

Study Circle

# CS EXECUTIVE

NEW SYLLABUS

# INDUSTRIAL & LABOUR LAWS

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# INDUSTRIAL & LABOUR LAWS

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CS EXECUTIVE

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# C ONSTITUTION AND LABOUR LAWS

## Chapter- 1

*Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.*

### 1. INTRODUCTION

The Constitution of a country is the fundamental law of the land. It is under this fundamental law that all other laws are made and executed.

The trinity of Indian Constitution, the Preamble, the Fundamental Rights and Directive Principles of the State Policy embody the fundamental principles which provide guide to all legislations including the labour legislations.

### 2. CONSTITUTIONAL BEARING ON INDUSTRIAL LAWS & INDUSTRIAL RELATIONS

Rights	
Fundamental Rights	Directive Principles of State Policy
Article 14 Equality before Law	Article 38 State shall strive to promote the welfare of the people
Article 16 Equal Opportunity in Public Employment	Article 39 Equal pay for equal work
Article 19 Right to Form Association or Union	Article 41 Right to work
Article 21 Right to Life	Article 42 Provision for just and humane conditions of work
Article 23 Prohibition of Trafficking and Forced in Labour	Article 43 Right to a living wage
Article 24 Prohibition of Child Labour under the age of 14 years	Article 43A Participation of workers in Management

### 3. CONSTITUTIONAL REMEDIES

The Constitution also envisages remedies for violation of fundamental rights.

Article 32 and 226 of the Constitution confers writ jurisdiction on Supreme Court and High Courts respectively for enforcement and protection of fundamental rights of an individual. Article 32 is itself a fundamental right.

#### Case Law

*S.P. Gupta and Ors. v. President of India and Ors.*

#### Issue

Can a Trade Union move the High Court under Article 226 to redress the fundamental rights of its members?

#### Judgement

*Yes, When legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional right or legal right than such persons either themselves or through any member of the public can maintain writ petition in the High Court under Article 226 of the Constitution of India or in the Supreme Court under Article 32 of the Constitution of India seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.*

### 4. FUNDAMENTAL RIGHTS AND INDUSTRIAL RELATIONS

Articles 12 to 35 of the Constitution pertain to Fundamental Rights of the people.. The need for protecting and safeguarding the interest of labour as human beings has been enshrined in Article 14, 16, 19, 21, 23 and 24 giving an idea of the conditions under which labour had to be for work.

#### Article- 14 Equality before Law

*"Article 14 of the Constitution says that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."*

Available to- **Every person, citizens as well as Foreigners**. The right extends to corporation or company as it is an artificial person created by law.

The Article covers two aspects **Equality Before Law** namely-  
**Equal Protection of Laws**

Case Law	Air India v. Nargesh Meerza	D.S Nakara v. Union of India
<b>Issue</b>	Indian Airlines regulations was in question which provides that an air Hostess will retire from the service upon attaining the age of 35 years or on marriage within 4 years of Service or on first pregnancy, whoever found earlier but the managing director had the discretion that he may extend the age of retirement one year at a time beyond the age of retirement up to the age of 45 years at his option if an air hostess was found medically fit. Whether such regulations reasonable?	Classifying a group of pensioners who did the same work on basis of retirement date? Whether such classification reasonable?
<b>Decision</b>	It was held by the court that the clauses regarding retirement and pregnancy of the regulation as unconstitutional and therefore struck down. The retirement of air hostess on the ground of pregnancy was <b>unreasonable and arbitrary and it was in violation of Article 14 of the Constitution law of India.</b>	The supreme court held Rule 34 of the Central Services (Pension) Rules, 1972 as <b>unconstitutional and was struck down</b> on the ground that the classification made violates Article 14 of Indian constitution.

**Article- 16 Equality of opportunity in matters of public employment**

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State

Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

<b>Case Law</b>	<b>Mewa Ram Kanojia vs. All India Institute of Medical Sciences and Ors.</b>
<b>Principle</b>	<i>Equal Pay for Equal Work'</i>
<b>Issue</b>	<i>Can state prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post?</i>
<b>Judgement</b>	Yes, it can do this if the classification has <b>reasonable nexus</b> with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is rounded on unreal, and unreasonable basis it would be violative of Article 14 and 16 of the Constitution.

**Article 19(1)(c) of the Constitution: Right to form Association & Union**

Article 19(1)(c) speaks about the Fundamental right of citizen to form an associations and unions. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of publicorder or morality or the sovereignty and integrity of India. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form Association implies also the freedom to form or not to form, to join or not to join, an association or union. This right is not absolute and is subject to limitations in the form of reasonable restrictions that can be imposed by the state.

Grounds of Restriction-

**Sovereignty and Integrity of India**

**Public Order**

**Morality**

Case Law

**All India Bank Employees vs. National Industrial Tribunal**

Issue

Constitutional validity of Labour Union

Decision

The court held that the object for which labour unions are brought into being and exist is to ensure collective bargaining by labour with the employers

The necessity for this has arisen from an incapacity stemming from the handicap of poverty and consequent lack of bargaining power in workmen as compared with employers which is the reason for the existence of labour organizations.

However reasonable restriction can be imposed in order to prevent illegal strike on the grounds of **sovereignty and integrity of India, public order and morality.**

**Article 21 of the Constitution: Right to Life**

Article 21 of the constitution of India reads as:

"No person shall be deprived of his life or personal liberty except according to a procedure

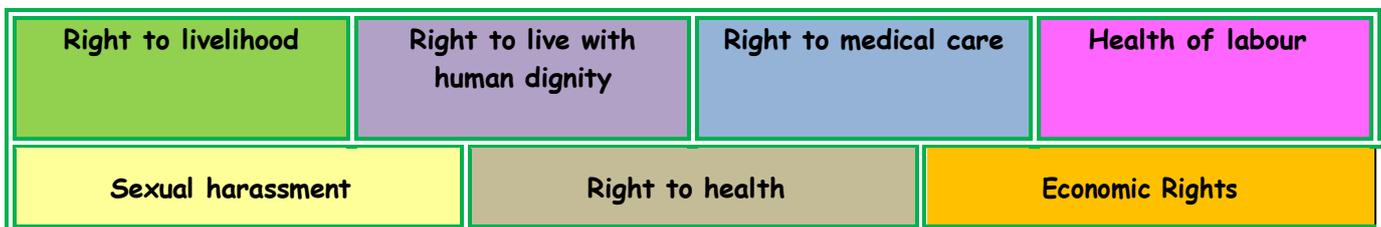
established by law."

Article 21 assures every person right to life and personal liberty. The term 'life' has been given a very expansive meaning. The term 'personal liberty' has been given a very wide amplitude covering a variety of rights which go to constitute personal liberty of a citizen. Its deprivation shall only be as per the relevant procedure prescribed in the relevant law, but the procedure has to be fair, just and reasonable.

The right to life enshrined in Article 21 has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence. It therefore includes all those aspects of life which go to make a man's life meaningful, complete and worth living.

In course of time, Article 21 has come to be regarded as the heart of Fundamental Rights. Article 21 has enough of positive content in it and it is not merely negative in its reach

Many Directive Principles which, as such, are not enforceable have been activated and have become enforceable



The Supreme Court has implied a number of Fundamental Rights from Art. 21.

Case Law	<i>Olga Tellis &amp; Ors v. Bombay Municipal Corporation</i>	<i>D.K. Yadav v. J.M.A. Industries Ltd</i>
Issue	Right to life includes the right to livelihood	Right to life includes right to livelihood, life with dignity and liberty.
Decision	<i>The Court held that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional.</i>	<i>The court held: "Article 21 of the Constitution clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. However before taking any action putting an end to the tenure of an employee/workman, fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice."</i>

Case Law	<i>Paschim Banga Khet Mazdoor Samity v. State of West Bengal</i>	<i>Vishakha &amp; Ors. v. State of Rajasthan</i>
Issue	A mazdoor fell from a running train and was seriously injured. He was sent from one government hospital to another and finally he had to be admitted in a private hospital where he had to incur an expenditure of Rs. 17,000/- on his treatment. Feeling aggrieved at the indifferent attitude shown by the	A woman was assaulted and harassed at her workplace

	various government hospitals, he filed a writ petition in the Supreme Court under Art. 32	
<b>Decision</b>	<i>"Art. 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance."</i>	<i>"Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'"</i>

### Article 23 and 24: Right against exploitation

According to Article 23(1), traffic in human beings, begar, and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 23(1) proscribes three unsocial practices, viz., (1) begar; (2) traffic in human beings; and (3) forced labour.

The term 'begar' means compulsory work without any payment. Begar is labour or service which a person is forced to give without receiving any remuneration for it.

The expression 'traffic in human beings,' commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is constitutionally abolished.

Article 24 of the Constitution of India states that "no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment". Article 24 is also enforceable against private citizens and lays down a prohibition against the employment of children below the age of fourteen years in any factory or mine or any other hazardous employment.

### 5. LABOUR LAWS AND REFERENCE TO DIRECTIVE PRINCIPLES OF STATE POLICY

- The makers of the Constitution had realized that in a poor country like India, political

democracy would be useless without economic democracy. Accordingly, they incorporated a few provisions in the Constitution with a view to achieve amelioration of the socio-economic condition of the masses.

- The Directive Principles strengthen and promote this concept by seeking to lay down some socio-economic goals which the various governments in India have to strive to achieve. The Directive Principles are designed to usher in a social and economic democracy in the country. These principles obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These principles give directions to the legislatures and the executive in India as regards the manner in which they should exercise their power.
- The Courts however do not enforce a directive principle enshrined in Part IV of the Constitution unlike rights enshrined in Part III. The reason behind the legal non-enforceability and non-justiciability of these principles is that they impose positive obligations on the state.

### Social Order Based on Socio- Economic Justice

- Article 38(1) directs the state to strive "to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."
- Article 38(2) directs the state to strive "to minimise the inequalities in income," and endeavour "to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also groups of people residing in different areas or engaged in different vocations".

### Equal Pay for Equal Work

Article 39 requires the state, in particular, to direct its policy towards securing:

that all citizens, irrespective of sex, equally have the right to an adequate means of livelihood;

that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

that there is equal work for both men and women;

that the health and strength of workers, men and women,

that children are given opportunities and facilities to



and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

<p><b>Case Law</b></p>	<p>Randhir Singh v. Union of India</p>	<p>Dhirendra Chamoli and Anr. v. State of U.P.</p>
<p><b>Issue</b></p>	<p>Whether Different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and as regards reliability and responsibility</p>	<p>The employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees. Whether Article 14 is violated?</p>
<p><b>Decision</b></p>	<p>The Supreme Court has held the doctrine of 'equal pay for equal work' cannot be put in a strait jacket. Accordingly, it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and as regards reliability and responsibility</p>	<p>Employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees."</p>

**Case Law** Bandhua Mukti Morcha and Ors. vs. Union of India (UOI) and Ors.

<b>Issue</b>	Whether employment of the children in any industry or in a hazardous industry, is violative of Article 24, Articles 39(e) and 45 of the Constitution read with the Preamble
<b>Decision</b>	<p><i>"Court has considered the constitutional perspectives of the abolition of the child labour and the child below 14 years of age in industries. We are of the view that a direction needs to be given that the Government to evolve the principles of policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in M.C. Mehta's case; to evolve such steps consistent with the scheme laid down in M.C. Mehta's case, to provide (1) compulsory education to all children either by the industries itself or in co-ordination with it by the State Government to the children employed in the factories, mine or any other industry, organised or unorganised labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of this Court."</i></p>

### Social Security Provisions

Article 41 requires the state, within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Social security is guaranteed in our Constitution under Articles 39, 41 and 43. The Employees' State Insurance Act, 1948 is a pioneering piece of legislation in the field of social insurance. The Employees' State Insurance Scheme provides for benefits in cash except the medical

benefit, which is in kind. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Maternity Benefit Act, 1961 are also social security measures to help fulfill the objectives of directive principles of our Constitution. The Provident Fund Scheme aimed at providing substantial security and timely monetary assistance to industrial employees and their families

The voluntary workers education scheme was launched in our country in 1958 to educate the workers in trade union philosophy and methods, and to promote physical awareness of problems, privileges and obligations as workers and citizens.

### Working Conditions

Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief.

Article 42 provides the basis of the large body of labour law that obtains in India. Referring to Arts. 42 and 43, the Supreme Court has emphasized that the Constitution expresses a deep concern for the welfare of the workers. By reading Article 21 with several Directive principles including Art 42, the Supreme Court has given broad connotation to Art 21 so as to include therein "the right to live with human dignity".

### Living wage

Article 43 requires the state to endeavour to secure, by suitable legislation, or economic organisation, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. In particular, the state is to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43 imposes an obligation towards ensuring the provision of a 'living wage' in all sectors as well as acceptable conditions of work. This provision enunciates the revolutionary doctrine that employees are entitled as of right to certain reliefs.

### Workers Participation in Management

Article 43-A which was introduced by the 42nd Amendment in 1976, has a direct bearing on labour laws, in so far as it provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments

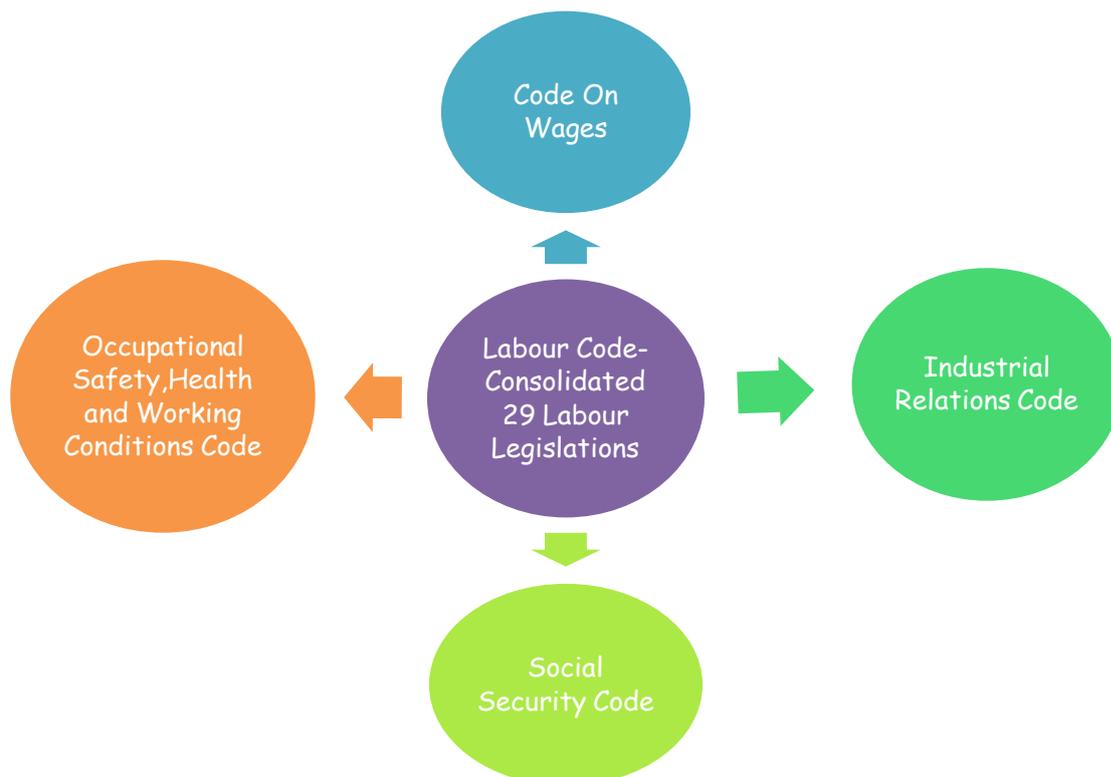
<b>Case Law</b>	Janapareddy Surya Narayana and Ors. vs. The Municipal Administration and Urban Development and Ors.
<b>Issue</b>	Whether workers who are discharging their duties for eight hours <i>in a day on par with regular employees of the same cadre</i> are entitled to get equal pay as that of the limited office hours.
<b>Decision</b>	<p>Andhra Pradesh High Court stated that -</p> <p><i>"When these petitioners are discharging their duties for eight hours, they are entitled to get equal pay in terms of Article 39(d) of the Constitution of India, otherwise, it amounts to discrimination, which is prohibited under Article 14 of the Constitution of India. When the act of the State is arbitrary and exploiting the situation of unemployment by paying meagre amount as salary, engaging the services of these petitioners on outsourcing basis, such act can be described as discriminatory and arbitrary. Therefore, court find that it is a fit case to issue a direction to the respondents to extend minimum time scale of pay to the petitioners who are discharging their duties for eight hours in a day on par with regular employees of the same cadre. Accordingly, the point is decided partly in favour of the petitioners."</i></p>

# EVALUATION OF LABOUR LEGISLATION AND

## NEED OF LABOUR CODE

### 1. INTRODUCTION

The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". Industrialization is considered to be one of the key engines to support the economic growth of any country. A plethora of labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.



## 2. HISTORY

International Labour Organisation (ILO) is one of the first organisations to deal with labour issues.

India is the founder member of International Labour Organization (ILO) and has been actively contributing to evolution of global policy on labour welfare.

International Labour Organization which came into existence in 1919 and has been a permanent member of the ILO Governing Body since 1922. At present the ILO has 187 Members.

A unique feature of the ILO is its tripartite character. At every level in the organization, Governments are associated with the two other social partners, namely, the workers and employers.

## 3. PURPOSE OF LABOUR LEGISLATION

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 which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced

## 4. ACTS SUBSTITUTED BY THE FOUR LABOUR CODES

Code on Wages, 2019	Occupational Safety, Health and Working Conditions Code, 2020	Industrial Relations Code, 2020	Code on Social Security, 2020
<ul style="list-style-type: none"> <li>➤ Payment of Wages Act, 1936;</li> <li>➤ Minimum Wages Act, 1948;</li> <li>➤ Payment of Bonus Act, 1965; and</li> <li>➤ Equal Remuneration Act, 1976.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Factories Act, 1948;</li> <li>➤ Mines Act, 1952;</li> <li>➤ Dock Workers (Safety, Health and Welfare) Act, 1986;</li> <li>➤ Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;</li> <li>➤ Plantations Labour Act, 1951;</li> <li>➤ Contract Labour (Regulation and Abolition) Act, 1970;</li> <li>➤ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;</li> <li>➤ Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955;</li> <li>➤ Working Journalist (Fixation of Rates of Wages) Act, 1958;</li> <li>➤ Motor Transport Workers Act, 1961;</li> <li>➤ Sales Promotion Employees (Condition of Service) Act, 1976;</li> <li>➤ Beedi and Cigar Workers (Conditions of Employment) Act, 1966;</li> <li>➤ Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Trade Unions Act, 1926;</li> <li>➤ Industrial Employment (Standing Orders) Act, 1946, and</li> <li>➤ Industrial Disputes Act, 1947.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Employees' Provident Funds and Miscellaneous Provisions Act, 1952;</li> <li>➤ Employees' State Insurance Act, 1948;</li> <li>➤ Employees' Compensation Act, 1923;</li> <li>➤ Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;</li> <li>➤ Maternity Benefit Act, 1961;</li> <li>➤ Payment of Gratuity Act, 1972;</li> <li>➤ Cine-workers Welfare Fund Act, 1981;</li> <li>➤ Building and Other Construction Workers' Welfare Cess Act, 1996; and</li> <li>➤ Unorganised Workers Social Security Act, 2008.</li> </ul>

## 5. REFORMS PROPOSED BY NEW LABOUR CODES

### 7.1. CODE ON SOCIAL SECURITY, 2020

The salient features of the Code on Social Security, 2020, *inter alia*, are-

Benefit of pension scheme (EPFO) to all workers of organized, unorganized and self-employed sectors

Creation of social security fund for providing comprehensive social security to the unorganized sector

Through a small contribution, benefit of free treatment is available under hospitals and dispensaries of ESIC

The doors of ESIC will now be opened for the workers of all sectors along with the workers of the unorganized sector.

Expansion of ESIC hospitals, dispensaries and branches upto district level.

Even if a single worker is engaged in hazardous work, he would be given ESIC benefit.

Opportunity to join ESIC for platform and gig workers engaged in new technology.

Plantation workers to get benefit of ESIC.

Institutions working in hazardous area to be compulsorily registered with ESIC.

Provisions for maternity benefits such as prohibition from work during certain periods, provision of nursing breaks, crèche facility, claim for maternity benefits, etc.

To provide for appeal against an order passed by any authority in regard to determination and assessment of dues and levy of damages relating to Employees' Provident Fund by an employer only after depositing with Social Security Organisation concerned, twenty-five per cent. of the amount due from him as determined by the authority against whose order the appeal has been preferred.

Creating a national database of workers of unorganized sector through registration on Portal.

Employers employing more than 20 workers to mandatorily report vacancies online.

A Universal Account Number (UAN) for ESIC, EPFO and Unorganised Sector Workers. Along with Aadhaar based Universal Account Number (UAN) to ensure seamless portability

## 7.2. OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

The salient features of the Occupational Safety, Health and Working Conditions Code, 2020 inter alia, are as under:—

To impart flexibility in adapting technological changes and dynamic factors, in the matters relating to health, safety, welfare and working conditions of workers.

To apply the provisions of the Code for all establishments having ten or more workers, other than the establishments relating to mines and docks; more employees.

Various provisions in the OSHWC Code will ease the lives of the Inter-State Migrant Workers.

A provision has been made for employers to provide travelling allowance annually to an Inter-State Migrant Worker for undertaking a to-and-fro journey to his native place.

Providing of appointment letters to the workers has been made mandatory.

Mandatory, free annual health check-up of the workers to be provided by the employers.

For a worker engaged in building and other construction work in one State and moving to another State, benefit from the Building and other Construction Workers' Cess fund will be provided.

Under the "One Nation - One Ration Card", an Inter-State Migrant Worker would get ration facility in the State he is working in and the remaining members of his family would be able to avail of the ration facility in the State where they reside

Mandatory helpline facility in every State for resolution of Inter-State Migrant Workers' grievances

National database to be created for the Inter State Migrant Workers.

Instead of 240 days, now if a worker has worked 180 days, he shall be entitled for one-day leave for every 20 days of work done.

Emphasis on women empowerment through the Labour Codes.

Right to women workers to work in all types of establishments.

Women have been given the right to work at night with their consent and it has also been ensured that the employer would make adequate arrangements to provide safety and facilities to women workers at night.

Maternity Benefit Act paid Maternity leave for women workers to 26 weeks and ensure mandatory crèche facility in all establishments having 50 or more workers.

To provide for issuing of appointment letter mandatorily by the employer of an establishment to promote formalisation in employment.

To constitute the National Occupational Safety and Health Advisory Board to give recommendations to the Central Government on policy matters, relating to occupational safety, health and working conditions of workers

To constitute the State Occupational Safety and Health Advisory Board at the State level to advise the State Government on such matters arising out of the administration of the Code.

To make a provision for the constitution of Safety Committee by the appropriate Government in any establishment or class of establishments.

To enable the courts to give a portion of monetary penalties up to fifty per cent. to the worker who is a victim of accident or to the legal heirs of such victim in the case of his death.

To provide overriding powers to the Central Government to regulate general safety and health of persons residing in whole or part of India in the event of declaration of epidemic or pandemic or disaster.

### 7.3. CODE ON WAGES, 2019

The salient features of the Code on Wages, 2019, inter alia, are as follows:—

To provide for all essential elements relating to wages, equal remuneration, its payment and bonus.

To provide wage security, social security and health security to workers, covering organized and unorganized sectors.

