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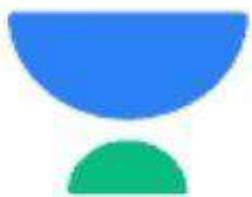
**SBIL Part - B**

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# Contents

<i>Chapter</i>	<i>Chapter Heading</i>	<i>Page No.</i>
<i>PART - B</i>		
<b>Chapter 1</b>	<b>The Industrial Employment (Standing Orders) Act, 1946</b>	<b>1 – 7</b>
<b>Chapter 2</b>	<b>Equal Remuneration Act, 1976</b>	<b>8 – 12</b>
<b>Chapter 3</b>	<b>Contract Labour Act, 1970</b>	<b>13 – 33</b>
<b>Chapter 4</b>	<b>Factories Act, 1948</b>	<b>34 – 55</b>
<b>Chapter 5</b>	<b>Payment of Wages Act 1936</b>	<b>56 – 65</b>
<b>Chapter 6</b>	<b>Minimum Wages Act, 1948</b>	<b>66 – 76</b>
<b>Chapter 7</b>	<b>Industrial Disputes Act, 1947</b>	<b>77 – 96</b>
<b>Chapter 8</b>	<b>Payment of Gratuity Act, 1972</b>	<b>97 – 114</b>
<b>Chapter 9</b>	<b>Maternity Benefit Act, 1961</b>	<b>115 – 123</b>
<b>Chapter 10</b>	<b>The Payment of Bonus Act, 1965</b>	<b>124 – 146</b>
<b>Chapter 11</b>	<b>Child and Adolescent Labour Act, 1986</b>	<b>147 – 153</b>
<b>Chapter 12</b>	<b>Apprentices Act, 1961</b>	<b>154 – 166</b>
<b>Chapter 13</b>	<b>Sexual Harassment of Women at Workplace Act, 2013</b>	<b>167 – 181</b>
<b>Chapter 14</b>	<b>Constitution and Labour Laws</b>	<b>182 – 193</b>
<b>Chapter 15</b>	<b>Employees' State Insurance Act, 1948</b>	<b>194 – 210</b>
<b>Chapter 16</b>	<b>Provident Funds Act, 1952</b>	<b>211 – 224</b>
<b>Chapter 17</b>	<b>Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988</b>	<b>225 – 228</b>
<b>Chapter 18</b>	<b>Evaluation of Labour Legislation and Need of Labour Code</b>	<b>229 – 241</b>

# Chapter – 1

## The Industrial Employment(Standing Orders) Act, 1946

### List of Sections

Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(a)	Appellate authority
2(b)	Appropriate Government
2(c)	Certification officer
2(d)	Employer
2(e)	Industrial establishment
2(g)	Standing orders
2(i)	wages & workman
3	Submission of draft Standing order
4	Conditions for certification of S.O & Fairness or reasonableness of S.O.
5	Certification of standing order
6	Appeals
7	Date of operation of standing order
8	Register of standing order
9	Posting (Display) of standing order
10	Duration and modification of standing order
10A	Subsistence allowance
12A	Temporary application of model standing orders
13A	Interpretation of standing order
13B	Act not to apply to certain industrial establishments
14	Power to exempt

### Introduction

The Industrial Employment (Standing Orders) Act, 1946 is designed to provide service rules to workmen. The object of the Act is to require employers in industrial establishments to formally define conditions of employment under them.

#### CASE LAW

**Barauni Refinery Pragati Sheel Parishad vs. Indian Oil Corporation Ltd. (1991)**

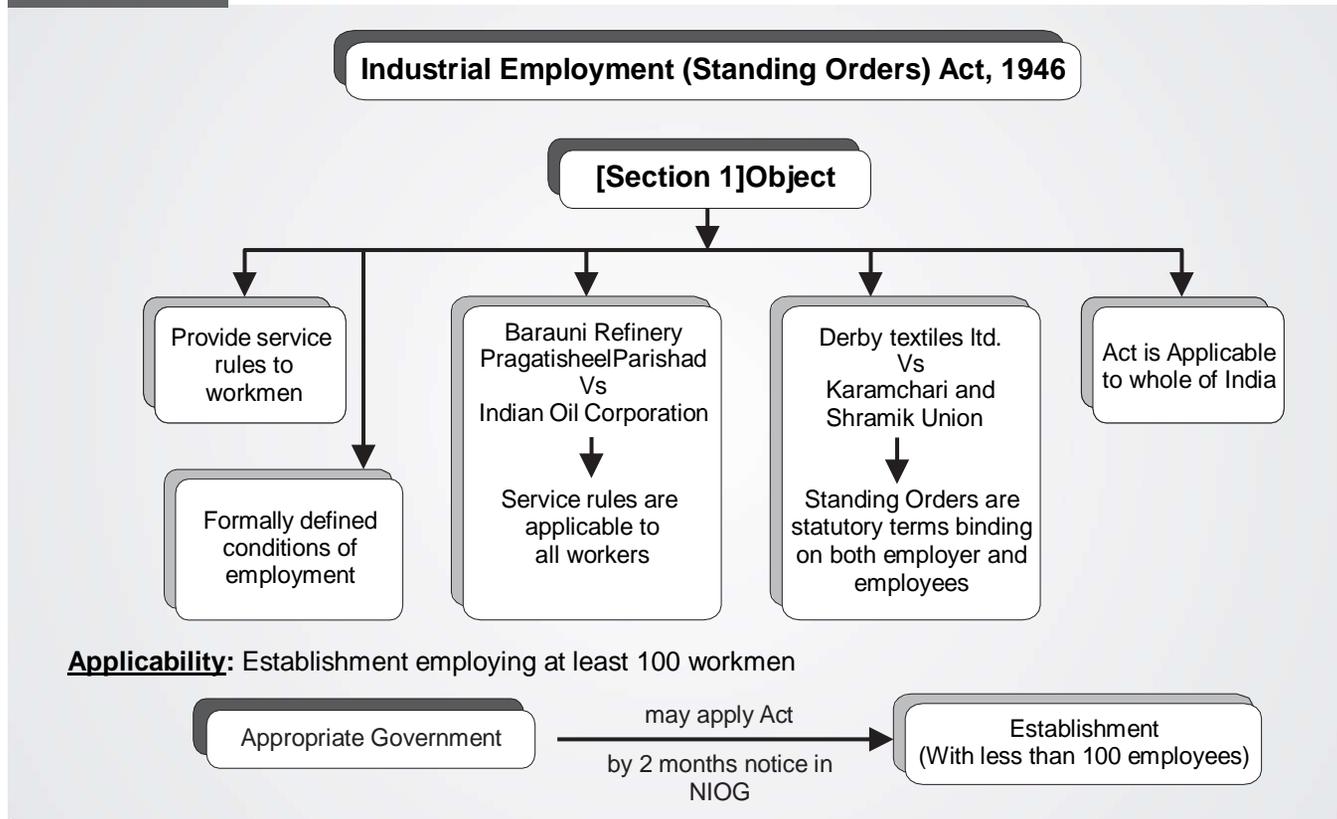
The object of the Act is to have uniform standing orders in respect of matters enumerated in the Schedule to the Act, applicable to all workers irrespective of their time of appointment (**Barauni Refinery Pragati Sheel Parishad vs. Indian Oil Corporation Ltd. (1991)**)

## CASE LAW

Derby Textiles Ltd. vs. Karamchari and Shramik union (1991)

Certified standing orders become part of the statutory and not contractual terms and conditions of service and are binding on both the employer and the employees (**Derby Textiles Ltd. vs. Karamchari and Shramik union (1991)**)

## Quick Recap



## Definitions

**[Section 2(a)] Appellate Authority**

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.

**[Section 2(b)] Appropriate Government**

“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**.

**[Section 2(c)] Certifying Officer**

“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.

**[Section 2(d)] Employer**

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

- i. A **manager so** named under [Section 7(1) (f)] of the **Factories Act, 1948**.
- ii. The **head of the department** or any authority appointed by the Government in any **industrial establishment**

under its control.

- iii. Any person responsible to the owner for the **supervision and control** of any other industrial establishment which is not under the control of Government. [(Section 2(d)].

**[(Section 2(e)] Industrial Establishment**

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.

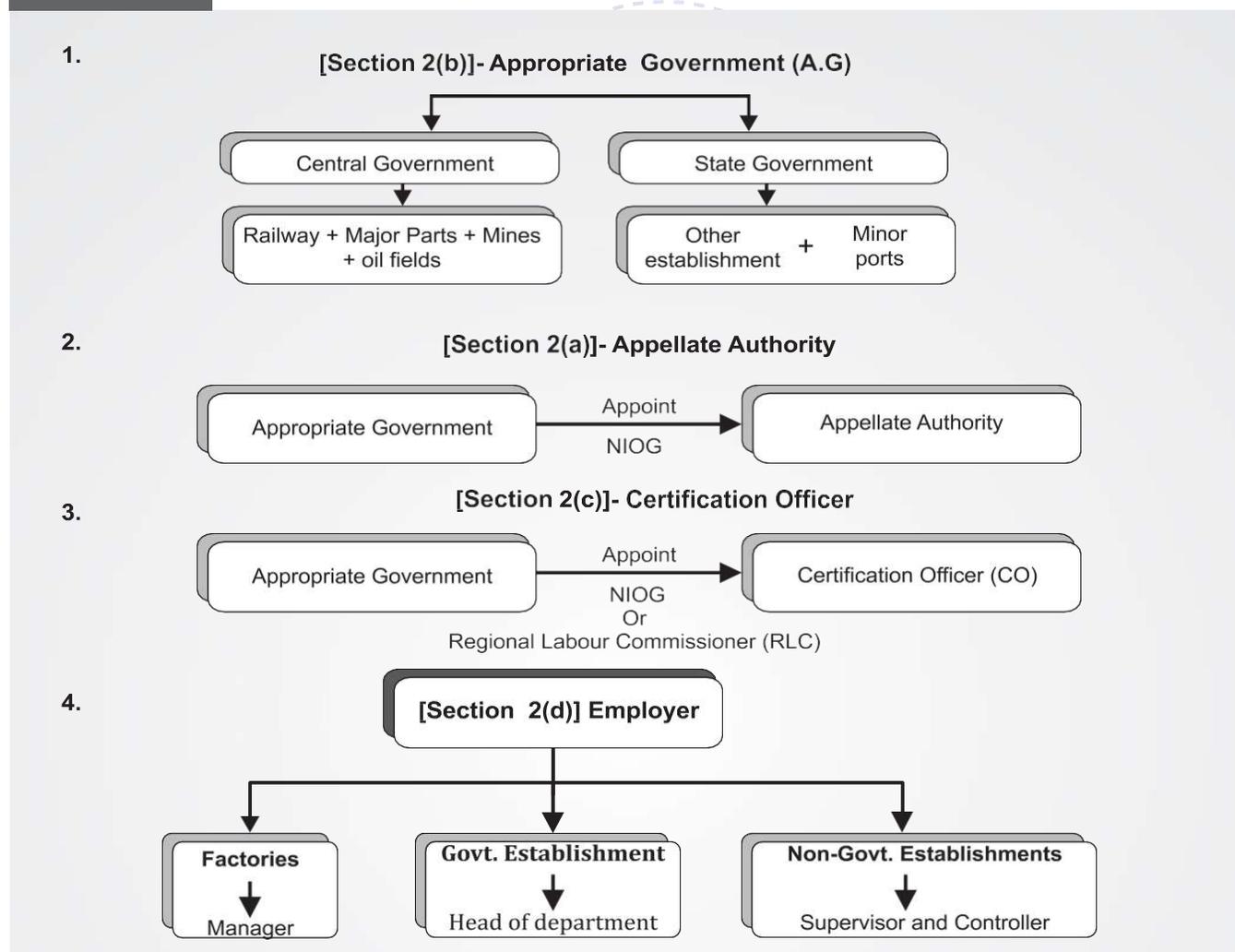
**[(Section 2(g)] Standing Orders**

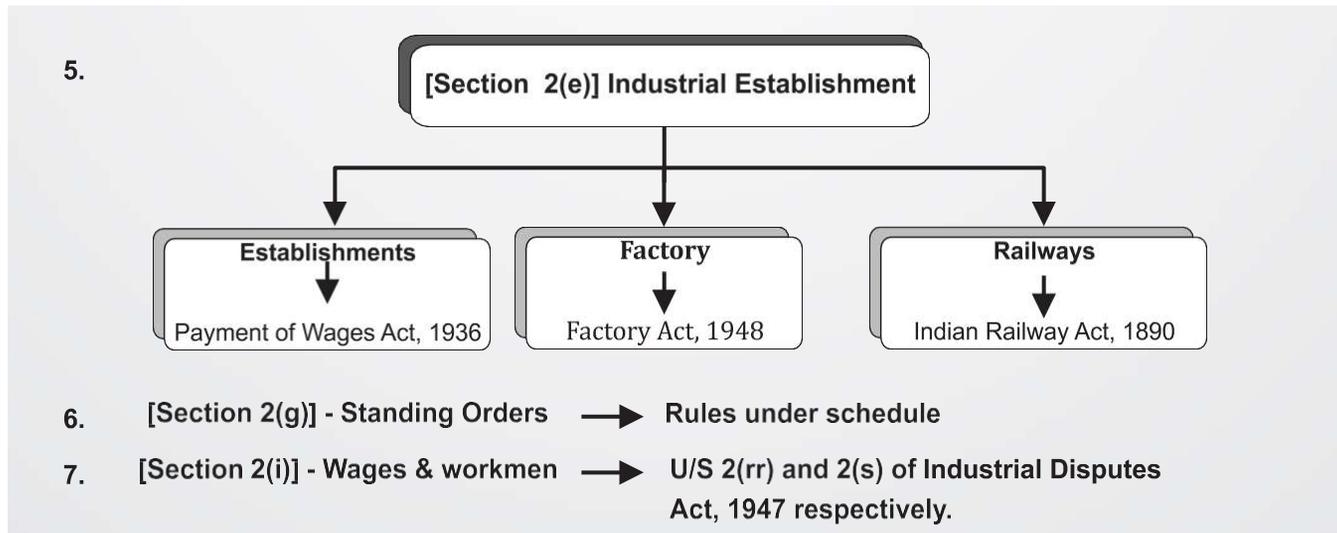
“Standing orders” means rules relating to matters set out in the schedule to the Act.

**[(Section 2(f)] Wages & workman:**

Have the meaning respective, assigned to them in clause (rr) & (s) of section 2 of Industrial Disputes Act, 1947.

**Quick Recap**





### Meaning of Standing Orders

Standing Orders mean rules of conduct for workmen employed in an industrial establishment. As per the Act, the standing orders must specify for the following:

- 1) Classification of workmen i.e., temporary, casual, skilled, etc.
- 2) Manner of intimating working hours, shift change, transfers, etc. to workmen
- 3) Holidays
- 4) Attendance and late coming rules
- 5) Leave rules
- 6) Termination of employment, suspension, dismissal, etc. for misconduct
- 7) Retirement age
- 8) Means of redressal of workmen against unfair treatment
- 9) Any other matter as may be prescribed.

### Applicability of the Act

The Act is applicable to all industrial establishments employing 100 or more workmen. The term industrial establishment includes factory, transport service, construction work, mines, plantation, workshop, building activity, transmission of power, etc.

### [Section 3] Approval of Standing Orders

Every employer covered under the Act has to prepare standing orders covering the matters required under the Act. Five copies of the standing orders shall be sent to Certifying Officer (Labour Commissioner) for approval within six months of Act becoming applicable.

### [Section 4] Fairness or reasonableness of 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.

### [Section 5] Certification of Standing Order

The Certifying Officer will inform the workman and shall hear their objections within 15 days of receipt of notice. After that, he will certify the standing orders for industrial establishment. Until the standing orders are certified, Model Standing Orders prepared by the Government shall automatically apply.

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.

CASE LAW	Eicher Good earth Ltd. vs. R.K. Soni
Once the standing orders are specified, they supersede any terms and conditions of employment contained in the employment letter. If there is any inconsistency between standing orders and appointment letter, provisions of standing orders shall prevail.	

**[Section 6] Appeals**

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 workman, 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.

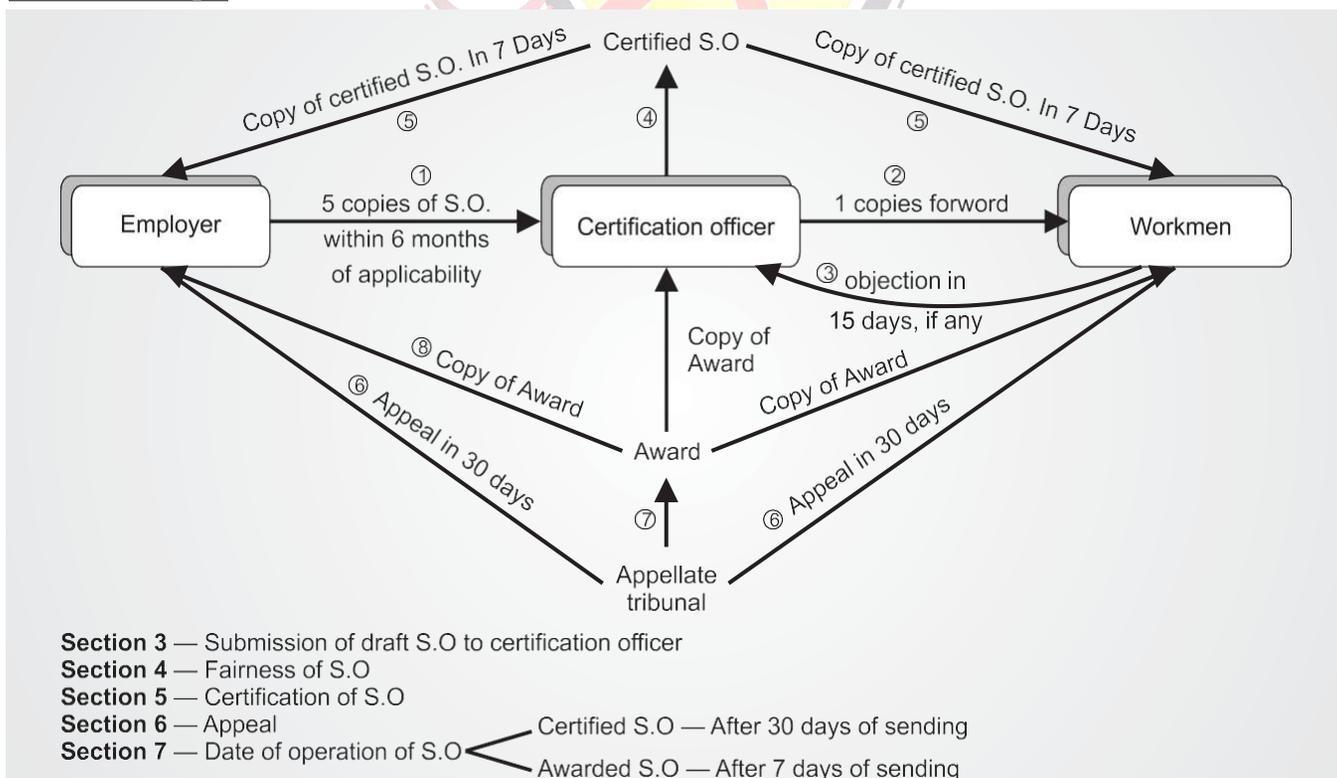
CASE LAW	Khadi Gram Udyog Sangh Vs Jeet Ram
The appellate authority has no power to set aside the order of certifying officer. It can confirm or amend standing orders.	

CASE LAW	Re - Kerala Agro Machinery Corporation (1998)
The appellate authority cannot remand the matter for fresh consideration. (Only Disputed matter).	

**[Section 7] Date of Operation of Standing Orders**

Standing Orders shall come into operation on the expiry of 30 days from the date of which the authenticated copies are sent to employer and workers, representatives or where an appeal has been performed, 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.

**Quick Recap**



**[Section 8] Maintaining of Register**

Empowers Certifying Officer to file a copy of Standing Orders as Certified by him in a Register maintained for this purpose. He shall furnish a copy to anyone applying thereof on payment of prescribed fees.

**[Section 10] Application for Modification**

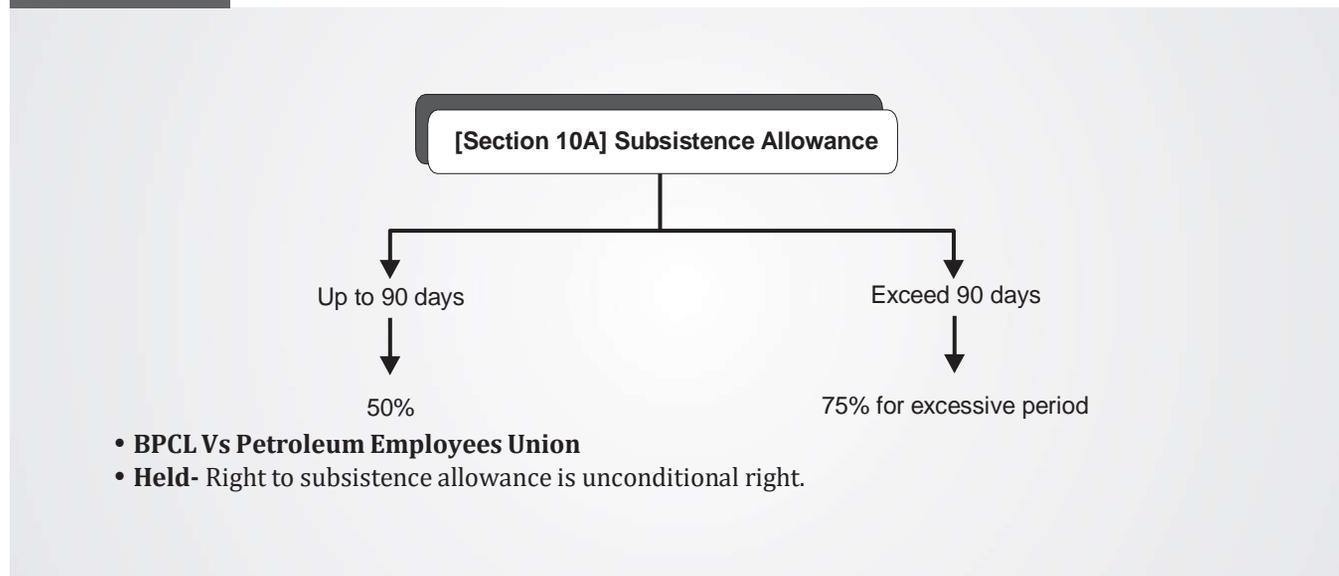
An application for modification of standing order can be made only after expiry of 6 months from the date of applicability or last modification.

**[Section 10A] Subsistence Allowance**

Where workman is suspended by employer pending investigation or enquiry into complaints or charge of misconduct against him, the workman shall be paid subsistence allowance equal to **50% of wages for the first 90 days of suspension and 75% for the remaining period until completion of disciplinary proceedings.**

Here 'Wages' has the same meaning as given under the Industrial Disputes Act, 1947.

Quick Recap



**[Section 13A] Interpretation of Standing Orders**

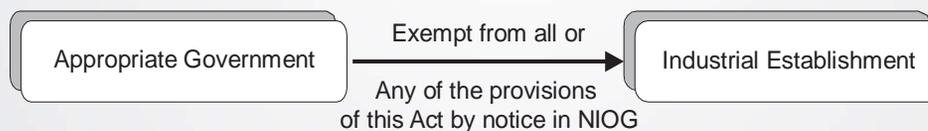
Section 13-A of the Act provides that the question relating to application or interpretation of a Standing Order certified under this Act, can be referred to any **Labour Court** constituted under the Industrial Disputes Act, 1947 by any employer or workman or a trade union or other representative body 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.

## Quick Recap

**[Section 13A] Interpretation of Standing orders**

Order of Labour Court shall be Final and Binding

- **[Section - 13B]** Exemption of certain Industrial Establishment from the purview of this Act
- **[Section 14]**

**[Section 13B]**

Exempt Certain Industrial establishment from the purview of this Act where Fundamental and Supplementary Rules, Civil Services Rules, Civil Services Regulations, Civil in Defence Services Rules or Indian Railway Establishment Code or any other rules or regulations that may be notified by Appropriate Government in NIOG applies.

**[Section 14]**

Appropriate Government may exempt any Industrial establishment from all or any of the provisions of this Act by giving notification in NIOG.

**Relevant Judgements**

<b>CASE LAW</b>	<b>Indian Iron and Steel Co. Ltd. vs. Ninth Industrial Tribunal</b>
	1. Where there are two categories of workers, daily rated and monthly rated but the certified Standing Orders are in respect of daily rated workmen only, the Model Standing Orders can be applied to monthly rated workmen.
<b>CASE LAW</b>	<b>Derby Textiles Ltd. vs. Karamchari and Shramik Union</b>
	2. Certified Standing Orders are a part of the statutory and not contractual terms and conditions of service and are binding on both the employer and the employees. In case where there are no certified Standing Orders applicable to an industrial establishment, the prescribed Model Standing Orders shall be deemed to be adopted and applicable.
<b>CASE LAW</b>	<b>Indian Express Employees Union vs. Indian Express (Madurai) Ltd.</b>
	3. Workmen are entitled to apply for modification of the Standing Orders. Modification Application can be made at any time but not within 6 months of certification or last amendments.
<b>CASE LAW</b>	<b>BPCL vs. Petroleum Employees Union</b>
	4. It was held that right to get the subsistence allowance during the period of suspension is an unconditional right and it cannot be affected by requiring the suspended workman to mark his attendance to get the subsistence allowance.

## Chapter – 2

# Equal Remuneration Act, 1976

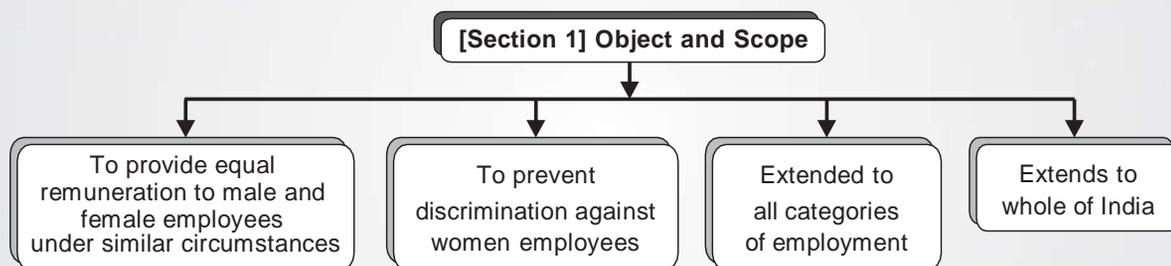
### List of Sections

Sections	Particulars of Section
1	Object and scope
2	Definitions
2(a)	Appropriate Government
2(d)	Men and Women
2(g)	Remuneration
2(h)	Same work or work of similar nature
3	Act to have overriding effect
4	Duty of employer to pay equal remuneration
5	No discrimination to be made while recruitment
6	Advisory committee
7	Power of Appropriate Government to appoint officer to hear complaints
8	Duty of employer to maintain register
9	Inspector
10	Penalty

### [Section 1] Object and Purpose of the Act

- ◆ 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**. (Section 4)
- ◆ It also **prevents discrimination** against women employees while making **recruitment**. (Section 5)
- ◆ The **provisions** of the Act are **applicable to all** categories of **employment**.
- ◆ The Act extends to **whole of India**.

### Quick Recap



**Note:** Article 39 of Indian Constitution states about equal Remuneration Act, 1976 before commencement of this act.

**[Section 2] Define the Following Terms**

**[Section 2(a)] “Appropriate Government” means:**

- ♦ In relation to any employment carried on by or under the **authority of the Central Government** or a **railway** administration, or in relation to a **banking company, a mine, oilfield or major port** or any corporation established by or under a central Act, the **Central government, and**
- ♦ In relation to any **other employment**, the **State Government**.

**[Section 2(d)] “Men” and “Women”**

It means **male and female** i.e. human beings, respectively, **of any age**.

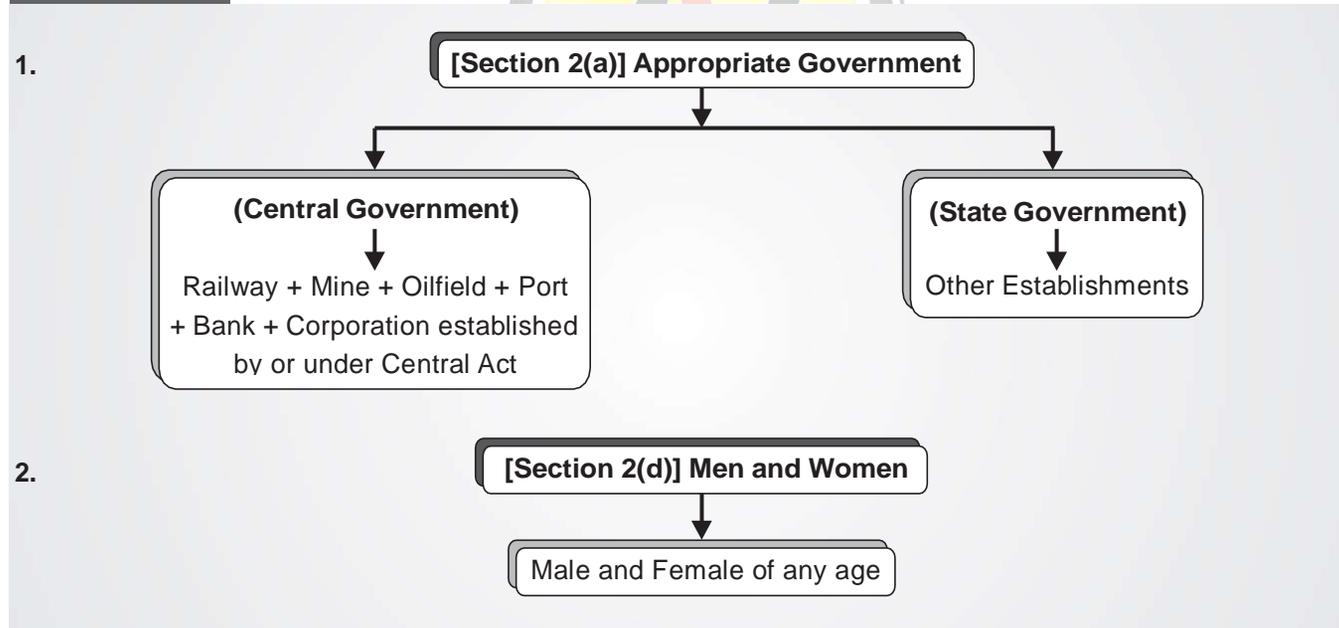
**[Section 2(g)] Remuneration**

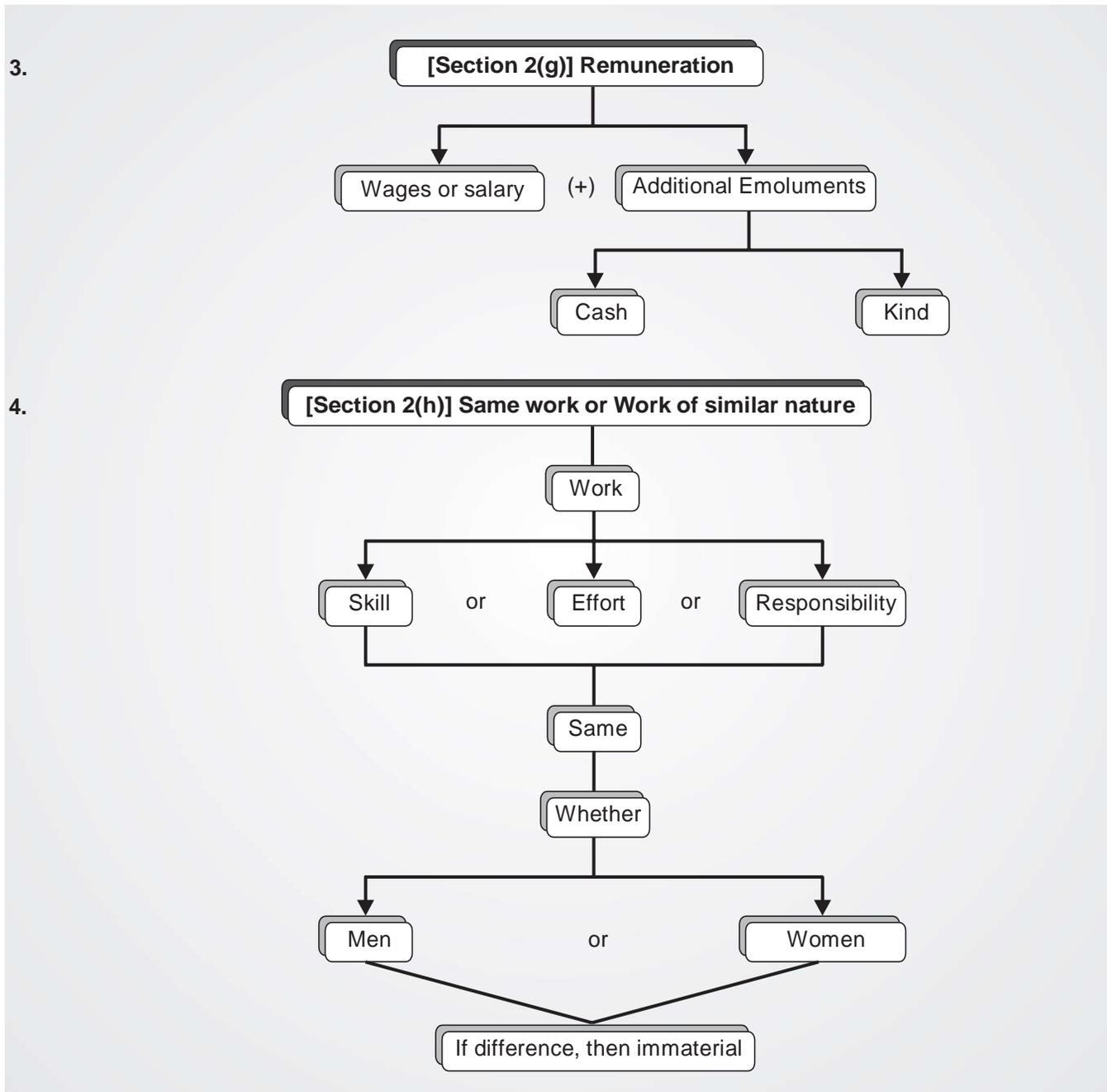
Remuneration means the **basic** wage or salary, **and** any **additional emoluments** whatsoever payable, **either in cash or in kind**, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled.

**[Section 2(h)] Same Work or Work of a Similar Nature**

It 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 a woman **are not of practical importance** in relation to the terms and conditions of employment.

**Quick Recap**





**[Section 3] Act to have Overriding Effect**

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.

**[Section 4] Duty of Employer to Pay Equal Remuneration to Men and Women Workers for Same Work or Work of a Similar Nature**

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.**

**[Section 5] Discrimination not to be made while Recruiting Men and Women**

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 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.

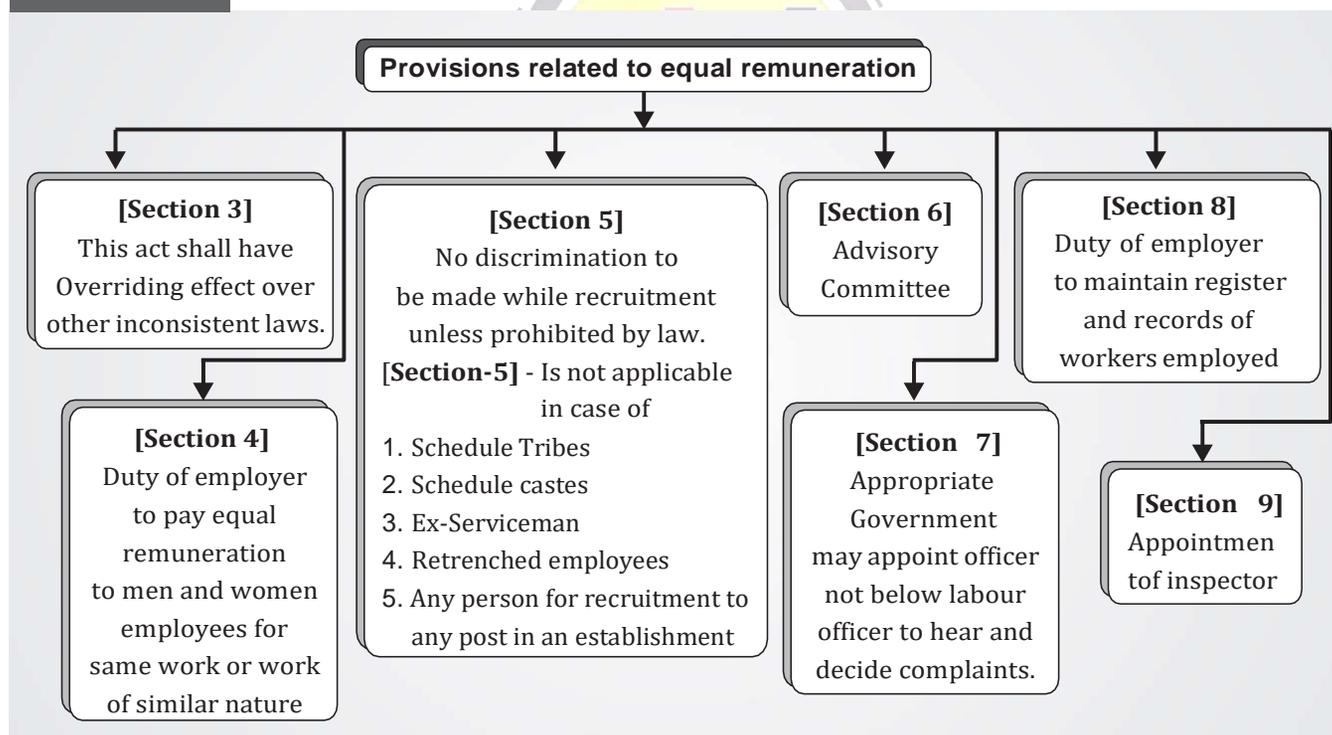
**[Section 7] Authorities for Hearing and Deciding Claims and Complaints**

Section 7 of the Act empower the **Appropriate Government to appoint** officers, **not below the rank of a Labour officer** as the authorities for the purpose of hearing and deciding complaints and define the **local limits** with which each such authority shall exercise its **jurisdiction.**

**[Section 8] Maintenance of Registers**

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

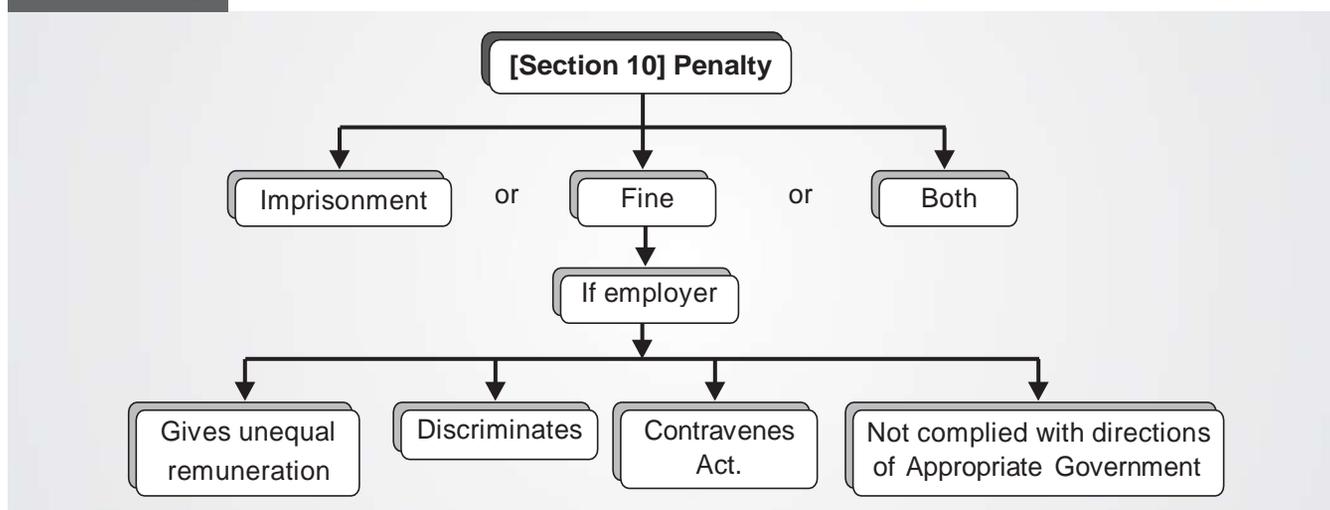
Quick Recap



**[Section 10] Penalty**

If any employer:

- (a) Makes any **recruitment in contravention** of the provisions of this Act, **Or**
- (b) Makes any payment of remuneration at **unequal rates** to men and women workers for the same work or work of a similar nature, **Or**
- (c) **Makes any discrimination** between men and women workers in contravention of the provisions of this Act, **Or**
- (d) 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.**

**Quick Recap**

## Chapter - 3

# Contract Labour Act, 1970

### List of Sections

Sections	Particulars of Sections
1	Scope and Applicability
2	Definitions
2 (1) (a)	Appropriate Government
2 (1) (b)	Contract Labour
2 (1) (c)	Contractor
2 (1) (d)	Control Industry
2 (1) (e)	Establishment
2 (1) (g)	Principal Employer
2 (1) (i)	Workman
3	Central Advisory Board
4	State Advisory Board
5	Power to Constitute Committees
6	Appointment of Registering Officer (R.O)
7	Registration of certain establishment
8	Revocation of registration in certain cases
9	Effect of non - registration
10	After - effect of abolition of Contract Labour
11	Appointment of licensing officer
12	Licensing of contractors
13	Grant of licenses
14	Revocation, suspension and amendment of license
15	Appeals
16	Canteen
17	Restroom
18	Other facilities
19	First aid facilities
20	Liability of principal employer in certain cases
21	Responsibility for payment of wages
22	Penalty for obstructing inspector
23	Penalty for contravention of act or rules
24	Other offences or miscellaneous penalty
25	Offences by companies
26	Cognizance of offences
27	Limitation of prosecution
28	Inspecting staff
29	Registers and other records to be maintained

**Purpose/Objective of the Act**

The purpose of the Act is to **regulate the employment of Contract Labour** and to provide for **abolition and prohibition of contract labour** in certain cases.

**Scope and Applicability of the Act**

The Act extends to the **whole of India**. According to **Section 1(4)**, it applies:

- a. To every **establishment** in which **twenty or more workmen** are employed or were employed on any day of the **preceding twelve months** as contract labour.
- b. To every **contractor who employs** or who employed on any day of the preceding twelve months **twenty or more workmen**.

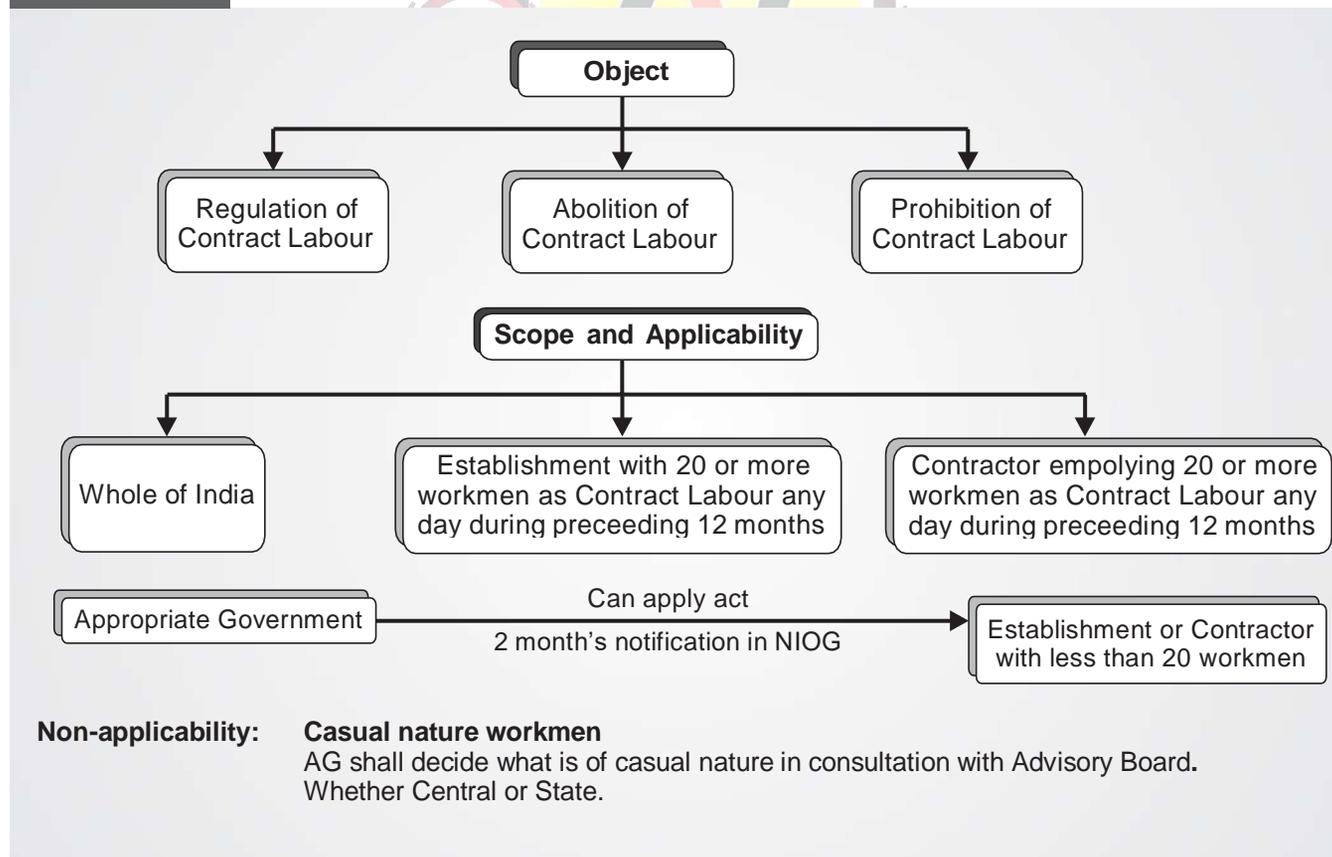
The **Appropriate Government** may, after giving **not less than two months notice** of its intention to do so, **by notification in the Official Gazette, apply the provisions** of this Act to any establishment or contractor employing such number of workmen **less than twenty** as may be specified in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

**Act not to apply to certain establishments**

According to **Section 1(5)**, the Act shall **not apply** to establishments in which work only of an intermittent or **casual nature** is performed.

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

Quick Recap



### Define the Following Terms

- [Section 2(1)(a)] **Appropriate Government**

“Appropriate Government” means

- In relation to an establishment in respect of which the Appropriate Government under the **Industrial Disputes Act, 1947** is the **Central Government**, and the State Government.
- In relation to any **other establishment**, the Government of the **State** in which that other establishment is situated.

- [Section 2(1)(b)] **Contract Labour**

A **workman** is deemed to be employed as contract labour in or in relation to the work of the establishment if he is hired for such work by or through a contractor, with or without the knowledge of the principal employer.

- [Section 2(1)(c)] **Contractor**

“Contractor”, in relation to an establishment, means a person **who undertakes to produce** a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who **supplies contract labour** for any work of the establishment and includes a sub-contractor.

- [Section 2(1)(e)] **Establishment**

Establishment means any office or department of Government or a local authority or any place where any industry, trade, business, manufacturing, or occupation is going on. Every such **establishment** is required to get itself **registered under the Act**.

- [Section 2(1)(g)] **Principal Employer**

“Principal Employer” means

- In relation to any office or department of the **Government** or a local authority, the **head of** that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf.
- In a **factory**, the owner or **occupier** of the factory and where a person has been named as the **manager** of the factory under the Factories Act, 1948, the person so named.
- In a **mine**, the owner or agent of the mine and where a person has been named as the **manager of the mine**, the person so named.
- In any **other establishment**, any person responsible for the **supervision** and control of the establishment.

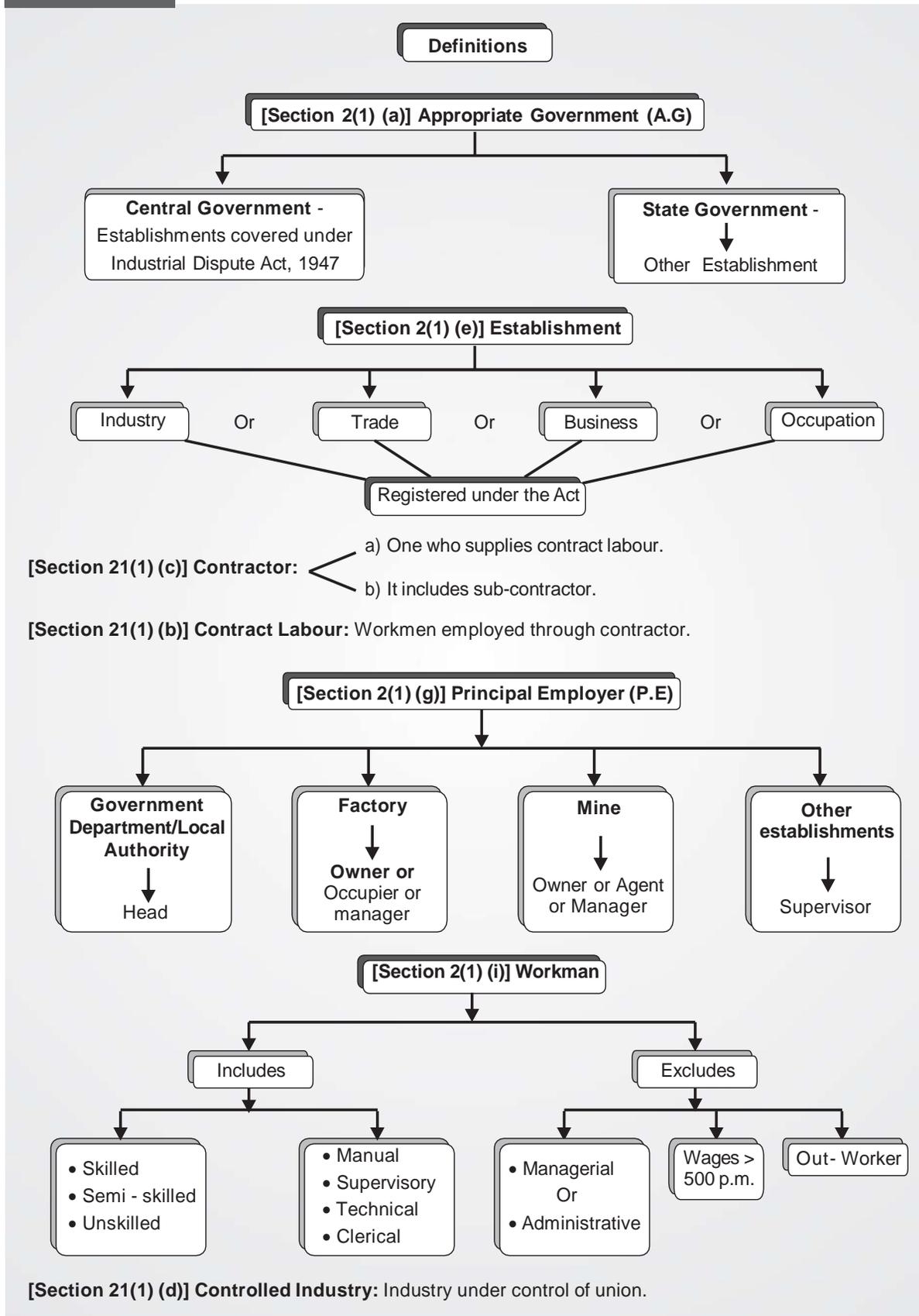
- [Section 2(1)(i)] **Workman**

“Workman” means any person employed in or in connection with the work of any establishment to do any **skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical** work for hire or reward, whether the terms of employment be expressed or implied, but **does not include** any such person:

- ♦ Who is employed mainly in a **managerial or administrative capacity**, or
- ♦ Who, being employed in a **supervisory capacity** draws wages exceeding **five hundred rupees per mensem** or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature, or
- ♦ Who is an **out-worker**, that is to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of trade or business of the principal employer and the process is to be carried out either in the home of the

out worker or in some other premises not being premises under the control and management of the principal employer.

Quick Recap



**The Advisory Boards**

**Central Advisory Board**

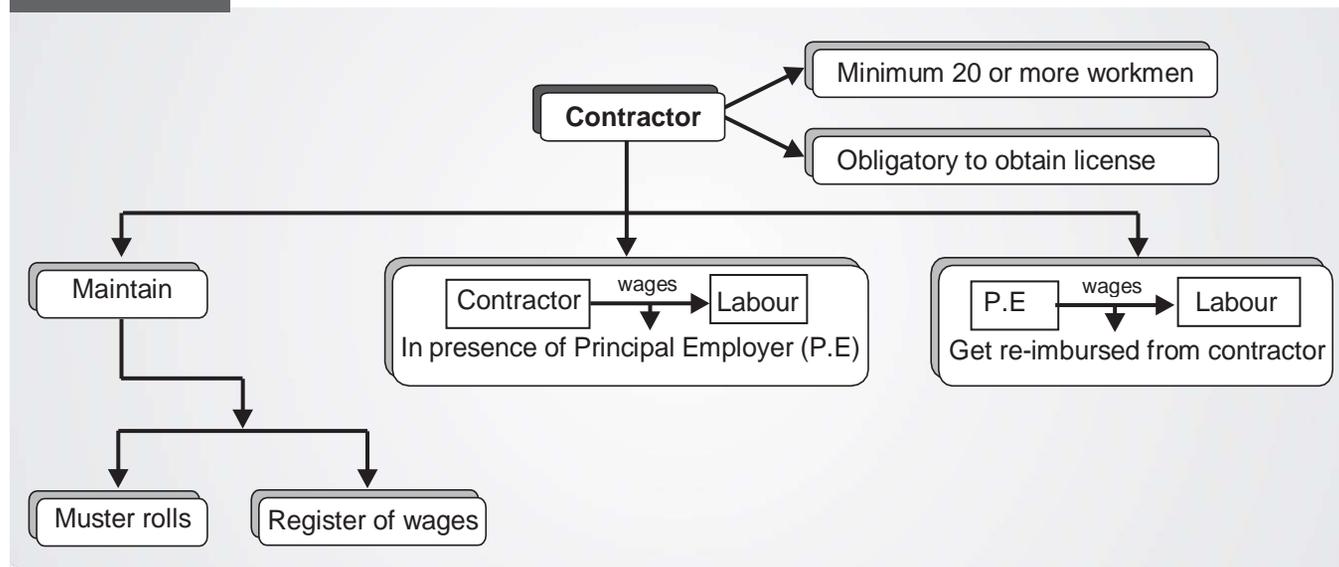
**Section 3** requires the Central Government to constitute a Central Advisory Contract Labour Board to **advise the Central Government** on such matters arising out of the administration of the Act as may be referred to it and to **carry out other functions assigned** to it under the Act.

**Contractor**

The Act applies to every contractor who **employs 20 or more workmen**. The contractor covered under this Act is required to **obtain a license** under this Act.

- ♦ A contractor is required to **maintain Muster Rolls and Register of Wages**.
- ♦ He is required to pay wages to workmen in time and in the presence of authorized representative of principal employer.
- ♦ If the **contractor fails to make payment** of wages, **principal employer is liable** to make payment of wages to contract labour. However, he can recover this amount from the contractor.
- ♦ A contractor is also required to provide certain facilities to the contract labour such as canteen facilities, restrooms, first aid, drinking water, toilets, etc.

