rupees] for payment of the same to the eldest surviving dependent of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependent or was not living with his dependent at the time of his death to the person who actually incurred such expenditure.

Section 4A

Compensation to be paid when due and penalty for default:

1. Compensation under section 4 shall be paid as soon as it falls due.
2. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.
3. Where any employer is in default in paying the compensation due under this Act within one month from the date it f ell due, the Commissioner shall if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty: Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation: For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependent, as the case may be.

Section 5

Method of calculating wages. In this Act and for the purposes thereof the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated] as follows, namely:

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

(C) In other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)],] the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

Explanation: A period of service shall, for the purposes of [48] [this [49] [section]] be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

Section 6: Review

1. Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the workman accompanied by the certificate of

a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

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

Section 7

Commutation of half-monthly payments: Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not-less than six months, on the application of either party to the Commissioner be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

Section 8

Distribution of Compensation

1. No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation: Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation [53] [of an amount equal to three months 'wages of such workman and so much of such amount] as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.]

2. Any other sum amounting to not less than ten rupees which is payable as, compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

3. The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

4. On the deposit of any money under sub-section (1), [54] [as compensation in respect of a deceased workman] the Commissioner [55] shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

5. Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as, the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

6. Where any compensation. deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

7. Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of an-y dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case: Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any -sum already paid to him.

8. Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31

Section 9

Compensation not to be assigned attached or charged.

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

Section 10

Notice and claim:

1. No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within [60] [two years] of the occurrence of the accident or, in case of death, within [60] [two years] from the date of death: Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease: Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement to his employer: Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that

employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected.] Provided further that they want of or any defect or irregularity in a notice shall not be a bar to the [63] [entertainment of a claim

- If the claim is [64] [preferred] in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

- Iif the employer [65] [or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed] had knowledge of the accident from any other source at or about the time when it occurred: Provided further that the Commissioner may [66] [entertain] and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been [67] [preferred] in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or [68] [prefer] the claim, as the case may be, was due to sufficient cause.

2. Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon [69] [any one of] several employers, or upon any person [70] responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

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

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

Section 10A

Power to require from employers statements regarding fatal accidents.

1. Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.
2. If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.
3. If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.
4. Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

Labour Dispute

How would you categories a dispute into an industrial dispute? Explain illegal strike and lockouts.

Industrial Dispute

One of the most striking trends is the progressively increasing Government intervention in labour management relations. In post-

independence period, there was a tremendous progress in industrial sphere by which relations between labour and capital came into great importance. For development of industry, it is necessary that there shall be continuous and growing production, which is only possible if there are no interruptions and stoppages in production, due to absence of disputes. The various agencies of production are satisfied and fare in a harmonious mood to work. In other words, industrial peace is very necessary for prosperity of industry.

Industrial dispute means any dispute or difference between employers and employers or employers and workmen or between workmen and workmen, which is connected with employment or non-employment or terms of employment or conditions of labour, or any person.

An industrial dispute must necessarily be a dispute in an industry. An industrial dispute has three ingredients

- There should be real and substantial dispute or difference.
- The dispute or difference must be between employers and employers or between employers and workmen or between workmen and workmen.
- The dispute or difference must be connected with employment and non-employment, or with the conditions of labour of any person.

The following dispute have been categorized as industrial disputes:

- allegation of wrongful termination of service
- Compulsory retirement employee
- Claim for reinstatement of dismissed workmen.
- Dispute connected with minimum wages
- Dispute regarding payment to be made under production bonus scheme
- Claim fro compensation for wrongful dismissal.
- Dispute regarding interpretation of standing orders
- Dispute relating to lock out or bona fide and genuine closure of business.

- Non implementation of award and claim for compensation payable by workmen to the employer for loss caused by strike and
- Demand of an employee relating to his confirmation on a post holding in an acting capacity.

Strike and lockout are two coercive measures resorted to by the employees and the employers respectively, for compelling the employers or employees to accept their demands or conditions or services.

Strike (industrial)

Strike means a cessation of work, by a body of persons employed in any industry acting in combination or a concerted refusal or a refusal under a common understanding if any number of persons who are or have been so employed to work or to accept employment.

Features of a Strike

- There shall be cessation of work or refusal to work
- Cessation or refusal to work should be by a body of workmen
- Workmen should be acting in concert in order to enforce a demand against the employer during an industrial dispute.

Kinds of Strikes

Strikes may be 'official' (union-authorized) or 'wildcat' (undertaken spontaneously), and may be accompanied by a sit-in or work-in, the one being worker occupation of a factory and the other continuation of work in a plant the employer wishes to close. In a 'sympathetic' strike, action is in support of other workers on strike elsewhere, possibly in a different industry. A general strike is action by members of several key industries that aims to halt a country's economic activity.

Illegal Strike

A strike called in violation of the law. Strikes are generally illegal when they occur as a result of a dispute over the interpretation of a collective agreement currently in force, when they occur before conciliation procedures have been complied with, or when certification

proceedings are under way. If the strike is illegal, workmen are not only liable to those wages but are also liable to punishment by way of discharge or dismissal. Workers are however entitled to wages for a period of lock out which is illegal and unjustified.

A lockout is a weapon of an employer to thwart or enforce such change by preventing employees from working. Another measure is work to rule, when production is virtually brought to a halt by the strict following of union rules.

Lockout

Lockout means the temporarily closing of a place of employment or suspension of work or the refusal by an employer to ploy any number of persons employed by him.

In case of lockout the workers are asked by the employer to keep away from work and they are not under obligation to present themselves for work.

Illegal Strikes and Lockout

1. A strike or a lock-out shall be illegal if - (i) it is commenced or declared in contravention of section 22 or section 23; or(ii) it is continued in contravention of an order made under sub-section (3) of section 10 [lda-136 or sub-section (4A) of section 10A;.
2. Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 or sub-section (4A) of section 10A.
3. A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Labour Factory Act 1948 (Part-I)

Describe objective, scope and coverage of factories act 1948. What are the employer's obligations in it?

There has been rapid industrialization in India during the second half of nineteenth century. The first Factories Act was passed in 1881. Since then, the Act has been amended on many occasions. The Factories Act 1934 was enacted to replace all previous legislation in regard to factories. The Act was drafted in the light of the recommendations of Royal Commission on Labour and the Conventions of Internationals Labour Organisation. This Act was suitably amended from time to time. The working of the Act revealed a number of defects, abuses and weaknesses, which hampered in effective administration. There was genuine need for the revision of the Act. Therefore, Factories Act 1948, consolidating the previous laws was passed in 1948. The Act received the assent of the Governor-General of India on 23rd September 1948 and came into force on 1st April 1949.

The Factories Act, 1948

Objectives

1. To ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.
2. To prevent haphazard growth of factories through the provisions related to the approval of plans before the creation of a factory.
3. To regulate the working condition in factories, regulate the working hours, leave, holidays, overtime, employment of children, women and young persons
4. Scope and coverage
5. Regulates working condition in factories.
6. Basic minimum requirements for ensuring safety, health and welfare of workers.
7. Applicable to all workers.
8. Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

Main Provisions

- Compulsory approval, licensing and registration of factories.
- Health measures.
- Safety measures.
- Welfare measures.
- Working hours.
- Employment of women and young persons.
- Annual leave provision.
- Accident and occupational diseases.
- Dangerous operations.
- Penalties.
- Obligations and rights of employees.

Obligation of Employers

1. Compulsory approval: the occupier of any factory has to obtain prior approval of the state government for the site on which the factory is to be situated and for the construction or extension of a factory.

2. Registration/license and notice by occupier: The occupier of factory is also required to get the factory registered for obtaining a license for operating it and send a notice of occupation to a chief inspector of factories, at least 15 days before he begins to occupy the factory. The application for registration and notice of occupation shall be submitted in triplicate in the prescribed fee and such other information as may be required by the licensing authority. The license fee shall be paid a Treasury challenge under the appropriate head of the account.

3. Notice of change of manager: whenever a new manager is appointed the occupier must intimate the inspector and the chief inspector in the prescribe form within 7 days from the date of charge taken.

4. General duties as to health, safety and welfare of workers: Every occupier shall

    - Ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory

- Provide and maintain plant and systems of work in the factory that are safe and without risks to health
- Make arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of article and substances.
- Provide necessary information, instruction, training and supervision for health and safety of all workers.
- Maintain all places in the factory in a condition that is safe and without risks to health.
- Provide and maintain such working environment in the factory that is safe, without risks to health and with adequate facilities and arrangements for the welfare of workers

Certificates of Fitness

1. A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.
2. The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew -
   - A certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work.
   - A certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year, and is fit for a full day's work in a factory: Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

3. A certificate of fitness granted or renewed under sub-section (2)

   a. Shall be valid only for a period of twelve months from the date thereof;

   b. may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.

4. A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.

5. Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.

6. Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.

7. Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

Employmet of Young Persons on Dangerous Machines

(1) No young person shall be required or allowed to work at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and - (a) has received sufficient training in work at the machine, or (b) Is under adequate supervision by a person who has a thorough knowledge and experience of the machine. (2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

1. General duties as regards article and substances for use in factories: Every person who design, manufacture, Imports or supplies any article for use in any factory shall

   - Ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to health of the workers when properly used
   - Take necessary steps to ensure that adequate information will be available in the connection with the use of the article and conditions necessary to ensure that the article, when put to such use, will be safe and without risks to health of the workers.

2. To provide health measure: The occupier of factory is obligated to undertake following measure for measures for ensuring good health and physical fitness:-

   - The occupier is required to keep the factory premises clean and free waste and effluvia. should make arrangement for sweeping and removing dirt daily.
   - Keep the factory adequately ventilated temperature and humid.
   - Prevents dust and fumes
   - Avoid overcrowding

Sufficient and suitable natural or artificial Lighting and wholesome drinking water at suitable points and during hot season.

Every factory should provide and, maintain latrine, urinals and spittoons, latrines and urinals.

(1) In every factory

a. Sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory.

b. Separate enclosed accommodation shall be provided for male and female workers.

c. Such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing

by the Chief Inspector, communicate with any workroom except through an intervening open space or ventilated passage.

d. All such accommodation shall be maintained in a clean and sanitary condition at all times.

e. Sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.

(2) In every factory wherein more than two hundred and fifty workers are ordinarily employed

a. All latrine and urinal accommodation shall be of prescribed sanitary types.

b. The floors and internal walls, up to a height of ninety centimetres, of the latrines and urinals and the sanitary blocks shall be laid in glazed titles or otherwise finished to provide a smooth polished impervious surface.

c. Without prejudice to the provisions of clauses (d) and (e) of sub-section (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

(3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

First Aid Appliances

1. There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory.

2. Nothing except the prescribed contents shall be kept in a first-aid box or cupboard.
3. Each first-aid box or cupboard shall be kept in the charge of a separate responsible person who holds a certificate in first-aid treatment recognized by State Government and who shall always be readily available during the working hours of the factory.
4. In every factory wherein more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory.

7) To undertake safety measures:

Every factory must take appropriate safety measure as provided under the act

1) Fencing of all dangerous and moving parts of the machinery while in motion or use
2) Young persons (age between 15 to 18 years) are not supposed to work on any dangerous machine without adequate training and supervision.
3) Keeping floors, stairs, steps, etc. free from obstructions and slippery substances and provided with substantial handrails.
4) taking necessary precautions and providing screens or goggles for protection of eyes, precautions to prevent exposure to dangerous fumes, gases or dust, and measure to prevent accumulation of explosive or in flammable dust, fumes, gases or vapors.

Welfare Amenities

All the factories shall provide adequate and suitable facilities for

a) Washing and drying of wet cloths and storing of cloths
b) Sitting arrangements for employee who are required to work in standing position in order that they may take shorts rests in the course of their work

c) First aid box or cupboards equipped with prescribe contents shall be provided

d) Factory should provide ambulance room if workers are more than 500

e) The canteen should be provided with sufficient light and ventilated

f) They should provide drinking water in rest rooms, shelters and lunch rooms.

g) Crèches should provide when more tan 30 women workers are employed in than factory.

Working Hours, Holidays and Overtime

1) Restriction for women workers not to work at night. And the child below 14 is not to be employed in the factory
2) No dual employment
3) The working hours for an adult should not exceed 48 hours in a week.
4) Every worker should allowed at least half an hour rest interval after a maximum working of 5 hours at a stretch
5) No overlapping of shift
6) Every worker should have one holiday in a week
7) If a person does more work at usual time he should receive the wages ouble the ordinary rate of wages

Leave with Wages

Earned leave- every workers who has worked for a period of 240 days or more during a calendar year or. If his services commence after first of January, then for at least two third s or the total number of days in the remaining part of the year. Display notice, maintain and submit returns:

The occupier and manager should required to intimate ant intention of closure of factory or any section or department thereof, along with the reasons for such closure, number of workers to be affected, etc. they should also maintain register of accidents and dangerous occurrence, inspection book etc. the manager is generally required to furnish certain

returns such as annual return, half yearly returns which relating to wages, leaves holidays etc.

Display of Notices

(1) In addition to the notices required to be displayed in any factory by or under this Act, there shall be displayed in every factory a notice containing such abstracts of this Act and of the rules made there-under as may be prescribed and also the name and address of the Inspector and the certifying surgeon.

(2) All notices required by or under this Act to be displayed in a factory shall be in English and in a language understood by the majority of the workers in the factory, and 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.

(3) The Chief Inspector may, by order in writing served on the manager of any factory, require that there shall be displayed in the factory any other notice or poster relating to the health, safety or welfare of the workers in the factory.

Returns

The State Government may make rules requiring owners, occupiers or managers of factories to submit such returns, occasional or periodical, as may in its opinion be required for the purposes of this Act. Notice of accidents, dangerous occurrence and diseases: the manager of a factory is required to send notice of the fatal and other accidents causing disablement to worker for a period of 48 hours or more, dangerous occurrences whether causing any bodily, injury or not, and any worker contacting any occupational disease Obligations regarding hazardous process/ substances;

The manager required to undertake the following measure for ensuring safety of life and health of the workers the occupier or manager inform the workers, the local authority and the general public in the vicinity of the factory, about the dangerous and health hazards caused by the hazardous process

a) They should have plane to handle usage and storage of hazardous inside the factory and their deposal outside the factory

b) The occupier shall also maintain accurate and up to date health/ medical records of the workers who are exposed to any chemical, toxic or ant other harmful substances.

c) The occupier should inform the chief inspector about the hazardous process within 30 days before the commencement of such process

Labour Factory Act 1948 (Part-II)

(b) Narrate the rights of an employer and an employee under act - 1948. What is the provision for prevention of over-crowding? Right of workers, etc. –the obligation of the employers, practically speaking the right of employees

Every Worker shall have the Right to:

- Obtain from the occupier, information relating to workers' health and safety at work.
- Get trained within the factory wherever possible, or, to get himself sponsored by the occupier for getting trained at a training centre or institute, duly approved by the Chief Inspector, where training is imparted for workers' health and safety at work.
- Represent to the Inspector directly or through his representative in the matter of inadequate provision for protection of his health or safety in the factory.

4) A workers has the right to claim wages for leave allowable to him, under the provisions of the payment of wages act.

5) A workers has the right not to pay any fee or charge for the facilities for the facilities provided by the employer.

Right of Employers

- The obligation of the employee can also be reckoned as right of the employers. Beside some more right have been vested in the employer under the factories act.

- Right to carry on the plan of setting up a new factory or extension of an existing one, if no adverse order is communicated to him within 3 months of the application for approval.
- Right to appeal to the central government against the sate government's refusal to grant approval to his application for setting up a factory.
- Right to retain a child or a young person not holding a certificate of fitness, from working in the factory.
- Right of appeal against the order of the inspector or chief inspector, to the prescribed appellate authority, within 30 days of the service of the order
- Right to demand an application for leave from the workers and a medical certificate when leave is availed on the ground of illness. Provision of overcrowding

    1. No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.
    2. Without prejudice to the generality of sub-section (1), there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least 9.9 cubic metres and of a factory built after the commencement of this Act at least 14.2 cubic metres or space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more than 4.2 metres above the level of the floor of the room.
    3. If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.
    4. The Chief Inspector may by order in writing exempt, subject to such conditions, if any, as he may think fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein. Write short notes on any five

d) Medical befit council under employee's state insurance act-1948

Medical Benefit Council

10. (1) The Central Government shall constitute a Medical Benefit Council consisting of -

a. The Director General, Health Services, ex officio, as Chairman.

b. A Deputy Director-General, Health Services, to be [appointed] by the Central Government.

c. he Medical Commissioner of the Corporation, ex officio

d. One member each representing each of the States (other than Union territories) in which this Act is in force to be appointed by the State Government concerned.

e. Three members representing employers to be appointed by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government.

f. Three members representing employees to be appointed by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government; and

g. Three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

(2) Save as otherwise expressly provided in this Act, the term of office of a member of the Medical Benefit Council, other than a member referred to in any of the clause (a) to (d) of sub-section (1), shall be four years from the date on which his appointment] is notified: Provided that a member of the Medical Benefit Council shall, notwithstanding the expiry of the said period of' four years continue to hold office until the appointment of his successor is notified.

(3) A member of the Medical Benefit Council referred to in clauses (b) and (d) of sub-section (1) shall hold office during the pleasure of the

Government appointing him. e) Important features of the minimum wages act 1948 an Act to provide for fixing minimum rates of wages in certain employments.

Whereas it is expedient to provide for fixing minimum rates of wages in certain employments;

An Act to provide for certain benefits to employees in case of sickness, maternity and "employment injury" and to make provision for certain other matters in relation thereto; Whereas it is expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto;

The Act Lays Down for Fixation of

- A minimum time rate of wages.
- A minimum piece rate.
- A guaranteed time rate and.
- An overtime rate

For different occupation, localities or classes of work and for adults, adolescents, children and apprentices.

The minimum rate of wages may consist of

1. A basic rate of wages and a cost of living allowance or
2. A basic arte of wages with or without the cost of living allowance and the cash value of the concessions in respect of essential commodities supplied at concessional rates.
3. The act lays down that wages shall be paid in cash although it empowers the appropriate government to authorize the payment of minimum wages either wholly or partly in kind in particular cases.
4. It provides that the cost of living allowance and cash value of the concessions in respect of supplies of essential commodities at concessional rates shall be computed by component authority at certain interval.

5. The act empowers the appropriate government to fix the number of hours of work per day, to provide for a weekly holiday and the payment of overtime wages of which minimum rates of wages have been fixed under the act.
6. The act lays down for appointment of inspectors and other authorities to hear and decide claims arising out of payment of wages at less than the minimum rates of wages or remuneration for days of rest of work done on such days or of overtime wages
7. All establishments covered by the act are required to maintain registers and office records in the prescribe manner
8. The act provides the procedure for dealing with complaints arising out of the violation of the provisions of the act and for imposing penalties for offences under the act.

Eligibility and Determination of Bonus

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced. Bonus under the payment of bonus act cannot be claimed by workers as a matter of right.

The bonus formula under the act rest on calculation of the available surplus and it envisages the following steps Computation of available surplus. The available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in section 6: Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of (a) The gross profits for that accounting year after deducting there from the sums referred to in section 6; and (b) An amount equal to the difference between- (i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer

for the immediately preceding accounting year; and (ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.]

Section 6

Sums Deductible from Gross Profits

The following sums shall be deducted from the gross profits as prior charges, namely:-

- Any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the Agricultural Income-tax Law, as the case may be: Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such notional normal depreciation;
- Any amount by way of [development rebate or investment allowance or development allowance] which the employer is entitled to deduct from his income under the Income-tax Act;
- Subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year.
- Such further sums as are specified in respect of the employer in the [Third Schedule].

b) Withdrawal or cancellation of trade union: A certificate of registration of a Trade Union may be withdrawn o cancelled by the Registrar –

1. On the application of the Trade Union to be verified in such manner as may be prescribed, or

2. If the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter, provision for which is required by Section 6: Provided that not less than two months previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

3. Section 10 provides that register may direct for withdrawal or cancellation of registration in the following cases Trade union has ceased to exist Trade union has on its own applied for its withdrawal or cancellation Allowed any rule to continue against the provision of this act

c) Conciliation proceeding and settlement under industrial dispute act-1947:

Conciliation begins when bargaining between the parties is deadlocked. Conciliation is an extension of the bargaining process in which the parties try to reconcile their differences. A third party acting as an intermediary –independent of the two parties and acting impartially – seeks to bring the disputants to a point where they can reach an agreement.

The conciliator has no power to compel the parties to the dispute to attend and does not actively take part in the settlement process but acts as a broker, bringing people together. Conciliation and mediation are third-party mechanisms to assist parties to negotiate during the process of negations, particularly when they are deadlocked. Conciliation is voluntary when parties are free to make use of it if they wish.

Composition of Conciliation

1. The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

2. A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

3. A Board shall consist of a Chairman and two or four other members, as the appropriate Government thinks fit.

4. The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party: Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

5. A Board, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number: Provided that if the appropriate Government notifies the Board that the services of the Chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

Duties of Conciliation Officers

1. Where an industrial dispute exists or is 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.

2. 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 settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

3. If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

4. If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

5. If, on a consideration of the report referred to in sub-section (4), 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 the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore.

Duties of Board

1. Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

2. If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

3. If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

4. If, on the receipt of a report under-sub-section (3) in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal under section 10, it shall record and communicate to the parties concerned its reasons therefore.

5. The Board shall submit its report under this section within two 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: Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate: Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

6. A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government: Provided that, Subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

Settlements

1. 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.

2. Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

3. An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the

award becomes enforceable under section 17A: Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit: Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit, so however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

4. Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal, for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be, on such reference shall be final.

5. Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

6. Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

7. No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.

Labour Welfare

What do you understand by term labour welfare? What is it all about?

Classical economics and all microeconomics labour is one of four factors of production, the others being land, capital and enterprise. It is a

measure of the work done by human beings. There are macro-economic system theories, which have created a concept called human capital (referring to the skills that workers possess, not necessarily their actual work), although there are also counterpoising macro-economic system theories that think human capital is a contradiction in terms.

The term welfare suggests the state of well-being and implies wholesomeness of the human being. It is a desirable state of existence involving the mental, physical, moral and emotional factor of a person

Adequate levels of earnings, safe and humane conditions of work and access to some minimum social security benefits are the major qualitative dimensions of employment which enhance quality of life of workers and their productivity. Institutional mechanisms exist for ensuring these to workers in the organized sector of the economy. These are being strengthened or expanded to the extent possible. However, workers in the unorganized sector, who constitute 90 per cent of the total workforce, by and large, do not have access to such benefits. Steps need to be taken on a larger scale than before to improve the quality of working life of the unorganized workers, including women workers.

Labor welfare is the key to smooth employer-employee relations. In order to increase labor welfare, Employers offer extra incentives in the form of labour welfare schemes, and to make it possible to pursued workers to accept mechanization. Sometimes the employers to combat the influence of outside agencies on their employees, use labor welfare as a tool to minimize the effect they may have on the labour. labour welfare measures are also initiated with the view to avoiding payment of tax on surplus and to build up at the same time better relations with employees.

There are some theories which constitutes the conceptual frame framework of the labour welfare, describe these theories

Several theories constituting the conceptual framework of labour welfare have so far been outlined these are

- Policy theory
- Religious theory
- Philanthropic theory

- Trusteeship theory
- Placating theory
- Public relations theory
- Functional theory

Policy Theory

This theory is based on the contention that a minimum standard of welfare is necessary for workers. The assumption on which the theory is based is the without compulsion, supervision and fear of punishment, no employer will provide even the barest minimum of welfare facilities for workers this theory is based on the assumption that man is selfish and self –centered, and always tries to achieve his own ends, even at the cost of the welfare of others. According to this theory, owners and managers of industrial undertakings make use of every opportunity to engage in this kind of exploitation. The sate has therefore to step in to prevent exploitation by enacting stiff laws to coerce industrialists into offering a minimum standard of welfare to their workers. Such interference it is felt is in the interests of the progress and welfare of the state as well. Laws are enacted to compel management to provide minimum wages, congenial working conditions and reasonable hours of work and social security.

The policy theory involves several stages of implementation

- Enactments
- Periodical supervision
- Punishment

Religious Theory

The theory views were an essentially religious. Religious feelings are what sometimes prompt employers to take up welfare activities in the belief of benefits either in his life or in support after life. Any good work is considered an investment, because both the benefactor and the beneficiary are benefited by the good work done by the benefactor. This theory does not take into consideration that the workers are not beneficiaries but rightful claimants to a part of the gains derived by their labour.

Philanthropic Theory

Philanthropy is the inclination to do or practice of doing well to ones fellow men. Man is basically self-centered and acts of these kinds stem from personal motivation, when some employers take compassion on their fellowmen, they may undertake labor welfare measures for their workers.

Trusteeship Theory

In this theory it is held that the industrialists or employers holds the total industrial estate, properties and profits accruing form them in trust for the workmen, for himself, and for society. It assumes that the workmen are like minors and are not able to look after their own interests that they are ignorant because of lack of education. Employers therefore have the moral responsibility to look after the interests of their wards, who are the workers.

Placating Theory

As labour groups are becoming better organized and are becoming demanding and militant, being more conscious of their rights and privileges that even before, their demand for higher wages and better standards increases. The placing theory advocates timely and periodical acts of labour welfare to appease the workers.

Public Relations Theory

This underlining philosophy behind this theory is an atmosphere of goodwill between management and labour and also between management and the public. Labour welfare programmes under this theory, work as assort of an advertisement for companies and helps build up good and healthy public relations. The labour welfare movements may be utilized to improve relations between management and labour. An advertisement or an exhibition of labour welfare programme may help the management projects a good image of the company.

Functional Theory

The concept behind this theory is that a happy and healthy person is a better, more productive worker. Here, welfare is used as a means to secure, preserve and develop the efficiency and productivity of labour. As discussed earlier, the approach to any solutions, especially as that as between the workers and the management should be dialogue and an understanding of one another's viewpoint. Once agreement has been reached, compliance by both parties can be assured to a very great extent. This also called the efficiency theory.

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Lesson 1.3 - Labour and the Constitution

A Constitution is a document with special legal sanctity which sets out the framework and principles that define the nature and extent of government. It is the source of all legislations. Information relating to labour laws is covered in list III (concurrent list) of the seventh schedule to the constitution of India. Entry no 22 speaks about the trade unions, industrial and labour disputes. Social security and social insurance are covered by entry 23. Entry 24 deals with labour welfare and entry 36 speaks about factories. It can be said that any law including labour law, enforced in this country must respect the part II of the constitution, failing which such law will be declared as null and void.