The guarantee of minimum wages is available to workers of organized and unorganized sectors.

Review of minimum wages in every 5 years.

Guarantee of timely payment of wages to all workers.

Equal remuneration to male and female workers

For the first time workers of unorganized sector in the country have got this right.

To remove regional disparity in minimum wages the provision of floor wage has been introduced.

The determination of minimum wages has been made easy. It will be based on criteria such as skill level and geographical area.

The appropriate Government may extend the coverage of wage ceiling to the Government establishments also.

The minimum wage decided by the government should be higher than the floor wage.

It provides that the wages to employees may also be paid by cheque or through digital or electronic mode or by crediting it in the bank account of the employee. However, the appropriate Government may specify the industrial or other establishment, where the wages

are to be paid only by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee.

In order to remove the arbitrariness and malpractices in inspection, it empowers the appropriate Government to appoint Inspectors-cum-Facilitators in the place of Inspectors, who would supply information and advice the employers and workers.

It enables the appropriate Government to establish an appellate authority to hear appeals for speedy, cheaper and efficient redressal of grievances and settlement of claims

It provides for compounding of those offences which are not punishable with imprisonment.

The period of limitation for filing of claims by a worker has been enhanced to three years, as against the existing time period varying from six months to two years, to provide a worker more time to settle his claims

It provides that where a claim has been filed for non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deduction not authorised by the legislation, the burden shall be on the employer to prove that the said dues have been paid to the employee.

It enables the appropriate Government to constitute Advisory Boards at Central and State level to advise the Central Government and the State Governments, respectively, on matters relating to wages, women employment, etc.

#### 7.4. INDUSTRIAL RELATION CODE, 2020

The salient features of the Industrial Relations Code, 2020, inter alia, are as follows:-

To define "workers" which includes the persons in supervisory capacity getting wages up to eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time.

To provide for fixed term employment with the objective that the employee gets all the benefits like that of a permanent worker (including gratuity), except for notice period after conclusion of a fixed period, and retrenchment compensation. The employer has been provided with the flexibility to employ workers on fixed term basis on the basis of requirement and without restriction on any sector.

To revise the definition of "industry" that any systematic activity carried on by co-operation between the employer and workers for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) with certain exceptions.

To bring concerted casual leave within the ambit of the definition of strike.

To provide the maximum number of members in the Grievance Redressal Committee up to ten in an industrial establishment employing twenty or more workers. There shall be adequate representation of the women workers therein in the proportion of the women workers to the total workers employed in the industrial establishment.

Under the Atal Bimit Vyakti Kalyan Yojna, a worker of organized sector who loses his job gets financial aid from the Government. This is a type of unemployment allowance, the benefit of which is admissible to the workers covered under the ESI Scheme.

In case of job loss, a worker will get benefit under the Atal Bimit Vyakti Kalyan Yojna.

At the time of retrenchment a worker would be provided 15 days' wages for re-skilling. The wages would be credited directly into the bank account of the worker so as to enable him to learn new skills.

To provide for appeal against non-registration or cancellation of registration of Trade Union before the Industrial Tribunal.

To empower the Central Government and the State Governments to recognise a Trade Union or a federation of Trade Unions as the Central Trade Union or State Trade Unions, respectively.

To provide for applicability of threshold of three hundred or more workers for an industrial

establishment to obtain certification of standing orders, if the standing order differ from the model standing order made by the Central Government.

Faster justice to the workers through the Tribunal.

Workers disputes to be resolved within a year in the Tribunal.

To set up Industrial Tribunal consisting of a Judicial Member and an Administrative Member, in place of only Judicial Member who presently presides the Tribunal. For certain specified cases, the matters will be decided by the two-member Tribunal and the remaining shall be decided by single-member Tribunals may be provided for in the rules.

To set up Industrial Tribunals in the place of existing multiple adjudicating bodies like the Court of Inquiry, Board of Conciliation and Labour Courts.

To remove the reference system for adjudication of Industrial Disputes, except the reference to the National Industrial Tribunal for adjudication.

To prohibit strikes and lock-outs in all industrial establishments without giving notice of fourteen days

Trade unions have been conferred with a new right, enabling them to get statutory recognition.

To provide for penalties for different types of violations to rationalise with such offences and commensurate with the gravity of the violations.

To empower the appropriate Government to exempt any industrial establishment from any of the provisions of the Code in the public interest for the specified period.

To provide for the obligation on the part of industrial establishments pertaining to mine, factories and plantation having three hundred or more workers to take prior permission of the appropriate Government before lay-off, retrenchment and closure with flexibility to the appropriate Government to increase the threshold to higher numbers, by notification.

To provide for compounding of offences by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of fifty per cent of the maximum fine provided for such offence punishable with fine only and for a sum of seventy-five per cent.

provided for such offence punishable with imprisonment for a term which is not more than one year, or with fine.

*Labour Code will facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers. The Code would bring the use of technology in its enforcement. All these measures would bring transparency and accountability which would lead to more effective enforcement. Widening the scope of minimum wages to all workers would be a big step for equity. The facilitation for ease of compliance of labour laws will promote in setting up of more enterprises thus catalyzing the creation of employment opportunities.*

# LAW OF WELFARE & WORKING CONDITION

## UNIT 1- FACTORIES ACT, 1948

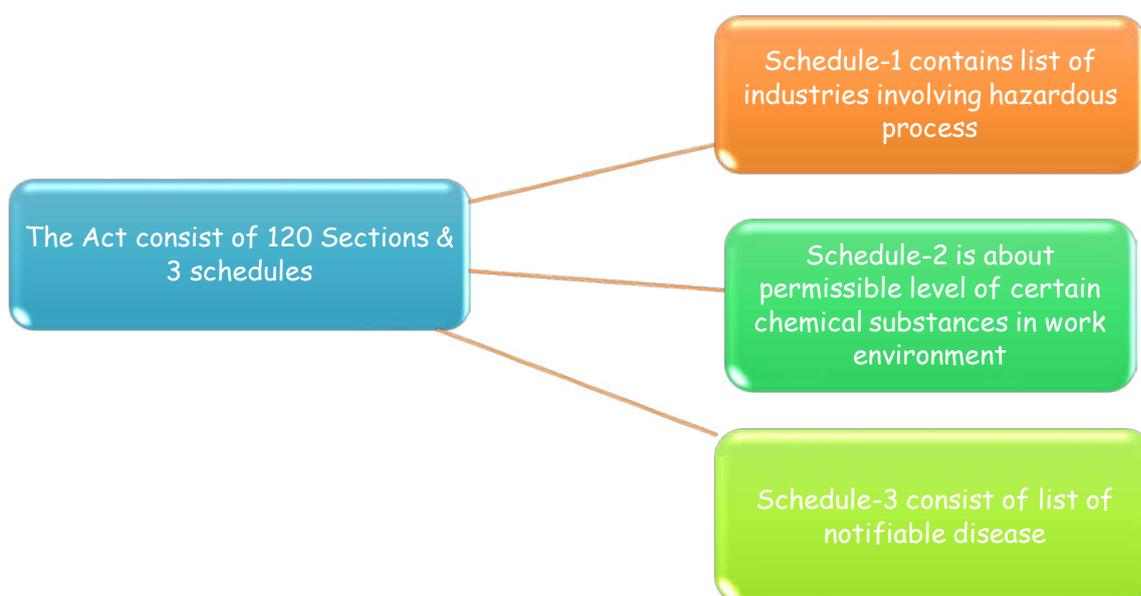
### 1. INTRODUCTION

Topic	Detailed Explanation
Object	<ul style="list-style-type: none"> <li>✚ The main object of the Factories Act, 1948 is to ensure adequate <b>safety measures</b> and to <b>promote the health and welfare</b> of the workers employed in factories.</li> <li>✚ The Act also makes provisions regarding <b>employment of women and young person</b> (including children and adolescents), annual leave with wages etc.</li> <li>✚ Act is meant to provide <b>protection to workers</b> from being <b>exploited</b> by the greedy business establishments and it also provides for the improvement of working conditions within the factory premises</li> </ul>
Enactment Date	The Factories Act, 1948 has been enacted on <b>23.09.1948</b> .
Effective Date	The Act came into force on <b>1<sup>st</sup> April 1949</b> .
Extent And Applicability	Factories Act, 1948 is extends to <b>whole of India</b> including the state of Jammu & Kashmir and covers all manufacturing processes and establishment falling within the definition of 'Factory' as defined under Section 2(m) of the Act. The Act is also applicable to <b>factories belonging to Central Government and State Government</b> .

## 2. HISTORY OF THE LEGISLATION

The Factories (Amendment) Act came into force on December 1, 1987. A special chapter on occupational health and safety to safeguard workers employed in hazardous industries was added. In this chapter, pre-employment and periodic medical examinations and monitoring of the work environment are mandatory for industries defined as hazardous under the Act. A maximum permissible limit has been laid down for a number of chemicals

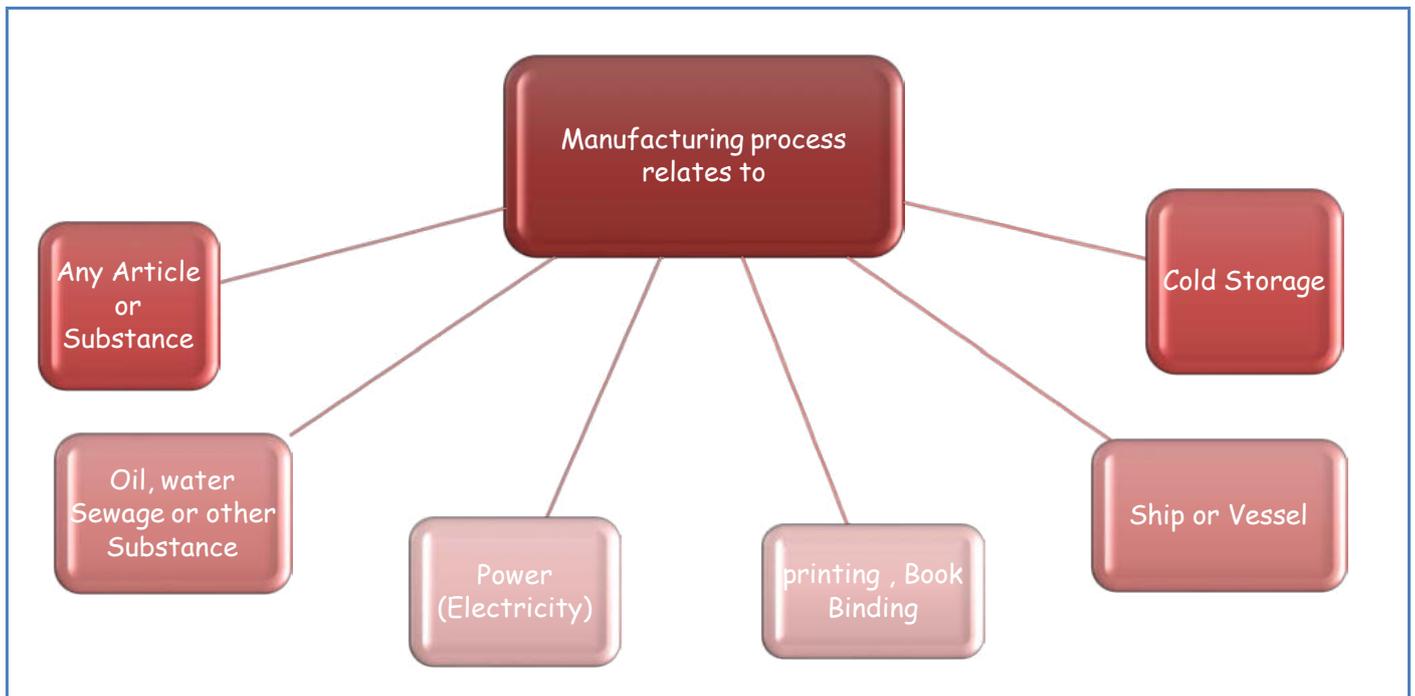
## 3. SCHEME OF THE ACT



## 4. IMPORTANT DEFINITION

Topic	Detailed Explanation
"Adult" Section 2(a)	Adult means a person who has completed his <b>eighteenth year of age</b> ;
"Adolescent" Section 2(b)	Adolescent means a person who has <b>completed his fifteenth year of age but has not completed his eighteenth year</b> ;
"Calendar Year" Section 2(bb)	Calendar Year means the period of twelve months beginning with the first day of January in any year;

<p><b>"Child"</b> Section 2(c)</p>	<p>Child means a person who has not completed his <b>fifteenth year of age</b>;</p>
<p><b>"Young Person"</b> Section 2(d)</p>	<p>Young person means a person who is either <b>a child or an adolescent</b>;</p>
<p><b>Hazardous Process</b> [Section 2(cb)]</p>	<p>The expression 'hazardous process' as any process or activity in relation to an industry specified in the <b>First Schedule</b> where, unless <b>special care is taken</b>, raw materials used therein or the intermediate or finished products, bye-products, wastes, or effluents thereof would-</p> <ul style="list-style-type: none"> <li>• cause material impairment to the health of the persons engaged in or connected therewith, or</li> <li>• result in the pollution of the general environment.</li> </ul> <p>The State Government may, by notification in the <i>Official Gazette</i>, amend the First Schedule by way of addition, omission or variation of any industry, specified in the said Schedule;</p>
<p><b>Manufacturing process</b> [Section 2(k)]</p>	<p>the expression 'manufacturing process' as any process for-</p> <ul style="list-style-type: none"> <li>• <b>making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating</b> or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or</li> <li>• <b>pumping</b> oil, water, sewage or any other substance; or</li> <li>• <b>generating, transforming or transmitting power</b>; or</li> <li>• <b>composing</b> types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or</li> <li>• <b>constructing, reconstructing, repairing, refitting, finishing or breaking up</b> ships or vessels; or</li> <li>• <b>Preserving</b> or storing any article in cold storage.</li> </ul>



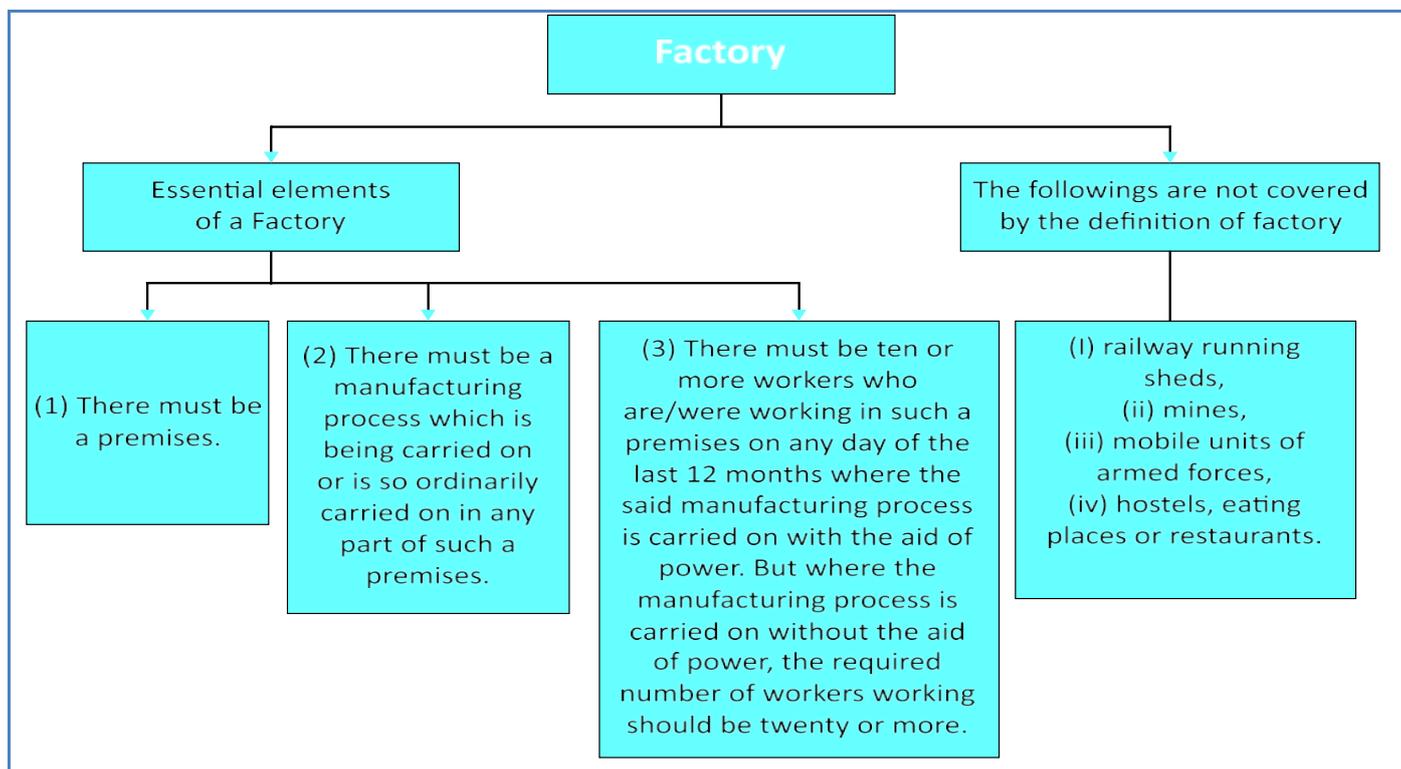
### Factory [Section 2(m)]

The term 'factory' as any premises including the precincts thereof-

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

**but this does not include:**

- i. **a Mine subject to the operation of the Mines Act, 1952**
- ii. **or a Mobile unit belonging to the armed forces of the union**
- iii. **a Railway running shed**
- iv. **or a hotel, Restaurant or eatingplace.**



**Explanation I:** For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;

**Explanation II:** For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;

**Occupier**  
[Section 2(n)]

Means the person who has **ultimate control** over the affairs of the factory

- In case of **Firm** or **AOI** > any one **individual partners or members**
- In case of **Company** > any one of the **directors**
- In case of **Factory owned and controlled by Central Government, State Government or Local Authority**
  - > person or persons appointed to **manage affairs** of the factory
- i. In case of **Ship** which is being **repaired** or on which **maintenance**

**work** is been carried out, in a dry dock which is available for hire

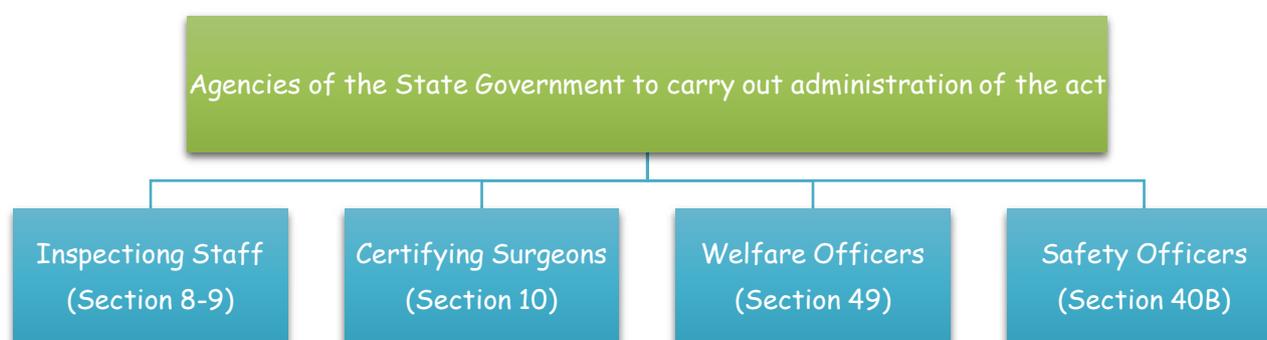
- i. **Owner of dock** shall deemed to be the occupier
- ii. **Owner of ship** or his agent or master or other officer in charge or any other person who contract with any one of above to carry out repair or maintenance

### Exemption of Occupier or Manager from liability in certain cases

Section 101 provides exemptions from liability of occupier or manager. It permits an occupier or manager of a factory who is charged with an offence punishable under the Act to bring into the Court any other person whom he charges actual offender and also proves to the satisfaction of the Court that:

- (a) he has used due diligence to enforce the execution of this Act; and
- (b) that the offence in question was committed without his knowledge, consent or connivance, by the said other person.

## 5. STATUTORY AGENCIES & THEIR POWERS FOR ENFORCEMENT OF THE ACT



### INSPECTORS

#### Appointment of Inspector

**Section 8**

**Section 8** empowers the State Government to appoint Inspectors, Additional Inspectors and Chief Inspectors, such persons who possess prescribed qualifications.

#### Powers of Inspector

**Section 9**

Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed, exercise the following powers-

- a. enter, with such assistants, being persons in the service of the government, or any local or other public authority, or with an expert as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;
- b. make examination of the premises, plant, machinery, article or substance;
- c. inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;
- d. require the production of any prescribed register or any other document relating to the factory;
- e. seize, or take copies of, any register, record or other document or any portion thereof as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;
- f. direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);
- g. take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;
- h. in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination
- i. exercise such other powers as may be prescribed:

It is provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

## CERTIFYING SURGEON

Appointment of Certifying Surgeon

Section 10

According to **section 10**, the **State Government** may appoint **qualified medical practitioners** to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. A certifying surgeon may, with the approval of the State Government, authorize any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorized.

### Duties of Certifying Surgeon

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

- a. **the examination and certification of young persons under this Act;**
- b. **the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;**
- c. **the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where —**
  - (i) **cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;**
  - (ii) **by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;**
  - (iii) **young persons are, or are about to be, employed in any work which is likely to cause injury to their health.**

### WELFARE OFFICER

#### Welfare Officer

#### Section 49

Section 49 of the Act imposes statutory obligation upon the occupier of the factory of the

appointment of Welfare Officer/s wherein 500 or more workers are ordinarily employed. Duties, qualifications and conditions of service may be prescribed by the State Government.

## SAFETY OFFICERS

### Safety Officers

### Section 40 B

**Section 40-B** empowers the State Government for directing a occupier of factory to employ such number of Safety Officers as specified by it where more than 1,000 workers are employed or where manufacturing process involves risk of bodily injury, poisoning or disease or any other hazard to health of the person employed therein. The duties, qualifications and working conditions may be prescribed by the State Government.

## 6. DUTIES OF OCCUPIER/ MANAGER

### Notice by Occupier

### Section 7

The occupier shall, at least 15 days before he begins to occupy or use any premises as a factory, send to the Chief Inspector, a written notice containing the name and situation of the factory, the name and address of the occupier, the nature of manufacturing process, the details of workers etc.

Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes over charge.