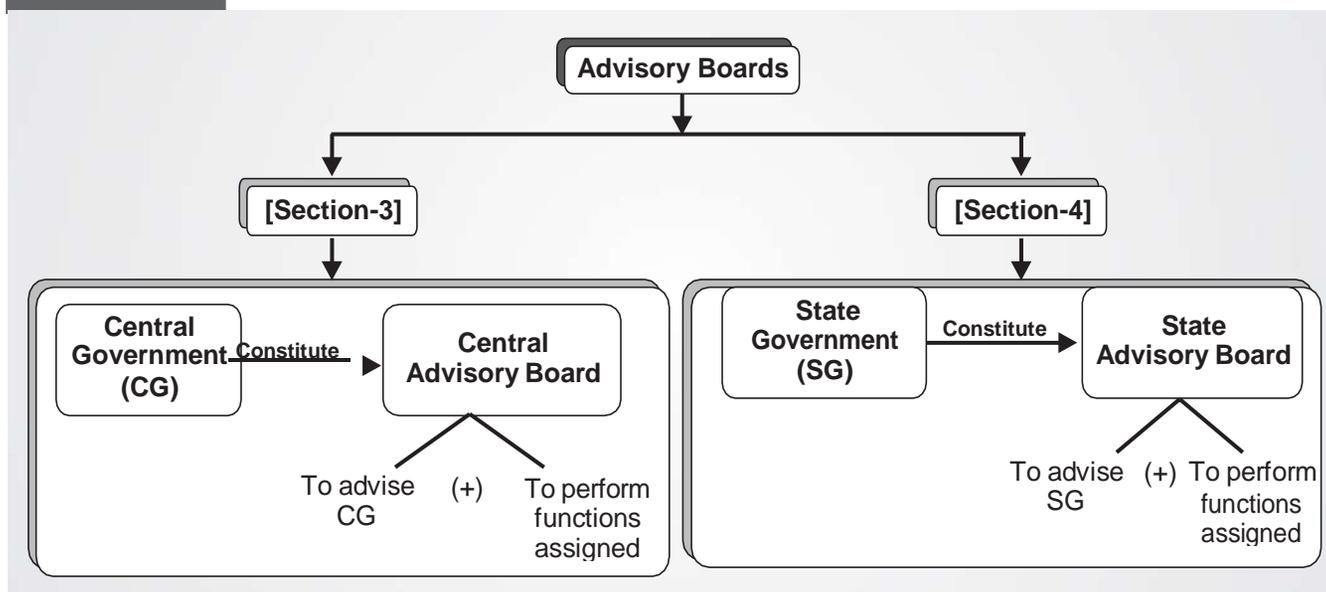
Quick Recap



**State Advisory Boards**

**Section 4** similarly requires the State Government to constitute the State Advisory Contract Labour Board to **advise the State Governments** on such matters arising out of the administration of the Act as may be referred to it and to **carry out other functions assigned** to it under the Act.

## Quick Recap

**Prohibition on Employment of Contract Labour**

**Appropriate Government** can prohibit employment of contract labour in any process, operation, or work in any establishment, by **issuing a notification**. Before issuing such order in respect of any establishment, appropriate Government will consider the following factors:

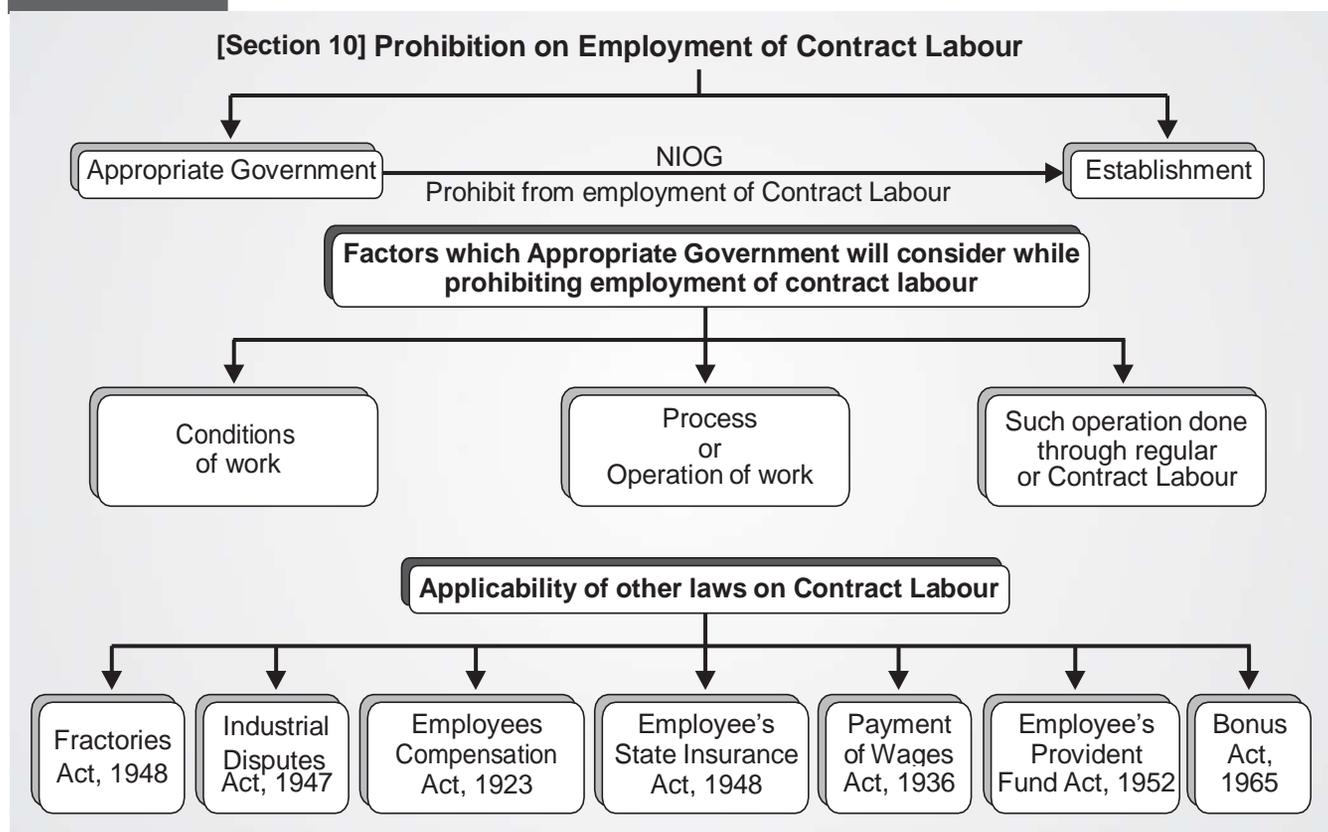
- ♦ Conditions of work and benefits provided to contract labour.
- ♦ Whether process, operation or work is incidental or necessary for the industry, trade, or business.
- ♦ Whether such process, operation, or work is done ordinarily through regular workmen or contract labour in other similar establishments.

**Applicability of Other Laws to Contract Labour**

Besides Contract Labour (Regulation and Abolition) Act, following Acts are also applicable to contract labour:

- 1) Factories Act, 1948
- 2) Industrial Disputes Act, 1947
- 3) Employees' Compensation Act, 1923
- 4) Employees' State Insurance Act, 1948
- 5) Payment of Wages Act, 1936
- 6) Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

## Quick Recap

**Registration of Establishments Employing Contract Labour**

In order to secure its objectives and purposes, the Act contains provisions for registration of establishments employing contract labour.

**[Section 6] Appointment of Registering Officer**

**Section 6** empowers the **Appropriate Government** to appoint by **Notification in the Official Gazette**, persons being **gazette officers** of Government, to be registering officers and define the limits within which a Registering Officer shall exercise the powers conferred on him by or under the Act.

**[Section 7] Registration of Certain Establishments**

Every **establishment** covered by the Act, if it wants to engage **twenty or more persons** through a contractor has to get **itself registered**.

**Section 7** of the Act lays down that every Principal Employer of an **establishment** to which the Act applies shall make an **application** to the **registering officer** in the prescribed manner for registration of the establishment within the **prescribed time limit**. A **registration fee** varying from **`20 to `500** which is **related** to the **number of workmen** employed as contract labour, is payable.

If the application 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 in the prescribed form.

**[Section 8] Revocation of Registration in Certain Cases**

The registration can be revoked in the following circumstances:

1. If the registering officer is satisfied, either on a reference made to him in his behalf or otherwise, that the registration has been obtained by **mis-representation or suppression of any material fact**,

Or

2. That the registration has become useless and become **ineffective** for any other reason and, therefore, requires to be revoked.

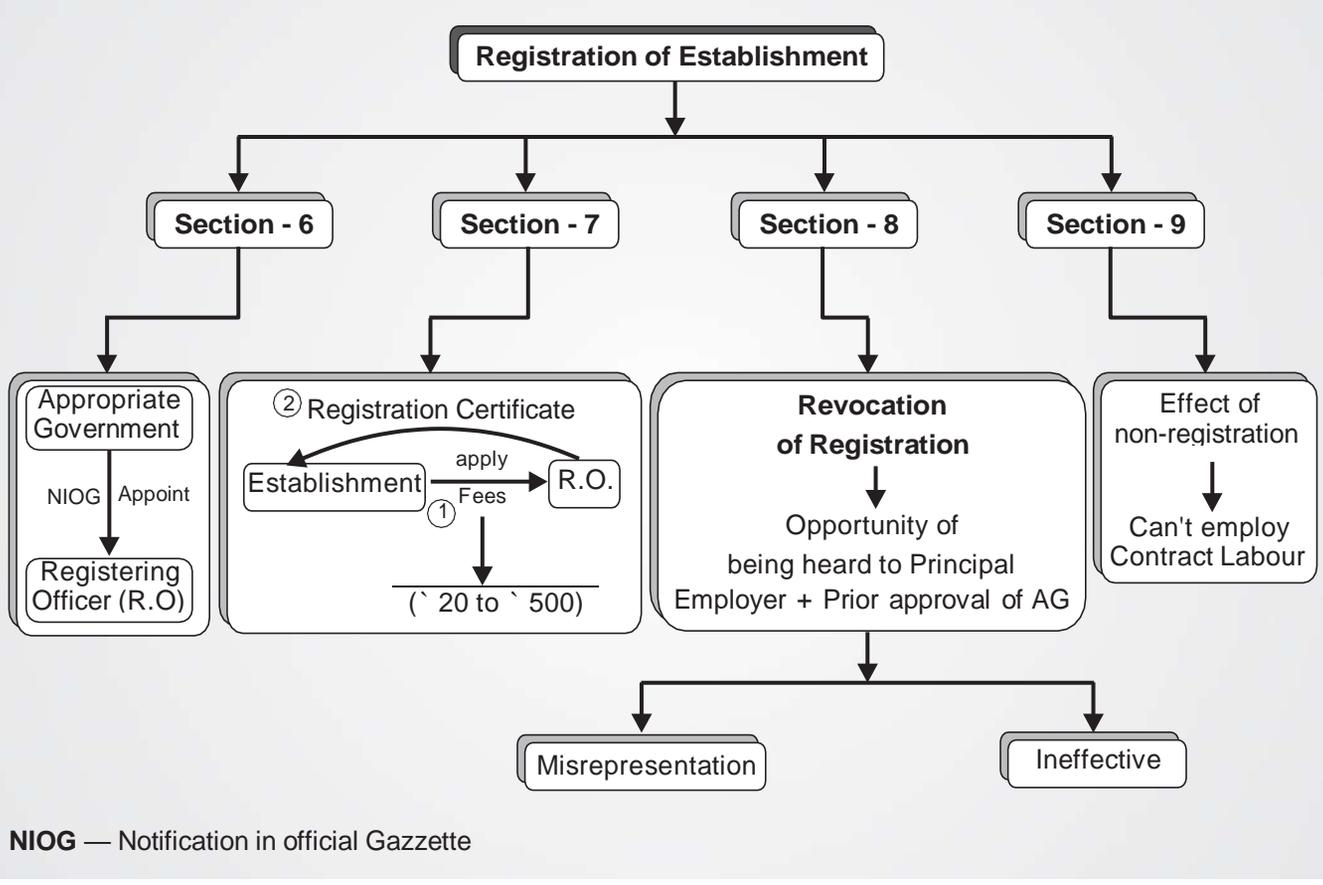
In both the cases, the registering officer shall give an **opportunity to the Principal Employer** of the establishment to be heard. He will also obtain **previous approval of the Appropriate Government** in case the registration is to be revoked.

**[Section 9] Effect of Non-Registration**

**No principal employer** of an establishment to which the Act applies can **employ contract labour**, if

- ♦ He has **not obtained** the **certification** of registration; or
- ♦ A **certificate** has been **revoked** after being issued.

**Quick Recap**



**[Section 10] After-effect of Abolition of Contract Labour**

At present there is **no provision** in the Act for **absorption of contract labour** in the event of prohibition of employment of contract labour in any category of work/jobs under **Section 10** of the Act. There have been **complaints** that **contract workers** are being **thrown out** of employment in the jobs covered by the relevant notification.

**CASE LAW | Dena Nath case 1991**

It overruled its earlier decision of two member bench of the Court (Dena Nath case 1991). In this case, it was held that High Court in exercise of its power under Article 226 could not drive at the absorption of contract labour (on its abolition) as direct employees of the principal employer.

**CASE LAW | Gujarat Electricity Board, AIR 1995 SC 2942**

The Court also overruled another important case (Gujarat Electricity Board, AIR 1995 SC 2942) wherein it was held that on abolition of contract labour their employees are free to raise their cause for reference under Section 10 of Industrial Disputes Act, 1947 seeking absorption of contract labour. After abolition of contract labour system, if the principal employer omits to able by the law and fails to absorb the contract labour worked in the establishment on regular basis, the workmen have no option but to seek redress under Article 226 of the Constitution.

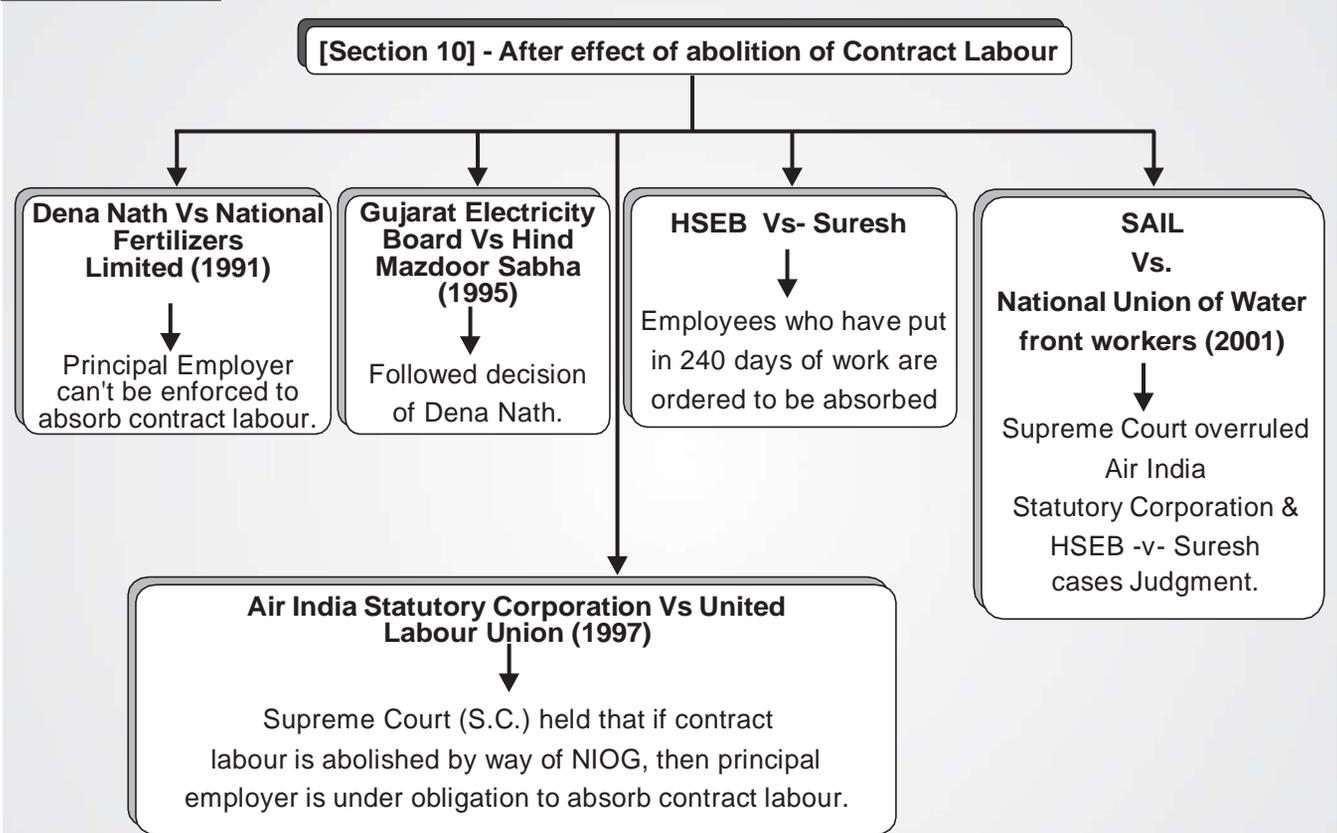
**CASE LAW | Air India Statutory Corporation vs. United Labour Union, AIR 1997 SC 645**

On the crucial question as to after effect of abolition of contract labour under Section 10 of the Act, the Supreme Court in Air India Statutory Corporation vs. United Labour Union, AIR 1997 SC 645, held that a High Court in exercise of its jurisdiction under Article 226 of the constitution, can direct a principal employer in an appropriate case to absorb the workman concerned after abolition of the contract labour.

**CASE LAW | Steel Authority of India vs. National Union of Water Front Workers and others, AIR 2001 SC 3527**

In Steel Authority of India vs. National Union of Water Front Workers and others, AIR 2001 SC 3527, the Supreme Court overruled the judgement delivered in the Air India Statutory Corporation Case. The Apex court held that neither Section 10 of the Act nor any other provision in the Act whether expressly or by necessary implication provides for automatic absorption of contract labour on issuing a notification by the Appropriate Government under Section 10(1) prohibiting employment of contract labour in any process or operation or other work in any establishment.

**Quick Recap**



**Current Status:** Principal employer can't be ordered to absorb contract labour in concerned establishment.



## Conclusion

**Consequently, the principal employer cannot be required to order absorption of contract labour working in the concerned establishment.**

### [Section 11] Appointment of Licensing Officer and Licensing of Contractors

Apart from registration of establishments employing contract labour, the Act contains provisions for licensing of contractors.

**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.

### [Section 12] Licensing of Contractors

Under **Section 12** of the Act, no contractor to whom the Act applies can undertake or execute any work through contract labour except under and in accordance with the license issued in that behalf by the licensing officer. The **license** may contain such **conditions** including, in particular, conditions as to **hours of work, fixation of wages** and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules framed under the Act.

The license shall be issued on the payment of **prescribed** fee and on the **deposit of security**, if any, for the due performance of the conditions prescribed in the license. The license fee ranges from **₹5 to ₹125** depending on the number of workmen employed by the contractor. The license is **not-transferable**.

### [Section 13] Grant of License

- ♦ An application for the grant of license has to be made in the prescribed form.
- ♦ It should contain particulars regarding the location of establishment, nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.
- ♦ The license is issued after necessary investigation by the licensing officer. It is valid for the period specified therein (12 months under the Central rules) and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

### [Section 14] Revocation, Suspension and Amendment of License

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

- (a) the license has been obtained by misrepresentation or suppression of any material fact or
- (b) the holder of license has, without reasonable cause, failed to comply with the conditions subject to which the license has granted or has contravened of any of the provisions of the Act or the rules made there under,

The licensing officer may revoke or suspend the license. He has also the powers to forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject the license was granted.

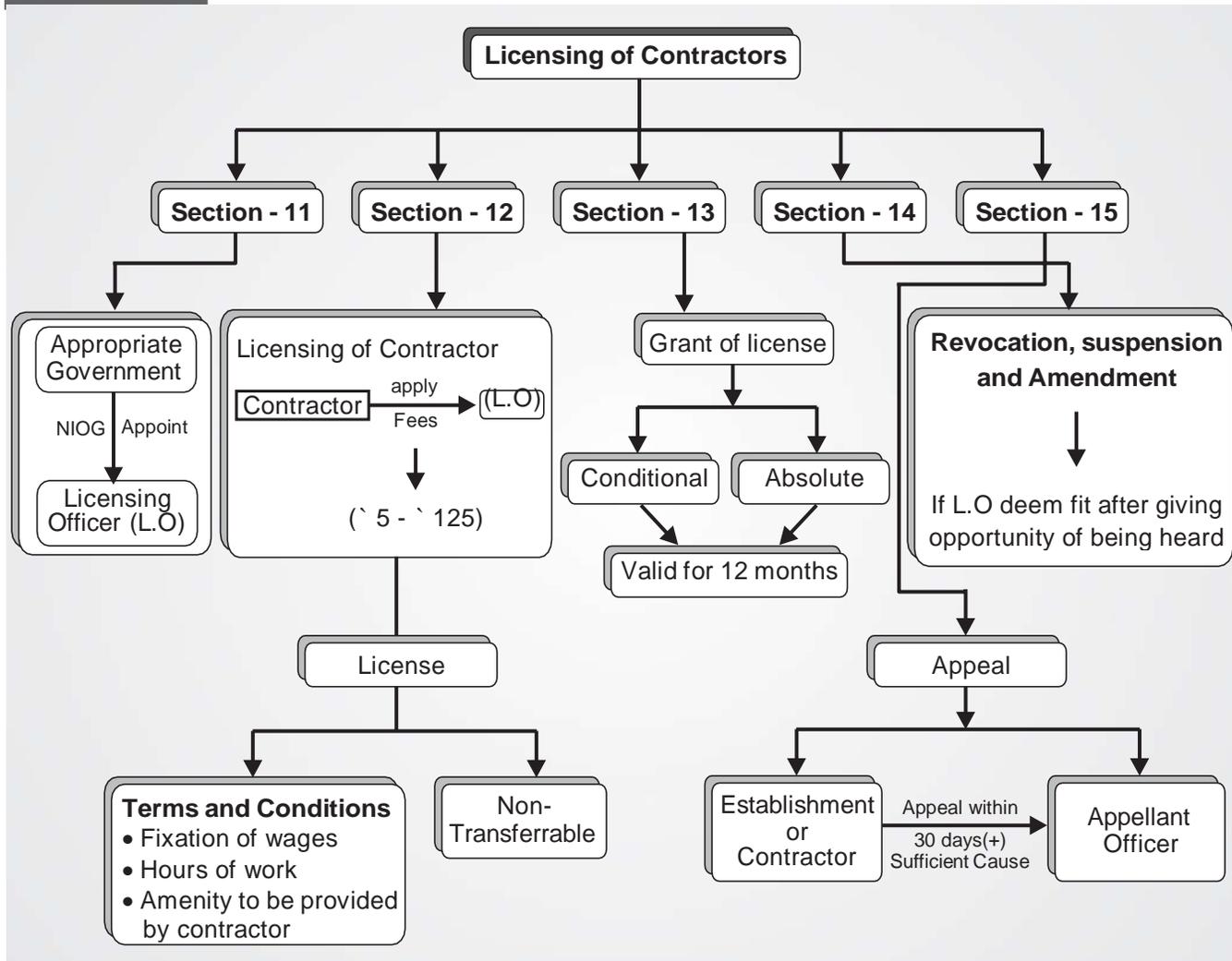
However, before revoking or suspending the license or ordering forfeiture of the security deposit by the contractor, the licensing officer has to give the holder of the license an opportunity of showing cause. The Licensing Officer may vary or amend a license subject to the rules that be made in this behalf.

### [Section 15] Appeals

The Act makes provision for appeals against orders relating to grant of registration to establishments, revocation of registration and revocation/suspension of licenses. The aggrieved person may within 30 days from the date on which the order is communicated to him prefer an appeal to an

appellate officer who shall be a person nominated in this behalf by the Appropriate Government. The appellant officer may entertain an appeal even after the expiry of 30 days, if he is satisfied that there was sufficient cause for the delay. The appellant officer shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

**Quick Recap**



**Welfare and Health of Contract Labour**

The contractors are required to take certain specific measures for the welfare and health of contract labour. This, of course, arises in those employments in which the system of contract labour has not been abolished.

The relevant provisions are as follows:

- (i) **Canteens:** As per section 16 appropriate Government has powers to make rules requiring that in every establishment to which the Act applies and wherein contract labour numbering 100 or more is ordinarily employed by a contractor and the employment of the contract labour is likely to continue for such period as may be prescribed, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour. The rules may provide for the date by which the canteen shall be provided, the number of the canteens and the standards in respect of constitution, accommodation, furniture and other equipment of the canteens, the food stuffs which may be served therein and the charges which may be

made therefor.

- (ii) **Rest rooms:** Section 17(1) makes the following provisions. In every place where contract labour is required to halt at night in connection with the work of an establishment to which the Act applies and in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such of the suitable alternative accommodation to be provided under Sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.
- (iii) **Other facilities:** It shall be the duty of every contractor employment contract labour in connection with the work of an establishment to which the 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 conveniently situated and accessible to the contract labour; and
  - (c) washing facilities. (Section 18)

**First Aid facilities:** The contractor is required to provide and maintain a first aid box equipped with the prescribed contents at every place, where contract labour is employed by him. The first aid box should be readily accessible during working hours. (Section 19)

**Liability of the principal employer in certain cases:** If the prescribed amenities (canteens, rest rooms and other facilities, first aid box) are not provided by the contractor within the prescribed time, then such amenities shall be provided by the principal employer within such time as may be specified. According to Section 20(2), all expenses incurred by the principal employer in providing the amenity may be recovered by him 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)

**Responsibility for payment of wages:** A common complaint against the contractors has been that some of them do not pay proper wages to the contract labourers or that payments are not made in time or that arbitrary deductions are made from wages. To take care of such malpractices, Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, lays down that the Contractor shall pay wages in the presence of the authorised representative of the Principal employer. An obligation is also cast on the principal employer to nominate a representative duly authorised by him to be present at the time of disbursement of wages.

The text of Section 21 is reproduced below:

“Section 21. (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

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

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

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

### Rules Framed Under the Act by the Central Government on the Question of Wages

Rules 63 to 73 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 are reproduced below:

63. The contractor shall fix wage periods in respect of which wages shall be payable.
64. No wage period shall exceed one month.
65. The wage of every person employed as contract labour in an establishment or by a contractor where less than one thousand such persons are employed shall be paid before the expiry of tenth day after the last day of the wage period in respect of which wages are payable.
66. Where the employment of any worker is terminated by or on behalf of the contractor 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.
67. All payments of wages shall be made on a working day at the working premises and during the working time and on a date notified in advance and in case the work is completed before the expiry of the wage period, final payment shall be made within 48 hours of the last working day.
68. Wages due to every worker shall be paid to him direct or to other authorised by him in his behalf.
69. All wages shall be paid in current coin or currency or in both.
70. Wages shall be paid without any deductions of any kind except those specified by the Central Government by general or special order in this behalf or permissible under the Payment of Wages Act, 1936.
71. A notice showing the wage-period and the place and time of disbursement of wages shall be displayed at the place or work and a copy sent by the contractor to the Principal Employer under acknowledgement.
72. The Principal Employer shall ensure the presence of his authorised representative at the place and time of disbursement of wages by the contractor to workmen and it shall be the duty of the contractor to ensure the disbursement of wages in the presence of such authorised representative.
73. The authorised representative of the principal employer shall record under his signature a certificate at the end of the entries in the Register of Wages-cum-Muster Roll, as the case may be in the following form: "Certified that the amount shown in columns No     has been paid to the workmen concerned in my presence on.....at...."

### Penalties and Procedure

The Act refers to the following types of offences and provide for penalties as shown against each.

#### [Section 22]

- (a) Obstructing an inspector in the discharge of his duties under the Act or refusal or wilful neglect to afford the inspector reasonable facility for making any inspection, examination, enquiry or investigation authorised by or under the Act in relation to an establishment to which, or a contractor to whom, this Act applies [Section 22(1)].
- (b) Willful refusal to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevention or attempted prevention or doing anything which the inspector 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 [Section 22(2)].

#### [Section 23]

Contravention of any provision of the Act or any rule made thereunder prohibiting or restricting or regulating employment of contract labour or contravention of any condition of a license granted

under the Act.

In case of a continuing contravention an additional fine which may extend to `100/- per day during which the contravention continues after conviction for the first such contraventions, may be imposed.

**[Section 24]**

Contravention of any of the provisions of the Act or of any rule made thereunder for which no penalty is elsewhere provided.

**[Section 25]**

**Offences by companies**

- (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

(Section 25)

*Explanation:* For the purpose of this Section

- (a) "company" means any body corporate and includes a firm or other association of individuals; and  
 (b) "director", in relation to a firm means a partner in the firm.

**[Section 26] Cognizance of offence:** Section 26 provides that 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.

**[Section 27] Limitation of prosecutions:** Section 27 prescribing limitation of prosecutions stipulates that no Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

It has been held by the Patna High Court in *Padam Prasad Jain v. State of Bihar and another*, (1979) 1 LLJ p. 111, that executing contract labour without a licensee, constituted a fresh offence every day on which it continued and, therefore, the limitation prescribed under Section 27 for taking cognizance of an offence does not apply.

**[Section 28] Inspectors**

Under Section 28 of the Act, appropriate Governments have been given powers to appoint

inspectors for the purposes of the Act and to define the local limits within which they shall exercise their powers. Sub-section (2) of Section 28 dealing with powers of Inspectors, read as follows:

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

- (a) enter, at all reasonable hours, with such assistance (if any), being 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;
- (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workmen employed therein;
- (c) require any person giving out work and any workmen, to give any information, which is in his powers to give with respect to the names and addresses of the persons to, for an from whom the work is given out or received, and with respect to the payments to be made for the work;
- (d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and
- (e) exercise such other powers as may be prescribed.

Sub-section (3) of Section 28 provides that any person required to produce any document or thing to give any information required by an inspector under Sub-section (2) shall be deemed to be legally bound to do so within the meaning of Section 175 and Section 176 of the Indian Penal Code.

Sub-section (4) lays down that the provisions of the Code of Criminal Procedure shall, so far as may be, apply to any search or seizure under Sub-section (2) as they apply to any search or seizure under the authority of a warrant issued under the Code.

### **[Section 29] Maintenance of Records and Registers**

Section 29 states that every principal employer and every contractor shall maintain such registers and records in such forms as may be prescribed.

The registers and records to be maintained, the notices to be displayed and the returns to be submitted by the contractors and the principal employer to the registering officers or/and licensing officer are explained in detail in the rules framed under the Act by the Central Government and the State Government.

The principal employers and the contractors are also required to 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. Exemption to small and very small establishment.

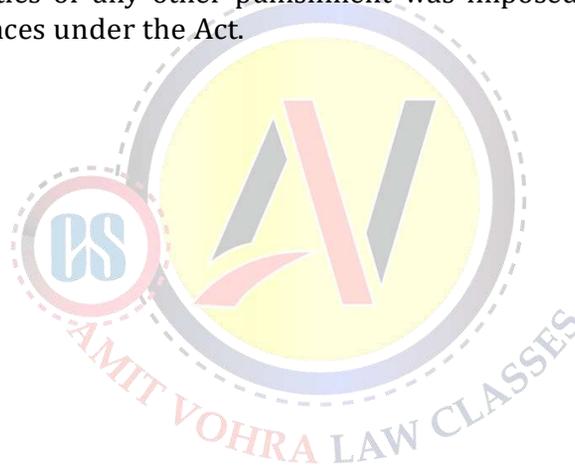
Labour Laws (Exemption to Small and Very Small Establishments) Act, 1988 provides for exemptions of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws including Contract Labour (Regulation and Abolition) Act, 1970 (as given in Schedule I). The Act has come into effect on 1st May, 1989.

As per this Act "small establishments" (establishments employing not less than 10 persons and not more than 40 persons) are required to furnish a Annual Return in Form I and maintain Registers Form II, Form II, and Form D and "very small establishments" (establishments employing not more than 9 persons) are required to furnish return in Form I and maintain Register in Form III prescribed under this Act. This requirement is in lieu of furnishing of such returns/maintaining of such registers prescribed under various labour laws mentioned in Schedule I to this Act.

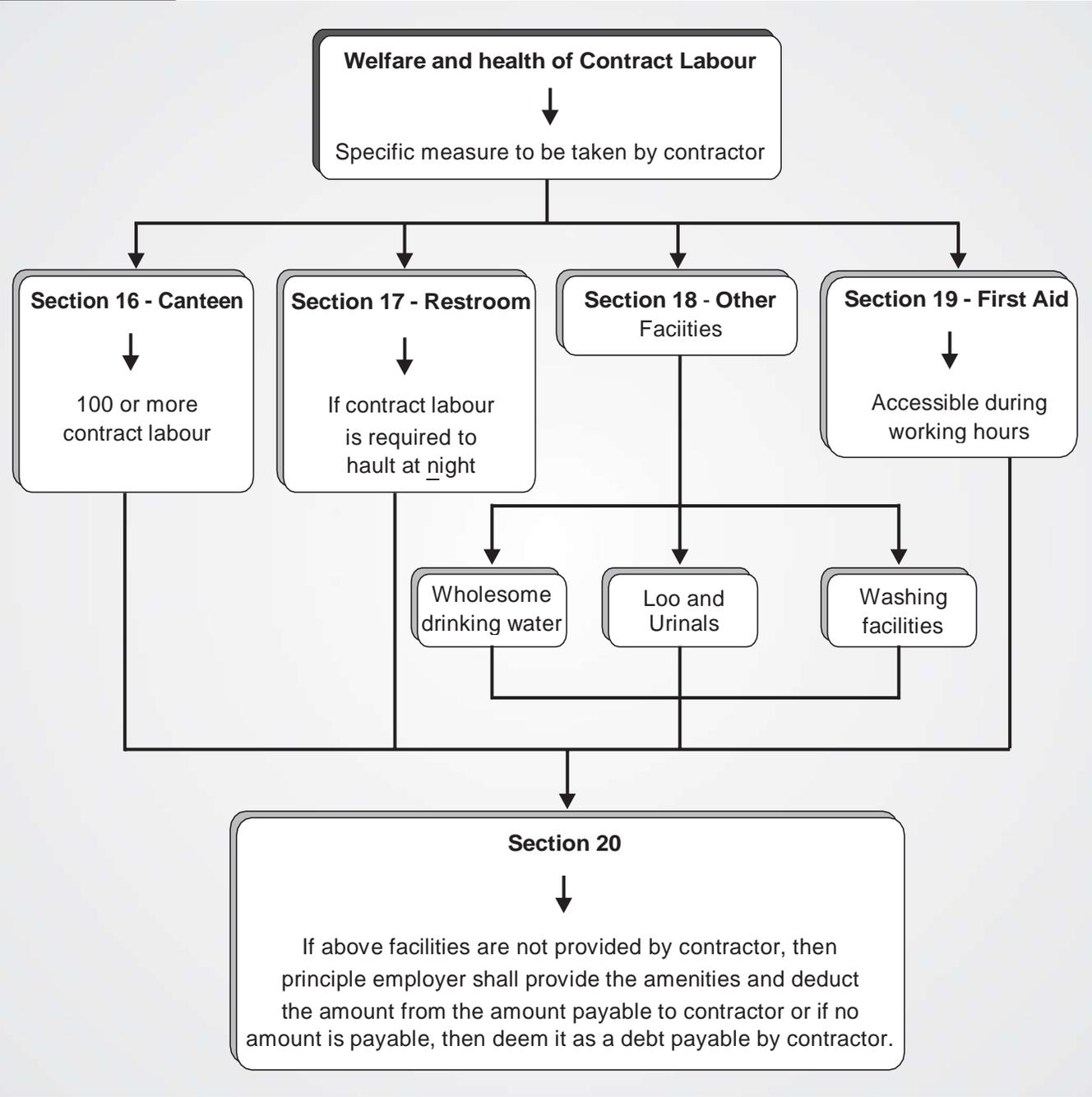
**Compliances Under the Act**

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

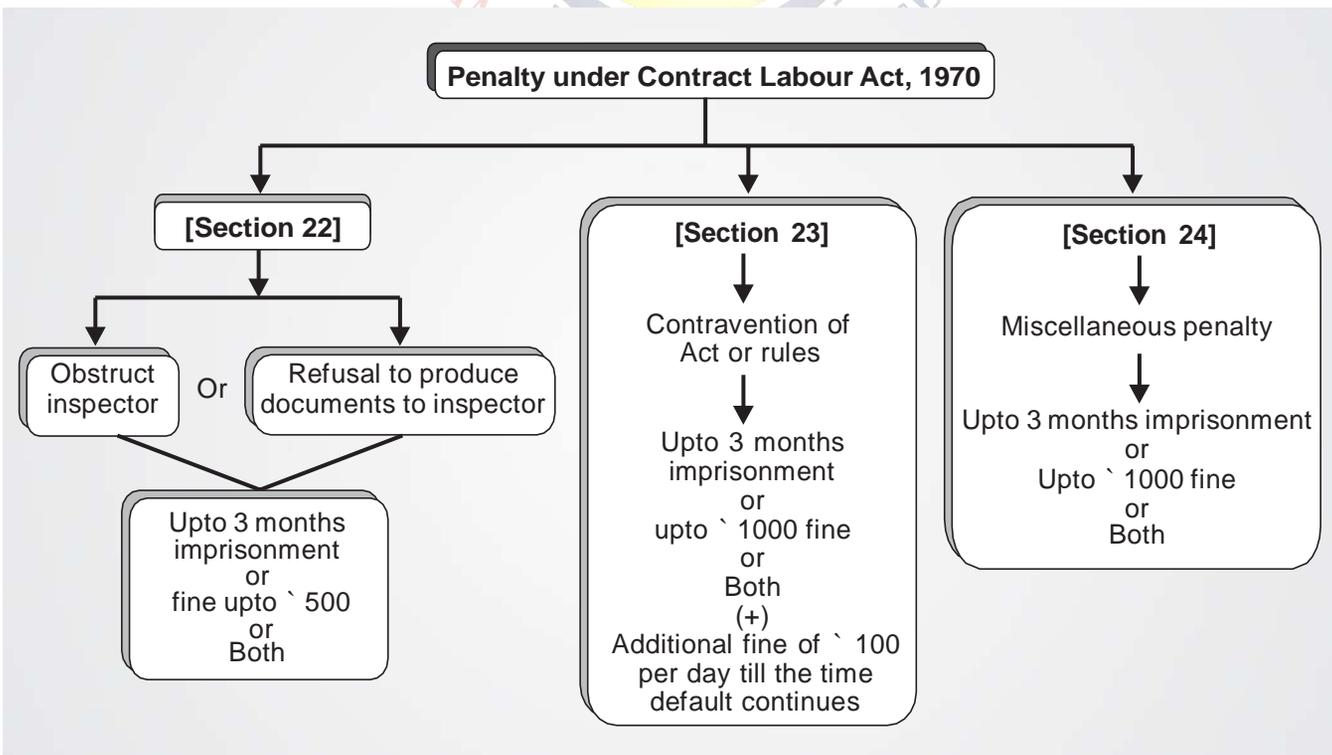
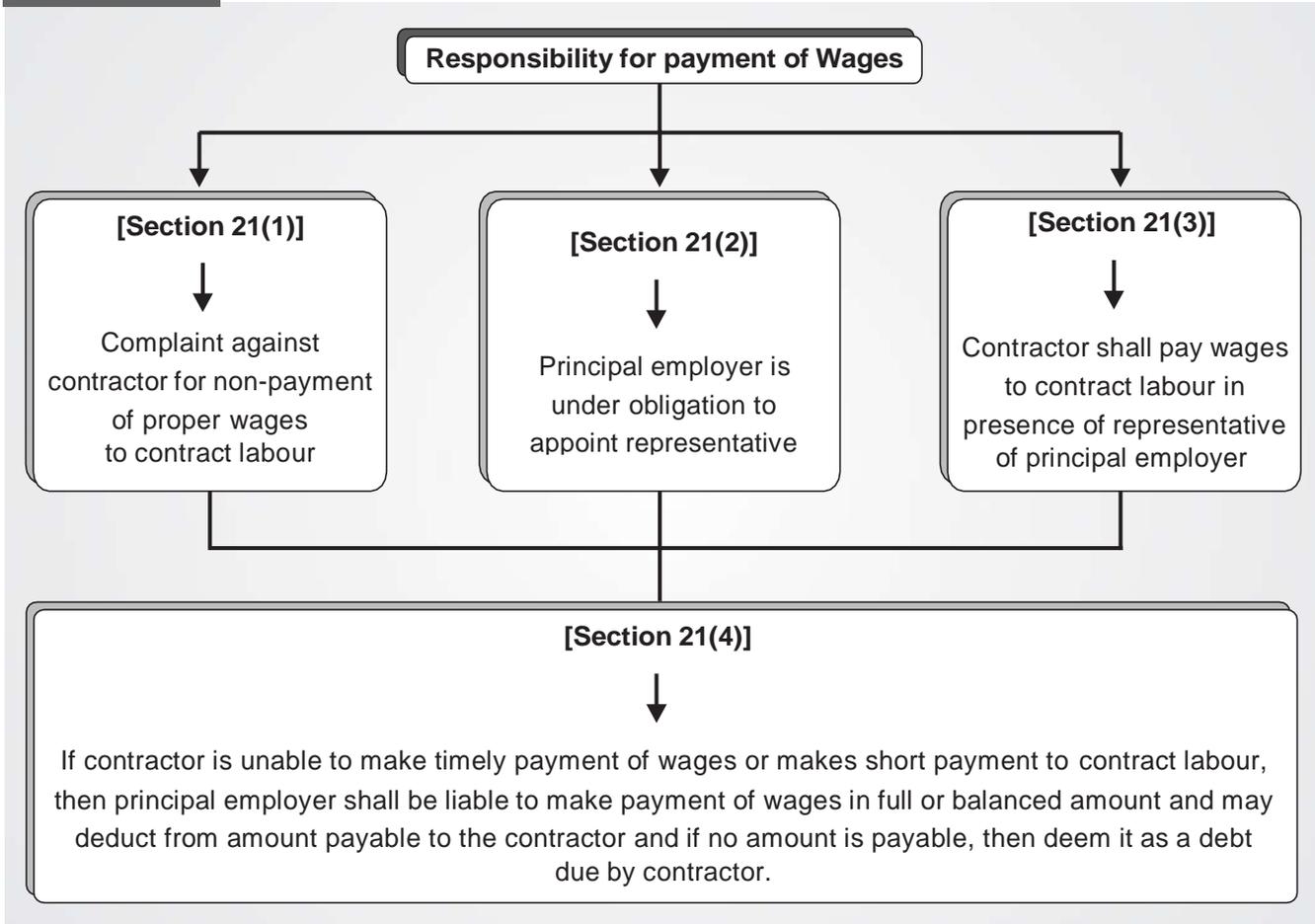
1. The factory/establishment is covered by the provisions of this Act with effect from.....Or  
The factory/establishment is covered under the provisions of this Act by a notification dated .....given by the government in the official gazette.
2. The factory/establishment has     number of workmen employed during the said financial year.
3. The factory/establishment has duly submitted all returns to the Commissioner/Regional Commissioner as per the provisions of the Act, regulations and rules made in this behalf.
4. The establishment has duly applied for and obtained the certificate of registration before the employment of any contract labour.
5. All the contractors engaged by the establishment to supply workmen do possess valid licence.
6. The establishment has duly complied with the provisions of the Act in respect of welfare and health of contract labour during the financial year.
7. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act.



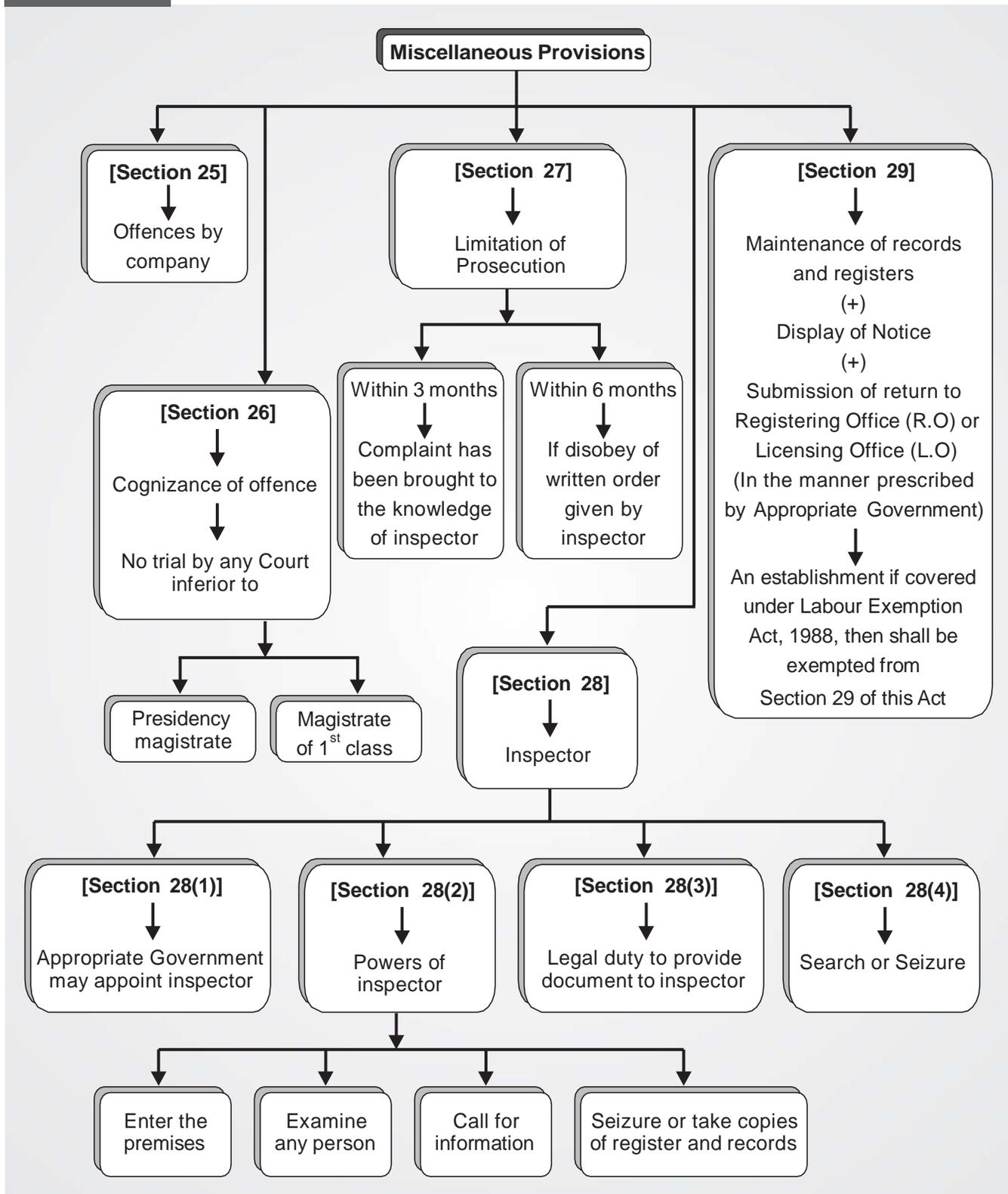
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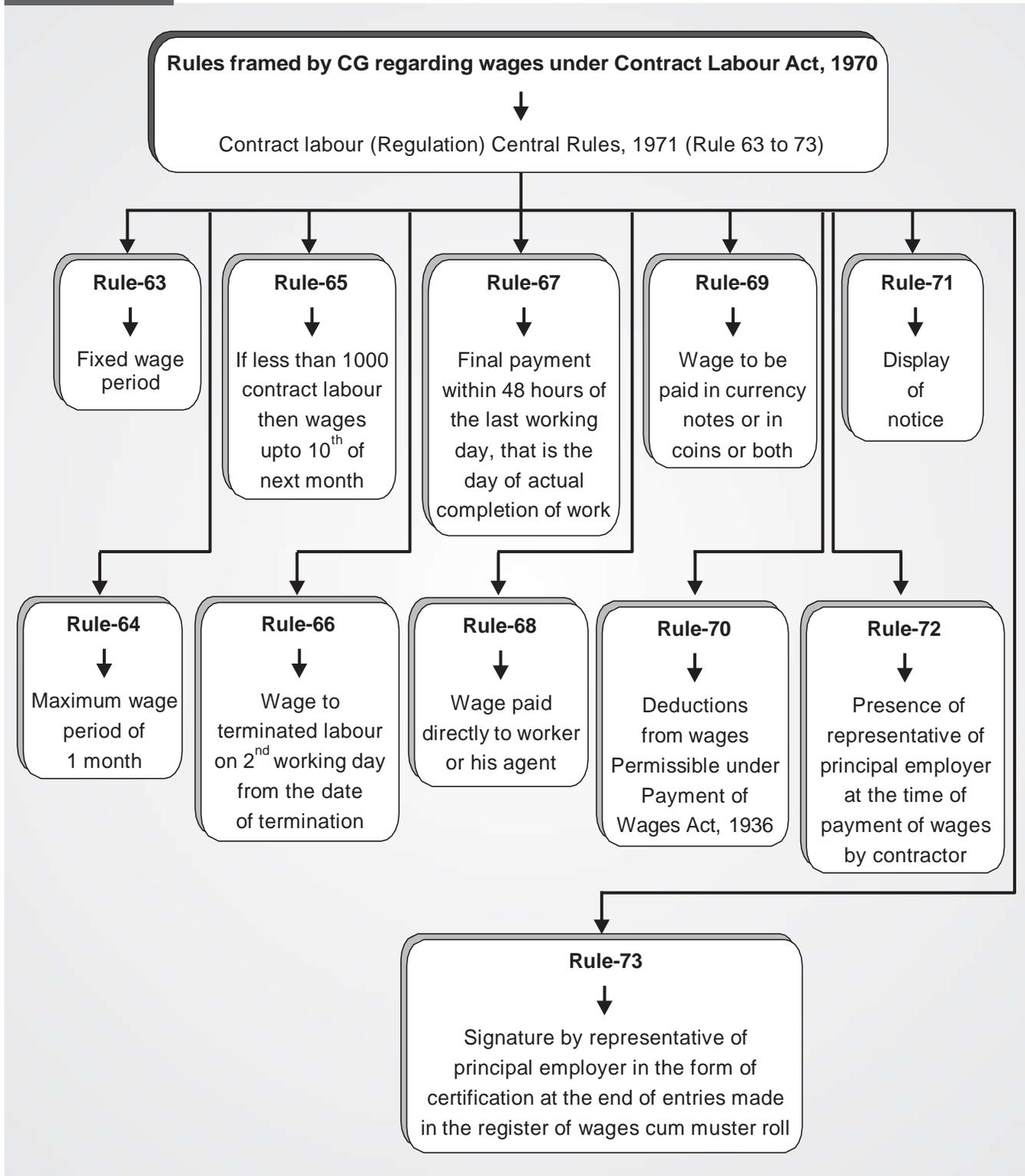
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Quick Recap



Quick Recap



## Chapter – 4 Factories Act, 1948

### List of Section

Sections	Particulars of Section
2(a)	Adult
2(b)	Adolescent
2(bb)	Calendar year
2(c)	Child
2(ca)	Competent person
2(cb)	Hazardous process
2(d)	Young person
2(e)	Day
2(f)	Week
2(g)	Power
2(h)	Prime mover
2(i)	Transmission machinery
2(j)	Machinery
2(k)	Manufacturing process
2(l)	Worker
2(m)	Factory
2(n)	Occupier
6	Approval, Licensing and registration of factories
6(2)	Automatic approval
7	Notice by occupier
7A	General duties of the occupier
7B	General duties of manufacturer etc.
9	Powers of Inspector
10	Certifying Surgeons
11	Cleanliness
12	Disposal of waste and effluents
13	Ventilation and temperature
14	Dust and fume
15	Artificial humidification
16	Overcrowding
17	Lighting
18	Drinking water
19	Latrines and urinals
20	Spittoons
21	Fencing of machinery
22	Safety measure in case of work on or near machinery in motion
23	Employment of young persons on dangerous machines

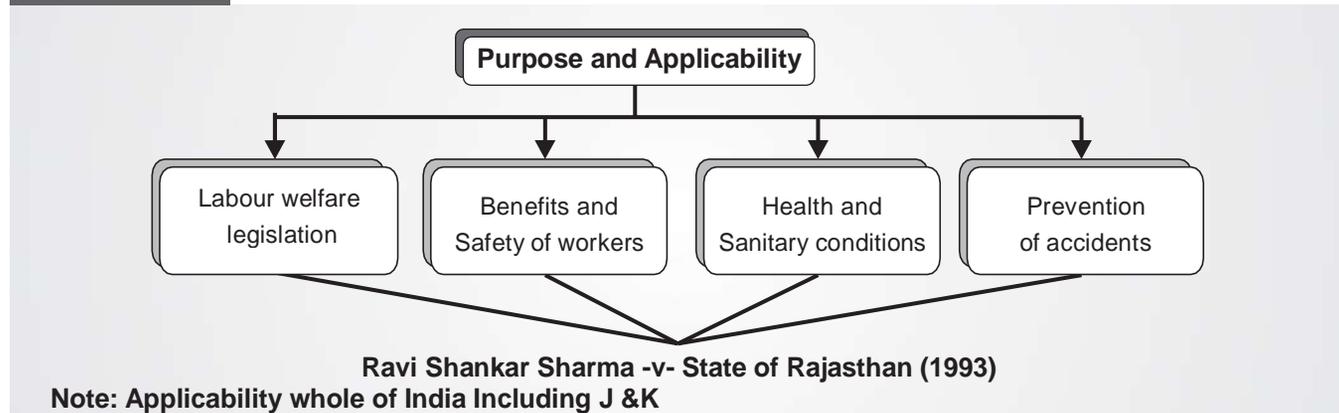
24	Striking gear and devices for cutting off power
25	Self acting machines
26	Casting of new machinery
27	Prohibition of employment of woman and children near cotton openers
28	Hoists and lifts
29	Lifting machines, Chains, Ropes and lifting tackles
30	Safety measures in case of use of revolving machinery
31	Pressure plants
32	Floor, Stairs and means of access
33	Pits, Sumps, Opening in floors etc
34	Excessive weights
35	Protections of eyes
36	Precaution against dangerous, fumes, gases etc
36A	Precautions regarding the use of portable electric light
37	Explosive or inflammable dust gas etc
38	Precautions in case of fire
39	Power to require specification of defective parts or test to stability
40	Safety of building or machinery
40A	Maintenance of buildings
40B	Safety officers
41	Power to make rules to supplement
41A	Constitution of Site Appraisal Committee
41B	Compulsory disclosure of information by the occupier
41C	Responsibility of occupier in relation to hazardous process
41D	Inquiry Committee
41E	Emergency standards
41F	Permissible limits of exposure of chemical and toxic substances
41G	Workers Participation in safety management
41H	Warning about imminent danger
42	Washing facilities
43	Facilities for storing and drying clothing
44	Facilities for sitting
45	First aid appliances
46	Canteens
47	Shelter, rest rooms and lunch rooms
48	Crèches
49	Welfare officers
50	Power to make rules to supplement
51	Weekly hours
52	Weekly holidays
53	Compensatory holidays
54	Daily hours
55	Intervals for rest

56	Spread over
57	Night shifts
58	Prohibition of overlapping shifts
59	Extra wages for overtime
60	Restriction on double employment
61	Notice of period of work for adults
62	Register of adult workers
63	Presence of worker during rest period
64	Power to make exempting rules
67	General prohibition as to employment of children
68	Conditions for employment of children and adolescents – conditions
69	What is Certificate of fitness
70	Effect to certificate of fitness granted to adolescents
71	Working hours for children
72	Notice of periods of work for children
73	Register of child workers
75	Power to require medical examination
77	Certain other provisions of law not barred
78	Application of the chapter
79	Annual leave with wages
80	Wages during leave period
81	Payment in advance in certain cases
82	Mode of recovery of unpaid wages
92	General penalties for offences
93	Liabilities of owner of premises in certain circumstances
95	Penalty for obstructing inspector
96	Penalty for wrongfully disclosing of results of analysis under section 91
96A	Penalty for contravention of sections 41B, 41C and 41H
97 & 98	Offences by worker and penalties
99	Penalty for permitting double employment of child by parents or guardians
101	Exemption of occupier or manager from liability in certain
104A	Onus of providing limits of what is practicable etc

### Object and Purpose of the Act

- ◆ Factories Act is one of the **earliest labour welfare legislations**.
- ◆ The object of the act is to secure health, safety, welfare, proper working hours and other **benefits to workers**.
- ◆ The Act requires that workers should work in **healthy and sanitary conditions** and for that purpose it provides that precaution should be taken for **safety of workers and prevention of accidents**.

#### Quick Recap



### Definitions

#### Factory

Factory means any premises, including the precincts thereof, in any part of which manufacturing process is carried on **with or without the aid of power**, provided that at least **10 or 20 persons** respectively are employed or were employed on any day of the **preceding 12 months**.