The subjects in the union list over which parliament has exclusive power to legislate, include participation in the national conferences, associations and other decision making bodies and implementation of decisions made there, regulation of labour and safety in mines and oilfields, major ports, railways, posts, telegraphs and telephones and defense, industrial disputes concerning union employees and inter-state migration. Among the subjects in the concurrent list are trade unions, industrial and labour disputes, welfare of labour including conditions of work, provident funds, employers liability, workmen's compensation, invalidity and old age pensions, maternity benefits, social security and social insurance, employment and unemployment, vocational and technical training of labour, economic and social planning and factories. Both Parliament and the state legislatures have power to make laws with respect to these matters but, in the event of conflict, the law made by Parliament prevails.

Origin and Growth of Labour Legislation in India

The first organized industry in India to attract legislative control was the plantation industry in Assam. The system of recruitment through professional recruiters had led to severe hardships for the workers, especially as a result of the methods used by the planters to prevent workers

from leaving the tea gardens, and several acts were, therefore, passed both by the Bengal government from 1863 onwards to regulate recruitment. Most of these laws were, however, enacted not with view to safeguarding the interest of the workers, but more with a view to protecting the interest of the employers. The first Factories act and the first mines act were passed in 1881 and 1901 respectively.

Legislation extending to the entire working class, as distinguished from workers in specific industries, was first enacted after 1922. Some of the most important of such laws in respect of workmen's compensation, trade unionism, industrial relations, hours of work for railway employees, and payment of wages.

When the popular ministries came into power under the government of India act, 1935, they undertook labour legislation with new enthusiasm. In this they were guided by the labour policy of the Indian national congress, which was to secure to the industrial workers a decent standard of living, reasonable hours of work and conditions of labour in conformity, as far as economic conditions of the country permitted, with international standards, suitable machinery for settlement of disputes between employers and workmen, protection against the economic consequences of old age, sickness and unemployment and the right of workers to form unions and to strike for the protection of their interests.

The need for a certain measure of uniformity in labour legislation and the existence, side by side, of a central and a number of provincial governments with concurrent jurisdiction in the sphere of labour legislation, combined with the imperative necessity of removing, as far as practicable, all friction between capital and labour, led the government of India in 1942 to set up a permanent tripartite labour organization.

The three main objects of this machinery are:

(a) promotion of uniformity in labour legislation

(b) determination of a procedure for settlement of industrial disputes,

(c) consultations on all matters of industrial interest affecting the country as a whole.

The opportunity afforded by this tripartite machinery for regular and periodical discussions between representatives of governments, employers and workers naturally helped to focus attention on the main problems of labour, with the result that during recent years there has been a remarkable extension in the scope and content of protective labour legislation.

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Lesson 1.4 - Agencies Interested in Labour Problems

It is true that almost everyone is interested in the solution of labour problems, in the sense that they are not problems of any particular group to the entire exclusion of the others, but the parties principally and vitally concerned are three, namely the workers, the employers and the government. As stated before, for many years none of them took any active step for the solution of the problems.

Philanthropic agencies and individual social workers were the first to give attention to the problems. They were motivated mainly by humanitarian considerations. They created and focused public opinion on labour problems as they had an evil effect on society. Under their lead, workers were organized to fight against the exploitation of industrialists.

They also influenced some of the industrialists who began to realize their responsibility for the welfare of their workers. By the force of public opinion, government was also compelled to give up its attitude of neutrality and laissez-faire. In India, the work done by the servants of India society, the social service league and others is worth mentioning in this connection.

WORKERS: Workers tried their best to improve their lot with the help of their accredited leaders and through their organizations and, in certain cases, by collective action. In the earlier stages, their efforts were unsuccessful in most of the cases. The main reason for this was that they were not on an equal footing with their employers for bargaining and lacked resources on which they could fall back for their living in the absence of wages.

EMPLOYERS: A few enlightened employers felt the necessity of some action for mitigating the evils of industrialization. They realized that investment on labour welfare work in the long run, would yield better dividends of increased efficiency from a contented working force..

GOVERNMENT: It is the custodian of the interests of the people, was also concerned with the economic, social, and moral well-being of the industrial workers, constituting as they do a large and important section of the society. As the years rolled by, government came to appreciate this and began to feel that it could not afford to be a silent spectator in the matter and had to intervene to settle dispute in the interest of national economy and for the welfare of society at large.

By reason of its authority and power, government is in a position to take effective steps for the solution of labour problems through legislative and administrative actions. By enacting labour legislation and by the strict enforcement of its provisions, a good many evil and harmful effects of industrialization could be eliminated or at least minimized.

Self Assessment Questions

1. State the Rights of employee in any organization
2. List out the agencies involved in labour legislation and administration
3. Discuss briefly about the ILC
4. Explain the legal framework of labor legislation and administration
5. Discuss the origin and growth of labour legislation in India
6. List out the ILO conventions in detail

CASE STUDY

'Available Hours' Legislation

This case focuses upon how proposed labour regulations created a furor among both business and unions in Saskatchewan. The case discusses the Saskatchewan government's decision to conduct public consultation regarding the implementation of a set of controversial labour regulations. These draft regulations required that employers with 50 or more employees be required to give any extra hours to the part timer who had been on staff the longest. These regulations still met with significant opposition, as some argued it would become more difficult for new workers to find part time jobs if available hours were being given to existing part time employees. Many businesses argued that the regulations would be unwieldy to manage and administer.

The 'available hours' controversy dominated the media for several weeks, with the Saskatchewan Federation of Labour being solidly in favour of it, and a coalition of business groups calling it a "job killing monster" The Case Study is designed to allow readers to discuss the introduction of labour legislation in particular, as well as all types of legislation in general.

After reading the case, readers are asked to assess the evidence and make a judgment about how the Saskatchewan government should proceed, and to make recommendations about what should be done next. Readers are also asked to consider what could have been done differently to reduce the public furor associated with this proposed legislation.

Questions

The Saskatchewan Government is meeting with considerable resistance to its attempts to introduce 'available hours' regulations that would force larger businesses to allocate extra hours of work topart-time workers on the basis of seniority.

1. Explain the purpose of the legislation.
2. What types of objections are being raised with regard to this legislation?
    a. What is the reaction of the business community toward the legislation?
    b. What is the reaction of the unions toward the legislation?
    c. What is the reaction of other groups toward the legislation?

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UNIT - II

Learning Objectives

- To understand about the various legal framework
- To identify the components of factories act
- To identify the issues addressing the maternity benefit act

Unit Structure

Lesson 2.1 - Factories Act, 1948

Introduction

In India the first Factories Act was passed in 1881. This Act was basically designed to protect children and to provide few measures for health and safety of the workers. This law was applicable to only those factories, which employed 100 or more workers. In 1891 another factories Act was passed which extended to the factories employing 50 or more workers.

Definition of a Factory

"Factory" is defined in Section 2(m) of the Act. It means any premises including the precincts thereof-

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

ii. Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on;

But does not include a mine subject to the operation of the Mines Act,1952 or a mobile unit belonging to the Armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

The following have held to be a factory:- (example)

i. Salt works
ii. A shed for ginning and pressing of cotton
iii. A Bidi making shed

iv. A Railway Workshop
v. Composing work for Letter Press Printing
vi. Saw Mills
vii. Place for preparation of foodstuff and other eatables

Highlights

- The Factories Act regulates the conditions of work (health, safety, etc) in factories. It safeguards the interests of the workers and it is for the welfare of the factory workers.
- The act received the assent of Governor General of India on September 23, 1948 and came into force on April 1, 1949 and extends to the whole of India. It was, in fact, extended to Dadra & Nagar Haveli, Pondicherry in 1963, to Goa in 1965 and to the State of Jammu & Kashmir in 1970.
- This act was further amended many times (1949, 1950, 1954, 1956, 1976 and 1989). The act is applicable to any factory in which ten or more than ten workers are working.

Scope of the Factory Act 1948

1) Regulate working condition in the factories.
2) Basic minimum requirements for ensuring safety, health and welfare of workers
3) Applicable of all workers
4) Applicable to all factories using power and employing 10 or more workers and if not using power, employing 20 or more workers on any day of the preceding 12 months

Main Provisions of Factory Act 1948

- Compulsory approval, licensing and registration of factories
- Health measures
- Safety measures
- Welfare measures
- Working hours

- Employment of women and young persons
- Annual leave provision
- Accident and occupational diseases
- Dangerous operations
- Penalties
- Obligations and rights of employees

Some of the Crucial Sections

Registration & Renewal of Factories

SECTION. 6: To be granted by Chief Inspector of Factories on submission of prescribed form, fee and plan.

Employer to Ensure Health of Workers Pertaining to

- Cleanliness Disposal of wastes and effluents - Sec 12
- Ventilation and temperature dust and fume - Sec 13
- Overcrowding Artificial humidification Lighting – Sec. 14
- Drinking water Spittoons. - Sec. 18

Safety Measures

- Fencing of machinery – Sec. 21
- Work on near machinery in motion. – Sec 22
- Employment prohibition of young persons on dangerous machines.– Sec 23
- Striking gear and devices for cutting off power. – Sec 24
- Self-acting machines.- Sec 25
- Casing of new machinery.- Sec 26
- Prohibition of employment of women and children near cotton-openers.- Sec 27
- Hoists and lifts.- Sec 28.

Welfare Measures

- Washing facilities – Sec 42
- Facilities for storing and drying clothing – Sec 43

- Facilities for sitting – Sec 44
- First-aid appliances – one first aid box not less than one for every 150 workers– Sec 45
- Canteens when there are 250 or more workers. – Sec 46
- Shelters, rest rooms and lunch rooms when there are 150 or more workers. – Sec 47
- Crèches when there are 30 or more women workers. – Sec 48
- Welfare office when there are 500 or more workers. – Sec 49

Working Hours, Spread Over & Overtime of Adults

- Weekly hours not more than 48 - Sec: 51
- Daily hours, not more than 9 hours. - Sec: 54
- Intervals for rest at least ½ hour on working for 5 hours. - Sec: 55
- Spread over not more than 10½ hours. - Sec: 56
- Overlapping shifts prohibited. - Sec: 58
- Extra wages for overtime double than normal rate of wages - Sec:59
- Restrictions on employment of women before 6AM and beyond 7 PM. - Sec: 60

Annual Leave with Wages

- A worker having worked for 240 days @ one day for every 20 days and for a child one day for working of 15 days.
- Accumulation of leave for 30 days.

Sec. 79

Approval, Licensing and Registration of Factories

(1) The State Government may make rules

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

(a) requiring the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site

on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;

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

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

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

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

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

(3) Where a State Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory, the applicant may within thirty days from the date of such refusal, appeal to the Central Government if the decision appealed for was of the State Government, and to the State Government in any other case.

Safety Provisions of the Act

1) Fencing of Machinery

Each and every dangerous hazardous and moving part of machinery shall be securely fenced by safeguards of substantial Construction, which shall be constantly maintained and kept in position while the parts of machinery they are fencing are in motion or in use.

2) Work on Near Machinery in Motion

- There in any factory it becomes necessary to examine any part of machinery, such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing. Such worker shall not handle a belt at a moving pulley unless the belt is not more than fifteen centimetres in width.
- No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion.

3) Employment of Young Person's on Dangerous Machines

- No young person shall be required or allowed to work at any unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and has received sufficient training in work at the machine.

4) Striking Gear and Devices for Cutting Off Power

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

5) Prohibition of Employment of Women and Children Near Cotton Openers

- No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work

6) Self-Acting Machines

- No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the apace over which it runs it a space over which any person is liable to pass, whether in the course

of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty-five centimetres from any fixed structure which is not part of the machine.

7) Casing of New Machine

- In all machinery driven by power and installed in any factory after the commencement of this Act, every set screw, bolt or key on any revolving shaft, spindle, and wheel pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger.

8) Excessive Weights

- No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

9) Hoists and Lifts

- In every factory every hoist and lift shall be *(i)* of good mechanical construction, sound material and adequate strength; and *(ii)* properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six mouths.
- Every hoist-way and lift-way shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part.

10) Revolving Machinery

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

11) Pressure Plant

- If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.

12) Floors, Stairs and Means of Access

- All floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstructions and substances likely to cause persons to slip, and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails.

13) Pits, Sumps, Openings in Floors etc

- In every factory fixed vessel, sump, tank, and pit or opening in the ground or in a floor which, by reasons of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.

14) Protection of Eyes

- The State Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of, the process.

15) Precautions Against Dangerous Fumes, Gasses etc

- No person shall be required or allowed to enter any chamber, tank, pit, pipe or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to persons employed there.

16) Explosive or Inflammable Dust, Gas etc

- Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be

likely to explode to ignition, all practicable measures shall be taken to prevent any such explosion by:

- Effective enclosure of the plant or machinery used in the process;
- Removal or prevention of the accumulation of such dust, gas, fume or vapour;
- Exclusion or effective enclosure of all possible sources of ignition

17) Precautions in Case of Fire

- In every factory, all practicable measures shall be taken to prevent outbreak or fire and its spread, both internally and externally, and to provide and maintain safe means of escape for all persons in the event of a fire, and the necessary equipment and facilities for extinguishing fire.
- Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such cases.

18) Safety of Building and Machinery

- If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

19) Safety Officers

- In every factory, wherein one thousand or more workers are ordinarily employed, or wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons

employed in the factory, the occupier shall, if so required by the State Government by notification in the Official Gazette, employ such number of Safety Officers as may be specified in that notification.

Working Hours

- Weekly hours
- Weekly holidays
- Compensatory holidays
- Daily hours
- Intervals for rest
- Spread over
- Night shifts
- Prohibition of overlapping shifts
- Extra wages for overtime
- Restriction on double employment
- Register of adult workers

Employment of Women and Young Persons

- Restriction on employment of women
- Prohibition of employment of young children
- Non-adult workers to carry tokens.
- Certificate of fitness
- Effect of certificate of fitness granted to adolescent
- Working hours for children
- Notice of period of work for children
- Register of child workers

Annual Leave Provision

- Annual leave with wages
- Wages during leave periods
- Payment in advance in certain cases
- Mode of recovery of unpaid wages

- Power to prohibit employment on account of serious hazard
- Notice of certain accident
- Notice of certain dangerous occurrences.
- Notice of certain diseases
- Power to direct inquiry into cases of accident or disease
- Safety and occupational health surveys

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Lesson 2.2 - Maternity Benefit Act, 1961

This Act has been enacted to regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit and certain other benefits. The Maternity Benefit Act is intended to achieve the object of doing social justice to women workers. Therefore, in interpreting the provisions of this Act beneficent rule of construction which would enable the woman worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker.

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows: -

1. Short Title, Extend and Commencement

(1) This Act may be called the Maternity Benefit Act, 1961.

(2) It extends to the whole of India

(3) It shall come into force on such date as may be notified in this behalf in the Official

(a) in relation to mines and to any other establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, by the Central Government, and]

2. Application of Act

1. It applies in the first instance, to every establishment being a factory, mine or plantation [including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances]: Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of so doing, by notification

2. Received the assent of the President on the 12December, 1961 and published in the Gazette of India, Extraordinary, dated 13 December 1961. For Statement of Objects and Reasons see Gazette of India, Extraordinary, Part II, dated 6 December 1960.

4. Words "except the State of Jammu and Kashmir" omitted by Act 51 of 1970, Sec. 2 and Sch. Subs. by Act 52 of 1973, Sec. 2, w.e.f. 1-3-1975 – Vide notification No. S.O. 113A (E), dated 27-2-1975. Subs. by Act 52 of 1973, S.3. In the official on In the official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

[sections 5A and 5B] nothing contained in this Act] shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (84 of 1948), apply for the time being.

Definitions. — In this Act, unless the context otherwise requires,

(a) "appropriate Government" means in relation to an establishment being a mine or an establishment where persons are employed for the exhibition of equestrian, acrobatic and other performances], the Central Government and in relation to any other establishment, the State Government;

(b) "child" includes a still-born child;

(c) "delivery" means the birth of a child;

(d) "employer" means –

(i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(ii) in relation to an establishment which is under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iii) in any other case, the person who are the authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;

(e) "establishment" means –

(i) a factory;

(ii) a mine;

(iii) a plantation;

(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatics and other performances; or Subs. by Act 52 of 1973, S. 4. (v) an establishment to which the provisions of this Act have been declared under sub-section (4) of section 2 to be applicable;]

(f) "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(g) "Inspector" means an Inspector appointed under section 14;

(h) "maternity benefit" means the payment referred to in sub-section (1) of section 5;

(i) "mine" means a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952)

(j) "miscarriage" means expulsion of the contents of a pregnant uterus at ay period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage the causing of which is punishable under the Indian Penal Code (45 of 1860);

(k) "plantation" means a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

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

(m) "State Government" in relation to a Union territory, means the Administrator thereof;

(n) "wages" means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes –

(1) such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;

(2) incentive bonus; and

(3) the money value of the concessional supply of food grains and other articles, but does not include

(i) any bonus other than incentive bonus;

(ii) overtime earnings and any deduction or payment made on account of fines;

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and

(iv) any gratuity payable on the termination of service;

(o) "woman" means a woman employed, whether directly or through any agency, for wages in any establishment.

NOTES. – Sec 3 (f). – A factory does not include a mine subject to the operation of the Mines Act, 152, or a railway running-shed. Sec. 3 (j) – The definition of miscarriage is similar to the definition as given in Sec. 2 (14-B) of the Employees' State Insurance Act, 1948. 4. Employment of, or work by, women prohibited during certain period.

(1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery of her miscarriage.

(3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section

(4) any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her regnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

4. The period referred to in sub-section (3) shall be

(a) at the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

5. Right to Payment of Maternity Benefit

(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.

Explanation. – For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee a day, whichever is higher.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery: Provided that the qualifying period of one hundred and sixty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation: - For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid-off during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up

to and including the day of her delivery and six weeks immediately following that day: Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death: Provided further that where a woman, having been delivered of a child dies during her delivery or during the period of six weeks immediately following the date of her delivery, leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child also dies during the said period, then for the days up to and including the day of the death of the child.

NOTES. – The term "week" means a cycle of seven days including Sundays; B. Shah V. Presiding Officer, A.I.R. 1978 S. C. 12.

[5-A. Continuance of payment of maternity benefit in certain cases. — Every woman ntitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employees' State Insurance Act, 1948 (34 of 1948), to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under Sec. 50 of that Act.]

[5-B. Payment of maternity benefit in certain cases. — Every woman.

(a) who is employed in a factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply;

(b) whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub-clause (b) of clause (a) of section 2 of that Act; and

(c) who fulfils the conditions specified in sub-section (2) of section 5, shall be entitled to the payment of maternity benefit under this Act].

6. Notice of claim for maternity benefit and payment thereof

(1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in

writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. Ins. By Act 21 of 1972, S. 3. Ins. By Act 53 of 1976, S. 3. (3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment until the expiry of six weeks after the day of her delivery.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on the production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

NOTES. – See also Sec. 50 of the Employees' State Insurance Act, 1948, for conditions under which a woman becomes qualified to claim maternity benefit under this Act.

7. Payment or Maternity Benefit in Case of Death of a Woman

If a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit or amount, or where

the employer is liable for maternity benefit under the second proviso to sub-section (3) of section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representative.

8. Payment of Medical Bonus

Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of twenty-five rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

9. Leave for Miscarriage

In case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage.

10. Leave for Illness Arising out of Pregnancy, Delivery, Premature Birth of Child, or Miscarriage

A woman suffering illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall, on production of such proof as may be prescribed, be entitled in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.

11. Nursing Breaks

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

12. Dismissal During Absence or Pregnancy

(1) Where a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to

discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service. (2)

(a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge of dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus: Provided that where the dismissal is for any prescribed gross misconduct the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

(b) Any woman deprived of maternity benefit or medical bonus or both may, within sixty days from the date on which the order of such deprivation is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefits or medical bonus or both, shall be final.

(c) Nothing contained in this sub-section shall affect the provisions contained in subsection (1).

13. No deduction of Wages in Certain Cases

No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act shall be made by reason only of –

(a) the nature of work assigned to her by virtue of the provisions contained in subsection (3) of section 4: or

(b) breaks for nursing the child allowed to her under the provisions of section 11.

14. Appointment of Inspectors

The appropriate Government may, by notification in the Official Gazette, appoint such officers as it thinks fit to by Inspectors for the

purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their function under this Act.

15. Powers and Duties of Inspectors

An Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely: -

(a) enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where women are employed or work is given to them in an establishment, for the purposes or examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspection;

(b) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment: Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself:

(c) require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notices received form them under this Act; and

(d) take copies of any registers and records or notices or any portions thereof.

16. Inspectors to be Public Servants

Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

17. Power of Inspector to Direct Payments to be Made

(1) Any woman claiming that maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld, may make a complaint to the inspector.

(2) The Inspector may, of his own motion or on receipt of a complaint referred to in subsection (1), make an enquiry or cause an inquiry to be made and if satisfied that payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders.

(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

(4) The decision of the prescribed authority where an appeal has been preferred to it under sub-section (3) or of the Inspector where no such appeal has been preferred, shall be final.

(5) Any amount payable under these sections shall be recoverable as an arrear of lane revenue.

18. Forfeiture of Maternity Benefit

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorized absence, he shall forfeit her claim to the maternity benefit for such period.

19. Abstracts of Act and Rules there under to be Exhibited

An abstract of the provisions of this Act and the rules made there under in the language or languages of the locality shall be exhibited I a conspicuous place by the employer in every part of the establishment in which women are employed.

20. Registers, Etc

Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

21. Penalty for Contravention of Act by Employers

If any employer contravenes the provisions of this Act or the rules made there under he shall be punishable with imprisonment which may

extend to three months, or with fine which may extend to five hundred rupees, or with both; and where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall in addition recover such maternity benefit or amount as if it were a fine, and pay the same to the person entitled thereto.

22. Penalty for Obstructing Inspector

Whoever fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made thereunder or conceals or prevents any person from appearing before or being examined by an Inspector, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees or with both.

23. Cognizance of Offences

(1) No prosecution for an offence punishable under this Act or any rule made thereunder shall be instituted after the expiry of one year from the date on which the offence is alleged to have been committed and no such prosecution shall be instituted except by, or with the previous sanction of, the Inspector; Provided that in computing the period of one year aforesaid, the time, if any, taken for the purpose of obtaining such previous sanction shall be excluded.

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any such offence.

NOTES. – Sections 21 to 23 deal with penalties under the Act and procedure to try offences committed under this Act.

24. Protection of Action Taken in Good Faith

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made thereunder.

25. Power of Central Government to Give Directions

The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution the provisions of this Act and the State Government shall comply with such directions.

26. Power to Exempt Establishments

If the appropriate Government is satisfied that having regard to an establishment or a class of establishments providing for the grant of benefit which are not less favourable than those provided in this Act, it is necessary so to do, it may, by notification in the Official Gazette, exempt subject to such conditions and restrictions, if any, as may be specified in the notifications, the establishment or class of establishments from the operation of all or any of the provisions of this Act or of any rule made thereunder.

27. Effect of Laws and Agreements Inconsistent with this Act

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act: Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefit in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter, which are more favourable to her than those to which she would be entitled under this Act.

28. Power to Make Rules

(1) The appropriate Government may, subject to the condition of previous publication and by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for –

(a) the preparation and maintenance of registers, records and muster rolls;

(b) the exercise of powers (including the inspection of establishments) and the performance of duties by Inspectors for the purposes of this Act;

(c) the method of payment of maternity benefit and other benefits under this Act in so far as provision has not been made therefore in this Act;

(d) the form of notices under section 6:

(e) the nature of proof required under the provisions of this Act;

(f) the duration of nursing breaks referred to in section 11;

(g) acts which may constitute gross misconduct for purposes of section 12;

(h) the authority to which an appeal under clause (b) of sub-section (2) of section 12 shall lie, the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;

(i) the authority to which an appeal shall lie against the decision of the Inspector under section 17; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;

(j) the form and manner in which complaints be made to Inspectors under subsection (1) of section 17 and the procedure to be followed by them when making inquiries or causing inquiries to be made under sub-section (2) of that section;

(k) any other matter which is to be, or may be, prescribed. (3)

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

29. Amendment of Act 69 of 1951

In section 32 of Plantation Labour Act, 1951, —

(a) in sub-section (1), the letter and brackets "(a)" before the words "in the case of sickness," the word "and" after the words "sickness allowance", and clause (b) shall be omitted.

(b) In sub-section (2), the words "or maternity" shall be omitted.

30. Repeal

On the application of this Act. —

(i) to mines, the Mines Maternity Benefit Act, 1941 (19 of 1941); and Maternity Benefit Act, 1929 (Bom. Act VII of 1929), as in force in that territory, shall stand repealed.

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Lesson 2.3 - The Contract Labour (Regulation and Abolition) Act, 1970 Act No. 37 of 19701

[5th September, 1970.]

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

Preliminary

1. Short Title, Extent, Commencement and Application

(1) This Act may be called the Contract Labour (Regulation and Abolition) Act, 1970.

(2) It extends to the whole of India.

(3) It shall come into force on such date 1* as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

(4) It applies—

(a) To every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;

(b) to every contractor who employees or who employed on any day of the preceding twelve months twenty or more workmen: Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

(5) (a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed.

(b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

Explanation.—For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature—

(i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or

(ii) if it is of a seasonal character and is performed for more than sixty days in a year.

2. Definitions

In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means,—

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated;]

(b) a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer;

(c) "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods of articles of manufacture to such establishment, through contract labouror who supplies contract labour for any work of the establishment and includes a sub-contractor;

(d) "controlled industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;

(e) "establishment" means—

(i) any office or department of the Government or a local authority, or

(ii) any place where any industry, trade, business, manufacture or occupation is carried on;

Subs. by Act 14 of 1986, s. 2 (w.e.f. 28.1.1986).

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

(g) "principal employer" means—

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

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948) the person so named,

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

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

Explanation.—For the purpose of sub-clause (iii) of this clause, the expressions "mine", "owner" and "agent" shall have the meanings respectively assigned to them in clause (j), clause (l) and clause (c) of subsection(1) of section 2 of the Mines Act, 1952 (35 of 1952);

(h) "wages" shall have the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936); (i) "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semiskilled or un-skilled manual, supervisory, or clerical work for hire or reward,

whether the terms of employment be express or implied, but does not include any such person—

(a) who is employed mainly in a managerial or administrative capacity; or

(b) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or

(c) who is an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the Principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

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

The Advisory Boards

3. Central Advisory Board

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

(2) The Central Board shall consist of—

(a) a Chairman to be appointed by the Central Government;

(b) the Chief Labour Commissioner (Central), ex-officio;

(c) such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, the opinion of the Central Government, ought to be represented on the Central Board.