Manager, Deemed Occupier: During any period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as a manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

### General Duties of Occupier

### Section 7A

### General Duties of Occupier

the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;

the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances

the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work

the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;

the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

### General Duties of Manufacturers, etc., as regards articles and substances for use in factories

### Section 7B

Sub-section (1) casts an obligation on every person who designs, manufactures, imports or supplies any article for use in any factory that he shall -

- (a) ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;
- (b) carry out or arrange for the carrying out of such tests and examination as may be considered necessary for the effective implementation of the provisions of clause (a);
- (c) take such steps as may be necessary to ensure that adequate information will be available
  - (i) in connection with the use of the article in any factory;
  - (ii) about the use for which it is designed and tested; and
  - (iii) about any conditions necessary to ensure that the, when put to such use, will be safe, and without risks to the health of the workers:

## 7. MEASURES TO BE TAKEN BY FACTORIES FOR HEALTH, SAFETY & WELFARE OF WORKERS

These measures are provided under Chapters III, IV and V of the Act which are as follows:

<b>Health Measures</b>	<b>Chapter III</b>
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<b>CLEANLINESS (Section 11)</b>	<b>Inside walls / partitions/ ceilings / passages and staircases</b>
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<i>Sweeping/ Dusting</i>	<i>Floor Wash</i>	<i>Wet Floor due to Manufacturing</i>	<i>Doors/ Windows</i>	<i>Varnish</i>	<i>Washable Water Paint</i>	<i>Smooth impervious surfaces</i>	<i>Any other case</i>
Daily	Every Week	Proper Drainage	Paint in 5years	Once in 5years	Wash in 6 months + paint in 3 years (1 coat)	Clean once in 14 Months	Once in 14 Months

<i>Disposal of wastes (Section 12)</i>	<i>Ventilation and temperature (Section 13)</i>	<i>Dust and fume (Section 14)</i>	<i>Artificial humidification (Section 15)</i>
effective arrangements for the treatment of wastes and effluents	<ul style="list-style-type: none"> <li>adequate ventilation</li> <li>temperature reasonable</li> <li>Measures to reduce excessive/y high temperature</li> <li>walls and roofs of such material that reduce temperature</li> <li>In excessively high temperatures, adequate measures</li> </ul>	exhaust in open air	as per standards

<i>Overcrowding (Section 16)</i>	<i>Lightening (Section 17)</i>	<i>Drinking water (Section 18)</i>
<ul style="list-style-type: none"> <li>14.2 cubic meters of space per worker</li> <li>space more than 4.2 meters above the level of the floor, will not be taken into</li> </ul>	<ul style="list-style-type: none"> <li>sufficient and suitable lighting, natural or artificial</li> <li>Windows kept clean</li> </ul>	<ul style="list-style-type: none"> <li>Convenient points</li> <li>legibly marked</li> <li>six meters from any washing place, urinal, and latrine</li> <li>Where <b>more than 250 workers are employed</b> provision shall be made for <b>cool drinking water</b></li> </ul>

consideration		during hot weather.
<b>Latrines and urinals (Section 19)</b>		<b>Spittoons Section 20</b>
<ul style="list-style-type: none"> <li>• 6 meter away from drinking water</li> <li>• 1 seat for 20 workers</li> <li>• separate for male and female workers</li> <li>• washed once in 7 days with detergents</li> </ul>		There shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

**SAFETY MEASURES****CHAPTER IV**

<b>Fencing of machinery (Section 21)</b>	<i>moving part of a prime mover</i>	<b>Pits, sumps, opening in floors, etc. (Section 33)</b>	<i>source of danger shall be either securely covered or securely fence</i>
<b>Work on or near machinery in motion (Section 22)</b>	<i>No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime-mover if risky for them</i>	<b>Excessive weights (Section 34)</b>	<i>no person shall lift, carry or make any load as to be likely to cause him injury</i>
<b>Employment of young persons on dangerous machines (Section 23)</b>	<i>Young person only allowed to work on dangerous machine if</i> <ul style="list-style-type: none"> <li>• received training</li> <li>• under supervision</li> </ul>	<b>Protection of eyes (Section 35)</b>	<i>effective screens or suitable goggles for the protection</i>
<b>Striking gear and devices for cutting off power (Section 24)</b>	<i>suitable striking gears shall be provided and maintained and used to move driving belts to and from fast and loose pulleys</i>	<b>Precautions against dangerous fumes, gases, etc. (Section 36)</b>	<i>special measures have been taken under the Factories Act</i>

<p><b>Self-acting machines (Section 25)</b></p>	<p><i>No traversing part of a self-acting machine in any factory be allowed to run on its outward or inward traverse within a distance of forty-five centimeters from any fixed structure which is not part of the machine</i></p>	<p><b>Precautions regarding the use of portable electric light (Section 36-A)</b></p>	<p><i>prohibits use of portable electric light or any other electric appliance of voltage exceeding 24 volts</i></p>
<p><b>Casing of new machinery (Section 26)</b></p>	<p><i>all machinery driven by power and installed in any factory encased or otherwise effectively guarded as to prevent danger</i></p>	<p><b>Explosive or inflammable dust, gas, etc. (Section 37)</b></p>	<p><i>measures to prevent any such explosion</i></p>
<p><b>Prohibition of employment of women and children near cotton-openers (Section 27)</b></p>	<p><i>No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work</i></p>	<p><b>Precautions in case of fire (Section 38)</b></p>	<p><i>measures shall be taken to prevent outbreak of fire and its spread</i></p>
<p><b>Hoists and lifts (Section 28)</b></p>	<ul style="list-style-type: none"> <li>• <i>good mechanical construction, adequate strength</i></li> <li>• <i>properly maintained</i></li> <li>• <i>examined once in 6 months</i></li> </ul> <p><i>sufficiently protected by an enclosure fitted with gates</i></p>	<p><b>Power to require specifications of defective parts or tests of stability (Section 39)</b></p>	<p><i>If Inspector feels that any building, machinery or plant in a factory is in condition dangerous to human life or safety, inspector serve order on the occupier or manager or both of the factory to furnish such drawings &amp; conduct test</i></p>

<p><b>Lifting machines, chains, ropes and lifting tackles (Section 29)</b></p>	<ul style="list-style-type: none"> <li>• <i>lifting machine shall be of good construction, adequate strength and free from defects;</i></li> <li>• <i>properly maintained; and thoroughly examined</i></li> </ul>	<p><b>Safety of buildings and machinery (Section 40)</b></p>	<p><i>If Inspector feels that any building, machinery or plant in a factory is in condition dangerous to human life or safety, inspector serve order on the occupier or manager or both of the factory specifying the measures, which in his opinion should be adopted</i></p>
<p><b>Revolving machinery (Section 30)</b></p>	<p><i>placing a notice in every factory in which process of grinding is carried on</i></p>	<p><b>Maintenance of buildings (Section 40-A)</b></p>	<p><i>If Inspector feels that any building is in a state of disrepair, he may serve on the occupier or manager or both of the factory an order of maintenance</i></p>
<p><b>Pressure plant (Section 31)</b></p>	<p><i>atmospheric pressure, does not exceed the limits</i></p>	<p><b>Safety Officers (Section 40-B)</b></p>	<p><i>wherein 1000 or more workers are employed</i></p>
<p><b>Floors, stairs and means of access (Section 32)</b></p>	<p><i>sound construction and properly maintained and shall be kept free from obstruction</i></p>	<p><b>Power to make rules to supplement this Chapter (Section 41)</b></p>	<p><i>State Government has authority to make rules</i></p>

## PROVISION RELATING TO HAZARDOUS PROCESSES

The Factories (Amendment) Act, 1987, has inserted this new chapter in the Act after Chapter IV. The new Chapter lays down provisions relating to hazardous process in sections 41A to 41H.

### Constitution of Site Appraisal Committees

### Section 41A

- ✚ The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory, appoint a Site Appraisal Committee. The Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt of such application in the prescribed form.
- ✚ Where any process relates to a factory owned or controlled by the Central Government or to a corporation or a company owned or controlled by the Central Government, the State Government shall co-opt in the Site Appraisal Committee a representative nominated by the Central Government as a member of that Committee. The Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.
- ✚ Where the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

### Compulsory disclosure of information by the Occupier

### Section 41B

The occupier of every factory involving a hazardous process shall disclose in the manner prescribed, all information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority, within whose jurisdiction the factory is situated, and the general public in the vicinity. The information furnished shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal

Every occupier of a factory shall inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed if-

- a. such factory is engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987 within a period of thirty days of such commencement; and
- b. if such factory purposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process. Where any occupier of a factory contravenes this provision, the license issued under section 6 to such factory shall, notwithstanding any penalty to which the occupier of the factory shall be subjected to under the provisions of this Act, be liable for cancellation

**Specific Responsibility of occupier in relation to hazardous processes**

**Section 41C**

Every occupier of a factory involving any hazardous process shall maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed.

Such occupier shall provide for medical examination of every worker-

before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and

while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months in such manner as may be prescribed,

**Power of Central Government to appoint inquiry committee**

**Section 41D**

The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure or neglect in the adoption of all measures or standards

prescribed for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to such failure or neglect and for the prevention and recurrence of such extraordinary situations in future in such factory or elsewhere.

### **Emergency Standard**

### **Section 41E**

Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any Institution specialised in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.

### **Permissible limits of exposure of chemicals and toxic substances**

### **Section 41F**

The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule. The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialised institutions or experts in the field, by notification in the Official Gazette, make suitable changes in the said Schedule.

### **Workers Participation in safety Management**

### **Section 41G**

The section provides for constitution of Safety Committee consisting of equal number of representatives of workers and management. Such Safety Committee shall be set up by the occupier in every factory where a hazardous process takes place, or where hazardous substances are used or handled. The functions of the Safety Committee are to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf.

### **Right of workers to warn about imminent danger**

### **Section 41H**

Where the workers employed in any factory engaged in a hazardous process have

reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may, bring the same to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector. It shall be the duty of such occupier, agent, manager or the person in-charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forth-with of the action taken to the nearest Inspector.

## WELFARE PROVISIONS

## CHAPTER V

### Washing Facilities

### Section 42

In every factory , there shall be provided -

adequate and suitable facilities for washing shall be provided and maintained for use of the workers therein;

separate and adequately screened facilities shall be provided for the use of male and female workers;

such facilities shall be conveniently accessible and shall be kept clean.

The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

### Facilities for storing and drying clothing

### Section 43

The State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable place for keeping clothing not worn during working hours and for the drying of wet clothing.

### Facilities for sitting

### Section 44

There shall be suitable arrangements for sitting in every factory and they shall be

maintained for all workers obliged to work in a standing position. The provision ensures such worker may take advantage of any opportunities for rest which may occur in the course of their work.

The State Government is vested with the power to exempt, by notification in the Official Gazette, any specified factory or class or description of factories or to any specified manufacturing process from compliance of the provisions of this section.

### First-Aid Appliances

### Section 45

In every factory, there shall be provided and maintained so as to be readily accessible during all working hours' first-aid boxes or cupboards equipped with the prescribed contents. At least one such box or cupboard shall be provided and maintained for every **one hundred and fifty workers** ordinarily employed at any one time in the factory. It is also mandatory that nothing except the prescribed contents shall be kept in a first-aid box or cupboard.

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 the State Government and who shall always be readily available during the working hours of the factory. There **shall be provided and maintained an ambulance room of the prescribed size**, containing the prescribed equipment in every factory **wherein more than five hundred workers** are ordinarily employed. The ambulance shall be 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.

### Canteens

### Section 46

The State Government may make rules requiring that the occupier shall provide and maintain a canteen or canteens for the use of the workers in any specified factory wherein **more than two hundred and fifty workers are ordinarily employed**. Without prejudice in the generality of the foregoing power, such rules may provide for-

- (a) **the date by which such canteen shall be provided;**

- (b) the standard in respect of construction, accommodation, furniture and other equipment of the canteen;
- (c) the foodstuffs to be served therein and the charges which may be made therefor;
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
- (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer ;
- (e) the delegation to Chief Inspector subject to such conditions as may be prescribed, of the power to make rules under clause (c).

#### Shelters, Restrooms and Lunch Rooms

#### Section 47

It is mandatory to provide and maintain adequate and suitable shelters or rest-rooms and a suitable lunch-room, with provision for drinking water, where workers can eat meals brought by them in every factory wherein more than one hundred and fifty workers are ordinarily employed.

The shelters or rest-room or lunch-room to be provided shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition. The State Government may

- (a) prescribe the standards, in respect of construction accommodation, furniture and other equipment of shelters, rest-rooms and lunch-rooms to be provided under this section;
- (b) by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

#### Creches

#### Section 48

It is compulsory to provide and maintain a suitable room or rooms for the use of children under the age of six years of women in every factory wherein more than thirty

women workers are ordinarily employed. Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

# LAW OF WELFARE & WORKING CONDITION

## UNIT 2- THE CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

### 1. HISTORY OF THE LEGISLATION

During the early period of industrialisation, the industrial establishments were always faced with the problems of labour recruitment. Low status of factory workers, lack of labour mobility, caste and religious taboo, language, etc., were some of the problems with which most of the employers in general and British employers or their representatives, in particular were not familiar. They were unable to solve these problems. Therefore, they had to depend on middlemen who helped them in recruitment and control of labour. These middlemen or contractors were known by different names in various parts of the country

### 2. OBJECT & SCOPE OF THE ACT

The preamble of the Act states that it is an Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

According to section 1, the Act extends to the whole of India. It applies –

**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 ;**

**to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen**

However, 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.

### 3. ADVISORY BOARDS

#### Central Advisory Board

#### Section 3

**Constitution of Central Board:** In pursuance to the provisions of section 3, the Central Government shall, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board).

**Function of the Central Board:** The Central Board shall perform function of advising 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.

**Composition of the Central Board:** The Central Board shall consist of-

a Chairman to be appointed by the Central Government;	the Chief Labour Commissioner (Central), <i>ex officio</i> ;	such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, in the opinion of the Central Government ought to be represented on the Central Board.
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#### State Advisory Board

#### Section 4

**Constitution of the State Board:** Section 4 empowers the State Government to constitute a board to be called the State Advisory Contract-Labour Board (hereinafter referred to as the State Board).

**Note:** It is mandatory for the Central Government to constitute the Central Board u/s 3 of the Act while it is discretionary for the State Government to constitute the State Board u/s 4 of the Act.

**Function of State Board:** The State Board is constituted to advise the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

**Composition of the State Board:** The State Board shall consist of —

a Chairman to be appointed by the State Government;	the Labour Commissioner, <i>ex officio</i> , or in his absence any other officer nominated by the State Government in that behalf	such numbers, 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.
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#### Power to constitute Committee

#### Section 5

According to section 5, 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. The committee shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed. 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.

## 4. REGISTRATION OF ESTABLISHMENT EMPLOYING CONTRACT LABOUR

### Appointment of Registering Officers

#### Section 6

(1) **Appointment of Registering Officers:** According to section 6, 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.

### Registration of certain establishment

### Section 7

**Registration of certain establishment:** Section 7 makes it mandatory for every principal employer of an establishment to which this Act applies to make an application to the registering office in the prescribed manner for registration of the establishment. The appropriate Government may, by notification in the Official Gazette, fix time period for making such application with respect to establishments generally or with respect to any class of them. It is 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.

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.

### Revocation of registration in certain cases

### Section 8

Section 8 provides that 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 mis-representation 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 revoke the registration. He can do so only after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government.

**Rule 19** prescribes the circumstances in which application for registration may be rejected.

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- (1) If any application for registration is not complete in all respects, the registering officer shall require the principal employer to amend the application so as to make it complete in all respects.
- (2) If the principal employer, on being required by the registering officer to amend his application for registration, omits or fails to do so, the registering officer shall reject the application for registration.

**Effect of non-registration****Section 9**

According to section 9, no principal employer of an establishment, to which this Act applies, shall employ contract labour in the establishment after the expiry of the period under section 7 in the case of the establishment which is required to be registered under Section 7, but which has not been registered within the time fixed for the purpose under that section.

The principal employer shall also not employ contract labour in the establishment after the revocation of registration of such establishment under Section 8.

**Prohibition of employment of contract labour****Section 10**

**Prohibition of employment of contract labour:** According to section 10, 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. Section 10 vests overriding power in Appropriate Government irrespective of anything contained in the Act.

But before issuing any such notification in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-

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 ;

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

whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

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

**Appointment of Licensing Officers****Section 11**

Section 11 empowers the appropriate Government to appoint Gazetted Officers to be licensing officers and define the limits of their jurisdiction. Orders regarding appointment of licensing officers and the limits of their jurisdiction are to be notified in the Official Gazette.

**Appointment of licensing officers:** According to section 11, 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.

### Licensing of contractors

### Section 12

**Licensing of contractors:** According to section 12, 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 accordance with a licence issued in that behalf by the licensing officer. Subject to the provisions of this Act, such a licence may contain such conditions including, in particular, conditions as to hours or 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.

## 5. WEALTH & HEALTH OF CONTRACTOR

### Canteens

### Section 16

According to section 16, the appropriate Government may make rules requiring that one or more canteens shall be provided and maintained by the contractor for the use of such contract labour in every establishment-

to which this Act applies,	wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and	Where in contract labour numbering one hundred or more is ordinarily employed by a contract, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.
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## Restrooms

## Section 17

According to section 17, it is mandatory for the contractor to provide and maintain 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 in every place wherein contract labour is required to halt at night in connection with the work of an establishment-

to which this Act applies	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.
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**Other Facilities****Section 18**

According to section 18, 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.

**First -Aid Facilities****Section 19**

According to section 19, 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.

**Liability of Principal Employer in certain cases****Section 20**

According to **Section 20**, If any amenity required to be provided under Section 16, Section 17, Section 18 or Section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed. 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.

**Section 20 & 21**- Obligation to provide amenities conferred under the Act to the workers is on the principal employer. Government will be responsible for enforcement of those amenities where contractors engaged by it for executing its construction project fail to provide the amenities to its workers.

**Responsibility for payment of wages****Section 21**

Section 21 makes a contractor statutorily 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.

## 6. PENALTIES & PROCEDURES

### Obstructions

### Section 22

According to section 22, Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section 22 also provides for that a person 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 if he wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under the Act,

### Contravention of provisions regarding employment contract labour

### Section 23

Section 23 provides for that a person 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, if he contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act.

### Other offences

### Section 24

According to section 24, If any person contravenes any of the provisions of this Act or of any

rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

#### Offences by companies

#### Section 25

Section 25 provides for that if the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

#### Cognizance or offences

#### Section 26

According to section 26, no court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no court inferior to that of a Presidency Magistrate or a magistrate of the first class shall try any offence punishable under this Act.

#### Limitation or prosecution

#### Section 27

According to section 27, 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.

## 7. INSPECTING STAFF

#### Inspecting staff

#### Section 28

According to section 28, 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.

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

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

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 ;

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 ;

seize to 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

exercise such other powers as may be prescribed.

## 8. REGISTERS & OTHER RECORDS TO BE MAINTAINED

According to Section 29, 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.

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

# LAW OF WELFARE & WORKING CONDITION

## UNIT 3- THE CHILD & ADOLESCENT LABOUR (PROHIBITION & REGULATION) ACT, 1986

### 1. INTRODUCTION

The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. **It extends to whole of India.**

It prohibits employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibits employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182, respectively.

### 2. PROHIBITION OF EMPLOYMENT OF CHILDREN IN ANY OCCUPATIONS AND PROCESSES

**Section 3** of the Act provides that no child shall be employed or permitted to work in any occupations or process except:-

**helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;**

**works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the**

**circus, subject to such conditions and safety measures, as may be prescribed.**

However no such work shall effect the school education of the child

### 3. PROHIBITION OF EMPLOYMENT OF ADOLESCENT IN HAZARDOUS OCCUPATIONS AND PROCESSES

**Section 3A** provides that no adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule.

The hazardous occupations or processes set forth in the Schedule are as under:

<b>Mines</b>	<b>Inflammable substances or explosives.</b>	<b>Hazardous process.</b>
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However, the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under the Act.

### 4. HOURS AND PERIOD OF WORK

**Section 7** provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

This section also stipulates that :

- No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- No adolescent shall be required or permitted to work overtime.
- No adolescent shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

## 5. WEEKLY HOLIDAYS

**As per section 8** every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months

## 6. NOTICE TO INSPECTORS

**Section 9** provides that every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars namely:

**The name and situation of the establishment**

**The name of the person in actual management of the establishment;**

**The address to which communications relating to the establishment should be sent; and**

**The nature of the occupation or process carried on in the establishment**

## 7. MAINTENANCE OF REGISTER

Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing -

**the name and date of birth of every adolescent so employed or permitted to work;**

**hours and periods of work of any such adolescent and the intervals of rest to which he is entitled;**

**the nature of work of any such adolescent; and**

**such other particulars as may be prescribed**

## 8. DISPLAY OF NOTICE CONTAINING ABSTRACT OF SECTIONS 3A & 14

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Sections 3A and 14.

## 9. PENALTIES

Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.

However; the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of **section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.** However; the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.

The parents or guardians of any child or adolescent shall not be liable for punishment, in case of the first offence.

Whoever, having been convicted of an offence under section 3 or section 3A commits a like offence afterwards; **he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.**

The parents or guardians having been convicted of an offence under section 3 or section 3A, commits a like offence afterwards, **he shall be punishable with a fine which may extend to ten thousand rupees.**

Whoever fails to comply with or contravenes any other provisions of the Act or the rules made thereunder, shall **be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.**

## 10. DISTRICT MAGISTRATE TO IMPLEMENT THE PROVISION

**Section 17A** of the Act provides that the appropriate Government may confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any

of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

# LAW OF INDUSTRIAL RELATION

## UNIT 1- INDUSTRIAL DISPUTES ACT, 1947

### 1. INTRODUCTION

The first enactment dealing with the settlement of industrial disputes was the **Employers' and Workmen's Disputes Act, 1860**. This Act weighed much against the workers and was therefore replaced by the **Trade Disputes Act, 1929**. The Act of 1929 contained special provisions regarding strikes in public utility services and general strikes affecting the community as a whole. The main purpose of the Act, however, was to provide a conciliation machinery to bring about peaceful settlement of industrial disputes. The Whitely Commission made in this regard the perceptive observation that the attempt to deal with unrest must begin rather with the creation of an atmosphere unfavourable to disputes than with machinery for their settlement.

**The Industrial Dispute Act, 1947 came into force on first day of April, 1947**

**This Act extends to whole of India.**

### 2. OBJECTIVE OF THE ACT

The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes.

It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees.

**Case Law**      *Workmen of Dimakuchi Tea Estate v. Dimakuchi Sea Estate*

**Decision**

Supreme Court laid down following objectives of the Act:

- (i) Promotion of measures of securing and preserving **amity and good relations between the employer and workmen.**
- (ii) **Investigation and settlement of industrial disputes** between employers and employees, employers and workmen, or workmen and workmen with a right of representation by registered trade union or federation of trade

unions or an association of employers or a federation of associations of employers.

- (iii) Prevention of illegal strikes and lock-outs.
- (iv) Relief to workmen in the matter of lay-off and retrenchment.
- (v) Promotion of collective bargaining.

### 3. IMPORTANT DEFINITIONS

#### 1. Industry

Section 2( j)

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen.

*Case Law*      *Bangalore Water Supply & Sewerage Board Vs. Rajappa & others*

*Issue*

Guidelines for deciding the dominant nature of an undertaking:

*Decision*

The Supreme Court, in *Bangalore Water Supply case* laid down the following guidelines for deciding the dominant nature of an undertaking:

- (i) Where a complex of activities, some of which qualify for exemption, others not, involves the employees on the total undertaking. Some of whom are not "workmen" or some departments are not productive of goods and services if isolated, nature of the department will be the true test. The whole undertaking will be "industry" although those who are not "workmen" definition may not be benefit by the status.
- (ii) Notwithstanding with previous clause, sovereign functions strictly understood alone qualify for exemption and not the welfare activities or economic adventures undertaken by Government or statutory bodies.
- (iii) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).
- (iv) Constitutional and competently enacted legislative provisions may well

remove an undertaking from the scope of the Act.

## 2. Industrial Dispute

## Section 2(k)

“Industrial Dispute” means any dispute or difference between employers and employees, 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

The above definition can be analysed and discussed under the following heads:

### There should exist a dispute or difference

- i. The dispute or difference should be between:
  - (a) employer and employer;
  - (b) employer and workmen; or
  - (c) workmen and workmen.
- ii. The dispute or difference should be connected with
  - (a) the employment or non-employment, or
  - (b) terms of employment, or
  - (c) the conditions of labour of any person;
- iii. The dispute should relate to an industry as defined in Section 2(j).