**Note:** The Act is **applicable to all the factories** in India including J and K

#### Occupier

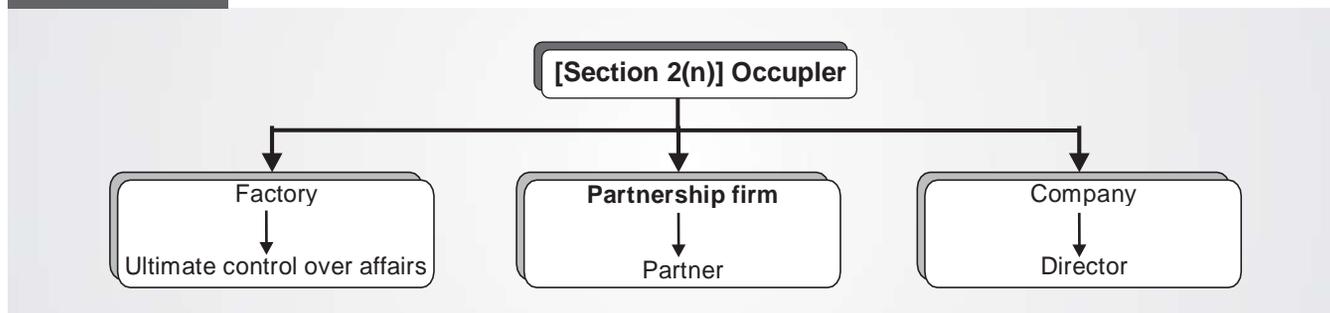
- ◆ Occupier of factory means a person who has **ultimate control** over affairs of factory.
- ◆ It includes a **partner** in case of a firm and director in case of a company.
- ◆ It may be noted that if a factory is run by a company, then only the **director** of the company can be treated as occupier.

#### CASE LAW

#### J.K. Industries Vs Chief Inspector of Factories

- The occupier shall ensure, as far as possible health, safety, and welfare of workers while they are working in a factory.
- The name of the occupier of the factory is required to be informed to the Chief Inspector of Factories.
- The occupier will be held responsible if the provisions of the Factories Act, 1948 are not complied with.

## Quick Recap

**[Section 2(a)] Adult**

“Adult” means a person who has completed his eighteenth year of age.

**[Section 2(b)] Adolescent**

“Adolescent” means a person who has completed his fifteenth year of age but has not completed his eighteenth year.

**[Section 2(bb)] Calendar Year**

“Calendar Year” means the period of twelve months beginning with the first day of January in any year.

**[Section 2(c)] Child**

“Child” means a person who has not completed his fifteenth year of age.

**[Section 2(ca)] Competent Person**

“Competent Person” in relation to any provision of this Act, means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to

- (i) the qualifications and experience of the person and facilities available at his disposal; or
- (ii) the qualifications and experience of the persons employed in such institution and facilities available therein.

With regard to the conduct of such tests, examinations and inspections and more than one person or institution can be recognised as a competent person in relation to a factory.

**[Section 2(cb)] Hazardous Process**

“Hazardous Process” means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, byproducts, wastes or effluents thereof would

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

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

**[Section 2(d)] Young Person**

“Young Person” means a person who is either a child or an adolescent.

**[Section 2(e)] Day**

“Day” means under Section 2(e), a period of twenty-four hours beginning at mid-night.

**[Section 2(f)] Week**

“Week” means a period of seven days beginning at mid-night on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories.

**[Section 2(g)] Power**

“Power” means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

**[Section 2(h)] Prime Mover**

“Prime” Mover means any engine, motor or other appliance which generates or otherwise provides power.

**[Section 2(i)] Transmission Machinery**

“Transmission” Machinery means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime-mover is transmitted to or received by any machinery or appliance.

**[Section 2(j)] Machinery**

The term includes prime-movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied.

**[Section 2(k)] Manufacturing Process**

It means any process for

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) pumping oil, water or sewage or any other substance; or
- (iii) generating, transforming, transmitting power; or
- (iv) composing types for printing, printing by letter-press, lithography, photogravure or other similar process, or book-binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage.

***Following processes have been held to be manufacturing processes:***

- (1) Sun-cured tobacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing, with a view to transport to company's main factory for their use in manufacturing cigarette (***V.P.Gopala Rao v. Public Prosecutor, AIR 1970 S.C. 66***).
- (2) The operation of peeling, washing etc., of prawns for putting them in cold storage is a process with a view to the sale or use or disposal of the prawns (***R.E.DSouzav. Krishnan Nair, 1968 F.J.R. 469***).
- (3) Stitching old gunny bags and making them fit for use.
- (4) In paper factory, bank as grass packed into bundles manually and despatched to the factory.
- (5) Work of garbling of pepper or curing ginger.
- (6) Process carried out in salt works in converting sea water into salt.
- (7) Conversion of latex into sheet rubber.
- (8) A process employed for the purpose of pumping water.
- (9) The work done on the bangles of cutting grooves in them which later would be filled with colouring, is clearly a stage in ornamentation of the bangle with view to its subsequent use for sale.
- (10) Preparation of soap in soap works.

- (11) The making of bidies.
- (12) The raw film used in the preparation of movies is an article or a substance and when by the process of tracing or adapting, after the sound are absorbed and the photos imprinted, it is rendered fit to be screened in a cinema theatre, then such a change would come within the meaning of the term treating or adapting any article or substance with a view to its use.
- (13) Composing is a necessary part of printing process and hence it is a manufacturing process. It cannot be said that the definition should be confined to the process by which impression is created on the paper and to no other process preceding or succeeding the marking of the impression on the paper to be printed. Everything that is necessary before or after complete process, would be included within the definition of the word 'manufacturing process'. The definition takes in all acts which bring in not only some change in the article or substance but also the act done for the protection and maintenance of such article by packing, oiling, washing, cleaning, etc. (***P.Natrajanv. E.S.I. Corporation (1973) 26 FLR 19***).
- (14) Preparation of food and beverages and its sale to members of a club (***CCI v. ESIC, 1992 LAB IC 2029 Bom.***).
- (15) Receiving products in bulk, in packing and packing as per clients requirements (***LLJ I 1998 Mad. 406***).

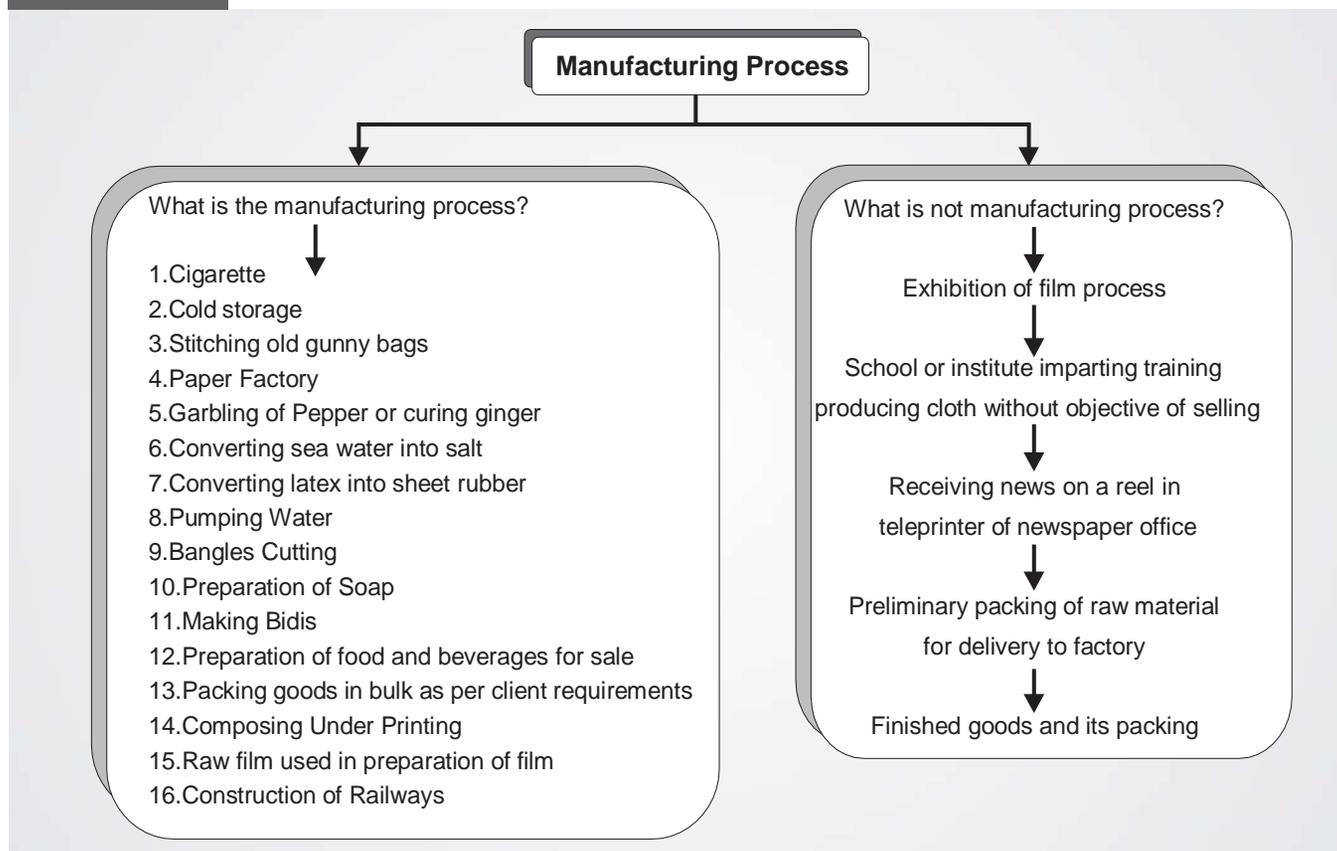
***Following processes are not manufacturing processes:***

- (1) Exhibition of films process.
- (2) Industrial school or Institute imparting training, producing cloth, not with a view to its sale.
- (3) Receiving of news from various sources on a reel in a teleprinter of a newspaper office, is not a manufacturing process in as much as news is not the article or substance to which Section 2(k)(i) has referred.
- (4) Any preliminary packing of raw material for delivering it to the factory (AIR 1969 Mad. 155).
- (5) Finished goods and packing thereof: *F. Hare v. State* AIR 1955, 2710.

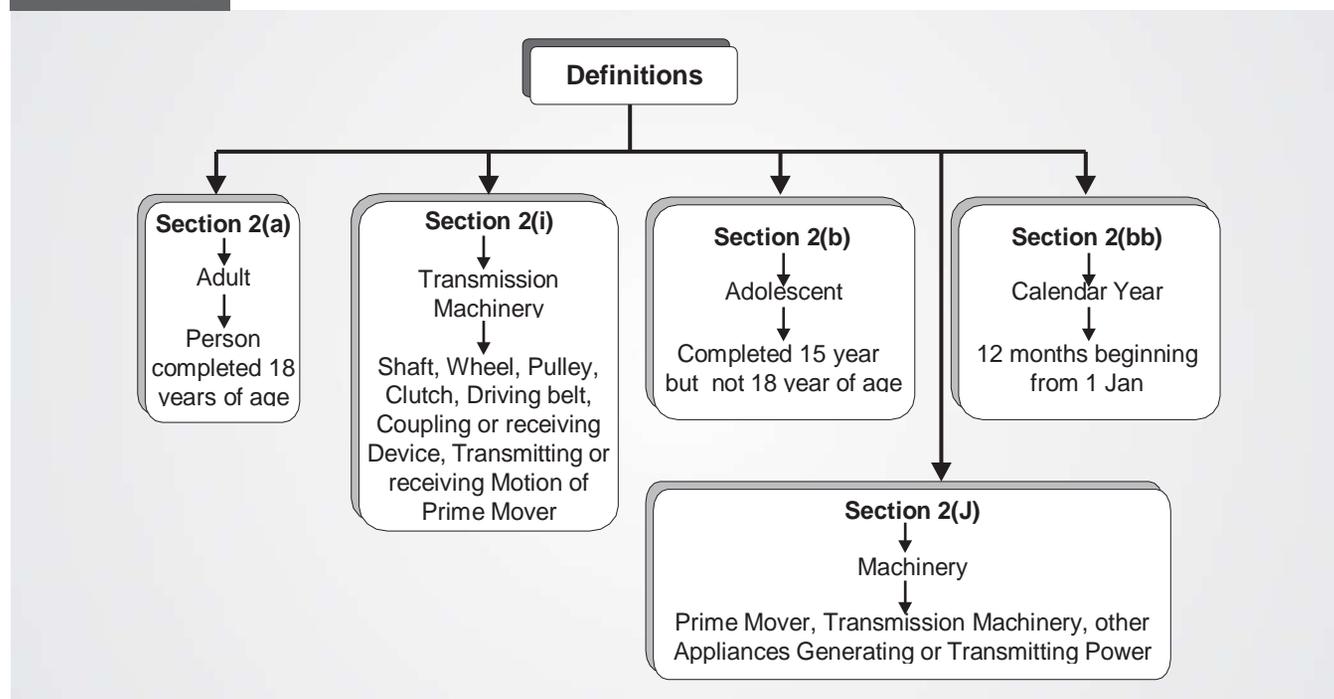
**[Section 2(l)] Worker**

"Worker" means a person employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in any other kind or work incidental to, or connected with, the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

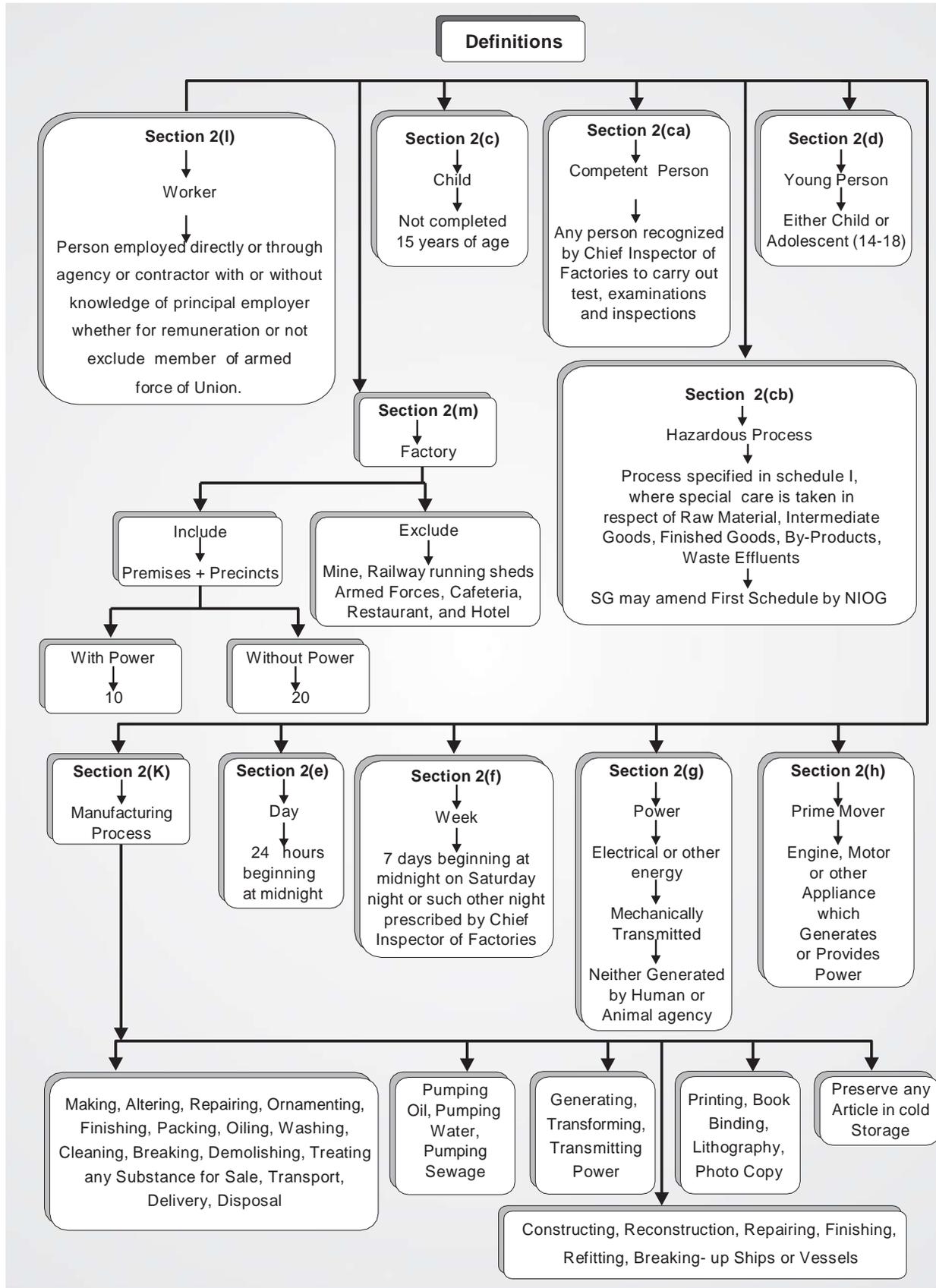
## Quick Recap



## Quick Recap



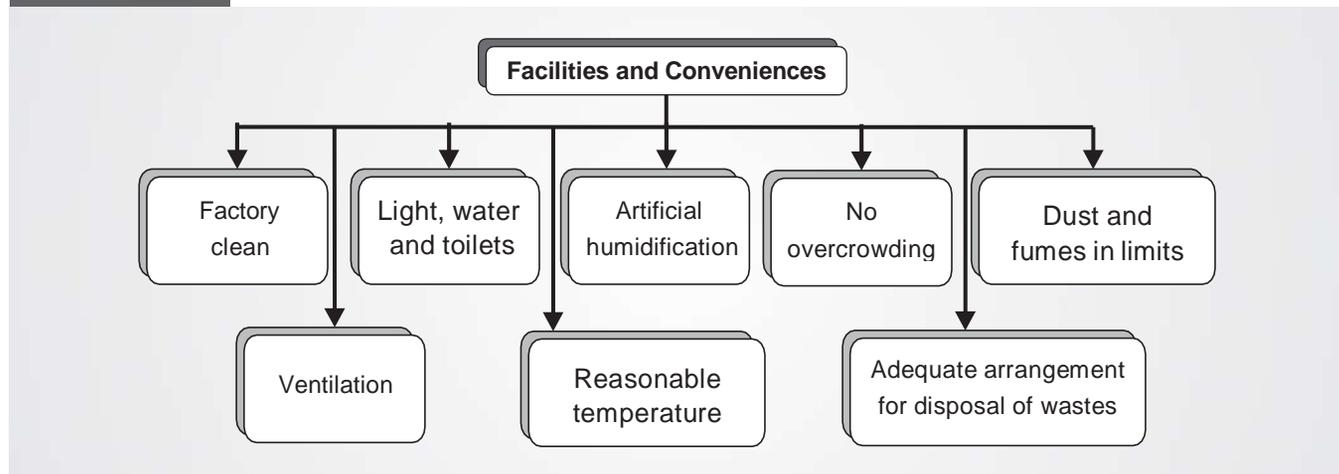
Quick Recap



**Facilities and Conveniences**

- ◆ Factory should be kept **clean**.
- ◆ Adequate **lighting, drinking water, toilets**, and spittoons should be provided.
- ◆ Artificial **humidification** should be at prescribed limits.
- ◆ Over **crowding** should be **avoided**.
- ◆ **Dust and fumes** should be controlled below **permissible limits**.
- ◆ **Reasonable temperature** for comfort of employees should be maintained
- ◆ There should be arrangement to **dispose off wastes** and effluents.
- ◆ **Ventilation** should be adequate.

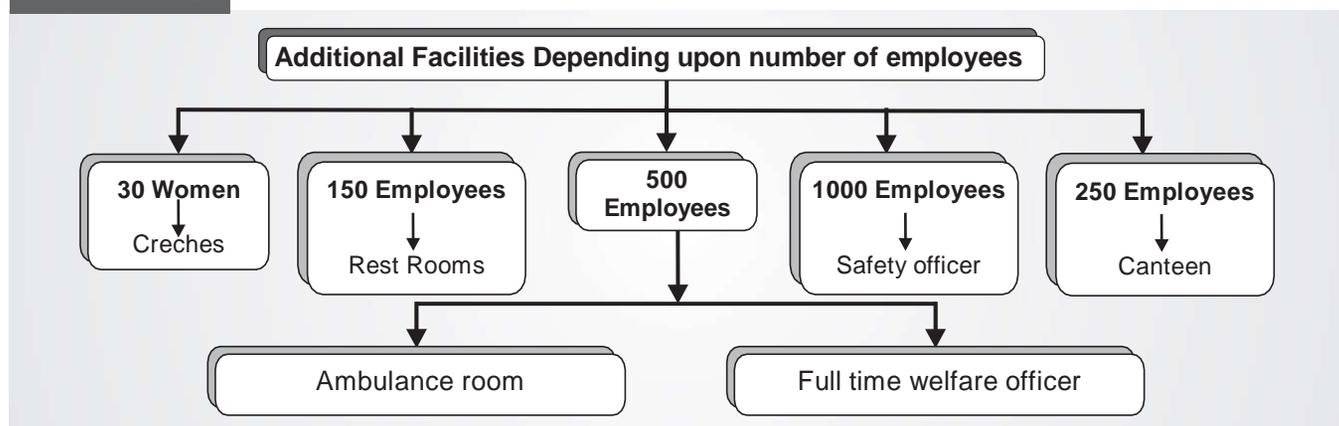
Quick Recap



**Additional Facilities in case of Large Factories**

- ◆ **Crèches**, if **30 or more women** workers are employed.
- ◆ **Rest rooms/Centers** with drinking facility, if **150** or more workers are employed.
- ◆ **Canteen**, if **250** or more workers are employed.
- ◆ **Ambulance room**, if **500** or more workers are employed.
- ◆ Full time **Welfare Officer**, if **500** or more workers are employed.
- ◆ **Safety Officer**, if **1000** or more workers are employed.

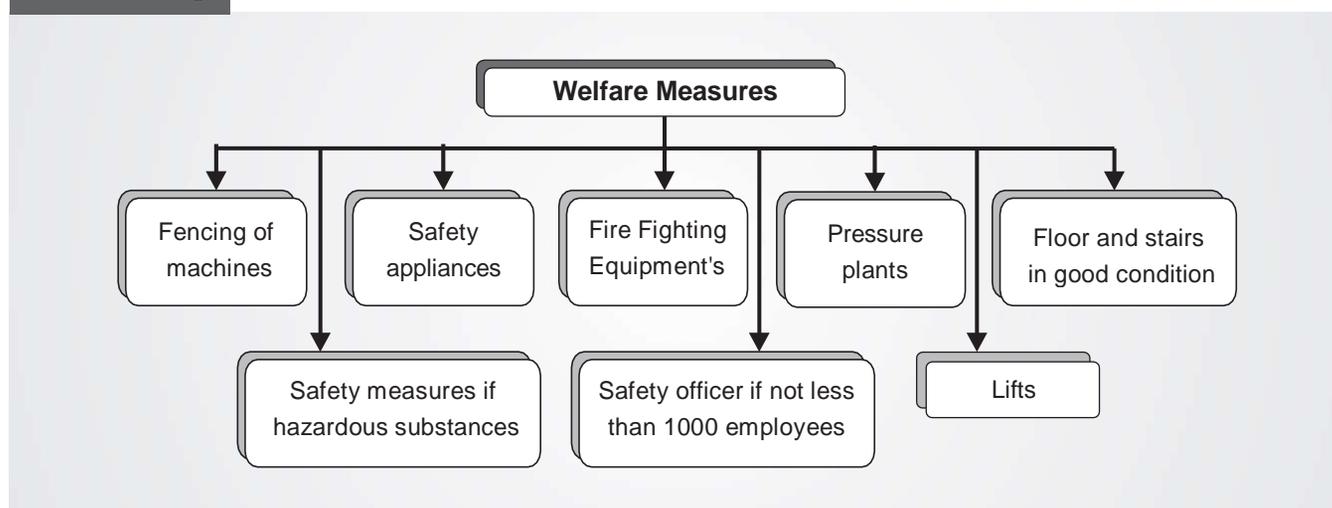
Quick Recap



### Welfare Measures

- ♦ All **machines** should be properly **fenced** to protect workers when machinery is in motion.
- ♦ **Pressure Plant** should be checked as per the rules.
- ♦ **Floor, stairs**, and means of access should be of sound construction and free from obstructions.
- ♦ Adequate **firefighting equipment** should be available.
- ♦ In case of **hazardous substances**, additional **safety measures** have to be taken.
- ♦ **Safety appliances** for eyes, dangerous dust, gas, fumes should be provided.
- ♦ **Safety Officer** should be appointed if number of workers in factory is 1000 or more.
- ♦ **Hoist and lifts** should be in **good condition** and tested periodically.

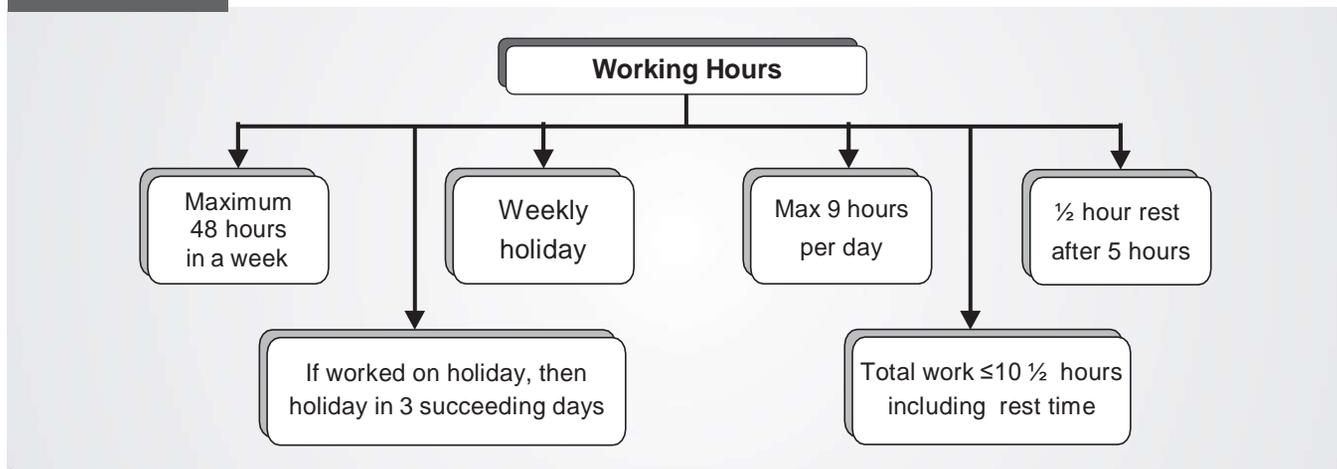
### Quick Recap



### Working Hours

- ♦ A worker cannot be employed for more than **48 hours in a week**.
- ♦ **Weekly holiday** is compulsory. If the worker is asked to work on weekly holiday, he should avail the holiday on one of the 3 days immediately after the normal day of holiday.
- ♦ A worker cannot be employed for more than **9 hours in a day**.
- ♦ At least  $\frac{1}{2}$  hour rest should be provided after every 5 hours.
- ♦ **Total period of work** including rest interval cannot be more than **10  $\frac{1}{2}$  hours**.

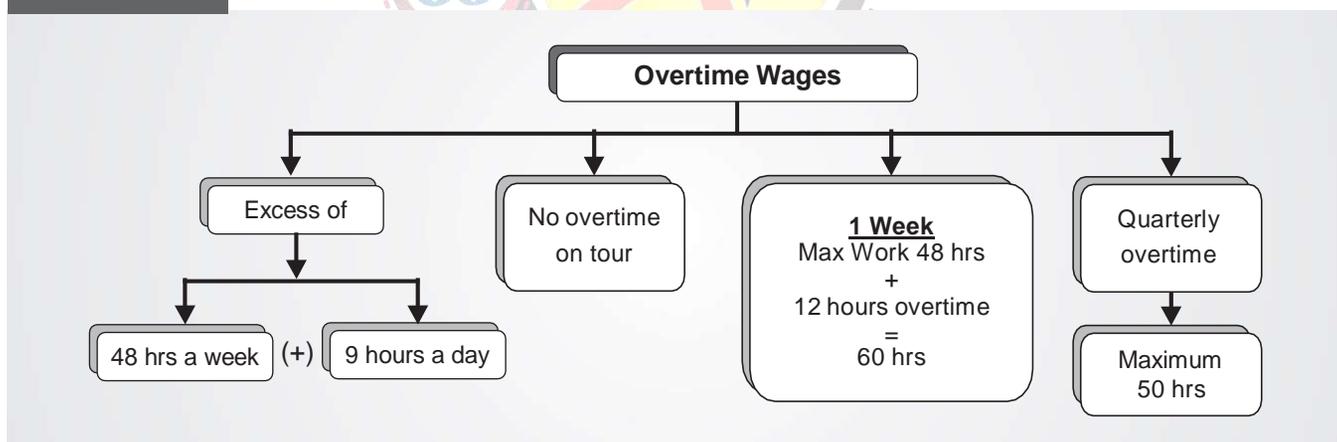
## Quick Recap



## Overtime Wages

- ♦ If a worker works beyond **9 hours a day** and **48 hours a week**, overtime wages are paid at **double the rate of normal wages**.
- ♦ However, overtime wages are **not payable on tour**.
- ♦ Total working hours **including overtime should not exceed 60 hours** in a week and total overtime hours in a **quarter should not exceed 50 hours**.

## Quick Recap

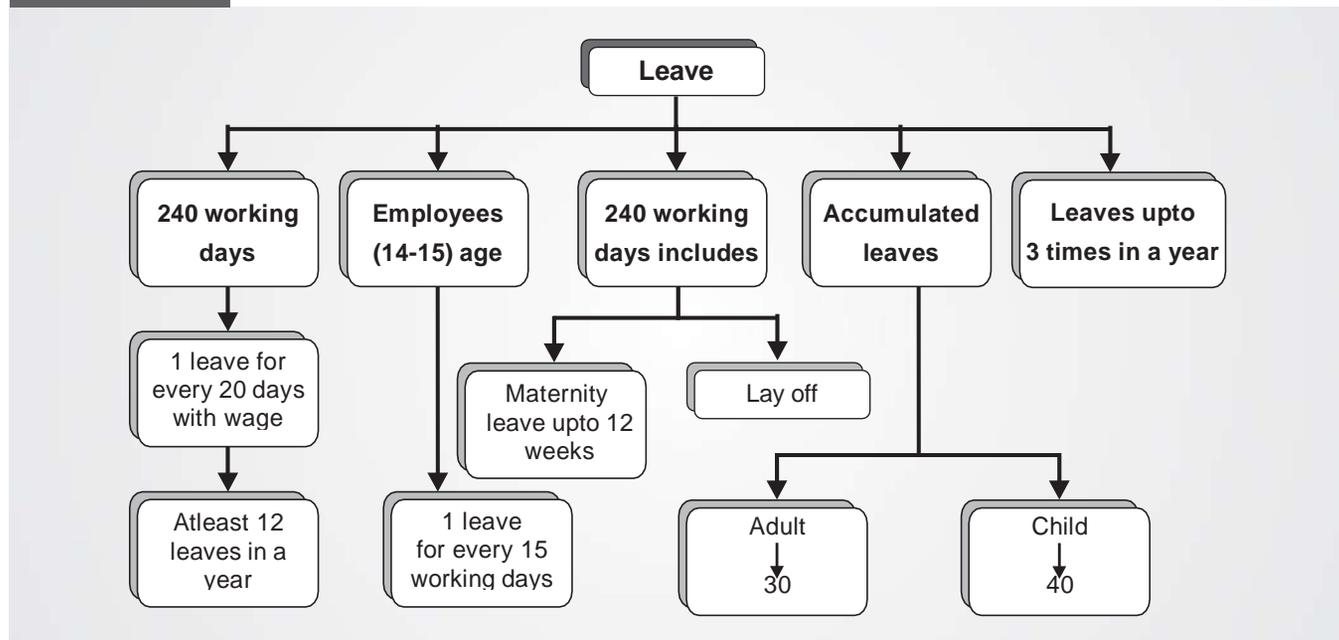


### Leave

- ♦ Worker is entitled in every calendar year **annual leave** with wages at the rate of **1 day for every 20 days** of work performed in the previous calendar year provided that he had worked **for 240 days** or more in the previous calendar year.
- ♦ Child worker (**who is 14 years and above but less than 15 years**) is entitled to 1 day leave with wages for every 15 days.
- ♦ While calculating **240 days** earned leave, maternity leave up to **12 weeks** and lay off days will be considered but leave shall not be earned on those days.
- ♦ Leave can be accumulated up to **30 days in the case of an adult and 40 days in the case of a child**.
- ♦ Leave admissible is **exclusive of holidays** occurring during or at either end of leave period.
- ♦ Leave cannot be taken for more than **3 times in a year**.

**Note:** It may be noted that above-mentioned benefit are the minimum benefits. Employer can of course provide additional or higher benefits.

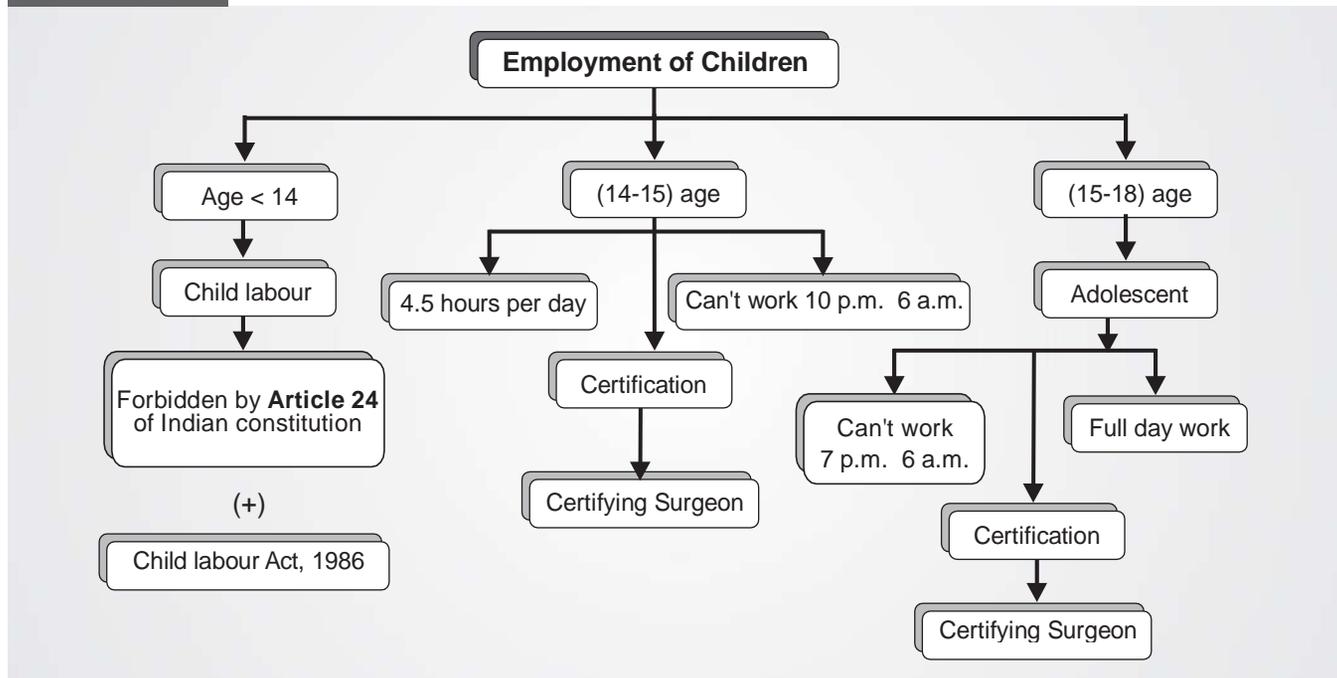
### Quick Recap



### Employment of Children

- ♦ Children **below 14 years** of age **cannot be employed**.
- ♦ A child of age 14 years but below 15 years can be employed for only **4.5 hours per day**. He should be **certified fit by certifying surgeon**. He cannot be employed during night from **10 p.m. to 6 a.m.**
- ♦ A person of **15 years of age but below 18 years** of age is termed as **adolescent**. He can be employed as an adult if he has certificate of fitness for a full day work from a **certifying surgeon**. An **adolescent is not permitted** to work between **7 p.m. to 6 a.m.**

## Quick Recap

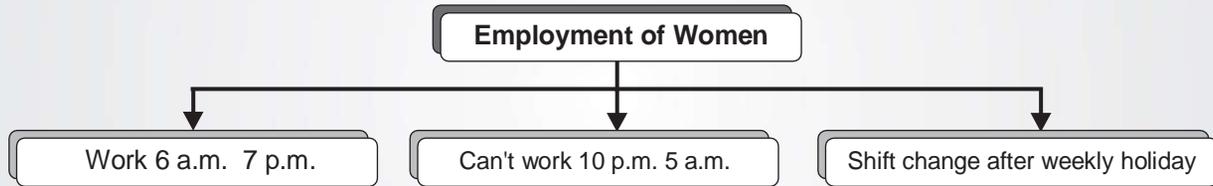
**Employment of Women**

- ♦ A women worker cannot be employed **beyond 6 a.m. to 7 p.m.**
- ♦ State Government can grant exemption to any factory from such provisions but in no case a women can be permitted to work during **10 p.m. to 5 a.m.** Shift change can be done only after weekly or other holiday or not in between.

**Note:** Display on Notice Board

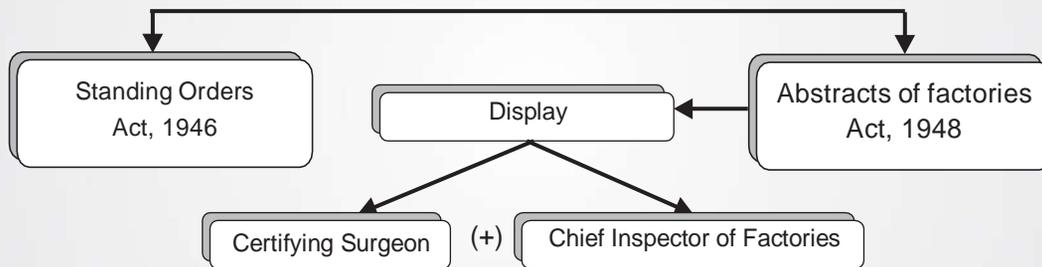
- ♦ A Notice containing an **abstract of the Factories Act, 1948** and the rules made there under in **English and local language** shall be displayed by employer.
- ♦ The name and address of **Inspector of factories** and **Certifying Surgeon** shall also be displayed on the NoticeBoard.

Quick Recap



Note:

Display [English (+) Local Language]

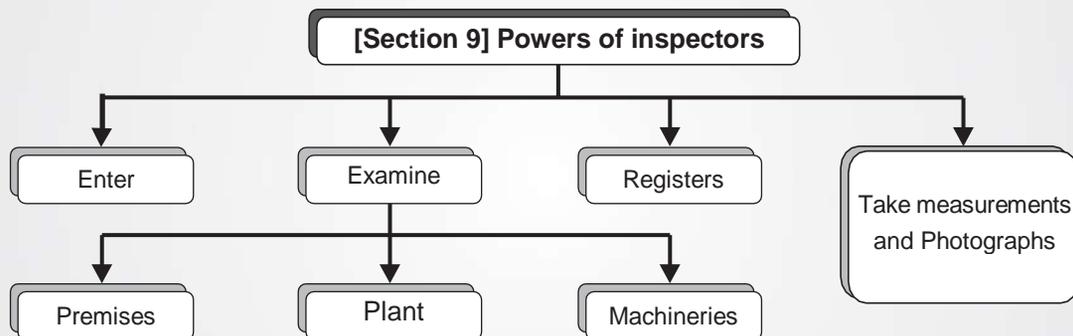


**Powers of Inspectors**

An inspector may exercise any of the following powers within the local limits for which he is appointed:

- ◆ He **can enter any place** which used or which is used or which, he has reasons to believe, is used as factory.
- ◆ He can make **examination** of the premises, plant, machinery etc.
- ◆ He can require the **production** of any prescribed register or any other document relating to the factory.
- ◆ Take **measurement and photographs** and make such recordings as he considers necessary for the purpose of any examination.

Quick Recap



### Special Provisions relating to Hazardous Process

Special provisions relating to hazardous process have been envisaged under Chapter **IV.A of the Factories Act, 1948**. This concept was inserted by the **Factories (Amendment) Act, 1987** and consists of **Sections 41 A to 41 H**. These sections are as follows:

#### (Section 41A) Constitution of Site Appraisal Committees

A Committee under the name Site Appraisal Committee shall be constituted by the State Government to advise the Government in the matter of examination of applications for **establishment of factories involving hazardous process**.

The Site Appraisal 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** in the prescribed form.

#### (Section 41B) Compulsory Disclosure of Information by the Occupier

It is compulsory on the part of **the occupier of every factory involving a hazardous process to disclose all information** regarding dangers, including health hazards 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.

(Section 41C) Specified Responsibility of the Occupier in Relation to Hazardous Process **Accurate and up-to-date health records or medical records of the workers** of 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 maintained by the occupier of a factory involving any hazardous process.

#### (Section 41D) Inquiry Committee

In the event of occurrence of an extraordinary situation, the **Central Government** may 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 any measures prescribed for the **health and safety** of the workers or the general public.

#### (Section 41E) Emergency Standards

The **Director-General of Factory Advice Service and Labour Institutes** may be directed by the Central Government to lay down emergency standards in respect of hazardous process.

#### (Section 41F) Permissible Limits of Exposure of Chemical and Toxic Substances

The Second Schedule added to the Act, indicates maximum permissible **limits of exposure of chemical and toxic** substances in manufacturing processes in any factory.

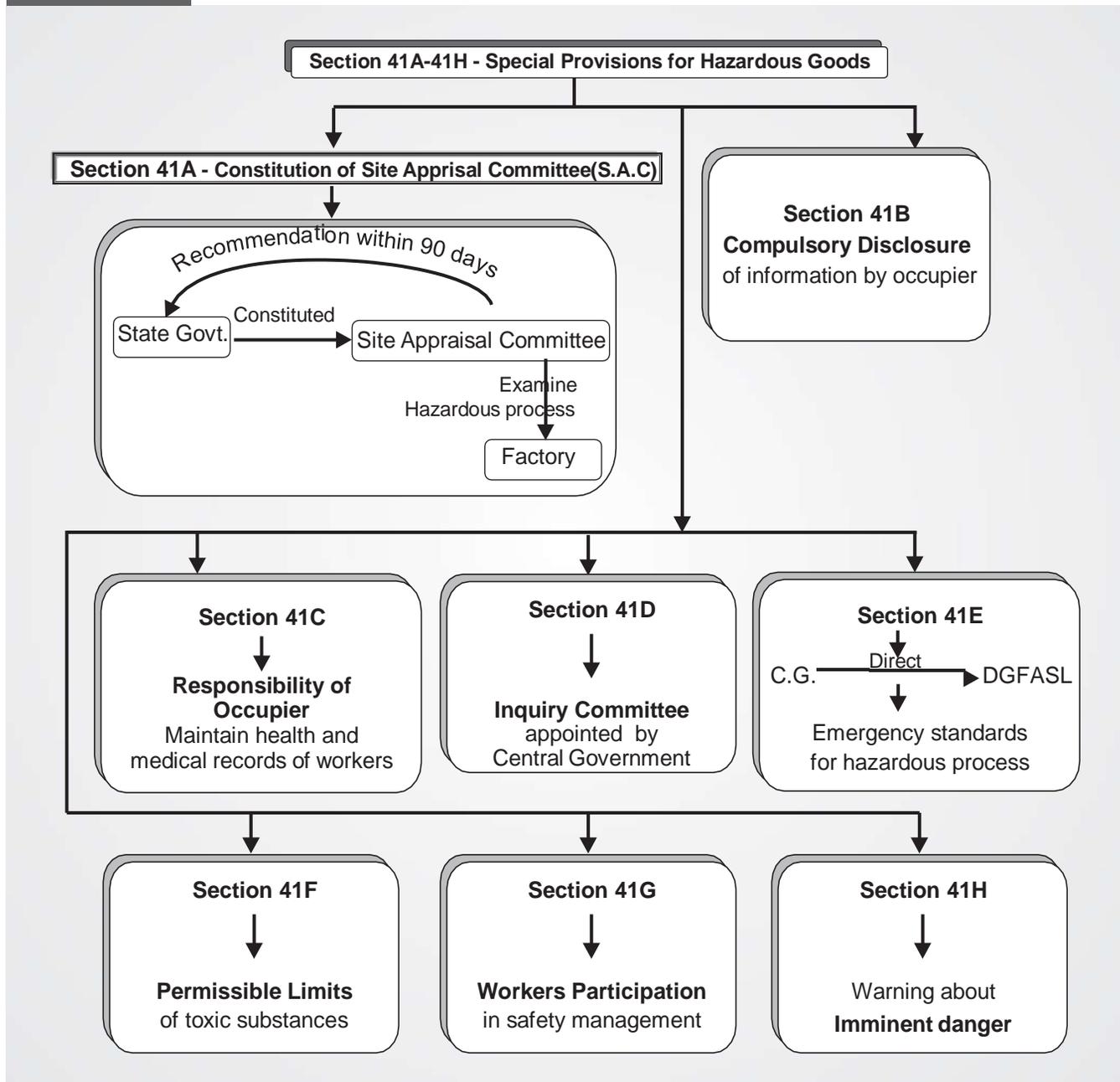
#### (Section 41G) Workers Participation in Safety Management

The occupier in every factory shall set up a safety committee consisting of equal number of representatives of workers and management 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 where hazardous process is involved.

#### (Section 41H) Warning about Imminent Danger

If there is reasonable apprehension regarding likelihood of imminent danger to the **lives or health** of the workers employed in a factory, they may bring the same to the notice of the **occupier, agent, manager, etc.**

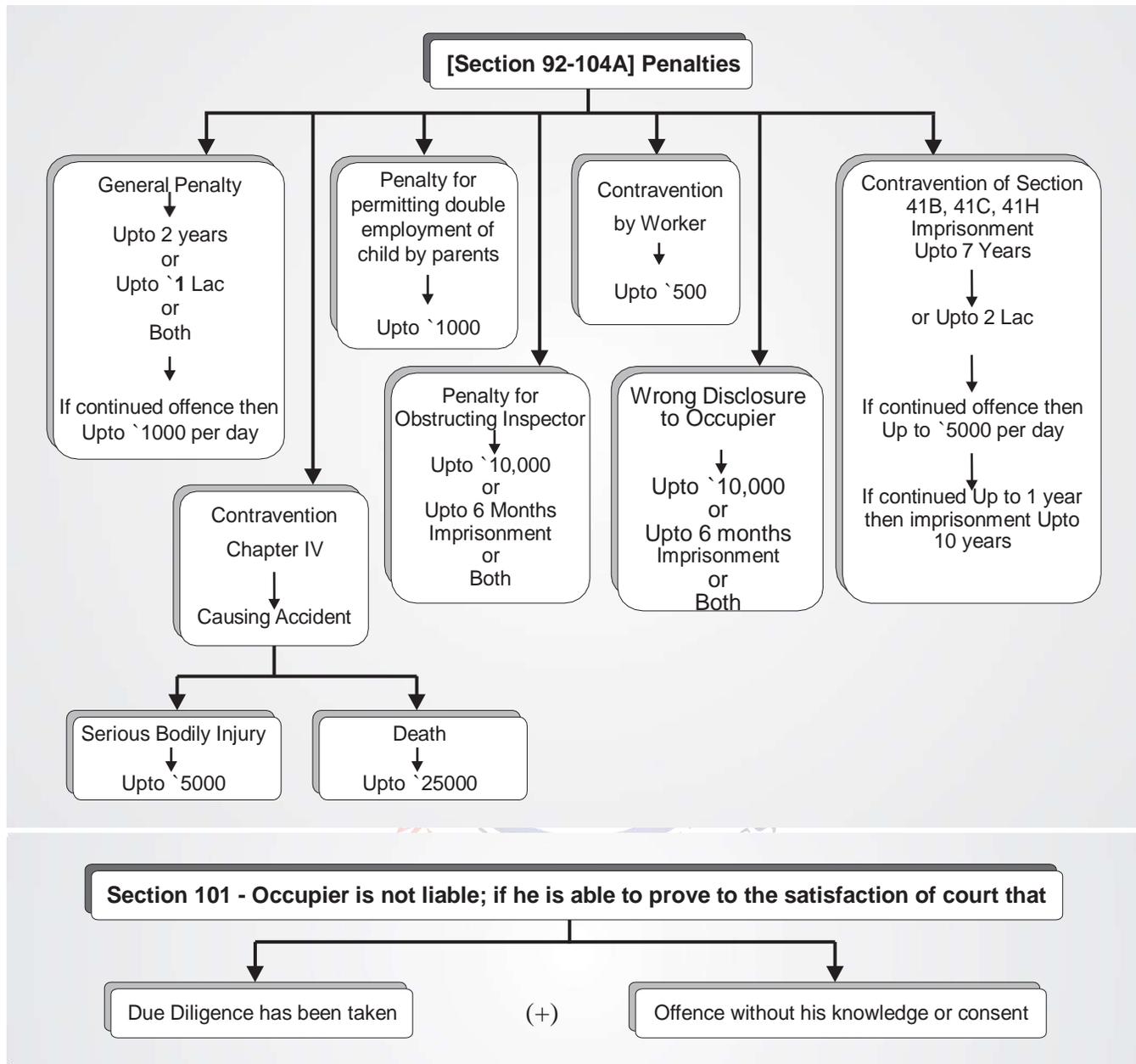
Quick Recap



Relevant Judicial Interpretations

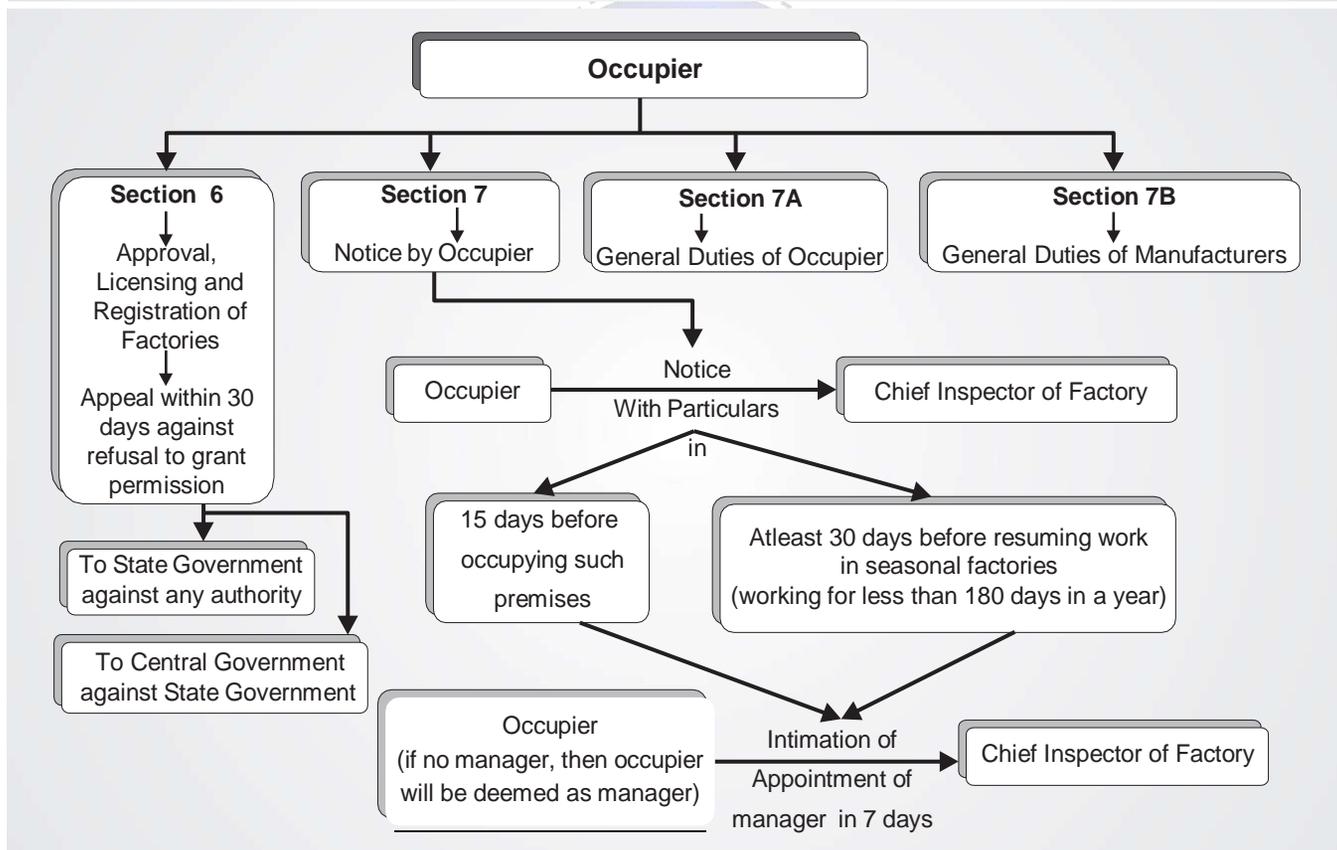
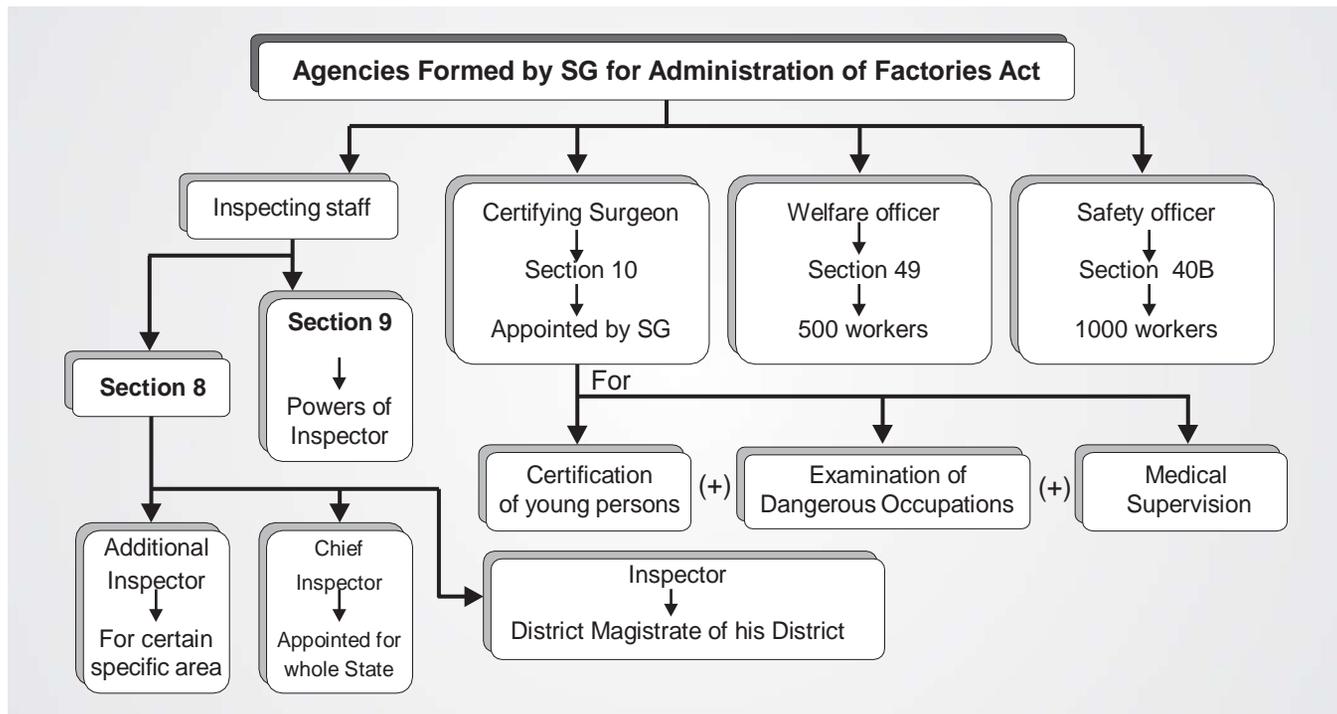
<b>CASE LAW</b>	<b>Arun Kumar Bali Vs Government, NCT of Delhi</b>
Punishment to Welfare Officer No punishment can be imposed on welfare officer without prior sanction of Chief Commissioner of Factories. However, simple order of termination as per terms of appointment is not punishment and such termination order is valid.	
<b>CASE LAW</b>	<b>Ardeshir H. Bhiwandiwalla Vs State of Bombay</b>
The Supreme Court held that salt manufacture from sea water by employing different processes is a manufacturing and the workers engaged in this work are workers within the meaning of factories Act.	