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

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

4. State Advisory Board

(1) The State Government may constitute a board to be called the State Advisory Contract Labour Board (hereinafter referred to as the State Board) to advice the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

(2) The State Board shall consist of—

(a) a Chairman to be appointed by the State Government;

(b) the Labour Commissioner, ex-officio, or in his absence any other officer nominated by the State Government in that behalf;

(c) such number of members, not exceeding eleven but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board.

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the

discharge of their functions by, and the manner of filling vacancies among, the members of the State Board shall be such as may be prescribed:

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

5. Power to Constitute Committees

(1) The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.

(2) The committee constituted under sub-section (1) shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(3) The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed:

Provided that no fees shall, be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.

Registration of Establishments Employing Contract Labour

6. Appointment of Registering Officers

The appropriate Government may, by an order notified in the Official Gazette—

(a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers for the purposes of this Chapter; and

(b) define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

7. Registration of Certain Establishments

(1) Every principal employer of an establishment to which this Act

applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment: Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

8. Revocation of Registration in Certain Cases

If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke the registration.

9. Effect of Non-Registration

No principal employer of an establishment, to which this Act applies, shall—

(a) in the case of an establishment required to be registered under section 7, but which has not been registered within the time fixed for the purpose under that section,

(b) in the case of an establishment the registration in respect of which has been revoked under section 8, employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be.

10. Prohibition of Employment of Contract Labour

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment:

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment oran establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation.—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.'

Licensing of Contractors

11. Appointment of Licensing Officers

The appropriate Government may, by an order notified in the Official Gazette,—

(a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter; and

(b) define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

12. Licensing of Contractors

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

13. Grant of Licences

(1) Every application for the grant of a licence under sub-section (1) of section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

(2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

(3) A licence granted under this Chapter shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

14. Revocation, Suspension and Amendment of Licences

(1) If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that—

(a) a licence granted under section 12 has been obtained by misrepresentation or suppression of any material fact, or

(b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made there under, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.

(2) Subject to any rules that may be made in this behalf, the licensing officer may vary or amend a licence granted under section 12.

15. Appeal

(1) Any person aggrieved by an order made under section 7, section 8, section 12 or section 14 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government: Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard dispose of the appeal as expeditiously as possible.

Welfare and Health of Contract Labour

16. Canteens

(1) The appropriate Government may make rules requiring that in every establishment—

(a) to which this Act applies,

(b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and

(c) wherein contract labour numbering one hundred or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the date by which the canteens shall be provided;

(b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and

(c) the foodstuffs which may be served therein and the charges which may be made thereof.

17. Rest-Rooms

(1) In every place wherein contract labour is required to halt at night in connection with the work of an establishment—

(a) to which this Act applies, and

(b) in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed.

(2) The rest rooms or the alternative accommodation to be provided under subsection

(a) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

18. Other Facilities

It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain—

(a) a sufficient supply of wholesome drinking water for the contract labour at convenient places;

(b) a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and

(c) washing facilities.

19. First-Aid Facilities

There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first-aid box equipped with the prescribed contents at every place where contract labour is employed by him.

20. Liability of Principal Employer in Certain Cases

(1) If any amenity required to be provided under section 16, section 17, section 18 or section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed thereof, such amenity shall be provided by the principal employer within such time as may be prescribed.

(2) All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

21. Responsibility for Payment of Wages

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

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Penalties and Procedure

22. Obstructions

(1) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever willfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he

has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

23. Contravention of Provisions Regarding Employment of Contract Labour

Whoever contravenes any provision of this Act or of any rules made there under prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

24. Other Offences

If any person contravenes any of the provisions of this Act or of any rules made there under for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

25. Offences by Companies

(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be prceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purpose of this section—

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

26. Cognizance of Offences

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

27. Limitation of Prosecutions

No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector: Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

Miscellaneous

28. Inspecting Staff

(1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for

the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

(2) Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed—

(a) enter, at all reasonable hours, with such assistance (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act or rules made there under, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workman employed therein;

(c) require any person giving out work and any workman, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;

(d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and

(e) exercise such other powers as may be prescribed.

(3) Any person required to produce any document or thing or to give any information required by an inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860).

(4) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall, so far as may be, apply to any search or seizure under sub-section (2) as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.3

29. Registers and Other Records to be Maintained

(1) Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.

(2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

30. Effect of Laws and Agreements Inconsistent with this Act

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any 3 Now see Section 94 of the Criminal Procedure Code, 1973 other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act: Provided that where under any such agreement, contract of service or standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter, which are more favourable to them than those to which they would be entitled under this Act.

31. Power to Exempt in Special Cases

The appropriate Government may, in the case of an emergency, direct, by notification in the Official Gazette, that subject to such

conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, all or any of the provisions of this Act or the rules made thereunder shall not apply to any establishment or class of establishments or any class of contractors.

32. Protection of Action Taken Under This Act

(1) No suit, prosecution or other legal proceedings shall lie against any registering officer, licensing officer or any other Government servant or against any member of the Central Board or the State Board, as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

33. Power to Give Directions

The Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

34. Power to Remove Difficulties

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

35. Power to Make Rules

(1) The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the number of persons to be appointed as members representing various interests on the Central Board and the State Board, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies;

(b) the times and places of the meetings of any committee constituted under this Act, the procedure to be followed at such meetings including the quorum necessary for the transaction of business, and the fees and allowances that may be paid to the members of a committee;

(c) the manner in which establishments may be registered under section 7, the levy of a fee thereof and the form of certificate of registration;

(d) the form of application for the grant or renewal of a licence under section 13 and the particulars it may contain;

(e) the manner in which an investigation is to be made in respect of an application for the grant of a licence and the matters to be taken into account in granting or refusing a licence;

(f) the form of a licence which may be granted or renewed under section 12 and the conditions subject to which the licence may be granted or renewed, the fees to be levied for the grant or renewal of a licence and the deposit of any sum as security for the performance of such conditions;

(g) the circumstances under which licences may be varied or amended under section 14;

(h) the form and manner in which appeals may be filed under section 15 and the procedure to be followed by appellate officers in disposing of the appeals;

(i) the time within which facilities required by this Act to be provided and maintained may be so provided by the contractor and in case of default on the part of the contractor, by the principal employer;

(j) the number and types of canteens, rest rooms, latrines and urinals that should be provided and maintained;

(k) the type of equipment that should be provided in the first-aid boxes;

(l) the period within which wages payable to contract labour should be paid by the contractor under sub-section (1) section 21;

(m) the form of registers and records to be maintained by principal employers and contractors;

(n) the submission of returns, forms in which, and the authorities to which, such returns, may be submitted;

(o) the collection of any information or statistics in relation to contract labour; and

(p) any other matter which has to be, or may be, prescribed under this Act.

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

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Lesson 2.4 - The Shops and Establishments Act, 1947

This Act was enacted to amend and consolidate the law relating to regulation of hours of work, payment of wages, leave, holidays, terms of service and other conditions of work of persons, employed in shops, commercial establishments, establishments for public entertainment or amusement and other establishments and to provide for certain matters connected herewith.

Definitions

- ***"Shop"*** means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns, sale-depots or ware-houses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a restaurant, eating house or commercial establishment

Not Applicable to Certain Establishments and Persons

- offices of or under the Central or State Governments, (except commercial undertakings), the Reserve Bank of India, any railway administration or any local authority;
- any railway service, air service, water transport service, tramway, postal, telegraph or telephone service, any system of public conservancy or sanitation or any industry business or undertaking which supplies power, light or water to the public;
- I railway dining cars;
- offices of lawyers;
- I any person employed about the business of any establishment mentioned in paragraphs (a) to (d) aforesaid;
- any person whose hours of employment are regulated by or under the Factories Act, 1947, except the provisions of sub-sections

(3), (4), and (5) of section 7 of this Act in so far as they relate to employment in a factory;

- any person whose work is inherently intermittent;
- Establishments of stamp vendors and petition writers.

Nothing in Section 9 and Sub-Section (1) of Section 10 shall Apply to

- clubs, hotels, boarding houses, stalls and refreshment rooms at the railway stations;
- shops of barbers and hair dressers;
- I establishments dealing exclusively in meat, fish, confectionery, poultry, eggs, dairy produce [except ghee], bread sweets, chocolates, ice, ice-cream, cooked food; fresh fruits, flowers or vegetables;
- Shops dealing exclusively in medicines or medical or surgical requisites or appliances and establishments for the treatment or care of the sick, infirm, destitute or mentally unfit.
- I shops dealing in articles required for funerals, burials, or cremations.
- Shops dealing exclusively in pans (betel leaves), bidis or cigarettes of liquid refreshment sold in retail for consumption on the premises.
- shops dealing exclusively in newspapers or periodicals, editing and dispatching sections of the newspaper office and office of the news agencies;
- places of public entertainment except cinema houses;
- establishment for the retail sale of petrol and petroleum products used for transport;(j) shops in regimental institutes, garrison shops and troop canteens in cantonments;
- tanneries;
- establishments engaged in retail trade carried on at an exhibition or show, if such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show;
- oil mills not registered under the Factories Act, 1948;
- brick and lime kilns;

- commercial establishments engaged in the manufacture of bronze and brass utensils so far as it is confined to the process of melting in furnace;
- saltpetre refineries;
- establishments of commercial; colleges of short hand or type writing and other educational academies;
- I booking offices of the passenger and goods transport companies;
- establishments dealing exclusively in green and dry fodder and chaff cutting; and
- cycle stands, and cycle repair shops;

Nothing in Sub-Section (1) of Section 10 shall Apply to

(i) Establishments of Cinema houses.

(ii) Establishments dealing in hides and skins;

(iii) ice factories;

(iv) establishments engaged exclusively in repairs of cycles or Motor vehicles or the service of motor vehicles, not being an establishment dealing in cycle or motor vehicle or exclusively in spare parts thereof;

(v) establishments dealing exclusively in providing on hire tents, *Chhauldaries* and other articles such as crockery, furniture, loud speakers, gas lights and fans required for ceremonial purposes and

(vi) Establishments, dealing exclusively in retail sale of *phulians, murmura,* sugar coated gram, *reories* or other similar commodities.

Provisions Applicable to the Act

Power of Government to Extend the Provision of Act

- No exempt to establishments or persons specified therein in the notification declared.
- Every notification made is laid before the both houses of the state legislature without any further delay.

Opening and Closing Hours

- Government shall by notification fix the opening and closing hours of all classes of establishments; and different opening and closing hours may be fixed for different classes of establishments and for different areas; Provided that Government may allow an establishment attached to a factory to observe such opening and closing hours as the Government may direct.

Hours of Employment

- Subject to the provisions of this Act, no person shall be employed about the business of an establishment for more than forty-eight hours in any one week and nine hours in any one-day.
- On occasion of seasonal or exceptional pressure of work a person employed in an establishment may be employed about the business of the establishment in excess of the working hour specified in sub-section (1)
- Provided that—

  (a) the total number of overtime hours worked by an employee does not exceed fifty within a period of any one quarter; and

  (b) the person-employed overtime shall be paid remuneration at twice the rate of his normal wages calculated by the hour.

Closing of Shops and Grant of Holidays

- Save as otherwise provided in this Act every shop shall remain closed one day in a week; It should provide the day which is closed in a conspicuous space and should not be altered in more than once in 3months.
- Every person employed in a shop is to be allowed a full day holiday in each week. This provision is not applicable to employees employed less than 6 days.
- Besides one whole day state government may by notification require shops to be closed at such hour in the afternoon of one weekday in every week.

- Every person employed in such notified shops is to be allowed one additional half day holiday. State government may fix different hours for different shops

Intervals for Rest and Meal

- Subject to the provisions of section 6, no employee except a chaukidar, watchman or guard, shall be allowed to work in an establishment for more than five hours before he has had an interval for rest of at least half an hour: Provided that Government may by notification fix such interval for rest in respect of any class of establishments for the whole of the State of any part thereof as it may consider n necessary.
- The period of work of an employee in an establishment shall be so fixed that, inclusive of his interval for rest, the spread over shall not be more than ten hours in a day.

Conditions of Employments for Young Persons

- Shall not exceed 40hrs/week and 7hrs in a day
- Shall not be employed continuously for more than three hours without an interval of at least half an hour for meal or rest.
- Government may prescribe further conditions about the business of establishments including anything it thinks fit, conditions w.r.t the daily period of employment etc.

Cleanliness, Ventilation, Light and Precautions Against Fire

- The premises of every establishment should be kept clean by lime washing, color washing, painting, varnishing, disinfecting and deodorizing.
- Proper ventilation and sufficient light should be provided according to the standards by a method prescribed by the inspector
- Precautions against fire should be provided as prescribed

Annual Holidays with Wages

- Every person employed in any establishment after 12months of continuous service is entitled to annual holidays with wages for a period of 12days.
- In a subsequent period of 12 months such holidays can be accumulated up to a maximum period of 24 days.
- Employee is further entitled to receive
  - i. 12 days leave with wages on the grounds of sickness incurred or accident sustained by him
  - ii. 12 days casual leave with wages on any reasonable grounds
- If a person entitled to any holidays is discharged by the employer before he has been allowed the holidays or quits employment (if the leave was rejected) the employer shall pay him the amount payable in respect of such holidays and similarly for the sick leave.
- When calculating period of 12 months of continual service the following interruptions need not be considered.
  - i. On account of sickness, accident or authorized leave not exceeding 90days in aggregate for all three
  - ii. By a lock out
  - iii. By a strike which in not illegal strike
  - iv. By intermittent period of involuntary unemployment not exceeding 30 days in aggregate
- The term authorized leave do not include any half day holiday or weekly holiday. The wages for such holidays is payable at a rate equivalent to the daily average over the preceding 3 months excluding of any earning in respect of overtime

Provisions Related to Wages

Every Employer is Responsible

- For the payment of wages to persons employed by him
- To fix wage period; no wage period should exceed one month

- To pay OT at a rate twice the ordinary work
- To pay wages before the expiry of the fifth day after the last day of the wage period
- Where the employment is terminated, wages earned by such person should be paid before the expiry of the second working day from the day of termination
- To pay wages on a working day
- To pay all wages in current coins or current notes or both
- To pay wages without any deductions of any kind except those authorized by under this act

Enforcement and Inspection

- Government may, by notification appoint such persons or such class of persons as it thinks fir to be inspecting officers for the purposes of this Act within such local limits as it may assign to them, respectively.
- Subject to any rules made by Government in this behalf an inspecting officer may, within the local limits for which he is appointed
- Ever inspecting officer appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Inspection of Registers and Calling for Information

- It shall be the duty of every employer of an establishment to make available for inspection of such officers as may be prescribed, all accounts or other records required to be kept for the purposes of this Act; and to give to such officer any other information in connection therewith as may be required.
- Whoever contravenes the provisions of sub-section (1) or wilfully obstructs the inspecting authority in the exercise of the power under this Act or conceals or prevents any employee in an establishment from appearing before or being examined by the authority shall be liable, on conviction to a fine which shall not be less than twenty five rupees and may extend to two hundred rupees.

Authorized Deductions

- Fines
- Absence from duty
- Damage or loss of goods/money directly attributable to his negligence or default
- House accommodation supplied by the employer
- Amenities and services supplied by the employer
- Recoveries of advances or adjustments of overpayment of wages
- Income tax payable by the employed persons
- By order of court or other competent authority
- Any recognized PF or payment of advances for such PF
- Payment of co-operative societies approved to a scheme of insurance

Dismissal Service

- The services of a person employed continuously for a period of not less than six months shall not be dispensed without a reasonable cause and giving such person one month notice or wages in lieu of such notice.
- However such notice is not required if the employee is dispensed on charge of misconduct supported by satisfactory evidence recorded at an enquiry held for this purpose.
- The person however has right to appeal to such authority and within a time prescribed? The decision of the appealing authority is final in binding on both the employer and the person employed.

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Lesson 2.5 - Trade Unions Act 1926

Introduction

The history of trade union movement can be traced back to 1890 when the Bombay Millhands Association was formed. That association acted merely as a clearing house for the grievances of Bombay Mill workers and it cannot be treated as trade union in the strict sense in which this expression is used now-a-days. Cost of living immensely increased after the first world war and this led to intense indusrial unrest. This was further accentated by the political agitation in the country. This industrial unrest and economic discontent led to a number of strikes by workers, guided and controlled by the action committees consisting of representatives of workers themselves.

On several occasions, these strikes were successful in getting the demands of workers fulfilled. The success of these strikes, worldwide uprising of labour consciousness and establishment of International Labour Organisation in 1919 influenced the growth of trade union movement in India. Trade unions and their activities were not considered lawful in the beginning any where in the world. This was so in India also. After independence, democratic spirit developed in Indian citizens and workers were no exception to it. As a result, the Indian Trade Union Act of 1926 was enacted on the pattern of English Law and in due course, number of amendments were taken place.

The act Relates to registration of Trade Unions in 1926. It came in to force in 1st June, 1927.

The act deals with

- Conditions governing Registration of TU
- Obligations imposed upon Registered TU
- Rights and liabilities of Registered TU

The act was extended to J & K by the Central Labor Laws Act, 1970

Appropriate Government

The objects are not confined to one state – central Govt or State Govt.

Trade Dispute

It is any dispute between

- Employers and workmen
- Workmen and workmen
- Employers and employers, which are connected with conditions of labor and employment.

Workmen

All persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

Trade Union

Any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between

- workmen and employers
- workmen and workmen
- employers and employers, for imposing restrictive conditions on the conduct of any trade or business

The act does not affect

- Any agreement between partners as their own business
- Any agreement in the sale of goodwill of a business or of instruction in any profession, trade or handicraft.

History of Trade Union

- The first trade union was started in 1877 in Nagpur
- In 1919 Madras Labor Union was the first Union in India to be formed and established by B. P. Vadia

- Bombay Trade Union formed in 1975 under the leadership of Sorabjee Shapurjee Bengatee

Functions

(i) Militant Functions

(a) To achieve higher wages and better working conditions

(b) To raise the status of workers as a part of industry

(c) To protect labors against victimization and injustice

(ii) Fraternal Functions

To take up welfare measures for improving the morale of workers

To generate self confidence among workers

To encourage sincerity and discipline among workers

To provide opportunities for promotion and growth

To protect women workers against discrimination

Importance

Trade unions help in accelerated pace of economic developmentin many ways as follows:

- By helping in the recruitment and selection of workers.
- by inculcating discipline among the workforce
- by enabling settlement of industrial disputes in a rational manner
- By helping social adjustments.

Social Responsibilities of Trade Unions Include

- promoting and maintaining national integration by reducing the number of industrial disputes
- incorporating a sense of corporate social responsibility in workers
- achieving industrial peace

Registrars and Registration of TU

State Govt., appoints Registrar and Additional Registrars- defines limits and functions

1. Application for Registration

- Seven or more members of TU can apply – subscribing name
- After date of application before registration applicants can disassociate or cease to be members
- Application must have copy of rules
- Statement of names, occupation and address of the members
- Name of the TU and address of head office
- Title, age and occupation and address of the officers of the TU

2. Rules of TU

- Name of TU
- Whole of its objects
- Whole of the purpose for which general funds applicable
- Maintenance of list of members of TU and facilities
- Admission of the ordinary members – person engaged/ honorary office bearers.
- Payment of a subscription by members shall not be less than 25 Paisa per month/member
- All members entitled to benefits
- The manner in which the rules shall be amended or varied or rescinded
- Appointment and removal of executive and other office bearers
- Safe custody of the funds and annual accounts audit and facilities of inspection of account books by office bearers and members of TU
- The manner in which TU may dissolved

3. Power to call for further particulars and to require alteration of name

4. Registration: requirements of the act

5. Certificate of Registration - conclusive evidence
6. Change of name: with consent of 2/3rd of its members only
7. Registered office: addressing of communication and notices
8. Eligibility to become the members - above 15 years

Cancellation of Registration

- On application of TU in prescribed format
- Fraud or mistake in obtaining certificate
- If Registrar is satisfied that TU is ceased to exist or breach of rules

Appeal Against Cancellation of Registration

Appeal in court within 60 days
Rights and privileges of Registered TU

- Body corporate
- Separate fund for political purpose
- Immunity from punishment for criminal conspiracy – Agreement in spending general funds (IPC sec 120-B(2)
- Immunity from civil sits - protection of employment
- Enforceability of agreement - shall not be void for merely by reason.

Rights and privileges of Registered TU
Right to inspect books of TU
Right of minor to be members

Change of Name

- If 2/3rd of members agree
- If proposed new name is not identical with existing name

Amalgamation of Unions

- ½ of members should vote and
- 60 % should be on favor.

Duties and Liabilities of Registered Trade Union

1. **Change of Registered office**
2. **Object on which general funds may be spent**
   - payment of salaries, allowances and expenses to office bearers
   - payment of expenses of administration of TU
   - expenses in prosecution and defense of legal proceedings
   - the conduct of trade disputes
   - compensation for members for loss arising out of disputes
   - provision of educational, social or religious benefits
   - the upkeep of periodical published
   - payment of contributions to any cause intended to workmen in general
3. **Constitution of a fund for political purpose**
   - payment of any expenses incurred by a candidate
   - holding of any meeting or the distribution of any literature
   - maintenance of any person who is member of any legislative body
   - Holding of a political meeting of any kind
4. **Proportion of officers to be connected with industry** - not less than one half of office bearers connected to one industry
5. **Returns**
6. **Disqualifications of office bearers of TU** - against moral turpitude / less than 18 years.

Amalgamation of Trade Union

Any two or more registered trade unions may become amalgamated together as one trade union provided the votes of at least one half of the members of each or every such trade union entitled to vote and at least 60% of the votes recorded are in favor of the proposal.

Notice of the amalgamation shall be sent to the Registrar in duplicate in Form-J (Section 24 to 26 read with Regulation 18)

Dissolution

When a registered trade union is dissolved the notice of dissolution shall be sent to the Registrar in Form - K, within 14 days of the dissolution along with the registration certificate (Section 27 read with Regulation 19).

Penalties

Offences punishable for the failure to submit returns may extend to ₹ 5/- and in the case of continuing default with an additional fine which may extend to ₹ 5/- for each week and shall not exceed ₹ 50.00.

Any person who willfully makes, or causes to be made any false entry or any omission from the general statement required by Section 28 etc. shall be punishable which may extend to ₹ 500/-.

Registered trade unions, furnishing false information's, shall be punishable with fine which may extend to ₹ 200/- (Section 31)

Reasons for Joining Trade Unions

- Greater Bargaining Power
- Minimize Discrimination
- Sense of Security
- Sense of Participation
- Sense of Belongingness
- Platform for self expression
- Betterment of relationships

At Present there are Twelve Central Trade Union

Organizations in India

1. All India Trade Union Congress (AITUC)
2. Bharatiya Mazdoor Sangh (BMS)
3. Centre of Indian Trade Unions (CITU)

4. Hind Mazdoor Kisan Panchayat (HMKP)
5. Hind Mazdoor Sabha (HMS)
6. Indian Federation of Free Trade Unions (IFFTU)
7. Indian National Trade Union Congress (INTUC)
8. National Front of Indian Trade Unions (NFITU)
9. National Labor Organization (NLO)
10. Trade Unions Co-ordination Centre (TUCC)
11. United Trade Union Congress (UTUC) and
12. United Trade Union Congress - Lenin Sarani (UTUC - LS)

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Lesson 2.6 - Industrial Disputes Act

Industrial Dispute means any dispute or differences between employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. All interruptions in production arising out of industrial disputes are really caused by the dissatisfaction of labour with their existing labour conditions. The whole history of labour struggle is nothing but a continuous struggle of demand for fair return to labour. Viewed in the above background, the Industrial Disputes Act, 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The main object of all labour legislation is to ensure fair wages to workers and to prevent disputes so that production may not be adversely affected.

The Industrial Disputes Act, 1947

This act weighed much against the workers and was therefore replaced by the trade disputes act 1929.

The main purpose of the act, however, was to provide a conciliation machinery to bring about peaceful settlement of industrial dispute.

The main objects of the act

1. to secure industrial peace

   (a) by preventing and settling industrial disputes between the employers and workmen.

   (b) securing and preserving amity and good relations ,through an internal works committee,

   c) by promoting good relations, through an external

2 to ameliorate the condition of workmen in industry

(a) by redressal of grievances of workmen

(b) by providing job security

Different Categories of Industrial Disputes?

The Second Schedule of the I.D. Act deals with matters within the jurisdiction of Labour Courts, which fall under the category of Rights Disputes. Such disputes are as follows:

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders, which regulate conditions of employment.
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

The Third Schedule of the I.D. Act deals with matters within the jurisdiction of Industrial Tribunals which could be classified as Interest Disputes. These are as follows: -

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalization;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

Who can raise an Industrial Dispute?

Any person who is a workman employed in an industry can raise an industrial dispute. A workman includes any person (including an apprentice) employed in an industry to do manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. It excludes those employed in the Army, Navy, Air Force and in the police service, in managerial or administrative capacity. Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

How to Raise an Industrial Dispute?

A workman can raise a dispute directly before a Conciliation Officer in the case of discharge, dismissal, retrenchment or any form of termination of service. In all other cases listed at 2 above, the dispute has to be raised by a Union / Management.

Conciliation Officers

The Organization of the Chief Labour Commissioner (Central) acts as the primary conciliatory agency in the Central Government for industrial disputes. There are the Regional Labour Commissioners (Central) and Assistant Labour Commissioners (Central) who on behalf of the Chief Labour Commissioner (Central) act as Conciliatory Officers in different parts of the country.

The Conciliation Officer makes efforts to resolve the dispute through settlement between the workmen and the management. The duties of Conciliation Officers have been laid down under Section 12 of the Industrial Disputes Act.

What happens if Conciliation Fails?

In case of failure of conciliation (FOC) a report is sent to Government (IR Desks in Ministry of Labour). The Ministry of Labour after considering the FOC Report exercises the powers available to it under

Section 10 of the Industrial Disputes Act and either refers the dispute for adjudication or refuses to do so. Details of functions of IR Desks and reasons for declining may be seen above.