Industrial dispute implies any distinction of conclusion, contest, injury between the business and the representatives, or between the laborers and bosses, or between the labourers or workers itself which is all concerned with the work or non-business terms or terms of business dependent on the terms of state of work of any person.

## 3. Workman

## Section 2(s)

“Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any

proceeding under this Act in relation to an industrial dispute, includes:

(a) any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute; or

(b) any person whose dismissal, discharge or retrenchment has led to that dispute,

(c) but does not include any such person:

- (i) who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy Act, 1957; or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who is employed in a supervisory capacity drawing more than Rs. 1,600 per month as wages; or (10,000)
- (v) who is exercising 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

#### 4. Award

Section 2(b)

"Award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A

#### 5. Average pay

Section 2(aaa)

"Average pay" means the average of the wages payable to a workman:

- (i) in the case of monthly paid workman, in the three complete calendar months;
- (ii) in the case of weekly paid workman, in the four complete weeks;
- (iii) in the case of daily paid workman, in the twelve full working days preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the

period he actually worked

#### 6. Closure

Section 2(cc)

"Closure" means the permanent closing down of a place of employment or a part thereof.

#### 7. Controlled Industry

Section 2(ee)

"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.

#### 8. Employer

Section 2(g)

"Employer" means:

- (i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

"Employer includes among others an agent of an employer, general manager, director, occupier of factory etc.

#### 9. Public Utility Service

Section 2(n)

"Public Utility Service" means:

- any railway service or any transport service for the carriage of passengers or goods by air
- any service in, or in connection with the working of, any major port or dock;
- any section of an industrial establishment, on the working of which the safety of the establishment or the workman employed therein depends;
- any postal, telegraph or telephone service;
- any industry which supplies power, light or water to the public;
- any system of public conservancy or sanitation;
- any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months at any one time, if in the opinion of the appropriate Government public emergency or public interest requires such extension

### 10. Settlement

Section 2(p)

"Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer

### 11. Trade Union

Section 2(qq)

"Trade Union" means a trade union registered under the Trade Unions Act, 1926.

### 12. Unfair Labour Practices

Section 2(ra)

It means any of the practices specified in the Fifth Schedule.

### 13. Wages

Section 2(rr)

"Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to workman in respect of his employment or of work done in such employment, and includes:

includes	But does not include:
<p>(i) such allowance (including dearness allowance) as the workman is for the time being entitled to;</p> <p>(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;</p> <p>(iii) any travelling concession,</p>	<p>(a) any bonus;</p> <p>(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force</p> <p>(c) any gratuity payable on the termination of his service;</p> <p>(d) any commission payable on the promotion of sales or business or</p>

both

#### 4. STRIKE, LOCKOUT, LAY-OFF AND RETRENCHMENT

##### 4.1. Strike

Section 2(q)

"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 of any number of persons who are or have been so employed to continue to work or to accept employment

Strike is a weapon of collective bargaining in the armament of workers. The following points may be noted regarding the definition of strike:

- (i) Strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or in a concerted manner. Time factor or duration of the strike is immaterial. The purpose behind the cessation of work is irrelevant in determining whether there is a strike or not. It is enough if the cessation of work is in defiance of the employers authority.
- (ii) A concerted refusal or a refusal under a common understanding of any number of persons to continue to work or to accept employment will amount to a strike
- (iii) The striking workman, must be employed in an "industry" which has not been closed down.
- (iv) Even when workmen cease to work, the relationship of employer and employee is deemed to continue albeit in a state of belligerent suspension

##### 4.2. Types of Strike and their Legality

###### (a) Stay-in, sit-down, pen-down or tool-down strike

In all such cases, the workmen after taking their seats, refuse to do work. Even when asked to leave the premises, they refuse to do so. All such acts on the part of the workmen acting in combination, amount to a strike. Since such strikes are directed against the employer, they are also called primary strikes.

**(b) Go-slow**

Go-slow does not amount to strike, but it is a serious case of misconduct.

**Case Law**    **Bharat Sugar Mills Ltd. v. Jai Singh****Decision**

Supreme Court explained the legality of go-slow in the following words: "*Go-slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory, is one of the most pernicious practices that discontented and disgruntled workmen sometimes resort to. Thus, while delaying production and thereby reducing the output, the workmen claim to have remained employed and entitled to full wages. Apart from this, 'go-slow' is likely to be much more harmful than total cessation of work by strike. During a go-slow much of the machinery is kept going on at a reduced speed which is often extremely damaging to the machinery parts. For all these reasons, 'go-slow' has always been considered a serious type of misconduct.*"

**(c) Sympathetic strike**

Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic strike. This is an unjustifiable invasion of the right of employer who is not at all involved in the dispute. The management can take disciplinary action for the absence of workmen.

**(d) Hunger strike**

Some workers may resort to fast on or near the place of work or residence of the employer. If it is peaceful and does not result in cessation of work, it will not constitute a strike. But if due to such an act, even those present for work, could not be given work, it will amount to strike

**(e) Work-to-rule**

Since there is no cessation of work, it does not constitute a strike.

**4.3. Lock-out****Section 2(I)**

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

**4.4. Strike and Lockout**

### Lockout is the antithesis of strike

It is the weapon of the employer while strike is that of the workers

Just as a strike is a weapon in the hands of the workers for enforcing their industrial demands, lockout is a weapon available to the employer to force the employees to see his points of view and to accept his demands

The Industrial Dispute Act does not intend to take away these rights

However the rights of strikes and lockouts have been restricted to achieve the purpose of the Act, namely peaceful investigation and settlement of the industrial dispute.

#### 4.5. Notice of lock-out or strike

According to Section 22 (3) the notice of lock-out or Strike under this section shall not be necessary where there is already in existence a strike or as a case may be lock-out in the public utility service.

#### 4.6. Legal Strikes and Lockouts

#### Section 24

- A strike or a lockout shall be illegal, if employers or worker who ever disobeys or fails to follow [Sec 22,23,10(3), 10-A (4A)] for commencing strikes or lockout, those strikes and lockout are said to illegal.
- A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lockout shall not be deemed to be illegal.

#### 4.7. Lay-off

#### Section 2(kkk)

“Lay-off’ (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer to give employment due to following reasons, to a workman whose name appears on the muster-roll of his industrial establishment and who has not been retrenched:

shortage of coal, power or raw materials, or

accumulation of stocks, or

break-down of machinery, or

natural calamity, or

for any other connected reason.

**Explanation:** Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause.

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during this second half of the shift for the day and is given employment, then, he shall be deemed to have been laid-off only for one-half of that day.

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day

#### 4.8. Difference between lay-off and lock-out

In lay-off, the employer refuses to give employment due to certain specified reasons, but in lock-out, there is deliberate closure of the business and employer locks out the workers not due to any such reasons.

In lay-off, the business continues, but in lock-out, the place of business is closed down for the time being.

In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified.

Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining

Lock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

However, both are of temporary nature and in both cases the contract of employment is not terminated but remains in suspended animation.

## 4.9. Retrenchment

## Section 2(oo)

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

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

Thus, the definition contemplates following requirements for retrenchment:

There should be termination of the service of the workman	The termination should be by the employer	The termination is not the result of punishment inflicted by way of disciplinary action	The definition excludes termination of service on the specified grounds or instances mentioned in it. [Section 2(oo)]
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## 5. AUTHORITIES UNDER THE ACT ANF THEIR DUTIES

The Act provides for following Authorities for Investigation and settlement of industrial disputes:

- (i) Works Committee.
- (ii) Conciliation Officers.

- (iii) **Boards of Conciliation.**
- (iv) **Court of Inquiry.**
- (v) **Labour Tribunals.**
- (vi) **Industrial Tribunals.**
- (vii) **National Tribunal.**

## 1. Works Committee

### Section 3

- ✚ Section 3 of the Act provides that the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee in industrial establishments, where 100 or more workmen are employed or have been employed on any working day in the preceding 12 months. The Works Committee will be comprised of the representatives of employers and workmen engaged in the establishment.
- ✚ It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters

## 2. Conciliation Officers

### Section 4

- ✚ With the duty of mediating in and promoting the settlement of industrial disputes, the appropriate Government may, by notification in the Official Gazette, appoint such number of Conciliation Officers as it thinks fit.
- ✚ The 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.
- ✚ The main objective of appointing the Conciliation Officers, by the appropriate

Government, is to create congenial atmosphere within the establishment where workers and employers can reconcile on their disputes through the mediation of the Conciliation Officers. Thus, they help in promoting the settlement of the disputes.

### 3. Boards of Conciliation.

### Section 5

- ✚ For promoting the settlement of an industrial dispute, the appropriate Government may, as occasion arises, constitute by a notification in the Official Gazette, a Board of Conciliation. A Board shall consist of a Chairman and two or four other members as the appropriate Government thinks fit.
- ✚ It shall be the duty of Board to endeavour to bring about a settlement of the dispute and for such purpose it shall, without delay, investigate into the dispute and all matters affecting the merits and the right settlement.
- ✚ The Board may also do all such things which may be considered fit by it, for including the parties to come for a fair and amicable settlement of the dispute.
- ✚ In case of settlement of the dispute, the Board shall send a report thereof to the appropriate Government together with a memorandum of settlement signed by all the parties to the dispute.
- ✚ In case no settlement is arrived at, the Board shall forward a report to appropriate Government enlisting therein the steps taken by the Board for ascertaining the facts and circumstances related to the dispute and for bringing about a settlement thereof.
- ✚ The Board will also enlist the reasons on account of which in its opinion a settlement could not be arrived at and its recommendations for determining the disputes

### 4. Court of Inquiry.

### Section 6

- ✚ According to Section 6 of the Act, the appropriate Government may as occasion arises, by notification in the Official Gazette constitute a Court of Inquiry into any matter appearing to be connected with or relevant to an industrial dispute.

- ✚ A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman.
- ✚ It is the duty of such a Court to inquire into matters referred to it and submit its report to the appropriate Government ordinarily within a period of six months from the commencement of the inquiry.
- ✚ The period within which the report is to be submitted is not mandatory and the report may be submitted even beyond the period of six months without affecting the legality of the inquiry

## 5. Labour Tribunals.

## Section 7

- ✚ Under Section 7, the appropriate Government is empowered to constitute one or more Labour Courts for adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the Act.
- ✚ A Labour Court shall consist of one person only to be appointed by the appropriate Government. A person shall not be qualified for appointment as the presiding officer of a Labour Court unless —
  - (a) **he is, or has been, a judge of a High Court: or**
  - (b) **he has, for a period not less than three years, been a district Judge or an Additional District Judge; or**
  - (c) **he has held any judicial office in India for not less than seven years; or**
  - (d) **he has been the presiding officer of a Labour Court constituted under any provincial Act or State Act for not less than five years.**
- ✚ When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the Labour Court to

- (i) hold its proceedings expeditiously, and
- (ii) Submit its award to the appropriate Government soon after the conclusion of the proceedings. No time period has been laid down for the completion of proceedings but it is expected that such Courts will hold their proceedings without going into the technicalities of a Civil Court. Labour Court has no power to permit *suo motu* the management to avail the opportunity of adducing fresh evidence in support of charges

## 6. Industrial Tribunals.

## Section 7A

- ✚ The appropriate Government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.
- ✚ A Tribunal shall consist of one person only to be appointed by the appropriate Government.
- ✚ A person shall not be qualified for appointment as the presiding officer of a Tribunal unless:
  - (a) he is, or has been, a Judge of High Court; or
  - (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge
- ✚ The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceedings before it.

## 7. National Tribunal.

## Section 7B

- ✚ Under Section 7-B, the Central Government alone has been empowered to constitute one or more National Tribunals for the adjudication of industrial disputes which (a) involve questions of national importance or (b) are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes;

- ✚ A National Tribunal shall consist of one person only to be appointed by the Central Government;
- ✚ A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal unless: he is, or has been, a Judge of a High Court; or
- ✚ The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.
- ✚ Section 7-C further provides that such a presiding officer should be an independent person and must not have attained the age of 65 years.

## 6. REFERENCE OF DISPUTES

The adjudication of industrial disputes by Conciliation Board, Labour Court, Court of Inquiry, Industrial Tribunal or National Tribunal can take place when a reference to this effect has been made by the appropriate Government under Section 10. The various provisions contained in this lengthy Section are summed up below:

### 1. Reference of Disputes to various Authorities

Where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing make a reference to various authorities in the following ways:

It may refer the dispute to a Conciliation Board for promoting the settlement of the dispute. As noted earlier, duty of the Board is to promote settlement and not	It may refer any matter appearing to be connected with or relevant to the dispute to a Court of Inquiry. The purpose of making such a reference is not conciliatory or	It may refer the dispute, or any matter appearing to be connected with, or relevant to, the dispute if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication. However, disputes	It may refer the dispute or any matter appearing to be connected with, or relevant to the dispute specified in the Second or Third Schedule, to an Industrial Tribunal for adjudication. [Section 10(1)]
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to adjudicate the dispute. A failure report of the Board will help the Government to make up its mind as to whether the dispute can be referred for compulsory adjudication	adjudicatory but only investigatory	relating to any matter falling in the Third Schedule can also be referred to a Labour Court, if the appropriate Government so thinks fit provided the dispute is not likely to affect more than 100 workmen.	
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Under the second proviso to Section 10(1), where the dispute relates to a public utility service and a notice of strike or lock-out under Section 22 has been given, it is mandatory for the appropriate Government or the Central Government as the case may be, to make a reference even when some proceedings under the Act are pending in respect of the dispute. But the Government may refuse to make the reference if it considers that

notice of strike/lock-out has been frivolously or vexatiously given,  
or

it would be inexpedient to make the reference.

## 2. Reference of dispute to National Tribunal involving question of importance, etc.

According to Section 10(1-A), where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by such dispute and that the dispute should be adjudicated by a **National Tribunal**, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal, and accordingly

(a) If the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) It shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal. [Section 10(1-A) and 10(5)]

### 3. Reference on Application of Parties

According to Section 10(2), where the parties to an industrial disputes apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly and shall specify the time limit (not exceeding three months) to submit the award, such time limit may be extended if required.

Thus, it is mandatory for the Government to make a reference if

**application to this effect has been made by the parties to the dispute, and**

**the applicants represent the majority of each party to the satisfaction of the appropriate Government. [Poona Labour Union v. State of Maharashtra]. The Government cannot, before making reference, go into the question of whether any industrial dispute exists or is apprehended**

### 4. Time limit for submission of awards

According to Section 10(2A) an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal shall specify the period within which its award shall be submitted to the appropriate Government. The idea is to expedite the proceedings. Sub-section (2A) reads as follows:

"An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government.

### 5. Prohibition of Strike or Lock-out

Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this Section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference. [Section 10(3)]

## 7. VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION

Section 10-A provides for the settlement of industrial disputes by voluntary reference of such dispute to arbitrators. To achieve this purpose, Section 10-A makes the following provisions:

Where any industrial dispute exists or is apprehended and the same has not yet been referred for adjudication to a Labour Court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, **by a written agreement, to arbitration** specifying the arbitrator or arbitrators. The presiding officer of a Labour Court or Tribunal or National Tribunal can also be named by the parties as arbitrator

An arbitration agreement referred to in sub-section (1) shall be in **such form** and shall be signed by the parties thereto in such manner as may be prescribed.

A copy of the **arbitration agreement** shall be forwarded to appropriate Government and the Conciliation Officer and the appropriate Government shall **within one month from the date of the receipt of such copy, publish the same in the Official Gazette.**

The arbitrator or arbitrators shall **investigate the dispute** and submit to the appropriate Government the arbitration award signed by the arbitrator or all arbitrators, as the case may be.

Where an industrial dispute has been referred to arbitration and a notification has been issued, the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

Nothing in the Arbitration Act, 1940 shall apply to arbitrations under this Section.

## 8. STRIKES AND LOCK-OUTS

Strikes and lock-outs are the two weapons in the hands of workers and employers respectively, which they can use to press their viewpoints in the process of collective bargaining. The Industrial Disputes Act, 1947 does not grant an unrestricted right of strike or lock-out.

### 1. General Prohibition of Strike and Lock-outs

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out:

- (a) **during the pendency of conciliation proceedings before a Board and seven days the conclusion of such proceedings;**
- (b) **during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and 60 months after the conclusion of such proceedings;**
- (bb) **during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of Section 10A; or**
- (c) **during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. (Section 23)**

## 2. Prohibition of Strike and Lock-outs in Public Utility Service

The abovementioned restrictions on strikes and lock-outs are applicable to both utility services and non-utility services. Section 22 provides for following additional safeguards for the smooth and uninterrupted running of public utility services and to obviate the possibility of inconvenience to the general public and society (*State of Bihar v. Deodar Jha*)

- (1) **No person employed in a public utility service shall go on strike in breach of contract.**
  - (a) **without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking, i.e., from the date of the notice to the date of strike a period of six weeks should not have elapsed; or**
  - (b) **within 14 days of giving of such notice, i.e., a period of 14 days must have elapsed from the date of notice to the date of strike; or**
  - (c) **before the expiry of the date of strike specified in any such notice as aforesaid, i.e., the date specified in the notice must have expired on the day of striking; or**
  - (d) **during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conciliation of such proceedings.**
- (2) **No employer carrying on any public utility service shall lock-out any of his workmen:**
  - (a) **without giving them notice of lock-out as hereinafter provided within six weeks before locking-out; or**
  - (b) **within 14 days of giving such notice; or**
  - (c) **before the expiry of the date of lock-out specified in any such notice as aforesaid; or**
  - (d) **during the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conciliation of such proceedings.**
- (3) **The notice of lock-out or strike under this Section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.**
- (4) **The notice of strike referred to in Section 22(1) shall be given by such number of**

persons to such person or persons and in such manner as may be prescribed.

- (5) The notice of lock-out referred to in Section 22(2) shall be given in such manner as may be prescribed.
- (6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day. (Section 22)

### 3. Illegal strikes and lock-outs

- (1) A strike or 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 Section 10(3) or Section 10A(4A).
- (2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under Section 10(3) or Section 10A(4A).
- (3) A lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal. (Section 24)

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out (Section 25).

### 9. UNFAIR LABOUR PRACTICES

A new Chapter VC relating to unfair labour practices has been inserted. Section 25T under this Chapter lays down that no employer or workman or a Trade Union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice. Section 25U provides that any person who commits any unfair labour practice

## 10. PENALTIES

Penalty for illegal strikes	Penalty for illegal lock-outs	Penalty for instigation etc.
<p>Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees or with both. [Section 26(1)]</p>	<p>Any employer who commences, continues, or otherwise, acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both. [Section 26(2)]</p>	<p>Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 27)</p>
Penalty for giving financial aid to illegal strikes and lock-outs	Penalty for breach of settlement or award	Penalty for disclosing confidential information
<p>Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one</p>	<p>Any person who commits a breach of any term of any settlement or award which is binding on him under this Act, should be punishable with imprisonment for a term which may extend to six months, or with fine or with both, and where the breach is a continuing one</p>	<p>Any person who wilfully discloses any such information as is referred to in Section 21 in contravention of the provisions of that section shall, on complaints made by or on behalf of the trade union or individual business affected, be punishable with</p>

thousand rupees, or with both. (Section 28)

with a further fine which may extend to two hundred rupees for everyday during which the breach continues after the conviction for the first, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation to any person who, in its opinion has been injured by such breach. (Section 29)

imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both. (Section 30)

Penalty for closure without notice

Any employer who closes down any undertaking without complying with the provisions of Section 25-FFA shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees, or with both. (Section 30-A)

Penalty for other offences

Any employer who contravenes the provisions of Section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Further, whoever contravenes any of the provisions of this Act or any rules made thereunder shall, if no other penalty is

Offence by companies, etc.

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not) every director, manager, secretary, agent or other officer or person concerned with management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be

elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees. (Section 31

deemed to be guilty of such offence. (Section 32)

# LAW OF INDUSTRIAL RELATION

## UNIT 2- THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

### 1. OBJECT & SCOPE OF THE ACT

Firstly, to enforce **uniformity in the conditions** of services under different employers in different industrial establishments. Secondly, the employer, once having made the conditions of **employment known to his employed workmen cannot change them to their detriment or to the prejudice of their rights and interests**. Thirdly, with the express or written conditions of employment, it is open for the **prospective worker** to accept them and join the industrial establishment. Fourthly, for **maintaining industrial peace and continued productivity**, the significance of the express written conditions of employment cannot be minimised or exaggerated. The object of the Act is to have uniform standing orders in respect of matters enumerated in the Schedule to the Act, applicable to all workers irrespective of their time of appointment

### 2. IMPORTANT DEFINITIONS

#### 1. Appellate Authority

Section 2(a)

It means an authority appointed by the appropriate Government by notification in the Official Gazette, to exercise in such area, as may be specified in the notification the functions of an appellate authority under this Act.

#### 2. Appropriate Government

Section 2(b)

"Appropriate Government" means in respect of industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oilfield, the Central Government, and in all other cases the State Government:

Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the

workmen or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

### 3. Certifying Officer

Section 2(c)

"Certifying Officer" means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act.

### 4. Employer

Section 2(d)

"Employer" means the owner of an industrial establishment to which this Act applies and also includes the following persons:

A manager so named under Section 7(1)(f) of the Factories Act, 1948.	The head of the department or any authority appointed by the Government in any industrial establishment under its control.	Any person responsible to the owner for the supervision and control of any other industrial establishment which is not under the control of Government
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### 5. Industrial Establishment

Section 2(e)

It means

- (i) an industrial establishment defined by Section 2(ii) of the Payment of Wages Act, 1936, or
- (ii) a factory as defined by Section 2(m) of the Factories Act, 1948, or
- (iii) a railway as defined by Section 2(4) of the Indian Railways Act, 1890, or
- (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

### 6. Standing orders

Section 2(e)

"Standing Orders" means rules relating to matters set out in the Schedule to the Act.

### 7. Wages and workmen

Section 2(i)

The terms "Wages" and "Workmen" have the meanings respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947.

### 3. CERTIFICATION OF DRAFT STANDING ORDERS

#### 1. Submission of draft Standing orders by employers to the certifying officer Section 3

Section 3 provides that within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer **five copies of the draft Standing Orders** proposed by him for adoption in that establishment.

Such draft Standing Orders shall be in conformity with the **Model Standing Orders** if any, and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.

#### 2. Conditions for certification of standing orders Section 4

According to Section 4 of the Act, Standing Orders shall be certifiable if-

provision is made therein for every matter stated in the Schedule to the Act which is applicable to industrial establishment; and

the Standing Orders are otherwise in conformity with the provisions of the Act.

#### 3. Fairness or reasonableness of standing orders Section 4

It is further provided in Section 4 that it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the **fairness or reasonableness** of the provisions of the Standing Orders.

The Act, has imposed a duty on the Certifying Officer, to consider the reasonableness and fairness of the Standing Orders before certifying the same. The Certifying Officer is under a legal duty to consider that the Standing Orders are in conformity with the Act. If the

Certifying Officer finds that some provisions, as proposed by the employer relate to matters which are not included in the Schedule, or if he finds some provisions are unreasonable he must refuse to certify the same. Certification of any such Standing Order would be without jurisdiction.