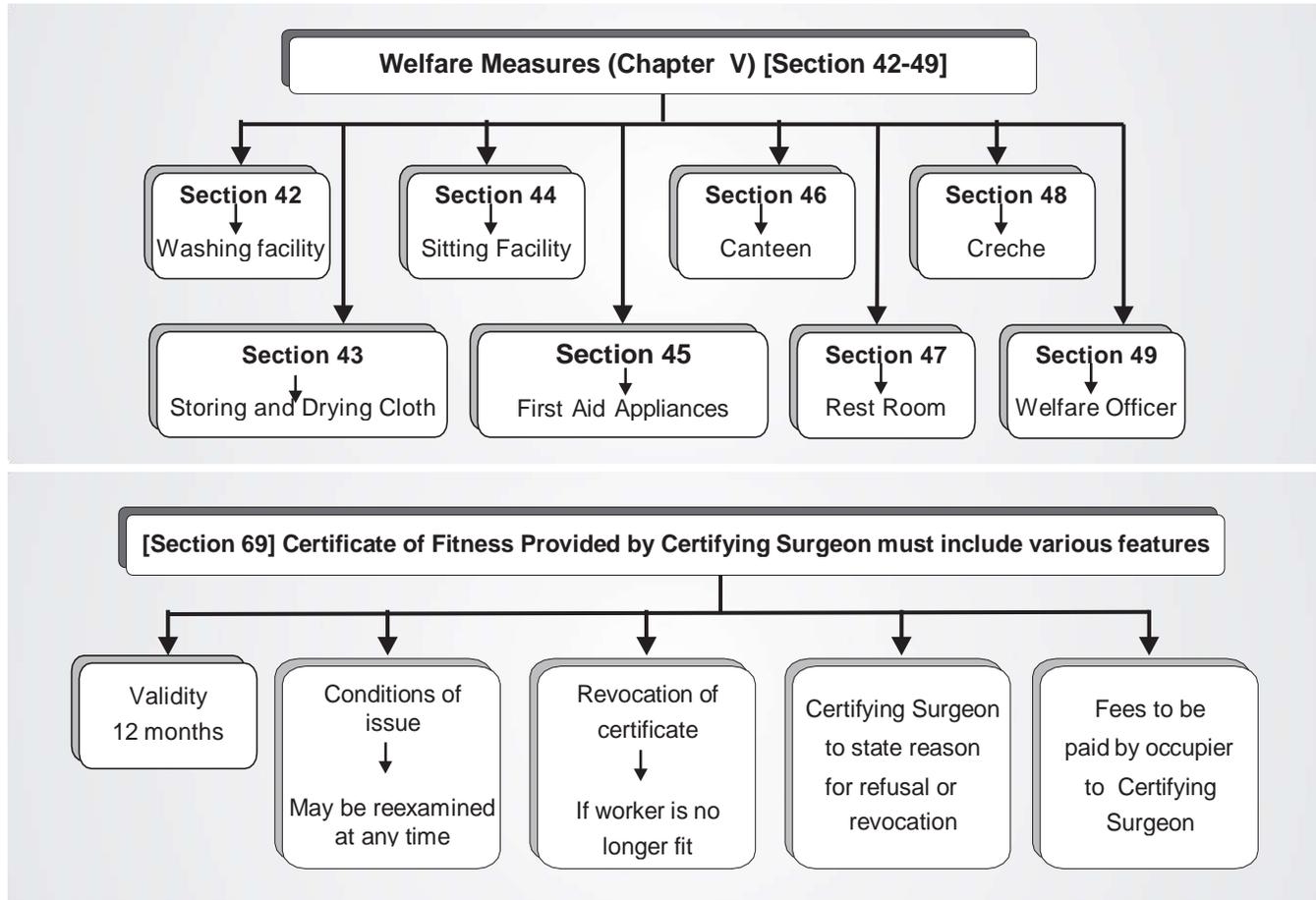
<b>CASE LAW</b>	<b>Shankar Balaji Wale Vs State of Maharashtra</b>
	Price-rate workers can be workers within the definition of worker in the Act, but they must be regular workers and not workers who come and work according to their will.
<b>CASE LAW</b>	<b>V.P. GopalaRao Vs Public Prosecutor</b>
	The Supreme Court held that Sun cured tobacco leaves subjected to processes of Company's main Factory for their use in manufacturing Cigarette is a manufacturing process under the Factories Act.
<b>CASE LAW</b>	<b>Bharati Udyog Vs Regional Director ESI Corporation</b>
	The cutting of the woods or converting the wood into planks is a part of the manufacturing activity.
<b>CASE LAW</b>	<b>Workmen of Delhi Electric Supply Undertaking Vs Management of DESU</b>
	The process undertaken in zonal and sub-stations and electricity generating stations, transforming and transmitting electricity generated at the power station does not fall within the definition of manufacturing process.
<b>CASE LAW</b>	<b>Suraksha Karamchari Union Vs Union of India</b>
	Employees working in canteens in industrial establishments run by Managing Committee are not employees of the Managing Committee, but are employees of occupier.
<b>CASE LAW</b>	<b>CCI Vs ESIC</b>
	Preparation of food and beverages and its sale to members of a club is a manufacturing process.
<b>CASE LAW</b>	<b>Shinde Vs Bombay Telephones</b>
	A person is said to be employed in the factory if his duties are connected with the business of the factory, no matter whether he stands outside the factory premises or inside it. Receiving products in bulk and packing as per client's requirements amounts to manufacture.
<b>CASE LAW</b>	<b>Works Manager, Central Railway Workshop Jhansi Vs Vishwanath and others</b>
	It was held that the definition of worker includes those employees who are entrusted solely with the clerical duties.
<b>CASE LAW</b>	<b>Lal Mohammad. Vs Indian Railway Construction Co. Ltd</b>
	Construction of railway- use of raw materials like sleepers, bolts, loose rails etc. to adaptation of their use for ultimately for laying down railway line amounts to manufacturing process.
<b>CASE LAW</b>	<b>J.K. Industries Ltd. Vs Chief Inspector of Factories</b>
	If a factory is being run by a company, then only a director of that Company can be the occupier for the purposes of the Act.



**Section 101 - Occupier is not liable; if he is able to prove to the satisfaction of court that**

- Due Diligence has been taken
- (+)
- Offence without his knowledge or consent





## Chapter – 5

# Payment of Wages Act 1936

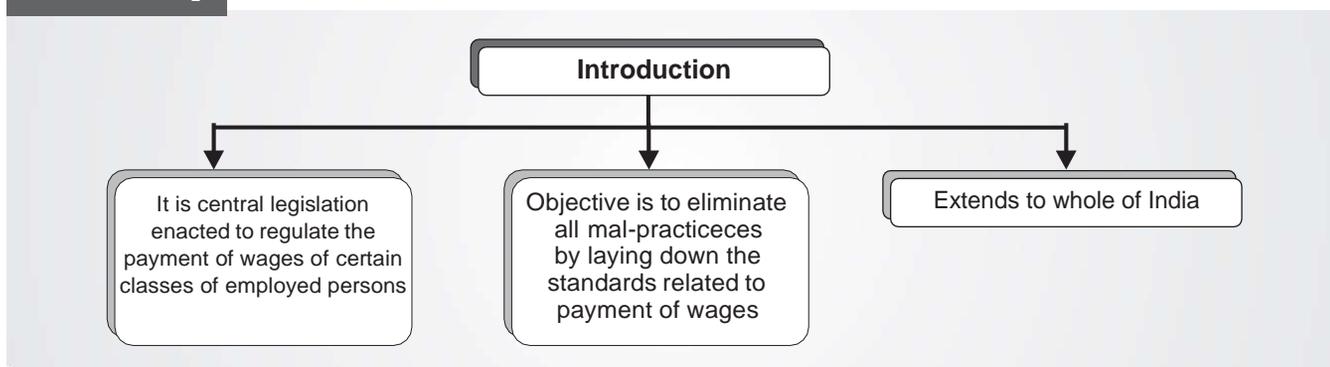
### List of Sections

Sections	Particulars of Section
1	Extent & applicability
2 (ia)	Employed Person
2 (ib)	Employer
2 (ic)	Factory
2 (ii)	Industrial or other establishment
2 (iia)	Mine
2 (iii)	Plantation
2 (iv)	Railway administration
2 (vi)	Wages
3	Responsibility for payment of wages
4	Fixation of wage periods
5	Times of payments of wages
6	Medium of payment of wages
7	Deduction which may be made from wages
8	Deduction for fines
13 (A)	Maintenance of registers and records
14	Inspectors
15	Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims

## Introduction

- ◆ The Payment of Wages Act, 1936 is a **central legislation** which has been enacted to:-
  - **Regulate the payment of wages** to workers employed in certain specified industries And
  - To ensure a **speedy and effective remedy** to them against unauthorized deductions or unjustified delay caused in paying wages to them.
- ◆ It **applies to the persons employed** in a factory, industrial or other establishment or in a railway, **whether directly or indirectly or through a sub-contractor.**
- ◆ In order to bring the law in uniformity with other labour laws and to make it more effective and practicable, the payment of wages Act was **last amended in 2005.**
- ◆ The **Central Government** is responsible for enforcement of the Act in railways, mines, oilfields and air transport services, while the **State Governments** are responsible for it in factories and other industrial establishments.

### Quick Recap



## Object and Scope

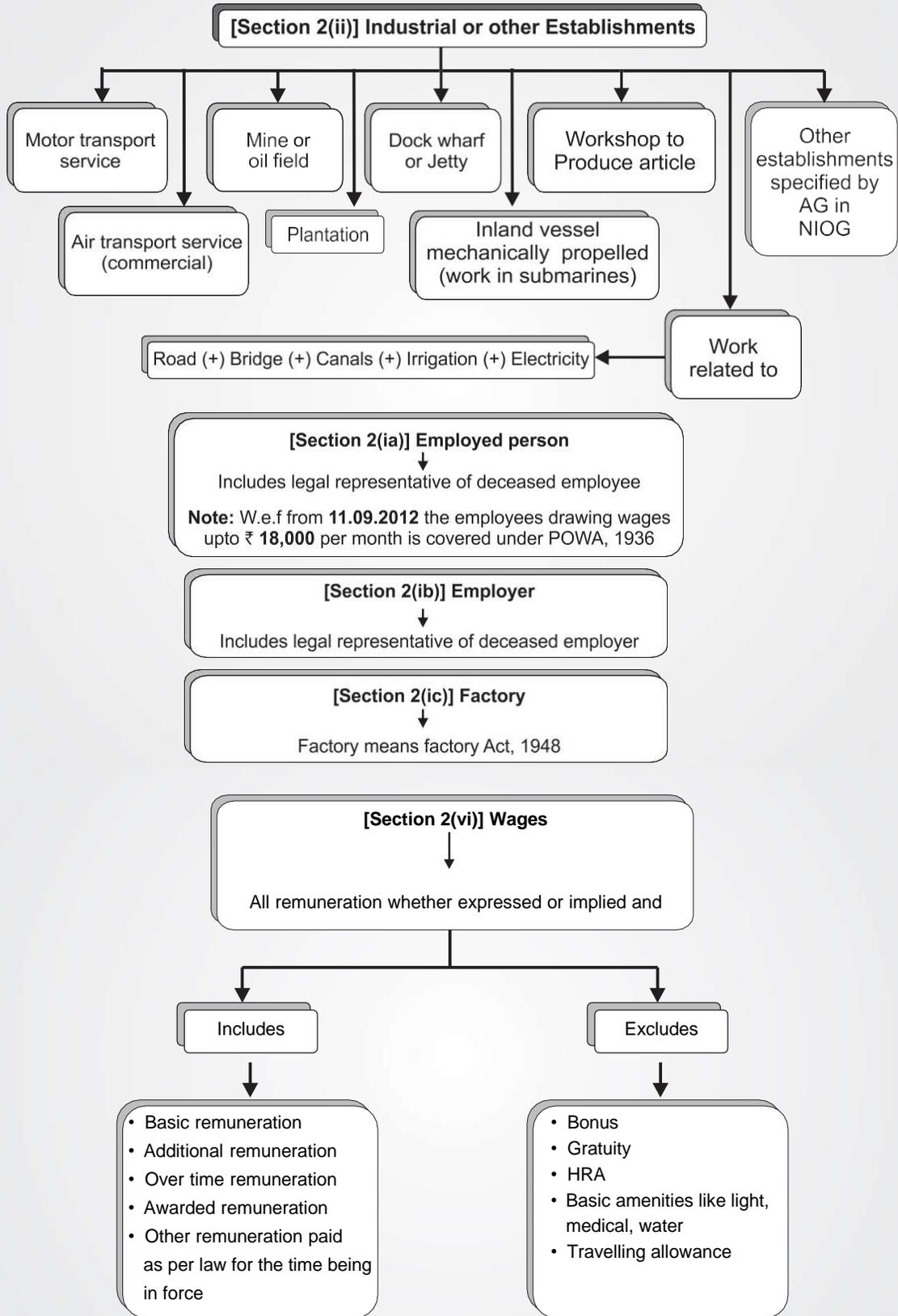
- ◆ The main object of the Act is to **eliminate all malpractices** by laying down the time and mode of payment of wages as well as securing that the workers are paid their wages at regular intervals, without any unauthorized deductions.
- ◆ The Act **extends to the whole of India.**

## Definitions

1. [Section 2(ia)] “**Employed person**” includes the legal representative of a deceased employed person.
2. [Section 2(ib)] “**Employer**” includes the legal representative of a deceased employer.
3. [Section 2(ic)] “**Factory**” means a factory as defined in clause (m) of section 2 of the Factories Act 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under sub-section (1) of section 85 thereof.
4. [Section 2(ii)] “**Industrial or other establishment**” means any –
  - a) **Tramway service or motor transport service** engaged in carrying passengers or goods or both by road for hire or reward;
  - (aa) **Air transport service** other than such service belonging to or exclusively employed in the military naval or air forces of the **Union or the Civil Aviation Department of the Government** of India;
  - b) **Dock wharf or jetty**;
  - c) **Inland vessel mechanically propelled**;
  - d) **Mine quarry or oil-field**;
  - e) **Plantation**;
  - f) **Workshop or other establishment** in which articles are produced adapted or manufactured with

- a view to their use transport or sale;
- g) Establishment in which any work relating to the **construction development** or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of Water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;
- h) Any other establishment or class of establishments which the **Appropriate Government may having regard** to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by **notification in the Official Gazette**.
5. [Section 2(vi)] “Wages” means all **remuneration** (whether by way of salary allowances or otherwise) **expressed in terms of money or capable of being so expressed** which would if the terms of **employment express or implied** were fulfilled by **payable to a person employed** in respect of his employment or of **work done in such employment** and includes –
- (a) Any remuneration payable under any **award or settlement** between the parties or order of a court;
- (b) Any remuneration to which the person employed is entitled in **respect of overtime** work or holidays or any leave period;
- (c) Any additional remuneration payable under the terms of employment (whether called a bonus or by another name) any sum which by reason of the **termination of employment of the person** employed is payable under any **law contract** or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;
- (d) Any sum to which the person employed is **entitled under any scheme** framed under any law for the time being in force, but does not include –
- (1) **Any bonus** (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
- (2) The value of any **house-accommodation or of the supply of light water medical attendance or other amenity** or of any service excluded from the computation of wages by a general or special order of Appropriate Government;
- (3) Any **contribution paid by the employer** to any **pension or provident fund** and the interest which may have accrued thereon;
- (4) Any **travelling allowance** or the value of any travelling concession;
- (5) Any sum paid to the **employed person to defray special expenses** entailed on him by the nature of his employment; or
- (6) Any **gratuity payable** on the termination of employment in cases other than those specified in **sub-clause (d)**.

Quick Recap



**Responsibility for Payment of Wages**

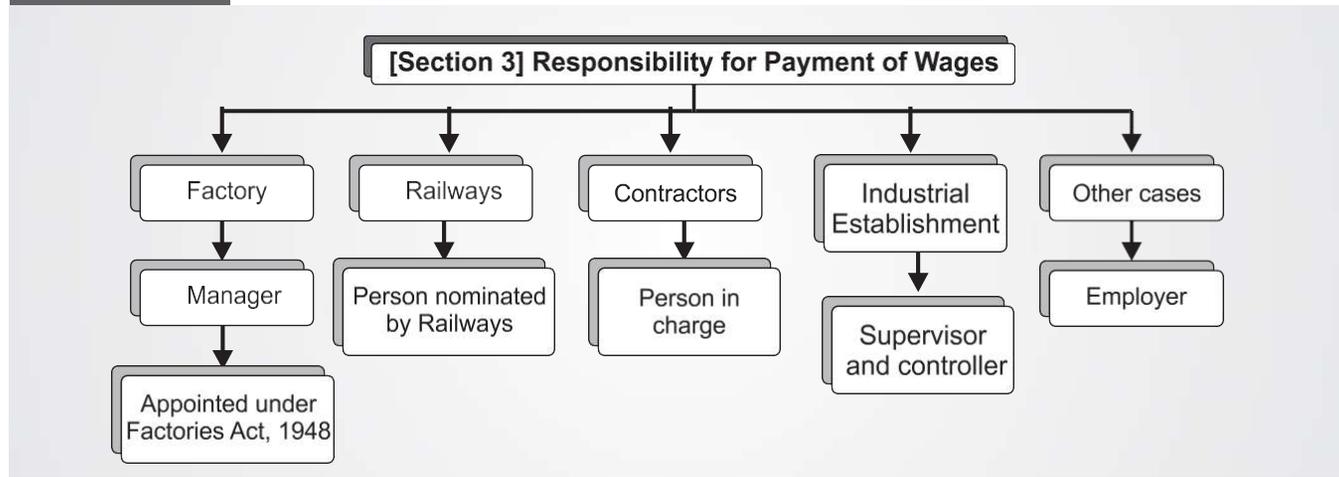
**Section 3** provides that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act.

However, in the case of persons employed in:

- a. **Factories** if a person has been named as the **manager of the factory**;
- b. **Industrial or other establishments** if there is a person responsible to the employer for the **supervision and control** of the industrial or other establishments;
- c. **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;
- d. **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**.

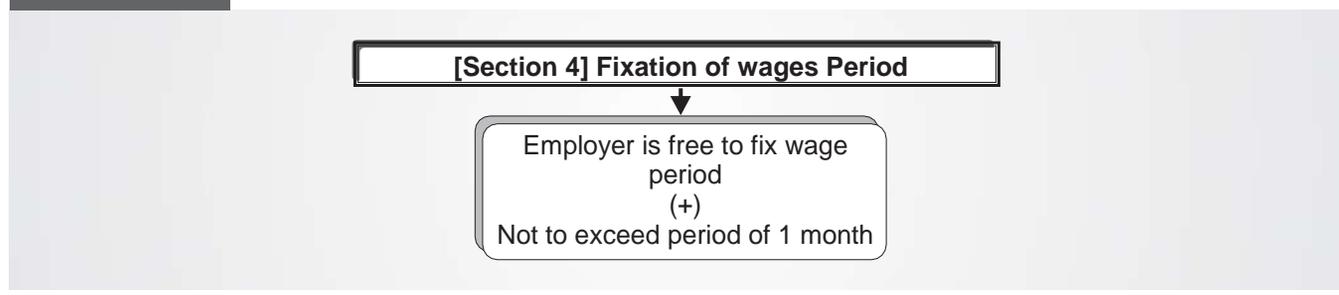
Quick Recap



**Fixation of Wage Period**

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**.

Quick Recap

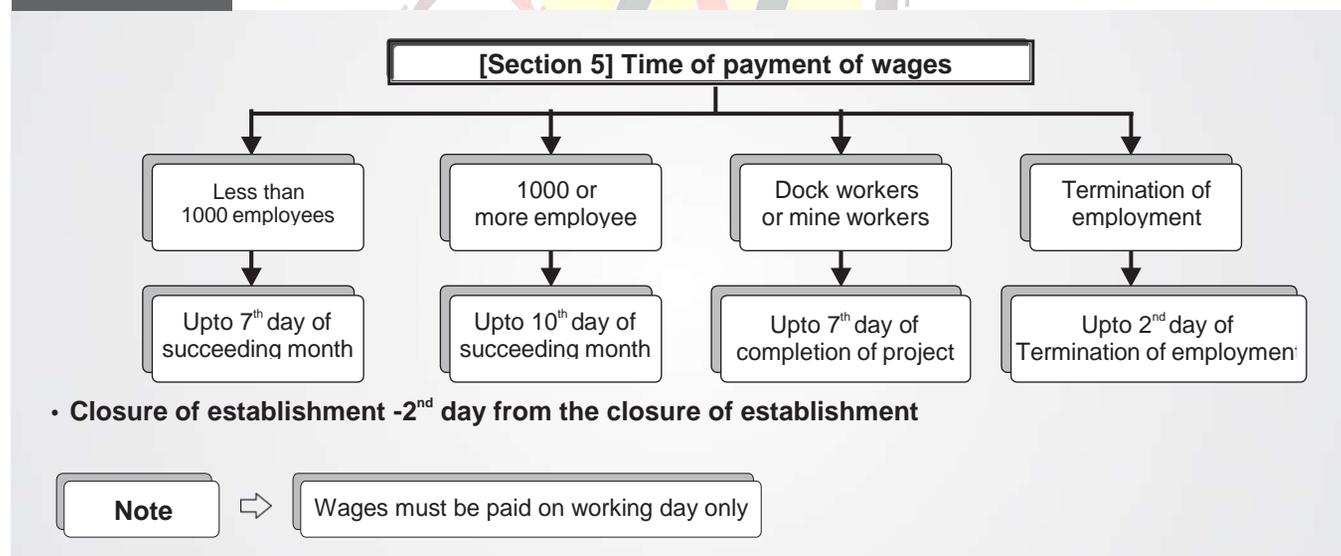


## Time of Payment of Wages

**Section 5** specifies the time payment of wages.

- a) 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 theseventh day**.
  - If persons employed are 1000 or more shall be paid before the **expiry of the tenth day**, after the last dayof the wage-period in respect of which the wages are payable.
- b) However, in the case of persons employed on a **dock wharf or jetty or in a mine** the balance of wages founddue on completion of the final tonnage account of the ship or wagons loaded or unloaded as the case maybe shall be paid before the **expiry of the seventh day** from the day of such completion.
- c) Where the employment of any person is terminated by or on behalf of the employer the wages earned byhim, shall be paid before **the expiry of the second working day** from the day on which his employment is terminated.
- d) 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.
- e) The **Appropriate Government** may by general or special order exempt to such extent and subject to such conditions as may be specified in the order the person responsible for the payment of wages to personsemployed upon any **railway or to persons employed as daily-rated workers in the Public Works Department** of the Appropriate Government from the operation of this section in respect of wages of any such persons or class of such persons. **All payments of wages shall be made on a working day.**

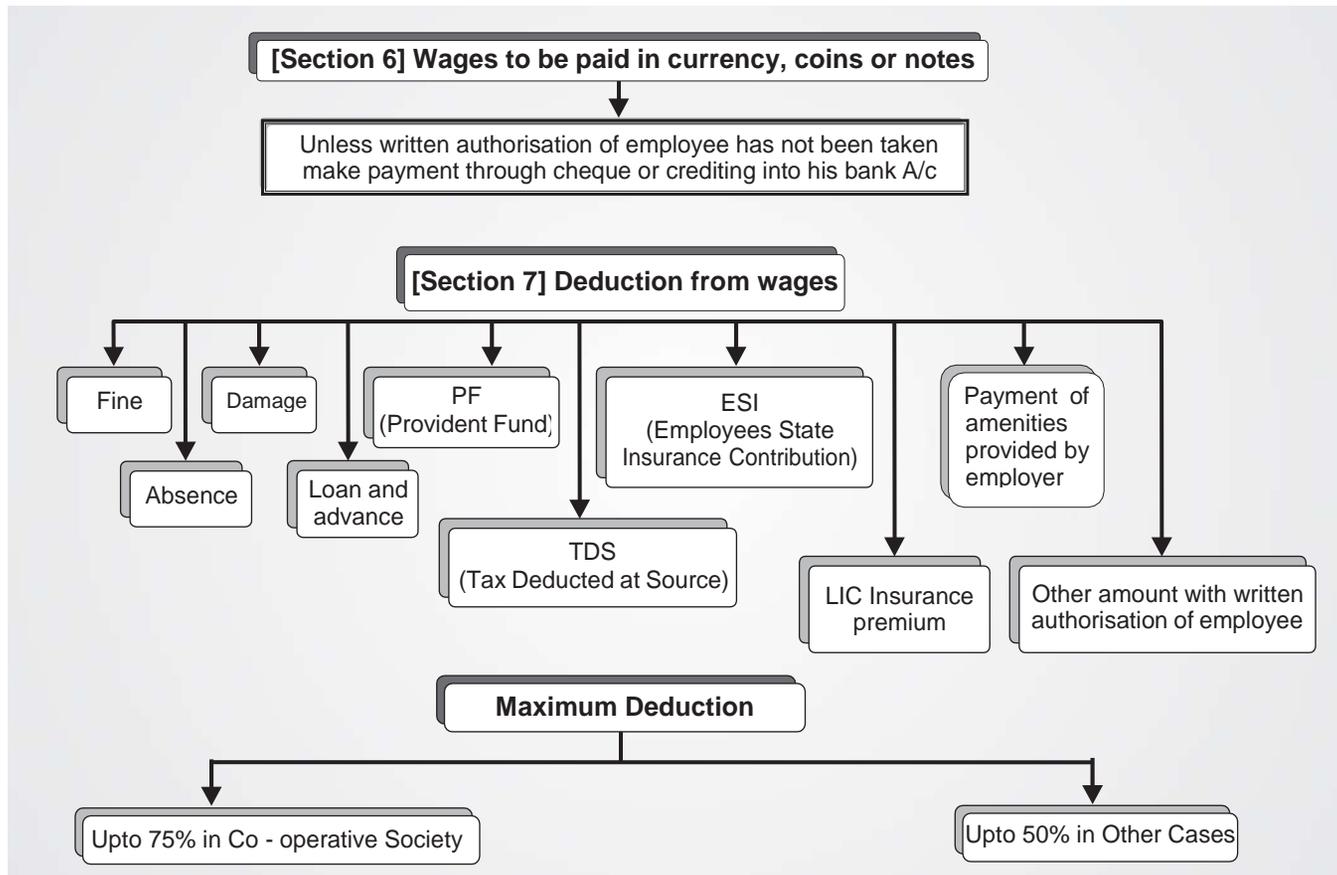
### Quick Recap



## Wages to be Paid in Current Coins or Currency Notes

As per **Section 6** of the Act, all wages shall be **paid in current coin or currency notes or in both**. However, the employer may, obtaining without the **written authorisation** of the employed person, pay him the wages either **bycheque or by crediting the wages** in his bank account.

**Note:** The Appropriate Government may notify establishments directing employers to pay wages, not in cash.



### Deductions from the Wages of an Employee

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

- (i) **fin**es;
- (ii) **absence from duty**;
- (iii) **damage to or loss of goods** expressly entrusted to the employee;
- (iv) **housing accommodation** and amenities provided by the employer;
- (v) **recovery of advances** or adjustment of overpayments of wages;
- (vi) **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;
- (vii) subscriptions to and for **repayment of advances** from any provident fund;
- (viii) **income-tax**;
- (ix) **payments to co-operative societies** approved by the State Government or to a scheme of insurance maintained by the **Indian Post Office**;
- (x) deductions made with the **written authorisation of the employee** for payment of any premium on his life insurance policy or purchase of securities.

### Fines

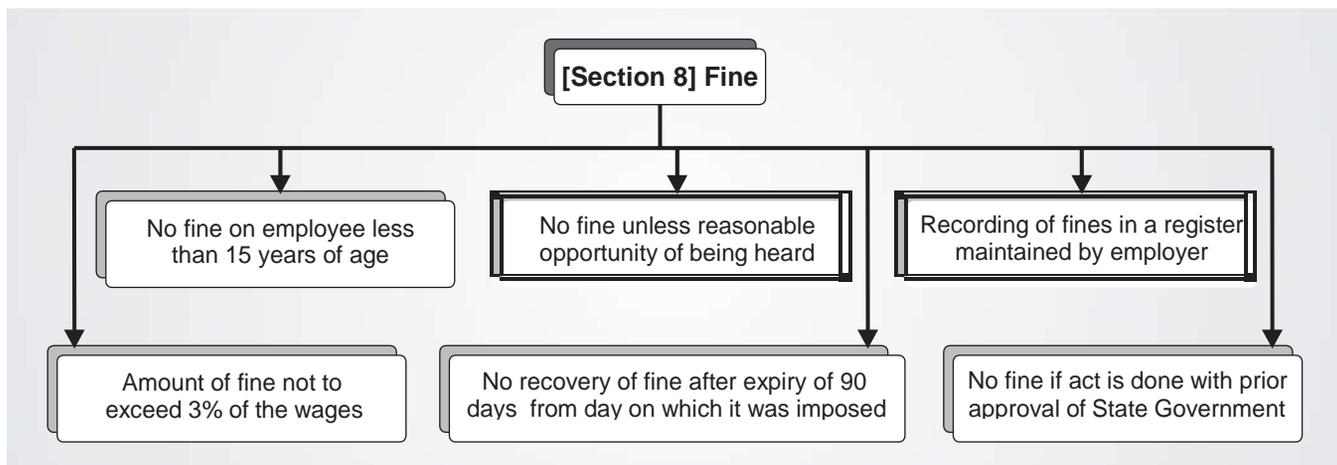
Section 8 deals with fines. It provides that:

- (1) **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 **previous approval of the State Government** or of the prescribed authority may have specified by notice under sub-section (2).
- (2) A **notice 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.
- (3) No fine shall be imposed on any employed person until he has been given **an opportunity of showing cause against the fine** or otherwise than in accordance with such procedure as may be

prescribed for the imposition of fines.

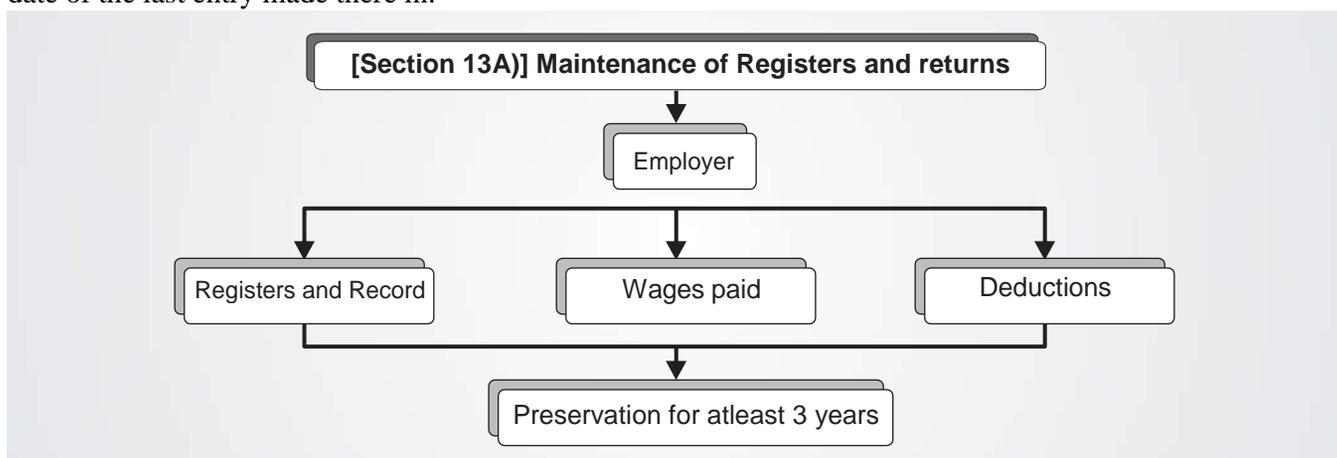
- (4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to **three per cent** of the wages payable to him in respect of that wage period.
- (5) No fine shall be imposed on any employed person who is **under the age of fifteen years**.
- (6) No fine imposed on any employed person shall be recovered from him **by installments** or after the **expiry of ninety days** from the day on which it was imposed.
- (7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- (8) All **fines and all realizations thereof shall be recorded in a register** 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 realizations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

It may be noted that when the persons employed upon or in any railway, factory or industrial or other establishment are part only of a staff employed under the same management all such realizations may be credited to a common fund maintained for the staff as a whole provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.



**Maintenance of Registers and Records**

**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 there in.



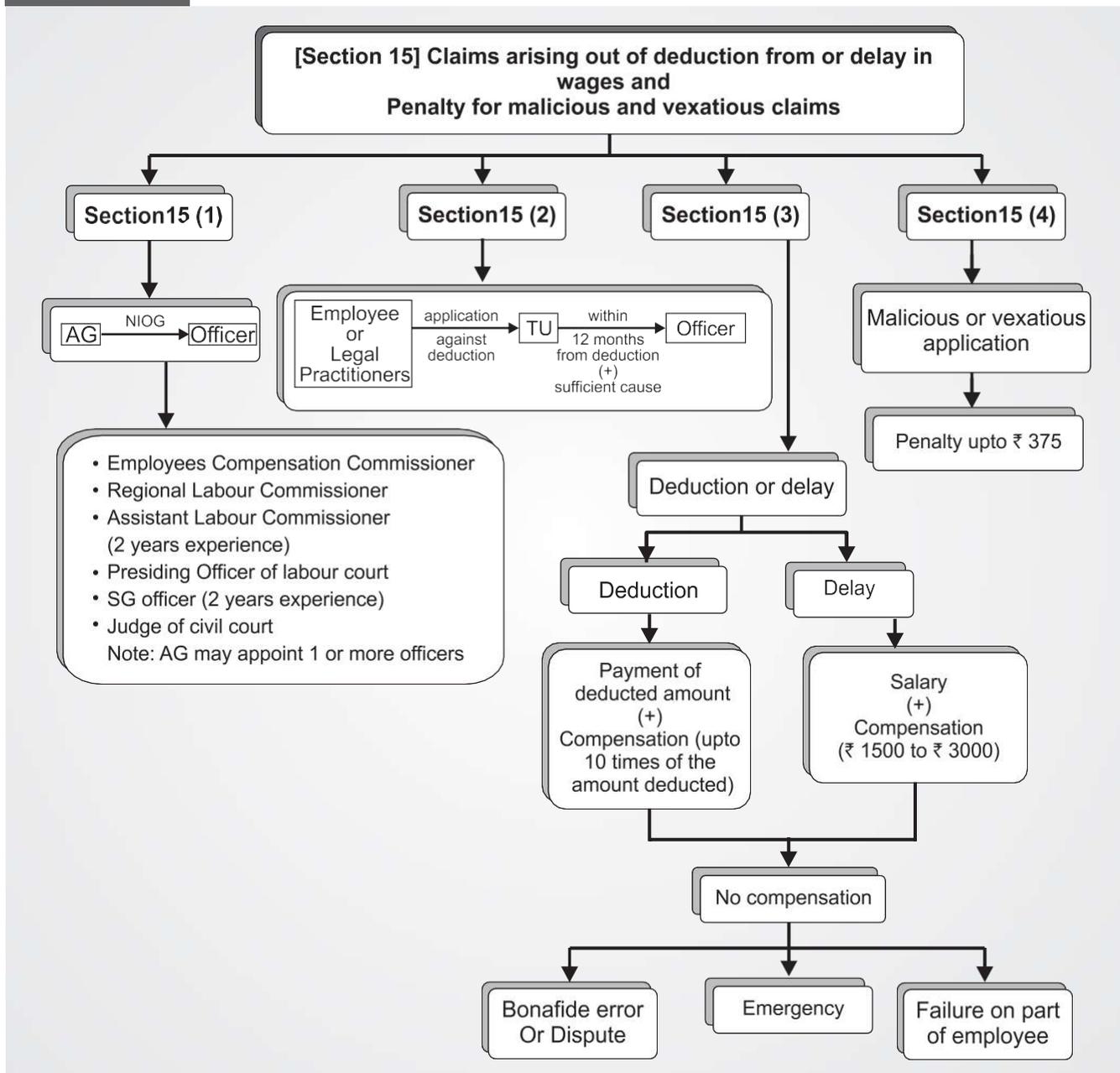
### Claims Arising Out of Deductions from Wages or Delay in Payment of Wages and Penalty for Malicious or Vexatious Claims

**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.
- f) ) Provided that where the appropriate Government considers it necessary so to do, it **may appoint more than one authority** for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act. **Sub-section (2) of section 15** provides that where **contrary to the provisions of the Act** any deduction has been made from the wages of an employed person or any payment of wages has been delayed such person himself or any **legal practitioner or any official of a registered trade union** authorised in writing to act on his behalf or any **Inspector** under this Act or any other person acting with the **permission of the authority appointed under subsection (1)** may apply to such authority for a direction under **sub-section (3)**:
- g) However, every such application shall be presented within **twelve months** from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be. Any application may be admitted after the said period of **twelve months** when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.
- h) As per **sub-section (3) when any application under sub-section (2)** is entertained, the authority shall **hear the applicant and the employer or other person responsible** for the payment of wages under **section 3**, or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the **refund to the employed person** of the amount deducted, or the payment of the delayed wages, together with the payment of such **compensation** as the authority may think fit, not exceeding ten times the amount deducted in the former case and not **exceeding three thousand rupees but not less than one thousand five hundred rupees** in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, **not exceeding two thousand rupees**.
- i) A claim under the Act shall be disposed of as far as practicable within a period of **three months** from the date of registration of the claim by the authority. It may be noted that the period of **three months** may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be **extended to such period as may be necessary to dispose of the application** in a just manner. 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-

- A **bona fide error or bona fide dispute** as to the amount payable to the employed person; or
  - **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
  - **The failure of the employed person** to apply for or accept payment.
- j) 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.**

Quick Recap



**Note:** Claim under this act shall be disposed off within 3 months from date of registration.

# Chapter – 6

## Minimum Wages Act, 1948

### List of Sections

Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(b)	Appropriate Government
2(e)	Employer
2(i)	Employee
2(h)	Wages
2(g)	Scheduled employment
3	Fixation of minimum rates of wages and its revision
4	Minimum rates of wages
5	Procedure for fixing and Revising Minimum Wages
7	Advisory Board
8	Central Advisory Board
11	Wages in cash or kind
12	Payment of minimum rates of wages is obligatory on employer otherwise is an offence
13	Fixing hours for normal working day
14	Overtime payment
15	Wages of workers who works for less than normal working day
17	Minimum time rate wages for piece work
18	Maintenance of Register and Records
20-21	Authorities and claims
22	Penalties for certain offences
22A	Penalties for other offences

### Introduction

The main objective of the Minimum Wages Act is to **prevent exploitation of labour by prescribing minimum wage rates** and for that purpose, it has empowered the Appropriate Government to take steps to prescribe minimum rates of wages in certain employments, as specified in the Schedule to this Act.

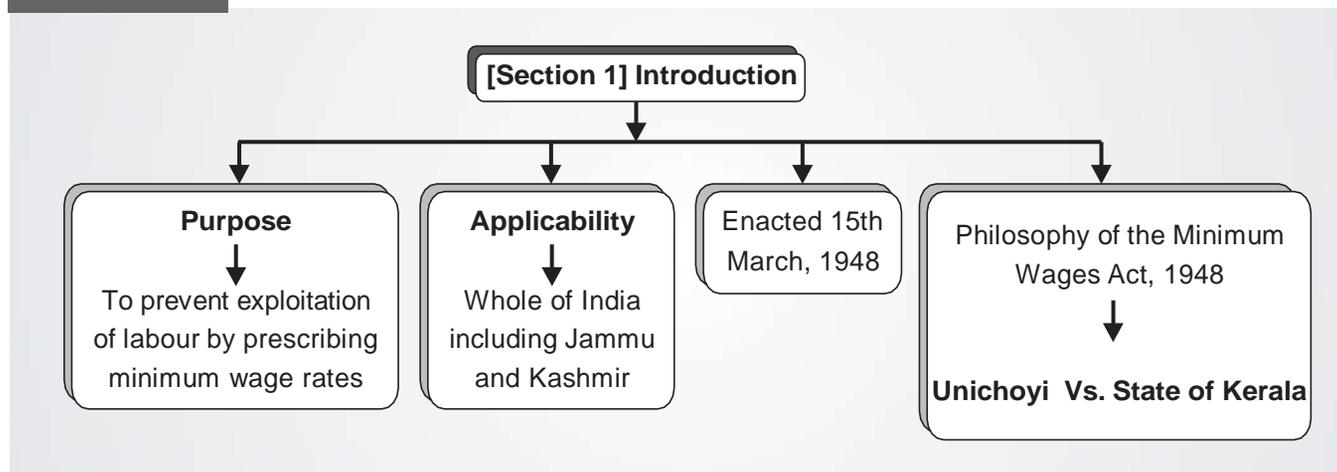
The act **extends to whole of India**.

### Philosophy Behind the Enactment of the Minimum Wages Act, 1948

CASE LAW	Unichoyi vs. State of Kerala
The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in Unichoyi vs. State of Kerala	

- ♦ The purpose of Minimum Wages Act, 1948 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 prescribed in minimum rates, the **capacity of the employer need not to be considered**.
- ♦ What is being prescribed is **minimum wages** rates which a welfare state assumes **every employer must pay** to his labour employed.

### Quick Recap



### Important Definitions

#### [Section 2(e)] Employer

“Employer” means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act.

Person who engages workers through another like a contractor would also be an employer.

It was held in **Nathu Ram Shukla vs. State of Madhya Pradesh** that if minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer within the meaning of the Act.

#### [Section 2(h)] Wages

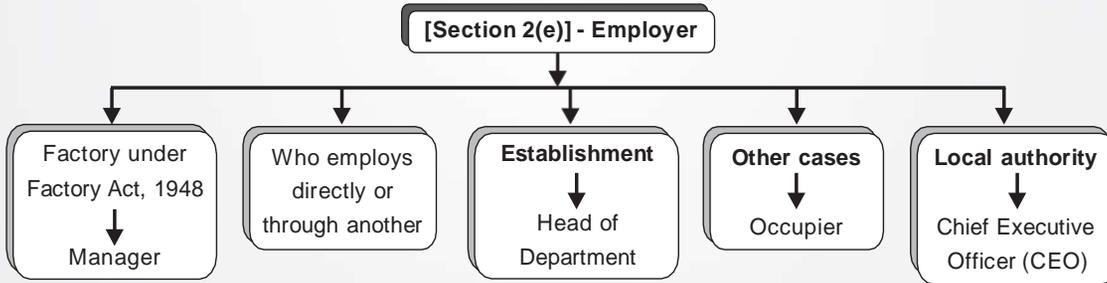
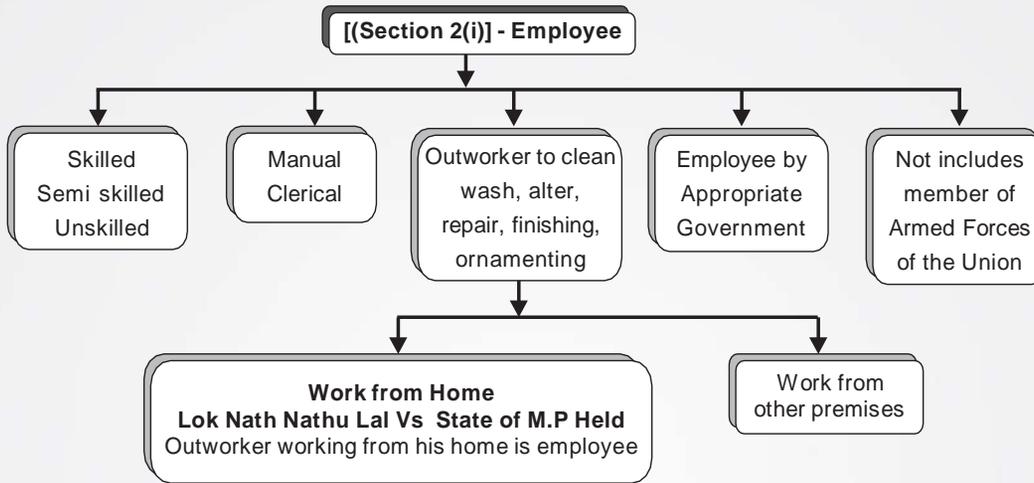
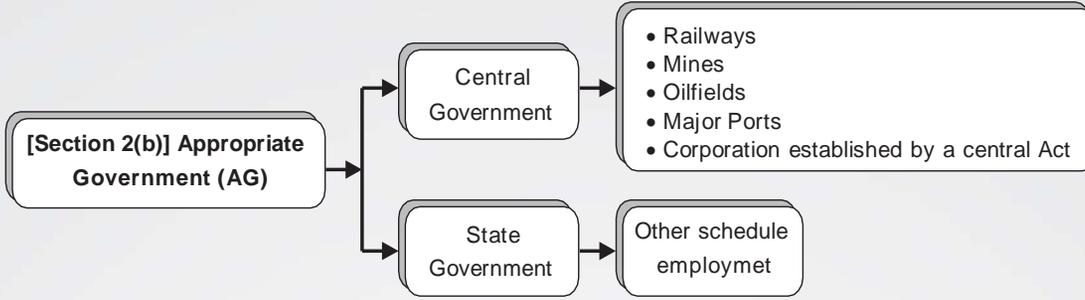
“Wages” means all remunerations capable of being expressed in terms of money and includes house rent allowance but does not include:

- The value of any house accommodation, supply of light, water, medical or any other amenity or any service excluded by general or social order of the Appropriate Government.
- Contribution by the employer to any Pension Fund or under any scheme of social insurance.
- Any travelling allowance.
- Any sum paid to the person employed to defray special expenses entitled on him by the nature of his employment.
- Any gratuity payable on discharge.

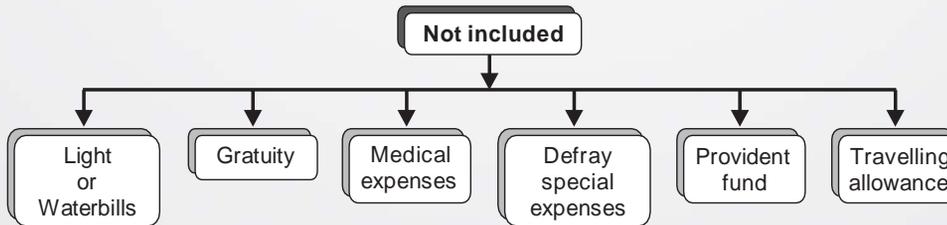
#### [Section 2(i)] Employee

“Employee” means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed, and includes an outworker, but does not include any member of Armed Force of the Union.

Quick Recap



Wages [Section 2(h)] All remuneration in money (+) HRA.



[Section 2(g)] Scheduled employment — Employment specified in Schedule



### Fixation of Minimum Rates of Wages

- ♦ **Section 3** provides that the ‘Appropriate Government [Central Government/State Government]’ shall fix the minimum rates of wages, payable to employees in an employment specified in Schedule to this Act.

CASE LAW	Basti Ram vs. State of A.P.
In the case of an employment specified in Part I of the Schedule, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. Different rates can be fixed for different zones or localities.	

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

CASE LAW	Bijoy Cotton Mills vs. State of Ajmer
In the case of Bijoy Cotton Mills vs. State of Ajmer, the Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guarantee under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public and with a view of carrying out one of the Directive Principles of the State Policy.	

### [Section 3(1)(b)] Revision of Minimum Wages

- ♦ The ‘Appropriate Government’ may review and revise the minimum rate of wages, if necessary, at **intervals not exceeding five years**.
- ♦ This means that minimum wages can be revised earlier than five years also.

### [Section 3(2)] Manner of fixation or revision of minimum wages

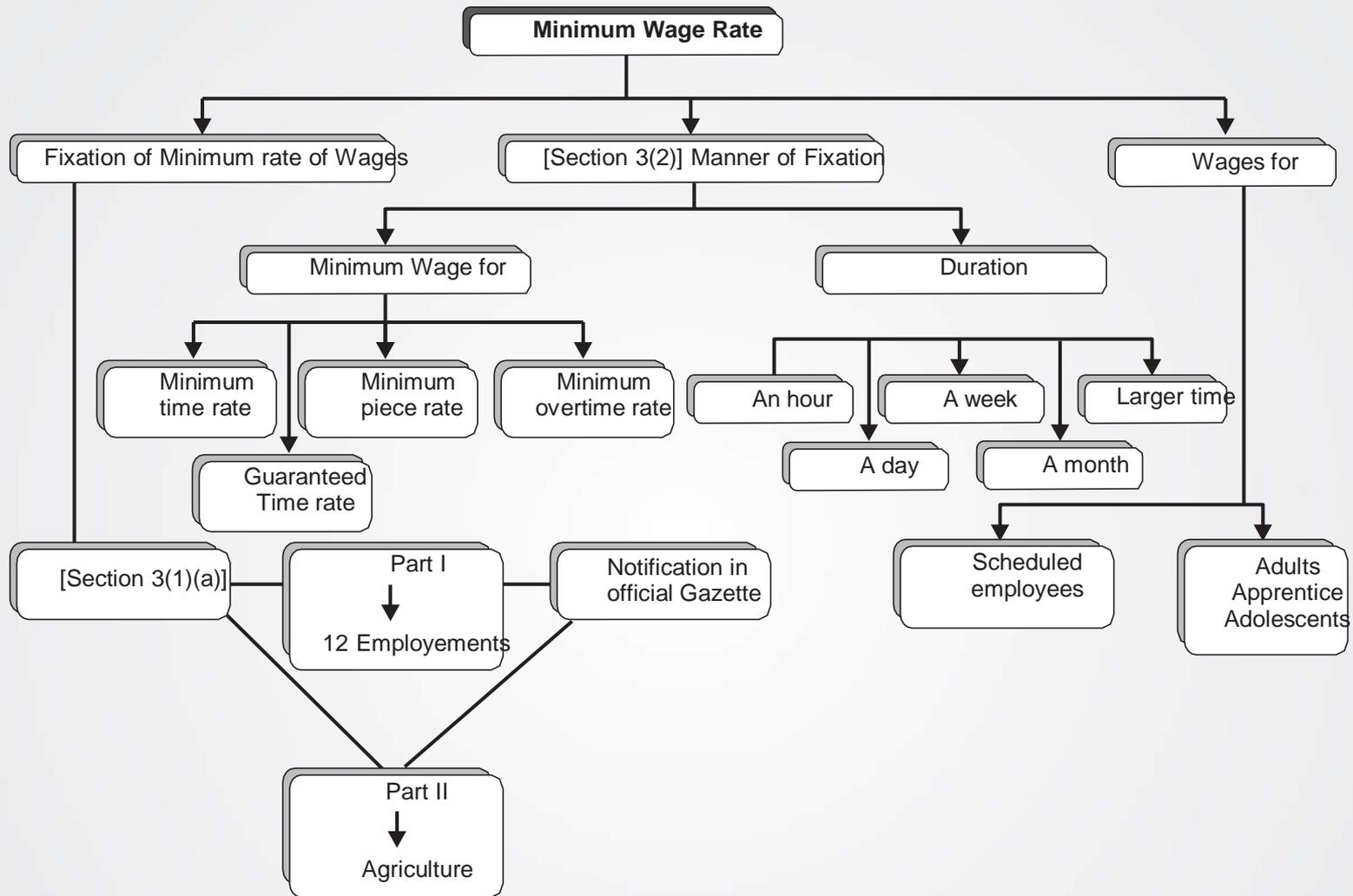
According to section 3(2), the ‘appropriate government’ may fix minimum rate of wages for:

- (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.

### Minimum Rate of Wages

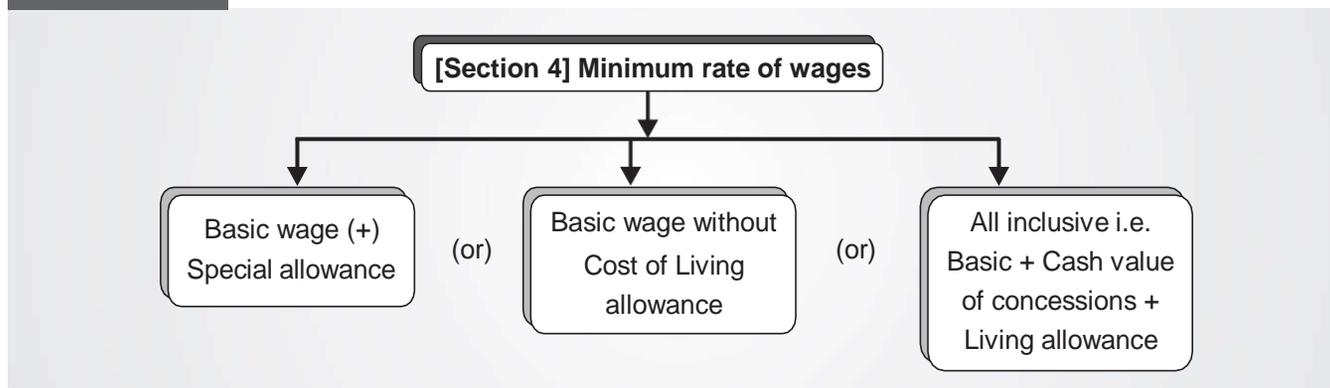
According to **Section 4** of Act, any minimum rate of wages fixed or revised by the Appropriate Government under Section 3 may consist of:

- (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 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.



- **Basti Ram Vs State of A.P.** Different rates for different localities.
- **Bijoy Cotton Mills Vs State of Ajmer** Section 3 is reasonable and valid.
- Government may fix minimum rates if employees in state are not less than 1000 workers.
- **Revision [Section 3(1) (b)]** Intervals not exceeding 5 years.  
Wages can be revised earlier also.

## Quick Recap



## [Section 5] Procedure for Fixing and Revising Minimum Wages

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.

- **Committee Method**

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 advice of the committee or sub-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**, wages rates shall come into force **on the expiry of three months from the date of the issue** of the notification.

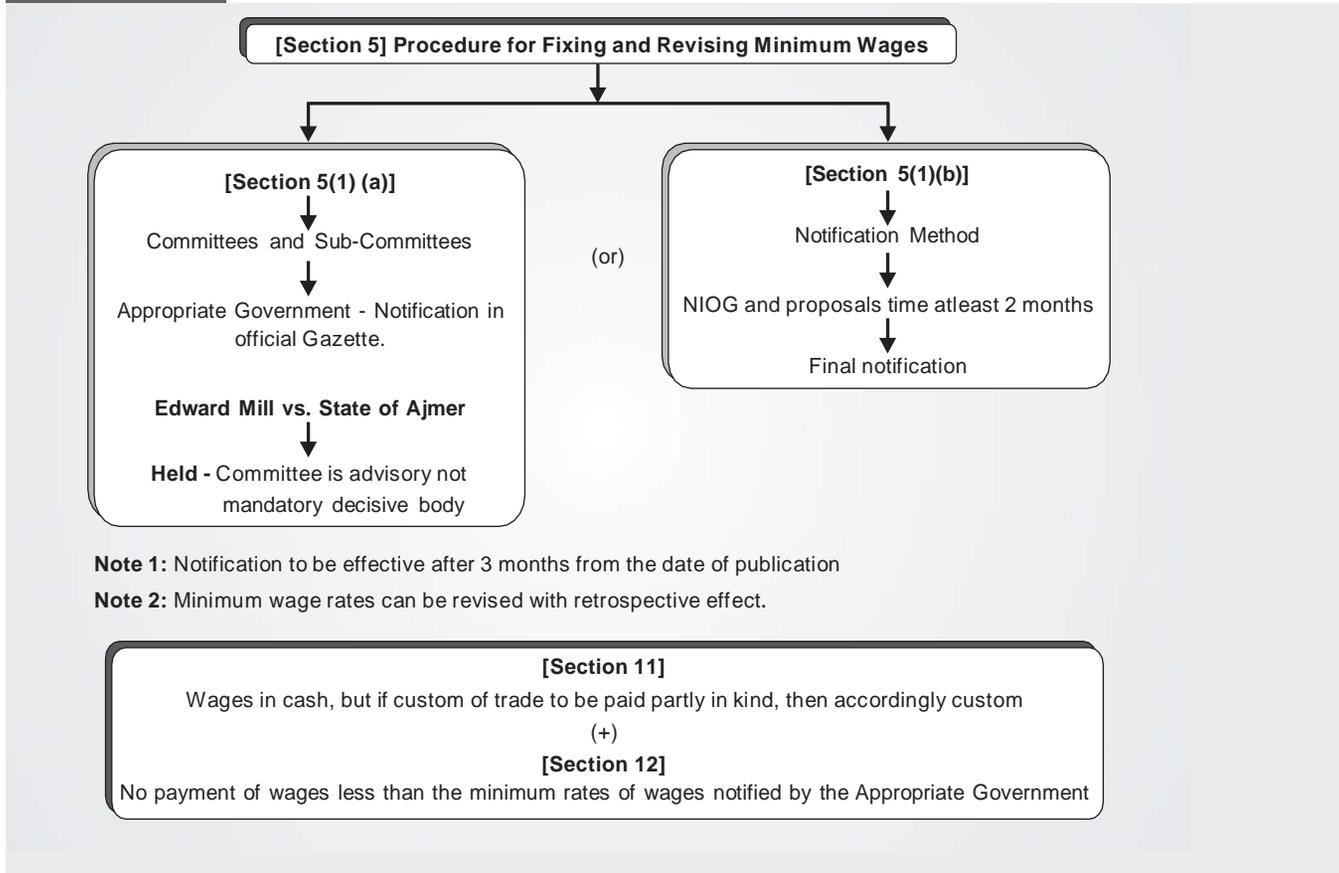
- **Notification Method**

When fixing minimum wages, 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 date not less **than 2 months** from the date of notification, on which the proposals will be taken into consideration.