There are at present 17 Central Government Industrial Tribunals-cum-Labour Courts in different parts of the country to whom industrial disputes could be referred for adjudication. These CGITs -cum-Labour Courts are at New Delhi, Mumbai (2 CGITs), Bangalore, Kolkata, Asansol, Dhanbad (2 CGITs), Jabalpur, Chandigarh, Kanpur, Jaipur, Lucknow, Nagpur, Hyderabad, Chennai and Bhubaneshwar. Out of these CGITs, 2 CGITs namely Mumbai-I and Kolkata have been declared as National Industrial Tribunals.

Dispute is referring to Labour Court

After the matter is referred to any of the CGIT-cum-Labour Court, the adjudication process begins. At the end of the proceedings an Award is given by the Presiding Officer. The Ministry of Labour under Section 17 of the I.D. Act publishes the Award in the Official Gazette within a period of 30 days from the date of receipt of the Award.

Award Implementation

An Award becomes enforceable on the expiry of 30 days from the date of its publication in the Official Gazette. The Regional Labour Commissioner is the implementing authority of the Awards.

The provisions for General Prohibition of Strikes and Lockouts

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 lockout:

(a) During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings,

(b) During the pendency of such proceedings before a Labour Court, Tribunal or National Tribunal and 2 months after the conclusion of such proceedings.

(c) During the pendency of arbitration proceedings before an Arbitrator and 2 months after the conclusion of such proceedings, where a notification has been issued.

(d) During any period in which a settlement or Award is in operation in respect of any of the matters covered by the settlement of Award.

Does the workman have the Right to go on strike with proper notice in Public Utility Services?

No person employed in a Public Utility Service can go on strike without giving to the employer notice of strike;

(a) Within 6 weeks before striking.

(b) Within 14 days of giving such notice.

(c) Before the expiry of the date of strike specified in such notice.

(d) During the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conclusion of such proceedings.

Does the Employer have the right to lock out any Public Utility?

No employer carrying on any Public Utility service can lockout any of his workman:

(i) Without giving to them notice of lockout provided within 6 weeks before locking out.

(ii) Within 14 days of giving such notice.

(iii) Before expiry of the date of lockout specified in any such notice.

(iv) During the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conclusion of such proceedings.

What compensation will a workman get when laid off?

Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment employing 50 or more workmen on an average working day

and who has completed not less than one year of continuous service under an employer laid off, whether continuously or intermittently, he is to be paid by the employer for all days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off.

What is the conditions precedent to retrenchment of workmen?

No workmen employed in any industry that has been in continuous service for not less than one year under an employer, can be retrenched by that employer until:

(a) The workman has to be given one month's notice in writing indicating the reasons for retrenchment or the workman has to be paid in lieu of such notice, wages for the period of the notice.

(b) The workman has to be paid, at the time of retrenchment, compensation, which is pay completed year of continuous service) or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is to be served on the appropriate Government (or such authority as may be specified, by the appropriate Government by notification in the Official Gazette).

Compensation of the workman when an undertaking closes down:

Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure is entitled to notice and compensation in accordance with the provisions as if the workman had been retrenched.

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman is not to exceed his average pay for three months

Self Assessment Questions

1. Discuss in detail about the conventions of factories act 1948
2. Explain about the benefits given in maternity benefit act
3. Discuss about the retrenchment of workers and their outcomes
4. Discuss about the trade union act
5. State the reasons for joining the trade union
6. What is industrial dispute and how the legal framework aids in addressing the industrial dispute

CASE STUDY

A is the owner of a ginning factory. Certain men were engaged in putting the ginned cotton into what are called bojhas and they were engaged for that work not by A but the merchants who owned cotton. A did not show their names in the attendance register of the factory.

Are the labour employed by the merchants workers within the meaning of the Factories Act, 1948?

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UNIT - III

Learning Objectives

- To study the various compensation act
- To know about the legal framework based on which compensation in India is framed
- To know the provisions given to the employees under various compensation act

Unit Structure

Lesson 3.1 - Payment of Wages Act, 1936

In an economy where even minimum wages were not paid to the workers, the need to protect the wages was felt in the early years of twentieth century. With a view to achieve this object, a private Bill called "Weekly Payment Bill" was introduced in the legislature in the year 1925. The bill aimed at to remove some of the evils prevalent in the economy. e.g., exploitation of labour by imposing arbitrary fines, delay in payment of wages and unauthorised deductions from wages.

The bill was withdrawn on the assurance of the Government that the matter was under consideration. The desirability for putting up legislation was keenly felt in the year 1926 to regulate the extent of fines and other unauthorised deductions. The question was again considered by Royal Commission on Labour in India and on its recommendations the bill of Payment of Wages Act was passed in the year 1936.

The payment of wages act, 1936 was passed to regulate the payment of wages to certain classes of persons employed in industry.

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

The Act extends to the whole of India (sec.1 (2))

The Act applies to the payment of wages to persons employed in any factory, to persons employed upon any railway by a railway administration and to an industrial or other establishment.

In various states the act has been extended to shops and establishments also.

The act does not apply to persons whose wages exceed ₹ 1, 600 per month.

Definitions

1) **Employed person**: Includes the legal representative of a deceased person
2) **Employer**: Includes the legal representative of a deceased employer.
3) **Industrial or other establishment**: it means any,

   a) Tramway service, or motor transport service
   b) Air transport services other than military
   c) Dock, wharf or jetty
   d) Inland vessel
   e) Plantation
   f) Workshop or other establishment in which articles are produced
   g) Establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals.

Wages

The definition of '*wages' includes the following*

a) Any remuneration payable under any award or settlement between the parties or order of a court

b) Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period.

c) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

The Expression Wages does not Include

1) Any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

2) The value of any house-accommodation or of the supply of light, water, medical attendance or other amenity or of any service

excluded from the computation of wages by a general or special order of the State Government.

3) Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

4) Any travelling allowance or the value of any travelling concession;

5) Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment.

6) Any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)

Rules for Payment of Wages

1) **Responsibility of Payment of Wages (Sec.3)**

Every employer shall be responsible for the payment to persons employed by him all the wages required to be paid under payment of wages act.

2) **Fixation of Wage-Periods (Sec.4)**

A wage period shall not exceed one month.

3) **Time of Payment of Wages (Sec.5)**

a) **Wages to be paid before 7th or 10th day:** No. of persons employed is less than 1000-SSSwages shall be paid before the expiry of 7th day of the following wage period above 1000-before 10th day.

b) **Wages in case of termination of employment:** The wages earned by him shall be paid before the expiry of the 2nd working day from the day on which his employment is terminated.

c) Wages to be paid on a working day.

4) **Medium of Payment of Wages: (Sec.6)**

All wages shall be paid in current coins or currency notes or both. Payment of wages in kind is not permitted.

Deductions from Wages (Sec.3 to 7)

1) **Deductions for Fines**

a) No fine shall be imposed without notice from concerned authority.

b) The notice specifying the acts and omissions for which fines may be imposed shall be exhibited.

c) No fine shall be imposed on an employed person until he has been given an opportunity of showing cause against the fine and has completed the age of 15 years.

d) The total amount of fine which may be imposed in one wage period on an employed person shall not exceed 3 percent of the wages payable to him in respect of that wage period.

e) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

f) All fines and all realizations thereof be recovered in a register to be kept by the person responsible for the payment of wages, in such form as may be prescribed.

2) Deductions for Absence from Duty

The ratio between the amount of such deductions and the wages payable shall not exceed the ratio between the period of absence and the total period within such wage period.

3) Deductions for Damages or Loss

The deduction for damage to or loss of goods due to employee should not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person.

4) Deduction for Services

A deduction for house accommodation and such amenities and services supplied by the employer shall not be made from the wages of an employed person, unless such services have been accepted by him as a term employment.

5) Deduction for Recovery of Advances

The state Government may regulate the extent to which such advances may be given and the instalments by which they may be recovered.

6) Deductions for Recovery of Loans

Loans for house building or for other purposes and the interest due in respect thereof approved by the state government shall be subject to any rules made by the state government.

7) Deductions for Payments to Co-Operate Societies and Insurance Schemes

These deductions shall be subject to such conditions as the state government may impose.

8) Other Deductions

a) Deductions of income- tax payable by the employed person.

b) Deductions for payments to any provident fund to which the Provident Funds act, 1952 applies or any recognized provident fund.

Limit on Deductions

- Should not exceed 75 percent of wages-deductions for payments to co-operatives
- Should not exceed 50 percent of wages-for other payments.

Enforcement of the Act

Inspectors: An inspector of Factories appointed under sec.8 (1) of the Factories Act, 1948 shall be an inspector for the purpose of the payment of wages act.

Powers and Functions of Inspectors

1) Make such examination and enquiry
2) Enter, inspect and search any premises of any railway, factory or industrial or other establishments.

3) Supervise the payment of wages to persons employed.
4) Seize or take copies of registers or documents or portions thereof as he may consider relevant in respect of an offence under this act.

Penalty for Offences Under the Act(Sec.20)

1) **Penalty for delaying payment of wages within the prescribed period or making un authorized deductions:**
   Punishable with fine which shall not be less than ₹ 200 but which may extends to ₹ 1,000
2) **Penalty for not paying wages on a working day or in current coin or not recording fines or not displaying the abstracts of the act:**

   Punishable with a fine which may extends to ₹ 500 for each offence.
3) Penalty for failure to maintain, furnish records and returns: fine, ₹ 200-1000
4) Penalty for Obstructing, etc. Inspector: fine, ₹ 200-1000
5) Subsequent offence: ₹ 500- 3000
6) Additional fine for failure to pay wages by the fixed date: Fine for ₹ 100 for each day for which such failure or neglect continues.

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Lesson 3.2 - The Payment of Bonus Act 1965

The payment of annual bonus based generally on the amount of annual profits, has become increasingly prevalent among the industrial and commercial establishments. It has gained much importance and has become the subject of increasing number of industrial disputes. This is due to disparity among the firms which are paying bonus and others which are not paying it. In order to have uniformity and consistency in the bonus solution and in the hope of setting a number of industrial disputes pending or likely to arise in the future, the Central Government introduced the Payment of Bonus Ordinance in 1965 and then enacted 'Payment of Bonus Act' to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith.

- It came into force September 25 1965
- Applied to

  I. every factory

  II. 20 or more person are employed on any day during an accounting year.

Act not to apply certain classes of people

- Employees employed by the life insurance corporation of India
- Seamen as defined under section 3(42)of the merchant shipping act,1958
- Employees employed through contractors on building operations
- Employees employed by the reserve bank of India
- Employees employed by

  1. The industrial finance corporation of India
  2. Any financial corporation established under section 3
  3. the deposits insurance corporation
  4. The agricultural refinance corporations

5. The unit trust of India
6. The industrial development bank of India
7. Any other financial institution

Entitled to bonus

- Employee have to work not less than thirty working days in the year on a salary less than ₹3,500 per month. Section 2(13)
- Disqualifications: an employee who has been dismissed from service for

1. Fraud
2. Violent behaviour
3. Theft
4. Misappropriation
5. Sabotage of any property of the establishment is not entitled for bonus{section 9}

- Employee entitled to bonus

1. On the basis of total number of days worked by him
2. A part time employee as a sweeper engaged on a regular basis is entitled to bonus
3. A dismissed employee reinstated with back wages is entitled to bonus.
4. A piece-rated worker is entitled to bonus.
5. A probationer is an employee,as such entitled to bonus

- Payment of minimum bonus (section 10)

Minimum bonus which shall be 8.33% of the salary, if employer suffers losses during the accounting year he is bound to pay minimum bonus.

- Payment of maximum bonus (section 11) Maximum 20% of salary
- Section 14-how to calculate number of working days
- Section 13-how the bonus can be reduced in certain cases

1. Date when he has been laid off under an agreement
2. He has been on leave with salary

3. Absent due to temporary disablement
4. Maternity leave with salary

- As per section 13 employee has not worked for all the working days in an accounting year, the minimum bonus of ₹ 100.such bonus is higher than 8.33%of his salary shall be reduced.
- If the employee willing to work but unable to work gets the eligibility for bonus under section 8 of the act.

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Lesson 3.3 - Payment of Gratuity Act, 1972

The payment of Gratuity Act of 1972, a social security measure, was passed by Parliament in August, 1972. Prior to the enactment of this Act, there was no Central Act to regulate the payment of gratuity to industrial workers except the Working Journalists and Miscellaneous Provisions Act 1955. Since the enactment of Kerala and the West Bengal Acts, some other State Governments, also voiced their intention to enacting similar measures in their respective States. It had become necessary, therefore, to have a central law on the subject so as to ensure a uniform pattern of payment of gratuity to the employees throughout the country. The Act has been drafted on the lines of West Bengal Employees' Payment of Compulsory Gratuity Act, 1971, with some modifications which have been made in the light of the views expressed at the Indian Labour Conference relating to the future of gratuity in cases of dismissal for gross misconduct.

The Act

- Came in to force on 21stAug, 1972.
- It extends to the whole of India:
  - Provided that in so far as it relates to plantations or ports,
  - It shall not extend to the State of Jammu and Kashmir.
- It shall apply to:
  - Every factory, mine, oilfield, plantation, port and railway company.
  - Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.
  - Such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

Definitions

Employee

- It means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

Employer (Section 2(i))

- It means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop-
  - Belonging to, or under the control of the Central Government or a State Government,
  - Belonging to, or under the control of, any local authority,
  - In any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment.

Factory (Section 2(m))**::** It has the meaning assigned to it in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948).

Family (Section 2(h))**::** In relation to an employee, shall be deemed to consist of-

- In the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any.
- In the case of a female employee (Vice versa….)

Completed year of service (Section 2(b))**:** Means continuous service for one year.

Continuous service (Section 2(e))**:** Means continuous service as defined in Section 2-A.

Controlling authority (Section 3)**:** Means an authority appointed by the appropriate Government under Section 3.

Appropriate Government (Section 2(a))**:** means,-

- In relation to an establishment-
  - Belonging to, or under the control of, the Central Government.
  - Having branches in more than one State,
  - Of a factory belonging to, or under the control of, the Central Government.
  - Of a major port, mine, oilfield or railway company, the Central Government.

Retirement (Section 2(q))**:** Means termination of the service of an employee otherwise than on superannuation.

Superannuation (Section 2(r))**: I**n relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment.

Wages (Section 2(S))**:** Means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Payment of gratuity (Section 4)

When payable: Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

- Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement

To whom payable: In the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority

Calculation of Amount

- For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned:
  - **In the case of a piece-rated employee:** daily wages shall be computed for a period of three months immediately preceding the termination of his employment.
  - **In the case of an employee who is employed in a seasonal** the employer shall pay the gratuity at the rate of 7 days' wages for each season.

Maximum Limit on Gratuity

- The amount of gratuity payable to an employee shall not exceed ₹ 3,50,000.
- A disabled employee entitled to the gratuity a t two rates
- One for the period of employment prior to his disablement
- Other for the period subsequent thereto.

Reduction and Forfeiture of Gratuity

- The gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
- The gratuity payable to an employee may be wholly or partially forfeited-
- If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
- If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Compulsory Insurance (Section 4-A)

- Provides for;
  - Complementary insurance of employer's liability to pay gratuity under the act.
  - Compulsory registration of all the establishments covered under the act with the controlling authorities appointed by the appropriate governments.

Power to Exempt (Section 5)

- This section empowers the appropriate governments to exempt from the operation of the provision of the act:
- Any establishment to which this act applies.
- Any employee of class of employees in any of the establishment.

Nomination (Section 6)

- Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be

prescribed, nomination for the purpose of the second provision to sub-section (1) of Section 4.s mentioned under this act.

Determination of the Amount of Gratuity (Section 7)

- A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

Inspectors (Section 7-A)

- The appropriate Government may, by notification, appoint as many Inspectors, as it deems fit, for the purposes of this Act.

Powers of Inspectors (Section 7-B)

- Require an employer to furnish such information as he may consider necessary;
- Enter and inspect, at all reasonable hours, with such assistants (if any),
- Examine with respect to any matter relevant to any of the purposes aforesaid
- Make copies of, or take extracts from, any register, record or notice, or other document as he may consider relevant.
- Exercise such other powers as may be prescribed.

Penalties (Section 9)

- The act provides for penalty for knowingly making or causing to be made any false statement or false for avoiding any payment to be made by himself or of enabling any person to avoid such payment.
- The penalty imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both.

Protection of Gratuity (Section 13):

- No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, Railway Company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Self Assessment Questions

1. Discuss about the components based on which the incentives of salesmen is fixed
2. List out the components of gratuity and how it varies based upon the hierarchy
3. Explain briefly about the payment of bonus act
4. What is the condition precedent to the retrenchment of workmen
5. State the rules for payment of wages
6. Briefly discuss about the components considered for monetary and non-monetary benefits

CASE STUDY

Labour Action China: Case Study

My name is Chen.* In 1995 I left my village in rural Sichuan province in search of a better life. I travelled to the industrial city of Shenzhen on the south coast of China, where I began a job as a stonecutter in a jewellery factory. The factory conditions were poor, and despite the presence of heavy dust from rocks we were not given face masks.

After seven years the factory managers decided to carry out medical examinations of workers. I was found to be suffering from a lung disease, which management told me was tuberculosis. I was given leave to return to my hometown for treatment. But my condition deteriorated, and I went to the occupational disease hospital in Chengdu, where I was diagnosed with silicosis, an incurable lung disease.

At that time I felt desperate. The factory told me to stay in my village and refused to pay my salary. I spent all my savings and had to borrow nearly 10,000 Yen to pay for treatment. At this time I had no options left, and I did not know what to do. But I was lucky enough to meet a member of a local organisation for migrant workers in my village that supports silicosis victims. They advised me on how to claim and demand my rights as a victim of an occupational disease. I found out about Labour Action China (LAC) and its support services for workers injured on the job. Many of the people they help have been dismissed without compensation after their employers discovered their illness.

Although my level of education is low, with the help of the LAC I learned for myself about labour legislation and what it meant for my case. I also asked members of the migrant worker organisation with more experience than me about my options. Through the organisation I got to know workers from the same factory I had worked in. Together we went to the occupational disease hospital in our home province to obtain a health certificate and to carry out a work capacity assessment - the first step in our compensation claims.

To fight for a better situation for myself and other workers suffering from diseases contracted at work, my local migrant worker organisation brings together workers to study labour law, including contract law, insurance law and legislation on occupational health. Using the knowledge from the course I was able to present my case to government officials in Beijing. This experience made it clear to me that only by learning ourselves about law will we be able to fight for our rights - and the rights of those who work with us.

With the support of LAC and other grassroots organisations, I have continued to fight my case for compensation.

Questions

1. Record your views on the above case

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UNIT - IV

Learning Objectives

- To understand the role of human capital in an organization
- To know about the various act relating to organized and unorganized labour
- To know about the legal framework of workmen compensation act

Unit Structure

Lesson 4.1 - Role of Human Capital

Corporations are recognizing the importance of investing in their employees now more than ever before. Companies are beginning to understand that to stay on top in the global economy, they need to place more and more emphasis on developing and retaining their people. Organizations that appreciate the financial impact of their employees often refer to them as human capital.

Derek Stockley, who works as a human resource trainer, defines human capital as "recognition that people in organizations and businesses are an important and essential asset who contribute to development and growth, in a similar way to physical assets such as machines and money. The collective attitudes, skills and abilities of people contribute to organizational performance and productivity. Any expenditure in training, development, health and support is an investment, not just an expense." He continues to say, "Competition is so fierce and change is so fast, that any competitive edge gained by the introduction of new processes or technology can be short-lived if competitors adopt the same technology. But to implement change, their people must have the same or better skills and abilities."

In defence of this statement, we have noticed a shift in our clients' strategic values from the tangibles to the intangibles. What began as a change in requirements for senior executive searches has become a shift permeating through the ranks of all the organizations we service. In other words, our clients have shifted their hiring focus from technology to people and process. I believe this trend is one of the factors that has increased the desire to hire non-traditional information security professionals by many of our forward-thinking clients.

This reprioritization of the value of human capital has changed the profile of what a successful candidate looks like, even in the most technical roles.

For example, we have seen an increase in hiring in the areas of insider threat and security monitoring. Given the severe impact of insider threat incidents, companies and technology vendors are starting to focus their resources to address these types of threats. From a hiring profile these positions require heavy technical skills, but that's not what seals the deal in receiving a job offer. To develop an effective insider threat management strategy, a person musthave the ability to understand and envision the ways that other people could pose a threat. So companies are searching for security professionals who have technical depth but who also understand human and criminal psychology. In the monitoring area the roles require technical skills, but just as importantly, employers are looking for employees who can interpret technology in a way that's useful and in line with the organization's business and risk management goals.

Even in these traditionally operational roles it is the interpretive ability of a candidate to understand the problems they need to solve that's what hiring managers are focusing on.

Relationship and consensus building skills are highly sought after at the middle management level. The job description for a recent middle management search required the "ability to build relationships with Business and Technology leadership, audit personnel, legal counterparts, compliance, human resources, and internal and external cross functional teams." To read between the lines: If you are to be successful and valuable you will need to create the personal relationships necessary to address the unique requirements and risk appetites of the business, so that your solutions are measured, balanced and effective.

At the executive level, identifying candidates with proven program management skills is apriority. Many corporations are creating broad-reaching IT risk management and business resiliency programs. In many cases these programs focus on developing and centralizing governance and performance metrics models. Success at this level requires leadership skills with the ability to manage diverse groups and multiple projects while driving results.

Consulting firms are strategically growing their practices to support clients committed to acting on the results of audits and assessments tied to all of the recent focus on regulatory requirements.

Those being hired are addressing not just technology, but the broader issues related to process design and improvement. Professionals skilled in Six Sigma and ITIL are able to differentiate themselves.

So since companies are finally valuing people and their softer skills, does that make it easier to hire good people? The answer is no. In today's business climate, attracting and retaining the best employees is very difficult. The reason is a combination of the change in business practices and the shift in employee attitudes. The business landscape has changed dramatically in the past decade as a result of many factors from the feverish hiring boom of the 90s to the economic slowdown in the earlier part of this decade. During this same period of time, employee attitudes have changed dramatically. Exposure to widespread layoffs and corporate scandals has led to an erosion of company loyalty and re-evaluation of career and life priorities by many employees. So now we have companies looking to acquire the best talent and a growing workforce of talented individuals who are no longer attracted by compensation alone, but who require and value intangibles as well.

The bottom line is this. In order to achieve professional growth and success in the next period of increased talent acquisition, technology professionals are going to have to step out of their comfort zone and develop the holistic, relationship-focused business skills that companies are requiring. And by the same token, companies are going to have to take a more strategic and supportive approach to recruiting and retention if they want to find and keep the new breed of evolving talent.

Nobel Prize-winning economist Gary S. Becker, who coined the term "human capital," says that "the basic resource in any company is the people. The most successful companies and the most successful countries will be those that manage human capital in the most effective and efficient manner."

Human capital is a valuable concept because it recognizes that people should be treated as assets, rather than as an expense. Seems to me, security professionals have been arguing that point about their profession for a long time.

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Lesson 4.2 - Organised and Unorganised Labour

In India, a major chunk of labor force is employed in the unorganized sector. The unorganized / informal employment consists of causal and contributing family workers; self employed persons in un-organized sector and private households; and other employed in organized and unorganized enterprises that are not eligible either for paid, sick or annual leave or for any social security benefits given by the employer.

According to the results of the National Sample Survey conducted in 1999-2000, total work force as on 1.1.2000 was of the order of 406 million. About 7 % of the total work force is employed in the formal or organized sector while remaining 93% work in the informal or unorganized sector. The NSS 55th round, 1999-2000 also covered non-agricultural enterprises in the informal sector in India. As per that survey, there were 44.35 million enterprises and 79.71 million workers employed thereof in the non-agricultural informal sector of the economy. Among these 25.01 million enterprises employing 39.74 million workers were in rural areas whereas 19.34 million enterprises with 39.97 million workers in the urban area. Among the workers engaged in the informal sector, 70.21 million are full time and 9.5 million part times. Percentage of female workers to the total workers is 20.2 percent.

The table below describes major employment trends for the organized and unorganized sector for the years 1983, 1987-88, 1993-94 and 1999-2000. It is evident that throughout this period a large portion of the workforce in India is found to be employed in the unorganized sector. Out of 397million workers in 1999-2000, it is estimated that 369 million workers (nearly 93 per cent) are employed in the unorganized segment of the economy whereas only 28 million workers (7 per cent) are engaged in the organized sector. The share of unorganized employment in the economy has displayed remarkable steadiness over the years. The share of informal employment has risen from 92 per cent (nearly 276 million out of 300 million) in 1983 to 93 per cent in the 1999-2000. It is clear that employment opportunity in

the organized sector has remained more or less stagnant, showing only a marginal increase from 24 million in 1983 to 28 million in 1999-2000.

Estimates of Population, Lab or Force, employment and un employment (in millions)

	1983	1988	1994	1999-2000
Estimated population	718.21	790	895.05	1004.1
Labor force	308.64	333.49	391.94	406.05
Employed	302.75	324.29	374.45	397
Unemployed	5.89	9.2	7.49	9.05
Unemployment rate (as % of labor force)	1.91	2.76	1.96	2.23
Employment in organized sector	24.01	25.71	27.37	28.11
Employment in unorganized sector	278.74	298.58	347.06	368.89

The largest numbers of informal workers are in agriculture. In fact, 98.84 percent of the employment in agriculture is informal. In the non-agricultural sector, the highest numbers of informal employees are in retail trade, construction, land transport, textiles etc.

Thus, the unorganized sector plays a vital role in terms of providing employment opportunity to a large segment of the working force in the country and contributes to the national product significantly. The contribution of the unorganized sector to the net domestic product and its share in the total NDP at current prices has been over 60%. In the matter of savings the share of household sector in the total gross domestic saving mainly unorganized sector is about three fourth. Thus unorganized sector has a crucial role in our economy in terms of employment and its contribution to the National Domestic Product, savings and capital formation.

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Lesson 4.3 - Unorganised Labour Act

The term 'unorganised labour' has been defined as those workers who have not been able to organise themselves in pursuit of their common interests due to certain constraints like casual nature of employment, ignorance and illiteracy, small and scattered size of establishments, etc.