#### 4. Certification of Standing order

#### Section 5

- ✚ **Procedure to be followed by the Certifying Officer** : Section 5 of the Act lays down the procedure to be followed by Certifying Officer. On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in such manner as may be prescribed, together with a notice requiring objections, if any, which the workmen may desire to make in the draft Standing Orders. These objections are required to be submitted to **him within 15 days from the receipt of the notice.** On receipt of such objections he shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, required to be made therein and this will render the draft Standing Orders certifiable under the Act and he will certify the same. **A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification.**
- ✚ **Effect of certification:** The Act is a special law in regard to matters enumerated in the Schedule and the regulations made by the employer with respect to any of those matters. These are of no effect unless such regulations are notified by the Government under Section 13B or certified by the Certifying Officer under Section 5 of the Act.
- ✚ **Register of Standing Orders:** Section 8 empowers the Certifying Officer to file a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying therefor on payment of the prescribed fee.

## 4. APPEALS

## Section 6

According to Section 6 of the Act, the order of the Certifying Officer can be challenged by any employer, workman, trade union or any other prescribed representatives of the workmen, who can file an appeal before the appellate authority **within 30 days from the date on which copies are sent to employer and the workers representatives.**

The appellate authority, whose decision shall be final, has the power to confirm the Standing Orders as certified by the Certifying Officer or to amend them.

The appellate authority is required to send copies of the Standing Orders as confirmed or modified by it, to the employer or workers representatives **within 7 days of its order.**

## 5. DATE OF OPERATION OF STANDING ORDERS

## Section 7

Standing Orders shall come into operation **on the expiry of 30 days** from the date on which the authenticated copies are sent to employer and workers representatives or where an appeal has been preferred, **they will become effective on the expiry of 7 days** from the date on which copies of the order of the appellate authority are sent to employer and workers representatives

## 6. POSTING OF STANDING ORDERS

## Section 9

The text of the Standing Orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed

## 7. DURATION AND MODIFICATION OF STANDING ORDERS

## Section 10

Section 10 prohibits an employer to modify the Standing Orders once they are certified under this Act except on agreement between the employer and the workmen or a trade union or

other representative body of the workmen. Such modification will not be affected until the **expiry of 6 months** from the date on which the Standing Orders were last modified or certified as the case may be. This Section further empowers an employer or the workmen or a trade union or other representative body of the workmen to apply to the Certifying Officer to have the Standing Orders modified by making an application to the Certifying Officer.

## 8. PAYMENT OF SUBSISTENCE ALLOWANCE

### Section 10A

Statutory provision for payment of subsistence allowance has been made under Section 10A of the Act which was inserted by the amending Act (No. 18) of 1982. Section 10A provides as follows:

Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such a workman the subsistence allowance

(a) **at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension: and**

(b) **at the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.**

## 9. INTERPRETATION OF STANDING ORDERS

### Section 13 A

Section 13-A of the Act provides that the question relating to application or interpretation of a Standing Order certified under this Act, can be referred to any Labour Court constituted under the Industrial Disputes Act, 1947 by any employer or workman or a trade union or other representative body of the workmen. The Labour Court to which the question is so referred, shall decide it after giving the parties an opportunity of being heard. Such

decision shall be final and binding on the parties.

## 10. TEMPORARY APPLICATION OF MODEL STANDING ORDERS

### Section 12 A

Section 12-A provides that for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the Standing Orders as finally certified under this Act come into operation in that establishment, the prescribed model Standing Orders shall be deemed to be adopted in that establishment and the provisions of Sections 9, 13(2) and 13-A shall apply.

#### Matters to be provided in Standing Orders under this Act

Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers or badlis.

Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates

Shift working.

Attendance and late coming.

Conditions of, procedure in applying for, and the authority which may grant leave and holidays.

Requirement to enter premises by certain gates, and liability to search.

Closing and reopening of sections of the industrial establishment, and temporary stoppage of work and the rights and liabilities of the employer and workmen arising therefrom.

Termination of employment, and the notice thereof to be given by employer and workmen.

Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.

Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.

Any other matter which may be prescribed.

# LAW OF WAGES

## UNIT 1- PAYMENT OF WAGES ACT, 1936

*The Payment of Wages Act, 1936 regulates the payment of wages of certain classes of employed persons.*

### 1. OBJECT AND SCOPE OF THE ACT

- ✚ The main object of the Act is to eliminate all malpractices by laying down the time and mode of payment of wages as well as securing that the workers are paid their wages at regular intervals, without any unauthorized deductions.
- ✚ In order to enlarge its scope and provide for more effective enforcement the Act empowering the Government to enhance the ceiling by notification in future.
- ✚ The Act extends to the whole of India.

### 2. PROVISION REGARDING PAYMENT OF WAGES

#### 1. Responsibility for payment of wages

#### Section 3

Section 3 provides that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act.

However, in the case of persons employed in factories if a person has been named as the **manager of the factory**; in the case of persons employed in industrial or other establishments if there is a **person responsible to the employer for the supervision and control of the industrial or other establishments**; in the case of persons employed upon railways if the employer is the **railway administration and the railway administration has nominated a person in this behalf for the local area concerned**; in the case of persons employed in the work of contractor, a **person designated by such contractor who is directly under his charge**; and in any other case, a **person designated by the employer as a person responsible for complying with the provisions of the Act**, the person so

named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

It may be noted that as per section 2(ia) "employer" includes the legal representative of a deceased employer.

## 2. Fixation of wage period

## Section 4

As per section 4 of the Act every person responsible for the payment of wages shall fix wage-periods in respect of which such wages shall be payable. No wage-period shall exceed one month.

## 3. Time payment of wages

## Section 5

Section 5 specifies the time payment of wages. The wages of every person employed upon or in any railway factory or industrial or other establishment upon or in **which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.**

The wages of every person employed upon or in any other railway factory or industrial or other establishment **shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable.**

However, in the case of persons employed on a dock wharf or jetty or in a mine the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded as the case may be **shall be paid before the expiry of the seventh day from the day of such completion.**

Where the employment of any person is **terminated by or on behalf of the employer the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.**

However, the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday the wages earned by him shall be **paid before the expiry of the second day from the day on which his employment is so terminated.**

All payments of wages shall be made on a working day.

#### 4. Mode of Payment

#### Section 6

As per section 6 of the Act, all wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee:

Provided that the appropriate Government may, by notification in the Official Gazette, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account.

### 3. DEDUCTION FROM THE WAGES OF AN EMPLOYEE

#### Section 7

Section 7 of the Act allows deductions from the wages of an employee on the account of the following:-

finer;	absence from duty;	damage to or loss of goods expressly entrusted to the employee;	housing accommodation and amenities provided by the employer;
recovery of advances or adjustment of over-payments of wages;	recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;	subscriptions to and for repayment of advances from any provident fund;	income-tax;
payments to co-operative societies approved by the State Government or to a scheme of insurance maintained by the Indian Post Office;		deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities.	

## 1. Fines

## Section 8

Section 8 deals with fines. It provides that :

<p>No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer with the <b>previous approval</b> of the State Government or of the prescribed authority may have specified by notice under sub-section (2).</p>	<p><b>A notice</b> specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment carried on or in the case of persons employed upon a railway (otherwise than in a factory) at the prescribed place or places.</p>	<p>No fine shall be imposed on any employed person until he has been given an <b>opportunity of showing cause</b> against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.</p>
<p>The total amount of fine which may be imposed in any one wage-period on any employed person shall <b>not exceed an amount equal to three per cent of the wages payable</b> to him in respect of that wage-period.</p>	<p><b>No fine</b> shall be imposed on any employed person who is <b>under the age of fifteen years</b>.</p>	<p><b>No fine imposed on any employed person shall be recovered from him by installments or after the expiry of ninety days</b> from the day on which it was imposed.</p>
<p>Every fine shall be deemed to have been imposed on the day of <b>the act or omission</b> in respect of which it was imposed.</p>	<p>All fines and all realisations thereof shall be <b>recorded in a register</b> to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.</p>	

**2. Maintenance of Registers and Records****Section 13A**

Section 13A provides that every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars in prescribed form. Every register and record required to be maintained shall be preserved for a period of three years after the date of the last entry made therein.

**4. CLAIMS ARISING OUT OF DEDUCTIONS FROM WAGES OR DELAY IN PAYMENT OF WAGES AND PENALTY FOR MALICIOUS OR VEXATIOUS CLAIMS.****Section 15**

Section 15 deals with claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. It provides that the appropriate Government may, by notification in the Official Gazette, appoint-

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as, -
  - (i) Regional Labour Commissioner; or
  - (ii) Assistant Labour Commissioner with at least two years' experience; or
- (c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or
- (d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
- (e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

No direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-

<p>a bona fide error or bona fide dispute as to the amount payable to the employed person; or</p>	<p>the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or</p>	<p>the failure of the employed person to apply for or accept payment.</p>
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As per sub-section (4) if the authority hearing an application under this section is satisfied that the application was either malicious or vexatious the authority may direct that a **penalty not exceeding three hundred seventy five Rupees** be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or in any case in which compensation is directed to be paid under sub-section (3) the applicant ought not to have been compelled to seek redress under this section the authority may direct that a **penalty not exceeding three hundred seventy five Rupees** be paid to the State Government by the employer or other person responsible for the payment of wages

# LAW OF WAGES

## UNIT 2- MINIMUM WAGES ACT, 1948

*The Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. the employments are those which are included in the schedule and are referred to as 'Scheduled Employments'.*

### 1. INTRODUCTION

The Minimum Wages Act was passed in 1948 and it came into force on **15' March, 1948**. The National Commission on Labour has described the passing of the Act as landmark in the history of labour legislation in the country.

### 2. OBJECT AND SCOPE OF THE LEGISLATION

"What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour".

According to its preamble the Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as 'Scheduled Employments'.

**The Act extends to whole of India.**

### 3. PROVISION RELATING TO MINIMUM WAGES

#### 1. Fixation of Minimum rates of wages

Section 3

Section 3 lays down that the 'appropriate Government' shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part ii of the Schedule, and in an employment added to either part by notification under Section 27.

In case of the employments specified in Part II of the Schedule, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether.

In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. The rates to be fixed need not be uniform.

Different rates can be fixed for different zones or localities

#### 2. Revision of Minimum Wages

Section 3

The 'appropriate Government' may review at such intervals as it may think fit, such intervals not exceeding five years, and revise the minimum rate of wages, if necessary. This means that **minimum wages can be revised earlier than five years also.**

#### 3. Manner of fixation/ Revision of Minimum Wages

Section 3

According to Section 3(2), the 'appropriate Government' may fix minimum rate of wages for:

- (a) **time work**, known as a Minimum Time Rate;
- (b) **piece work**, known as a Minimum Piece Rate;
- (c) a "**Guaranteed Time Rate**" for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and
- (d) a "**Over Time Rate**" i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

Section 3(3) provides that different minimum rates of wages may be fixed for —

- (i) **different scheduled employments;**
- (ii) **different classes of work in the same scheduled employments;**
- (iii) **adults, adolescents, children and apprentices;**
- (iv) **different localities**

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

- (i) **by the hour**
- (ii) **by the day,**
- (iii) **by the month, or**
- (iv) **by such other large wage periods as may be prescribed.**

and where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day as the case may be, may be indicated.

#### 4. Minimum Rate of Wages

#### Section 4

According to Section 4 of the Act, any minimum rate of wages fixed or revised by the appropriate Government under Section 3 may consist of —

- (i) **a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such worker (hereinafter referred to as the cost of living allowance); or**
- (ii) **a basic rate of wages or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates where so authorized; or**
- (iii) **an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.**

The cost of living allowance and the cash value of the concessions in respect of supplies essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such directions specified or given by the appropriate Government.

## 4. PROVISION RELATING TO MINIMUM WAGES

## Section 5

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

First Method [Section 5(1)(a)]	Second Method [Section 5(1)(b)]
Committee Method	Notification Method
<p>The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advise of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the <b>expiry of three months from the date of the issue of the notification</b></p> <p>As regards composition of the Committee, Section 9 of the Act lays down that it shall consist of persons to be nominated by the appropriate Government representing employers and employee in the scheduled employment, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the</p>	<p>When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a <b>date not less than 2 months</b> from the date of notification, on which the proposals will be taken into consideration.</p> <p>The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall come into force on expiry of <b>three months from the date of its issue</b>. Minimum wage rates can be revised with retrospective effect.</p>

Chairman of the Committee by the appropriate Government.

## 5. ADVISORY BOARD

### Section 7

The advisory board is constituted under Section 7 of the Act by the appropriate Government for the purpose of co-ordinating the work of committees and sub-committees appointed under Section 5 of the Act and advising the appropriate Government generally in the matter of fixing and revising of minimum rates of wages. According to Section 9 of the Act, the advisory board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman by the appropriate Government.

## 6. CENTRAL ADVISORY BOARD

### Section 8

Section 8 of the Act provides that the Central Government shall appoint a Central Advisory Board for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages Act and for coordinating work of the advisory boards. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3'd of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government.

## 7. MINIMUM WAGE- WHETHER TO BE PAID IN CASH OR KIND

### Section 11

Section 11 of the Act provides that minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government, on being satisfied, may approve and authorize such payments. Such Government can also authorize for supply of essential commodities at concessional rates. Where payment is to be made in kind, the cash value of the wages in kind or in the shape of essential commodities on concessions shall be estimated in the prescribed manner.

## 8. PAYMENT OF MINIMUM WAGES IS OBLIGATORY ON EMPLOYER

### Section 12

Payment of less than the minimum rates of wages notified by the appropriate Government is an offence. Section 12 clearly lays down that the employer shall pay to every employee engaged in a scheduled employment under him such wages at a rate not less than the minimum rate of wages fixed by the appropriate Government under Section 5 for that class of employment without deduction except as may be authorized, within such time and subject to such conditions, as may be prescribed.

## 9. FIXING HOURS FOR A NORMAL WORKING DAY

### Section 13

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, by virtue of Section 13 the appropriate Government may —

- (a) fix the number of work which shall constitute a normal working day, inclusive of one or more specified intervals;
- (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of

remuneration in respect of such day of rest;

- (c) provide for payment of work on a day of rest at a rate not less than the overtime rate.

The above stated provision shall apply to following classes of employees only to such extent and subject to such conditions as may be prescribed:

- (a) Employees engaged on urgent work, or in any emergency, which could not have been foreseen or prevented;
- (b) Employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
- (c) Employees whose employment is essentially intermittent;
- (d) Employees engaged in any work which for technical reasons, has to be completed before the duty is over;
- (e) Employees engaged in any work which could not be carried on except at times dependent on the irregular action of natural forces.

For the purpose of clause (c) employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on ground that the daily hours of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally includes period of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

## 10. PAYMENT OF OVERTIME

### Section 14

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act by the hours, the day or by such longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under this Act or under any other law of the appropriate Government for the time being in force whichever is higher.

Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages.

### 11. WAGES OF A WORKER WHO WORKS LESS THAN NORMAL WORKING DAY

### Section 15

Where the rate of wages has been fixed under the Act by the day for an employee and if he works on any day on which he employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day.

Provided that he shall not receive wages for full normal working day –

**if his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work, and**

**such other cases and circumstances as may be prescribed.**

### 12. MINIMUM TIME- RATE WAGES FOR PIECE WORK

### Section 17

Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid in terms of Section 17 of the Act at minimum time rate.

### 13. MAINTENANCE OF REGISTERS AND RECORDS

### Section 18

Apart from the payment of the minimum wages, the employer is required under Section 18 to maintain registers and records giving such particulars of employees under his employment, the work performed by them, the receipts given by them and such other particulars as may be prescribed. Every employee is required also to exhibit notices, in the prescribed form containing particulars in the place of work. He is also required to

maintain wage books or wage-slips as may be prescribed by the appropriate Government and the entries made therein will have to be authenticated by the employer or his agent in the manner prescribed by the appropriate Government.

## 14. AUTHORITY AND CLAIMS

## Section 20-21

Under Section 20(1) of the Act, the appropriate Government, may appoint any of the following as an authority to hear and decide for any specified area any claims arising out of payment of less than the minimum rate of wages or in respect of the payment of remuneration for the days of rest or of wages at the rate of overtime work:

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as Labour Commissioner for any region; or
- (c) any officer of the State Government not below the rank of Labour Commissioner; or
- (d) any other officer with experience as a Judge of a Civil Court or as the Stipendiary Magistrate.

The authority so appointed shall have jurisdiction to hear and decide claim arising out of payment of less than the minimum rates of wages or in respect of the payment remuneration for days of rest or for work done on such days or for payment of overtime.

The provisions of Section 20(1) are attracted only if there exists a disputed between the employer and the employee as to the rates of wages. Where no such dispute exists between the employer and employees and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off days is due to an employee or not, the appropriate remedy is provided by the Payment of Wages Act, 1936.

## 15. OFFENCES AND PENALTIES

## Section 22

Section 22 of the Act provides that any employer who (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or contravenes any rule or order made under Section 13, **shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.**

While imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20

It is further stipulated under Section 22A of the Act that any employer who contravenes any provision of this Act or of any rule or order made thereunder shall if no other penalty is provided for such contravention by this Act **be punishable with fine which may extend to five hundred rupees.**

# LAW OF WAGES

## UNIT 3 – PAYMENT OF BONUS ACT, 1965

*The Payment of Bonus Act, 1965 provides for the payment of bonus to persons employed in certain establishments and for matters connected therewith.*

### 1. OBJECT AND SCOPE OF THE ACT

The object of the Act is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith.

"object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus together with the scheme of "set-off" and "set on" not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity".

### 2. APPLICABILITY OF THE ACT

According to Section 1(2), the Act extends to the whole of India, and as per Section 1(3) the Act shall apply to-

**every factory; and**

**every other establishment in which twenty or more persons are employed on any day during an accounting year.**

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 with effect from such accounting year as may be specified in the notification to any establishment including an establishment being a factory within the meaning of sub-clause (ii)

of clause (m) of Section 2 of the Factories Act, 1948 employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.

An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty, or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3).

### 3. ACT NOT TO APPLY TO CERTAIN CLASSES OF EMPLOYEES

Section 32 of this Act provides that the Act shall not apply to the following classes of employees:

- (i) employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;
- (ii) seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;
- (iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;
- (iv) employees employed by an establishment engaged in any industry called on by or under the authority of any department of Central Government or a State Government or a local authority;
- (v) employees employed by
  - (a) the Indian Red Cross Society or any other institution of a like nature including its branches;
  - (b) universities and other educational institutions;
  - (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;
- (vi) & (vii) (omitted);
- (viii) employees employed by the Reserve Bank of India;
- (ix) employees employed by

the Industrial Finance Corporation of India;	any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1951;	the Deposit Insurance Corporation;
the National Bank for Agriculture and Rural Development;	the Unit Trust of India;	the Industrial Development Bank of India;
the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989	the National Housing Bank;	any other financial Institution (other than Banking Company) being an establishment in public sector, which the Central Government may by notification specify having regard to (i) its capital structure; (ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or any concession given to it by the Government; and (iv) any other relevant factor;

(x) (omitted);

(xi) employees employed by inland water transport establishments operating on routes passing through any other country.

#### 4. IMPORTANT DEFINITIONS

**1. Allocable Surplus****Section 2(4)**

It means –

- (a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act, sixty- seven per cent of the available surplus in an accounting year;
- (b) in any other case sixty per cent of such available surplus.

**2. Employee****Section 2(13)**

“Employee” means any person (other than an apprentice) employed on a salary or wages not exceeding Rs. 21,000/- per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied.

**3. Employer****Section 2(14)**

“Employer” includes:

- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as a manager of the factory under Clause (f) of Sub-section 7(1) of the Factories Act, 1948, the person so named; and
- (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

**4. Salary or Wage****Section 2(21)**

The “salary or wage” means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment,

express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living) but does not include:

- (i) any other allowance which the employee is for the time being entitled to;
- (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
- (iii) any travelling concession;
- (iv) any bonus (including incentive, production and attendance bonus);
- (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
- (vii) any commission payable to the employee

The Explanation appended to the Section states that where an employee is given in lieu of the whole or part of the salary or, wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.

## 5. CALCULATION OF AMOUNT PAYABLE AS BONUS

### 1. Computation of Gross Profits

### Section 4

As per Section 4, the gross profits derived by an employer from an establishment in respect of any accounting year shall:

in the case of banking company be calculated in the manner specified in the First Schedule.

in any other case, be calculated in the manner specified in the Second Schedule.

**2. Deductions From Gross Profits****Section 6**

According to Section 6, the sums deductible from gross profits include:

- (a) any amount by way of depreciation admissible in accordance with the provisions of Section 32(1) of the Income-tax Act, or in accordance with the provisions of the Agricultural Income-tax Law, as the case may be;
- (b) any amount by way of development rebate, investment allowance, or development allowance which the employer is entitled to deduct from his income under the Income Tax Act.
- (c) subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during the year.
- (d) such further sums as are specified in respect of the employer in the Third Schedule.

**3. Calculation Direct Tax Payable by the Employer****Section 7**

Under Section 7, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:

- (a) in calculating such tax no account shall be taken of
  - (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
  - (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of Section 32 of the Income-tax Act;
  - (iii) any exemption conferred on the employer under Section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of Section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965.
- (b) where the employer is a religious or a charitable institution to which the provisions of Section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act
- (c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income.

**4. Computation of Available Surplus****Section 5**

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in Section 6.

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of —

- (a) the gross profits for that accounting year after deducting therefrom the sums referred to in Section 6; and
- (b) an amount equal to the difference between
  - (i) the direct tax, calculated in accordance with the provisions of Section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

the direct tax calculated in accordance with the provisions of Section 7 in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

**6. ELIGIBILITY FOR BONUS AND ITS PAYMENT****1. Eligibility for Bonus****Section 8**

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.

**2. Disqualification for Bonus****Section 9**

An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises or the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment.

**3. Payment of Minimum Bonus****Section 10**

Section 10 states that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of any accounting year **a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher**, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed **fifteen years of age at the beginning of the accounting year**, the provisions of this Section shall have effect in relation to such employee as if for the words **one hundred rupees the words sixty rupees were substituted**

#### 4. Maximum Bonus

#### Section 11

- (1) Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that Section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a **maximum of twenty per cent** of such salary or wage.
- (2) In computing the allocable surplus under this Section, **the amount set on or the amount set off under the provisions of Section 15** shall be taken into account in accordance with the provisions of that Section.

#### 5. Calculation of Bonus with respect to certain employees

#### Section 12

Where the salary or wages of an employee **exceeds seven thousand rupees or the minimum wage for the scheduled employment**, as fixed by the appropriate Government, whichever is higher per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wages were **seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government. whichever is higher per mensem**

#### 6. Proportionate Reduction in bonus in certain cases

#### Section 13

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 had worked in that accounting year, shall be proportionately reduced

### 7. Computation of Number of working days

### Section 14

For the purposes of Section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which:

<p>he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 or under the Industrial Disputes Act, 1947 or under any other law applicable to the establishment;</p>	<p>he has been on leave with salary or wage;</p>
<p>he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and</p>	<p>the employee has been on maternity leave with salary or wage, during the accounting year</p>

### 8. Set on and set off of Allocable Surplus

### Section 15

- ✚ Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.
- ✚ Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilized for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding

accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

- ✚ The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.
- ✚ Where in any accounting year any amount has been carried forward and set on or set off under this Section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Apart from the provisions contained in Section 15(1), there is no statutory obligation on an employer to set apart any part of the profits of the previous year for payment of bonus for subsequent years.