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 three months from the date of its issue**.

**Note:** Minimum wage rates can be revised with retrospective effect.

Quick Recap



**Advisory Boards**

**State Advisory Board**

The advisory board is constituted, under **Section 7** of the Act, by the State Government for the purpose of co-ordinating the work of committees and subcommittees 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.

The advisory board shall consist of persons to be nominated by the State Government representing **employers and employees** in the scheduled employment who shall be **equal in number**, and **independent persons not exceeding 1/3<sup>rd</sup> of its total number of members**, one of such **independent persons** shall be appointed as the **Chairman** by the State Government.

An **independent person means** a person who is **neither an employer nor an employee** in the employment for which the minimum wages are to be fixed.

<b>CASE LAW</b>	<b>State of Rajasthan vs. Hari Ram Nathwani</b>
In the case of State of Rajasthan vs. Hari Ram Nathwani, it was held that the mere fact that a person happens to be a Government servant will not divert him of the character of the independent person.	

<b>CASE LAW</b>	<b>B. Y. Kshtriya vs. Bidi Kamgar Union</b>
It is not necessary that the Board shall consist of representatives of any particular industry or of each and every scheduled employment.	

**Central Advisory Board**

**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<sup>rd</sup> of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government.

**Quick Recap**

**[Section 7] - Advisory Board**

State  
Government

Constituted

→

Advisory Board

↓

To co-ordinate  
with

Committees

Sub Committees

□ Equal number of employees representatives and employer representative (+) 1/3rd independent persons (+) 1 independent person appointed as chairman by State Government.  
(+)

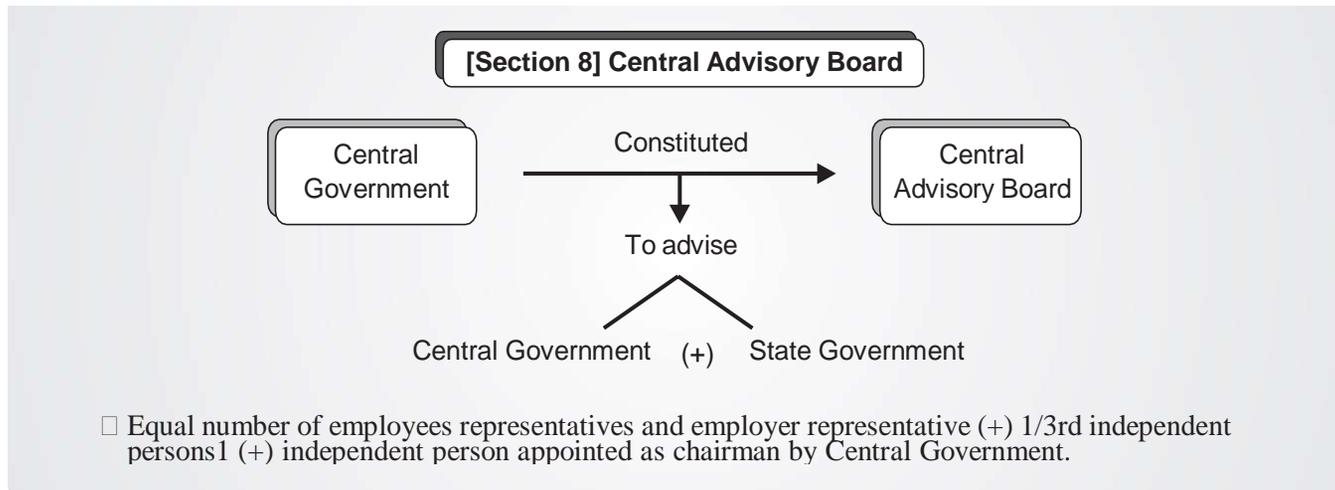
**State of Rajasthan Vs. Hari Ram Nathwani**

**Held:** - Government servant can be an independent chairman

**B.Y. Kshatriya Vs. S.A.T. Bidi Kamgar Union**

**Held:**

- Neither employer nor employee can act as Chairman.
- Not necessary to constitute member from each industry.



### [Section 11] Minimum Wage – Whether to be Paid in Cash or Kind

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 in kind, the Appropriate Government, on being satisfied, may approve and authorize such payments.

**Note:** Such Government can also authorize for supply of essential commodities at concessional rates.

### [Section 12] Payment of Minimum Wages is Obligatory on Employer

Payment of less than the minimum rates of wages notified by the appropriate Government is **an offence**.

### [Section 14] Payment for Overtime

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act, 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; 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.

### [Section 15] Wages of a Worker Who Works Less than Normal Working Day

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 is 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, subject to the condition that failure to work is not caused by employee's unwillingness to work.

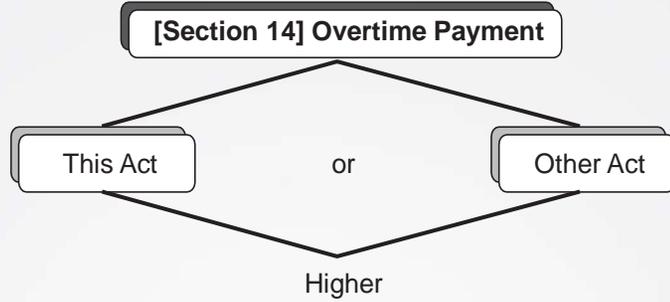
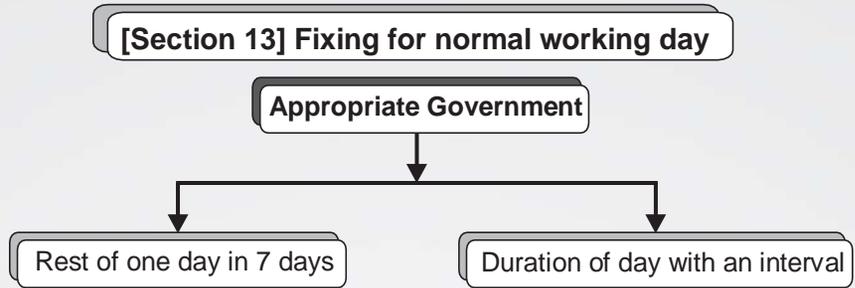
### [Section 17] Minimum Time – Rate Wages for Piece Work

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 at minimum time rate.

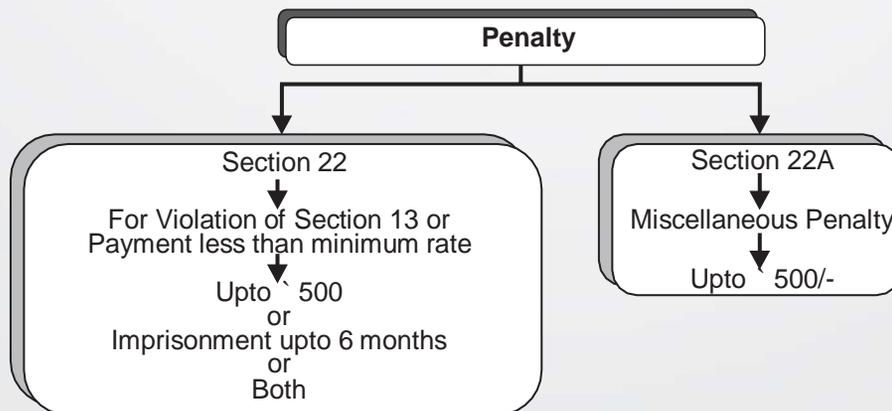
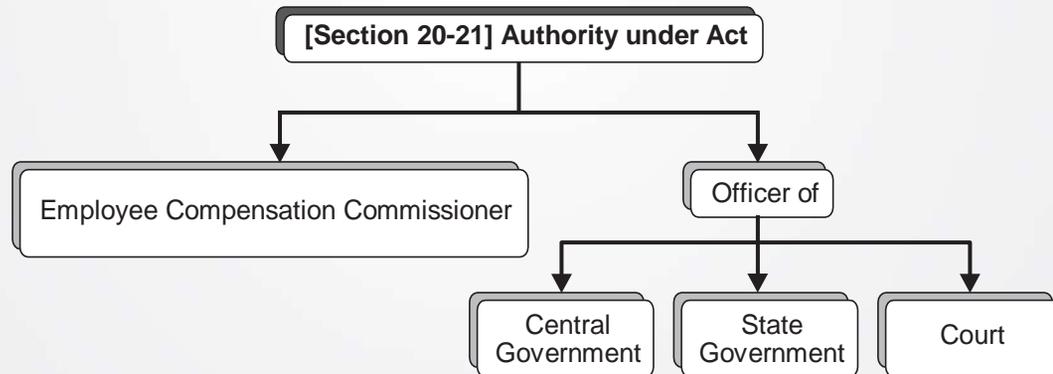
### [Section 18] Maintenance of Register and Records

Every employer is required to maintain registers and records as prescribed under the rules by the Appropriate Government.

Quick Recap



- **[Section 15]: - Full wages if, work is less than a day**  
But no pay if employee is unwilling to work.
- **[Section 18]: - Maintenance of registers and records**  
Manner prescribed by Appropriate Government





# Chapter – 7

## Industrial Disputes Act, 1947

### List of Sections

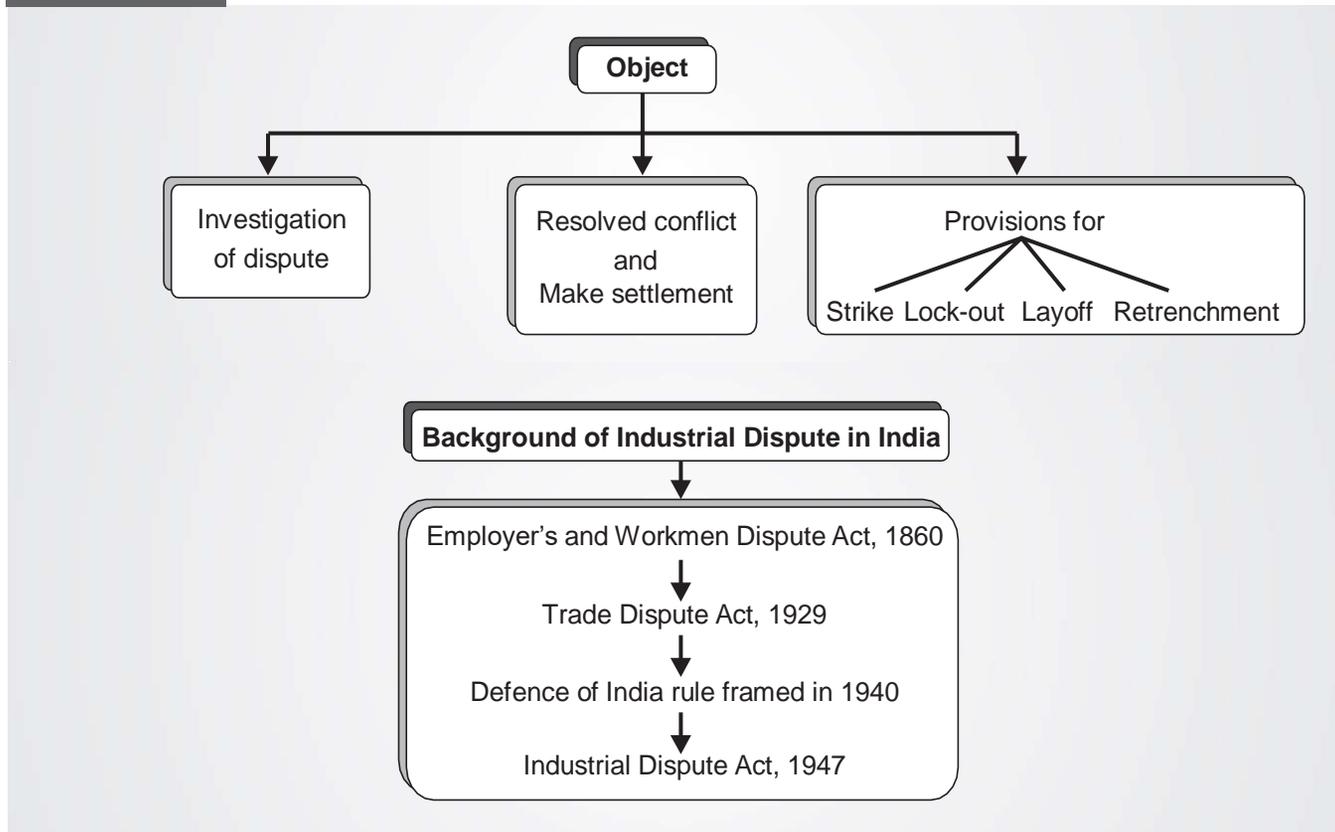
Sections	Particulars of Section
2A	Dismissal of individual workman to be deemed to be an industrial dispute
2(a)	Appropriate Government
2(aa)	Arbitrator
2(aaa)	Average pay
2(b)	Award
2(cc)	Closure
2(ee)	Controlled Industry
2(g)	Employer
2(gg)	Executive
2(i)	Independent
2(j)	Industry
2(k)	Industrial dispute
2(kkk)	Lay - off
2(l)	Lockout
2(III)	Office bearer
2(n)	Public utility service
2(oo)	Retrenchment
2(p)	Settlement
2(q)	Strike
2(qq)	Trade Union
2(ra)	Unfair labour practice
2(rr)	Wages
2(s)	Workman
3	Work Committee
4	Conciliation officer
5	Boards of Conciliation
6	Courts of Inquiry
7	Labour Court
7A	Tribunals
7B	National Tribunals

7C	Presiding officer should be an independent person
9A	Change in service conditions when no proceedings are pending before labour Court or Tribunal etc.
10	Reference of AG by Tribunal
11	Procedure and Powers of Authorities
11A	Powers to give appropriate relief in case of discharge or dismissal
15	Duties
22	Notice of strike and lockout
23	General prohibitions of strike and lock outs
24	Illegal strikes and lock outs
25	No support of illegal strike
25T	Unfair labour practices
25U	Fines under unfair labour practices
26(1)	Penalty for illegal strike
26(2)	Penalty for lockouts
27	Penalty for instigation
28	Penalty for giving financial aid to illegal striker & lockouts
29	Penalty for breach of settlement or award
30	Penalty for disclosing confidential information
30A	Penalty for closure without notice
31	Penalty for other offences
32	Penalty for offence by Companies
33	Change in conditions of service during pendency of proceedings

### Introduction

- ♦ The object of Industrial Disputes Act, 1947 is to make provisions for **investigation and settlement of industrial disputes**.
- ♦ The purpose is to bring the **conflict** between the employer and the employees to an amicable **settlement**.
- ♦ The Act also provides **machinery for settlement** of disputes, if dispute cannot be resolved through collective bargaining.
- ♦ In addition to above, the Act also makes other provisions in respect of **strike, lock-out, lay-off, retrenchment, etc.**

## Quick Recap



## Meaning

## [Section 2(j)] Industry

Industry means any **business, trade, undertaking, and manufacture of employers and includes any services, employment, handicraft, or industrial occupation of workmen.**

The meaning and definition of the term industry can be understood in a better manner as decided in **Bangalore Water**

## CASE LAW

## Supply and Sewage Board Vs A. Rajappa and Others

**Supply and Sewage Board Vs A. Rajappa and Others**, a very wide interpretation of the term industry was given in the said case. It was held that any systematic activity organized by cooperation between employers and employees for the production or distribution of goods and services constituted to satisfy human wants and wishes is an industry.

**Note: Profit motive** or desire to generate income **is not necessary** for any undertaking to be covered under the concept of **industry**.

It may lead to the conclusion that many **charitable institutions, welfare organizations**, clubs, cooperatives, **hospitals**, educational institutions, universities, etc. are also industries within the meaning of Industrial Disputes Act, 1947.

## Quick Recap

## [Section 2(j) ] Meaning of Industry

**Bangalore Water Supply and Sewage Board vs. Rajappa and Others**

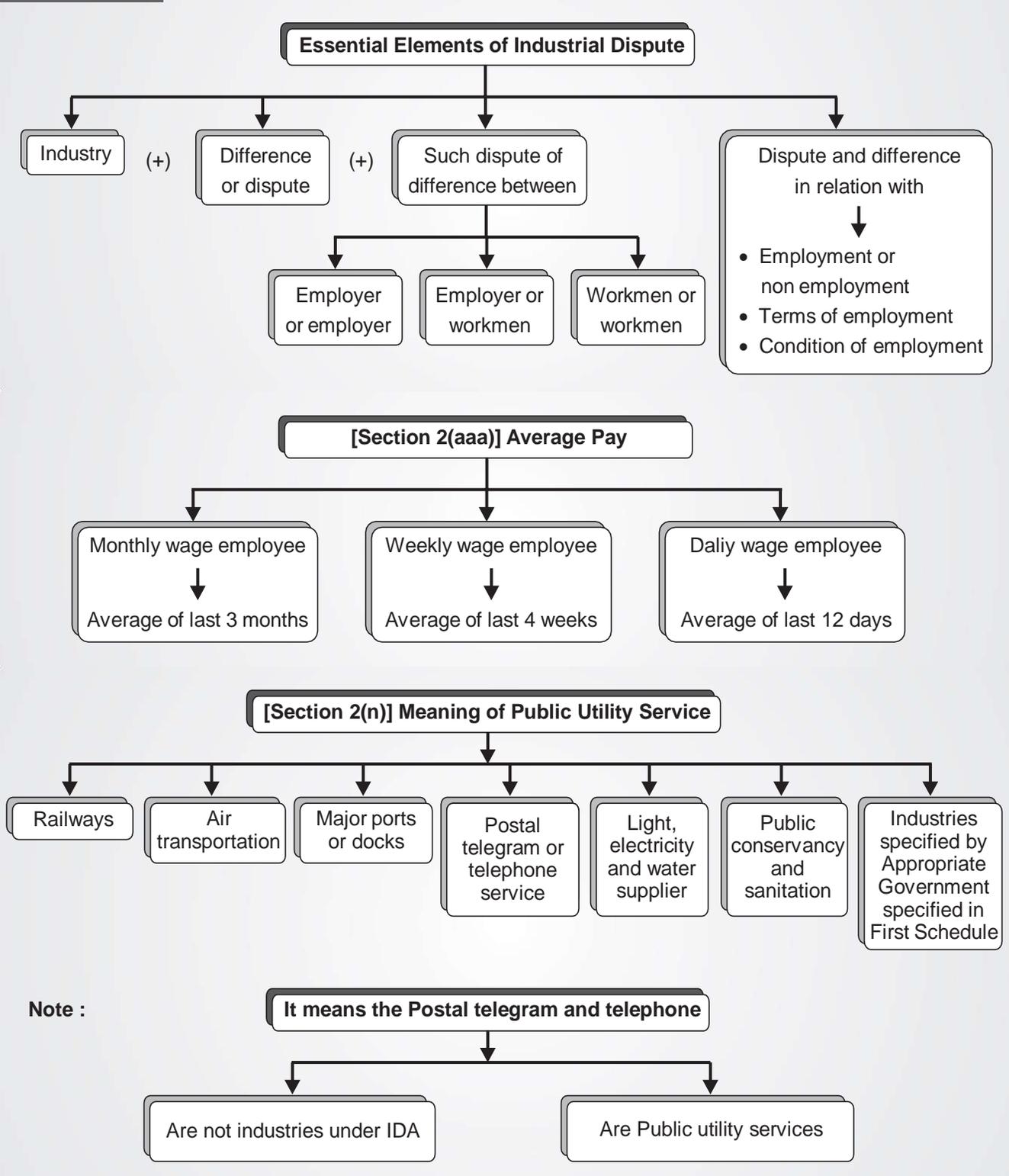
**Held** - Business, trade, occupation either for **profit or non-profit** motive.

## Inclusion and exclusion of industries

1. Municipality
2. tax department
3. Fire bridge
4. Public garden
5. Printing press
6. Larger clubs
7. Hospital and charitable institutions
8. Universities research institutions
9. Sovereign functional department (Passport type)
10. Firms of professionals
11. Voluntary free services of professional
12. Corporative society
13. Federation of Indian chamber of commerce
14. Agriculture operation Co.
15. Indian Navy sailor home
16. Panchat Samiti
17. Trust
18. Khadi and village industrial board
19. Housing board
20. Dock labour board
21. Forest department of Government
22. Zoo
23. Indian institute of petroleum
24. Primary health control
25. Khadi gramodyaya sage
26. Management of Pvt. Educational institutions

1. Post and telegram department
2. Telecom department
3. Central institute of fisheries
4. Trade union
5. Construction and maintenance of National and state highway

Quick Recap



**[Section 2(k)] Industrial Dispute**

Industrial Disputes Act, 1947 provides that a dispute or difference between:-

- ♦ employers and employers
- ♦ employers and workmen
- ♦ workmen and workmen.

Which is connected with employment or non-employment or the terms and conditions of employment or with the condition of labour of any person.

**[Section 2(aa)] Arbitrator**

An "Arbitrator" includes an umpire.

**[Section 2(aaa)] Average Pay**

"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.

**[Section 2(cc)] Closure**

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

**[Section 2(ee)] Controlled Industry**

"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.

**[Section 2(g)] Employer**

"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.

**[Section 2(gg)] Executive**

"Executive" in relation to a Trade Union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted.

**[Section 2(i)] Independent**

A person shall be deemed to be "independent" for the purpose of his appointment as the chairman or other member of a Board, Court or Tribunal if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal, or with any industry directly affected by such dispute.

Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government, the nature and extent of the shares held by him in such company.

**[Section 2(III)] Office Bearer**

“Office Bearer”, in relation to a trade union, includes any member of the executive thereof, but does not include an auditor.

**[Section 2(n)] Public Utility Service**

“Public Utility Service” means:

- (i) any railway service or any transport service for the carriage of passengers or goods by air; (ia) any service in, or in connection with the working of, any major port or dock;
- (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workman employed therein depends;
- (iii) any postal, telegraph or telephone service;
- (iv) any industry which supplies power, light or water to the public;
- (v) any system of public conservancy or sanitation;
- (vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the 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.

Public utility services may be carried out by private companies or business corporations (*D.N. Banerjee v. P.R. Mukharjee (Budge Budge Municipality)*, AIR 1953 SC 58).

**[Section 2(qq)] Trade Union**

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

**[Section 2(ra)] Unfair Labour Practice**

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

**[Section 2(rr)] Wages**

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

- (i) such allowance (including dearness allowance) as the workman 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 food grains or other articles;
- (iii) any travelling concession, but does not include:
  - (a) any bonus;
  - (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;
  - (c) any gratuity payable on the termination of his service.
  - (d) any commission payable on the promotion of sales or business or both.

**Authorities under the Act and 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.

#### **[Section 3(2)] Works Committee**

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

#### **[Section 4] Conciliation Officers**

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.

#### **[Section 5] Boards of Conciliation**

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.

#### ***Courts of Inquiry***

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.

#### **Labour Courts**

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 *suomotu* the management to avail the opportunity of adducing fresh evidence in support of charges (1998 Lab 1C 540 AP).

Provisions of Article 137 of the Limitation Act do not apply to reference of dispute to the Labour Court. In case of delays, Court can mould relief by refunding back wages or directing payment of past wages (1999 LAB 1C SC 1435).

#### **Tribunals**

- (1) 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.
- (2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.
- (3) 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 Judges or an Additional District Judge.
- (4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceedings before it.

Further, the person appointed as a Presiding Officer should be an independent person and must not have attained the age of 65 years. (Section 7-A)

The duties of Industrial Tribunal are identical with the duties of Labour Court, i.e., on a reference of any industrial dispute, the Tribunal shall hold its proceedings expeditiously and submit its award to the appropriate Government.

#### **National Tribunals**

- (1) 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.

- (2) A National Tribunal shall consist of one person only to be appointed by the Central Government.
- (3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal unless: he is, or has been, a Judge of a High Court; or
- (4) 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.

**Who can Raise a Dispute?**

Industrial Disputes Act, 1947 provides that a **dispute between employer and a single workman can not be** considered as dispute under definition of Industrial Dispute.

**Note:** If the **workman** acts as a body or a **representative** of other workmen with a common cause, then such a dispute will be an Industrial Dispute.

Thus, an Industrial Dispute is a collective dispute supported by either a trade union or by number of fellowworkers.

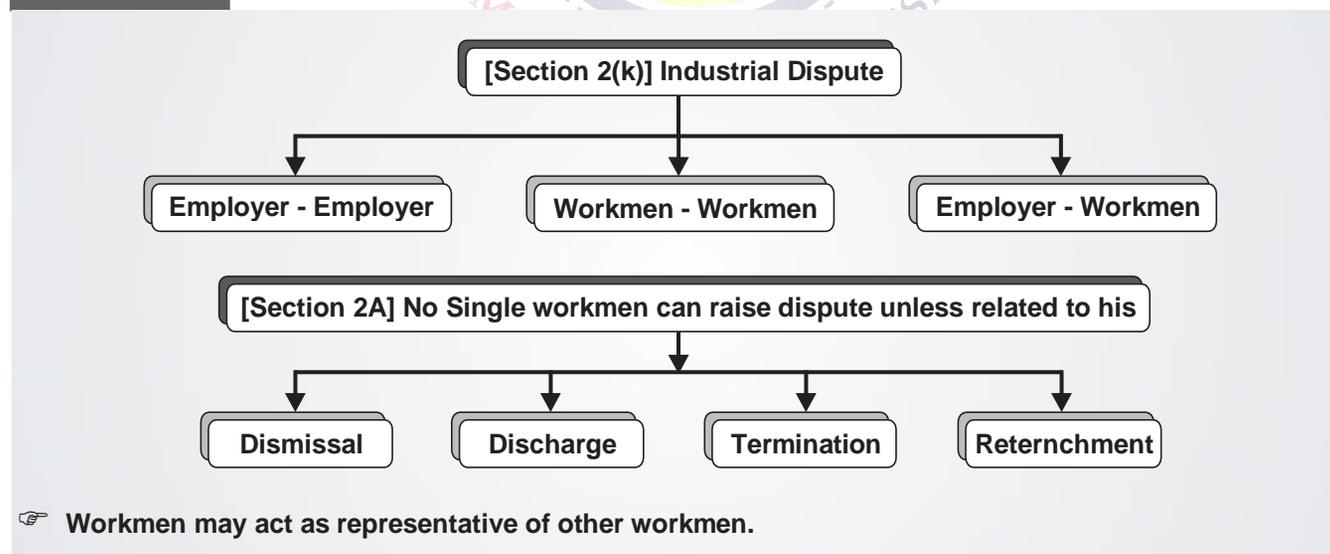
**[Section 2A] Exception**

In respect of certain disputes relating to:

- ♦ dismissal
- ♦ discharge
- ♦ retrenchment
- ♦ termination of services,

Even a single workman can raise a dispute.

**Quick Recap**



**[Section 2(s)] Workmen or Employees Covered under the Industrial Disputes Act, 1947**

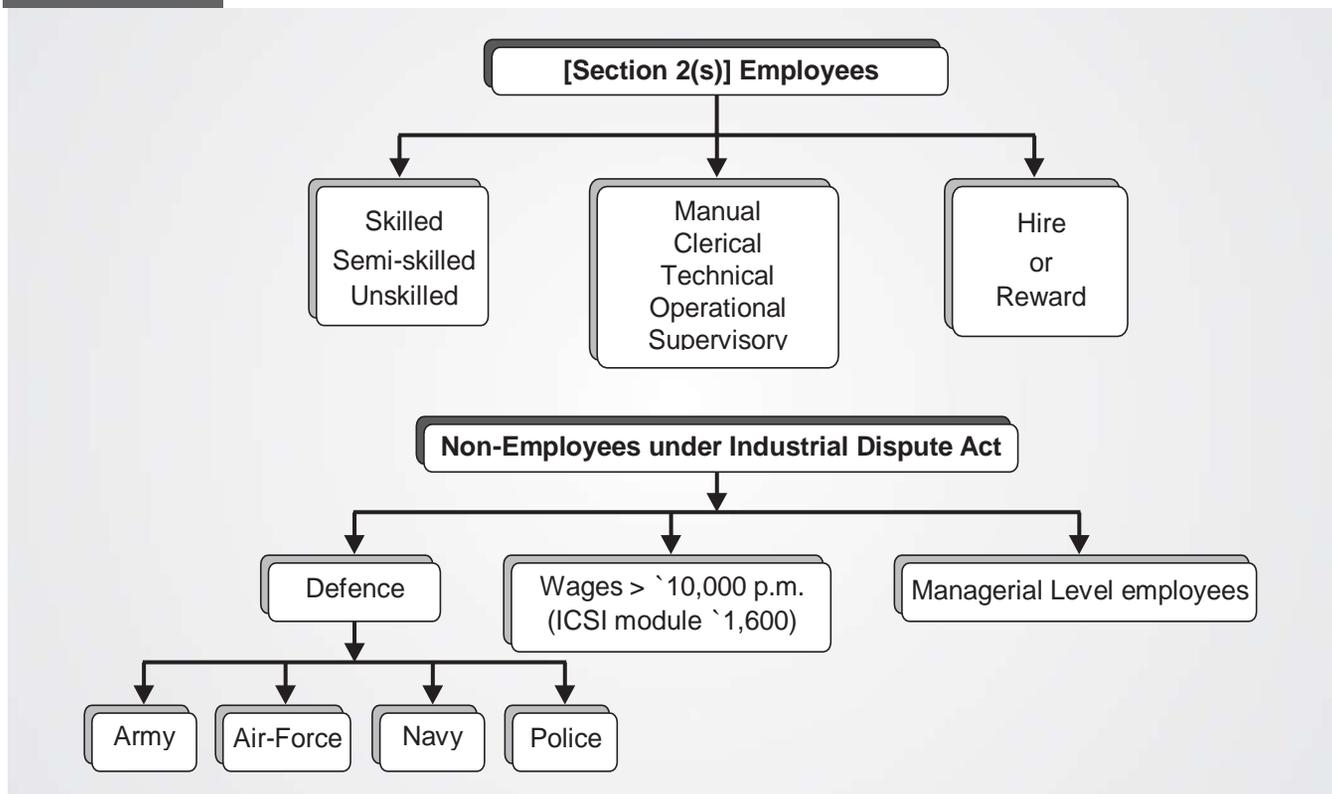
Every person employed in an establishment

- ♦ Skilled, semi-skilled or unskilled.
- ♦ For hire or reward.
- ♦ To do any manual, clerical, technical, operational and supervisory work supervisory is covered

under the Act. However, following are not employees under Industrial Dispute Act, 1947:

- ♦ Person employed in managerial or administrative capacity.
- ♦ Person employed in a supervisory capacity and drawing wages **exceeding** `10,000/- p.m. (in ICSI module `1600).
- ♦ Persons subject to defence acts like
  - **Army Act,**
  - **Air force Act,**
  - **Navy Act**
  - employed in the **police** service

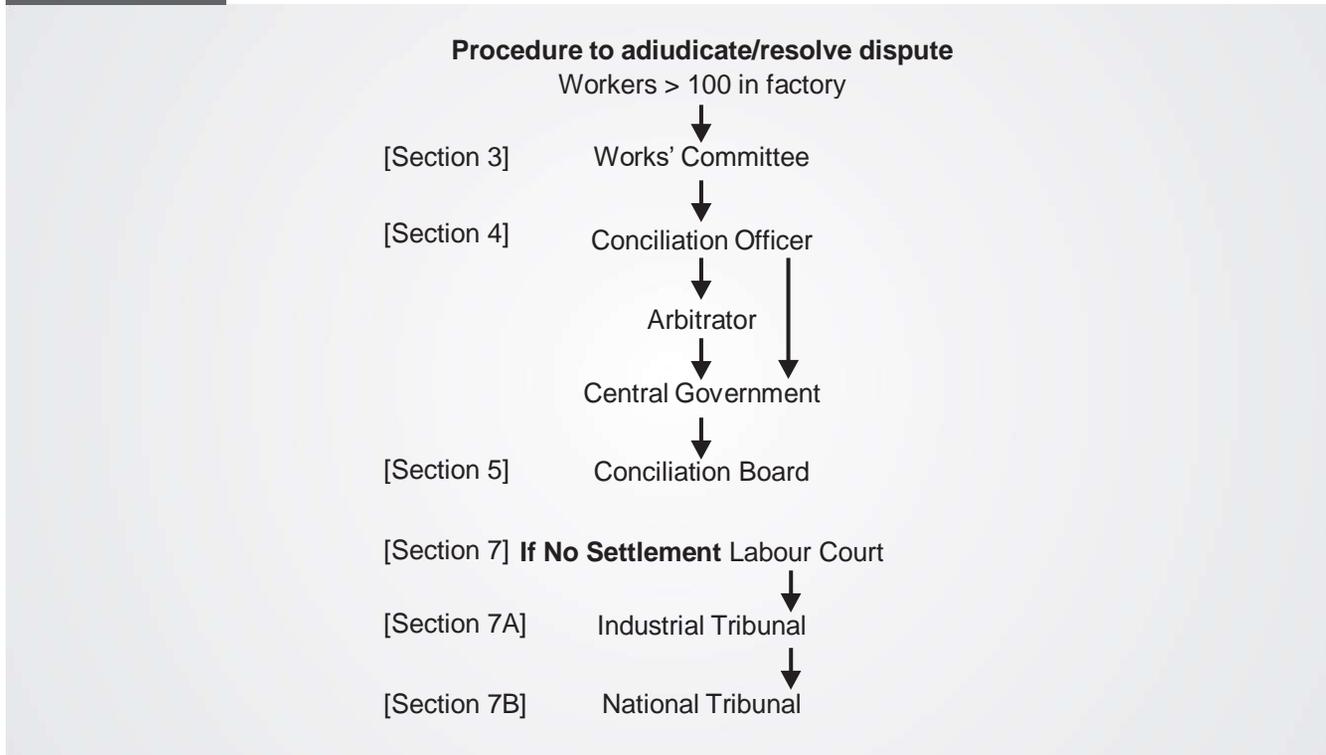
### Quick Recap



### Procedure to Resolve or Adjudicate Disputes

- ♦ The Act provides for constitution of **Works Committee in factories employing 100 or more workers.**
- ♦ First of all, the Works Committee will **try to settle** the dispute.
- ♦ If the dispute is not settled, it will be **referred to the Conciliation Officer.**
- ♦ The Conciliation Officer will try to arrive at fair and **amicable settlement** acceptable to both the parties.
- ♦ If he is **unable** to do so, he will send the report to the **Arbitrator or Central Government.**
- ♦ The Government may then refer the industrial dispute to the **Board of Conciliation.**
- ♦ **If no settlement** is arrived at, then, it is arrived through **three-tier system** of adjudication consisting of **Labour Court, Industrial Tribunal and National Tribunal.**
- ♦ The order made by any of the adjudicating authority is called **Award.**

Quick Recap



**[Section 2(b)] Meaning of Award**

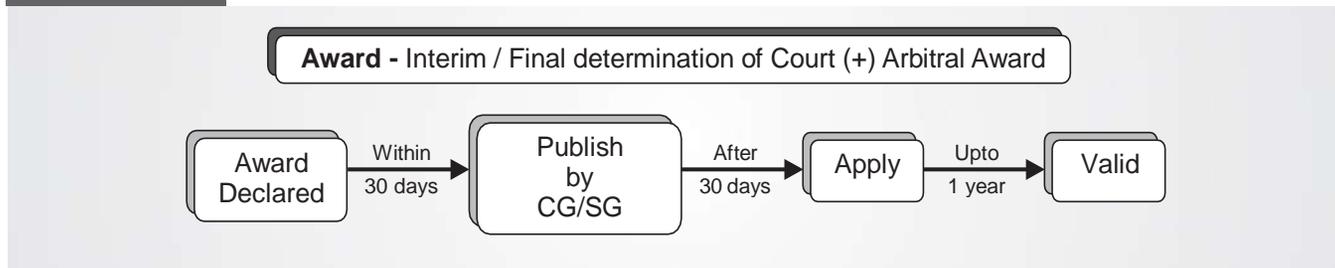
Award means an **interim or final determination of any industrial dispute or of any question relating thereto by any Labor Court, Industrial Tribunal, or National Tribunal.**

The term award also includes arbitral award.

The **award** is required to be **published** by the Central Government or State Government **within 30 days** from the date it is made.

The award becomes effective only after 30 days of its publication. Generally the validity period of an award is 1 year.

Quick Recap



### [Section 2(p)] Meaning of Settlement

Settlement means a **settlement** arrived at in the course of **conciliation proceedings** and also includes a **written agreement between the employer and workman**, arrived in the course of conciliation proceedings.

The **settlement arrived** in the course of conciliation and arbitration award and Labour Court award of the Industrial or National Tribunal Award **binds all parties to industrial dispute, including present and future workmen** and all parties who are summoned to appear in the proceedings.

If settlement is arrived at otherwise, in the course of conciliation proceedings, it binds only those who are actually parties to the agreement.

Generally, the **settlement is valid for 6 months**.

#### Quick Recap

[Section 2(p)] Settlement - Agreement during conciliation proceeding

Valid upto 6 months

### [Section 2(kkk)] Meaning of Lay-off

Lay off means failure, refusal or inability of the employer to give employment to a workman because of any of the following reasons:

- ♦ Shortage of coal, power or raw material.
- ♦ Accumulation of stock.
- ♦ Breakdown of machinery.
- ♦ Natural calamity.
- ♦ Any other just and equitable ground.

**Lay-off means not giving employment within 2 hours after reporting to work.**

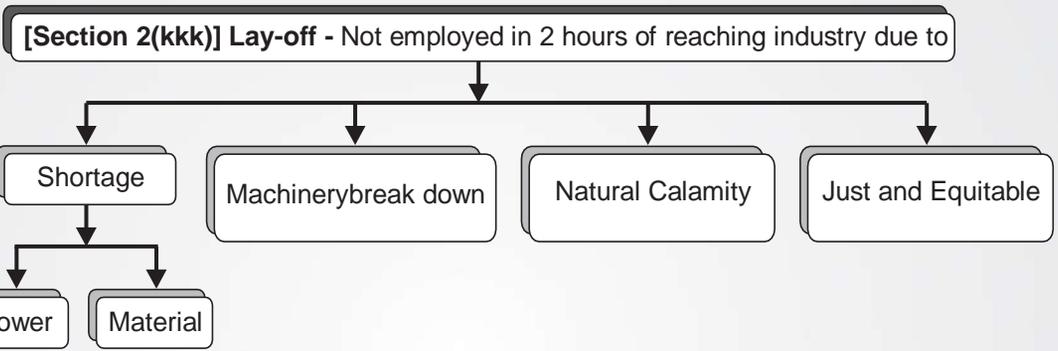
Lay off can be for half day also wherein the worker shall be asked to come in the second half of the shift.

A factory employing **50 or more but less than 100 employees** can lay-off its workmen who have completed 1 year of service by paying compensation equal to **50% of the salary/wages**.

A factory employing **more than 100 employees** can **lay-off** its workmen with the **previous approval of Central Govt**. However the approval of Central Government is not required in case lay-off is done on account of shortage of power or due to natural calamity.

Employer can offer him alternate employment if alternate employment does not call for any special skill or previous experience. In such a case lay-off compensation will not be payable if the employee refuses to accept the alternate employment.

**Quick Recap**



(50–100) employees - Lay off with 50% salary  
 Employees > 100 - Lay off - Prior approval - Central Government.  
 If employee rejected alternate employment, no compensation will be paid.

**Case Study**

Rahul was an employee of ABC Ltd. ABC Ltd. laid off Rahul and offered alternate employment. Rahul rejected the same and claimed compensation.

Employer is not bound to give compensation.

**[Section 2(oo)] Meaning of Retrenchment**

Retrenchment means the **termination of service** of a workman by the employer for any reason **other than as a punishment** inflicted by a disciplinary action.

In addition, retrenchment **does not cover:**

- ◆ Voluntary retirement.
- ◆ Retirement on reaching the age of superannuation.
- ◆ Termination on account of non-renewal of contract.
- ◆ Termination of contract itself.
- ◆ Termination due to continued ill-health of workman.

Retrenchment means **discharge of surplus labour** or staff of the employer. It is not by way of punishment.

**Note:** The retrenchment shall be done on Last in First Out (LIFO) basis in respect of each category.

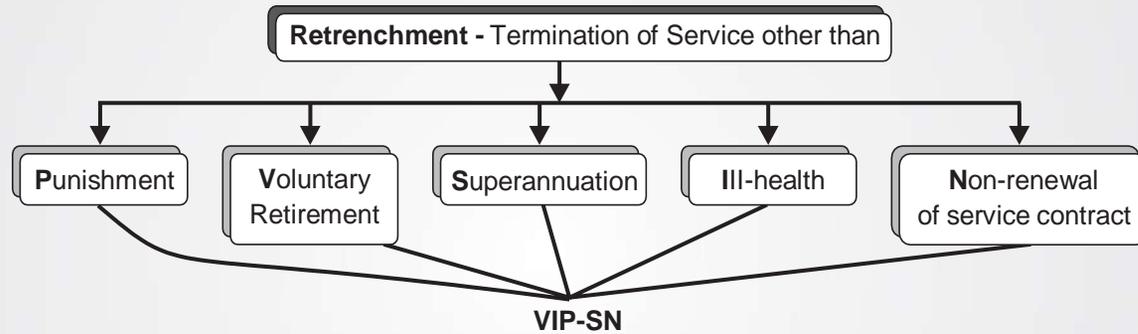
A workman who has **completed one year of service can be retrenched by giving one month's notice or onemonth's salary and retrenchment compensation.**

Retrenchment compensation is calculated at the rate of 15 days' average wages for every completed year of service or any part thereof in excess of 6 months.

Average Wages means average of the wages payable for the preceding 3 complete calendar months.

**Explanation:** For the purpose of retrenchment compensation, one-day wage shall be calculated by dividing monthly wages by 30.

**Quick Recap**



Retrenchment means **discharge of surplus labour**

LIFO - retrenchment of any person by giving 1 month's notice or salary

$$\left( \frac{\text{Average Pay}}{30 \text{ days}} \times 15 \right) \times \text{Completed years of service} = \text{Retrenchment Compensation}$$

**[Section 2(q)] Meaning of Strike**

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.

No strike can be constituted by the workmen under the following cases:

- ◆ During **pendency of conciliation proceedings** and 7 days thereafter.
- ◆ During **pendency of proceedings before Labour Court** or Industrial Tribunal or National Tribunal.
- ◆ During **period of arbitration proceedings**.
- ◆ During period **when settlement or award is in operation** in respect of the matters covered by the award or settlement.

In case of public utility services (**hospitals, railways, ports, docks, telephone, transport etc.**), **employees have to give at least 14 days' notice for strike**. The notice is valid only if strike commences within 6 weeks otherwise fresh notice is required. If such notice is received by any employer, Government authorities should be informed within 5 days of the receipt of notice.

CASE LAW	Syndicate Bank Vs Umesh Naik
Wages during strike period are payable only if strike is legal as well as justified.	

**Illegal Strike and its consequences**

Strike in violation of above provisions is illegal.

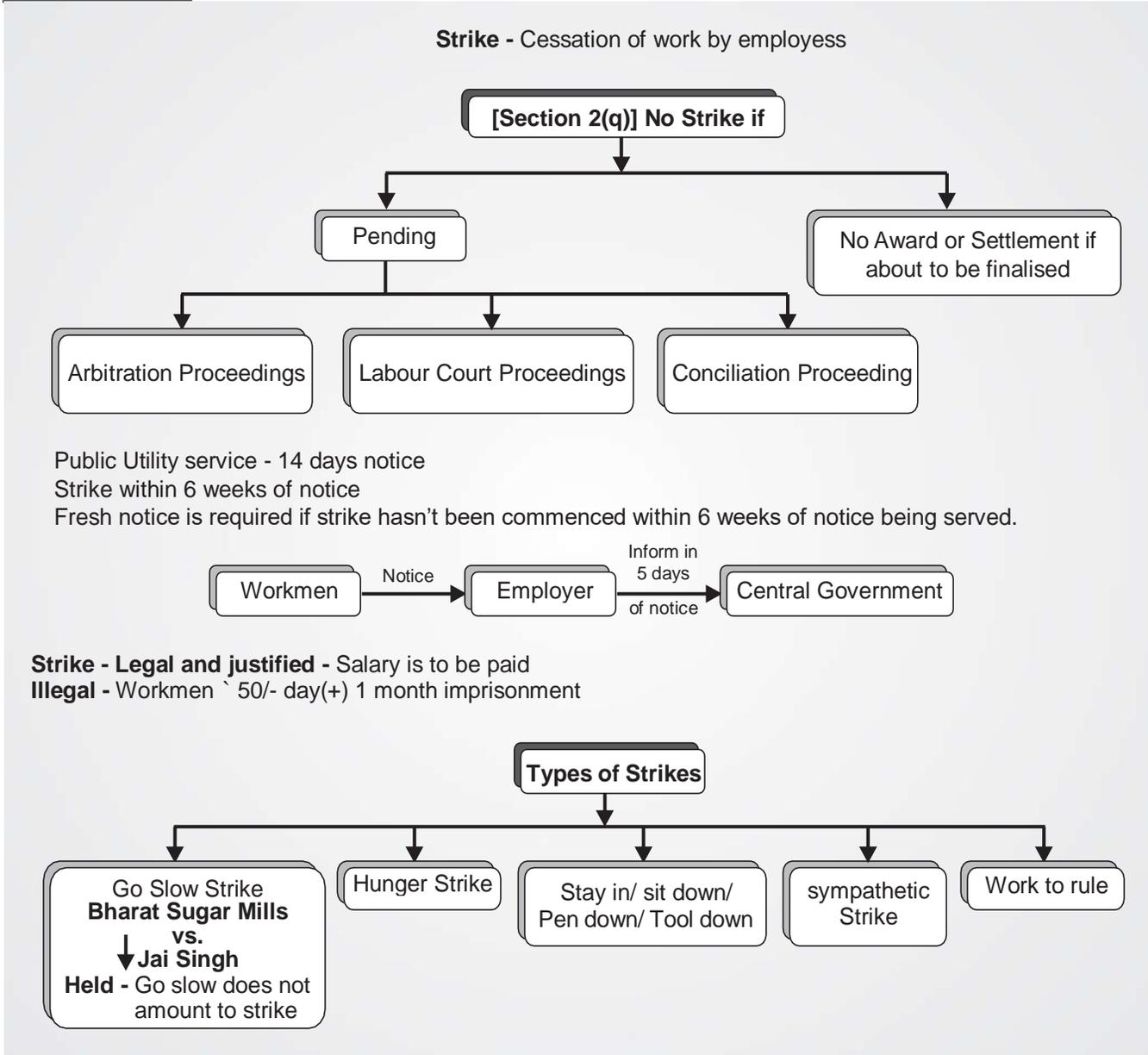
In such a case, the workman shall be punishable with fine, which may extend to `50/- per day and with imprisonment, which may extend to 1 month.

**Types of Strike**

- ◆ **Stay-in, sit down, pen down or tool-down strike**
  - In all such cases, the workmen after taking their seats, refuse to do work.
- ◆ **Go slow**
  - Go slow does not amount to strike, but it is a serious case of misconduct.

- ♦ **Sympathetic strike**
  - Cessation of work in the support of the demands of workmen belonging to other employer.
- ♦ **Hunger strike**
  - Some workers may resort to fast on or near the place of work or residence of the employer.
- ♦ **Work-to-rule**
  - Since there is no cessation of work, it does not constitute a strike.

**Quick Recap**



**[Section 2(I)] Meaning of Lock-Out**

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

Employer cannot go for lock-out in the following cases:

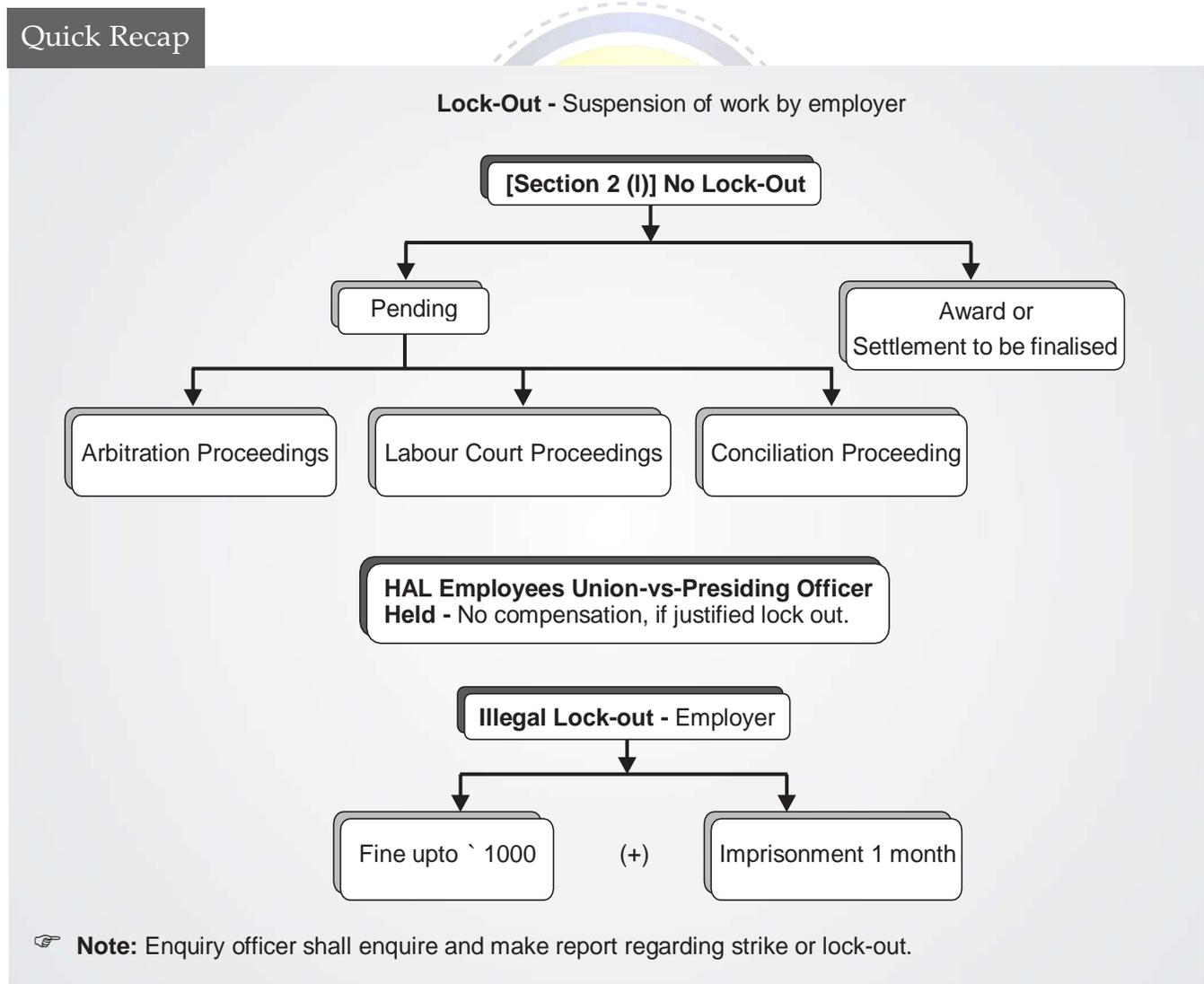
- ♦ During **pendency of conciliation proceedings** and 7 days thereafter.
- ♦ During **pendency of proceedings before Labour Court** or Industrial Tribunal or National Tribunal.
- ♦ During **period of arbitration proceedings**.
- ♦ During period **when settlement or award is in operation** in respect of the matters covered by the award or settlement.

CASE LAW	HAL Employees' Union vs. Presiding Officer
In HAL Employees' Union vs. Presiding Officer, it was held that when lock-out by employer is legal and justified, workmen are not entitled to compensation and wages for the period during which lock-out continues.	

**Illegal Lock-out and its Consequences**

In case of illegal lock-out, the employer can be punished with fine may extend to `1,000/- and with imprisonment, which may extend to 1 month.

**Quick Recap**



**Important Note****1) Principles of government Domestic Enquiry**

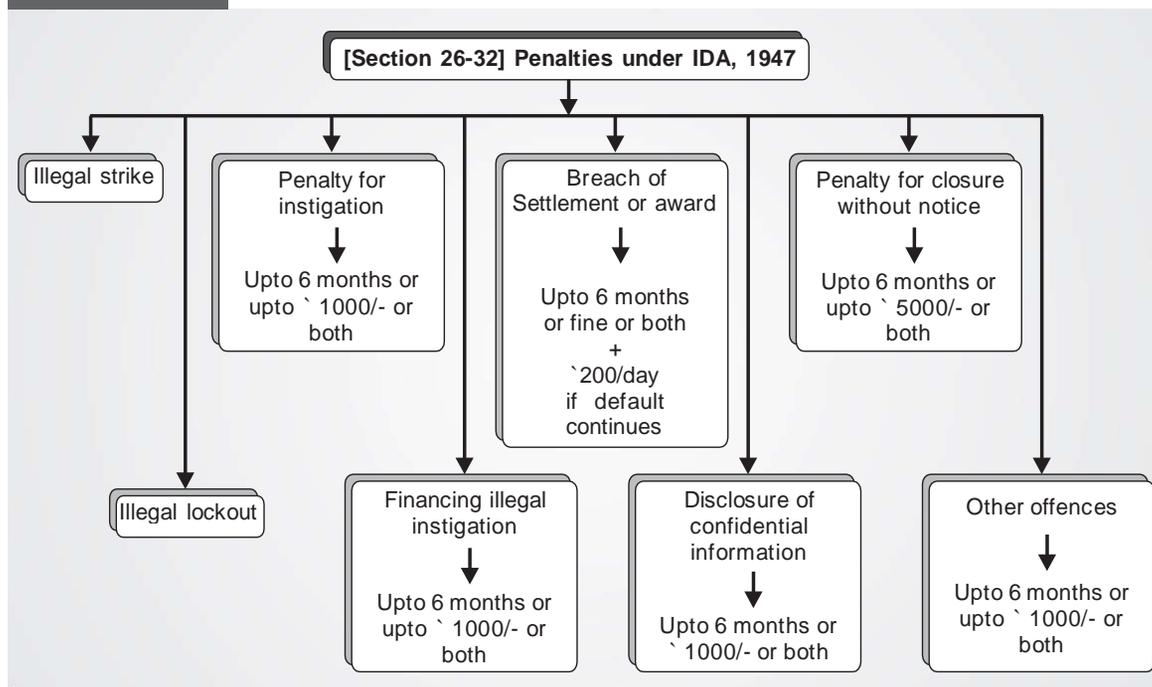
- The enquiry should be conducted by an unbiased person.
- The enquiry officer should conduct the enquiry in an objective and fair manner.
- The employee should be given a fair opportunity to defend himself.
- Proper procedure, rules, regulations etc. should be followed while conducting enquiry.
- The enquiry officer should report whether charges are proved or not.