As per the survey carried out by the National Sample Survey Organisation in the year 1999-2000, the total employment in both organized and unorganised sector in the country was of the order of 39.7 crore. Out of this, about 2.8 crore were in the organized sector and the balance 36.9 crore in the unorganised sector. Out of 36.9 crore workers in the unorganised sector 23.7 crore workers were employed in agriculture sector, 1.7 crore in construction, 4.1 in manufacturing activities and 3.7 crore each in trade and transport, communication & services.

Categories of Workers

The unorganised Labour can be categorised broadly under the following categories: —

a) Occupation: Small and marginal farmers, landless agricultural labourers, share croppers, fishermen, those engaged in animal husbandry, in beedi rolling, labelling and packing, building and construction, collection of raw hides and skins, handlooms weaving in rural areas, brick kilns and stone quarries, saw mills, oil mills etc.

b) Nature of Employment: Attached agricultural labourers, bonded labourers migrant workers, contract and casual labourers etc.

c) Specially distressed categories: Toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles, loaders, unloaders etc

d) Service categories: Midwives, domestic workers, barbers, vegetable and fruit vendors, newspaper vendors etc.

Special Characteristics

The unorganised sector with its overwhelming number, range and complexity of problems has not been amenable to any statistical accuracy and precision in the same sense as the organised sector.

- Existing surveys conducted in few sectors of employment do not throw light on all aspects and not much helpful in building adequate database.
- Suffers from cycles of excessive seasonality of employment and lack of stable and durable avenues of employment.
- Low legislative protection due to scattered and dispersed nature of employment.
- No formal employer - employee relationship.
- Primitive production technologies and feudal production relations not conducive to encourage the workmen to imbibe and assimilate higher technologies and better production relations.
- Large-scale ignorance and illiteracy and limited exposure to the outside world.

Various Acts Applicable to Workers in the Unorganisedsector

The following Acts are applicable to the workers in the unorganised sector also: —

(i) The Payment of Wages Act, 1936;
(ii) The Employees State Insurance Act, 1948;
(iii) The Plantation Labour Act, 1951;
(iv) The Maternity Benefit Act, 1961;
(v) The Payment of Gratuity Act, 1972; and
(vi) The Personal Injuries (Compensation Insurance) Act, 1963.

The Ministry of Labour has also set up welfare funds in respect of various categories and sub - categories of workers in the unorganised sector such as Mica Mines, Iron Ore, Manganese Ore and Chrome Ore Mines, Beedi, Limestone and Dolomite Mines and Cine Workers.

Agricultural Workers

Agricultural workers constitute by far the largest segment of workers in the unorganised sector and their number according to 1991Census was 7.46 crore. In addition, a significant number of 11.07 crore cultivators(large, medium and small), about 50% belong to the category of small and marginal farmers also working on the land of others because of small and uneconomical holdings and low yield also qualify for agricultural labourers. About 60 lakh workers are engaged in fishery,forestry, orchardry and allied activities,

Problems Faced by Agriculturalworkers

Broadly, the problems of agricultural workers can be classified into two groups viz.,

(i) social and (ii) economic. Social problems emanate from the low status of agricultural workers in the rural hierarchy and the economic problems are due to inadequacy of employment opportunities, poor security of tenure, low income and inadequate diversification of economic activity in rural areas.

- They are dispersed, unorganised and generally have poor bargaining power.
- Due to seasonal work they often have to migrate for alternative avenues of employment in other areas like construction etc. during off-season.
- Circumstances force many of them to borrow, from time to time, from private sources either for consumption purposes(even to maintain a subsistence level) or to meet social obligations (marriages, etc.)and some of them end up as bonded labourers.

Social Security Scheme Foragricultural Workers

Several legislative and administrative measures have been taken to protect the interests of the working class particularly up lift of the conditions of agricultural workers. In addition to the Acts with enabling provision to extend them to agricultural workers, a social security scheme,

namely, Krishi ShramikSamajik Suraksha Yojana- 2001 has been launched by the Ministry of Labour through the Life Insurance Corporation of India, w.e.f. 1stJuly, 2001. The highlights of the scheme are as under:

- The scheme is implemented in 50 selected districts in the country.
- It will cover 20,000 agricultural workers from each district over a span of three years. During 2001-02, it is expected to cover 5000 workers from each selected district.
- Agricultural workers in the age group of18-50 years are eligible under the scheme.
- The workers will contribute ₹ 1/- per day or ₹ 365/- per annum and the Govt. of India will pay ₹ 2/- per day or ₹ 730/-per beneficiary, per year from the Social Security Fund and adequate provisions will be made in the subsequent two years. The benefits under the scheme available to he agricultural workers are:

On death before age 60

- Lump sum payment of ₹ 20, 000 on natural death
- Lump sum payment of ₹ 50, 000 in case of death due to accident
- Return of contribution plus interest or pension for family On disability due to accident before age 60
- Lump sum payment of ₹ 50, 000 in case of permanent total disability or Rs.25, 000 in case of permanent partial disability due to accident.

On surviving up to age 60

- Pension per month, which ranges from Rs 100 to Rs 1900 and a lump sum payment to the family on death that ranges from Rs 13000 to Rs2,50,000, depending on the age of entry to the scheme.

Some Other Schemes for the Welfare of Agricultural Workers

- Janshree Bima Yojana for people belowand marginally above the poverty line.

- National Social Assistance Programme(NSAP) comprising of National Old Age Pension Scheme (NOAPS), NationalFamily Benefit Scheme (NFBS) and National Maternity Benefit Scheme (NMBS),
- Sampooran Gramin Rozgar Yojana (SGRY),
- Employment Assurance Scheme (EAS),
- Swaranjayanti Gram Swarojgar Yojana (SGSY),
- Jawahar Gram Samridhi Yojana (JGSY),
- Pradhan Mantri Gram Sadak Yojana (PMGSY);
- Rural Housing and Water Supply Programme,
- Drought Prone Areas, Desert Area Development Programmes, etc.

Home Based Workers

A major category of unorganised workers is Home Based Workers. Home Based Workers are those who are engaged in the production of goods or service for an employer or contractor in an arrangement whereby the work is carried out at the place of the workers' own choice, often the worker'sown home.

The issues and problems of home based workers are very complex because of the absence of any direct master-servant or employer-employee relationship between the home worker and the person or organization for whom he works. The relationship being ambiguous and indefinite, the home worker is subjected to exploitation in various forms.

In India, there is no authentic data on home based workers. Official data sources such as Census of India, do not recognize these workers as an independent category but have included them in the broad category of those working in house-hold Industries. As such, home based workers are not visible in national statistics. However, it has been estimated that over 3 crore workers in the country are home based workers. Among these, 45 lakh workers are employed in beedi rolling, 65 lakh in handloom weaving, 48 lakh rural artisans and craft persons. The other rmajor occupations of the Home based workers are agarbatti makers, zari workers, papadmakers, cobblers, lady tailors, carpenters, etc.

The Government has enacted the Beedi and Cigar Workers (Conditions Employment) Act, 1966 and Beedi Workers Welfare Fund Act, 1976. Under these legislations the conditions of service of these workers are regulated and a number of schemes for their welfare are in place.

Further, the Ministry of Textiles through the office of Development Commissioner for Handlooms and Handicrafts implements schemes and programmes covering various aspects such as skill up gradation, insurance coverage, housing, health, etc. With a view to providing legislative protection, welfare measures and social security to a large number of home based workers who have been hitherto neglected, the possibility of formulating a National Policyon Home Based Workers is being explored in consultation with other concerned Ministries/Departments, State governments, etc.

Building & Other Constructionworkers

Construction workers constitute one of the largest categories of workers in the unorganised sector. According to the Sample survey conducted by NSSO in 1999-2000,about 1.76 crore workers are employed in the construction activities. "Building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works) transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio,television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aquaducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 or the Mines Act, 1952 applies.

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Lesson 4.4 - Workmen's Compensation Act1923

Introduction

The Workmen's Compensation Act came into force from July 1924. The act provides for the payment of compensation by certain classes of employers to their workmen for the injury by accidents. This act doesn't apply to factories covered by the Employees State Insurance act. An amendment was made in 1976 with the object of providing suitable scales of compensation for the higher wage levels beyond 500/-per month.

Employer is not Liable

Prior to passing this Act the employer was liable only if he was guilty but even there are cases where employer can get rid of his liability. They are:

- **The Doctrine of assumed risks:** If the employee knew the nature of the risk he was undertaking
- **The Doctrine of Common Employment:** when several people are working together for a common purpose and one among them is injured.
- **The Doctrine of Contributory Negligence:** Person is entitled to damages for injury if he was himself guilty of negligence.

Ways of Claiming Compensation

The workmen has to choose between two reliefs, he cannot have both.

- Civil suit for Damages or
- Claim for Compensation under Act

In case of civil suits for damages, it is open to the employer to plead all the defenses provided by law which is a risky procedure for workmen and is rarely adopted.

Rules Regarding WC

Employer is liable to pay compensation under following cases

- Injury caused by Accident.
- The accident arises out of and in course of employment.
- An occupational disease is deemed to be an injury.

Personal injury not necessarily confined to physical or bodily injury it may also includes psychological and physiological injury. Schedules of the act will specify the amount of compensation for a particular accident. (Schedules I & IV)

In Course of Employment

- When the workman uses transport provided by the employer for going to and from the place of work.
- The time on which the workman is upon the premises of the employer.
- If the workman reaches place of work before the time
- If the workman with the knowledge and permission of the employer leaves at some distance from the place where he is called upon to work
- The period of rest during the period of employment is in the course of employment.

Amount of Compensation

The act provides compensation for

- Death
- Permanent total disablement
- Permanent partial disablement
- Temporary disablement

Example:

Description of injury	Percentage loss of Earning capacity
Loss of Both hands	100
Severe facial disfigurement	100
Absolute Deafness	100
Loss of Thumb	30
Loss of 1 Eye	40

Provisions Regarding Distribution of Compensation

Section 8 lays down the following rules regarding the distribution of compensation.

- Compensation for death and lump sum payment due to a woman or to a person under a legal disability must be deposited with the commissioner.
- Any other sum amounting to not less than ₹ 10 which is payable as compensation may be deposited with commissioner on behalf of the person entitled thereto.
- The receipt of the commissioner shall be sufficient for discharge in respect of any compensation deposited with him.
- The commissioner may serve notices calling upon the dependents to appear before him for the purpose of determining the distribution of compensation.
- If the commissioner satisfies that no dependent exists, he shall pay the balance of the money to employer.
- If payment of compensation to any person is obtained by fraud, impersonation or any other improper means any amount so paid may be recovered.

Time Limit for Payment of Compensation

- Compensation shall be paid as soon it falls due. Where the employer doesn't accept the liability to the extent claimed, he must make the provisional payment based on the extent of liability which he accepts.
- If an employer fails to pay within 1 month, the commissioner may direct the payment of simple interest @ 6%.

Important Conditions

For entitlement to compensation under the Act, there are 2 conditions which are must. They are:

- The workman must suffer from a personal injury and that must be caused by an accident
- The second condition is that the accident must arise out of and in the course of employment.

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Lesson 4.5 - Employee Pension Scheme

Employee Pension Scheme

The purpose of the scheme is to provide

- Superannuating pension, retiring pension or permanent total disablement pension to the employees.
- Widow or widower's pension, children pension or orphan pension payable to the beneficiaries' employees.

Salient Features of the Employees Pension Scheme 1995 (EPS-95).

- This scheme is applicable to all members who are covered under Provident Fund Act after 15.11.1995
- It replaces the previous Employees Family Scheme 1971
- If member is alive, pension to member
- If member is not alive, Pension to spouse and two children below 25 years of age

This scheme is applicable to all PF subscribers including exempted establishments contributing to EPS Scheme.

Funding of the Pension Scheme

- An amount equal to 8.33% of pay or Rs 541/- (whichever is lesser) will be pooled into the EPS from the Employer's contribution.

Example: - If a PF member gets ₹ 1000/- as monthly wages and he and his employer contributes 12% each (Total of ₹ 240)

₹ 120 + ₹ 37 =157 goes to Provident Fund and ₹ 83 goes to Pension Fund.

- The Central Government will also contribute at 1.16 % of the pay of the member.

*Pay" means basic wages, with dearness allowance, retaining allowance and cash value of food concessions admissible, if any.

Eligibility to be Benefited Under EPS Scheme

Minimum 10 years eligible service will entitle for member pension. The aggregate of actual service and the 'past service' shall be treated as eligible service. The fraction of service for six months or more shall be treated as one year and the service less than six months shall be ignored

Calculation of Pension

Monthly Member Pension:

$$\frac{\text{Pensionable Salary X Pensionable Service}}{70}$$

Maximum Pensionable service for the calculation of service is 35 yrs. If a member has maximum service, pension will be:

$$\frac{\text{Pensionable Salary}}{20}$$

Pensionable Salary

It means the average salary of the member drawn during the last 12 months. The maximum limit of pensionable salary is ₹ 6500/-PM. i.e. If an employee received ₹ 10,000/- PM as basic salary, for the purpose of calculating pension under FPS, the basic salary is considered to be ₹ 6500/- PM

Pensionable Service

It means service of the member for which contribution for the pension fund is made. In the case of the member who superannuates on attaining the age of 58 years, and/or who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding a weightage of 2 years.

Types of Monthly Pension

- Member Pension: - This pension will be given to the employee on superannuation / Retirement/ Short service.
- Disablement Pension:- this kind of pension will be paid to the employee on permanent and total disablement during employment
- Widow Pension: - this kind of pension will be given to the wife of the employee after death in service or death after retirement of the employee from the company. (50% of monthly members pension subject to a minimum of ₹ 250/- PM)
- Children Pension: - this pension will be paid to the children of the employee after the death in service or death after retirement of the employee from the company. Children pension is given two children (25% of the widow pension subject to a minimum of ₹ 115/- PM) in addition to widow pension. If there is no widow pension, children are entitled for orphan pension (75% of widow pension subject to a minimum of ₹ 170/-PM)
- Return of Capital: - Reduced pension and avail of return of capital under any three alternatives.
- Nominee Pension:- this pension will be paid to the nominee of the employee upon death of the members having no family (Equal to that of widow pension)
- Superannuation Pension
  - Superannuation pension will be given if the age of the employee is 58 years or more and
  - The employee must have 20 years or more service
- Retirement Pensions
  - Retirement pension will be given to the employee on his retirement if the age is between 50 and 58 years
  - The employee must have 20 years or more service
- Short Service Pension
  - Short service pension will be paid if the employee has 10 to 20 years of service irrespective of his age.

- Disability Pension
  - Disability pension will be paid to the employee if the employee is caused permanent disablement and totally unfit for the employment which the member was doing at the time of such disablement.
  - Membership with one month's contribution to the pension fund is enough.
  - Quantum of pension as per pension formula subject to minimum ₹ 250/- PM

Monthly Member Pension Calculation

If the member completes 20 years, the Monthly Member Pension

$$\frac{\text{Pensionable Salary X Pensionable Service}}{70}$$

If the member has less than 20 years of service, the monthly member pension, the amount arrived as per the above formula, shall be reduced at the rate of 6% for every year by which the eligible service falls short of 20 years, subject to a maximum reduction of 25%

- The member can continue in service while receiving this pension On attaining 58 years of age, a EPF member cease to be a member of EPS automatically
- The member need not be in service if he completes 10 years service in FPS

Family Pension – Eligibility

The eligibility is based upon three situations as follows:

Situation I

Death of the member/ Death while in service:-(Widow Pension & Children Pension/ Orphan Pension/ Nominee Pension)

- Member should complete at least one month's service

- If unmarried, pension to nominee or to dependent parent is payable without any other conditions.
- In this case children pension / orphan pension is payable to maximum of 2 children up to 25 years. (In case more than two children the eligibility of pension will run from the eldest to the younger child in order).

Situation II

Death of the member Death when NOT in service:-(Widow Pension &Children Pension / Orphan Pension/ Nominee Pension)

- If a member dies even when not in service, holding a valid scheme certificate and not completed 58 years of age.
- If unmarried, pension to nominee or to dependent parent is payable only when the member has rendered 10 years of service

Situation III

Death of the employee while getting Pension from FPS:-(Widow Pension &Children Pension / Orphan Pension/ Nominee Pension)

- Widow Pension - 50% of the monthly member pension subject to minimum ₹ 250 /- PM
- Children Pension - 25% of the monthly member pension to each children (maximum number 2) up to attaining 25 years of age.
- Nominee Pension - Equal that of widow pension.

Options for Return of Capital

The employee is eligible to pension may opt to draw for reduced pension and avail of return of capital under any one of the three alternatives given below:

Alternative 1

Revised pension during life time of member with return of capital on his death.

Alternative 2

Revised pension during life time of member further reduced pension during life time of the widow or her remarriage whichever is earlier and return of capital on widow's death / remarriage

Alternative 3

Pension for a fixed period of 20 years not with standing whether the member lives for that period or not

Example of Calculation

Date of Birth	:	31.1.1947
Completed 58 Years on	:	31.1.2005
Age as on 16.11.95	:	48 years
FPF Membership	:	18 Years (assumed membership of FPF w.e.f 1977)
EPS 95 Membership	:	10 Years
Pay as on 16.11.95	:	above Rs 2500/-
Past service benefit	:	₹ 135 X 5.301 = ₹ 715.635

(Factor formula of table & schedule B of the previous EFPS - 1971)

Pension payable	:	= ₹ 715.635 + (₹ 6500 X 10/70)
		= ₹ 715.635 + ₹ 928.57
		= ₹ 1644.205

Example of Calculation

Date of Birth	:	11.7.1951
Completed 58 Years on	:	10.7.2009
Age as on 16.11.95	:	34years
FPF Membership	:	15 Years (assumed membership of FPF w.e.f 1980)

EPS 95 Membership : 13 Years

Pay as on 16.11.95 : above ₹ 2500/-

Past service benefit : ₹ 105 X 3.292 = ₹ 345.66

(Factor formula of table & schedule B of the previous EFPS - 1971)

Pension payable : = ₹ 345.66 + (₹ 6500 X 13/70)

= ₹ 345.66 + ₹ 1207.14

= ₹ 1552.80

Schedule B of the previous EFPS - 1971

(n) (1)	FACTOR (2)	(n) (1)	FACTOR (2)
Less than 1	1.049	Less than 13	3.292
Less than 2	1.154	Less than 14	3.621
Less than 3	1.269	Less than 15	3.983
Less than 4	1.396	Less than 16	4.381
Less than 5	1.536	Less than 17	4.819
Less than 6	1.689	Less than 18	5.301
Less than 7	1.858	Less than 19	5.81
Less than 8	2.044	Less than 20	6.414
Less than 9	2.248	Less than 21	7.056
Less than 10	2.473	Less than 22	7.761
Less than 11	2.72	Less than 23	8.537
Less than 12	2.992	Less than 24	9.39

Act to Override Other Enactments, Etc (Section 14)

- The provisions of this Act or any rule made there under shall have effect not withstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

Self Assessment Questions

1. Discuss about the employee pension scheme
2. Explain the role of human capital in manufacturing industry
3. Briefly discuss about the legal privilege given for agricultural workers
4. How will you calculate pension and methods of calculating pension
5. What are the ways of claiming compensation
6. State the types of monthly pension

CASE STUDY

Prathamesh Steel (Pvt.) Ltd. founded 15 years before by Mr. A.M. Bapat was having booming time. At that time, Mr. Bapat, worked both in the office and in the factory and knew his men and they knew him. Production standard were always maintained and labour turnover was practically non-existing. As the business mushroomed, the number of employees has progressively increased. Thus, Mr. Bapat's greetings and conversation with his workers became less frequent. In fact, he had so many things to do, that he could no longer supervise the factory. Thus, he hired another man, Mr. Godse as a plant supervisor.

As this time though the number of workers increased to about 500, labour turnover and absenteeism increased along with the labour cases. The only thing that decreased was productivity. In order to meet the situations, Mr. Bapat granted substantial increase in wages which were already high and made some arrangements for increment earnings based on merit rating on seniority. Yet labour turnover and absenteeism continue at a high rate. On investigation, it was found that the new plant supervisor lacked the patience and understanding which is necessary for dealing with the employees.

When something was found wrong, he was scolding the employees but no attempt was made to find the case of faulty work. Meanwhile, labour unrest developed. The,Worker began to complain about working on Saturdays and not having either time or facilities change from work

clothes to original dresses after work, about toilet facilities etc. Some of the claims were' not found sufficiently justified or easy to meet. Mr. Bapat offered to workers as compensation, a new rise in wages with more liberty in allowing vacation time all of which the company could well afford.

Questions

1. Were the steps taken by Mr. Bapat right?
2. What do you think he should have done in order to improve the situation?

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UNIT - V

Learning Objectives

- To study about the gender dimensions in labour law
- To understand about the quality of work life of the employees
- To know about the contemporary issues in labour laws and administration

Unit Structure

Lesson 5.1 - Quality of Life of Workers

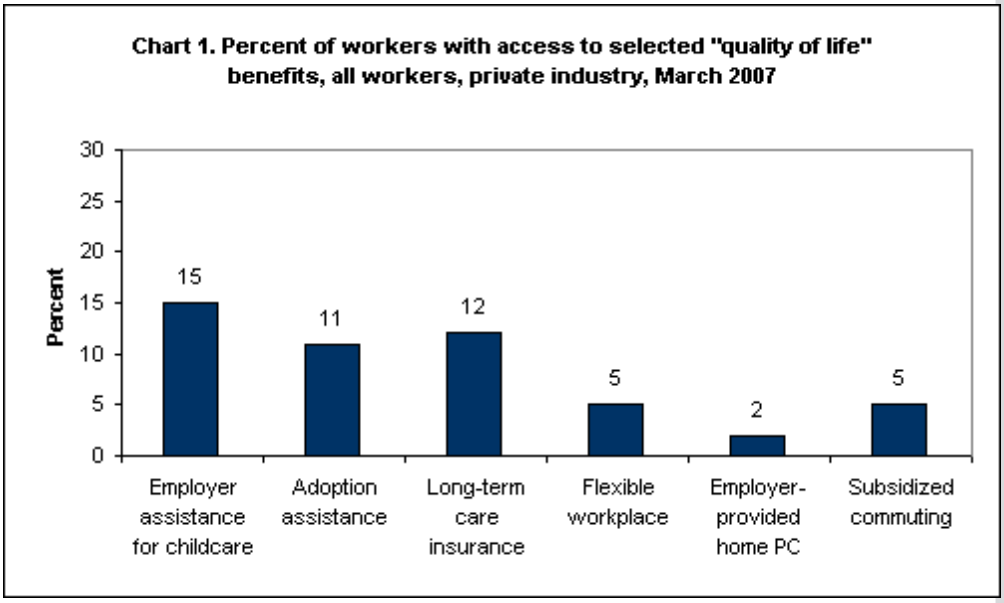
The National Compensation Survey provides data on "quality-of-life" benefits in its annual benefits summary publications. Although a relatively small percent of workers have access to these kinds of benefits, the data give insight into ways that employers and employees are working toward more family- and environmentally friendly work arrangements.

The Bureau of Labour Statistics National Compensation Survey (NCS) collects data on the percent of employees with access to a wide range of employer-provided benefits.1 Some types of employer-provided benefits are more commonly available than others. As shown in the most recent NCS publication of benefits data, 61 percent of workers in private industry have access to retirement benefits, 71 percent have access to medical plans, and 77 percent have access to paid holidays and paid vacation time.2 By comparison, employee access to various «quality-of-life» benefits is relatively uncommon. (See chart 1.)

Nevertheless, the NCS quality-of-life benefits data give insight into the type of work arrangements that workers value and some employers promote. These benefits have a potential for influencing how people get to work, how they conduct their work, and the extent to which they are connected with their families and fellow workers. Therefore, a closer look at worker access to quality-of-life benefits—by occupation, bargaining status, wage level, establishment size, and area in which the worker is employed—is of value.

Quality-of-Life Benefits for Private Industry Workers

Chart 1 shows the percent of workers with access to a variety of quality-of-life benefits for all workers in private industry. Long-term care insurance, childcare assistance, and adoption assistance are more than twice as likely to be available than are subsidized commuting, flexible workplace, and employer-provided home personal computer (PC) benefits. (See exhibit for NCS definitions of these benefits.)



Employer assistance for childcare. Parental participation in the workforce often depends on access to formal childcare arrangements.3In 2007, 15 percent of workers in private industry had access to employer-provided childcare assistance, which includes funds, on-site or off-site childcare, and resource and referral services. For some workers, childcare needs may be covered by a different employee benefit,*dependent care reimbursement accounts*, which set aside money to be used to pay for expenses including childcare, eldercare, or services to a disabled dependent. In 2007, 31 percent of workers in private industry had access to dependent care reimbursement accounts.4

Adoption assistance. Of the more than 72 million children under 18 years old in the United States,5 1.6 million (or 2.2 percent) are adopted.6 The U.S. Department of Health and Human Services reports that 51,000 children were adopted with public agency involvement in Fiscal Year 2005.7 The cost of adopting a child can range from $5,000 to $40,000, depending on the agency and source.8 In 2007, 11 percent of all private industry workers had access to employer-provided adoption assistance.

Long-term care insurance. Long-term care insurance has become a sought-after form of insurance as baby boomers prepare for retirement.9 NCS data on access to long-term care insurance includes workers who have access to a group plan as well as those whose employer subsidizes the cost of individual plans. In 2007, 12 percent of private industry workers had access to such plans.

Subsidized commuting. The American public made 9.8 billion trips on public transit in 2005.10 By this measure, public transit use has increased steadily over the past decade. Approximately half of these trips were for commuting to and from work.11 With current concerns about the global impact of modern living, gasoline price uncertainty, and increasing traffic congestion, commuting by public transit may offer some solutions. In 2007, only 5 percent of private industry workers had access to commuter subsidies.

Flexible workplace. With the advent of the personal computer and the Internet, it became possible for more types of work, particularly those of professional and technical workers, to be conducted effectively off site, and often from home. Increased employee productivity, reduced stress, cost savings, and emergency preparedness have been cited as some of the positive effects of flexible workplace programs. Flexible workplace arrangements are sometimes referred to as «teleworking» or «telecommuting,» although it is uncertain to what extent flexible workplaces are displacing the traditional daily commute to work.

The NCS definition of flexible workplace is quite restrictive, requiring a formal program; informal plans are not included. In 2007, 5 percent of workers in private industry had access to flexible workplace benefits. By contrast, the Office of Personnel Management reports that approximately 70 percent of Federal workers were eligible to telework during 2005, and 6.6 percent of the Federal workforce (9.5 percent of those eligible) participated in teleworking. Of those who participated, 60 percent teleworked at least 1 day per week.