#### 9. Adjustment of Customary Bonus or Interim Bonus

#### Section 17

Where in any accounting year

- (a) an employer has paid any puja bonus or other customary bonus to an employee; or
- (b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable; then,

the employer shall be entitled to deduct at the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance

#### 10. Deductions of certain amounts from Bonus

#### Section 18

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act, in respect of that accounting year only and the employee shall be entitled to receive the balance, if any

#### 11. Time Limit for payment of Bonus

#### Section 19

- (a) Where there is a dispute regarding payment of bonus pending before any authority under Section 22, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within a month from the date

from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

- (b) In any other case, the bonus should be paid within a period of eight months from the close of the accounting year. However, the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of 8 months to such further period or periods as it thinks fit, so, however, that the total period so extended shall not in any case exceed two years.

## 12. Recovery Set on and Set off of Allocable surplus

## Section 21

- ✚ Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:
- ✚ It may be noted that every such application shall be made within one year from the date on which the money became due to the employee from the employer. Any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

**Explanation:** In this Section and in Sections 22, 23, 24 and 25, employee includes a person who is entitled to the payment of bonus under this Act but who is no longer in employment.

Mode of recovery prescribed in Section 21 would be available only if bonus sought to be recovered is under settlement or an award or an agreement. Bonus payable under Bonus Act is not covered by Section 21

**7. BONUS LINKED WITH PRODUCTION OR PRODUCTIVITY****Section 31-A**

Section 31A enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act.

However, bonus payments under Section 31A are also subject to the minimum (8.33 per cent) and maximum (20 per cent). In other words a minimum of 8.33 per cent is payable in any case and the maximum cannot exceed 20 per cent.

**8. POWER OF EXEMPTION****Section 36**

If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act.

Government should consider public interest, financial position and whether workers contributed to the loss, before grant of exemption (*J.K.Chemicals v. Maharashtra*)

**9. PENALTIES****Section 28**

If any person contravenes any of the provisions of this Act or any rule made thereunder; he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Likewise if any person, to whom a direction is given or a requisition is made under this Act, fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

**10. OFFENCES BY COMPANIES****Section 29**

If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Further, if 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 is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be proceeded against and punished accordingly.

For the purpose of Section 29, 'company' means any body corporate and includes a firm or other association of individuals, and 'director', in relation to a firm, means a partner in the firm.

# LAW OF WAGES

## UNIT 4 – EQUAL REMUNERATION ACT, 1976

*Article 39 of Constitution of India envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this constitutional provision, the Parliament enacted the Equal Remuneration Act, 1976.*

### 1. OBJECT AND SCOPE

The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers for same work or work of similar nature without any discrimination and also prevents discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service subsequent to recruitment. The provisions of the Act have been extended to all categories of employment.

**The Act extends to whole of India.**

### 2. ACT TO HAVE OVERRIDE EFFECT

#### Section 3

Section 3 of the Act provides that the provisions of the 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 commencement of the Act, or in any instrument having effect under any law for the time being in force.

### 3. DUTY OF EMPLOYER TO PAY EQUAL REMUNERATION TO MEN & WOMEN WORKERS FOR SAME WORK OR WORK OF A SIMILAR NATURE

#### Section 4

Section 4 of the Act provides that no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature and employer shall not reduce the rate of remuneration of any worker.

It may be noted that as per Section 2(g) "remuneration" means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled and Section 2(h) defines "same work or work of a similar nature" means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of woman are not of practical importance in relation to the terms and conditions of employment.

#### 4. DISCRIMINATION NOT TO BE MADE WHILE RECRUITING MEN AND WOMEN

#### Section 5

As per section 5 employer while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, shall not make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

However, above mentioned section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

## 5. AUTHORITIES FOR HEARING AND DECIDING CLAIMS AND COMPLAINTS

### Section 7

Section 7 of the Act empower the appropriate Government appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding complaints with regard to the contravention of any provision of the Act; claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature; and define the local limits within which each such authority shall exercise its jurisdiction.

## 6. MAINTENANCE OF REGISTERS

### Section 8

As per section 8 it is the duty of every employer, to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.

## 7. PENALTY

If any employer:-

- (i) makes any recruitment in contravention of the provisions of this Act; or
- (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or
- (iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or
- (iv) omits or fails to carry out any direction made by the appropriate Government, then he/she shall be punishable with fine or with imprisonment or with both.

# SOCIAL SECURITY LEGISLATIONS

## UNIT 1 – EMPLOYEES STATE INSURANCE ACT, 1948

*The Employees' State Insurance Act, 1948 provides an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement, death due to employment injury resulting in loss of wages or earning capacity. The Act also guarantees reasonably good medical care to workers and their immediate dependents.*

### 1. INTRODUCTION

#### 1. Object

The Employees' State Insurance Act, 1948 provides for certain benefits to employees in case of sickness, maternity and employment injury and also makes provisions for certain other matters in relation thereto. The Act has been amended by the Employees' State Insurance (Amendment) Act, 2010 for enhancing the Social Security Coverage, streamlining the procedure for assessment of dues and for providing better services to the beneficiaries.

#### 2. Effective Date

It shall come into force on such date or dates as Central Government may by notification in official Gazette, specify. **(19/04/1948)**

#### 3. Extent

This Act extends to whole of India.

#### 4. Applicability

<b>Applicability</b>	In the first instance applicable to all <b>factories, including factories belonging to the Government, other than season factories;</b>
<b>Government after giving one months'</b>	The appropriate Government may, in consultation with the corporation and where the appropriate Government is a State Government, with the approval of Central Government, after giving <b>one month's notice</b> of its intention of so

<b>notice</b>	<p>doing by notification in the <i>Official Gazette</i>, extend the provisions of this Act or any of them, to any other establishment or classes of establishments, <b>industrial, commercial, agricultural or otherwise</b>;</p> <p>Under these enacting provisions, the Act has been extended by many State Governments to <b>shops, hotels, restaurants, cinemas, including preview theatres, newspaper establishments, road transport undertakings, etc., employing 20 or more persons.</b></p>
<b>Once applicable always applicable</b>	A factory or an establishment to which this Act <b>applies shall continue to be governed by this Act</b> notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.
<b>Wage limit for coverage</b>	The <b>Central Government</b> prescribed the wage limit for coverage of an employee under the Act, as <b>Rupees 21,000 per month.</b>

## 2. IMPORTANT DEFINITION

### 1. Appropriate Government

[Section 2(1)]

The term 'appropriate Government',

- in respect of establishments under the control of the *Central Government* or a railway administration or a major port or a mine or oilfield, **the Central Government**,
- and in all other cases, **the State Government**.

### 2. Confinement

[Section 2(3)]

The term 'confinement' as labour resulting in the issue of a living child or labour after **26 weeks** of pregnancy resulting in the issue of a child, whether alive or dead.

### 3. Dependant

[Section 2(6A)]

The term 'dependant' means any of the following of a deceased insured person:

- 1) a widow, a legitimate or adopted son who has not attained the age of 25 years, an unmarried legitimate or adopted daughter;
- 2) a widowed mother;

- 3) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;
- 4) if wholly or in part dependant on the earnings of the insured person at the time of his death-
  - a parent other a widowed mother;
  - a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor;
  - a minor brother or an unmarried sister or a widowed sister if a minor;
  - a widowed daughter-in-law;
  - a minor child of a pre-deceased son;
  - a minor child of a pre-deceased daughter where no parent of the child is alive; or
  - a paternal grand-parent if no parent of the insured person is alive.

#### 4. Employment Injury

[Section 2(8)]

The term 'employment injury' as a personal injury to an employee caused by **accident or an occupational disease arising out of and in the course of employment**, being an insurable employment, whether the accident occurs or the occupation disease is contracted within or outside the territorial limits of India.

#### 5. Employee

[Section 2(9)]

The term 'employee' as any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and-

- who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
- who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is

preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

- whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the productions of, the factory or establishment or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time

**but does not include-**

- any member of the Indian naval, military or air forces; or
- any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government provided that an employee whose wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

The following categories are coming under the purview of the term 'employee'-

- Canteen workers
- Employees who are working in a show room or sales office
- Workers rendering services outside the place of establishment or shop
- Part time employees employed on daily rate basis
- Casual workers

## 6. Immediate employer

[Section 2(13)]

'Immediate employer' in relation to employees employed by or through him, as a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the

factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent on hire to the principal employer and includes a contractor.

### 7. Insured Person

[Section 2(14)]

The term 'insured person' as a person who is or was an employee in respect of whom contributions are or were payable under the Act and who is by reason thereof, entitled to any of the benefits provided by this Act.

### 8. Permanent partial disablement

[Section 2(15A)]

'Permanent partial disablement' as such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement. Every injury specified in **Part II** of the **Second Schedule** shall be deemed to result in permanent partial disablement.

### 9. Permanent total disablement

[Section 2(15B)]

'Permanent total disablement' as such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident in such disablement. **The permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100% or more.**

### 10. Principal Employer

[Section 2(17)]

in a factory,

- the **owner or occupier** of the factory and includes the **managing agent** of such owner or occupier,
- the **legal representative of a deceased owner or occupier**,
- and where a person has been named as the **manager** of the factory under the Factories Act, 1948.

in any establishment  
under the control of  
any department of any

- the **authority appointed** by such Government in this behalf  
or
- where no authority is so appointed, the **head of the**

Government in India, in any other establishment,	Department: • any person responsible for the <b>supervision and control</b> of the establishment.
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**11. Seasonal factory****[Section 2(19A)]**

term 'Seasonal factory' as a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortications of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period **not exceeding seven months in a year-**

- in any process of blending, packing or repacking of tea or coffee; or
- in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify.

**12. Temporary disablement****[Section 2(21)]**

The term 'temporary disablement' as a condition resulting from an employment which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury.

**13. Wages****[Section 2(22)]**

The term 'wages' as all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lock out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months,

**but not include-**

- any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- any travelling allowance or the value of any travelling concession;
- any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- any gratuity payable on discharge.

It was held that bonus or ex-gratia amount is not 'wages'. The following are treated as wages-

- LIC Premium subsidy;
- House rent allowance, heat, gas and dust allowance and incentive allowance;
- Incentive bonus;
- Over time allowance;

#### 14. Factory

[Section 2(12)]

The term 'factory' is defined as any premises including the precincts thereof **whereon ten or more persons are employed or were employed on any day of the preceding 12 months** and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, **but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed**

### 3. REGISTRATION OF FACTORIES AND ESTABLISHMENTS UNDER THIS ACT

Section 2A of the Act lays down that every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

### 4. EMPLOYEES STATE INSURANCE

Section 38

Section 38 of the Act makes compulsory that subject to the provisions of the Act all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution. Such insured persons are entitled to get certain benefits from that fund which shall be administered by the Corporation. Any dispute will be settled by the Employees' Insurance Court.

### 5. ADMINISTRATION OF EMPLOYEES STATE INSURANCE SCHEME

For the administration of the scheme of Employees' State Insurance in accordance with the

provisions of this Act, the Employees' State Insurance Corporation **Standing Committee and Medical Benefit Council** have been constituted.

Further, **ESI Fund** has been created which is held and administered by ESI Corporation through its executive committee called Standing Committee with the assistance, advice and expertise of Medical Council, etc. and Regional and Local Boards and Committees.

## 6. EMPLOYEES STATE INSURANCE CORPORATION

### Section 3

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

Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

### 1. Constitution

### Section 4

The Central Government appoints a chairman, a vice-chairman and other members representing interests of employers, employees, state governments/union territories and medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members

### 2. Powers and Duties of the Corporation

### Section 19

Section 19 empowers the Corporation, to promote (in addition to the scheme of benefits specified in the Act), measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

Section 29 empowers the Corporation:-

to acquire and hold property both movable and immovable, sell or otherwise transfer the said property	it can invest and reinvest any moneys which are not immediately required for expenses and or realize such investments;	it can raise loans and discharge such loans with the previous sanction of Central Government;	it may constitute for the benefit of its staff or any class of them such provident or other benefit fund as it may think fit.
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### 3. Appointment of Regional Boards, etc.

**Section 25**

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations.

## 7. WINGS OF THE CORPORATION

**Section 3**

The Corporation to discharge its functions efficiently, has been provided with two wings:

### 1. Standing Committee

**Section 8**

The Act provides for the constitution of a Standing Committee under Section 8 from amongst its members.

### 2. Powers of Standing Committee

The Standing Committee has to administer affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation subject to the general superintendence and control of the Corporation. The standing Committee acts as an

executive body for administration of Employees State Insurance Corporation.

### 3. Medical Benefit Council

Section 10 empowers the Central Government to constitute a Medical Benefit Council. Section 22 determines the duties of the Medical Benefit Council stating that the Council shall:

<p>advise the Corporation and the Standing Committee on matters relating to administration of medical benefit, the certification for purposes of the grant of benefit and other connected matters;</p>	<p>have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance; and</p>	<p>perform such other duties in connection with medical treatment and attendance as may be specified in the regulations</p>
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## 8. EMPLOYEES STATE INSURANCE FUND

### 1. Creation of Fund

Section 26 of the Act provides that all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act.

### 2. Purposes for which the fund may be expended

Section 28 provides that Fund shall be expended only for the following purposes:

1. Payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;
2. Payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
3. Payment of salaries, leave and joining time allowances, travelling and compensatory

allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;

4. Establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;
5. Payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
6. Defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
7. Defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;
8. Payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;
9. Payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;
10. Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
11. Defraying expenditure, within the limits prescribed, on measures for the improvement of the health welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
12. Such other purposes as may be authorized by the Corporation with the previous

approval of the Central Government.

## 9. CONTRIBUTIONS

The contributions have to be paid at such rates as may be prescribed by the Central Government. The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable. The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

### 1. Principal Employer to pay contributions in the first instance

According to Section 40 of the Act, it is incumbent upon the principal employer to pay in respect of every employee whether directly employed by him or by or through an immediate employer, both the employers contributions and the employees contribution

According to Section 39(5) of the Act, if any contribution payable is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of 12 per cent per annum or at such higher rate as may be specified in the regulations, till the date of its actual payment.

### 2. Recovery of contribution from immediate employer

According to Section 41, principal employer who has paid contribution in respect of an employee employed by or through an immediate employer is entitled to recover the amount of contribution so paid (both employers and employees contribution) from the immediate employer either by deduction from any amount payable to him by the principal employer under any contract or as a debt payable by the immediate employer

### 3. Method of Payment of contribution

Section 43 provides for the Corporation to make regulations for payment and collection of contribution payable under this Act and such regulations may provide for:

the manner and time for payment of contribution;	the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed or impressed;	the date by which evidence of contributions having been paid is to be received by the Corporation;
the entry in or upon books or cards or particulars of contribution paid and benefits distributed in the case of the insured persons to whom such books or card relate; and	the issue, sale, custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been, lost, destroyed or defaced.	

## 10. BENEFITS

Under Section 46 of the Act, the insured persons, their dependants are entitled to the following benefits on prescribed scale:

periodical payments in case of sickness certified by medical practitioner;	periodical payments to an insured workman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement;	periodical payment to an insured person suffering from disablement as a result of employment injury;
periodical payment to dependants of insured person;	medical treatment and attendance on insured person;	payment of funeral expenses on the death of insured person at the prescribed rate of.

## 11. GENERAL PROVISIONS RELATING TO BENEFITS

Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.

An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

## 12. EMPLOYEES STATE INSURANCE COURT (E.I.COURT)

### 1. Constitution

### Section 74

- ✚ Section 74 of the Act provides that the State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court for such local area as may be specified in the notification.
- ✚ The Court shall consist of such number of judges as the State Government may think fit.
- ✚ Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of E.I. Court.
- ✚ The State Government may appoint the same Court for two or more local areas or Mo or more Courts for the same local area and may regulate the distribution of business between them.

### 2. Matters to be decided by E.I Court

Adjudication of disputes	Adjudication of claims
The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.	The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

### 13. EXEMPTIONS

The appropriate Government may exempt any factory/establishment from the purview of this Act, as well as any person or class of persons employed in any factory/establishment, provided the employees employed therein are in receipt of benefits superior to the benefits under the Act. Such exemption is initially given for one year and may be extended from time to time. The applicant has to submit application justifying exemption with full details and satisfy the concerned Government.

# SOCIAL SECURITY LEGISLATIONS

## UNIT 2 – EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

*The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for the institution of provident funds, pension fund and deposit linked insurance fund for employees in factories and other establishments. It extends to the whole of India except the State of Jammu and Kashmir.*

### 1. INTRODUCTION

Provident Fund schemes for the benefit of the employees had been introduced by some organisations even when there was no legislation requiring them to do so. Such schemes were, however, very few in number and they covered only limited classes/groups of employees. The following three schemes have been framed under the Act by the Central Government:

**The Employees' Provident Fund Schemes, 1952;**

**The Employees' Pension Scheme, 1995; and**

**The Employees' Deposit-Linked Insurance Scheme; 1976.**

The three schemes mentioned above confer significant social security benefits on workers and their dependents.

### 2. APPLICATION OF THE ACT

According to Section 1(3), the Act, subject to the provisions of Section 16, applies:

- (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed; and
- (b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

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

The constitutional validity of this Act was challenged on the ground of discrimination and excessive delegation.

It was held that the law lays down a rule which is applicable to all the factories or establishments similarly placed. It makes a reasonable classification without making any discrimination between factories placed in the same class or group (*Delhi Cloth and General Mills v. R.P.F. Commissioner*)

The liability to contribute to the provident fund is created the moment the Scheme is applied to a particular establishment.

Section 1(3)(b) empowers the Central Government to apply the Act to trading or commercial establishments whether, such establishments are factories or not.

### 3. NON-APPLICABILITY OF THE ACT TO CERTAIN ESTABLISHMENTS

Section 16(1) of the Act provides that the Act shall not apply to certain establishments as stated thereunder. Such establishments include

establishments registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to co-operative societies, employing less than 50 persons and working without the aid of power; or

to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

According to Section 16(2), if the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt that class of establishments from the operation of this Act for such period as may be specified in the notification

### 4. IMPORTANT DEFINITION

Topic	Detailed Explanation
<b>Appropriate Government</b> [ Section 2(a)]	The term 'appropriate Government', <ul style="list-style-type: none"> <li>in relation to an establishment belonging to or under the control of, the <b>Central Government</b> or in relation to an establishment connected with-</li> <li>a railway company;</li> </ul>

	<ul style="list-style-type: none"> <li>• a major port;</li> <li>• a mine or an oilfield; or</li> <li>• a controlled industry; or</li> <li>• in relation to an establishment having departments or branches in more than one state, the appropriate Government is the '<b>Central Government</b>'</li> <li>• in relation to any other establishment, the appropriate Government is the '<b>State Government</b>'</li> </ul>
<p><b>Authorized Officer</b> [Section 2(aa)]</p>	<ul style="list-style-type: none"> <li>• the Central Provident Fund Commissioner;</li> <li>• Additional Central Provident Fund Commissioner;</li> <li>• Deputy Provident Fund Commissioner;</li> <li>• Regional Provident Fund Commissioner; or</li> <li>• Such other officer as may be authorized by the Central Government, by Notification in the Official Gazette.</li> </ul>
<p><b>Basic wages</b> [Section 2(b)]</p>	<p>Section 2(b) defines the term '<b>basic wages</b>' as all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case, in accordance with the terms of the contract of employment and which are paid or payable in cash to him, <b>but does not include-</b></p> <ul style="list-style-type: none"> <li>• <b>the cash value of any consideration;</b></li> <li>• <b>any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) house rent allowance, over time allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;</b></li> <li>• <b>Any presents made by the employer.</b></li> </ul>
<p><b>Contribution</b> [Section 2(c)]</p>	<p>Section 2(c) defines the term 'contribution' as a contribution payable in respect of a member under a scheme or the contribution payable in respect of an employee to whom the Insurance scheme applies.</p>

<b>Fund</b> <b>[Section 2(h)]</b>	It means Provident Fund established under the Scheme.
<b>Employer</b> <b>[Section 2(e)]</b>	Section 2(e) defines the term 'employer' as <ul style="list-style-type: none"> <li>• <u>in relation to an establishment which is a factory</u>, the <b>owner or occupier</b> of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory, the person so named; and</li> <li>• <u>in relation to any other establishment</u>, the person who, or the authority which, has the <b>ultimate control</b> over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.</li> </ul>
<b>Employee</b> <b>[Section 2(f)]</b>	Section 2(f) defines the term 'employee' as any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person- <ul style="list-style-type: none"> <li>• Employed by or through a <b>contractor</b> in or in connection with the work of the establishment;</li> <li>• Engaged as an <b>apprentice</b>, not being an apprentice engaged under the Apprentices Act, 1961 or under the Standing orders of the establishment.</li> </ul>
<b>Factory</b> <b>[Section 2(g)]</b>	Section 2(g) defines the term 'factory' as any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid or power.

## 5. SCHEMES UNDER THE ACT

The Act provides three types of schemes for the benefit of the employees as detailed

below-

1. **Section 5 - Employees' Provident Fund Schemes;**
2. **Section 6A - Employees' Pension Scheme;**
3. **Section 6C - Employees' Deposit Linked Insurance Scheme.**

Section 7 gives powers to the Central Government to amend or vary, either prospectively or retrospectively, the Scheme, the Pension Scheme or the Insurance scheme, as the case may be.

## A] EMPLOYEES PROVIDENT FUND SCHEME

The Central Government has framed a Scheme called Employees Provident Fund Scheme. The Fund vests in and is administered by the Central Board constituted under Section 5A.

### Administration of the Fund

- (a) Board of Trustees or Central Board: Section 5A provides for the administration of the Fund. The Central Government may by notification in the Official Gazette constitute with effect from such date as may be specified therein, a Board of Trustees, for the territories to which this Act extends.

### Class of employees entitled and required to join Provident Fund

Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

**'Excluded employee' means:**

an employee who, having been a member of the Fund, withdraw the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph 69;

an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds fifteen thousand rupees per month.

Explanation: "Pay" includes basic wages with dearness allowance retaining allowance (if any) and cash value of food concession admissible thereon.

An apprentice.

Explanation: An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.

**Contributions**

Points	Detailed Explanation
<b>Rate of Contribution by employer and employee</b>	The contribution which shall be paid by the employer to the Fund shall be <b>10%</b> , of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and the <b>employees contribution shall be equal to the contribution payable by the employer.</b>
<b>Employees may make contribution exceeding the prescribed rate</b>	Employees, if <b>they desire</b> , may make contribution <b>exceeding</b> the prescribed rate but subject to the condition that <b>employer shall not be under any obligation</b> to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act
<b>Calculated to the nearest rupee</b>	Each contribution shall be calculated to the <b>nearest rupee, fifty paise or more to be counted as the next higher rupee and</b>

	<b>fraction of a rupee less than fifty paise to be ignored.</b>
<b>What to be included</b>	<b>Dearness allowance</b> shall include the <b>cash value of any food concession allowed to an employee</b> . <b>Retaining allowance</b> is the allowance payable to an employee for retaining his services, when the establishment is not working.
<b>Payment of contribution is mandatory</b>	The Provident Fund Scheme has made the payment of contribution mandatory and the Act provides for <b>no exception</b> under which a specified employer can avoid his mandatory liability.

### Investment

The amount received by way of Provident Fund contributions is invested by the Board of Trustees in accordance with the investment pattern approved by the Government of India. The members of the Provident Fund get interest on the money standing to their credit in their Provident Fund Accounts. The rate of interest for each financial year is recommended by the Board of Trustees and is subject to final decision by the Government of India.