**Relevant Judicial Interpretations**

<b>a. CASE LAW</b>	<b>National Textiles Workers Union vs. Meenakshi Mills</b>
It has been held that if on the death of a fellow worker, the workmen acting in combination refuse to resume work, it amounts to strike.	
<b>b. CASE LAW</b>	<b>Northbrook Jute Co. Ltd. vs. Their Workmen</b>
Refusal to do work which the employer has no right to ask for performance, such a refusal does not constitute a strike.	
<b>c. CASE LAW</b>	<b>Punjab National Bank Ltd. vs. All India Punjab National Bank Employees' Federation</b>
Where in pursuance of a common understanding, the employees entered the premises of the Bank and refused to take their pens in their hands, it was held to be a strike.	
<b>d. CASE LAW</b>	<b>Tapan Kumar Jana vs. The General Manager, Calcutta Telephones</b>
Termination of service of casual workers after their work is over, is not a retrenchment.	
<b>e. CASE LAW</b>	<b>Bharat Sugar Mills Ltd. vs. Jai Singh</b>
Go-slow does not amount to strike.	
<b>f. CASE LAW</b>	<b>Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Majdoor Sabha</b>
Where the strike was resorted to by using violence or acts of sabotage or for any ulterior purpose, then the strike will be illegal.	
<b>g. CASE LAW</b>	<b>India Marine Service Pvt. Ltd. vs. Their Workmen</b>
When the workmen and the management are equally to be blamed for the strike, the Court normally awards half of the wages.	
<b>h. CASE LAW</b>	<b>U.P. -vs.-Labour Court, Haldwani</b>
Retrenchment does not include disengagement from service of persons employed for working on daily wages.	
<b>i. CASE LAW</b>	<b>SBI -vs.- Employees of SBI</b>
If the termination of an employee's service is a punishment inflicted by way of disciplinary action, such termination would not amount to retrenchment.	
<b>j. CASE LAW</b>	<b>J.K. Cotton Spinning vs. Weaving Mills Co. Ltd.</b>
Certain gardeners were appointed to look after the bung low provided to the MD of the Company. The gardeners were supposed to mark their attendance in the Company Register and their salaries were being paid directly by the company. It was held that since the gardeners are working directly under the control of the company, they are workmen under the Industrial Disputes Act.	

<b>k. CASE LAW</b>	<b>Sunderambal vs. Government of Goa</b>
The Supreme Court held that the teachers employed by the Educational Institutions cannot be considered as workmen within the Industrial Disputes Act, as imparting of education which is the main function of the teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical or clerical work.	
<b>l. CASE LAW</b>	<b>AnandBihari vs. Rajasthan State Road Transport</b>
<b>Unfair Labour Practices</b> means any of the practices specified in the V <sup>th</sup> Schedule to the Industrial Disputes Act. This Schedule declares certain labour practices as unfair on the part of the employers and their trade unions and on the part of the workmen and their trade unions. Industrial Disputes Act prohibits commission of any unfair labour practice by Employers and Workmen. The Supreme Court held that termination of services of a bus driver on the ground of weak eyesight does not amount to retrenchment under the Industrial Disputes Act because here the employee is being terminated on the ground of continued ill health and not because of surplus labour.	
<b>m. CASE LAW</b>	<b>PNB vs. GhulamDastagi</b>
It was held that a car driver engaged by area manager of a bank for which allowance was given to him was not a workman of the bank under Industrial Disputes Act, even though the car was maintained at the bank's expenses, as the control of the driver was not into the hands of the bank.	
<b>n. CASE LAW</b>	<b>Sindhu Resettlement Corporation Ltd. vs. Industrial Tribunal</b>
An Industrial Dispute exists only when the same has been raised by the workmen with the employer. A mere demand to the appropriate government without a dispute being raised by the workmen with their employer, cannot become an industrial dispute.	
<b>o. CASE LAW</b>	<b>Newspaper Ltd., Allahabad vs. Industrial Tribunal</b>
A Workmen's case sponsored by a body of workmen either acting through their union or otherwise, would amount to an Industrial Dispute.	
<b>p. CASE LAW</b>	<b>Western India Automobile Association vs. Industrial Tribunal</b>
The term 'employment or non-employment' is concerned with the employers; failure or refusal to employ a workman.	
<b>q. CASE LAW</b>	<b>CaronaSahu Co. Ltd. vs. Labour Court</b>
A Salesman, whose duties included manual as well as clerical work such as to attend to the customer, prepare cash memos, to assist manager in daily routine is a workman.	
<b>r. CASE LAW</b>	<b>Prabhudayal Jat vs. Alwar Sehkari Bhumi Vikas Bank Ltd.</b>
Where the services of an employee irregularly appointed were terminated, it was held to be a case of retrenchment.	
<b>s. CASE LAW</b>	<b>Crompton Greaves Ltd. Vs Workmen, Syndicate Bank vs. UmeshNaik</b>
The use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period.	
<b>t. CASE LAW</b>	<b>T.K. Rangarajan vs. Govt. of Tamil Nadu and Others</b>
The Government employees have no fundamental right to resort to strike and they cannot take the society at ransom by going on strike, even if there is injustice to some extent.	
<b>u. CASE LAW</b>	<b>Lord Krishna Sugar Mills Ltd. vs. State of U.P.</b>
A closure of a place of business for a short duration of 30 days in retaliation to certain acts of workmen was held to be a lockout.	

Quick Recap



## Chapter – 8

# Payment of Gratuity Act, 1972

### List of Sections

Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(a)	Appropriate Government
2(d)	Controlling Authority
2(e)	Employee
2(f)	Employer
2(h)	Family
2(q)	Retirement
2(r)	Superannuation
2(s)	Wages
2A	Continuous Service
3	Controlling Authority
4	Payment of Gratuity
4A	Compulsory Insurance
5	Power to exempt
6	Nomination
7	Determination of the amount of Gratuity
7A	Inspector
7 B	Powers of Inspector
8	Recovery of Gratuity
9	Penalties
13	Protection of Gratuity

### [Section 1] Extent and Applicability of Payment of Gratuity Act, 1972

When services of an employee are terminated due to retirement or otherwise, a lump sum amount is paid by employer to his employee like leave encashment, provident fund etc.

Gratuity is also one of the amounts paid by employer to his employee at that time of termination of service. It is basically a retirement benefit to employees so that they can live comfortably after retirement.

It is a lump sum payment made by an employer to an employee in consideration of his past service when the employment is terminated.

#### Extent and Application (Section 1)

##### It extends to the whole of India:

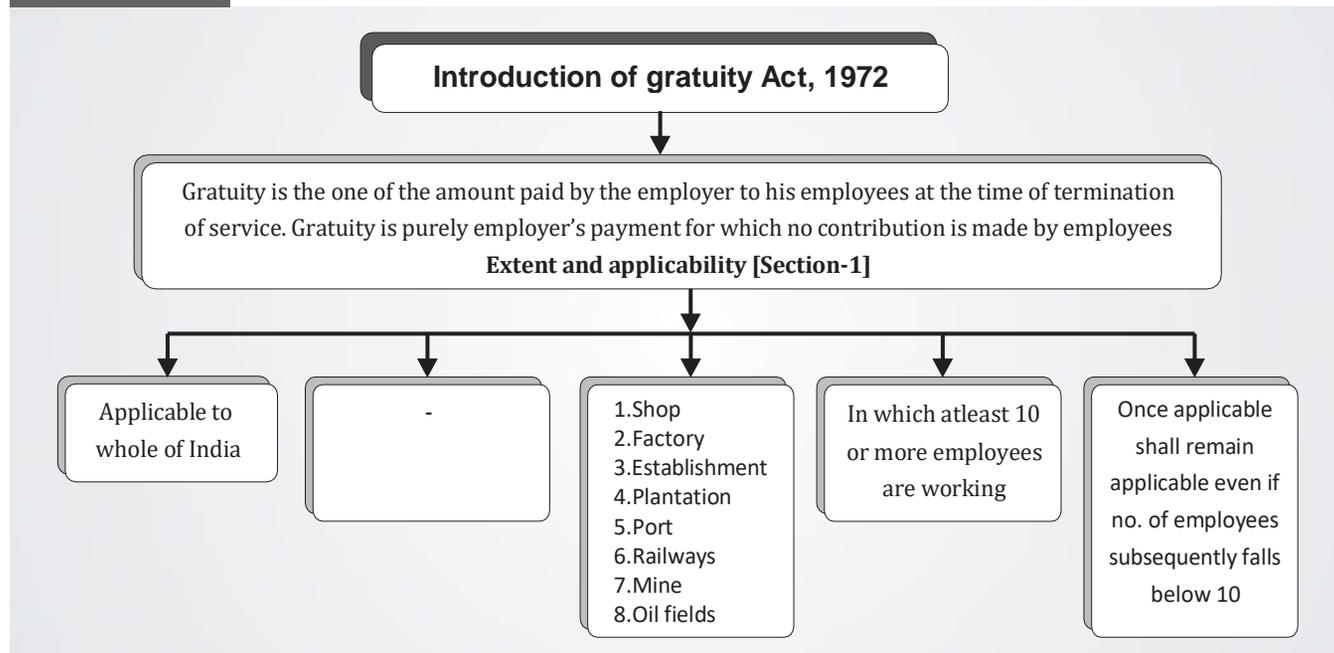
It shall apply to:

- Every factory, mine, oil field, plantation, port and Railway Company.
- Every shop or establishment, with the meaning of any law for the time being in force in relation to shops and establishment in a state, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

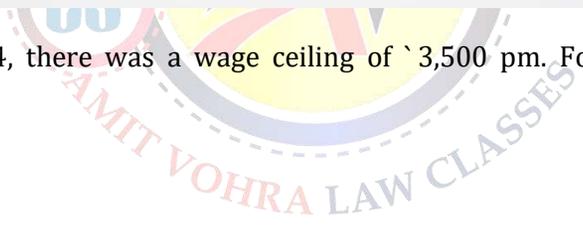
- Such other establishments or class of establishment, in which **ten or more employees** are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

A shop or establishment to which this act **has become applicable shall continue** to be governed by this act notwithstanding that the number of persons employed therein at any time **after it has become so applicable falls below ten.**

Quick Recap



**Note:** Before 24th May, 1994, there was a wage ceiling of `3,500 pm. For the employees in order to be eligible to receive gratuity



### Case Study 1B

In the year 2009-10, there are 8 employees in an establishment, whereas during next year number of employees increased to 12 and in next financial year it has been reduced to six employees Comment on the applicability of Gratuity Act, 1972

#### According to Section

As per Sec 1 of gratuity Act, 1972 this act is applicable to the establishment in which there are atleast 10 more employees and once applicable shall remain applicable even if number of employees subsequently fall below 10

#### Facts of the problem

In the first financial year i.e. 2009-10 there were 8 employees in an establishment and subsequently increased to 12 employees in year 2010-11, and in the exceeding year i.e. 2011-12, number of employees reduced to 6 employees

#### Conclusion

During 2009-10, there are only 8 employees and hence gratuity act is not applicable. But in the year 2010-11, Gratuity Act shall be applicable as number of employees is 12. In the year 11-12, though there are 6 employees but Gratuity Act, will continue to apply because subsequent reduction in number of employees shall not affect the applicability of gratuity act once applicable

### Definitions under Payment of Gratuity Act, 1972

#### [Section 2(e)] Employee

Employee means any person (**other than an apprentice**) employed on wages, in any establishment, factory, mine, oil field, plantation, port, railway company or shop, to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity. 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 institutions retrospectively with effect from 3rd April, 1997.

#### [Section 2(f)] Employer

Employer means in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop:

- ♦ Belonging to, or under the **control** of the Central **Government** or a State Government, a person or authority appointed by the Appropriate Government for the supervision and control of employees or where no person or authority has been so appointed, the head of the Ministry or the Department concerned.
- ♦ Belonging to, or under the control of, any **local authority**, the person appointed by such authority for supervision and control of employees or where no person has been so appointed, the **Chief Executive Officer** of the local authority.

- ♦ In any **other case**, the person, who or the authority which, has the **ultimate control over the affairs of the establishment**, factory, mine, oilfield, plantation, port, railway or shop and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.

#### [Section 2(a)] Appropriate Government

For the following establishment the Appropriate Government mean the Central Government:

- (a) An establishment belonging to, or under the control of the Central Government mean the Central Government.
- (b) An establishment having branches in more than one state.
- (c) An establishment of a factory belonging to, or under the control of Central Government.
- (d) An establishment of a major port mine, oilfield or Railway Company.

In any **other case** 'Appropriate Government' means the **State Government**.

#### [Section 2(d)] Controlling Authority

'Controlling Authority' means an authority appointed by the Appropriate Government under section, the Appropriate Government may, by **notification published in the Official Gazette** appoint any officer as controlling authority, who shall be responsible for the administration of the Act. Different controlling authorities may be appointed for different areas.

#### [Section 2(q)] Retirement

It means **termination** of the service of an employee **otherwise than superannuation**. Termination of service would amount to retirement for the purpose of this Act. Retirement is a termination of service.

#### [Section 2(r)] Superannuation

Superannuation in relation to a employee means the **attainment** by the employee **of such age** as is **fixed** in the **contract** or conditions of service at the age on the attainment of which the employee shall vacate the employment.

#### [Section 2(A)] Continuous Service

Continuous service means continuous service as defined in Section 2A.

#### For the purpose of this act:

1. An employee shall be said to be in continuous service for a period if he has, for that period, been in **uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave**, lay off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this act.
2. Where an employees (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer.
  - (a) for the said period of one year, if the employee during the period of twelve calendar months, preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:
    - (i) **One hundred and ninety days**, in case of an employee employed below the ground in a mine or in an establishment which works for less than six days in week; and
    - (ii) **Two hundred and forty days**, in any other case.

- (b) for the said **period of six months**, if the employee during the periods of six calendar months preceding the date with reference to which the calculation is to be made has actually worked under the employer for not less than;
- (i) **Ninety-five days** in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week;
  - (ii) **One hundred and twenty days** in any other case.

**Explanation:** For the purpose of clause (2) the number of days in which an employee has actually worked under an employer shall include the days in which;

- (i) He was been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (standing order) Act, 1946, or under the Industrial Dispute Act, 1947, or under any other law applicable to the establishment.
  - (ii) He has been on leave with full wages, earned in the previous year;
  - (iii) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment;
  - (iv) In the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed **twenty six weeks**.
3. Where an employee employed in a **seasonal establishment**, is not in continuous service, within the meaning of clause (1) for any period of any year or six months, he shall deemed to be in continuous service under employer for such period if has actually **worked for not less than seventy five percent of the number of days** in which the establishment was in operation.

### Family

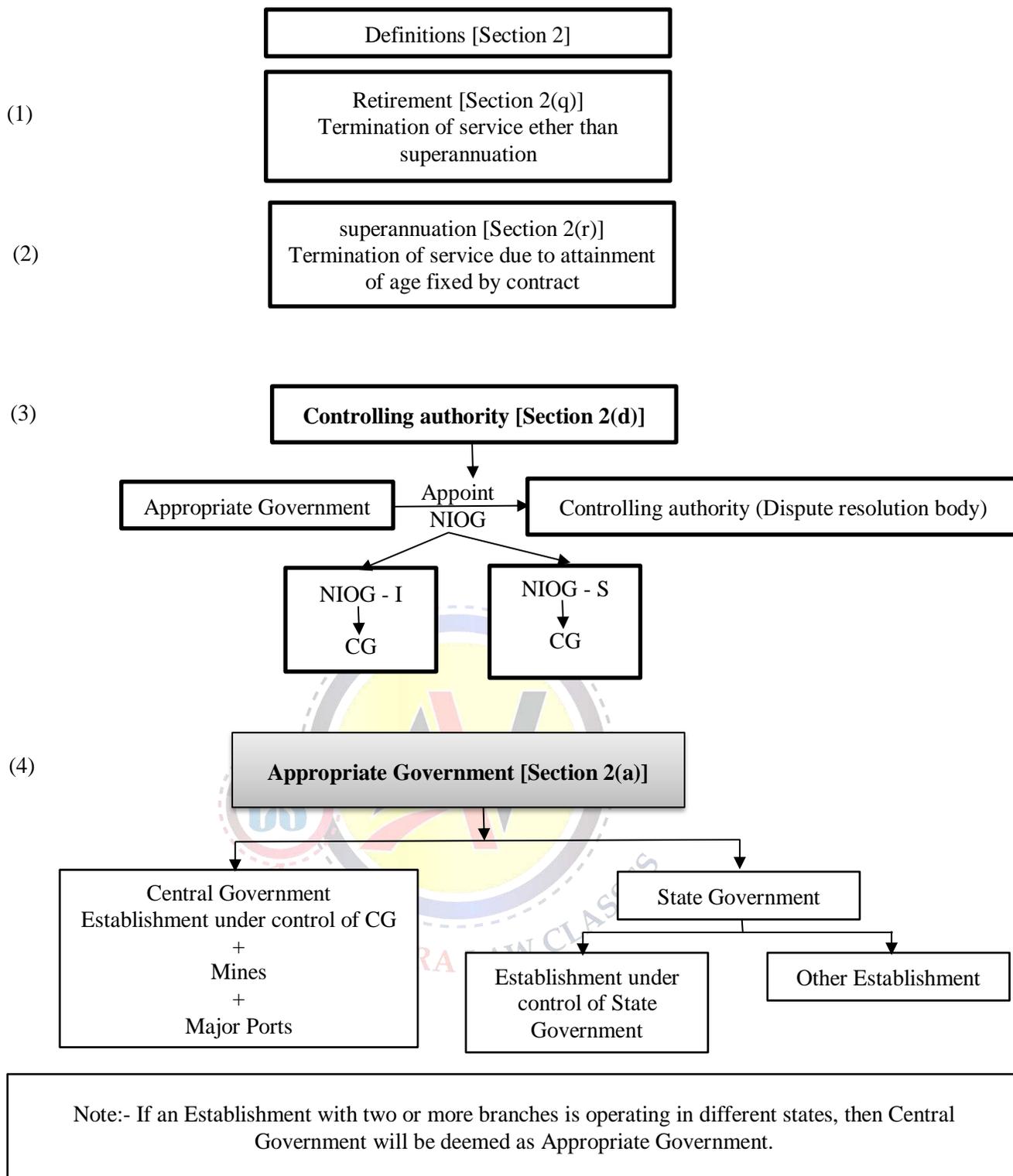
Family, in relation to an employee, shall be deemed to consist of:

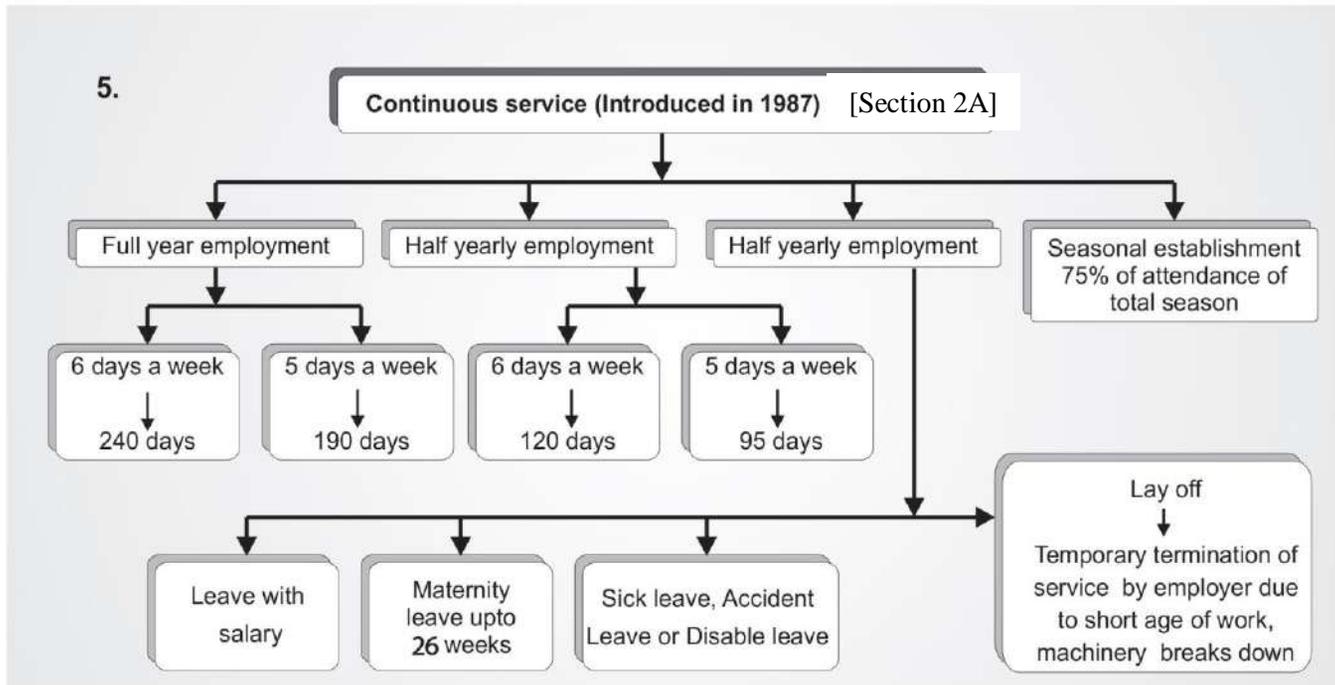
- (i) In case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any,
- (ii) In the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any. **[Section 2(h)]**

**Explanation:** Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, 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 deemed to be excluded from the family of the employee.

### Wages

"Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. **[Section 2(s)]**





**Case Study**

Mrs. X works in a shop which is seasonal in nature, total season is of 120 days and worked for 120 days and was on 2 weeks maturity leave. Has she complied with section 2A of gratuity act, 1972. Will it make any difference to your answer if the maternity leave is for 3 weeks?

**According to the Section**

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Sec 2A of Gratuity Act, 1972 states that an employee shall be said to be in continuous service in seasonal establishment if having 75% attendance of total season and maternity leave upto 12 weeks is included in working days

**Facts of the problem**

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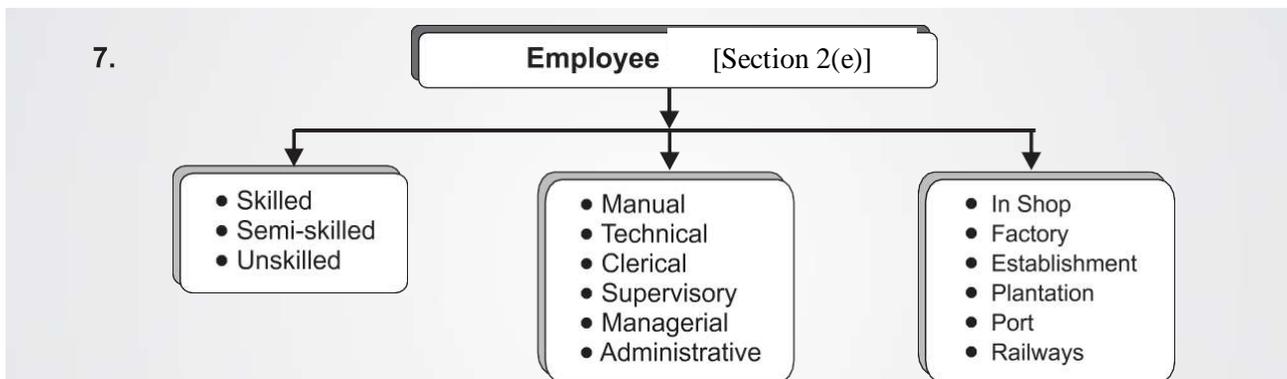
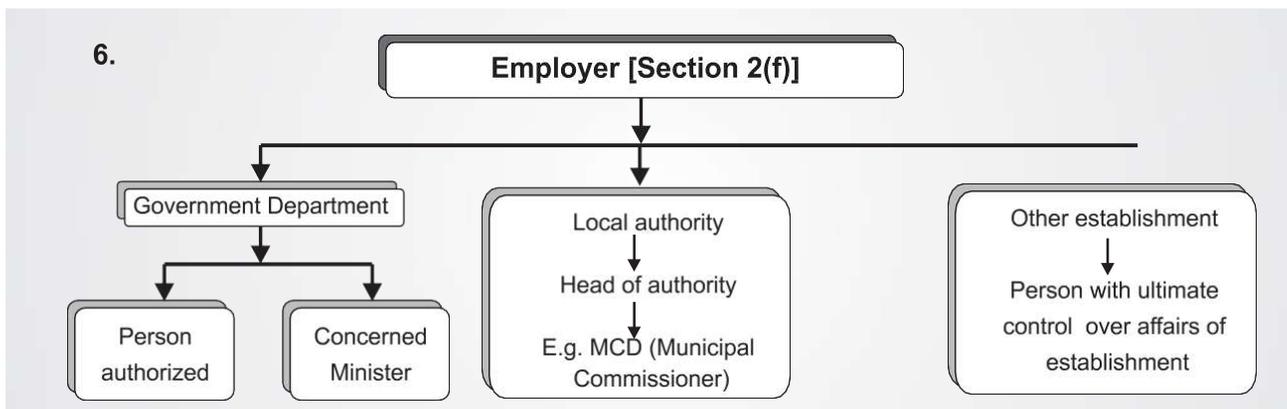
Mrs. X work in seasonal establishment of 180 days and has worked for 120 days and was on 2 weeks maternity leave

**Conclusion**

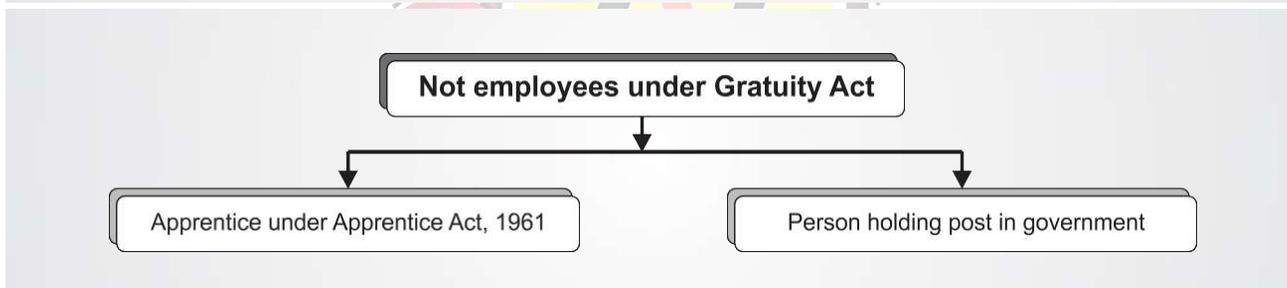
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Mrs. X needs to work for 75% days i.e. 135 days  
But, number of working days = Actual days 120 + Demed working 14 = 134 days.  
Mrs. X hasnot complied with Section2A

**Note:** If maternity leave is for 3 weeks then number of working days = 120+21 = 141 days yes Section 2A has been followed



**Note:** Teachers are employee under gratuity act with effect from 2010.  
 Payment of Gratuity Act has been amended by Amendment Act, 2009 to cover teacher in educational institutions retrospectively with effect from 3rd April, 1997.



**Case Study**

Mr. X works in an establishment covered under Gratuity Act, 1972. Upto 20<sup>th</sup> march, 2013, his total working days were 237. He took leave without salary for 7 days but resumed job on 5<sup>th</sup> April, 2013.  
 Can employer consider it violation of continuous service?

**Lallappa Lingappa Vs Laxmi Vishnu Mills**

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It was held by the court of law that there is scope of sick or accident leave available to employee and therefore, employer without providing reasonable opportunity of being heard to employee cannot consider it violation of Sec 2A.

## Provisions Relating to Payment of Gratuity

### Payment of Gratuity (Section 4)

1. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than **five years**:-
  - (a) On his **superannuation**; or
  - (b) On his **retirement** or resignation, or
  - (c) On his **death or disablement** due to accident or disease.

Provided that the completion of continuous service of **five years** shall **not** be necessary where the

**termination** of the employment of any employee is due to **death** or disablement.

Provided further that in the case of **death** of the employee, **gratuity payable** to him shall be paid to his **nominee** or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

**Explanation:** For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he has capable of performing before the accident or disease resulting in such disablement.

4. For every completed year of service or part thereof if **in excess of six months**, the employer shall pay gratuity to an employee at the **rate of fifteen days wages** based on the rate of wages last drawn by the employee concerned.

Provided that in the case of a **piece rated employee**, daily wages shall be computed on the **average** of the total wages received by him for a period of **three months immediately** preceding the termination of his employment, and for this purpose, the wages paid for any overtime works shall not be taken into account.

Provided further that in the case of an **employee** who is employed **in a seasonal establishment** and who is not so employed throughout the year, the employer shall pay the gratuity at the **rate of seven days wages** for each reason.

**Explanation:** In the case of a monthly rated employee the fifteen days wages shall be calculated by **dividing the monthly rate of wages last drawn by him by twenty six and multiplying the quotient by fifteen**.

5. The amount of gratuity payable to an employee shall **not exceed twenty lakh rupees**.
6. For the purposes of computing the gratuity payable to an **employee** who is **employed after his disablement**, on reduced wages, his **wages for the period preceding his disablement** shall be taken to be the wages received by him during that period, and his **wages for the period subsequent to his disablement** shall be taken to be the wages as so reduced.

### Who will Determine the Amount of Gratuity and Payment of Gratuity Under this Act?

#### Employer's Duty to Determine and Pay 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.

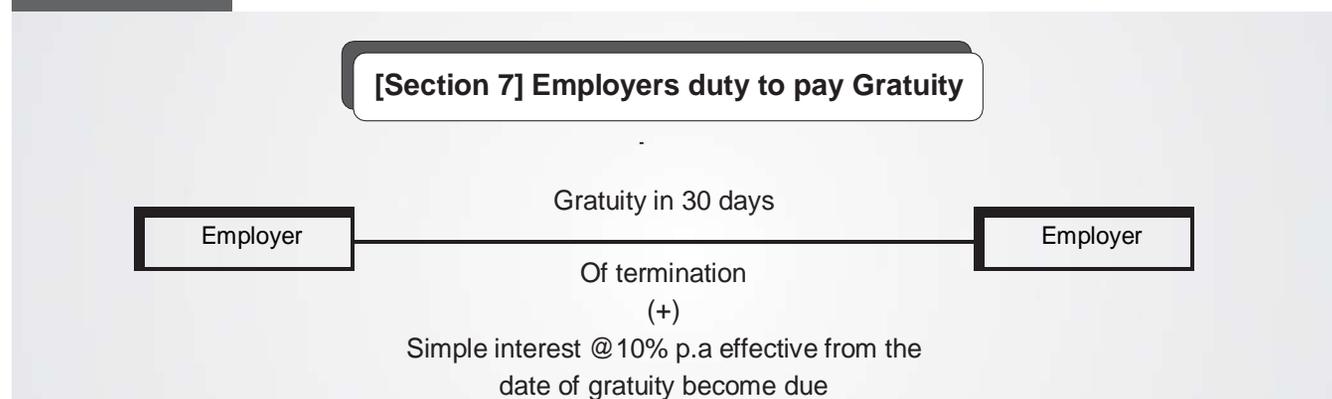
**Section 7(2)** lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount 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 percent** 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 form the Controlling Authority of the delayed payment on this ground.

### Quick Recap



**Note:** No interest if delay on part of employees if permission has been taken by employee from controlling authority.

### [Section 7A] Inspectors

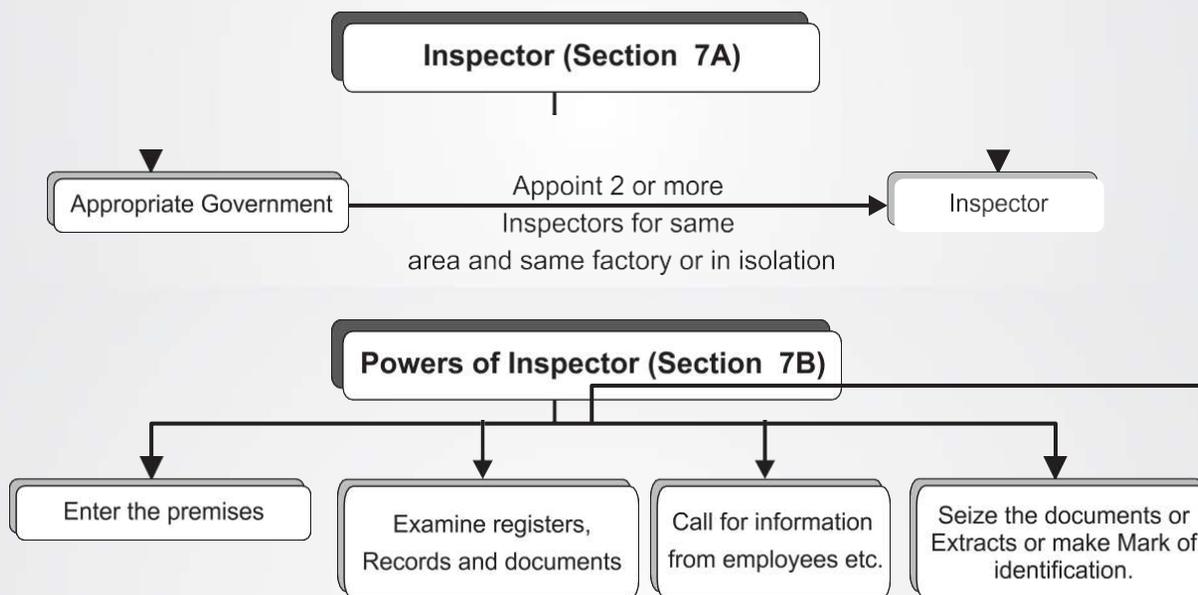
- (1) The **appropriate Government** may, by notification, **appoint** as many inspectors, as it deems fit, for the purposes of this Act.
- (2) The appropriate Government may, by general or special order, define the area to which the authority of an Inspector so appointed shall extend and where **two or more inspectors** are appointed for the same area, also provide, by such order, for the distribution or allocation of work to be performed by them under this Act.
- (3) Every inspector shall be deemed to be a **public servant** within the meaning of Section 21 of the Indian Penal Code, 1860 (45 of 1860).

### [Section 7B] Powers of Inspectors

- (1) Subject to any rules made by the appropriate Government in this behalf, an Inspector may, for the purpose of ascertaining whether any of the provisions of this Act or the conditions, if any, of any exemption granted there under, have been complied with, exercise all or any of the following powers, namely:
  - (a) Require an **employer to furnish such information** as he may consider necessary;
  - (b) **Enter and inspect**, at all reasonable hours, premises of or place in any factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, for the purpose of **examining any register, record or notice**.
  - (c) **Examine the employer or any person** whom he finds in such premises or place and whom, he has reasonable cause to believe, is an employee employed therein.
  - (d) **Make copies of, or take extracts** from, any register, record, notice as he may consider relevant, and search and seize such register, record, notice or other document as he may consider relevant in respect of that offence.
  - (e) Exercise such **other powers** as may be **prescribed**.

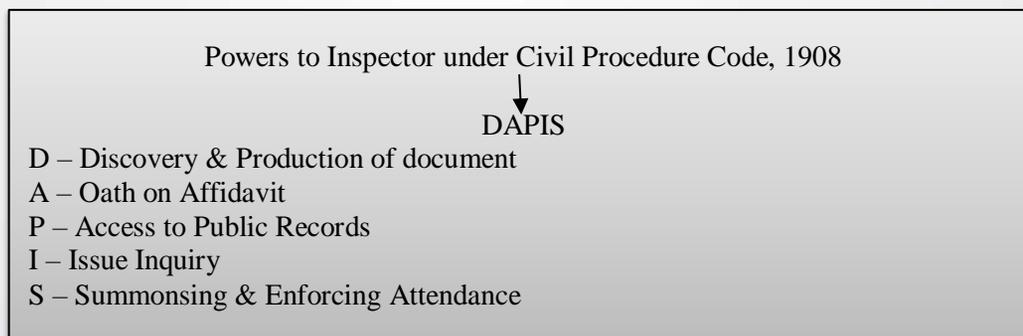
- (2) Any person required to produce any register, record, notice or other document or to give any information by an inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of Sections 175 and 176 of the Indian Penal Code 1860 (45 of 1860).

**Quick Recap**



**Note:** It is the duty of every employer to give reasonable assistance to inspector.

- If an employer resists inspector from entrance and/or inspection, then it shall be considered as Contempt of Court.



**How can Gratuity be Recovered by the Employees?**

**[Section 8] Recovery of Gratuity**

If the amount of gratuity payable under this act is not paid by the employer, within the prescribed time, to the person entitled there to, 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 compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as **arrears of land revenue** and lay the same to the person entitled there to.

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.

**[Section 4(6)] Circumstances under which Gratuity is Liable to be Forfeited**

**Forfeiture of Gratuity**

The act deals with the issue in two parts.

**Section 4(6)(a)** provides that the gratuity of an employee whose services have been terminated for any act of which 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 caused.

The right of forfeiture is **limited** to the **extent of damage**.

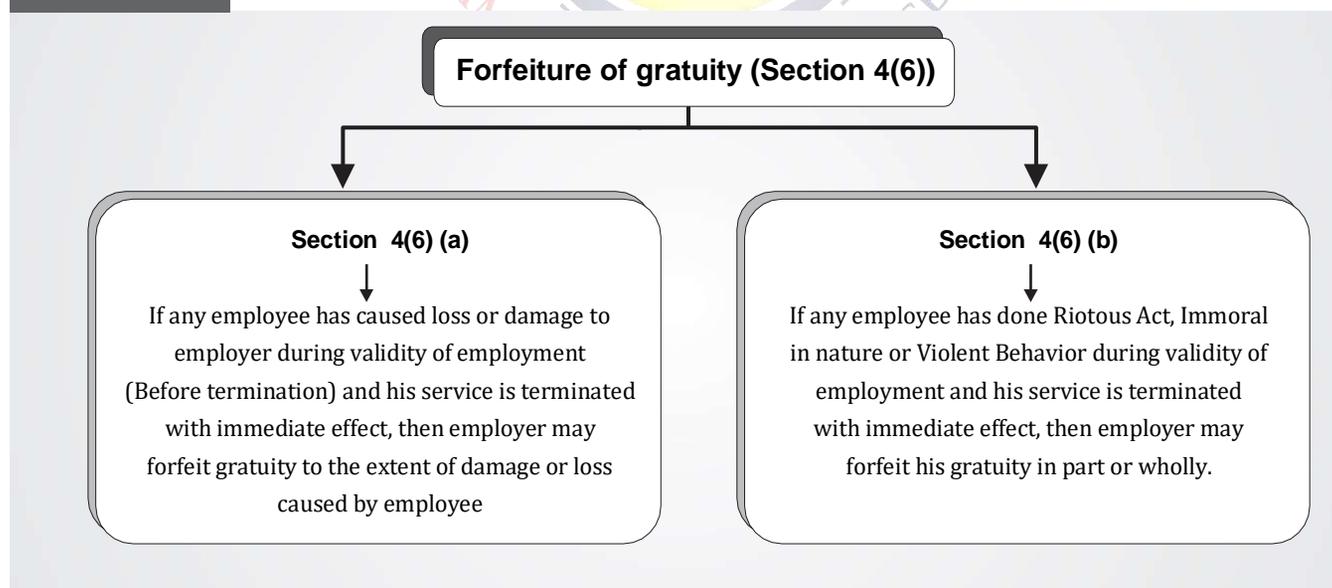
In **absence of proof** of the extent of damage, the right of **forfeiture is not available**. **Section 4(6)(b)** deals with a case where service of an employee have been terminated:-

- (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**.

**Note:** Where the service has not been terminated on any of the above grounds, the employer cannot withhold gratuity due to the employee.

Quick Recap



### Relevant Judicial Interpretations

<b>Case Law</b>	<b>Bharat Gold Mines -V- Regional Labour Commissioner</b>
It has been held that any decision to forfeit the gratuity can be taken only after giving an opportunity of being heard to the concerned employees.	
<b>Case Law</b>	<b>Travancore Plywood Ind. -V-. Regional JLC, Kerala, 1996 Ker</b>
Where the land of the employer is not vacated by the employee, gratuity cannot be withheld.	
<b>Case Law</b>	<b>Wazir Chand -V- Union Of India</b>
Company can't deduct rent due for 6 months from the amount of gratuity paid to employee on the ground of non- vacation of company's quarter for 6 months.	
<b>Case Law</b>	<b>Jeevan Lal Limited -V- Controlling Authority (1982)</b>
An employee who is re-employed without any break in service will be eligible for gratuity and he cannot be denied from receiving the gratuity simply on the ground of the change in employment contract.	
<b>Case Law</b>	<b>Lallapa Lingappa -V- Laxmi Vishnu Mills</b>
Interrupted service due to sickness, accident or disablement shall not be deemed as breaking or violation of continuous service and employee shall be provided with reasonable opportunity of being heard.	

### Protection of Gratuity

No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, Railway Company or shop exempted under section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

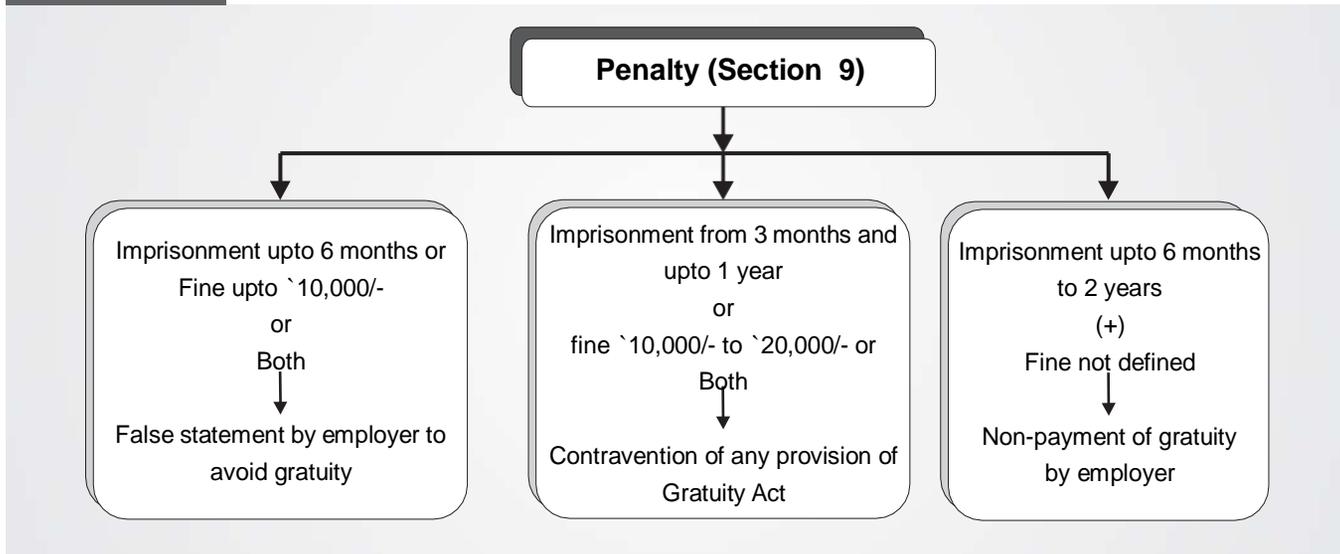
### Penalties for the Contravention of Various Provisions of Payment of Gratuity Act, 1972

#### (Section 9) Penalty

- ◆ Wherever, for the **purpose of avoiding any payment** to be made by himself under this act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any **false statement** or false representations shall be punishable with the imprisonment for a term which may **extend to six months**, or with fine which may **extend to ten thousand rupees** or both.
- ◆ An **employer who contravenes**, or makes default in complying with, any of the provision of this act or any rule or order made the under shall be punishable with the imprisonment for a term which shall not be less than three months but which may **extend to one year**, or with fine which shall not be less than ten thousand rupees but which may extend to **twenty thousand rupees** or **with both**.

Provided that where the offence relates to **non-payment of any gratuity payable** under this Act, the employer shall be punishable with imprisonment for a term which shall **not be less than six months** but which may **extend to two years** unless the court trying the offence, for reasons to be recorded by it in writing is of opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice.

Quick Recap



### [Section 4A] Provisions Relating to Compulsory Insurance

The amendments act of 1987 has made provision for **compulsory insurance of employer's liability** to pay gratuity under the Act or in the alternative for the setting up of gratuity fund in relation to **establishments employing 500 or more employees**. This has been done by introducing a new Section 4A in the act

According to **Section 4A**, every employer shall obtain insurance for his liability for payment towards the gratuity under the act from the **Life Insurance Corporation** of any other prescribed insurer with effect from such date as may be notified by the Appropriate Government in this behalf. Section 4A(1) does not apply to an employer or an establishment belonging to, or under the control of the Central Government.

**Exemption:** The Appropriate Government may exempt:-

- (a) Every employer who had already established an **approved gratuity fund** in respect of his employees and who desires to continue such arrangement, and
- (b) Every employer employing 500 or more person who establishes an approved gratuity fund under the provision of the act.

**"Approved Gratuity Fund"** shall have the same meaning as in **Section 5** of the **Income Tax Act 1961**.

### Failure to Pay Insurance Premium or Contribution

Where an employer fails to pay Insurance premium (under section 4-A(1)) or any contribution to an approved gratuity fund [under section 4-A (2)], he shall be liable to pay the amount of gratuity due under the act (including interest if any, for delayed payments) forthwith to the controlling authority.

**Whoever contravenes** this provision **shall be punishable** with fine which may **extend to `10,000** and in the case of a **continuing offence** with a further fine which may extend to **`1,000 for each day** during which the offence continues [Section 4-A (6)].

### Quick Recap

#### Provisions relating to Compulsory Insurance (Section 4A) Amendment in 1987

Every employer with an establishment of 500 or more employee is under obligation to take compulsory insurance if employees through LIC or any other insurance company

#### Exception under Section 4A

Employees less than 500  
in an establishment

`500 or more employees  
(+)  
Approved Gratuity Fund under  
Income Tax Act, 1961

## Provisions Relation to Nomination

### [Section 6] Nomination by Employee under Gratuity Act, 1972

1. Each **employee**, who has **completed one year of service**, shall make, within such time, in such form and in such manner, as may be prescribed nomination for the purpose of the second proviso to sub-section (1) of section 4.
2. An employee may, in his nomination, distribute the amount of gratuity payable to him under this act amongst **more than one nominee**.
3. If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family.

To protect the interest of the family, it has been specifically provided that any **nomination** made by such employee **in favour of a person** who is **not a member of his family shall be void** [Section 6(3)].

4. If at the time of nomination the **employee has no family**, the nomination may be made in favour of any other person but if the employee **subsequently acquires a family**, such nomination shall forthwith become invalid and the employee **shall make within 90 days a fresh nomination** in favour of one or more members of his family.
7. The **nomination may be modified** at any time after giving a written notice to his employer in a prescribed form.
8. If a **nominee predeceases the employee**, the interest of the nominee shall revert to the employee who shall make a **fresh nomination**, in the prescribed form, in respect of such interest.
9. Every nomination fresh **nomination** or modified nomination as the case may be, shall be sent by the employee to his **employer**, who shall keep the same in this **safe custody**. [Section 6(7)]

### Quick Recap

#### Nomination under gratuity (Section 6)

Every employee is under obligation to fill nomination form with his employer after 1 year of service.

Employee may appoint or fill nomination form in favour of more than 1 nominees .

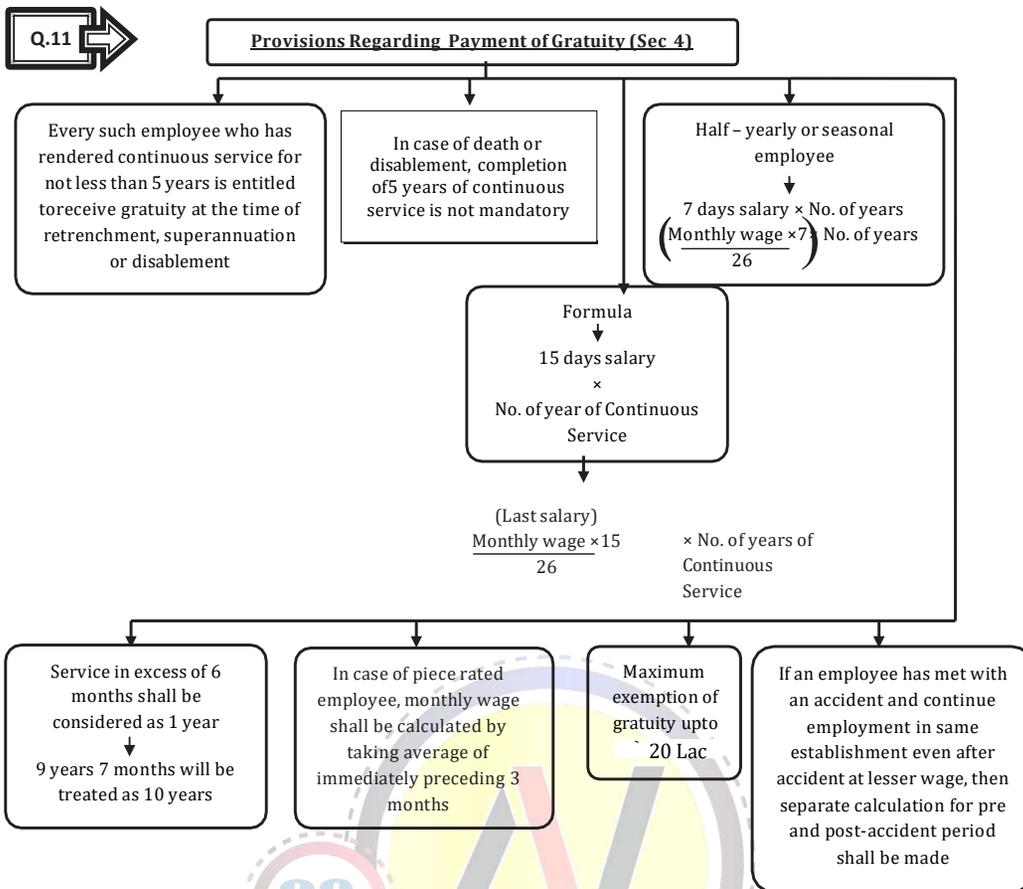
Nomination other than family member is void .

If employee is without family, then he may appoint any person as his nominee.If

nominee pre deceases an employee, than new nominee shall be appointed.

If employee without family subsequently acquired family then new nomination form will be filled within 90 days.

**Quick Recap**



**Sec 13**  
The amount of gratuity is fully protected and is not liable to be attached to any order or decree of court. But can be adjusted towards loan taken against gratuity

**Case Study**

AV (employer) → Appointed for 4 year → K (employee)

After completion of the contract AV renewed contract for 4 years. Can employee claim gratuity after 8 years of service ?

**Jeevanlal**  
-v-  
**Controlling Authority, 1982**

It was held by the Court of law that there is malafide intention of employer to escape liability of gratuity hence. He is bound to pay gratuity

**Case Study**

MR. X joined the establishment at the age of 20. His salary was Rs. 10,000. At the age of 40 he met an accident and at such time he was drawing salary of Rs. 30,000 per/month. After accident he continued employment at the salary of Rs. 29,500 per month for next 20 years and retired at the age of 60 and the time of retirement his salary was Rs. 1, 00,000 per month. Calculate gratuity

(A) Will it make any difference to your answer if even after accident his salary would be same

**Separate calculation**

Pre-accident period

$$\left(\frac{MW}{26} \times 15\right) \times \text{No. of years}$$

$$\left(\frac{30,000}{26} \times 15\right) \times 20 = \text{` 3,46,154}$$

Post-accident period

$$\left(\frac{MW}{26} \times 15\right) \times \text{No. of years}$$

$$\left(\frac{1,00,000}{26} \times 15\right) \times 20 = \text{` 11,53,846}$$

$$\text{` 3,46,154} + \text{` 11,53,846} = \text{` 15,00,000}$$

(B)  $\left(\frac{1,00,000}{26} \times 15\right) \times 40 = 23,07,692.30$

**Case Study**

Mr. X joined an establishment for 10 years but died after 2 years. His widow claimed gratuity from employer but employer refused her contention on the ground of non-compliance of 5 years continuous service. It refusal by employee justify ?

**According to Section**

Account to Sec 4, in case of death and disablement of the employee 5 yrs fulfillment is not mandatory.

**Facts of the problem**

Mr. X joined an establishment for 10 years but died after 2 years. Employer rejected the contention of widow on the ground of non-compliance of 5 years continuous service

**Conclusion**

In case of death and disability of the employee, 5 year completion of continuous service is not required. Therefore, rejection by employer is unjustified and widow may knock at the door of judiciary.

## Chapter – 9

# Maternity Benefit Act, 1961

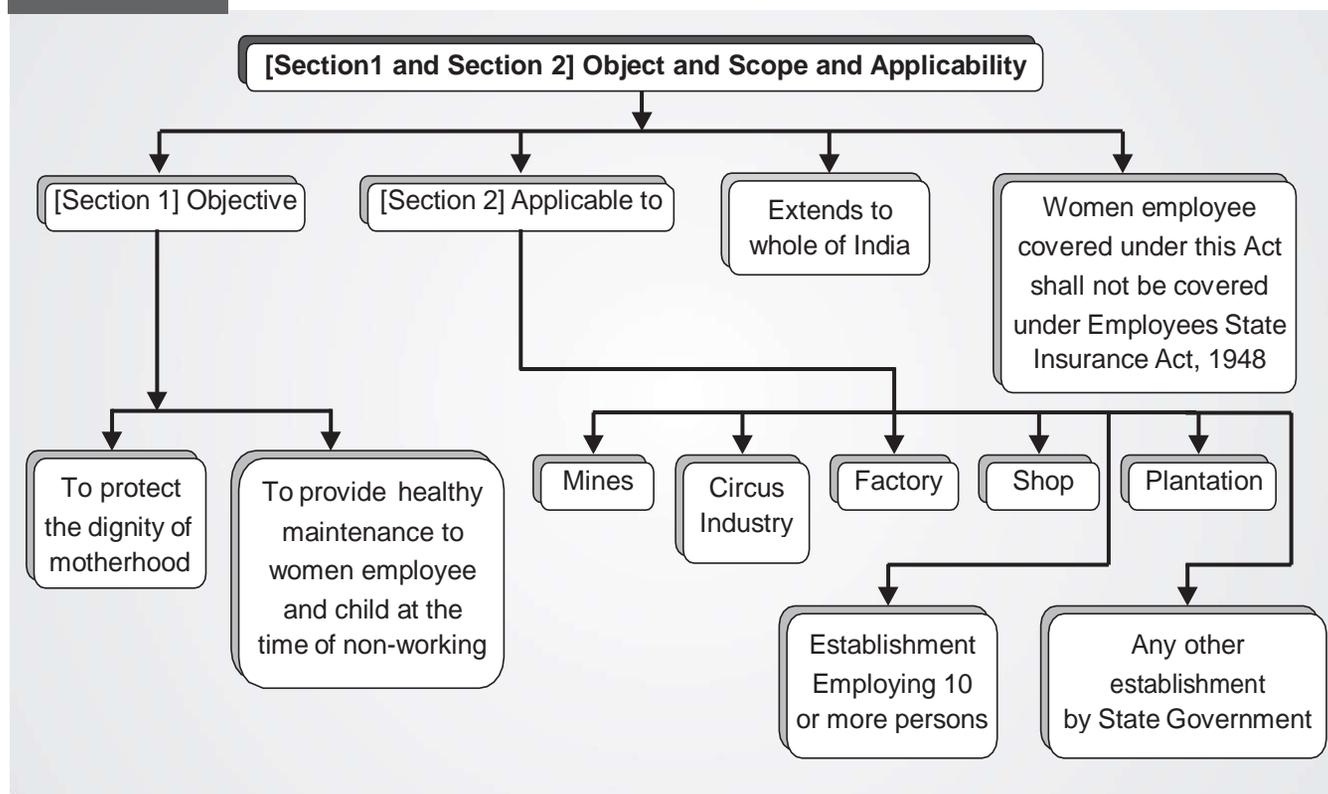
### List of Sections

Sections	Particulars of Section
1	Extent
2	Applicability
3	Definitions
3(a)	Appropriate Government
3(b)	Child
3(d)	Employer
3(e)	Establishment
3(h)	Maternity benefit
3(n)	Wages
4	Employment by women prohibited during certain period
5	Right to receive payment of maternity benefits
6	Notice of claim for maternity benefit and payment thereof
11	Nursing break
19	Display of rules and abstract of Act regarding maternity benefits
20	Obligation of employer to maintain register
21	Penalty for contravention of Act by employer

### [Section 1] Introduction and Objective of Maternity Benefit Act, 1961

- The Maternity Benefit Act, 1961 **regulates employment** of women in certain establishments for a certain period **before and after birth of child** and provides for maternity and other benefits.
- It extends to the whole of India.
- The Maternity Benefit Act is applicable to women employees employed in establishments which are not covered by ESI Act, 1948 or such women employees whose establishments are covered but such women employees are out of its coverage due to their wage limit. i.e. Rs. 25,000 per month.

## Quick Recap



**Note:** Section 2(1)(b) - State Government can make this Act applicable by giving 2 months notification with prior approval of Central Government.

**[Section 3] Define the Following Term**

1. **[Section 3(a)] Appropriate government**

- Means in relation to an establishment being a mine or an establishment wherein persons are employed for the exhibition of equestrian (something related to jumping and horse riding) acrobatic and other performances the Central Government

**AND**

- in relation to any other establishment, the **State Government**.

2. **[Section 3(b)] Child** includes a **still – born child**.