Employer-provided home personal computer (PC). Only 2 percent of employers provide workers with a home PC in 2007. This does not include a personal home computer provided by an employer only as part of a flexible workplace arrangement.

Quality-of-Life Benefits by Worker and Establishment Characteristics

While most subsets of workers followed a similar pattern of access to quality-of-life benefits as did all workers in private industry, some groups showed notable differences. Chart 2 shows employee access to quality-of-

life benefits by major occupational group.16Management, professional, and related occupations had greater access to each of the quality-of-life benefits than did any other occupational group. Sales and office workers were the next most likely to have access to the quality-of-life benefits. Workers in service occupations; natural resources, construction, and maintenance occupations; and production, transportation, and material moving occupations had less access to these benefits.

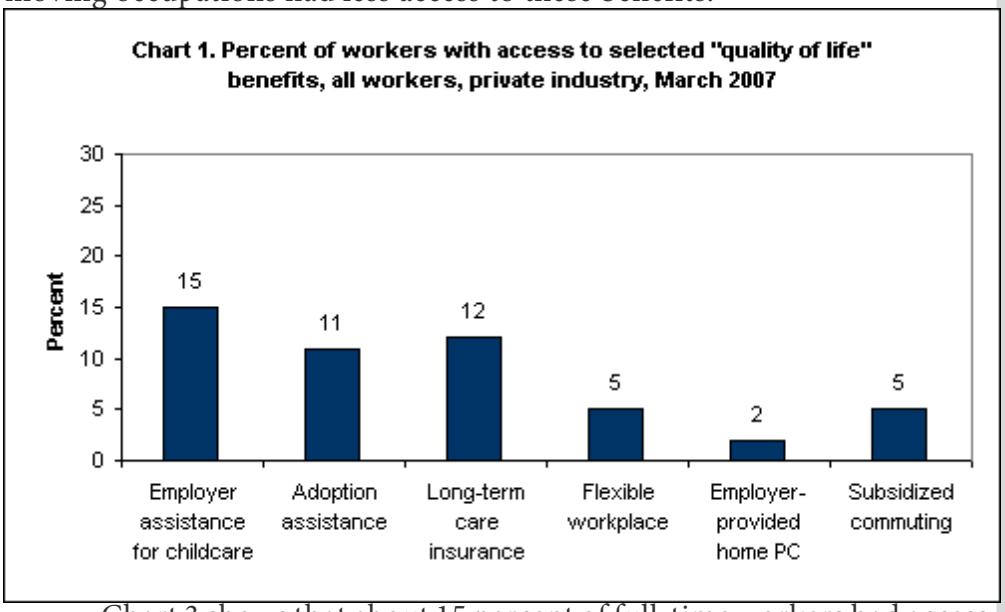


Chart 3 shows that about 15 percent of full-time workers had access to childcare and long-term care benefits, while fewer than 10 percent of part-time workers had access to these benefits. Part-time workers were less than half as likely as full-time workers to have access to adoption assistance.

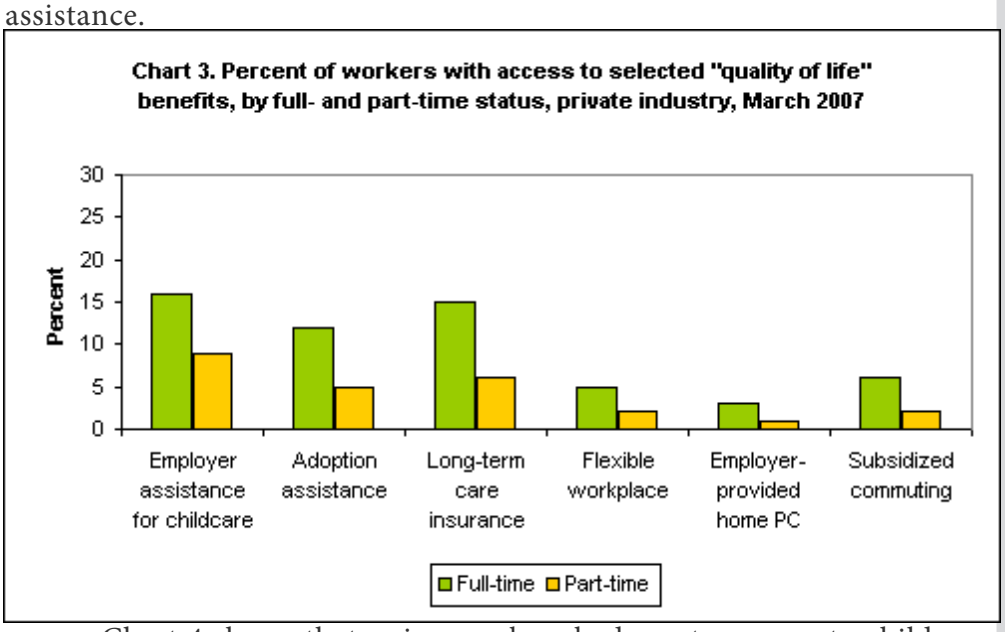


Chart 4 shows that union workers had greater access to childcare assistance, adoption assistance and long-term care insurance than did non-union workers. Flexible workplace arrangements, while relatively

uncommon, are more prevalent among non-union workers than among union workers, most likely due to union workers' greater representation in manufacturing and construction occupations, which require work on site, than in professional, managerial, and office and administrative occupations, which had a lower percentage of unionized workers.17

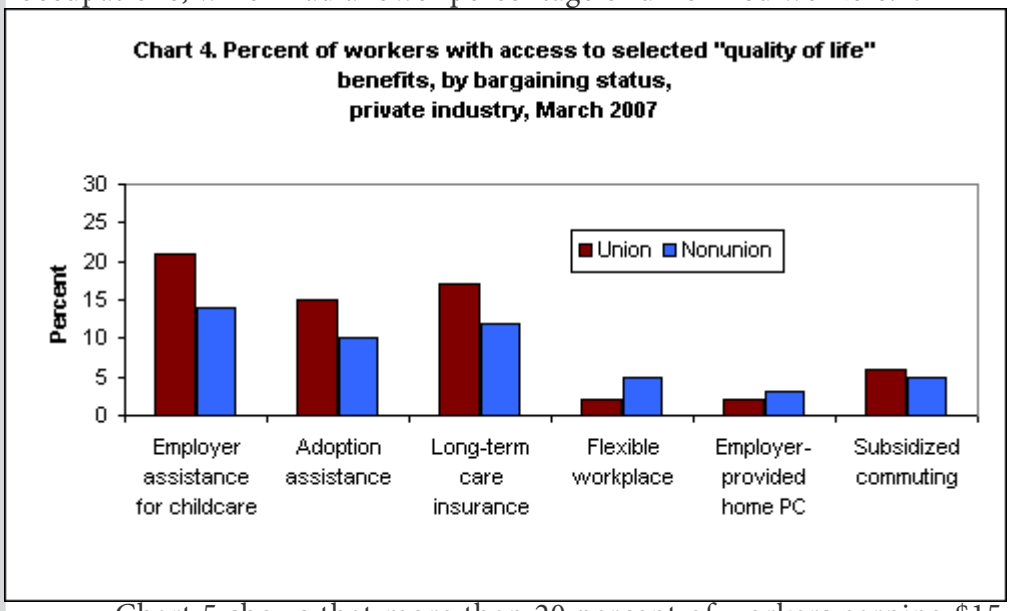


Chart 5 shows that more than 20 percent of workers earning $15 or more per hour had access to childcare assistance, while less than 10 percent of workers earning less than $15 per hour had such access. The disparity among workers by wage level was notable in each of these benefit categories.

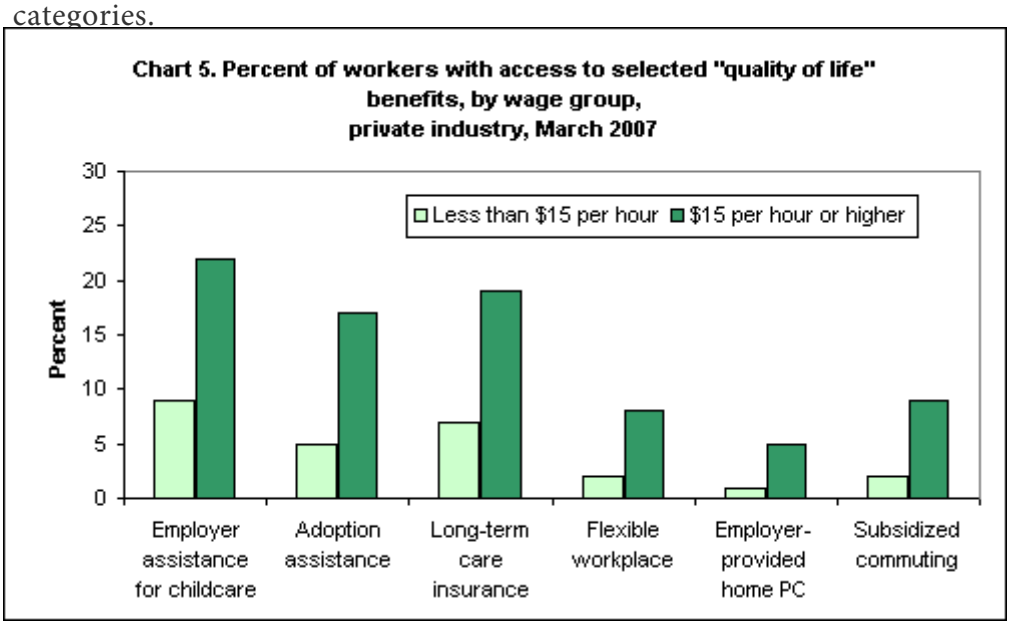


Chart 6 shows that workers employed in establishments with 100 or more workers had much greater access to almost every type of quality-of-life benefit than workers employed in smaller firms. Workers in large

firms were 4 to 5 times as likely as workers in smaller firms to have access to childcare, adoption, and long-term care insurance benefits.

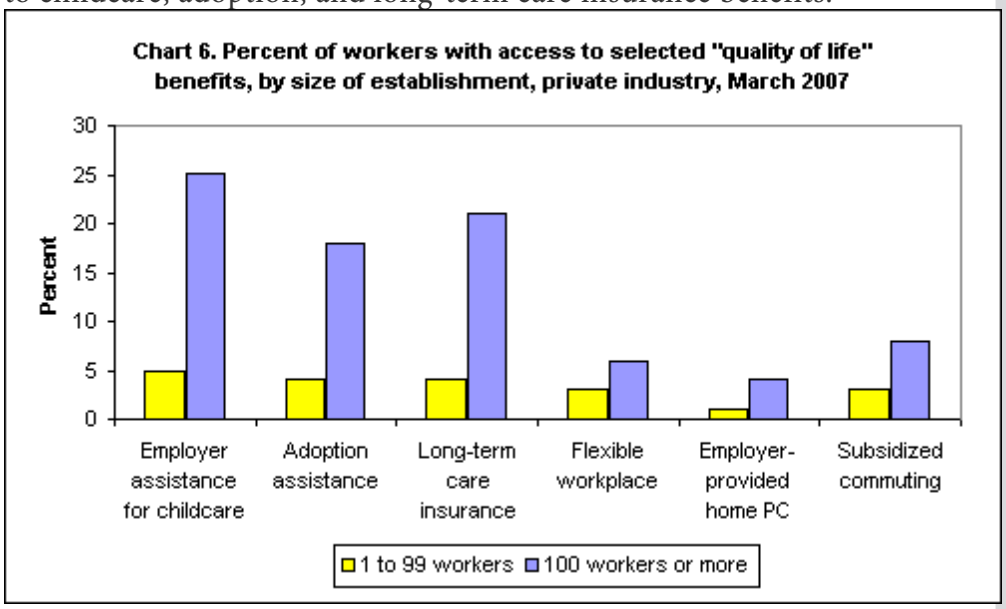
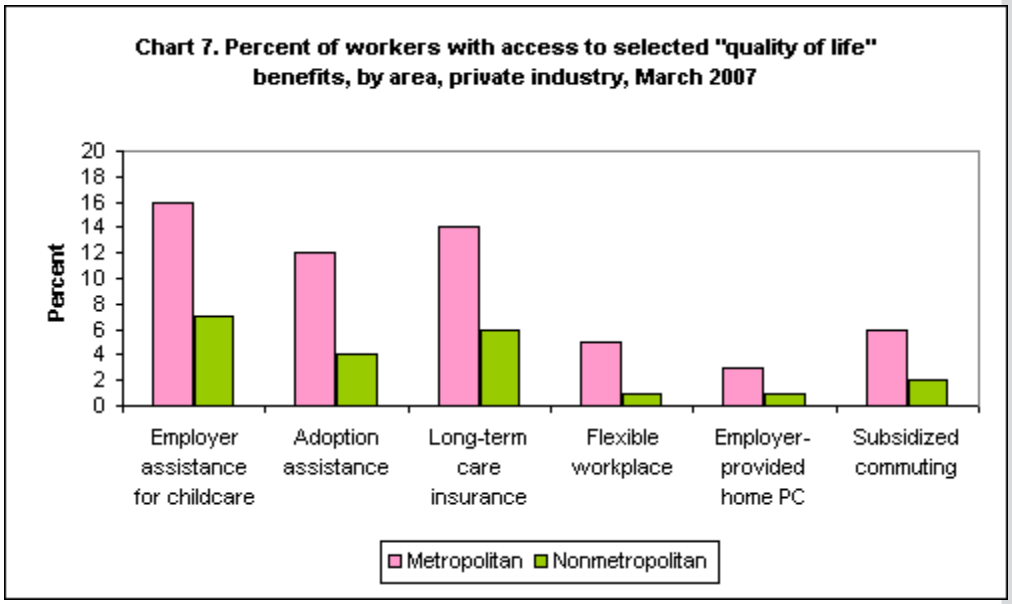


Chart 7 shows that workers in metropolitan areas were more likely to have each of the quality-of-life benefits than did workers in nonmetropolitan areas. Public transit systems are more common in metropolitan than nonmetropolitan areas, which might account for the greater access to subsidized commuting among workers in metropolitan areas.



Occupational and establishment characteristics and location of establishment are factors that are most likely to influence the percent of workers who have access to quality-of-life benefits; however, these factors overlap to some extent. For example, workers in metropolitan areas receive average wages of more than $15 per hour, and workers in larger firms earn, on average, more than those in smaller firms. Thus, if workers who

earn more than $15 per hour are more likely to receive certain benefits, it could be related to the fact that many of them work in larger firms and in metropolitan areas.

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Lesson 5.2 - Advantages and Disadvantages of Legal System

Some of the innovations which can be **appreciated by employees**

- **a refusal to give an employment** to the citizen must be given in written form (it gives more chances for the potential contest in the court for employee);
- **a probation period** can be set up by mutual consent of two sides;
- **an information gathering** about previous place of employment is possible just in the presence of written consent of the employee;
- the employee who was dismissed because of **stuff reduction** has a priority in a right to be employed if his established post was renewed during one year after the quit moreover the employer has to inform him in written form about this;
- the employer has to pay **a fine for the employees in case of the salary delay** and the amount of the fine depends on the quantity of the days during which the employer has failed to pay on time;
- the new category of employees is introduced who have **"liability to family"** and that's why they have additional benefits;
- the definition of **irregular working hours** is sharply defined and how irregular working hours can be adopted in practice;
- a term while which the employee can be called to account for the violation of the **discipline is decreased**. One month team has to be counted not from the point when disciplinary case was discovered, but from the day when it was done;
- **a term** during which a claim (**labour controversy**) can be registered is increased from 3 months to 3 years term etc.

The innovations which can be **very interesting for the employers**

- the term construction "**changes in organisation of production and labour management**" becomes more detailed and new reasons for stuff reduction are given;

- the employer is not obliged to deliver **a work-book and dismissal** in case of quit if the employee is absent during last working day as it is now according to the law. The employer will have to give out the work-book and dismissal upon first request according to the new bill;
- a labour contract can contain a duty to keep a **trade secret** and if the employee clue it then the employer has a right to dismiss him for such a violation or/and to claim damages in full measures of caused harm;
- the peculiarities of the labour relations' regulation in **private business** where up to 20 employees are working for natural person (businessman);
- the peculiarities of the labour relations' regulation with those employees who signed **labour contract** at a short date etc.

Advantages and Disadvantages of Medical Aid Schemes

Advantages

it protects employees if they suddenly have to pay large, unexpected medical costs and they don't have to delay their medical treatment because they don't have any money employees get better medical care because they are looked after by private doctors, clinics and specialists instead of overcrowded public hospitals.

Disadvantages of a Medical Aid Scheme

- It is expensive and fees are always increasing
- If an employee has dependants in the rural areas it does not help to have medical aid because there are no private health care facilities
- There are often many hidden costs in the schemes and the scheme might only pay a small percentage of the costs and the employee has to pay the rest;
- Some schemes set limits for benefits, for example, a scheme could set a limit of R720 per year for medicines prescribed by a doctor for a single member. If the member needs to buy more than R720

worth of medicines in a year, she or he will have to pay for any costs of medicines above this limit.

- Some medical costs are completely excluded from medical aid schemes. Employees must then pay for these costs themselves even though they are paying into the medical aid fund every month.

The Medical Schemes Act

The Medical Schemes Act (No 131 of 1998) has made the following changes to medical aid schemes: there must be standard-rate fees for people to join medical aid schemes regardless of their health or age there can be no discrimination on grounds of peoples' health, for example, refusing to allow a person to join a medical aid scheme because they are HIV-positive, or because they have asthma or diabetes the definition of dependants includes spouses (husband or wife) and natural and adopted children

Gender Perspective of Informal Sector

Women are the bigger workforce of the Informal sector as they are more likely than men to undertake 'unpaid' activities, whether economic or non-economic, women are also more likely than men to be involved simultaneously in unpaid care work and in unpaid or low-paid economic activity. More generally, women are less likely than men to be engaged in full-time regular employment as 'employees' in formal sector enterprises, which is the simplest form of work to capture in surveys. Often the work of women is unrecognized by society, their families and even themselves. They are instead regarded as homemakers, and thus not economically active, even though they are engaged in economic work.

Gender sensitive statistics are needed to understand how a range of different factors is affecting women and men, especially those who are poor, and their families. These factors include:-

- A large and possibly expanding, informal economy;
- Globalization-increased economic integration and advances in technology;
- The impact of work and lack of work on family and personal lives;
- The linkages between unpaid care work and production;

- The extent to which women and men are affected by decent work deficits

The National Statistical System has to widen its scope to cover contextual evidences to establish or quantitatively demonstrate the value and validity of this set of postulations, which inter-alia provide overarching objectives for statistical investigations.

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Lesson 5.3 - Gender Dimensions of Labour Law

In Andhra Pradesh female migration is on par with male migration both for rural and urban. In Assam urban female migration is seven percentage points less than that of rural female migrating. In Bihar one finds higher female migration in the urban area than in the rural area though female migration is by and large less than what we get for majority states. In Gujarat urban female migration is three percentage points higher than rural female migration. In Haryana one finds very poor urban female migration.

In Karnataka, Kerala and Tamil Nadu female migration both rural and urban are comparatively high. In U.P., West Bengal and Rajasthan urban female migration is comparatively high when compared to rural female migration. Orissa exhibits least mobility among its urban females. So the broad conclusions arrived at is as follows:

(a) In Southern states males and females are almost equal in number (50:50) in both rural and urban migration except for Tamil Nadu where the ratio is 60:40 and urban female migration is slightly lower than rural female migration. But when compared to the rest of the states in India southern states in general exhibit higher rural and urban migration among females.

(b) The predominantly male migration states as far as rural migration is concerned are Rajasthan (79:21) and Bihar (76:24). Such predominant male migration is witnessed in the case of Orissa in urban migration (81:19).

(c) In Rajasthan females are almost in equal number (only slightly less) in urban migration (57:43) while they constitute only 21% in rural migration. Among the less developed states Orissa is on the other extreme with least female participation in urban migration (81:19)

(d) In West Bengal urban female migrants are one and half times higher than rural female migrants the ratio being 54:46 while it is only 72:28 for rural migrants. U.P also joins this list.

(e) In the rest of the states females dominate in rural migration. The overall conclusion is female migrants are more in number in rural migration in the least developed states while they are more in number in southern region both in rural and urban migration.

On rural –urban migration for both males and females other research studies have come to the conclusion that in the developed states of Maharashtra and Gujarat rural to urban movers are higher than rural to rural movers. Except Kerala urban bound movement is important in the southern states reflecting generally their higher levels of urbanization (Tim Dyson & Visaria:p115) Punjab and Haryana show high urban to urban migration because of its proximity to Delhi. Because of low levels of urbanization states like Bihar, U.P, and Orissa witness high rural to rural when compared to urban to urban migration. The migration streams from Bihar, U.P and Orissa are predominantly male and this is attributed to cultural or economic reasons. But in Maharashtra and Gujarat the migrants move with their families including the womenfolk. (Srivastava 1998).

Studies on Female Migration: An Over-view

Over the years the literature on migration has grown in volume and variety in response to the unfolding complexities of migratory processes. Though women's employment oriented migration is on the increase, only few studies discuss the movement of women in detail especially in relation to poverty. The work of Connell et al (1976) the earliest of the studies in migration contains a detailed discussion on women's migration. Fernandez-Kelly (1983) and Khoo (1984) concentrate on women and work both migrant and non-migrant in the world's labour force. They discuss the problem in the wider context of problem of feminisation of the work force, de-skilling and devaluation of manufacturing work.

In recent literature female migration is linked to gender specific patterns of labour demand in cities. In both South East Asian and Latin American cities plenty of opportunities are available to women in the services and industrial sectors especially with the rise of export processing in these regions. (Fernandez –Kelly 1983, Hayzer 1982, Khoo 1984 and studies on South East Asian Labour migration) It has been established that women are no longer mere passive movers who followed the household

head (Fawcett et al 1984, Rao 1986). In fact daughters are sent to towns to work as domestic servants (Arizpe 1981). From an early age girls become economically independent living on their own in the cities and sending remittances home. This kind of move has been characterised by Veena Thadani and Michael Todaro (1984) as 'autonomous female migration 'and has resulted in Thadani-Todaro model of migration, However studies indicate that the independent movement of young women in South Asia and Middle East as labour migrants is very rare and associated with derogatory status connotations. (Connell et al 1976, Fawcett et al 1984).

But with trade liberalization and new economic policies, gender specific labour demand has motivated many young Asian women to join the migration streams in groups or with their families to "cash- in" the opportunity. Kabeer (2000) in her study finds Bangladeshi women (with a long tradition of female seclusion) taking up jobs in garment factories and joining the labour markets of Middle East and South East Asian Countries.

A study of 387 female labour migrants from South East Asia, Thailand, the Philippines and China finds positive impacts on women. (Chantavanich 2001). Another research (Gamburd 2000) concludes that despite some unpleasant situations, none of the women she interviewed felt that the risks of going abroad outweighed the benefits. Recent migration research shows that female migrant's constitute roughly half of all internal migrants in developing countries. In some regions they even predominate men. In India with the entry of more and younger women in the export processing zones, market segmentation is being accentuated; female dominant jobs are being devalued, degraded and least paid. Though this does not augur well with women development it has not deterred women from contributing to family survival and studies do not want which highlight that it is women who settle down in the labour market as flower/ fruit vendors, domestic servants and allow the men to find a suitable job leisurely

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Lesson 5.4 - Recent Trends in Labour Laws

This is an attempt to compare the judgments delivered in the 1960 To 1990'swith that of judgments delivered from 2001 onwards. The Indian Economy has undergone significant changes after the introduction of liberalization and globalization. The Indian Judiciary has also taken a note of the prevailing circumstances and there is a different direction taken by the Indian Judiciary in the recent years.

Earlier the Judiciary has taken a human approach. However, now the discipline and industrial peace in the industry is considered to be of paramount importance. With this background, I tried to compare several judgments rendered by the Supreme Court and the High Courts.

1. Absenteeism

Earlier absenteeism even for a period of 5 years was not considered as a major misconduct. In a judgment the Supreme Court in the case of Syed Yakoob Vs K.S.Radhakrishnan and others reported in AIR 1964 SC 477 is relevent which dealt with that termination on the ground of absenteeism and found that it was disproportionate and set-aside the termination and granted reinstatement with full back-wages.

Whereas the Hon'ble Supreme Court in the case reported in 2008 LLR 715 SC Chairman & MD VSP and others Vs. Gokaraju Sri Prabhakar held that despite of opportunities granted him to report for duty, he failed to report duty – Absence justifies dismissal from service - High court cannot set aside a well reasoned order only on sympathy or sentiments – Once it is found that all the procedural requirements have been complied, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee.

2. Theft

Theft is defined as a mis-conduct under the Industrial Employment Standing Orders Act, A.P. Shops & Establishments Act and also under the

IPC. Earlier the quantum involved in the theft or fraud used to be the deciding factor in case of theft, fraud or dishonesty. The courts in earlier days used to take lenient view depending upon the amount involved in the theft and the nature of theft. A reference can be made to the judgment of P.Orr & Sons Pvt. Ltd., and others Vs Presiding Officer labour court reported in 1974 I LLJ page no.517 herein the court has held that the amount involved in the theft is not of a high value and as such dismissal was a disproportionate punishment.

Whereas in the recent days Supreme Court has taken a view that the amount involved in the theft is not the criteria but integrity of the employee is more important. Termination of workmen for theft of employer's property should not be set aside reported in 2008 Supreme Court LLR 231 in the case of workmen of Balmadies Estates Vs management of Balmadies Estates. Similar Judgements on this aspect are as follows.

A) In the case of A. Venkat Ram Vs. Depot Manager, Charminar Depot, APSRTC reported in 2004 LLR 186, the A.P. High court has observed as follows: "Unless cases of misappropriation and loss of confidence by the employees are dealt with iron-hand, it may not said right signals to the employee".