### Advances/Withdrawals

Advances from the Provident Fund can be taken for the following purposes subject to conditions laid down in the relevant paras of the Employees Provident Fund Scheme:

- (1) **Non-refundable advance** for payment of **premia towards a policy or policies of Life Insurance** of a member
- (2) **Withdrawal for purchasing a dwelling house or flat** or for construction of a dwelling house including the acquisition of a suitable site for the purpose, or for completing/continuing the construction of a dwelling house, already commenced by the member or the spouse and an additional advance for additions, alteration or substantial improvement necessary to the dwelling house;
- (3) **Non-refundable advance to members due to temporary closure of any factory or establishment for more than fifteen days, for reasons other than a strike or due to non-receipt of wages for 2 months or more, and refundable advance due to closure of the factory or establishment for more than six months;**

- (4) (i) Non-refundable in case of:
- (a) **hospitalisation lasting one month or more, or**
  - (b) **major surgical operation in a hospital, or**
  - (c) **suffering from T.B., Leprosy, Paralysis, Cancer, Mental derangement or heart ailment, for the treatment of which leave has been granted by the employer;**
- (ii) Non-refundable advance for the treatment of a **member of his family**, who has been hospitalised or requires hospitalisation, for one month or more:
- (a) **for a major surgical operation; or**
  - (b) **for the treatment of T.B., Leprosy, Paralysis, Cancer, mental derangement or heart ailment;**
- (5) Non-refundable advance for **daughter/sons marriage, self-marriage, the marriage of sister/brother or for the post matriculation education of son or daughter;**
- (6) Non-refundable advance to members affected by **cut in the supply of electricity;**
- (7) Non-refundable advance in case **property is damaged by a calamity of exceptional nature such as floods, earthquakes or riots;**
- (8) Withdrawals for **repayment of loans in special cases;** and
- (9) Non-refundable advance to **physically handicapped members** for purchasing an equipment required to minimize the hardship on account of handicap.

### Final Withdrawal

Full accumulations with interest thereon are refunded in the event of death, permanent disability, superannuation, retrenchment or migration from India for permanent settlement abroad/taking employment abroad, voluntary retirement, certain discharges from employment under Industrial Disputes Act, 1947, transfer to an establishment/factory not

covered under the Act.

## B] EMPLOYEES PENSION SCHEME

The Employees' Pension Scheme is compulsory for all the persons who were members of the Family Pension Scheme, 1971. It is also compulsory for the persons who become members of the Provident Fund from **16.11.1995** i.e. the date of introduction of the Scheme

Minimum 10 years contributory service is required for entitlement to pension. Normal superannuation pension is payable on attaining the age of **58 years**.

Pension on a discounted rate is also payable on attaining the age of **50 years**.

Where pensionable service is **less than 10 years**, the member has an option to remain covered for pensionary benefits till 58 years of age or claim return of contribution/ withdrawal benefits.

The Scheme provides for payment of monthly pension in the following contingencies

Superannuation on attaining the age of 58 years

Retirement

Permanent total disablement;

Death during service;

Death after retirement/ superannuation/permanent total disablement;

Children Pension

Orphan pension.

The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service.

## C] EMPLOYEES DEPOSIT LINKED INSURANCE SCHEME

The Act was amended in 1976 and a new Section 6C was inserted empowering the Central Government to frame a Scheme to be called the Employees' Deposit-Linked Insurance Scheme for the purpose of providing life insurance benefit to the employees of any establishment or class of establishments to which the Act applies.

The Central Government has accordingly framed the Employees' Deposits-Linked Insurance Scheme, 1976. It came into force on the 1st August, 1976.

### ***Application of the Scheme***

The Employees Deposit-Linked Insurance Scheme, 1976 is applicable to all factories/establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies.

All the employees who are members of the Provident Funds in both the exempted and the unexempted establishments are covered under the scheme.

### ***Contributions to the Insurance Fund:***

The employees are not required to contribute to the Insurance Fund. The employers are required to pay contributions to the Insurance Fund at the rate of 1% of the total emoluments, i.e., basic wages, dearness allowance including, cash value of any food concession and retaining allowance, if any.

### ***Administrative expenses:***

The employers of all covered establishments are required to pay charges to the Insurance Fund.

### ***Nomination:***

The nomination made by a member under the Employee Provident Fund Scheme 1952 or in the exempted provident fund is treated as nomination under this scheme. Provisions of Section 5 have overriding effect and will override the personal laws of the subscriber in the matters of nominations

### ***Payment of assurance benefit***

In case of death of a member, an amount equal to the average balance in the account of the deceased during the preceding 12 months or period of membership, whichever is less shall be paid to the persons eligible to receive the amount or the Provident Fund accumulations.

### ***Exemption from the Scheme:***

Factories/establishments, which have an Insurance Scheme conferring more benefits than those provided under the statutory Scheme, may be granted exemption, subject to certain conditions, if majority of the employees are in favour of such exemption

## 6. DETERMINATION OF MONEYS DUE FROM EMPLOYERS

### 1. Determination of Moneys due

**Section 7A**

Section 7A vests the powers of determining the amount due from any employer under the provisions of this Act and deciding the dispute regarding applicability of this Act in the Central Provident Fund Commissioner, Additional Provident Fund Commissioner, Deputy Provident Fund Commissioner, or Regional Provident Fund Commissioner. For this purpose he may conduct such inquiry as he may deem necessary.

### 2. Mode of recovery of moneys due from employer

**Section 8**

Section 8 prescribes the mode of recovery of moneys due from employers by the Central Provident Fund Commissioner or such officer as may be authorised by him by notification in the Official Gazette in this behalf in the same manner as an arrear of land revenue. Recovery of arrears of Provident Fund cannot be effected from unutilised part of cash-credit of an industrial establishment

### 3. Recovery of moneys by employers and contractors

**Section 8A**

Section 8A lays down that the amount of contribution that is to say the employer's contribution as well as the employee's contribution and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor, may be recovered by such 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.

### 4. Measures for recovery of amount due from employer

**Section 8B-8G**

The authorised officer under this Act shall issue a certificate for recovery of amount due from employer to the Recovery Officer. The Recovery Officer has got the powers to attach/sell the property of employer, call for arrest and detention of employer, etc. for

effecting recovery. The employer cannot challenge the validity of the certificate. The authorised officer can grant time to the employer to make the payment of dues.

The Central Provident Fund Commissioner may require any person, from whom amount is due to the employer, to pay directly to the Central Provident Fund Commissioner/Officer so authorised and the same will be treated as discharge of his liability to the employer to the extent of amount so paid

#### 5. Priority of payment of contributions over other debts

#### Section 11

Section 11 of the Act provides that the contribution towards Provident Fund shall rank prior to other payments in the event of employer being adjudicated insolvent or where it is a company on which order of winding up has been made. The amount shall include:

- (a) the amount due from the employer in relation to an establishment to which any Scheme or Insurance Scheme applies in respect of any contribution payable to the Fund, or the Insurance, damages recoverable under Section 14B, accumulations required to be transferred under sub-section (2) of Section 15 or any charges payable by him under any other provisions of this Act or of any provision of the Scheme or the Insurance Scheme; or
- (b) the amount due from employer in relation to an exempted establishment in respect of any contribution to the Provident Fund or any Insurance Fund in so far as it relates to exempted employees under the rules of the Provident Fund, or any Insurance Fund or any contribution payable by him towards the Pension Fund under Sub-section (6) of Section 17, damages recoverable under Section 13B or any charges payable by him to the appropriate Government under any provisions of this Act or any of the conditions specified under Section 17.

#### 7. EMPLOYER NOT TO REDUCE WAGES

#### Section 12

Section 12 prohibits an employer not to reduce directly or indirectly the wages of any employee to whom the Scheme or the Insurance Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund or life insurance to which the employee is entitled under the terms of employment, express or implied, simply by reason of his liability for the payment of any contribution to the Fund or the Insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme

**8. TRANSFER OF ACCOUNTS****Section 17A**

Section 17A(1) of the Act provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtain re-employment in another establishment to which this Act doesnot apply, the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the Provident Fund of the establishment left by him shall be transferred within such time as may be specified by Central Government in this behalf to the credit of his account in the Provident Fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that Provident Fund permit such transfer.

Sub-section (2) further provides that whereas employee employed in an establishment to which this Act doesnot apply, leaves his employment and obtain re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the Provident Fund of the establishment left by him, may, if the employee so desires and also rules in relation to such Provident Fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the Provident Fund of the establishment in which he is re-employed.

**9. PROTECTION AGAINST ATTACHMENT****Section 10**

Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. Sub-section (1) of Section 10 provides that the amount standing to the credit of any member in the Fund or any exempted employee in a Provident fund shall not in any way, be capable of being assigned or charged and shall not be liable to attachment under any decree or order or any Court in respect of any debtor liability incurred by the member or the exempted employee and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to or have any claim on any such amount.

**10. POWER TO EXEMPT****Section 17**

Section 17 authorizes the appropriate *Government* to grant exemptions to certain establishments or persons from the operation of all or any of the provisions of the Scheme. Such exemption shall be granted by notification in the *Official Gazette* subject to such conditions as may be specified therein.

# SOCIAL SECURITY LEGISLATIONS

## UNIT 3 – MATERNITY BENEFIT ACT, 1961

*The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. It extends to the whole of India.*

### 1. INTRODUCTION

Maternity Benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. The Maternity Benefit Act, 1961 is applicable to mines, factories, circus industry, plantations, shops and establishments employing **ten or more persons**. It can be extended to other establishments by the State Governments.

### 2. IMPORTANT DEFINITIONS

#### 1. Appropriate Government

Section 3(a)

"Appropriate Government" means in relation to an establishment being a mine or an establishment where in 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.

#### 2. Child

Section 3(b)

"Child" includes a still-born child.

#### 3. Commissioning Mother

Section 3(ba)

"Commissioning Mother" means a biological mother who uses her egg to create an embryo implanted in any other woman.

#### 4. Employer

Section 3(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 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 or 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;

## 5. Maternity Benefit

Section 3(h)

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

## 6. Wages

Section 3(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 allowances) 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) over-time 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;

## 3. EMPLOYMENT OF OR WORK BY WOMEN PROHIBITED DURING CERTAIN PERIODS

Section 4 of the Act provides that no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. It also specifies that no women shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

It may be noted that if a pregnant woman makes request to her employer, she shall not be

given to do during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery, 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 pregnancy or the normal development of the fetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

#### 4. RIGHT TO PAYMENT OF MATERNITY BENEFITS

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, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

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, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

#### 5. NOTICE OF CLAIM FOR MATERNITY BENEFITS

Section 6 deals with notice of claim for maternity benefit and payment thereof. As per the section any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in prescribed form, 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.

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. Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit. 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 production of such proof, 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. 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.**

## 7. CRECHE FACILITY

Every establishment having **fifty or more employees** shall have the facility of **creche** within such distance as may be prescribed, either separately or along with common facilities. The employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.

Every establishment shall intimate in **writing and electronically** to every woman at the time of her initial appointment regarding every benefit available under the Act.

## 8. ABSTRACT OF ACT AND RULES THERE UNDER TO BE EXHIBITED

As per section 19 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 in a conspicuous place by the employer in every part of the establishment in which women are employed

## 9. REGISTERS

Every employer shall prepare and maintain such registers, records and muster-rolls and in prescribed manner under section 20 of the Act.

## 10. PENALTY FOR CONTRAVENTION OF ACT BY EMPLOYER

Section 21 provides that if any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, **he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees.**

However, the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

# SOCIAL SECURITY LEGISLATIONS

## UNIT 4 – PAYMENT OF GRATUITY ACT, 1972

*The Payment of Gratuity Act, 1972 provides for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. It extends to the whole of India.*

### 1. INTRODUCTION

Gratuity is a lump sum payment made by the employer as a mark of recognition of the service rendered by the employee when he retires or leaves service. The Payment of Gratuity Act provides for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

The Payment of Gratuity Act has been amended from time to time to bring it in tune with the prevailing situation. The Act has been amended to enhance the ceiling on amount of gratuity from Rs.10 lakh to Rs.20 lakh as well as to widen the scope of the definition of "employee" under section 2 (e) of the Act.

### 2. APPLICATION OF THE ACT

Application of the Act to an employed person depends on two factors. Firstly, he should be employed in an establishment to which the Act applies. Secondly, he should be an "employee" as defined in Section 2(e).

According to Section 1(3), the Act applies 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.

### 3. WHO IS AN EMPLOYEE

According to Section 2(e) as amended by the Payment of Gratuity (Amendment) Act, 2009 "employee" means any person (**other than an apprentice**) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, **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.**

The definition of "employee" under section 2 (e) of the Act has been amended by the Payment of Gratuity (Amendment) Act, 2009 to cover the teachers in educational institutions retrospectively with effect from 3rd April, 1997. The amendment to the definition of "employee" has been introduced in pursuance to the judgment of Supreme Court in *Ahmedabad Private Primary Teachers' Association v. Administrative Officer*.

## 4. CONTINUOUS SERVICE

[SECTION 2A(1)]

Cases	Detailed Explanation
<p><b>Case 1:</b> <b>Continuous Service</b> <b>[Section 2A(1)]</b></p>	<p>An employee shall be said to be in '<b>continuous service</b>' for a period if he has, for that period been in <b>un-interrupted service</b></p> <p><b><u>Permissible Interruptions:</u></b></p> <ol style="list-style-type: none"> <li>i. <b>Sickness,</b></li> <li>ii. <b>Accident,</b></li> <li>iii. <b>Absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment),</b></li> <li>iv. <b>Lay off, strike or a lock out or cessation of work not due to any fault of the Employee</b></li> </ol>
<p><b>Case 2:</b> <b>Deemed Continuous Service</b></p>	<p>When an employee is not in continuous service as defined above, he shall be deemed to be in continuous service under the employer:</p> <p><b><u>For the said period of 1 year:</u></b> if the employee during the period of <b>twelve calendar months</b> preceding the date with reference to which calculation is to be made, has actually worked for not less than:-</p> <ol style="list-style-type: none"> <li>I. <b>190 days</b> in the case of an Employee employed below the ground in mine or in an establishment which works for <b>less than 6 days a week;</b> and</li> <li>II. <b>240 days</b> in any other case</li> </ol> <p><b><u>For the said period of 6 months:</u></b> if the employee during the period of <b>six calendar months</b> preceding the date with reference to which calculation is to be made, has actually worked for not less than:-</p> <ol style="list-style-type: none"> <li>I. <b>95 days</b> in the case of an Employee employed below the ground in mine or in an establishment which works for less than <b>6 days a week;</b> and</li> <li>II. <b>120 days</b> in any other case</li> </ol>

	<p>For the purpose of <b>Case (2)</b> for number of days on which an employee has actually worked under an Employer shall <b>include</b> the days on which-</p> <ul style="list-style-type: none"> <li>➤ He has been <b>laid off</b>.</li> <li>➤ He has been on <b>leave with full wages</b>, earned in the previous year;</li> <li>➤ He has been absent due to <b>temporary disablement</b> caused by accident arising out of and in the course of his employment; and</li> <li>➤ In the case of a female, she has been on maternity leave, so however, that the total period of such <b>maternity leave does not exceed 12 weeks</b>.</li> </ul>
<b>Case: 3</b> <b>Seasonal Establishment</b>	Where an employee, employed in Seasonal Establishment he shall deemed to be in continuous service if he has worked <b>for more than 75%</b> , of the number of days on which the establishment was in operation.

#### 4. OTHER IMPORTANT DEFINITION

Topic	Detailed Explanation
<b>Appropriate Government</b> [Section 2(a)]	<p>-in relation to an establishment-</p> <ul style="list-style-type: none"> <li>➤ belonging to, or under the control of, the <b>Central Government</b>,</li> <li>➤ having branches in more than one State,</li> <li>➤ of a factory belonging to, or under the control of, the <b>Central Government</b>,</li> <li>➤ of a major port, mine, oilfield or railway company - the <b>Central Government</b>,</li> <li>• in any other case - the <b>State Government</b>;</li> </ul>
<b>Family</b> [Section	The term 'family' in relation to an employee, shall be deemed to consist of

2(h)]	<p>i. in case of a <b>male employee</b>, 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;</p> <p>ii. in the case of a <b>female employee</b>, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any:</p> <p>The explanation to this section provides that where the personal law of an employee permits the adoption by him of a child, any <b>lawfully adopted</b> by him shall be deemed to be <b>included in his family</b>,</p> <p>And where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption lawful such child shall be <b>deemed to be excluded from the family of the employees</b>.</p>
Retirement [Section 2(q)]	The term 'retirement' as termination of the service of an employee <b>otherwise than on superannuation</b> .
Superannuation [Section 2(r)]	'Superannuation' as in relation to an employee, the attainment by the employee of such age as is fixed in the contract or conditions of service as the <b>age on the attainment</b> of which the employee shall vacate the employment.
Wages [Section 2(s)]	<p>'Wages' as all emoluments which are earned by an employee</p> <p>a) While on duty or on leave in accordance with the terms and conditions of his employment <b>AND</b></p> <p>b) which are paid or payable to him in cash (not in kind) <b>AND</b></p> <p>c) includes dearness allowance <b>but does not include any</b>  <b>bonus,</b>  <b>commission,</b>  <b>house rent allowance,</b></p>

	<p><b>overtime wages and</b></p> <p><b>any other allowance</b></p>	
<b>Employer</b> <b>[Section 2(f)]</b>	<p>The term 'employer' In relation to any establishment, factory, mine, oilfield, port, Railway Company or shop:-</p>	
	<p>➤ Belonging to, or under the control of, <b>the Central Government or a State Government</b></p>	<p>a. <u>a person or authority appointed by appropriate Government</u> <b>:for the supervision or control of employees</b></p> <p>b. <u>or where no person or authority has been so appointed</u> <b>:the head of the Ministry or the Department</b></p>
	<p>➤ Belonging to, or under the control of, <b>any local authority</b></p>	<p>a. <u>The person appointed by such authority for supervision and control of employees</u></p> <p>b. <u>Or where no person has been so appointed,</u> <b>the Chief Executive Officer of the local authority</b></p>
	<p>➤ In any <b>other case,</b></p>	<p>a. The person, who, or the authority which, has the <b>ultimate control</b> over the affairs of the establishment, factory, mine, oil field, plantation, port, Railway Company or shop</p> <p>b. <b>Manager, Managing director or any such</b></p>

<b>Controlling Authority</b> [Section 3]	The <b>Government</b> , by notification, appoint any officer to be the Controlling authority, who shall be responsible for the administration of this Act and different authorities may be appointed for different areas
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## 5. WHEN IS GRATUITY PAYABLE

### Section 4(1)

According to Section 4(1) of the Payment of Gratuity Act, 1972, 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:**

<b>on his superannuation, or</b>	<b>on his retirement or resignation, or</b>	<b>on his death or disablement due to accident or disease.</b>
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**Note:** The completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

## 6. TO WHOM GRATUITY IS PAYABLE

### 1. Gratuity is payable to-

It is payable normally to the employee himself. However, in the case of death of the employee, it shall be paid to his nominee and 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.

### 2. Amount of Gratuity Payable

Gratuity is calculated on the basis of continuous service as defined above i.e. for every completed year of service or part in excess of six months, at the rate of fifteen days wages last drawn. The maximum amount of gratuity allowed under the Act is **Rs. 20 lakh**. The ceiling on the amount of gratuity **from Rs. 10 lakh to Rs.20 lakh** has been enhanced by the Payment of Gratuity (Amendment) Act, 2018.

### 3. Nomination

An employee covered by the Act is required to make nomination in accordance with the Rules under the Act for the purpose of payment of gratuity in the event of his death. The rules also provide for change in nomination

### 4. Forfeiture of Gratuity

The Act deals with this issue in two parts.

Section 4(6)(a) provides that the gratuity of an employee whose services have been terminated for

- any act of
- willful omission or
- negligence

causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss or caused. The right of forfeiture is limited to the extent of damage. In absence of proof of the extent of damage, the right of forfeiture is not available.

Section 4(6)(b) deals with a case where the services of an employee have been terminated:

- (a) for riotous and disorderly conduct or any other act of violence on his part, or
- (b) for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

In such cases the gratuity payable to the employee may be wholly or partially forfeited. Where the service has not been terminated on any of the above grounds, the employer cannot withhold gratuity due to the employee.

## 7. EXEMPTIONS

The appropriate Government may exempt any factory or establishment covered by the Act

or any employee or class of employees if the gratuity or pensionary benefits for the employees **are not less favourable** than conferred under the Act.

### The Controlling Authority and the Appellate Authority

The controlling authority and the Appellate Authority are two important functionaries in the operation of the Act. Section 3 of the Act says that the appropriate Government may by notification appoint any officer to be a Controlling Authority who shall be responsible for the administration of the Act. Different controlling authorities may be appointed for different areas.

Section 7(7) provides for an appeal being preferred against an order of the Controlling Authority to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.

## 8. RIGHTS AND OBLIGATIONS OF EMPLOYEES

### 1. Application and Payment of Gratuity

- ✚ Section 7(1) lays down that a person who is eligible for payment of gratuity under the Act or any person authorised, in writing, to act on his behalf shall **send a written application** to the employer.
- ✚ Rule 7 of the Payment of Gratuity (Central) Rules, 1972, provides that the application shall be made ordinarily **within 30 days from the date gratuity becomes payable**.
- ✚ The rules also provides that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer **before 30 days of the date of superannuation or retirement**.
- ✚ A **nominee of an employee** who is eligible for payment of gratuity in the case of death of the employee shall apply to the employee **ordinarily within 30 days from the date of the gratuity becomes payable to him**. [Rule7(2)]
- ✚ Although the forms in which the applications are to be made have been laid down, an

application **on plain paper** with relevant particulars is also accepted

- ✚ The application may be presented to the employer either by **personal service** or be **registered post with acknowledgement due**.
- ✚ An application for payment of gratuity filed after the period of 30 days mentioned above shall also be entertained by the employer if the application adduces **sufficient cause** for the delay in preferring his claim.
- ✚ Any dispute in this regard shall be referred to the **Controlling Authority** for his decision

## 9. RIGHTS AND OBLIGATIONS OF EMPLOYER

### 1. Employers Duty to Determine and Pay Gratuity

- ✚ Section 7(2) lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not, **determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined**.
- ✚ Section 7(3) of the Act says that the employer shall **arrange to pay the amount of gratuity within thirty days from the date of its becoming payable** to the person to whom it is payable.
- ✚ Section 7(3A): If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, **simple interest at the rate of 10 per cent per annum**:
- ✚ Provided that **no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground**.

### 2. Dispute as to Amount of Gratuity or Admissibility of Claim

- ✚ **If the claim for gratuity is not found admissible**, the employer shall issue a notice in the prescribed form to the applicant employee, nominee or legal heir, as the case may be, specifying reasons why the claim for gratuity is not considered admissible. A copy of the notice shall be endorsed to the Controlling Authority.
- ✚ **If the disputes relates as to the amount of gratuity payable**, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him. According to Section 7(4)(e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made

to the applicant where he is the employee; or

where the applicant is not the employee, to the nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

### 3. Recovery Of Gratuity

Section 8 provides that if the gratuity payable under the Act is not paid by the employer within the prescribed time, the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the **Collector**, who shall recover the same together with the **compound interest** thereon at such rate as the Central Government may be notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

"Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a **reasonable opportunity of showing cause** against the issue of such certificate:

**Provided further that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act"**

### 4. Protection Of Gratuity

Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or Criminal Court. This relief is aimed at providing payment of gratuity to the

person or persons entitled there to without being affected by any order of attachment by an decree of any Court.