3. **[Section 3(ba)] “Commissioning Mother”** means a biological mother who uses her egg to create an embryo implanted in any other woman.

4. **[Section 3(d)] Employer** means:

- 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**.
- 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.
- In 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. **[Section 3(e)] “Establishment”** means:

- A factory
- A mine
- A plantation
- An establishment wherein persons are employed for the exhibition of equestrian acrobatic and other performance
- A shop or establishment
- An establishment to which the provision of this act have been declared under Section 2(1) to be applicable.

6. **[Section 3(h)] Maternity benefit**

Maternity benefit means the payment referred to in sub-section(1) of Section 5.

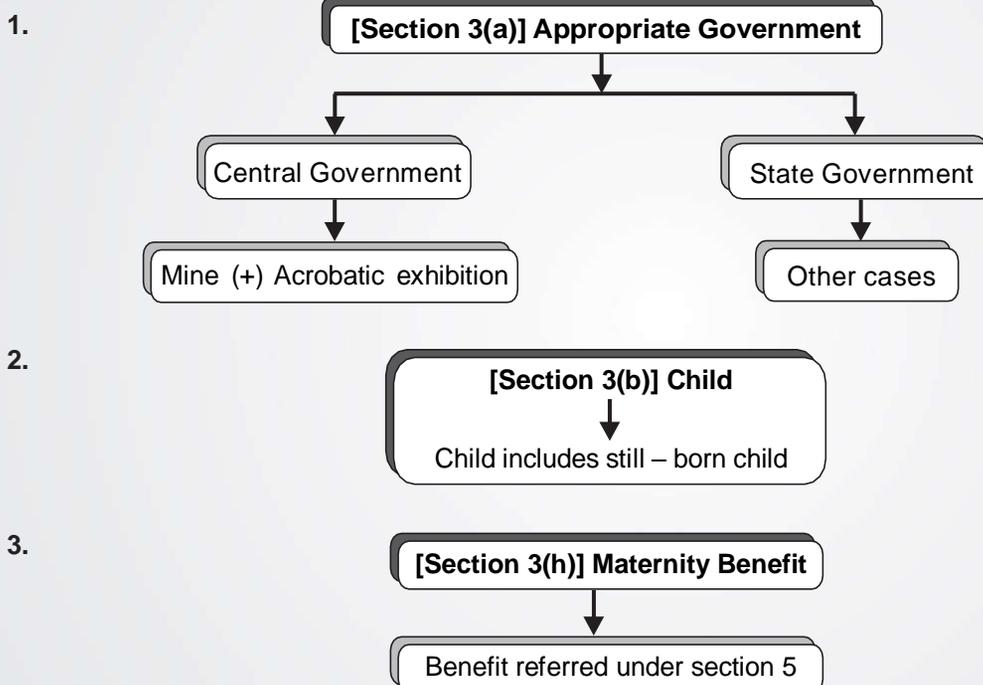
7. **[Section 3(n)] Wages**

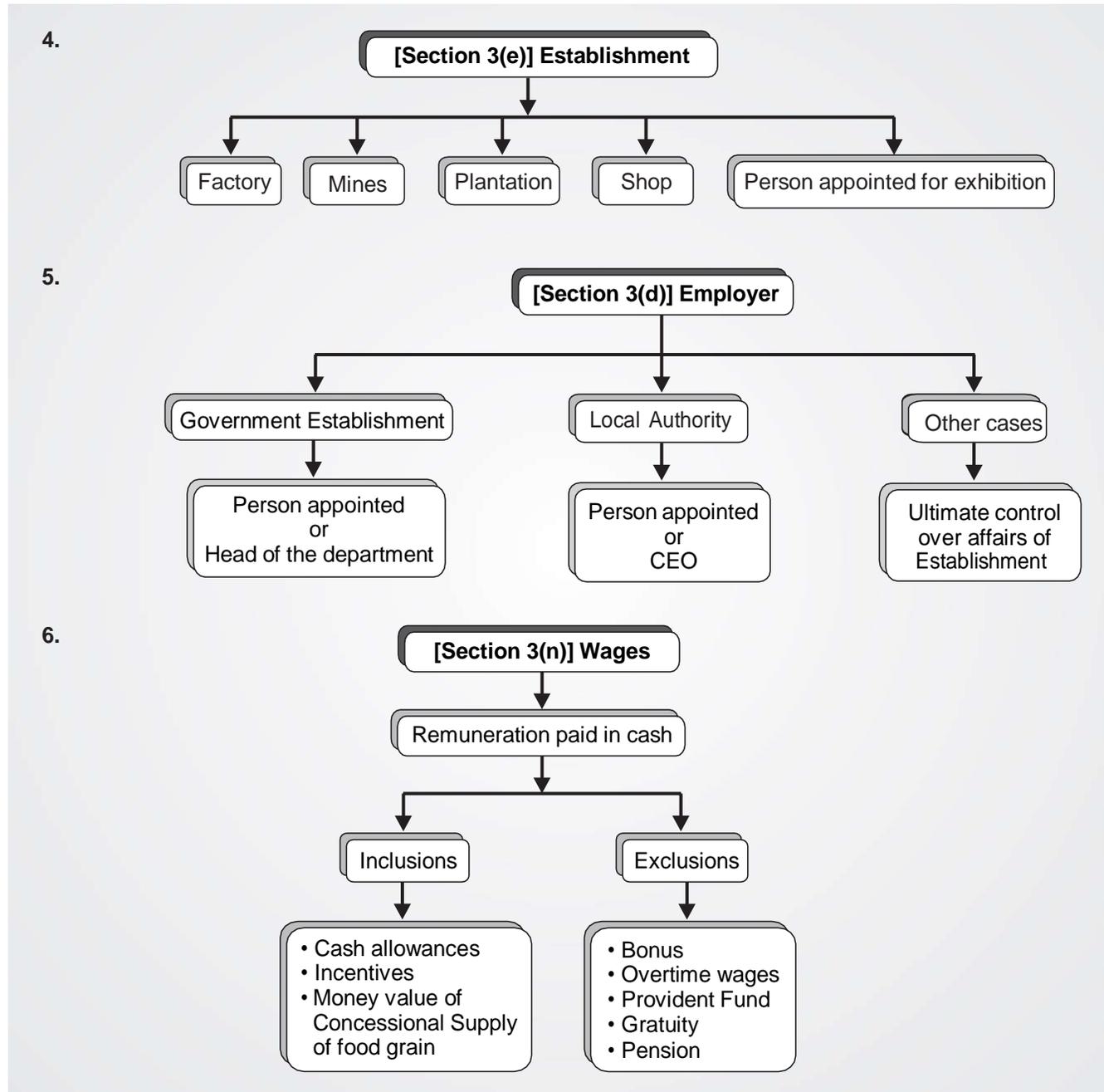
“Wages” means all remuneration paid or payable in cash to a woman if the terms of the contract of employment expressed or implied were fulfilled and **includes**:

1. Such **cash allowances** (including dearness allowances 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**:
  - (a) Any **bonus** other than incentive bonus.
  - (b) **Overtime earnings** and any deduction or payment made on account of fines.
  - (c) 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.
  - (d) Any **gratuity payable** on the termination of service.

Quick Recap

**[Section 3] Definitions**





#### [Section 4] Employment of or Work by Women Prohibited during Certain Periods

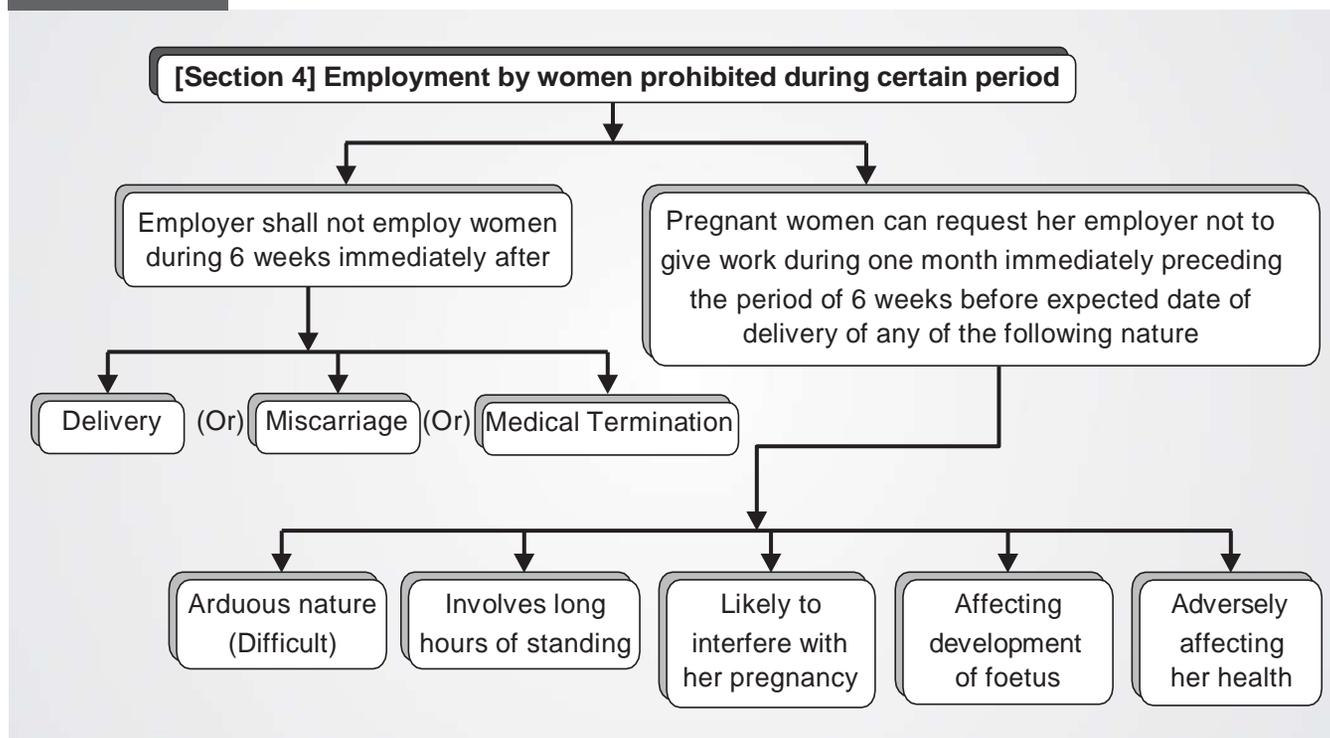
The Act provides that **no employer shall knowingly employ a woman** in any establishment during the **six weeks immediately following** the day of the **delivery, miscarriage or medical termination** of pregnancy.

It may be noted that if a **pregnant women** makes request to her employer, she shall **not be given any work** of any of the following nature:

- ◆ Arduous (laborious) nature of standing,
- ◆ Which in any way is likely to interfere with her pregnancy or the normal development of the foetus,
- ◆ Is likely to cause her miscarriage or otherwise to adversely affect her health,

to do during the period of **one month immediately preceding the period of six weeks, before the date of her expected delivery.**

### Quick Recap



### [Section 5] Right to Payment of Maternity Benefits

#### 1. Entitlement

Every woman shall be entitled to receive payment of maternity benefits and her employer shall be liable for, the payment of benefit at the **rate of the average daily wage** for the period of her actual absence.

#### 2. Average Daily Wage

It 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.

#### 3. Eligibility

A **woman shall be entitled** to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of **not less than eighty days in the twelve months immediately preceding the date of her expected delivery.**

#### 4. Period of Benefit

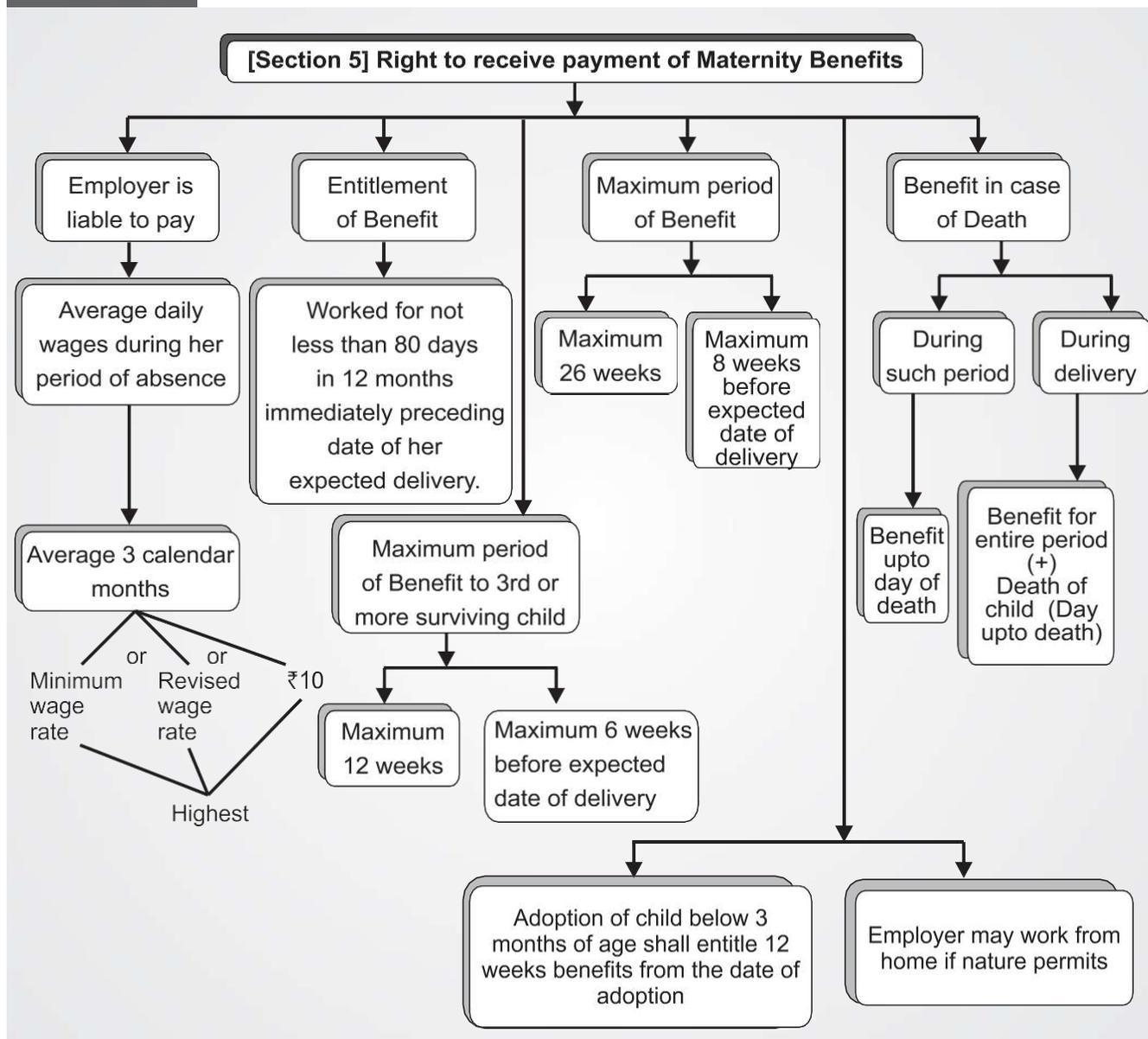
The **maximum period** for which any woman shall be entitled to maternity benefit shall be **twenty six weeks** of which **not more than eight weeks shall precede the date of her expected delivery.**

#### 5. Benefit in case of death

- If a woman **dies during this period**, the maternity **benefit** shall be payable only for the **days up to and including the day of her death.**
- Where a woman, having been delivered a child, **dies during her delivery** or during the period **immediately following the date of her delivery** for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period.

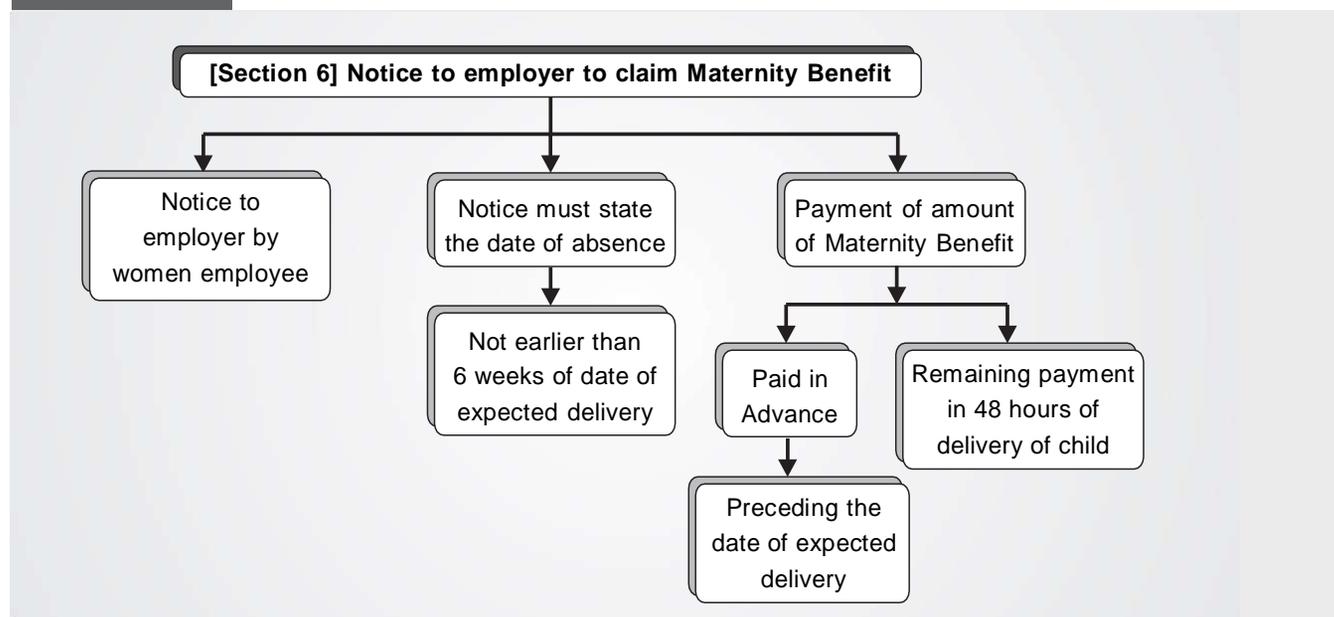
- If the child also dies during the said period, then, for the days up to and including the date of the death of the child.
- A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.
- In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

Quick Recap



**[Section 6] Notice of Claim for Maternity Benefit**

- ♦ As per Section 6, any women entitled to maternity benefit may give **notice in writing to her employer**, stating that her maternity benefit and other entitled benefits may be paid to her or her nominee for the period of her absence, not being a date earlier than six weeks from the date of her expected delivery for which she receives maternity benefit.
- ♦ 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 and the benefit **shall be paid to her in advance** by the employer and the **amount due for the subsequent period** shall be paid by the employer **within 48 hours of delivering a child**.

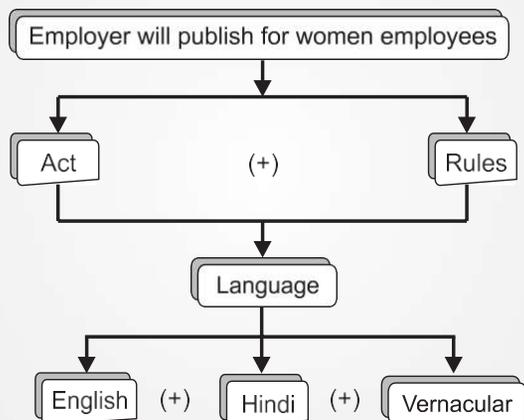
**Quick Recap****[Section 11] Nursing Breaks**

Every woman who resumed her employment after delivery shall be provided with **two breaks** of the prescribed duration for nursing the child **until the child attains the age of fifteen months**.

**[Section 19] Abstract of Act and Rules there under to be Exhibited**

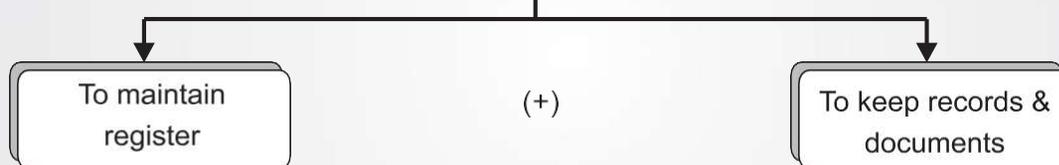
An abstract of the provisions and the rules made under the Act shall be **exhibited in a conspicuous (visible) place** by the employer in every part of the establishment in which women are employed, in the language or languages of the locality.

## Quick Recap

**[Section 19] Display of Rules regarding Maternity Benefit****[Section 20] Registers**

Every employer shall prepare and maintain such **registers, records and muster – rolls** and in prescribed manner under section 20 of the Act.

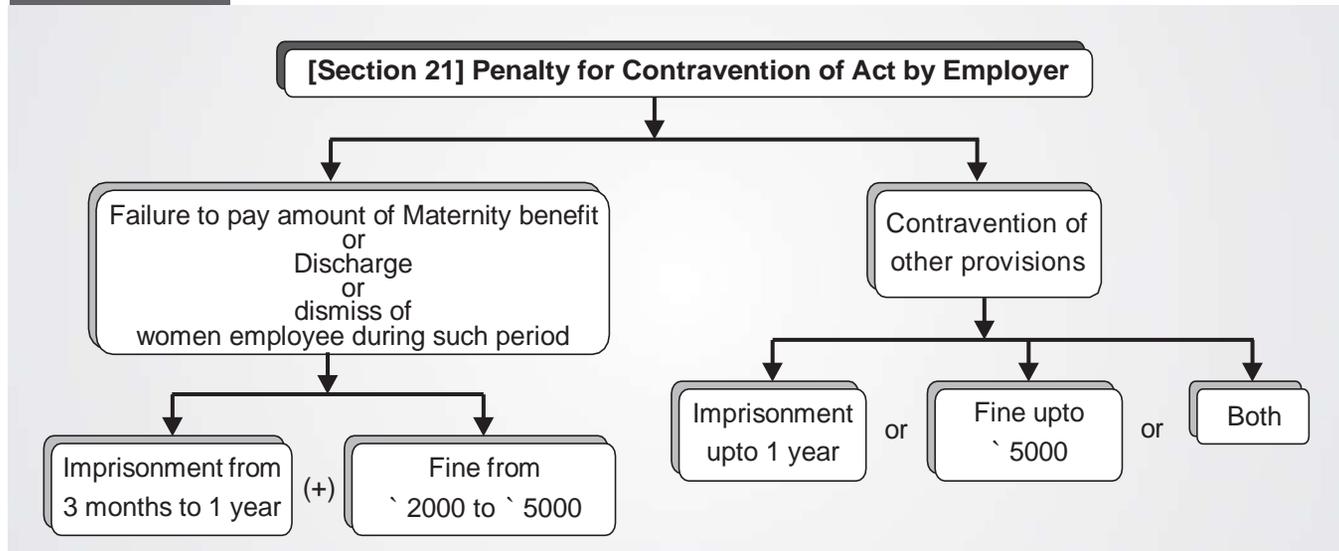
## Quick Recap

**[Section 20] Obligation of employer****[Section 21] 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**.

**Miscellaneous Penalty:** If any employer contravenes the provisions of the Act, he shall, if no other penalty is elsewhere provided, be punishable with imprisonment which may **extend to one year**, or with fine which may **extend to five thousand rupees**, or with **both**.

Quick Recap



## Chapter – 10

# The Payment of Bonus Act, 1965

### List of Sections

Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(1)	Accounting Year
2(4)	Allocable Surplus
2(5)	Appropriate Government
2(6)	Available Surplus
2(7)	Award
2(11)	Corporation
2(13)	Employee
2 (14)	Employer
2 (15)	Establishment in Private Sector
2 (16)	Establishment in Public Sector
2 (21)	Salary or Wage
3	Establishment
4	Gross Profit
5	Available surplus
6	Deductions from gross profit
7	Computation of Tax
8	Eligibility to Receive Bonus
9	Disqualification from Receiving Bonus
10	Minimum bonus
11	Maximum bonus
12	Calculation of salary for making Bonus
13	Proportionate reduction in Bonus in Certain Cases
14	Computation of number of working days or Inclusion in working days
15	Set on & Set off of allocable surplus
17	Adjustment of customary / interim Bonus
18	Deductions of Certain amounts from Bonus
19	Time limit for recovery of bonus

20	Applicability of Bonus Act on Public Sector
21	Recovery of bonus
28	Penalty for Contravention
31A	Productivity linked Bonus
32	Non Applicability of Bonus Act or Employees not covered under
36	Power of Exemption of C.G

**Discuss the Extent and Applicability of Payment of Bonus Act, 1965**

Bonus is a reward for good work, behavior or share in the profits of an organization where the employee is working. Often there were disputes between employer and employee about bonus to be paid. Therefore legislation by the way of Bonus Act was passed to solve the problem of employer-employee conflict.

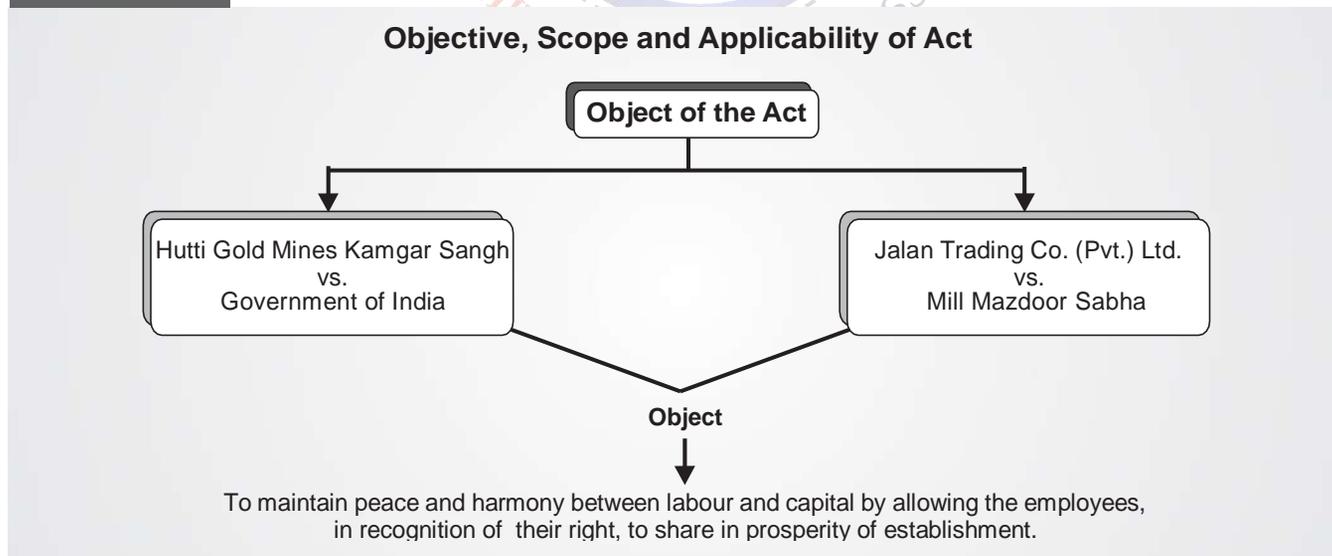
CASE LAW	Hutti Gold Mines Kamgar Sangh vs.. Government of India and Jalan Trading Co. (Pvt.) Ltd. vs.. Mill Mazdor Sabha
<p>The Supreme Court has explained the object of the Payment of Bonus Act, 1965 HGM and Jalan Trading to maintain peace and harmony between labour and capital by allowing the employees 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 secure the right of labour to share in the profits but also ensure a reasonable degree of uniformity”.</p>	

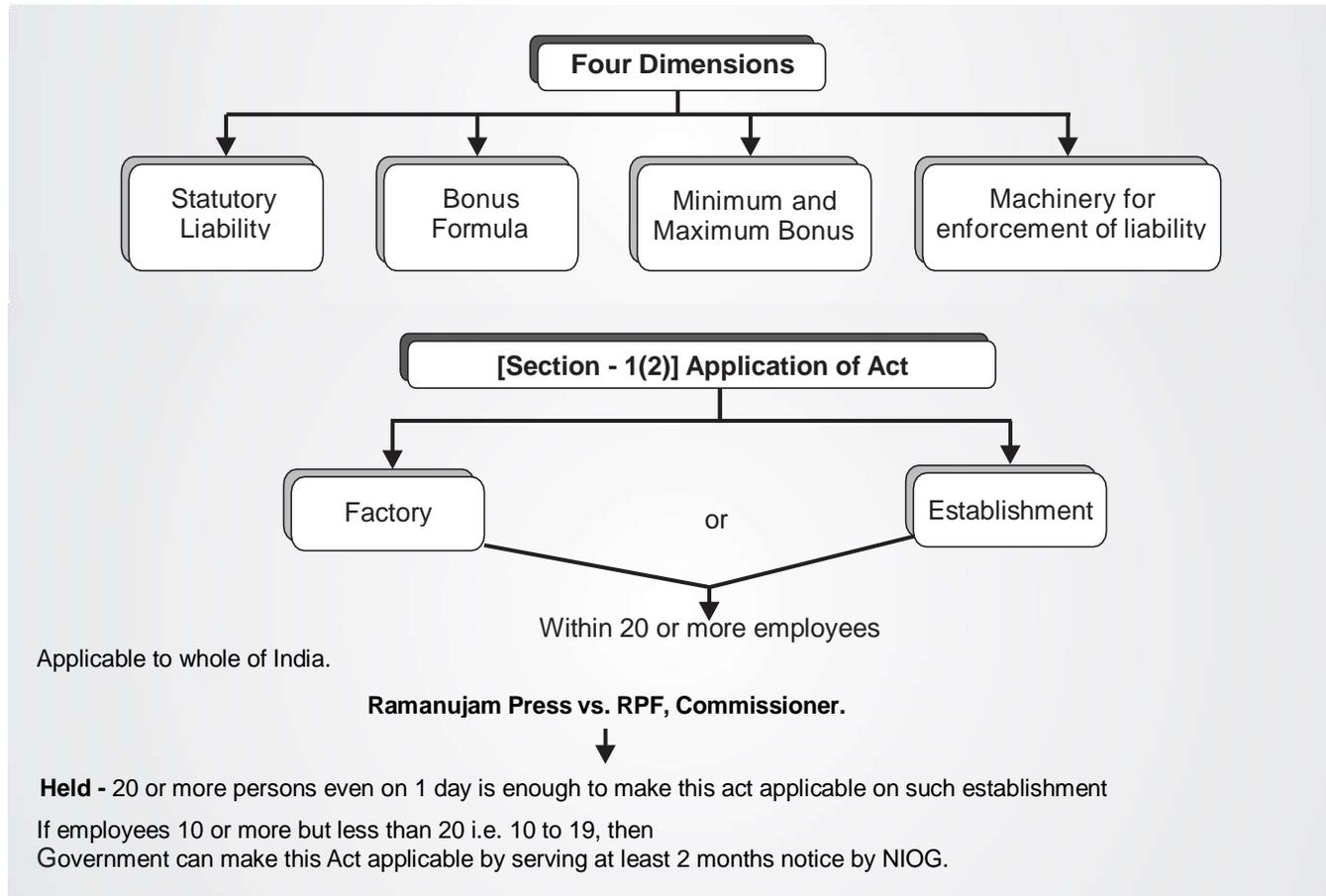
**Extent and Application**

Bonus Act, 1965 is applicable to every factory or other establishment in which 20 or more persons were employed on any day during the preceding accounting year.

It may be noted that once the act is applicable, it continues to apply even if number of employee’s falls below 20.

**Quick Recap**





### Define the Following Terms, Under the Payment of Bonus Act, 1965

#### [Section 2(4)] Allocable Surplus

##### It means:

- (a) In relation to an employer, being a **company** (other than a banking company) which has not made the arrangement prescribed under the Income Tax Act, 1961 for the declaration and payment within India of the dividends payable out of its profits in accordance with the provision of Section 194 of the Income Tax Act, 1961, **67 percent** of the available surplus in an accounting year.
- (b) Any **other case**, **60 percent** of the available surplus. The allocable surplus is the workers' share towards the bonus to be distributed among them.

#### [Section 2 (6)] Available Surplus

It means the available surplus computed under Section 5.

According to Section 5, the available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in Section 6.

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

- (a) The gross profits for that accounting year after deduction there from the sums referred in Section 6, and.

- (b) The amount equal to the difference between:
- i. the direct tax, calculated in accordance with the provisions of Section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year, and
  - ii. the indirect tax, calculated in accordance with the provisions of Section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

**[Section 2(5)] Appropriate Government**

It means:

- (a) In relation to an establishment, in respect of which the Appropriate Government under the Industrial Disputes Act, 1947 is the Central Government.
- (b) In relation to any other establishment, the Government of the State in which the establishment is situated.

**[Section 2 (14)] Employer**

'Employer' includes:

- (a) 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 deceased owner or occupier and the manager of the factory.
- (b) In relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment. Where the said affairs are entrusted to a manager or managing director, such manager or managing director is the employer.

**[Section 2 (13)] Employee**

"Employee" means any person (other than an apprentice) employed on a salary or wage not exceeding ₹21,000 per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment are express or, implied.

**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
  - (a) the Industrial Finance Corporation of India;
  - (b) any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1951;

- (c) the Deposit Insurance Corporation;
- (d) the National Bank for Agriculture and Rural Development; (e) the Unit Trust of India; (f) the Industrial Development Bank of India;
  - (i) the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
  - (ii) the National Housing Bank;
- (g) 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.

Apart from the above, the appropriate Government has necessary powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act for a specified period having regard to its financial position and other relevant circumstances and if it is of the opinion that it will not be in the public interest to apply all or any of the provisions of this Act thereto. It may also impose such conditions while according the exemptions as it may consider fit to impose.

**Problem 1: CS-2A:** A workshop is employing 50 workmen. A shop-supervisor is drawing monthly ₹9,000. Human Resources Department (HRD) paid bonus to all employees except the supervisor. The Supervisor contends that he is also entitled to bonus. Referring to the provisions of the Payment of Bonus Act, 1965 decide whether the HRD's action is correct.

**Answer: Shop supervisor is entitled to bonus**

- Since he is an 'employee'.
- Since he is employed on a salary or wage not exceeding ₹10,000 per month (Section 2(13)).

**Problem 2: CS-2B:** Decide whether the following persons are entitled to get bonus under the Payment of Bonus Act, 1965:

- An apprentice.
- A retrenched employee
- A dismissed employee
- Piece-rated worker.
- A University teacher.
- An employee of the 'NABARD'.
- A reinstated employee without wages for the period of dismissal.
- J, who is working in a social welfare organization.
- D, an employee employed by an establishment engaged in an industry carried on by a department of the Central government.

**Answer:**

- An apprentice is not eligible
  - Since he is expressly excluded from the definition of employee (Section 2(13)).
- A retrenched employee is eligible
  - Provided he has worked for a minimum period of 30 days in the Accounting Year (AY) (Section 8).
- A dismissed employee is eligible
  - Provided he has worked for a minimum period of 30 days in the Accounting year (AY) (Section 8), and
  - Provided he is not disqualified as per Section 9.

- A piece-rated worker is eligible
  - Provided he has worked for a minimum period of 30 days in the Accounting Year (AY) (Section 8).
- A University teacher is not eligible
  - Since the Act does not apply to Universities or other educational institutions. Institutions established not for purposes of profit (Section 32).
- An employee of the 'NABARD' is not eligible
  - Since the Act does not apply to NABARD (Section 32).
- A reinstated employee without wages for the period of dismissal is eligible
  - Provided he has worked for a minimum period of 30 days in the AY (Section 8).
  - Since it is immaterial as to whether the employee was reinstated with or without wages for the period of dismissal.
- The Act is not applicable to J
  - Since the Act does not apply to a social welfare organization.
- The Act is not applicable to D
  - Since the Act does not apply to employees engaged by a Department of CG.

### [Section 3] Establishment

The term 'establishment' is not defined in the act. It is a wider term than 'Factory', Section 3, however, provides that where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in difference places, all such departments or undertaking or branches shall be treated as part of the same establishment for the purpose of computation of bonus under the act.

Where, for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking branch shall be treated as a separate establishment for the purpose of computation of bonus under this act for that year, unless such department of undertaking or branch was immediately before the commencement of that accounting year, treated as part of establishment for the purpose of computation of bonus.

### [Section 2 (15)] Establishment in Private Sector

It means any establishment other than an establishment in public sector.

### [Section 2(16)] Establishment in Public Sector

It means any establishment owned, controlled or managed by:

- (a) A Government Company as defined in Section 2(45) of the Companies Act, 2013.
- (b) A Corporation in which not less than forty percent of its capital is held (Whether singly or taken together) by:
  - (i) The Government; or
  - (ii) The Reserve Bank of India; or
  - (iii) A Corporation owned by the Government or the Reserve Bank of India. [Section 2(16)]

### [Section 2 (21)] Salary or Wages

It means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money which would, if the terms of employments, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment. It includes dearness allowance (all cash payments, by whatever name called paid to an employee on account of rise in the cost of living).

#### 'Salary or wages' 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 good grains or other articles.
- (iii) Any traveling concession.
- (iv) Any bonus (including incentive, production and attendance bonus)
- (v) Any contribution paid or payable by the employer to any pension fund for the benefit of the employee under any law for time being in force.
- (vi) Any retrenchment compensation or any gratuity or any other retirement benefit payable to the employee or any extra payment made to him.
- (vii) Any commission payable to the employee. Where an employee is given in lieu of the whole or part of the salary or wages 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 Section 2(21), be deemed to form part of the salary or wage of such employee.

**Problem 3: CS-2C.** Prakash Chandra is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year-

- Overtime allowance,
- Dearness allowance,
- Commission on sales,
- Employer's contribution towards pension fund
- Value of free food.

Examine as to which of the above payments form part of 'salary' of Prakash Chandra under the provisions of the Payment of Bonus Act, 1965.

**Answer:**

- Items to be included in 'salary or wage'
  - Dearness allowance
  - Value of free food (provided it is given in lieu of salary)
- Items not to be included in 'salary or wage'
  - Overtime allowance
  - Commission on sales
  - Employer's contribution towards pension fund

### Quick Recap

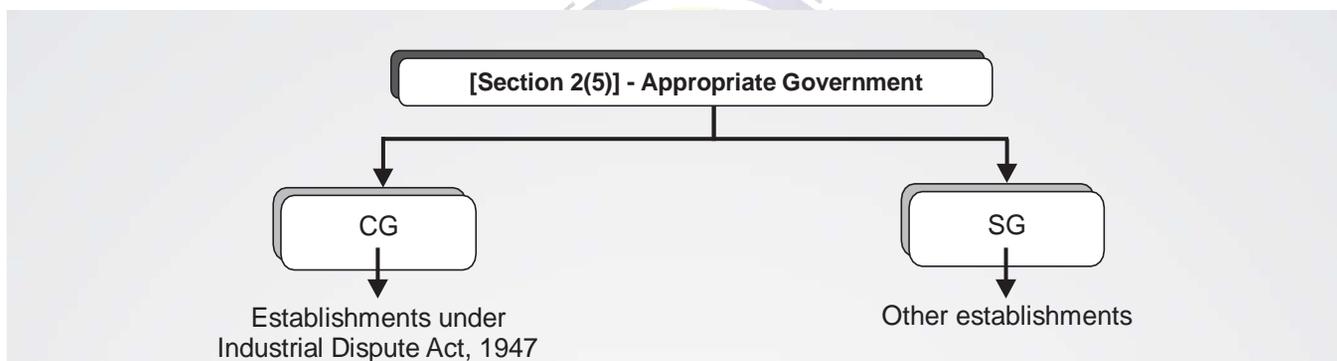
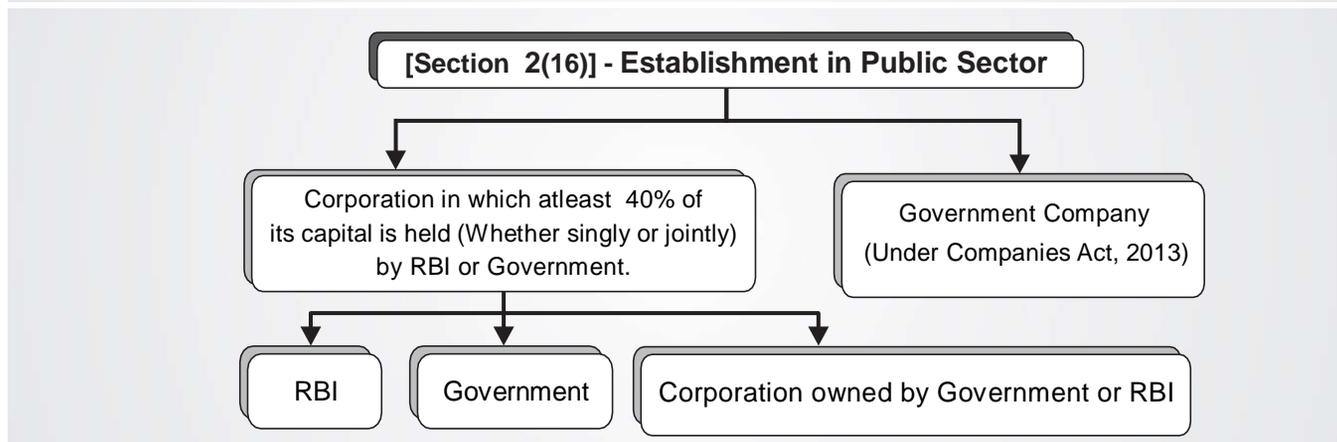
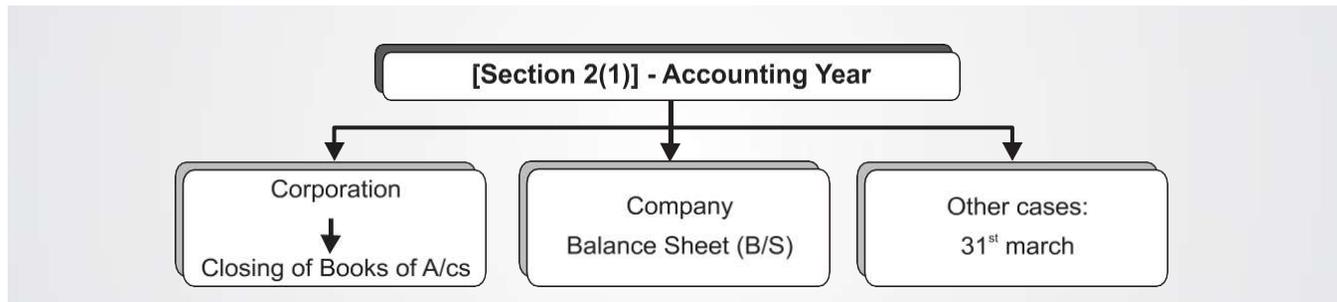
#### Definitions

**[Section - 3] - Establishment:** Wider term than factory includes all departments, undertaking and branches if single balance sheet.

**[Section 2(15)] - Establishment in Private Sector:**



Establishment other than public sector.



**[(Section - 2(6)) - Available Surplus defined in Section 5:**

Gross Profit Under **Section-4** → Banking Companies → Calculate as per Ist Schedule

→ Other Companies → Calculate as per IInd Schedule

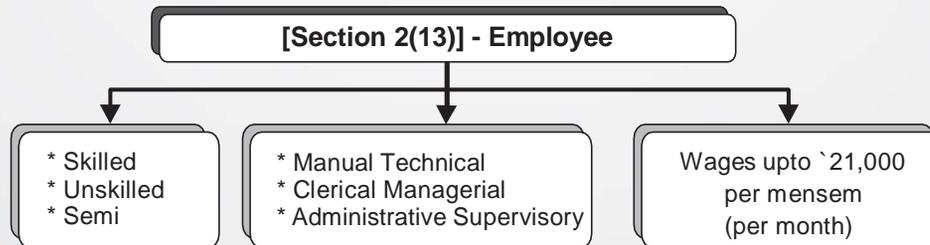
(-) Item of [Section-6]  
 Depreciation  
 Investment allowance  
 Development rebate

(+) Tax of under **Section 7**

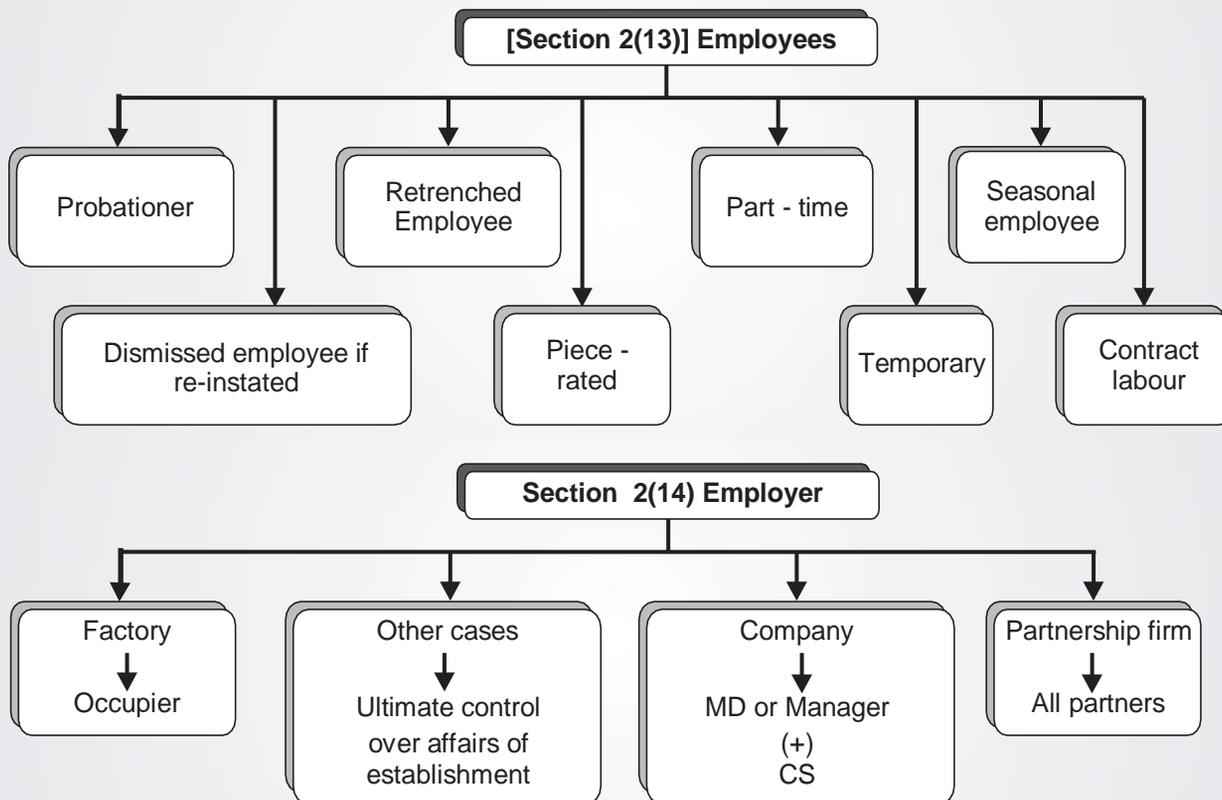
= Available Surplus under **Section 5**

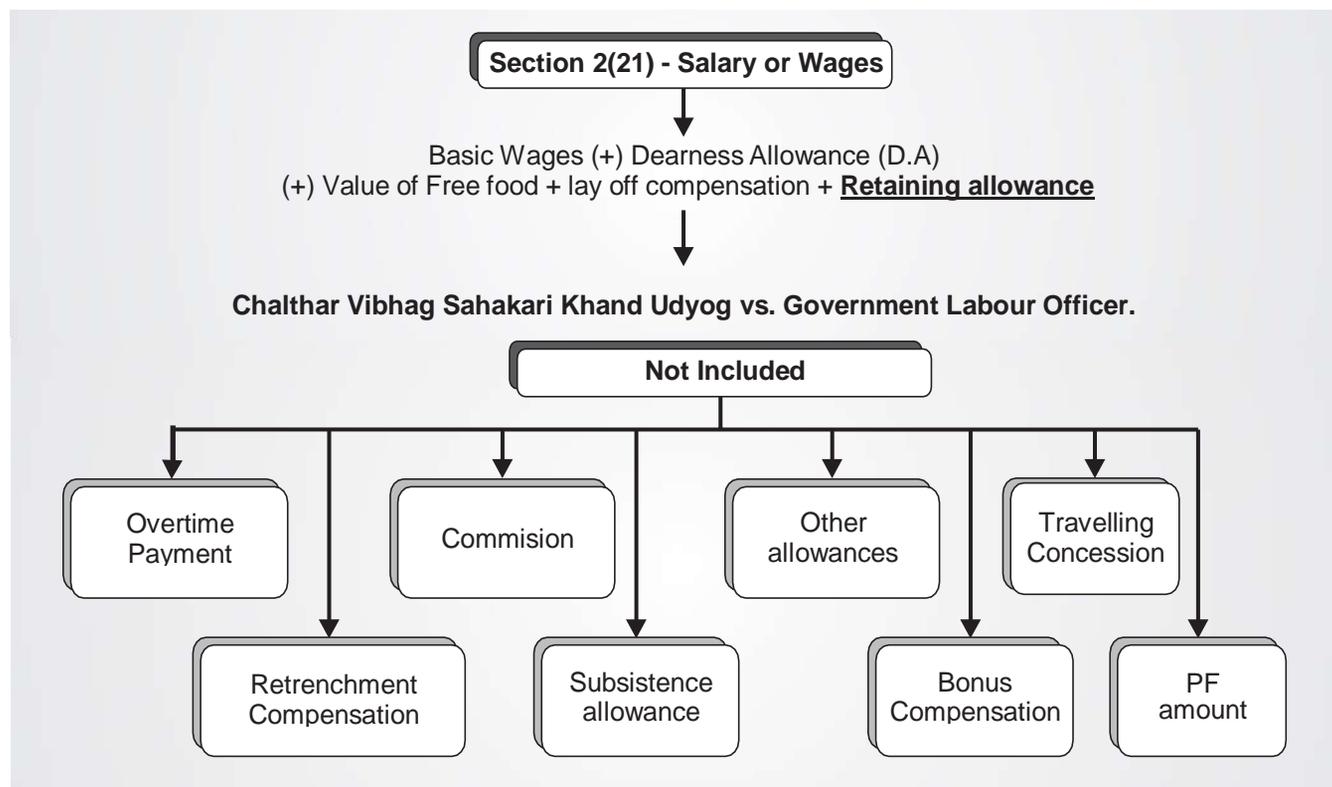
**[Section 2(7)] - Award:** Interim or final determination of any industrial dispute by any court.

**[Section 2(11)] - Corporation:** Body Corporate by Central Government or State Government but does not include Company or a Co-operative Society



**Note -** Apprentices are not employees under Bonus Act, 1965.





### [Section 8] Eligibility for Receiving Bonus under the Payment of Bonus Act, 1965

Accounting to **Section 8** of the Payment of Bonus Act, 1965, 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 that he has worked in the establishment for not less than **thirty working days** in that year.

### Some Important Case Law

CASE LAW	Project Manager ONGC vs.. Shyam Kr Sehgal
	An employee suspended but subsequently reinstated with full back wages is eligible for the bonus for the period of suspension.

Whether a supervisor who joins on 01.02.09 and then resigns on 28.02.09 is entitled to [(Section 2(13)] and (8) bonus of 20% declared by the employer?

**Problem 4: CS-3A.** Mr. "E" joined as supervisor on monthly salary of `20,900 on 01.02.2009 and resigned from his job on 28.2.2009. The company declared a bonus of 20% to all Human Resource Department eligible employees and paid it on time. Mr. "E" knowing the facts made a claim to (HRD), which in turn rejected the claim. Examine the validity in the light of the provisions of the payment of Bonus Act, 1965.

**Answer:**

- The claim of Mr. E is not valid
  - Since he has not worked for at least 30 working days in the Accounting Year (AY) 2008-2009 (Section 8).
  - Although he is covered in the definition of 'employee', i.e. he is employed on a salary or wage not exceeding `21,000 per month (Section 2(13)).

Whether an employee earning `3,400 per month is eligible for bonus if he resigned from job [(Section 2(13) and 8) after 28 days]?

**Problem 5: CS-3B.** Mr. 'E' joined as supervisor on monthly salary of `3,400 on 1.02.2007 and resigned from his job on 28.02.2007. The company declared a bonus of 20% to all eligible employees and paid it on time. Mr. 'E' knowing the

facts made a claim to Human Resource Department, which in turn rejected the claim. Examine the validity in the light of the provisions of the payment of Bonus Act, 1965.

**Answer:**

- **Mr. E is an 'employee'**
- **Since he is employed on a salary or wage not exceeding `21,000 (Section 2(13)).**
- **Mr. E is not eligible for bonus**
- **Since he has not worked for 30 days or more (Section 8).**

**Problem 6: CS-3C.** ABC Textiles Ltd. employed 20 full-time and 5 part-time employees who were drawing salary of less than `10,000 per month. After completing service of 28 days, in an accounting year, 10 full-time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned, to the remaining full-time employees and to the part-time employees. Against the decision, all the employees applied to the authorities for relief. Decide, stating the provisions of the Payment of Bonus Act, 1965, whether the employees, who resigned, remaining full-time employees and part-time employees, will get relief.

**Answer:**

- **The Act is applicable to the establishment**
  - Since the establishment has employed 20 or more persons during any day of the Account year (AY).
  - Since if the provisions of the Act become applicable to an establishment once, they shall continue to be applicable notwithstanding subsequent reduction in the number of persons employed (Section 11).
- **20 full-time and 5 part-time employee**
  - Are employees' within the definition of 'employee' (Section 2(13))?
- **The 10 full-time employees who resigned are not eligible for bonus**
  - Since they have not worked for 30 days (Section 8).
- **The remaining 10 full-time employees and all the 5 part time employees are eligible for bonus**
  - Since they have worked for 30 days or more during the Accounting Year (Section 8).
  - Since even a part-time employee is entitled to bonus (**Automobile Karmchari Sangh -v- Industrial Tribunal**).

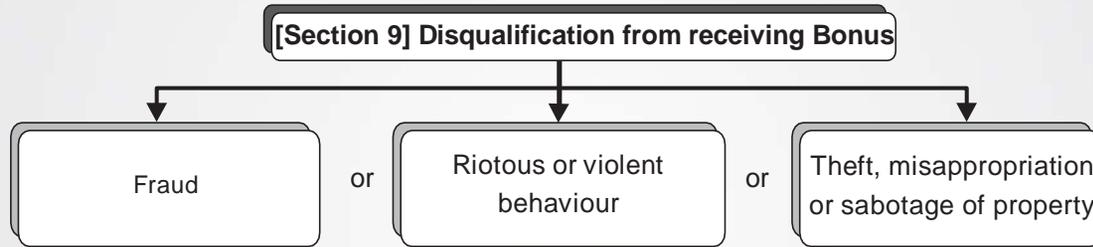
#### **[Section 9] Disqualification of an Employee from Receiving Bonus under the Payment of Bonus Act, 1965**

According to Section 9 of the Payment of Bonus Act, 1965, an employee shall be disqualified from receiving bonus, if he is dismissed from the service for:

- (a) **Fraud**; or
- (b) **Riotous or violent behaviour** while on the premises of the establishment; or
- (c) **Theft, misappropriation or sabotage** of any property of the establishment.

## Quick Recap

B.

**Pandian Roadways Corporation Ltd. vs Presiding Officer, Principal Labour Court.****Held:**

- Disqualified if dismissed only.
- Disqualified means disqualified from receiving any kind of bonus whether interim etc.

**Problem 7: CS-4A.** X, a temporary employee drawing a salary of Rs. 13,000 per month, in an establishment to which the Payment of Bonus Act, 1965 applies was prevented by the employers from working in the establishment for two months during the financial year 2021-2022, pending certain inquiry. Since there were no adverse findings 'X' was reinstated in service, later, when the bonus was to be paid to other employees, the employers refuse to pay bonus to 'X', even though he has worked for the remaining ten months in the year. Referring to the provisions of the Payment of Bonus Act, 1965 examine the validity of employer's refusal to pay bonus to 'X'.