B) The Supreme Court also taken the same opinion by observing that for quantum of money misappropriated but the loss of confidence is the primary fact in the case of Depot Manager, APSRTC Vs Raghuda Siva Shankar Prasad reported in 2007 LLR 113

3. Usage of Vulgar Language

Earlier whenever the cases relating to usage of vulgar or abusive language reaches the court of law, the courts have taken a view that the workers basically came from the families of without much education background and they have grown in a society where usage of decent language was not possible. Therefore keeping in view of their social status, the courts have granted relief in favour of the workers even such misconduct was duly proved. Reference can be made to the case of Ramakant Mishra Vs State of UP reported in 1982 Lab ic page no.1790 SC. However, now the Supreme Court in the year 2005 LLR page 360 in the case of Mahindra and Mahindra Ltd., Vs. N.V. Naravade held that

usage of abusive and filthy language against superior officer held that did not call for lesser punishment than dismissal.

4. Sleeping While on Duty:

The courts are of the opinion in the earlier days that the workmen generally work for the long hours and sleeping while on duty was not considered as a major misconduct warranting the dismissal unless it is an habitual act. In this connection, a judgment of Supreme Court in the year 1960 in the case of Nirmal Sen Gupta Vs National Carbon Company Ltd. is relevant. Whereas now the Supreme Court in the case of Bharat Forge Company Vs. Uttam Manohar reported in 2005 LLR 210 held that sleeping while on duty as major misconduct warrants punishment of dismissal.

5. Assaulting the Superiors

The courts earlier taken a view that in some of the cases that assaulting the superior is not a major misconduct and considered the mitigating circumstances used to grant relief in favour of the workers. Whereas now the Supreme Court in the case of Bharat Cooking Coal Ltd., etc., Vs. Bihar Colliery Comgar Union reported in 2005 LLR 373 SC held that assaulting the superior is a major misconduct and also observed that the stand taken by the earlier courts that victim did not die because of the injuries is not a mitigating circumstance. Similar view was also taken by the Hon'ble Supreme Court in the case of Usha Breco Mazdoor Sangh Vs The management of Usha Breco Ltd and another reported in 2008 LLR page no.619 SC

6. Strike

Strike was considered to be the weapon in the hands of the workmen and the union to pressurize the management and to get their demands settled. This was the approach of the judiciary in the earlier days and a reference can be made to the case of B.R. Singh Vs Union of India reported in 1990 Lab. Ic, page 389 S.C. The Supreme Court in a landmark judgement relating to Tamilnadu Government Employees strike held that they have no statutory or constitutional right to go on strike as per the case reported in 2003 LLJ page 275.

A strike is used as a tool not for the welfare of workman but for the welfare of trade union leaders as per the Judgement in the case of Lt. Governor, Govt. of NCT of Delhi Vs. Delhi Flood Control Mazdoor Union reported in 2006 LLR 1113 (Delhi High Court).A strike cannot be converted into a tool to blackmail or protect erring employee (Ajay Enterprises Ltd., Vs. Secretary Govt. of NCT of Delhi reported in 2007 LLR page 86 Delhi High Court).

7. Burden of Proof of 240 Days of Service

If any workman wants to avail the protection under the Industrial Disputes Act in case of his dismissal or termination, he has to complete 240 days of service prior to his dismissal. Earlier the courts have taken a view that the burden of proving the service of an employee lies on the management as all the records pertaining to their employment are available only with the management – reference can be made to the case of State Bank of India Vs Shri N.Sundara Mani reported in 1976 (32) FLR page no.197 (SC).

Whereas now the Supreme Court in a series of judgments have held that the workman has to prove by a cognate evidence that he has completed 240 days of service. It was also made clear that the burden lies on the workman but not on the management.

A) Manager, RBI Banglore Vs. S. Mani 2005 FLR 1067.

B) Surendra Nagar District Panchayat Vs. Jetha Bhai reported in 2005 SCC 1167.

C) The Range Forest Officer Vs. S.T.Hadimani, reported in 2002(93) FLR page 179 SC.

8. Limitation

Industrial disputes Act is silent about the limitation in raising the disputes. Several courts have taken a view that in the absence of any provision under the Act, the limitation law is not applicable to the Industrial Disputes. Reference can be made to the case of Bombay Gas co.Ltd., Vs Gopal Bhiva and others reported in 1963 (7) FLR page no.304 (SC) and also in the case of Jai Bhagavan Vs Management of the Ambala

Central Co-operative Bank Ltd., and another reported in 1983 (47) FLR page no.532 (SC). Now the Supreme Court is of very clear opinion that even though no time limit is prescribed, parties has to approach courts within the reasonable period and rejected the claim of workman who raises the dispute after seven years in case of Haryana State Co-op. Bank Ltd., Vs. Neelam reported in 2005 1 LLJ 1153 (SC).

9. Back-Wages

Granting of back wages was mandatory nature by requirement during the earlier days and even though a small lapse of the management, the courts used to grant reinstatement with full back wages reference can be made to the case of Maharaja Sayajirao University of Baroda Vs RS Takkar reported in 1994 III LLJ page no.1111 SC.Now the Supreme Court in the case of UPSRTC Vs Samala Prasad Misra reported in 2006 LLR page 586 and also in another case of Babu Lal Vs Haryana State Agri, Marketing Board reported in 2009 LLR page 936 held that the back wages on reinstatement is no longer the rule of thumb and also held that when the workman is not contributed for a certain period, the employer would not be compelled to pay back wages.

10. Engagement for Short Period

The courts in earlier days was of the opinion that whenever, any employee was terminated the procedure mentioned in the section 25-F of I.D. Act has to be followed.Whereas now the Supreme Court in the case of G.M.Tanda Thermal Power Project vs. Jaya Prakash reported in 2008 LLR 30 SC held that Reinstatement of Workman is not tenable when they were engaged for a short period.

11. Gainful Employment

Whenever the managements take a stand that the workman was gainfully employed, the courts used to take a stand that the management has to prove about the gainful employment. The Decision of the Supreme Court in case of shambhunath Goel Vs Bank of Baroda reported in 1983 II LLJ page no.415 is relevant on this issue. Whereas the Supreme Court in recent days have clearly held that the workman has to prove that he is not gainfully employed after the date of termination in the case of Municipal Council, Sujanpur Vs. Surender Kumar reported in 2006 LLR 662 (SC).

12. Resjudicata

The earlier view was the principles of resjudicata is not applicable for industrial and labour matters as per the judgement of the Supreme Court in the case of A.P.State Road Transport Corporation Vs P.Venkateswara Rao passed in C.A.No. 36 to 54 of 1971 dated 19.08.1976.In a judgement the Supreme Court in E.E. Z.P.Engineering Division and another Vs Digambara Rao reported in 2005 (I) LLJ page no.1 held that the principles of resjudicata are applicable to the labour matters also.

13. Regularisation

The Supreme Court in the case of Daily Rated Casual Labour Employees Union Vs Union of India reported in 1988 (72) IFJR page 124 held that the casual labours working continuosly for more than one year are entitled to regularisation.Where as now in C.S. Azad Krishi Evam Prodyogiki Vishwavidyalaya vs. United Trades Congress and Anr. (Reported in 2008(1) SCC (L&S) page 504 the Suprexe Court held that completion of 240 days of work in a year does not confer the right to regularization under Act, thus there is no vested right in a daily wager to seek regularization.

14. Fixed Term Employment

Earlier the Supreme Court in the case of Uptron India Ltd Vs Shammi Bhan reported in 1998(6) SCC page 538 held that an employee cannot be thrown of service by simple reason, even though the standing orders provides for the same. Whereas now the Supreme Court in the case of M.D., Karnataka Handloom Dev. Corpn. Ltd. vs. Sri Mahadeva Laxman Raval reported in 2007 LLR page 317 held, Respondent claimant was aware that his appointment was purely contractual and for a specified period and was not eligible to any other benefits as a regular employee of Corporation and could be liable for termination without any notice and without payment of compensation, case of the claimant did not become an industrial dispute and held that termination of his contract did not amount to retrenchment, therefore, it did not attract compliance of Section 25F.

15. Registration of Trade Unions

Registration of a Union U/S 4 of the trade Union act by lay off workmen is not valid. Since nearly all the members of the respondent Union are laid off employees, therefore, the registration was granted dehorns the statute. LML Co. had filed a writ in High Court of Allahabad against the registrar of Trade Unions Uttar Pradesh for registering a union in the factory by workmen who are in Lay off. The basic issue involved in the case was whether the lay off workmen are covered under the definition of workmen who are actually engaged or employed in the factory during the period of lay off and are covered u/s of 4 of The Trade Union Act. When an employee is laid-off, he becomes unemployed and the bond of master and servant is snapped, though temporarily, and the newly added proviso comes into play and, thus, the registration could not be said to be in accordance with the requirements of the Act. Since nearly all the members of the respondent Union are laid-off employees, therefore, the registration was granted dehorns the Statute. Hence, the High Court has allowed the case filed by the management and quashed the registration certificate dated 18.01.2008. issued by the Registrar of Trade Unions.16.

Dispensing With Holding of Domestic Enquiry

Earlier it was the view of the Supreme Court that an employee cannot be dismissed without holding an enquiry. Reference can be made to the judgment of D.K. Yadav Vs. J.M.A. Industries Ltd., reported in 1993 (67) FLR page 111. Whereas, now the Supreme Court has taken a different view in the case of Engineering Laghu Udyog Employees Union Vs. Judge, Labour Court and another reported in 2004 LLR 331 in which it was held that in certain contingencies the employer in case of grave nature of misconduct also can dismiss a workman without holding an enquiry. The action of management will not be invalid, merely because the dismissal was effected without holding an enquiry.

Employees' State Insurance Act

1. Liberal Interpretation of Statutes

M/s. International Ore & Fertilizers (India) Pvt. Ltd. vs. Employees' State Insurance Corporation (18.08.1987) – SC liberal interpretation to be

placed on provisions of such welfare legislation. Whereas Supreme Court in the recent case held that liberal interpretation is not permissible when the statute is clear reported in Manipal Academy of Higher Education Vs. Provident Fund Commissioner reported in 2008 FLR (117) at page 358

2. Levy of Damages

In the case of Toshiba Anand Vs ESI Corporation reported in 1980 Lab IC page no.907 held ESI Corporation is entitled to recover damages when there is a delay in payment of contributions. Now the Supreme Court in recent judgement in the case of ESI Corporation Vs HMT Ltd., reported in 2008 (116) FLR page no.543 (SC) held that damages is not compulsory in all the cases.

3. Wages

The Supreme Court in the case of Wellmen (India) Pvt. Ltd., Vs ESI Corporation reported in 1994 (I) LLJ page no.545 has held that the attendance bonus paid under a settlement once in a quarter falls within the wages. Whereas the Supreme Court in the case of Whirlpool India Ltd. Vs ESI Corporation 2000 LLR page no.431 SC held that any payment made within a gap of two months does not fall within the definition of wages even though the same was paid under a settlement.

4. Coverage of Contract Employees

The Supreme Court in earlier in the case of Regional Director, Employees' State Insurance Corporation, Madras vs. South India Flour Mills (P) Ltd. reported in 1986 III SCC 238 held that the workers employed in construction were employees within meaning of Section 2 (9) of ESI Act. In the recent case the Hon'ble Supreme Court in the case of the ESI Corporation Vs JMD Fashions reported in 2007 (114) IFLR page no.621 held that principal employer is not liable to pay contributions in respect of outside employees.

5. Coverage of Canteen and Cycle Stand Workers

The persons engaged in a canteen and cycle stand of a theatre held to be employees of a theatre as per the judgement of the Supreme Court

in Royal Talkies Vs ESI Corporation reported in 1978 4 SCC page no.204. Whereas the Supreme Court in the case of Calcutta Electricity Supply Vs Subhash Chandra Bose reported in 1992 I SCC page no.441 held that unless supervision and control is exercised by the principal employer over the contract workers, such workers cannot be considered as employees of the principal employer.

6. Enforcement of the Act

The Supreme Court in the case of Gasket Radiators Pvt. Ltd., Vs ESI Corporation reported in 1985 FLR 426 held that the contributions have to be paid from the date of applicability of the Act. Whereas the Hon'ble Supreme Court in the case of ESI Corporation and others Vs Distillaries and Chemicals Mazdoor Union reported in 2006 (3) LLJ page 349 held that when the matter is pending before the courts for 17 years and the during the said period the employer has provided the Medical benefits, therefore a direction was given to implement the ESI Scheme from the date of the Judgement of High Court.

7. Limitation

Earlier the Supreme Court in the case of Goodyear India Ltd., Vs ESIC reported in 1997 held that limitation is not applicable for the claims made by the ESI corporation. Whereas the Supreme Court in the case of ESI Corporation V C.C Santakumar reported in 2007 (112) FLR page no.636 SC held that the corporation has to make claims within a reasonable period.

8. Directors Liability

The Supreme Court earlier in the case of Srikanta Datta Narasimharaja Wodiyar vs. Enforcement Officer, Mysore, in the year 1993 has taken a view that all the directors of the company are liable for payment of contributions. Whereas the Supreme Court in the case of ESI Corporation Vs S.K. Aggarwal reported in 1998 (80) FLR page no.199 SC held that unless there is control over the affairs of the factory the director cannot be prosecuted.

9. Coverage of Club

The earlier view of the Bombay High Court was that preparation of food in kitchen of Club amounts to manufacturing process under the ESI Act as per the Judgement in the case of Cricket Club of India Vs ESI Corporation reported in 1994(69) FLR page 19. Whereas now the Supreme Court in the case of Bangalore Turf Club Ltd., Vs. ESI Corporation reported in 2009 LLR 826 held that coverage of Turf Club under the caption of 'Shop' requires reconsideration. Hence should be considered by the larger bench and the ESIC should not raise any demand against the appellant club till the final decision.

10. Conveyance Allowance

According to the Judgement in the case of ESI Corporation Vs Sundaram Clayton reported in 2004 LLR page 621, the ESI contributions are not required to be paid on conveyance allowance. However, the High court of A.P. in the case of Deputy Director, ESI Corporation, Hyderabad Vs. Amruthanjan Ltd., Hyderabad and others reported in 2009 (3) ALD 569held that the conveyance allowance and washing allowance are falling within meaning of expression 'Wages'.

11. Other Important Judgements

A. Service Charges

The Supreme Court in the case of Quality Inn Southern Star Vs ESI Corporation reported in the year 2008 LLR page 119 SC held that the service charges collected from the customers and distributed among employees is not wages.

B. Opportunity Before Coverage

The Supreme Court in the case of Srinivasa Rice Mill Vs ESI Corporation reported in the year 2007 (112) FLR page 233 held that before the Act is made applicable, an opportunity should be given to the employer before the coverage under the Act.

C. Applicability of Consumer Protection Act

The Supreme Court in the case of Kishori Lal Vs Chairman, ESIC reported in 2007 (114) FLR page no.219 SC held that medical services rendered by ESI hospitals are covered by Consumer Protection Act.

D. Coverage of Employees

a. The Supreme Court in the case of Bharatagath Engineering Vs R.Ranganaiki reported in 2003(3) ALT page 28 held that the an employee suffering employment injury but given registration post humously. But entitled to the benefits under the ESI Act.

b. The Bombay High Court in the case of ESI Corporation Vs R.K. Furnaces and another reported in 2007 LLR page 14 held that casual workmen of casual Contractors like Plumbers, Electricians, Ac repair workers who are engaged for temporary repair work would not be covered under the Act. This Judgement was passed by following the principle laid down by Supreme Court in the case of Harrison Malayalam.

Employees Provident Funds Act

1. Trainees are not Covered

In a judgment of Supreme Court in the case of RPF Commissioner Vs. Central Aercanut and Coca Marketing and Processing Co-operative Ltd., reported in 2006 FLR (108) SC 805held that even the standing orders were not certified in terms section 12 (A) of the Act, the model standing orders are applicable. The model standing orders defines an apprentice as a learner who is paid allowances during the period of training. Therefore, the trainees are not covered under the P.F.Act

2. Provident Fund Contributions are not Required to be Paid on Encashment of Leave

Earlier the courts have taken a view that the contributions are to be paid on leave encashment. Reference can be made in the case of the Hindustan Lever Employees Union (1995 (2) LLJ page 279). However, the Hon'ble Supreme Court in a case of Manipal Academy of Higher Education

Vs. Provident Fund Commissioner reported in 2008 FLR (117) at page 358 have held that the Provident Fund contributions are not required to be paid on encashment of leave.

3. Beneficiaries are to be Identified

The High court Bench of Bombay High Court in the case of Sandeep Dwellers Vs. Union of India reported in 2007 (1) LLJ page 518 have held that the casual and temporary workers employed through the contractors are not required to be covered unless they are identified.. Therefore, with a direction to conduct a fresh enquiry, the mater was remitted back to the Department. The issue was again followed by the Supreme Court the case of Himachal State Forest Corporation Vs. RPF Commissioner reported in2008, Labour Law Reporter page 980 and further held that the demand of the department is old and stale, the contributions can only be claimed for the beneficiaries who can be identified. The Supreme Court has also further held that the old record which is not available with the management should not be insisted to be produced.

4. Engagement of Persons for Short Periods

Engaging persons for very short period such as Plumbers, Cleaners, Carpenters and Electricians etc., even though as per the provisions of the EPF Act every person who worked for single day is also to be covered but in a case reported in 2006, Labour Law Reporter page 357, the High Court have taken a practical view and declared that the persons employed for very short period are not required to be covered under the P.F. Act.

5. Contributions on Total Wages

The P.F Department officials are now repeatedly relying upon the judgment of Karnataka reported in 2004, LLR page 540 in the case of Group IV Securities Guarding Ltd., Vs. RPF Commissioner where the High court of Karnataka held that the authority under section 7-Aof the Act into the question of as to whether the wages being paid to the employees have been split under various heads with an ulterior motive to avoid EPF contributions. Aggrieved by the same an appeal was filed before the Supreme Court and the Hon'ble Supreme Court have directed the P.F. Commissioner to dispose off the matter without being influenced by the

observations in the said case and further stated that the observations made by the Karnataka High court should not be taken as conclusive but it is only a tentative. With the said direction, the matter was remanded back to the P.F. authorities for fresh disposal. Therefore, the judgment of Group four Securities is no longer a valid judgment and no final order is passed by the P.F authorities in Karnataka till this date. The E.P.F Appellate Tribunal, New Delhi have already passed orders in the following cases confirming that contributions are required to be paid only Basic and D.A and not on any other allowances.

a. St. Anne's School Vs APFC, Patna, it was held that the EPF contributions are not required to be paid on house rent allowance, medical allowance, conveyance allowance etc.

b. M/s. Old Anchor Vs APFC, Goa, it was held that EPF contributions are not required to be paid on food allowance and special allowances.

c. V.M. Salgaocar & Bros. Pvt. Ltd. Vs APFC, Panaji, it was held that EPF contributions are not required to be paid on supplementary allowance.

d. M/s. Hotel Lalitha Vs APFC, Patna it was held that EPF contributions are not required to be paid on staff food.

6. Damages

In the case of K.T.Rolling Mills Pvt. Ltd VS RPF Commissioner reported in 1994(1) LLJ page No.66 held that the officers entrusted with the task of administering social welfare legislations should be aware of this and they should be conscious that they are administering the legislation. Delay in claiming damages from the employers, If such delay caused any loss to the workman such loss has to be recovered from concerned authorities.

7. Clubbing of Two Establishments

The Supreme Court in the case of RPF Commissioner Vs Rash Continental Exports (P) Ltd., reported in 2007 (II) SCC (L & S) page no.37 held that two concerns having separate registrations under Factories Act, Sales Tax Act, Income Tax Act, ESI Act, Separate Balances Sheets cannot be clubbed.

8. Interest

The Hon'ble High Court of Calcutta in the case of Indian Record Manufacturing Co. Ltd.,Vs Union of India and others reported in 2008 (117) FLR page no.164 held that Interest on late payment – Delayed payment of contributions by petitioner – Before passing order, a reasonable opportunity should be given to employer and an Order passed in a mechanical manner cannot be sustained in law.

Important Notifications Issued Under the Esi Act

1. Memorandum of notification no.2/2000 dated 10.02.2000} - Guidelines for levy of damages under section 85- B of ESI Act, in case of any dispute raised by the employer and if the matter is pending before the court of law the damages should not be claimed for litigation period.
2. Memorandum of notification bearing no.P-12(1)-11/27/99-Ins.IV dated 31.03.2000 regarding the coverage of the employees engaged for the work of construction of the building for the expansion of the factory/establishment and on repair and maintenance of buildings. The persons directly connected with the construction work which is carried on within the premises will be considered as an work incidental to the work of the factory and the persons who engaged will be coverable under the ESI scheme. However, when a building is not utilized for the expansion of the factory of establishment the persons so engaged will not be coverable under the ESI scheme. But, if the construction activity is for the incidental works of the factory or establishment such as construction of guest house, canteen, club or dispensary the persons so engaged for construction of the said activities will be coverable under the ESI Act.
3. Memorandum bearing no.T-11/14/41/84-Ins.IV dated 09.03.2000 deals with the prosecution under section 86-A of the ESI Act and prosecution has to be initiated only against the persons who at the time of the offence committed were in charge and responsible for the day to day affairs of the company by following the judgement passed by the Hon'ble Supreme Court in Criminal Appeal No.222 of 1990 between ESI Corporation Vs S.K.Aggarwal and others.

4. Memorandum of notification bearing no.P-11/13/97-Ins.IV dated 06.11.2000 deals with different heads on which the contributions are required to be paid and also deals with the items on which the contributions are required to be paid.

5. Notification no.1/2000 bearing no.S-11/12/1/2000-Ins.IV dated 01.05.2000 with a direction that the additional employees found on the date of inspection may not be taken for claiming contribution from the back period without collecting the employees particulars.

6. Notification bearing no.P-12/(11)-11/83/05-Ref.II dated 25.10.2007 states that the principal employer is not liable to pay the contributions in respect of the contract workers who are independently covered with a separate code number.

7. Notification bearing no.2/2008 dated 01.05.2008 deals with the procedure to be followed by the ESI authorities before passing orders under section 45-A of the ESI Act with a mandatory direction that when ever the claim is more than one lakh a paper notification shall be given before passing exparte adhoc assessment order.

8. Notification bearing no.T-11/13/3/2008-Rev.II dated 31.12.2008 guidelines to reopen the cases where contributions are determined on adhoc basis and whenever the employer makes a request to reopen the case, such cases may be reopened for fresh assessment on depositing of 50% of the assessed amount or the actual payable contributions whichever is higher.

Introduction to Labour Administration

For the ILO, labour administration is defined as public administration activities in the field of national labour policy. By labour administration system is meant all public administration bodies responsible for and/or engaged in labour administration – whether they are ministerial departments or public agencies, including para statal and regional or local agencies, or any other form of decentralized administration – and any institutional framework for the coordination of the activities of such bodies, and for consultation with and participation by employers and workers and their organizations.

Although the Labour Administration Convention, 1978 (No. 150) does not define a national labour policy, it is commonly accepted that such a policy includes all labour related matters, such as protection of employment and working conditions, the promotion of equal opportunity, and fundamental principles and rights at work. It is clear that a wide range of activities are covered, but not all these activities come under the direct or immediate supervision of the ministry of labour, and so proper coordination within the overall administrative system is needed.

In general, the ministry of labour (or employment, or welfare, or social affairs) often has to coordinate its work with that of other ministries. When developing initiatives in respect of persons working illegally, for example, the ministry of labour will coordinate with the ministry of finance, which has competency in this area in respect of people who are not paying taxes. Similarly, when developing initiatives that affect women, the ministry of labour will coordinate with the ministry for family affairs (or women), and so on.

Within the realm of public administration, labour administration is a relatively new arrival. It was only in the late nineteenth century that governments accepted the need for a permanent system of labour administration to regulate labour market forces and improve working conditions. With the passage of time, the responsibility for labour administration was vested in fully fledged ministries concerned with labour and social matters. During the past century, there has been increasing recognition of the importance of labour administration to national development. Initially, this became apparent in the creation of special labour units attached to ministries of the interior or ministries responsible for economic affairs empowered to draft, apply and enforce labour laws.

The creation of the ILO in 1919 marked a clear watershed, with many labour ministries coming into being after this date. A concomitant trend was the formation of national labour inspection systems, with powers to enforce the law, which were set up in countries including Brazil, France, India, Italy, Malaysia, Spain, Sri Lanka and the United Kingdom.

Since those early years of the twentieth century, most countries have maintained a viable and active labour administration system respon-

sible for all aspects of national labour policy formulation and implementation. In addition, labour administrations in ILO member States have contributed to compliance with international labour standards by means including the collection of labour statistics, which are invaluable in identifying needs and formulating labour policy at both national and international levels.

Globally, public administration has attracted criticism from various quarters as embodying the stranglehold of the State, blocking the operation of free markets and being marred by bureaucratic inefficiency, rigidity and high costs. These arguments were based on two fundamental assumptions about free markets: first, that they were sufficient to achieve economic growth; second, that they were sufficient to achieve social stability and political democracy.

From the mid-1990s onwards, however, confidence in the view that markets would adjust better and faster with minimal state involvement started to diminish. This increasing doubt was prompted by recession in the transition economies of Central and Eastern Europe and financial crises in Asia and Latin America, as well as the failure to stimulate growth in Africa. Concern about social inequality within and among countries has also re-emerged, especially in the wake of the most recent financial global crisis in late 2008.

At the global level, poverty reduction, the fostering of social cohesion and job creation made their way back on to the political agenda after the 1995 World Summit for Social Development in Copenhagen and were prominent in discussions at the Millennium Summit of 2000 and the World Summit in 2005 that marked the 60th anniversary of the United Nations. Throughout all these deliberations a growing concern became evident on the part of many countries, enterprises and civil society

Decent work, Labour Administration and the ILO

The phrase "decent work" sums up the aspirations of people in their working lives – aspirations for opportunity and income; rights, voice and recognition; family stability and personal development; fairness and equality. Ultimately, these various dimensions of decent work underpin social peace in communities and society at large. "Decent work" also

reflects the concerns of governments, workers and employers to provide the foundations for growth and equity. In the ILO's analysis, the concept of Decent Work is captured in four strategic objectives: fundamental principles and rights at work; employment and income opportunities; social protection and social security; and social dialogue and tripartism.

These objectives hold for all, women and men, in both formal and informal economies. The primary goal of the ILO today is therefore to promote opportunities for all to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.

The State, through its labour administration system, bears a heavy responsibility in the social field, most importantly to safeguard the fundamental human rights of workers and, in particular, to ensure respect of the minimum age for admission to employment, abolition of forced labour, freedom of association, the right to collective bargaining, non-discrimination, and equal remuneration for work of equal value.