# **S**OCIAL SECURITY LEGISLATIONS

Chapter- 6.5

## **UNIT 5 – APPRENTICES ACT, 1961**

*The Apprentices Act, 1961 enacted to regulate and control the programme of training of apprentices and for matters connected therewith. It extends to whole of India.*

## 1. INTRODUCTION

The Apprentices Act, 1961 was enacted with the objective of regulating the programme of training of apprentices in the industry by utilising the facilities available therein for imparting on-the-job training.

Non engineering graduates and diploma holders have been made eligible for apprenticeship. A portal is being setup to make all approvals transparent and time bound. Apprenticeship can be taken up in new occupations also.

## 2. IMPORTANT DEFINITION

### 1. Apprentice

Section 2(aa)

Apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship

### 2. Apprenticeship training

Section 2 (aaa)

Apprenticeship training means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices

## 3. QUALIFICATION FOR BEING ENGAGED AS AN APPRENTICE

Section 3

Section 3 of the Act provides that a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he –

is not less than fourteen years of age,  
and for designated trades related to

satisfies such standards of education  
and physical fitness as may be

hazardous industries, not less than eighteen years of age; and

prescribed: Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

#### 4. CONTRACT OF APPRENTICESHIP

#### Section 4

Section 4 of the Act deals with Contract of apprenticeship. Section 4 states that -

- (1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer.
- (2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).
- (3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract: Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder.
- (4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within thirty days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within seven days, for verification and registration.
- (4A) In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within fifteen days from the date of its receipt.
- (4B) The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt.

#### 5. NOVATION OF CONTRACTS OF APPRENTICESHIP

#### Section 5

Section 5 of the Act provides that where an employer with whom a contract of apprenticeship

has been entered into, is for any reason unable to fulfil his obligations under the contract and with the approval of the Apprenticeship Adviser it is agreed between the employer, the apprentice or his guardian and any other employer that the apprentice shall be engaged as apprentice under the other employer for the un-expired portion of the period of apprenticeship training, the agreement, on registration with the Apprenticeship Adviser, shall be deemed to be the contract of apprenticeship between the apprentice or his guardian and other employer, and on and from the date of such registration, the contract of apprenticeship with the first employer shall terminate and no obligation under the contract shall be enforceable at the instance of any party to the contract against the other party thereto

## 6. ENGAGEMENT OF APPRENTICES FROM OTHER STATES

### Section 5B

Under section 5B the employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

## 7. PERIOD OF APPRENTICESHIP TRAINING

### Section 6

As per section 6 of the Act the period of apprenticeship training, which shall be specified in the contract of apprenticeship, shall be as follows —

- (a) In the case of trade apprentices who, having undergone institutional training in a school or other institution *recognised by the National Council*, have passed the trade tests or examinations conducted by that Council or by an institution recognised by that Council, the period of apprenticeship training shall be such as may be prescribed.
- (aa) in the case of trade apprentices who, having undergone institutional training in a school or other institution affiliated to or **recognised by a Board or State Council of Technical Education or any other authority or courses approved under any scheme which the Central Government may, by notification in the Official Gazette** specify in this behalf, have passed the trade tests or examinations conducted by that Board or State Council or authority or by any other agency authorised by the Central Government, the period of apprenticeship training shall be such as may be prescribed;

- (b) in the case of other **trade apprentices** , the period of apprenticeship training shall be such as may be prescribed;
- (c) in the case of **graduate or technician apprentices**, technician (vocational) apprentices and the period of apprenticeship training shall be such as may be prescribed.

## 8. NUMBER OF APPRENTICES FOR A DESIGNATED TRADE AND OPTIONAL TRADE

### Section 8

Section 8 empowers the Central Government to prescribe the number of apprentices to be engaged by the employer for designated trade and optional trade. Several employers may join together either themselves or through an agency, approved by the Apprenticeship Adviser, according to the guidelines issued from time to time by the Central Government in this behalf, for the purpose of providing apprenticeship training to the apprentices under them.

## 9. OBLIGATIONS OF EMPLOYER

Every employer shall have the following obligations in relation to an apprentice, namely: -

- to provide the apprentice with the training in his trade in accordance with the provisions of the Act and the rules made thereunder;
- if the employer is not himself qualified in the trade, to ensure that a person who possesses the prescribed qualifications is placed in charge of the training of the apprentice;
- to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices;
- to carry out his obligations under the contract of apprenticeship

## 10. OBLIGATIONS OF APPRENTICE

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely :-

- to learn his trade conscientiously and diligently and endeavor to qualify himself as a skilled craftsman before the expiry of the period of training;
  - to attend practical and instructional classes regularly;
  - to carry out all lawful orders of his employer and superiors in the establishment; and
  - to carry out his obligations under the contract of apprenticeship.
- Every graduate or technician apprentice, technician (vocational) apprentice undergoing apprenticeship training shall have the obligations to learn his subject field in engineering or technology or vocational course conscientiously and diligently at his place of training; to attend the practical and instructional classes regularly; to carry out all lawful orders of his employer and superiors in the establishment; to carry out his obligations under the contract of apprenticeship.

## 11. HOURS OF WORK, OVERTIME, LEAVE AND HOLIDAYS

### Section 15

Section 15 of the Act deals with hours of work, overtime, leave and holidays. Section 15 provides that:

- (1) The weekly and daily hours of work of an apprentice while undergoing practical training in a workplace shall be as determined by the employer subject to the compliance with the training duration, if prescribed.
- (2) No apprentice shall be required or allowed to work overtime except with the approval of the Apprenticeship Adviser who shall not grant such approval unless he is satisfied that such overtime is in the interest of the training of the apprentice or in the public interest.
- (3) An apprentice shall be entitled to such leave and holidays as are observed in the establishment in which he is undergoing training.

## 12. APPRENTICES ARE TRAINEES AND NOT WORKERS

Every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

## 13. RECORDS AND RETURNS

### Section 19

Section 19 of the Act provides that every employer shall maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed.

Until a portal-site is developed by the Central Government, every employer shall furnish such information and return in such form as may be prescribed, to such authorities at such intervals as may be prescribed.

Every employer shall also give trade-wise requirement and engagement of apprentices in respect of apprenticeship training on portal-site developed by the Central Government in this regard.

## 14. SETTLEMENT OF DISPUTES

### Section 20

As per section 20 of the Act any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship shall be referred to the **Apprenticeship Adviser** for decision.

Any person aggrieved by the decision of the Apprenticeship Adviser may, **within thirty days** from the date of communication to him of such decision, prefer an appeal against the decision to the Apprenticeship Council and such appeal shall be heard and determined by a **Committee of that Council** appointed for the purpose.

The decision of the Committee and subject only to such decision, the decision of the Apprenticeship Adviser shall be final.

## 15. HOLDING OF TEST AND GRANT OF CERTIFICATE AND CONCLUSION OF TRAINING

### Section 21

Section 21(1) provides that every trade apprentice who has completed the period of training may appear for a test to be conducted by the **National Council or any other agency authorised by the Central Government** to determine his **proficiency** in the designated trade in which he has undergone apprenticeship training.

Every trade apprentice who passes the test referred to in sub-section (1) shall be granted a **certificate of proficiency** in the trade by the National Council or by the other agency authorised by the Central Government.

The progress in apprenticeship training of every graduate or technician apprentice shall be assessed by the employer from time to time. Every graduate or technician apprentice or technician (vocational) apprentice who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.

## 16. OFFER AND ACCEPTANCE OF EMPLOYMENT

### Section 22

As per section 22(1) of the Act every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

Section 22(2) states that notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. Provided that where such period of

remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to the period of remuneration agreed to between the apprentice and the employer.

## 17. AUTHORITIES UNDER THE ACT

In addition to the Government, there are the following authorities under the Act, namely : -

<b>The National Council</b>	<b>The Central Apprenticeship Council,</b>	<b>The State Council,</b>	<b>The State Apprenticeship Council,</b>	<b>The All India Council,</b>
<b>The Regional Boards,</b>	<b>The Boards or State Councils of Technical Education</b>	<b>The Central Apprenticeship Adviser,</b>	<b>The State Apprenticeship Adviser.</b>	

## 18. OFFENCES ANF PENALTIES

Section 30 deals with offences and penalties. Section 30 provides that-

- (1) If any employer contravenes the provisions of the Act relating to the number of apprentices which he is required to engage under those provisions, he shall be given a month's notice in writing, by an officer duly authorised in this behalf by the appropriate Government, for explaining the reasons for such contravention.

(1A) In case the employer fails to reply the notice within the period specified under subsection (1), or the authorised officer, after giving him an opportunity of being heard, is not satisfied with the reasons given by the employer, he shall be punishable with fine of five hundred rupees per shortfall of apprenticeship month for first three months and thereafter one thousand rupees per month till such number of seats are filled up.

- (2) If any employer or any other person -
- (a) required to furnish any information or return- (i) refuses or neglects to furnish such information or return, or (ii) furnishes or causes to be furnished any information or return which is false and which is either knows or believes to be false or does not believe to be true, or (iii) refuses to answer, or give a false answer to any question necessary for obtaining any information required to be furnished by him, or
  - (b) refuses or willfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or
  - (c) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or
  - (d) employs an apprentice on any work which is not connected with his training, or
  - (e) makes payment to an apprentice on the basis of piece-work, or
  - (f) requires an apprentice to take part in any output bonus or incentive scheme.
  - (g) engages as an apprentice a person who is not qualified for being so engaged, or
  - (h) fails to carry out the terms and conditions of a contract of apprenticeship he shall be punishable with fine of one thousand rupees for every occurrence.

(2A) The provisions of this section shall not apply to any establishment or industry which is under the Board for Industrial and Financial Reconstruction established under the Sick Industrial Companies (Special Provisions) Act, 1985

# SOCIAL SECURITY LEGISLATIONS

## Chapter- 6.6

### UNIT 6 – LABOUR LAWS (SIMPLIFICATION OF PROCEDURE FOR FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENT) ACT, 1988

*The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India.*

#### 1. INTRODUCTION

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws

Small establishment	Very small establishment
<ul style="list-style-type: none"> <li>Small establishment means an establishment in which <b>not less than ten and not more than forty persons</b> are employed or were employed on <b>any day of the preceding twelve months</b></li> </ul>	<ul style="list-style-type: none"> <li>Very small establishment means an establishment in which <b>not more than nine persons</b> are employed or were employed on <b>any day of the preceding twelve months</b></li> </ul>

#### 2. EXEMPTION FROM FURNISHING OR MAINTAINING OF RETURNS AND REGISTERS

## REQUIRED UNDER CERTAIN LABOUR LAWS

Section 4(1) of the Act provides that notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014, it shall not be necessary for an employer in relation to any small establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act.

It may be noted that such employer -

- (a) furnishes, in lieu of such returns, annual return in **Form I**; and
- (b) maintains at the work spot, in lieu of such registers, -
  - (i) registers in Form II and Form III, in the case of small establishments, and
  - (ii) a register in Form III, in the case of very small establishments.

### 3. FURNISHING OR MAINTAINING OF RETURNS AND REGISTERS IN ELECTRONIC FORM

- ✚ As per Section 4 (2) of the Act, the annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, as provided in sub-section (1), may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media.
- ✚ It may be noted that in case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.
- ✚ Under section 4(3) the employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts either in physical form or through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

### 4. PENALTY

#### Section 6

As per section 6 of the Act , any employer who fails to comply with the provisions of the Act

shall, on conviction, be punishable, in the case of the first conviction, with fine which may extend to rupees five thousand ; and in the case of any second or subsequent conviction, with imprisonment for a period which **shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty-five thousand, or with both**

# **S**EXUAL HARASSEMENT OF WOMEN AT WORKPLACE

## **(PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013**

*An Act for provide protection against sexual harassmt of women at workplace and for the prevention and redressal of complaints of 'sexual harassmt and or matters connected therewith or incidental thereto.*

### 1. HISTORY OF THE LEGISLATION

Sexual harassment of a woman in workplace is of serious concern to humanity on the whole. It cannot be construed to be in a narrow sense, as it may include sexual advances and other verbal or physical harassment of a sexual nature. The victims of sexual harassment face psychological and health effects like stress, depression, anxiety, shame, guilt and so on.

Sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment

The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles.

However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of *Vishaka v. State of Rajasthan*, ("Vishaka Judgment"), wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. In the absence of a specific law in India, the Supreme Court, in the Vishaka Judgment, laid down certain guidelines making it mandatory for every employer to provide a mechanism to redress

grievances pertaining to workplace sexual harassment ("Vishaka Guidelines") which were being followed by employers until the enactment of the Act.

## 2. VISHAKHA JUDGEMENT

**The Vishaka Judgement:** In 1992, Bhanwari Devi, a dalit woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage. This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women's rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of Vishaka. The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified

As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector.

As per the Vishaka judgment,

'Sexual Harassment' includes such unwelcome sexually determined behavior (whether directly or by implication) as:

<b>Physical contact and advances;</b>	<b>A demand or request for sexual favours;</b>	<b>Sexually coloured remarks;</b>
<b>Showing pornography;</b>	<b>Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.</b>	

### 3. OBJECT OF THE ACT

The Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment.

The Preamble of the Act reads as under:

"An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace."

### 4. FORMS OF WORKPLACE SEXUAL HARRASEMENT

Generally workplace sexual harassment refers to Mo common forms of inappropriate behaviour:

**Quid Pro Quo (literally 'this for that') - Implied or explicit promise of preferential/detrimental treatment in employment - Implied or express threat about her present or future employment status.**

**Hostile Work Environment - Creating a hostile, intimidating or an offensive work environment - Humiliating treatment likely to affect her health or safety.**

## 5. APPLICABILITY

The Act applies to both the organized and unorganized sectors (**self-employed or having less than 10 workers**) in India. It inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.

## 6. DEFINITIONS

### 1. "Aggrieved woman"

**Section 2(a)**

"Aggrieved woman" means—

- i. in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
- ii. in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

### 2. "Sexual Harassment"

**Section 2(n)**

"Sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: -

physical contact and advances; or	a demand or request for sexual favours; or	making sexually coloured remarks; or
showing pornography; or		any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The POSH Act defines 'sexual harassment' in line with the Supreme Court's definition of 'sexual harassment' in the Vishaka Judgment. The definition of 'sexual harassment' under the POSH Act is wide enough to cover both direct or implied sexual conduct which may involve physical, verbal or even written conduct. The key distinguishing feature is that the conduct is unwanted and unwelcome by the recipient.

## 7. COMPLAINTS COMMITTEE

The Act provides for two kinds of complaints mechanisms:

Internal Complaints Committee (ICC); and	Local Complaints Committee (LCC).
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### 1. Constitution internal complaints Committee

Section 4

According to section 4 the Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment. The section provides for the following regarding the ICC:

#### 1. Mandatory constitution of Internal Complaints Committee by order in writing:

Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

#### 2. Composition of the ICC:

The Internal Committee shall consist of the following members to be nominated by the employer, namely: —

- a. **Presiding Officer**: a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees. However, in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section.

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

- b. **Members**: not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
- c. **External member**: one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

### 3. **Tenure of office**:

The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

### 4. **Fees of external members**:

The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

### 5. **Casual vacancy in the office of Presiding Officer or any member of Internal Committee**:

Where the Presiding Officer or any Member of the Internal Committee-

- a. contravenes the provisions of section 16; or
- b. has been convicted for an offence or an inquiry into an offence under any law

for the time being in force is pending against him; or

- c. he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be,

shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

## 2. Constitution of Local Complaints Committee

At the district level, the Government is required to set up a 'Local Complaints Committee' ("LCC") to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee. The provisions of the Act w.r.t. LCC are as follows:

### (i) Notification of District Officer.

According to section 5, the Appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

### (ii) Constitution and jurisdiction of Local Committee

According to section 6, every District Officer shall constitute in the district concerned, a committee to be known as the "Local Committee" to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself. The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Committee within a period of seven days. The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.

### (iii) Composition, tenure and other terms and conditions of Local Committee

Pursuant to section 7, the Local Committee shall consist of the following members to be nominated by the District Officer, namely:- —

- a. a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

- b. one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;
- c. two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge. It is provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

- d. the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio. **[Section 7(1)]**

The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer. Where the Chairperson or any Member of the Local Committee commits any of the following acts, he shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section:

- a. contravenes the provisions of section 16; or
- b. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- c. has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson or Member, as the case may be.

The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

### 3. Grants And Audit

In accordance with section 8, the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in section 7.

The State Government may set up an agency and transfer the grants so made to that agency.

The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to section 7.

The accounts of such agency shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

## 8. COMPLAINT

### 1. Complaint of sexual harassment

### Section 9

Section 9 of the Act provides for the procedure for filing and hearing of complaints under the Act as follows:

1. Any aggrieved woman may make, in writing, a complaint of sexual harassment at work place to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:
2. Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Prompt reporting of an act of sexual harassment is probably as important as swift action to be taken by the authorities on receiving a complaint. In fact the more prompt the complaint is, the more authentic can it be treated.

## 9. CONCILIATION

According to section 10, the Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman, take steps to settle the matter between her and the respondent through conciliation. It is provided that no monetary settlement shall be made as a basis of conciliation.

Where a settlement has been so arrived, the Internal Committee or the Local Committee,

as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation. The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement so recorded to the aggrieved woman and the respondent. No further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be in case where such settlement is arrived.

## 1. Inquiry into Complaint

### Section 11

Section 11 of the Act states the procedure for conducting inquiry into the complaint made under the Act. Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable.

The POSH Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:-

summoning and enforcing the attendance of any person and examining him on oath;	requiring the discovery and production of documents; and	any other matter which may be prescribed.
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Such an inquiry shall be completed within a period of ninety days.

## 2. Action during pendency of inquiry

### Section 12

Section 12 provides for the relief that can be given by IC to the aggrieved woman during pendency of inquiry. During the pendency of an inquiry, on a written request made by the

aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to –

- a. transfer the aggrieved woman or the respondent to any other workplace; or
- b. grant leave to the aggrieved woman up to a period of three months; or
- c. grant such other relief to the aggrieved woman as may be prescribed.

The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

On such recommendation of the Internal Committee or the Local Committee, as the case may be, the employer shall implement the recommendations so made and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

### 3. Inquiry Report

### Section 13

Section 13 of the Act provides for the action report to be submitted by IC or LC after conducting inquiry under the Act. On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be -

- i. to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

- ii. to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15

#### 4. Punishment for false or malicious complaint and false evidence

It is provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section. It is provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended

Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

#### 5. Determining of Compensation

Section 15

Section 15 provides that for the purpose of determining the sums to be paid to the aggrieved woman section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to

- (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) the loss in the career opportunity due to the incident of sexual harassment;
- (c) medical expenses incurred by the victim for physical or psychiatric treatment;
- (d) the income and financial status of the respondent;
- (e) feasibility of such payment in lump sum or in installments

#### 6. Prohibition of publication or making known contents of complaint and inquiry proceedings

Section 16

According to section 16, Notwithstanding anything contained in the Right to Information

Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner.

It is provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

#### **7. Penalty for publication or making known contents of complaint and inquiry proceedings**

#### **Section 17**

According to section 17, where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

#### **10. APPEAL**

#### **Section 18**

Section 18 provides for the appeal by aggrieved person under the Act. Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (1) of section 13 or subsection (I) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such

manner as may be prescribed. Such appeal shall be preferred within a period of ninety days of the recommendations.

## 11. DUTIES OF EMPLOYER

## Section 19

The law has provided for several duties of the employer under section 19 of the Act. Such duties begin at the time when an employer has to set up an internal complaints committee to ensure that aggrieved can file their complaints and seek redressal to such complaints and end at the time when the employer has provided certain data, in accordance with the provisions of the law, in relation to sexual harassment in its annual report. According to the section, every employer shall –

provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;	display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (I) of section 4;	organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;	assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;	make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;
provide assistance to the woman if she so chooses to file a complaint in relation to the offence	cause to initiate action, under the Indian Penal Code 1860 or any other law for the time being in force,	treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

under the Indian Penal Code 1860 or any other law for the time being in force;

against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

monitor the timely submission of reports by the Internal Committee

## 12. DUTIES AND POWERS OF DISTRICT OFFICERS

### Section 20

Section 20 cast upon the following mandatory duties on the District Officer who shall, —

monitor the timely submission of reports furnished by the Local Committee;

take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

## 13. MISCELLANEOUS

### 1. Committee to submit Annual Report

#### Section 21

According to section 21, the Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

The District Officer shall forward a brief report on the annual reports so received to the State Government

### 2. Employer to include information in Annual Report

#### Section 22

According to section 22, the employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Appropriate Government to monitor implementation and maintain data.

Pursuant to the provisions of section 23, the appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

### 3. Appropriate Government to make measure to publicise the Act

#### Section 24

In accordance with section 24, the appropriate Government may, subject to the availability of financial and other resources, —

- (a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace,
- (b) formulate orientation and training programmes for the members of the Local Committee.

### 4. Power to call for information and inspection of records

#### Section 25

Section 25 lists out the power of the appropriate Government under the Act. The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing, —

- a. call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;
- b. authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the

subject matter of such inspection.

### 5. Penalty for non-compliance with provision of the Act

### Section 26

Section 26 provides for a penalty with a fine up to rupees fifty thousand where the employer fails to-

- a. constitute an Internal Committee under sub-section (1) of section 4;
- b. take action under sections 13, 14 and 22; and
- c. contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under.

If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence.

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment.

In addition to above, he shall be liable for cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, by the Government or local authority, as the case may be, for carrying on his business or activity.

### 6. Cognizance of offence by courts

### Section 27

According to section 27, every offence under this Act are non-cognizable which means one cannot be arrested without a warrant. No court shall take cognizance of any offence punishable under this Act or any rules made there under, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

### 7. Act not in derogation of any other Law

### Section 28

Section 28 states that the purpose of the Act is to provide additional safeguard to women at work. According to the section, the provisions of this Act shall be in addition to and not in

derogation of the provisions of any other law for the time being in force.

## 8. Power of Appropriate Government to make rules

## Section 29

Section 29 states that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. 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 fees or allowances to be paid to the Members under sub-section (4) of section 4;
- b. nomination of members under clause (c) of sub-section (I) of section 7;
- c. the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;
- d. the person who may make complaint under sub-section (2) of section 9;
- e. the manner of inquiry under sub-section (I) of section 11;
- f. the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
- g. the relief to be recommended under clause (c) of sub-section (I) of section 12;
- h. the manner of action to be taken under clause (i) of sub-section (3) of section 13;
- i. the manner of action to be taken under sub-sections (1) and (2) of section 14
- j. the manner of action to be taken under section 17;
- k. the manner of appeal under sub-section (1) of section 18;
- l. the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and
- m. The form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (I) of section 21

In 2019, POSH saw an amendment. In general notification issued by Women Development and Child Welfare Department it stated that all businesses in Telangana with ten or more employees are required to register their IC with the State Shebox portal by no later than July 15, 2019. This was done in an effort to help officials better monitor local firms' compliance levels, this is being done.

Maharashtra government also mandated all companies to complete and submit to the Sub-Divisional Magistrate by July 20, 2019, a form explaining their compliance status and internal committee.

# Our Rankers



Pulak Bansal



Sidra Khan



Albiya Shaikh



Khushi Dubey



Kushal Todi



Richa Chokhani



Isha Shah



Kartiki Tulaskar



Mansi Rawat



Deep Patel



Aditya Dakh



Aditi Menon



Femi Jain



Ibrat Khan



Rahul Lakhwani



Kausha Sheth



Kimaya Sonawdekar



Suyash Kasat



Siddharth Nair



Anjali Vishwakarma



Kedar More



Raj Singh



Dhruvi Patel



Vaibhavi Palkar



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