Labour administration is a tool at the disposal of governments to achieve the ILO's Decent Work objectives, to enforce labour legislation, and to offer solutions to the various and complex problems the world of work faces. To have the maximum impact, labour administration must act in consultation and cooperation with workers, employers and their respective organizations, in order to foster social dialogue. A better knowledge of the role, functions and organization of labour administration will enable the public to understand the relationship between social policy and economic policy, and to identify the vast array of services to which most people have access during their working lives.

The report of the World Commission on the Social Dimension of Globalization, entitled A fair globalization, underlined the importance of developing national labour administration: We strongly believe in the fundamental importance of good governance in all countries at all levels of development, for effective and equitable participation in the global economy. The basic principles, which we believe must guide globalization, are democracy, social equity, respect for human rights and the rule of law. These need to be reflected in institutions, rules and political systems within countries, and respected by all sectors of society.

Within this broad framework of promoting good governance at national level, labour ministries have a pivotal role to play, as they can influence governance from the level of the individual workplace to that of the whole national labour market.

Labour administration today operates in a very rapidly changing environment characterized by dramatic economic, institutional and political transformations, including changing patterns of production, work organization and employment structures, increased labour migration, delocalization of production sites and the expansion of informal economy, to mention just a few factors. At the same time, governments are under increased pressure both to reduce public spending and to improve public service delivery. At the same time as these changes are adding to the challenges with which labour administration has to deal, the demand for its services is on the increase. The effectiveness and quality of those services depend on the means available, on the organization and functioning of the system and on the coherence of the national labour policy.

There are, of course, different labour administration practices around the world, reflecting different historical, political and administrative backgrounds and governance systems. The variety of labour administration practices are reflected to some extent in the Labour Administration Convention, 1978 (No. 150), and its accompanying Labour Administration Recommendation, 1978 (No. 158).

The ILO is committed to strengthening labour ministries with a view to developing labour administration based on international labour standards, as embodied in the ILO Conventions and Recommendations.

Technical cooperation activities, involving training and retraining, are also undertaken to improve the quality and skills of labour administration staff. The ILO's tripartite principle has a significant influence on the development of labour administration by acknowledging workers and employers as equal partners with governments on labour and economic issues.

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Lesson 5.5 - Contemporary Issues in Labour Law in India

For the past six to seven years it has been argued (especially by employers) that labour laws in India are excessively pro-worker in the organized sector and this has led to serious rigidities that has resulted in adverse consequences in terms of performance of this sector as well as the operation of the labour markets. There have been recommendations by the government to reform labour laws in India by highlighting the need for flexibility in Indian labour laws that would give appropriate flexibility to the industry that is essential to compete in international markets.

The main issue has been slow employment growth despite increasing GDP growth termed as 'jobless growth' the arguments for which are that the existing labour laws are less employment friendly and biased towards the organized labour force, they protect employment and do not encourage employment or employability, they give scope for illegitimate demands of the Trade Unions and are a major cause for greater acceptance of capital-intensive methods in the organized sector and affect the sector's long run demand for labour. It has been argued that due to inflexibility in the labour laws the opportunity to expand employment in the organized manufacturing sector has been denied since there is a lack of consensus between the employer's side and the worker's side.

The employer's view flexibility in labour markets as a pre-requisite for promoting economic growth and generating jobs, whereas, the trade unionists view flexibilisation in labour markets as a strategy for profit maximizing of the firms and reducing their bargaining power without generating sufficient employment opportunities as has been said.

For them insecurity has been the major cause of concern. In the wake of labour market flexibility post economic liberalization, which is believed to enhance competitiveness in an environment of rapidly changing markets and technologies, the government is in a dilemma as most of the labour laws and social protection laws has been labour friendly. But in order to introduce reforms in the labour market, the government has

to respond to the requirements of the various stakeholders (employers, workers, multinational firms and international financial agencies).

The urgency for the need to reform labour laws was brought into front after the recent spat in Gurgaon (Honda Motorcycle and Scooter India case)1. It is considered to be a watershed event that turned all eyes towards the urgency to delve into the matter seriously. Yet the labour and the management communities differ in their opinion in what reforms can actually be done to the laws. The employees are of the opinion that the central and the state labour laws have been flouted continuously, whereas, the employers are of the opinion that the 'labour laws in the country seek employment at the cost of employability' (Business Standard, August 6, 2005).

The three main labour laws that are the major point of debate in this regard are the Industrial Disputes Act (1947), the Contract Labour Act (1970) and the Trade Union Act(1926). But though on one hand we have the accusation on the rigid labour laws, on the other hand this argument has been contested on grounds that there are weak linkages between labour regulations and industrial outcomes. Some of these studies found that neither employment growth nor fixed capital investments of firms were constrained by labour laws. So, in this context of current debates related to rigidity of labour laws and hence the impediments to employment generation in this sector, it becomes extremely important to understand firstly the jobless growth in organized manufacturing since1980's and especially in the post reform period; secondly the need for flexible markets and skill development in the country; thirdly the labour laws that are the current concern; fourthly the task force and SNCL recommendations and the objections to those recommendations and lastly the need for safety nets and social security for labour in the current wake of flexible labour markets.

Need for Flexiblity in Labour Markets and Labour Laws

Eyck (2003) states three basic theories for perceived need for flexibility in labour markets. The first one emphasizes on the need for labour force to change according to the market fluctuations which happens because of increase in specialized products that requires firms to quickly change the size, composition, and at times the location of the

workforce. The second emphasizes on lowering the labour costs and increasing productivity because of rising competitiveness. The third is the political economy perspective which advocates free markets where there would be no government intervention and interference of trade unionism. He says that this kind of new employment relations and occupations have the potential to generate more employment and also make available a range of opportunities to both workers and employers. So in for any state to achieve this kind of flexibility would depend on the how it will be introduced through legislative reforms. He also mentions that "in those countries where labour market rigidities are caused by excessive legislative regulation, flexibility tends to focus on how national legislative reform may grant greater freedom for individual employers or social partners to negotiate the terms of flexibility".

The basic idea behind flexible labour markets was 'market fundamentalism' put forward by Stiglitz (2002) as stated by Sharma (2006):

"…free market forces are efficient and Pareto optimal. The free play of market forces results in employment of resources at the market clearing prices; this leads to both efficiency (as almost all resources are employed) and equity (all are rewarded according to their marginal contribution). Regulation of the market by state leads to deviation from full employment of resources. Hence, attempts should be made to remove as many of these imperfections as possible so as to achieve full employment of resources and optimal social welfare. In the case of labour market, trade unions and protective labour legislations are said to be market distorting agents, which curtail the free operation of the market forces to ensure full employment of labour."

Sharma (2006) states that there is a 'strong' argument for labour market regulation to enhance investment and employment which would bring about equality in the labour market and provide for flexibility in free entry and exit market and provide for flexibility in free entry and exit. He says that because of excessive institutional interventions markets do not clear and make wages 'sticky' which affects the freedom of employers to adjust the quantities of resources leading to unemployment.

Hence, in order to protect the existing employees, potential employees (even retrenched workers) remain unemployed or enter the

unorganized sector with no social security or political power.Sundar (2005) opines that employers view flexibility in the labour markets as essential because in this era of economic liberalization and growing competition between firms and countries, production should be organized to suit the changing market conditions. This would promote economic growth and also generate jobs. He mentions that the Second National Commission on Labour also advocates the need for flexibility in the labour markets saying that it would promote 'competitiveness' and 'efficiency' in the current wake of globalization and rapid technological progress.

According to Dr. Rangarajan (2006), in order to achieve faster growth rate emphasis should be laid on labour intensive sectors by skill development of the labour force and flexibility of labour laws. He also stressed on the fact that flexibility is not just related to' hire and fire strategy' and that business units will have to function under legitimate restrictions. Flexibility in labour laws has also been advocated by the Planning Commission Deputy Chairman Mr. Montek Singh Ahluwalia. According to him flexibility in labour laws would attract more investment and would be able to create more jobs albeit ruling out the hire and fire policy (The Hindu Business Line, 2006). Debroy(2001) mentions that labour market flexibility varies from state to state and labour laws contribute to these disparities between states.

Labour Laws that are of Current Concern

As we have seen above, bringing in flexibility in the labour market and hence flexibility in labour laws is therefore, an important matter in any agenda on structural reforms. The main accusation against the labour laws is that in the absence of flexible labour markets in the organized sector growth in output is not leading to a proportionate growth in employment hence the employers are going for more capital intensive production processes because of labour becoming a fixed input. Hence though the labour laws are meant to protect the jobs of the workers, the scope for creation of more job opportunities in future is being lost. Therefore

India's comparative advantage of enormous labour abundance is not being adequately utilized because of the high wage lands created by the labour legislation in the organized sector (Debroy, 2001). There is a lack of consensus amongst the employers and workers which is being an

impediment to any proposed changes in the labour laws. To understand this, we first begin with a brief description of the labour legislation and then move on to the particular laws that are the major causes of concern.

Under Article 246 of the Indian constitution, issues related to labour and labour welfare come under List –III that is the Concurrent List2. Exceptional matters related to labour and safety in mines and oilfields and industrial disputes concerning union employees come under Central List. In all there are 47 central labour laws and 200 state labour laws.

The three main acts that are the cause of contention are the Industrial Disputes Act(1947), the Contract Labour (Regulation and Abolition) Act (1970) and the Trade Union Act (1926).In The Industrial Disputes Act provides for machinery and procedure for investigation and settlement of industrial disputes and applies to all industries irrespective of size. Apart from this it has conditions for lay offs, retrenchment and closure of an industry. It has 40sections with five chapters and five schedules. Various amendments to the act were made since 1947.

The main amendments were as follows: 1972- any industrial establishment employing more than 50 persons would have to give 60 days notice to the appropriate government before the closure of the industry stating reasons for the closure, 1976- a special chapter (Chapter V-B) was introduced which made compulsory prior approval of the appropriate government necessary in the case of lay offs, retrenchment and closure in industrial establishments employing more than 300 workers, again in 1982- lowered the limit of the employment size to 100 for mandatory permission before closure and increased the number of days of notice to 90 days. In 1984, this amendment was again redrafted and lay offs, retrenchments and closures in establishments having more than100 employees had to follow the same procedures for seeking permission from the government.

The inclusion of Chapter V-B and its consecutive amendments is construed as causing rigidity in the labour market. This provision means that if establishments employing more than 100 workers may need to lay off some workers, they have to seek permission from the government. An example cited by Nagaraj (2007) best explains how stringent are the rules

of this clause and hence how it forms the heart of the current dispute on labour market rigidity. He says that according to this provision, employers and employees are expected to inform the labour commissioner in case of any dispute. Hence, in order to retrench a single worker, the employer has to seek the permission of the labour commissioner (in case of factories employing more than 100 workers) (Anant, et al,2006). Besley and Burgess (2004) in their study found that the amendments of this act by states taking in the interests of the workers lowered their output and employment levels which also led to poverty. They also experienced reduced investment in their organized manufacturing.

Bhattacharya (2006) however, has a different opinion the first approach gives conflicting results and the second approach which studied the variations in the state level amendments to the ID Act was based on a 'flawed' index of regulation. But still he advocates for reforming labour laws by rationalizing them, avoiding inconsistencies and making compliance less arduous. He also raises an important point saying that where organized manufacturing sector comprises of only 6 per cent of the total labour force, the rest 94 per cent being in the unorganized sector, where chapter V-Bis applied to the smaller figure, whether reforming labour laws would make any difference to the national employment situation in spite of labour flexibility creating employment in this small portion of the sector.

Section 9 A of the act has also been a cause of concern. It lays down conditions for service rules, according to which employees should be given at least 21 days notice before modifying wages and other allowances, hours of work rest intervals and leave. It has been said that this could cause problems when employees have to be redeployed quickly to meet certain time bound targets and also could constrain industrial restructuring and technological upgrading.

An important negative effect of the Chapter V-B is that foreign investors who are keen on investing in labour intensive countries are deterred from investing in India, whereas other labour intensive countries that have a strong export orientation has benefitted in terms of more foreign investment in their countries and creation of high quality employment based on exports (Report of Task Force, Planning Commission, 2001).

Contract Labour (Regulation and Prohibition) Act (1970)

There is a cry amongst workers that the Contract Labour act is been flouted by employers. They say that in the event of contract workers being abolished in a firm, they should be absorbed by the firm (Sundar, 2005). It is said that contract labour allows flexibility and permits outsourcing but provisions of the Contract Labour Act was never meant to protect contract labour. First in 1960 and then again in 1972, there was a ruling by SC that if the work done by a contract labour is essential to the main activity of any industry, then contract labour in that industry should be abolished. It was this ruling that affected flexibility. In different judgment in different years, there was a need for clarification whether after abolition of contract labour whether they should be absorbed as permanent labour in the industry or not. There was an argument about whether Contract Labour Act should be done away with. But the problem lies in the fact that decisions on abolition would then slip back to industrial tribunals from government (Debroy, 2001).

The workers say that if the government changes the definition under the Act from' perennial and permanent jobs' to 'core and peripheral jobs', then the employers would take the benefit of it to engage contract workers in only peripheral jobs as these kind of jobs constitute the most. According to them it would finally result in employers employing only contract workers and would 'sack' all regular workers. Hence, instead of generation of more jobs as promised by the employers, it would lead to more exploitation and poorer working conditions. But the employers have a different opinion. They say that more emphasis should be laid on core activities and peripheral activities should be contracted out as that would be more efficient and would lead to lesser costs and for that they should have greater freedom to employ contract workers. So employers are of the opinion that the Act should be scrapped (Sundar, 2005).

But trade unions are of a different opinion. For instance, in the 41st Indian labour Conference held in New Delhi on April 2007 (see Sen, 2007), members of CITU had proposed amendments to the Act which not only says that they are for it but also looking forward to strengthening it. The following was a list of amendments suggested by them:

1) Redefining employment relationship on the basis of the linkage between the final recipients of the gains of production, i.e., the principal employer, vis-à-vis the producer at the lowest rung of the production process deployed through various decentralised agencies.

2) Outsourcing should be treated as contract and should be covered by Contract Labour-Legislation.

3) Reiterating the equal pay for same and similar work both for regular and contract/temporary workers in the main body of the legislation (at present similar provision is there in the rules framed under the present statute.

4) Regularization of contract workers deployed in permanent/ perennial jobs in the permanent roll of the company and stringent punishment (This is required to negate the pernicious impact of the Supreme Court Judgments on rights of the contract workers)

5) Payment of the minimum wage prevalent in the company/ establishment to the contractWorkers of the said company if it is higher than the statutory-Minimum-wage

6) All contractors must obtain license from the appropriate authority for running its operations.

7) even if contractor changes, the contract workers engaged by previous contractor should continue to be deployed without any interruption and change in service conditions: this provision should be incorporated as a condition in the tender for appointment of contractor. 8) The Annual Return on employment to be submitted to labour department by the principal employer should compulsorily include details of the contract workers including the contractors and their license-details.

9) In case of death owing to accident or otherwise in course of employment, contract workers should be paid same compensation as the regular-workers

10) The Principal employer should be held responsible for implementation of all labour laws for the contract workers including maintenance of employment register, submission of annual returns to labour department, PF, ESI and other social

security measures and workmen's compensation any violation of those laws should attract stringent punishment on the principal employers as well.

11) A separate inspectorate with adequate manpower has to be established in all states only for the purpose for inspection of the contract-employment-related-matters.

12) Contract labour monitoring board must be constituted in all states and central level with the representatives of unions, employers and government to monitor implementation of labour laws in respect of contract workers. Etc.

13) Appropriate legislation to negate the pernicious impact of the Supreme Court judgment in setting aside its own judgment (Air India case) in the case Vs SAIL".

Regarding the issue of minimum wages, a chairman of an automotive component maker had said that there is a need to liberate labour laws so that it brings greater space for contract labour which is just not about hire and fire but which will have tenure of three years or so and more temporary workers. He also added that if the minimum wages are low then the government must take initiative to raise the level of minimum wages (Business Standard, August 6, 2005). In a situation where permanent workers are almost impossible to be removed according to the employers and contract workers are seen as a' necessary evil' and an easier option, one needs to pay attention to the growing grievances of the contract workers in the industries. There have been recent cases of agitation by the contract workers in certain organizations including the Hyundai Motors case in May 2007 and the NTPC-Simhadri case in January 2007 where contract workers in the first case had been agitating for pay hikes and in the second case they went on for a strike demanding for increase in allowances.

Trade Union Act (1926)5Firstly, it should be mentioned that there is no nationwide law that recognizes trade union and also there is no compulsion for the employers to enter into a collective bargaining seven though there is a right to form an association or form a trade union, it is not mandatory for an employer to recognize it (Anant et al, 2006). Secondly, it allows outsiders to be office bearers and members of unions. So workers who are not directly employed under a particular employer also

stand against that employer in the event of any dispute. The whole idea of outsiders intervening in disputes between the workers and employers of a particular organization does not exist in other countries (Nath, 2006).

Citing an example of Trade Union Act in Singapore, Nath (2006) says that while trade union policies in Singapore aim at promoting country's productivity and economic growth, India's policies restrict productivity and economic growth. Thirdly, Nath (2006) points out the lack of democracy in trade unions in India which leads to inexplicable behaviour of the unions and their office bearers. He says that while countries like UK and Japan follow a democratic way of electing their members by letting the unions consult members through a process of secret ballot, laws in India follow a different strategy.

There is no representativeness through secret ballots and they also do not hold any strike ballot before any strike. It has been said that there has been a long term trend in India of losing number of person days because of strikes and lockouts. Though it is said to have decreased since1985 yet compared to other countries it shows a greater loss of person days. The average annual loss of person days due to strikes and lockouts in India is said to be the second highest in the world (Nath, 2006). An example would be the strike at Uttarpara's (Near Kolkata) Hind Motor plant by one of the five registered trade unions protesting against

The alleged non-payment of wages for the past two months. This plant produces ambassador cars. The strike continued for over a month. First the management calls the five trade unions for talks then calls off the meeting when the unions do not respond toothier invitation. The management stated that the strike was unlawful whereas the president of one of the 5 trade unions says that according to the high court verdict their strike was a lawful trade union activity. This resulted in a supply crunch of ambassador cars. According to an official of a car distributor company instead of selling 100ambassador cars in a month in the month of March 2007 when the unrest took place, he was able to sell only 70 cars because the purchase orders were not met because of the lack of supply (The Hindu Business Line, 2007). So one can imagine the amount of loss incurred due to such strikes. The Economic Survey (2005-2006) though says that even if the number of strikes had come down since 1990's but there was a sharp decline in strikes compared to lockouts.

Government and Other Recommendations

In the prolonged situation of 'jobless growth' and current wake of labour unrest, the government had come up with certain recommendations to reform labour laws, first in2001 in its Report on Task Force on Employment Opportunities, by the Planning Commission of India and again in 2002 when the Second National Commission on Labour(SNCL) had come up with its recommendations.

The task force points out the various problem areas in the labour legislation where immediate reforms were needed. It focuses on the three main Acts and their features and suggests changes. Other than Chapter V-Bin the Industrial disputes Act which is a major cause of concern, another main area where it emphasizes was Section 9A which concerns the job content and the area and nature of work of an employee. It says that in case the job content or the nature of work needed to be changed of an employee or group of employees, a 21 day notice has to be given to the employee and in practice also required the consent of the employee. This proves to be serious impediment in case of a firm trying to introduce a new technology where some workers need to be retrenched.

If the employers want to redeploy the workers, it becomes virtually impossible if the employee or employees do not give their consent. Had the process of retrenchment been easier to be implemented, the workers would have been willing to accept redeployment in order to avoid retrenchment.

Apart from retrenchment the task force also points out another problem of dismissal of any worker. It says that though in case of dismissal no prior government approval is needed, yet in practice it is difficult because of unions which lead to protracted litigation. It mentions that this inflexibility proves to be severe for smaller establishments that are more labour intensive and other establishments with large number of workers because the transactions cost involved in such cases are too high.

Though the SNCL had come up with certain recommendations taking into broader interests of the employers and the workers into consideration, its recommendation to use contract labour in non-core activities and also to some extent in core activities first of all creating a distinction between core and non-core activities instead of perennial

and non perennial activities was vehemently opposed by trade unionists and also employers to a smaller extent. First of all the trade unionists do not believe that greater flexibility in the labour market would lead to employment generation, they are of the opinion that even if jobs are created they will be of poorer quality.

Their greatest threat is the freedom of 'hire and fire' that will be given to the employers would be a threat to their income security and also would lead to greater unemployment in the long run instead of more employment opportunities as promised. They fear that it would also affect their bargaining power in the organized sector.

The employers, on the other side have also expressed their disagreements with some of the recommendations. They were dissatisfied with the commission not raised the cut off limit for closure permission to establishments with 1000 and more workers that was earlier indicated to them (Sundar, 2005). Though they have been satisfied with other recommendations and want them to be implemented.

Another major issue put forward by many economists and policy makers is the multiplicity of labour laws. Unification and harmonization of the labour laws has been highly recommended by Debroy (2001, 2005). He says that apart from the seventh schedule there are separate statutes for cine workers, dock workers, motor transport workers, sales promotion employees, plantation labour, working journalists and workers in mines.

There are varied definitions on child, contract labour, wages, employee, workman, factory, industry, etc. In the Case Law6, under the ID Act; a lot of things come under the categorization of industry. So, there is a suggestion to unify all the definitions to give way for a Uniform Labour Code where for instance, all provisions related to social security or wage can come under single statutes respectively. Debroy (2001) also points out excessive state intervention in areas other than industrial relations.

He gives an instance of Section 10 of factories Act where there are provisions regarding number of spittoons, Section 43 where there are rules regarding space for keeping clothes that are not worn during working hours, etc. he says that there are numerous such provisions where state intervention is generally not required.

Enforcement of Labour Laws in the Country

An important function of the Central Industrial Relations Machinery (CIRM) is the enforcement of labour laws. The machinery enforces various labour laws including Minimum Wages Act, 1948, Payment of Wages Act, 1936, Contract Labour Act, 1970, Inter-State Migrant Workmen Act, 1979. According to the Annual report, 2005-06 of Ministry of Labour, there are 1.5 lakh establishments in the central sphere. The inspection officers of the CIRM inspect these establishments under different labour enactments through routine inspections and prosecute the persistent defaulters in respect of major violations. The following table shows the number of inspections, number of prosecutions and number of convictions that have taken place over the years.

The Social Security Concerns

In the wake of international competitiveness and the need for flexibility in labour markets, it becomes increasingly essential to accommodate social security concerns in reform movements. Extension of the social security benefits to cover majority who had been excluded, is perhaps the greatest challenge facing the developing countries today. In fact Ghai (2002) points out to a certain correlation between the degree of economic progress in a country and the development of its national security system wherein those countries with a higher per capita income and larger proportion of working population in the formal sector had more social security due to state subsidized schemes.

Though the schemes had varying degrees of effectiveness depending on countries and systems are social security are hence, very complex in these countries. In the developing world, majority of the population is bereft of even basic social security. For instance in India, social security covers only 6 per cent of the workforce that belongs to the organized sector. The remaining 94 per cent that is in the unorganized sector and those who are self-employed has very limited social security.

The social security system in India is indeed dualistic in nature where only a very small proportion of the workforce which is in the organized sector are in a relatively privileged position to have access to protective social security benefits whereas the remaining majority

remains unprotected due to not being able to organize themselves (Datta, 2001). In the organized sector the main social security programmes include Workmen's Compensation Act, 1923 for accidents in the place of work, Employees' State Insurance Act, 1948 for health benefits, Maternity Benefit Act, 1961 for expectant women workers and retirement benefits like Payment of Gratuity Act, 1972 and Employees' Provident Fund Act, 1952.

But in spite of a wide coverage the schemes lack appropriate planning, inappropriate coverage, the applicability depends on wage ceilings, number of employees in an establishment, type of establishment, etc. The five year plans of government do not deal with the social security issues (Anant et al, 2006). On the other hand on the unorganized sector whatever minimum level of social security exists, they have not been implemented appropriately7.

Sharma and Mamgain (2001) opine that Indian Labour Market cannot be called rigid since they attribute the decline in employment in manufacturing to the structural and technological characteristics of the industrial growth. Although they say that stringent job security measures in the organized manufacturing may be one of the reasons but according to them it cannot be the sole reason for the decline. Hence irrespective of the impact of 'rigid' labour legislation to employment, they opine that a degree of protection to labour would lead to inflexibility of labour adjustment that is required for restructuring of the enterprises to adjust to competitiveness. This leads to slow and tardy process of adjustment of the firms. Hence, several issues regarding social security comes into picture that need attention.

The concept of social security also hence, needs to be widened to encompass the changing patterns of employment keeping in mind the various types and groups of workers and social security programmes made accordingly. Ginneken(1998) emphasizes on the need to improve the existing systems. Guhan (1998) points out that the existing formal security system not only has structural problems but also has administrative problems hence the reform agenda cannot be confined only to 'piece meal improvements to individual enactments' but should also include 'radical restructuring of the entire framework along with legal and administrative reforms'.

Self Assessment Questions

1. Discuss the contemporary issues in labour law and administration
2. Discuss about the enforcement labour law in the country
3. Briefly explain about the gender dimensions in labour law
4. Discuss the legal framework that aids the quality of work-life among employees

CASE STUDY

One of the workers, Sunil Pawar is a worker in the Production Department and works as a driller. He is in the company for past five years and all the while he has been working as a driller only. He record of service has been generally good, except for one warning for remaining absent for two days without permission. In the early years of service, he used to be rude to his superiors and quarrelsome with his co-workers. But there is nothing about this on the record, because no serious view was taken about this by the superiors. In the past eight months, since the new management took over the control of Neptune Engineering Company, there is a change in the policy. The new management has taken a stricter approach in enforcing discipline.

One day, at 8.00 p.m., at the time of starting of the shift Sunil went to his supervisor saying that some guests has arrived unexpectedly at his house in the morning and he wanted leave for that day. The supervisor told him that since few more workers were already absent in the Department he could not grant him, leave. Instead he asked Sunil to work on the press machine. On that day because the regular press operator had not come and there was a large backlog which must be cleared today. Sunil declined to obey the instruction. He said, "I will work on my machine only and not on any other machine", and he went to his usual drilling machine. After some time he left a leave application on the supervisor table. He was not seen on the shop floor throughout the day.

The supervisor had reported the case to his manager and the manager wants your opinion as the Senior Consultant to the company.

Questions

1. Comment on the events that have taken place.
2. Suggest the course of action.

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