**Answer:**

- X is an employee
  - Since his salary or wage is not more than Rs. 21,000 (it is immaterial that he is a temporary employee) (Section 2(13))
- X is eligible to receive bonus
  - Since he has worked for 10 months (i.e., 30 days or more during the AY) (Section 8).
  - Since it is immaterial that the employment of X was of temporary nature or permanent nature.
- X is not disqualified u/s 9
  - Since he has not been dismissed from service (section 9).
- Conclusion
  - Employer's refusal to pay bonus to X is not valid.
  - X is entitled to bonus for the entire period of 12 months since absence for a period of 2 months due to suspension was not due to any fault of X (**Project Manager, Ahmedabad Project, ONGC vs. Shyam Kumar Sehgal**)

**[Section 10] Discuss the Provisions Relating to Payment of Minimum and Maximum Bonus under the Payment of Bonus Act, 1965**

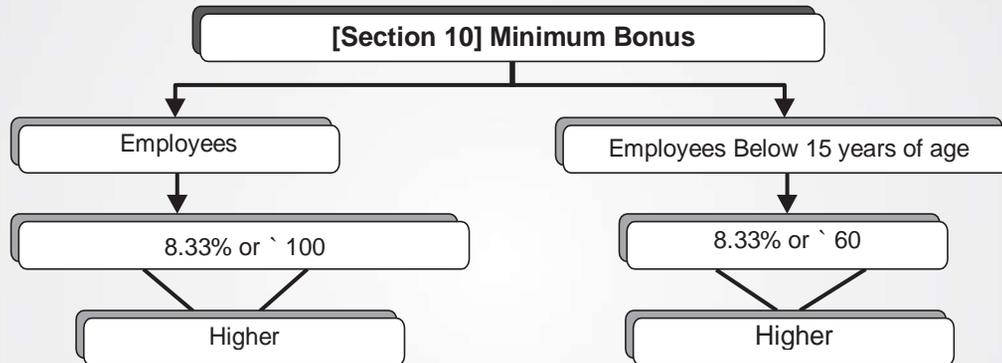
**Payment of Minimum and Maximum Bonus:** Every employer shall be bound to pay to every employee in respect of an accounting year a minimum bonus, which shall be **8.33% of salary** or wage earned by the employee during an accounting year **or `100/-** whichever is **higher**.

Whereas employee has **not completed 15 years of age** at the beginning of accounting year, the minimum bonus payable is **8.33% or `60**, whichever is **higher**.

**Maximum bonus** payable to employees is **20% of the salary** or wage earned by the employee in the accounting year.

### Quick Recap

C.



- Minimum bonus has to be paid.
- Even in the year of loss (**State Vs Sardar Singh Majithia**).
- **[Section 16(1A)]** No bonus if loss in first 5 years of incorporation.

### [Section 11] Maximum Bonus

↓  
20% of Salary

### [Section 12] - Calculation of salary for making Bonus

Salary Actual or ₹ 7,000/-  
↓  
Less

### [Section 13]

If an employee has contributed his service for less than 1 year, then an employer is empowered to reduce the Bonus proportionately.

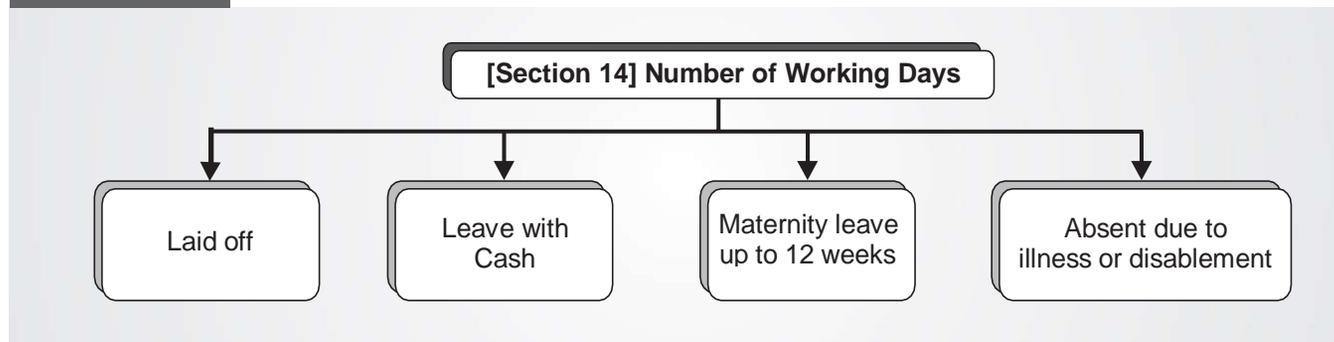
### [Section 14] Calculation of Number of Working Days for the Purpose of Payment of Bonus Act, 1965

**Calculation of Number of Working Days:** An employee shall be deemed to have worked, in an establishment in any accounting year, also on the days on which:

- He has been laid off under an agreement or as permitted by standing order under the Industrial Employment (Standing orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment.

- (b) He has been on leave with salary or wage.
- (c) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, and
- (d) The employee has been on maternity leave with salary or wage during the accounting year.

### Quick Recap



**Problem 8: CS-6A.** What are the days on which an employee shall be deemed to have worked for the of computation of Bonus payable to him? State with reasons whether such computation of number of working days on which an employee has worked is required in an establishment paying minimum bonus to its employees where none of the employees earned less than ₹2,400 in an accounting year.

**Answer:**

- **Days that are deemed to be 'working days' are:**
  - Mentioned Above
- **The minimum bonus is:**
  - 8.33% of salary or wage earned by the employee during the AY or ₹100. Whichever is higher (Section 10).
- **Proportionate reduction in minimum bonus of ₹100 shall be made**
  - Where an employee has not worked for all the working days during on Accounting Year (Section 13).
- **An employee whose salary or wage earned is ₹2,400 in the AY**
  - Shall be entitled to ₹199.92 (₹2,400 x 8.33%) as minimum bonus, which is more than minimum bonus of ₹100 specified u/s 10.
- **Computation of number of working days is not required**
  - In as establishment where none of the employees earned less than ₹2,400 in an AY, since the minimum bonus of ₹199.92 shall always be more than minimum bonus of ₹100, and so the limit of ₹100 becomes irrelevant in such an establishment.

*(Section 2(13), 10, 11 and 14) Whether an employee is entitled for bonus for the period of paid maternity leave?*

**Problem 9: CS-6B.** The amount of bonus payable to N, a probationer chemist in Global Limited, is ₹12,000, during the accounting year 2007-2008. A sum of ₹10,000 was paid to her and ₹2,000 was deducted by the company under the pretext of proportionate deduction in bonus for two months maternity leave on full pay availed by her during the year. N files a suit against the company for recovery of the deducted amount. Examine the validity of N's claim under the provisions of the Payment of Bonus Act, 1965.

**Answer:**

- **N's claim is valid**
  - Since the period for which a female employee has been on maternity leave with salary or wages shall be deemed to be the 'working days'.

### [Section 17] Adjustment of the Customary or Interim Bonus be Adjusted Against Bonus Payable under the Payment of Bonus Act, 1965

Adjustment of customary or interim bonus against bonus payable under the Act, 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 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.

Sometimes, the employer has a **tradition or custom to pay bonus** at some special occasion like **Diwali or New Year**. It is just a voluntary payment. The employer is not bound by any law to pay the same.

However, if the **employer** has paid any such bonus, he **has a right** under the Bonus Act **to adjust the same from the bonus due under this Act**.

#### Quick Recap

#### [Section 17] Adjustment of Customary / Interim Bonus

- Puja or Diwali or New year Bonus
- Voluntary Payments → Employer may adjust from final bonus.

### [Section 18] Deduction of Certain Amounts from Bonus Payable under the

**Deduction of certain amounts from bonus payable under the Act:** 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 bonus payable by him to the employee under this act in respect of that accounting year only and employee shall be entitled to receive the balance, if any

#### Quick Recap

#### [Section 18] Amount deducted from Bonus

- Guilty of misconduct financial loss.
- Deducted from bonus of said year only and not from previous year.

**Whether an employer can deduct the amount of loss suffered by him due to misconduct of employee. (Section 18) from the bonus payable to the employee**

**Problem 10: CS-8A.** A is an employee of a company. The amount of the bonus payable to A during the year 2006-07 is `10,000, but the company paid him `7,000 only and a sum of `3,000 was deducted from bonus against the loss suffered by the company due to misconduct of A during the same accounting year. A files a suit against the company for recovery of the deducted amount. Decide whether A would be given any relief by the court under the provisions of the Payment of Bonus Act, 1965? What will be your answer, if the losses are related to the accounting year 2005-06?

**Answer:**

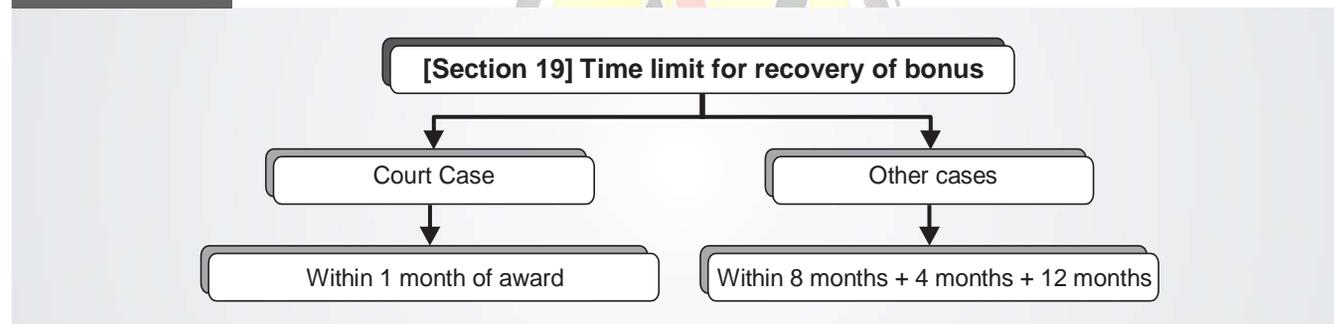
- **A shall not be given any relief by the court:**
  - Since the company is entitled to deduct from the amount of bonus payable, the financial loss suffered by it due to the misconduct of the employee
- **If the company suffered loss during the AY 2005-06:**
  - Then, the company shall not be entitled to deduct from the amount of bonus payable, the financial loss suffered by it in AY 2005-06, since the right to make deduction is available only in respect of bonus for the same accounting year.

**[Section 19] The Time Limit of Payment of Bonus**

**Time limit for payment of Bonus (Section 19):** All the amounts payable to an employee by way of bonus under this act shall be paid in cash by his employer:

- (a) Where there is a dispute regarding payment of bonus pending before any authority under section 22 **within a month from the date on which the award becomes enforceable** or the settlement comes into operation, in respect of such dispute.
- (b) In any **other case**, within a period of **eight months from the close of the accounting year**.

Provided that the Appropriate Government or such authority as the Appropriate Government may specify in his behalf may, upon an application made to it by the employer and for the sufficient reasons, by order extend the said period by eight 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**.

**Quick Recap**

**Problem 10: CS-9A.** Skypark Wooden Toys Limited was established in Kolkata in the year 2005 employing 100 workmen. Since then the company suffered the losses, but minimum bonus was paid in the accounting years of 2006 and 2007. In the accounting year 2008 the company earned huge profits. After mitigating the previous losses the company is having surplus profits and wants to pay the bonus to its workmen Skypark Wooden Toys Limited wants the legal advice on the following issues:

- How much minimum and maximum bonus may be paid to the workmen?
  - Whether the company adjusts the Puja bonus already paid to the workmen while calculating the amount of bonus payable to workmen of that accounting year.
  - Company wants to give wooden toys as bonus instead in cash. Whether the Company can do so?
- Advise the Skypark Wooden Toys Limited, stating the provisions of the Payment of Bonus Act, 1965.

**Answer:**

- The minimum bonus shall be
  - 8.33% of salary or wage earned by the employee during the accounting year or `100, whichever is higher (Section 10).
- The maximum bonus shall be
  - 20% of salary or wage earned by the employee during the AY (Section 11).

- Adjustment of Puja bonus already paid is possible
  - Since any interim, customary or Puja bonus paid by the employer may be deducted from bonus payable during that accounting year (Section 17).
- Giving toys as bonus instead of cash is not possible
  - Since the bonus shall always be paid in cash, i.e. money only (Section 19).

### [Section 20] Applicability of Act

#### General Rule

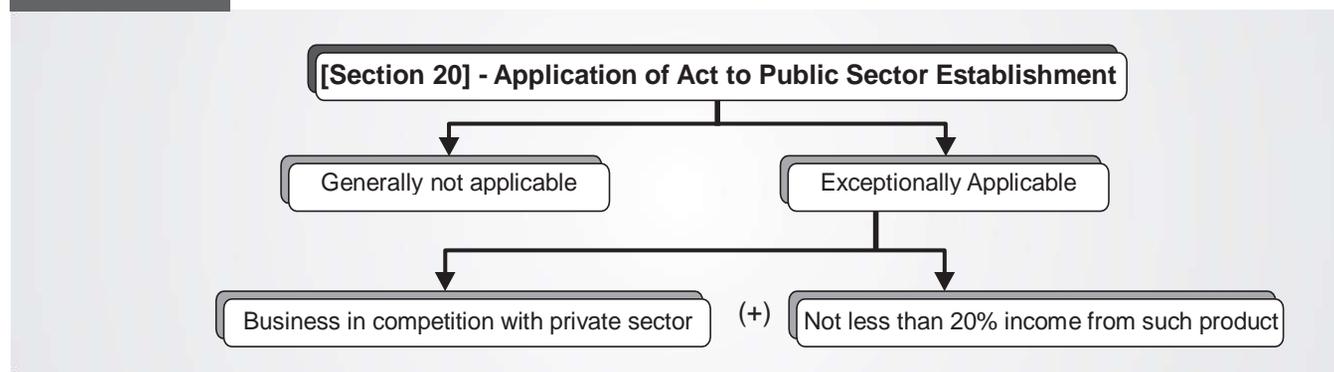
The Act does not apply to an establishment in public sector.

#### Exception

The Act shall apply if the following 2 conditions are satisfied:

- (i) In an accounting year it sells any goods or renders any services, in competition with an establishment in private sector.
- (ii) The income from such sale or services or both is 20% or more of its gross total income.

#### Quick Recap



#### *Whether employees of a Public Sector Undertaking are entitled to bonus?*

**Problem 11: CS-10A.** In 2009, the Electronics Corporation, a public Sector establishment under the Department of Science and Technology, Government of Rajasthan starts to sell mobile sets manufactured by it, in addition to T.V sets, so as to compare with private sector establishments of mobile sets in the market. The income from sale of mobile sets is 30 percent of the gross income of the corporation. The employees of the Corporation went to strike for demand of Bonus. Decide whether the demand of the employees is tenable under the provisions of the payment of bonus Act, 1965. Would your answer be different if the income from sale of mobile sets is only 10 percent of the gross income of the Corporation?

#### **Answer: The employees are entitled to bonus**

- Since the Act applies to Electronics Corporation.
- Since the income of Electronics Corporation from sale of mobile sets (by competing with the private sector) is 20% or more of its gross total income.

#### **If the income from sale of mobile sets is only 10%**

- Then, the Act shall not apply to Electronics Corporation, and so the employees shall not have any right to demand bonus.

**[Section 21] Recovery of Bonus by the Employees under the Payment of Bonus Act, 1965**

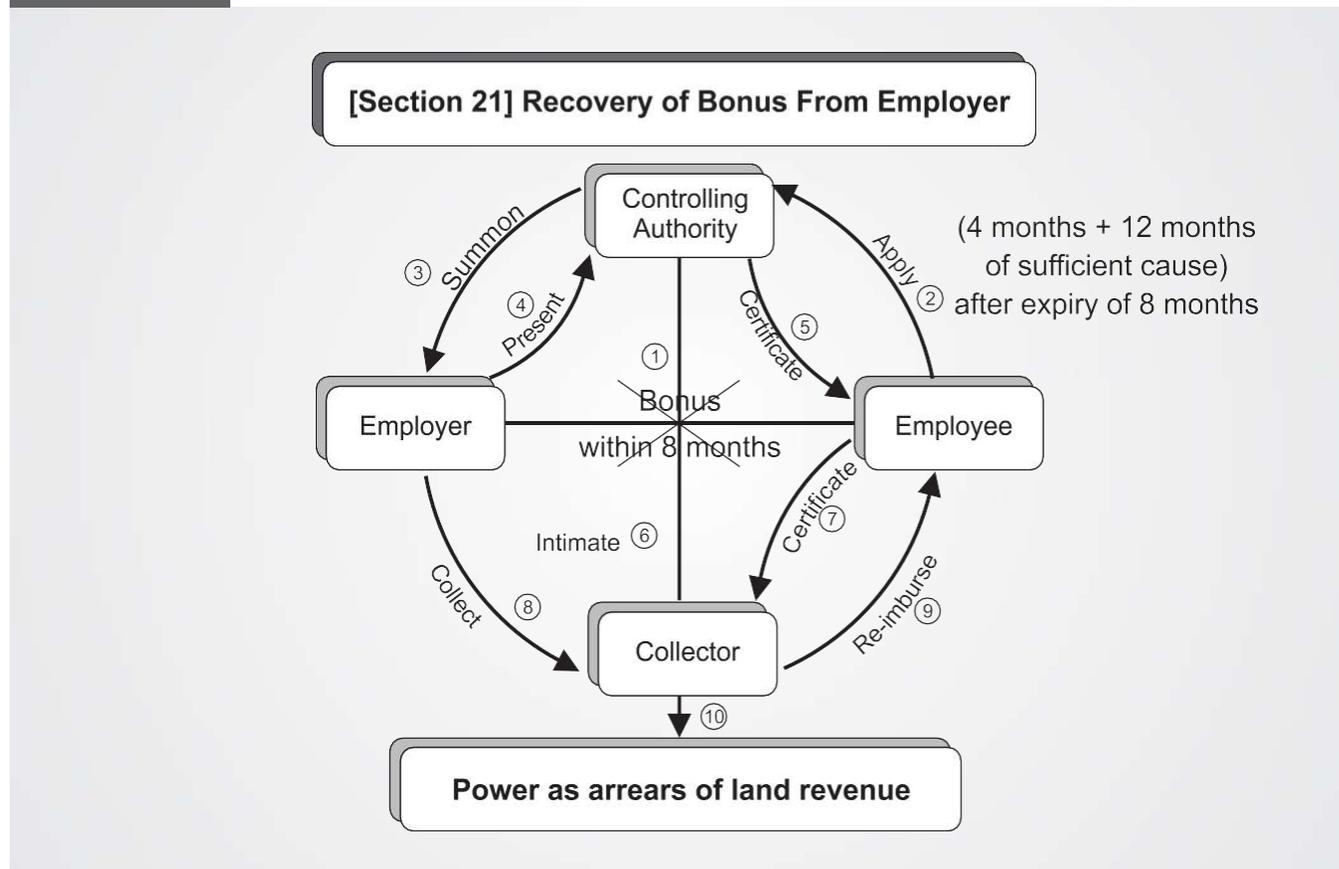
**Recovery of Bonus due from an employer:** Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorized by him in writing in this behalf, or in case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Appropriate Government of 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 area of land revenue.

Provided 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.

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the application had sufficient cause for not making the application within the said period.

Here, "employee" includes a person who is entitled to the payment of bonus under this act but who is no longer in employment.

Quick Recap



### [Section 15 and 16] Provisions Regarding Set on and Set off under Bonus Act, 1965

It may happen that in a particular year the allocable surplus is more than the maximum 20% bonus to be paid to the employees. Such excess allocable surplus is carried forward to next year and is called **Carry Forward of Bonus for Being Set on in Succeeding Years**. The amount set on is carried forward only upto and inclusive of fourth accounting year. If the amount carried forward is not utilized in that period it lapses.

Similarly, in a particular year there may be lower allocable surplus or no allocable surplus even for the payment of minimum 8.33% bonus. Such shortfall is carried forward to next year. The amount set off is carried forward only upto and inclusive of fourth accounting year. If the amount carried forward is not utilized in that period it also lapses.

Thus, in every year first of all allocable surplus is calculated. To this amount, set on from the previous years is added, if any. Similarly, set off if any from the previous years is deducted. This gives us the amount which is available for distribution as bonus.

#### Quick Recap

##### Set on and Set off of Allocable Surplus

If Allocable Surplus > Maximum Bonus, then **Bonus 20%**

If still surplus then set on to next year.

If allocable Surplus minimum bonus, **Bonus 8.33%**

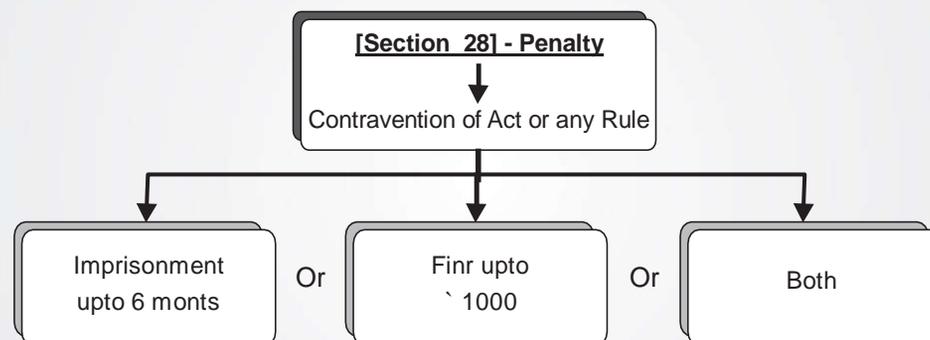
**Deficit** - Set off and carried forward to next year.

### [Section 28] Penalty

If any person:

- (A) contravenes any of the provisions of this act or any other rule made there under: or
- (B) 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.

#### Quick Recap



### [Section 29] Offences by Company's Penalties for the Contravention of Various Provisions of the Payment of Bonus Act, 1965

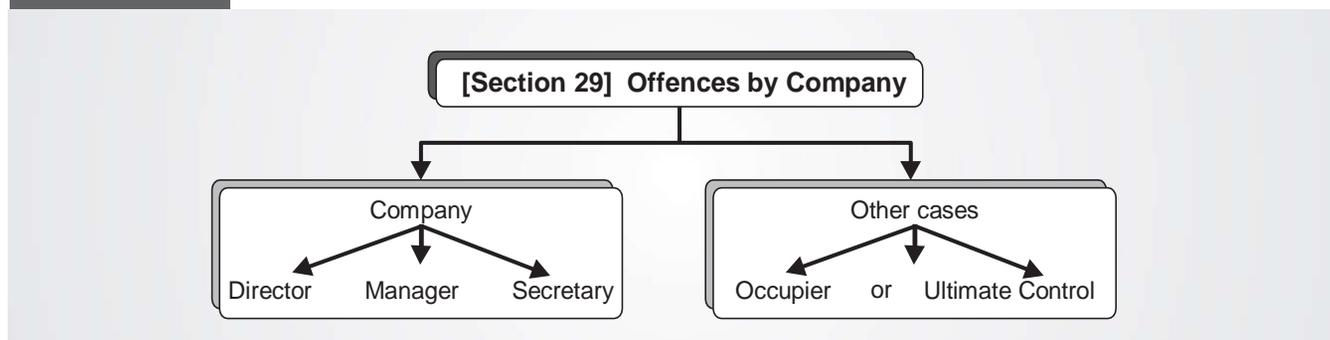
#### Offences by Companies:

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. (Section 29)

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.

#### Quick Recap



### [Section 31A] Payment of Bonus Linked with Production or Productivity

#### ♦ Applicability of Section 31A

- Section 31A applies only if there is an agreement or settlement between the employer and employees to pay annual bonus linked with production or productivity.
- Section 31A overrides the entire Act.

#### ♦ Terms of the agreement

The agreement or settlement may provide that:

- The bonus shall be **paid annually** to employees.
- Such bonus shall be **linked with production** or productivity.
- Such bonus shall not be **paid in lieu of bonus** based on profits.

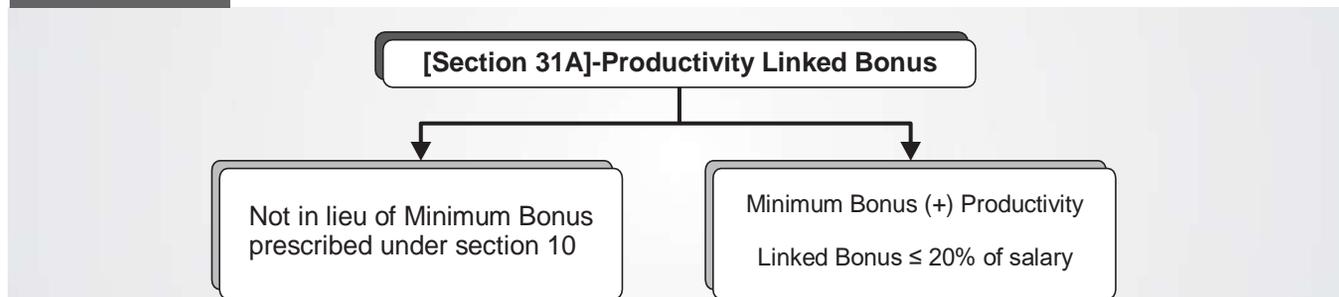
#### ♦ Agreement to be void

The agreement or settlement shall be null and void in so far as it purports to deprive an employee of his right to minimum bonus. In other words, every employee shall have a right to receive the minimum bonus even though bonus calculated as per the provisions of the agreement or settlement is less than the amount of minimum bonus.

#### ♦ Ceiling on bonus

The bonus linked with production or productivity calculated as per the agreement or settlement shall not **exceed 20%** of salary or wages earned in the relevant accounting year.

## Quick Recap



*Whether employees are entitled to minimum bonus if it exceeds the bonus linked with production or (Section 31A) productivity?*

**Problem 12: CS-15A.** On 1<sup>st</sup> January, 2002, Aryan Textiles Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of bonus based on profits subject to the limit of 30% of their salary/wages during the relevant accounting year. It was also agreed by the employees that they will not claim minimum bonus stated under Section 10 of the Payment of Bonus Act, 1965.

As per the agreement, the employees of Aryan Textiles Ltd. claimed annual bonus linked with production or productivity in the relevant accounting year. On refusal of the company the employees of the company moved to the court for relief. Decide with reference to the provisions of the payment of Bonus Act, 1965 whether the employees will get the relief? In spite of the aforesaid agreement whether the employees are still entitled to receive minimum bonus.

**Answer:**

- **The agreement of Aryan Textiles Ltd. with its employees is void**
  - In so far as it purports to deprive the employee of their right to minimum bonus.
  - In so far as it purports to entitle the employees to receive bonus exceeding 20% of salary or wages.
- **The employees are entitled to receive minimum bonus**
  - Since the agreement is null and void to such extent as explained above.

**Problem 13: CS-15B.** The management of Shakthi Mills Ltd. entered into an agreement with their employees to pay them bonus based on production in lieu of Bonus based on profits, from the accounting year 2007. The employees further agreed to forego their right to receive minimum bonus and instead accept 25% of their salary/wage as bonus based on productivity. Is such an agreement valid? Examine in the light of the provisions of the Payment of Bonus Act, 1965.

**Answer:**

- The agreement of Shakti Mills Ltd. with its employees is void
  - In so far as it purports to deprive the employee of their right to minimum bonus.
  - In so far as it purports to entitle the employees to receive bonus exceeding 20% of salary or wages.
- The employees are entitled to receive minimum bonus
  - Since the agreement is null and void to such extent as explained above.

## Quick Recap

**[Section 36]- Power of Appropriate Government to exempt any establishment**

Appropriate Government

May exempt  
by NIOG

Any Establishment

**Case Studies for Self Practice**

**Question 1:** A newly set up establishment, in its first five accounting years could not earn any profit. Is it liable to pay bonus under Bonus Act, 1965?

**Answer:** No, as per section 16(1A), a company or any other establishment will pay bonus during first five years of its set up in the year of profits only.

**Question 2:** During the Accounting year 2003-04, Memorize Ltd. to which Bonus act applies, suffered heavy losses. The Board of Directors decided not to pay any bonus to its employees. The employees moved the court for relief. Will they succeed?

**Answer: Section 10:** Decision of company is not valid.

**State vs. Sardar Singh Majithia.** Every employer is under obligation to pay bonus. Employee may apply to Appropriate Government for recovery of bonus **u/s 21.**

**Question 3:** Arun, an employee was suspended for an alleged misconduct.

On inquiry was conducted and the charges against him couldn't be proved. As a result he **was re-instated with full back wages.** Arun wasn't paid bonus for period of suspension. Can he challenge the employer's action?

**Answer:** Section 8, Yes

**Project Manger Ahmedabad Project, ONGC vs. Sham Kumar Sehgal.**

**Question 4:** Decide who amongst following are eligible for Bonus under Bonus Act 1965.

**Answer:**

- (i) **Apprentice** – Not eligible expressly excluded u/s 2(13).
- (ii) **Piece - rated worker** – eligible if worked > 30 days or **temporary work man** or **retrenched employee.**
- (iii) **Employee dismissed for misconduct**  
Disqualified **u/s 9.**
- (iv) **Peons of University** or **teachers of Schools**  
Not eligible as per **Section 32.**
- (v) **Pilots of Indian Air force or Cattle Catchers of MCD.** Employees employed by RBI, CG, SG or local authority aren't eligible **u/s 32.**
- (vi) **A probationer** ineligible

**Question 5:**

- (a) Varun joined an establishment on monthly salary of `2400 on 1.4.2009 and resigned on 28.4.2009. The establishment declared bonus of 20% to all eligible employees and paid it. Varun claimed his bonus but was rejected. Advise Varun?

**Answer:** Varun is employee u/s 2(13) but isn't eligible for bonus as he has not worked for at least 30 days in an accounting year as per section 8.

**Sec 2(13)** – Employee if salary upto Rs. 21,000/- month.

- (b) Are employees employed through contractors on building operations eligible for Bonus.

**Answer:** Yes, since exemption given u/s 32 has been withdrawn vide payment of Bonus (Amendment), ordinance 2007, w.e.f 1.4.06.

- (c) Sewak, a worker in Social welfare institution is **not eligible** for bonus u/s 32 (v) (c).

- (d) Arpit was dismissed from service by the company. He was alleged for misconduct and wasn't paid bonus. Arpit contended that he was eligible for payment of bonus for accounting year in which dismissal took place. Will he succeed?

**Answer:** Pandian Roadways Corporation Ltd.

**Presiding Officer, Principal Labour Court. Section 9**, States employee dismissed for misconduct is disqualified from receiving bonus, even of the same years.

The action of the company is justified.



# Chapter - 11

## Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

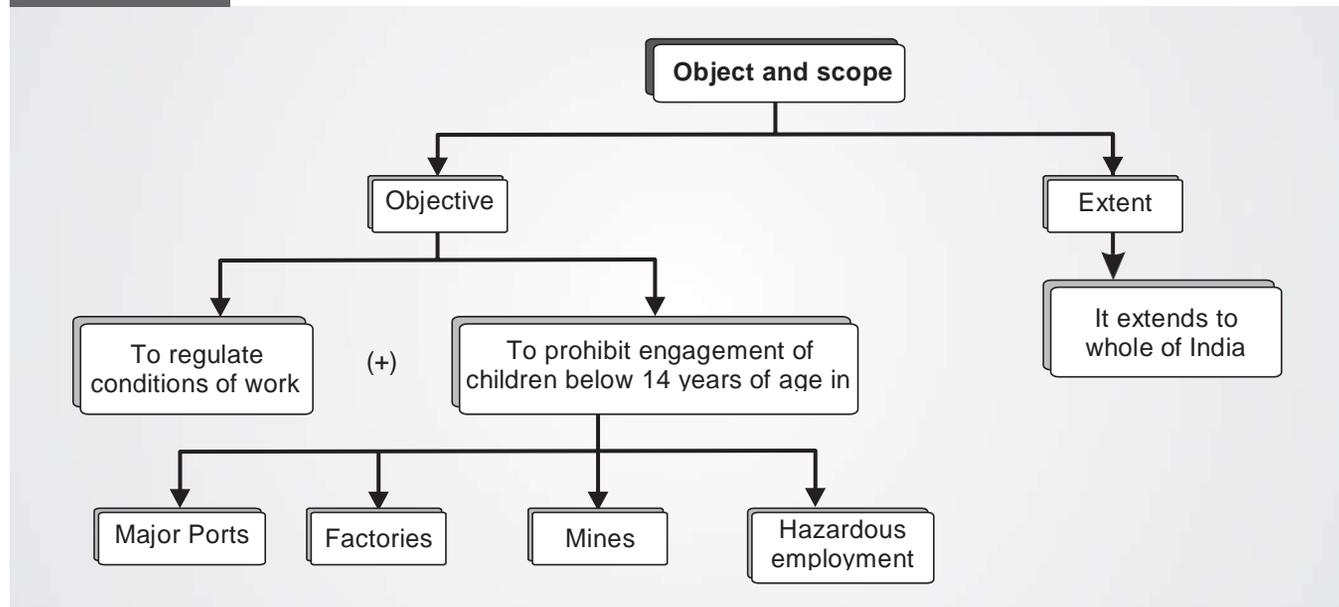
### List of Sections

Sections	Particulars of Section
1	Object and Scope
2	Definitions
2(i)	Appropriate Government
2(ii)	Child
2(iii)	Day
2(iv)	Establishment
2(vi)	Occupier
2(x)	Workshop
3	Prohibition of employment of Children in Certain Occupations and Processes
6 to 13	Regulation of Conditions of work of Children
7	Hours and Period of Work
8	Weekly Holiday
9	Notice to Inspector
11	Maintenance of Register
12	Display of Notice Containing abstract of Section 3 and 14
14	Penalties

#### [Section 1] Object and Purpose of the Act

- ♦ The Child and adolescent Labour (Prohibition and Regulation) Act, 1986 enacted to **prohibit the engagement of children below the age of fourteen years** in factories, mines and hazardous employments and to regulate their conditions of work in certain other employments.
- ♦ It extends to whole of India.
- ♦ Last amended on 1<sup>st</sup> September, 2016.

## Quick Recap



**Note:** Article 21A of Indian constitution states about Right to education per children of 6-14 years age.

### [Section 2] Define of Following Terms

Section 2 of the Act defines various terms used in the act, some of the definitions are given here under:

#### [Section 2(i)] Appropriate Government

It means, in relation to an establishment 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**.

#### Adolescent

Adolescent means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

#### [Section 2(ii)] Child

Child means a person who is less than 14 years of age or age given under Right of Children to Free and Compulsory Education Act, 2009, whichever is more .

#### [Section (iv)] Establishment

Establishment includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

#### [Section 2(vi)] Occupier

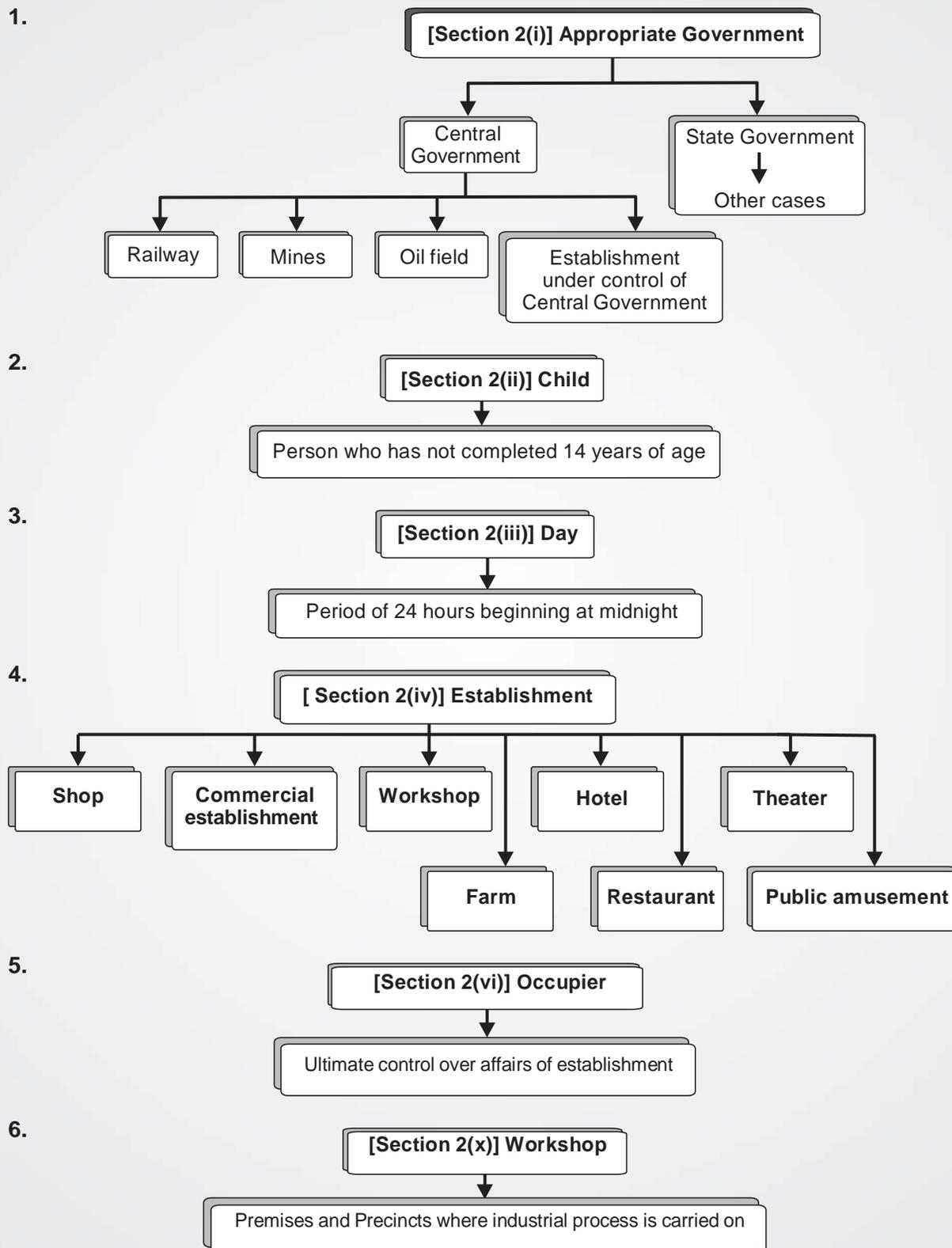
Occupier, in relation to an establishment or a workshop, means the person who has the **ultimate control over the affairs** of the establishment or workshop.

#### [Section 2(x)] Workshop

Workshop means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Section 67 of the Factories Act, 1948 applies.

## Quick Recap

## Definitions (Section 2)



**[Section 3] 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:-

- (a) 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;
- (b) 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.

**It may be noted that the expression:**

- (a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;
- (b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;
- (c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).”

**[Section 3A] Prohibition of employment of adolescents in certain 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:

- (1) Mines.
- (2) Inflammable substances or explosives.
- (3) Hazardous process.

**Explanation:** For the purposes of this Schedule, “hazardous process” has the meaning assigned to it in clause (cb) of the Factories Act, 1948.

However, the Central Government may, by notification, specify the nature of the nonhazardous work to which an adolescent may be permitted to work under the Act

**[Section 7] 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.**

**[Section 8] 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.**

**[Section 9] Notice to Inspector**

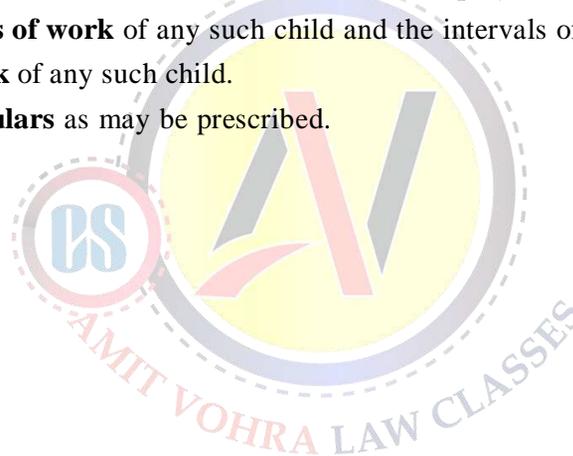
Section 9 provides that every **occupier** in relation to an establishment who employs, permits to work, any adolescent shall, within a **period of thirty days** from the date of such employment, **send to the inspector** within whose local limits the establishment is situated, a written notice containing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

- ♦ The **name and situation** of the establishment.
- ♦ The **name** of the **manager** of the establishment.
- ♦ The address to which **communication** relating to the establishment should be sent.
- ♦ The **nature of the occupations** or processes carried on in the establishment.

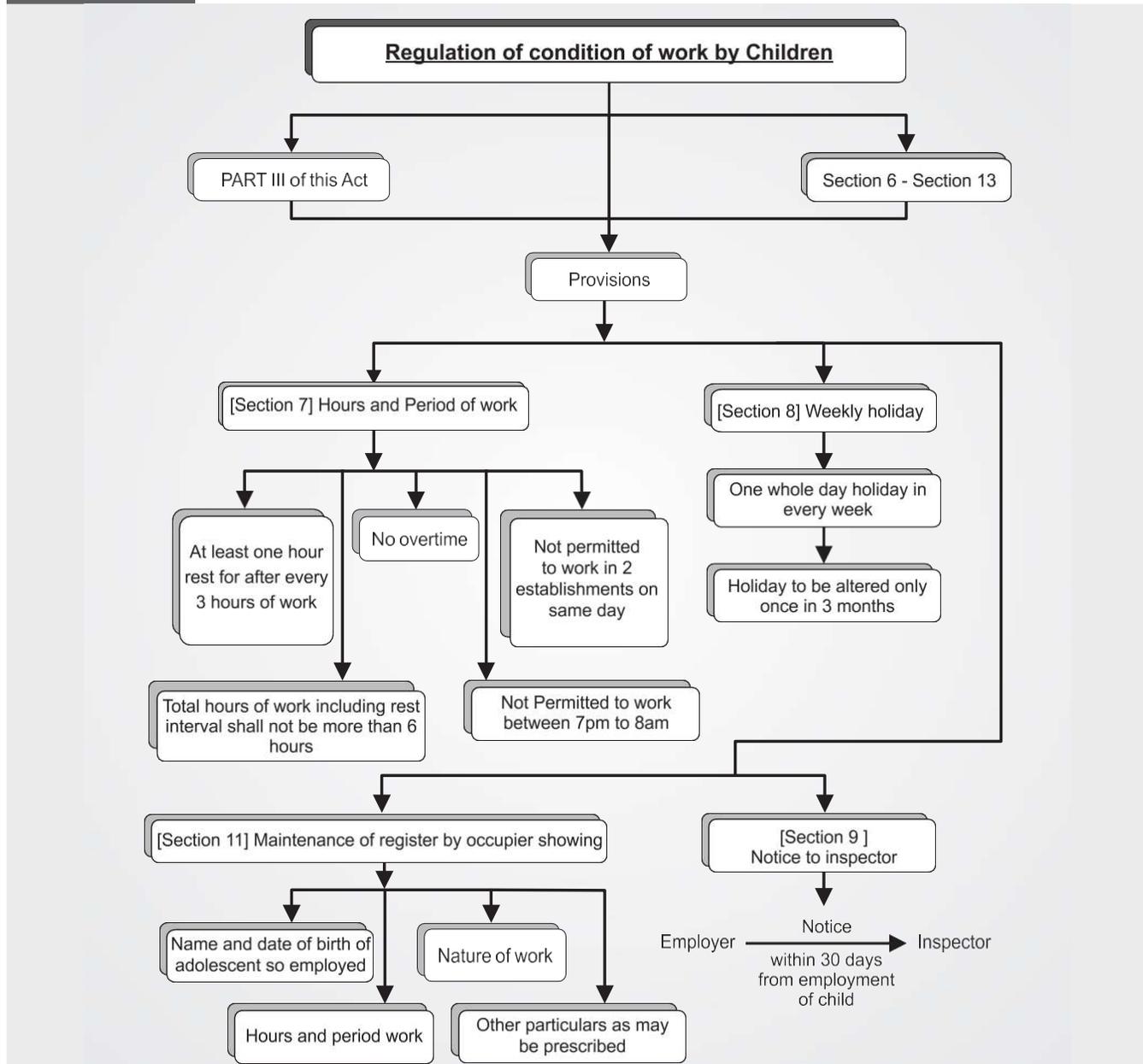
**[Section 11] Maintenance of Register**

Every occupier in respect of children employed or permitted to work in any establishment, should maintain 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 child and the intervals of rest to which he is entitled.
- ♦ The **nature of work** of any such child.
- ♦ **Such other particulars** as may be prescribed.



## Quick Recap

**[Section 12] Display of Notice Containing Abstract of Section 3A and 14**

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 and abstracts.

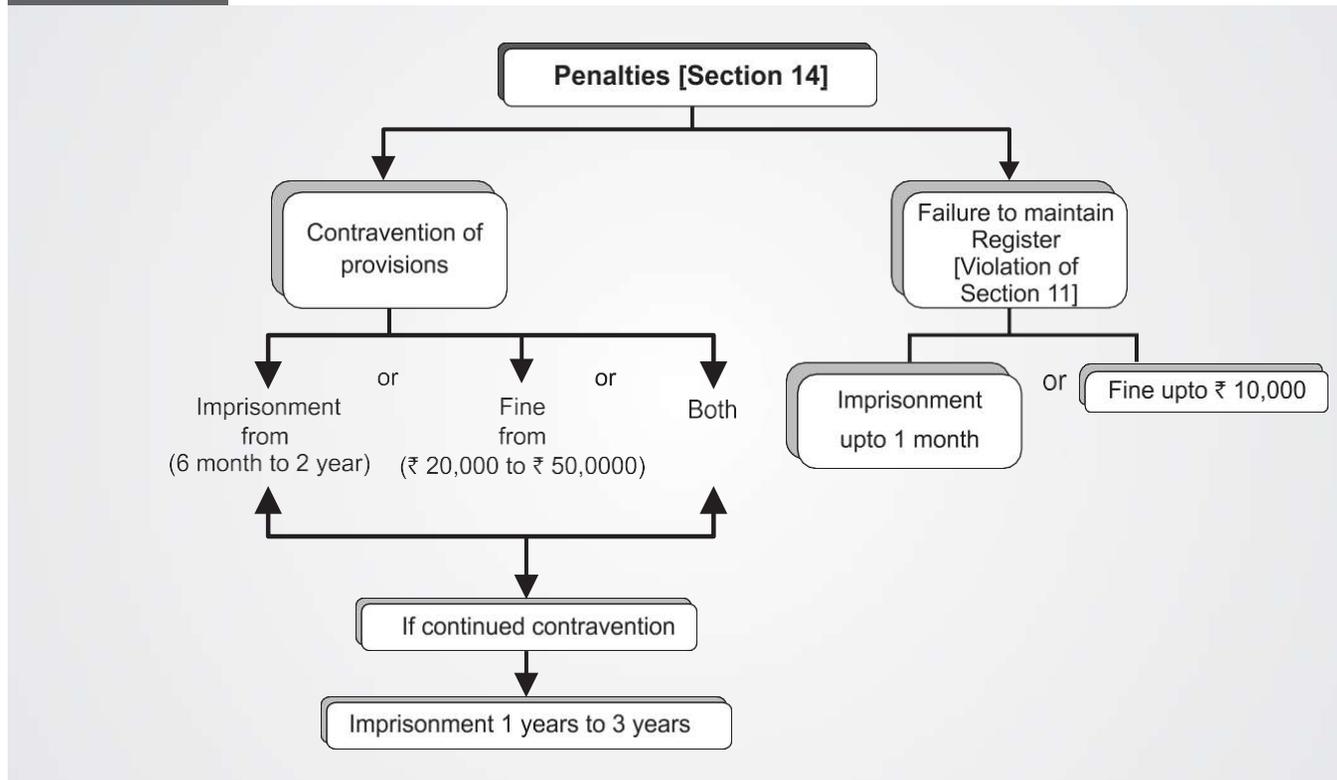
**[Section 14] Penalties**

Section 14 provides that whoever employs any child or adolescent or permits any child or adolescent to work in contravention of the provisions of section 3 or Section 3A shall be punishable with imprisonment for a term which shall **not be less than Six months** but which may **extend to two year** or with **fine** which shall **not be less than ten thousand rupees** but which may **extend to fifty thousand rupees** or with **both**.

Whoever, having been **convicted of an offence** under section 3 or 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.**

Whoever **fails to give notice or fails to maintain a register** or makes any false entry in any such register; or fails to display a notice containing an abstracts of section 3 or fails to comply with or contravenes any other provisions of the Act or the rules made there under, shall be punishable with **simple imprisonment which may extend to one month or with fine.**

### Quick Recap



### [Section 17A] District Magistrate to implement the provisions

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.

## Chapter – 12

# Apprentices Act, 1961

### List of Sections

Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(aa)	Apprentice
2(aaa)	Apprenticeship training
2(e)	Designated trade
2(f)	Employer
2(g)	Establishment
2(j)	Graduate apprentice
2(k)	Industry
2(pp)	Vocational apprentice or Technician Apprentice
2(q)	Trade apprentice
2(r)	Worker
3	Qualification for being engaged as an apprentice
4	Contract of apprenticeship
4A	Objection on Contract of Apprenticeship by Apprentice Advisor
4B	Registration of Contract of Apprenticeship by Apprentice Advisor
11	Obligations of employer
12	Obligations of Apprentices
13	Payment to apprentices
15	Hours of work, overtime, leave and holidays
17	Conduct and discipline
18	Apprentices are trainees and not workers
19	Records and Returns
20	Settlement of disputes
23	Authorities under the Act
30	Offences and penalties

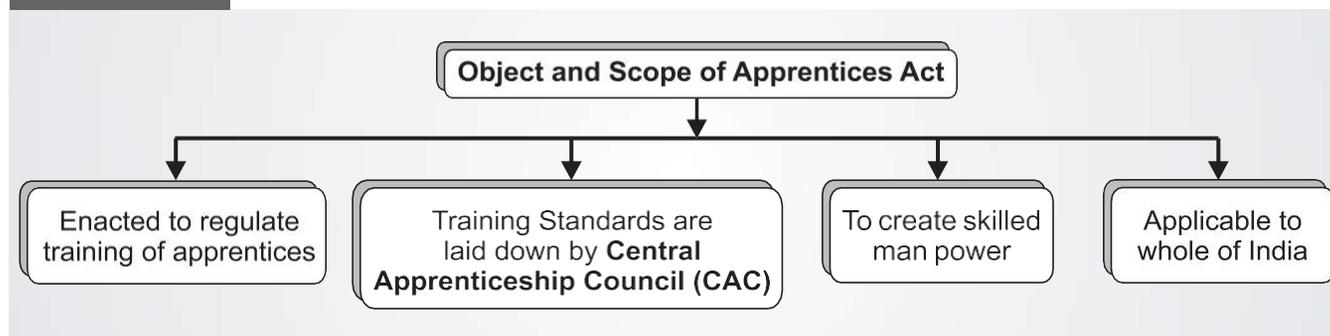
### Object and Scope of the Act

**Apprentices Act, 1961 was enacted to regulate and control the programme of training of apprentices and for matters connected therewith.**

#### Objective

- ◆ To conform to the prescribed training standards as laid down by the **Central Apprenticeship Council**.
- ◆ To utilize fully the facilities available in industry for imparting **practical training** with a view to meet the requirements of **skilled manpower** for industry.
- ◆ It extends to **whole of India**.
- ◆ Last Amendment 22nd December, 2014.

#### Quick Recap



### [Section 2] Define of Following Terms

#### [Section 2(aa)] Apprentice

Apprentice means a **person** who is undergoing **apprenticeship training** in pursuance of a **Contract of Apprenticeship**.

#### [Section 2(aaa)] Apprenticeship Training

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**.

### Appropriate Government

#### Appropriate Government means:

- (1) in relation to:
  - (a) the Central Apprenticeship Council, or
  - (b) (aa) the Regional Boards, or
  - (aaa) the practical training of graduate or technician apprentices or of technician(vocational) apprentices, or;
  - (c) any establishment of any railway, major port, mine or oilfield, or
  - (bb) any establishment which is operating business or trade from different locations situated in four or more States, or
  - (d) any establishment owned, controlled or managed by:
    - (i) the Central Government or a department of Central Government,
    - (ii) a company in which not less than fifty-one per cent of the share capital is held by the Central Government or partly by that Government and partly by one or more State Governments,
    - (iii) a corporation (including a co-operative society) established by or under a Central Act which is owned, controlled or managed by the Central Govt; the Central Government

(2) in relation to:

- (a) a State Apprenticeship Council, or
- (b) any establishment other than an establishment specified in sub-clause (1) of this clause, the State Govt.; [Section 2(d)].

**[Section 2 (e)] Designated Trade**

Designated trade means any **trade or occupation** or any subject field in engineering or non-engineering technology or any **vocational course** which the central govt. after consultation with the central apprenticeship council, may by NIOG, Special by as designated trade for the proposal of this Act,

**[Section 2(f)] Employer**

Employer means any **person who employs** one or more **other** persons to do any **work** in an establishment for **remuneration** and **includes** any person entrusted with the **supervision** and **control** of employees in such establishment.

**[Section 2(g)] Establishment**

Establishment includes **any place**

- ♦ Where any industry is carried on  
**AND**
- ♦ Where an establishment consists of different departments or have branches, whether situated in the same place or at different places, all such departments or branches shall be treated as part of that establishment

**[Section 2(j)] Graduate or Technician Apprentice**

- ♦ Graduate or technician apprentice means an apprentice **who holds, Or**
- ♦ Is undergoing training in order that he **may hold**
- ♦ a **degree or diploma** in engineering or non-engineering technology or equivalent qualification granted by any institution recognized by the Government,  
**AND**
- ♦ undergoes apprenticeship training in any designated trade.

**[Section 2(k)] Industry**

Industry means any **industry or business** in which any trade, occupation or subject field in engineering non-engineering or technology or any vocational course may be specified as a designated trade or optional trade or both.

**Optional Trade**

Optional trade means any trade or occupation or any subject field in engineering or non engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act [Section 2(l)].

**Portal-site**

Portal-site means a website of the Central Government for exchange of information under this Act {Section 2(m)}.

**[Section 2(pp)] Vocational Apprentice**

Vocational apprentice means an apprentice **who holds or is undergoing training** in order that he may hold a certificate in vocational course **involving two years of study** after the completion of the secondary stage of school education recognized by the All – India Council and **undergoes apprenticeship** training in any such subject field in any vocational course as may be prescribed.

**[Section 2 (q)] Trade Apprentice**

Trade apprentice means an **apprentice** who **undergoes** apprenticeship **training** in any designated trade.

**[Section 2(r)] Worker**

Means any person working in the premises of the employer who is **employed for wages** in any kind of work either directly or through any kind of agency including a contractor and who gets his wages directly or indirectly from the employer but shall **not include** an **apprentice**.

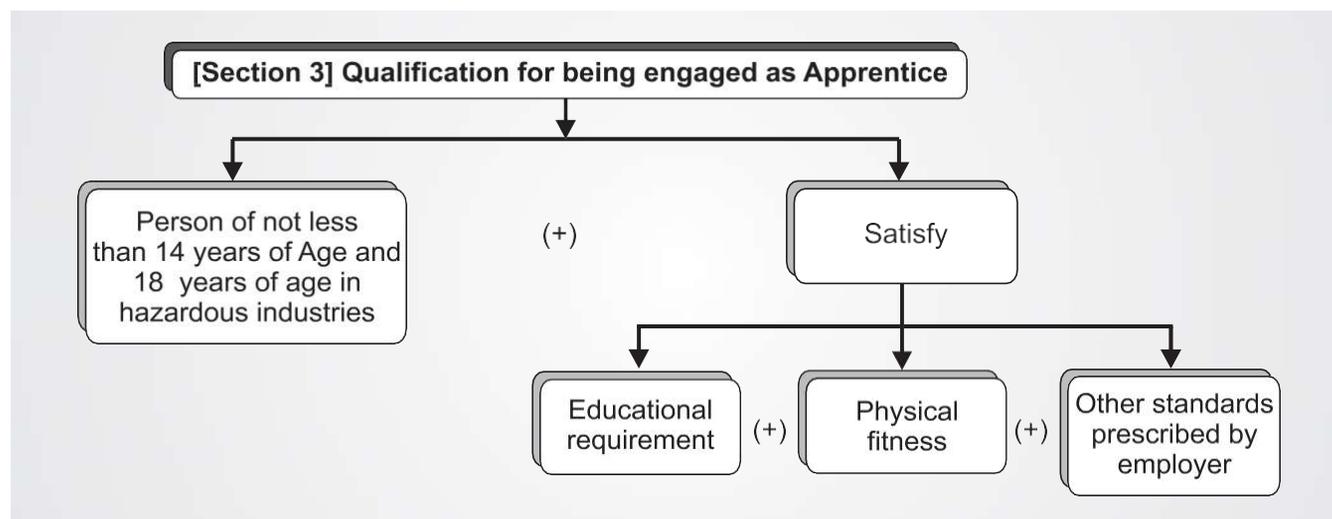
**[Section 3] Qualification for Being Engaged as an Apprentice**

A person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, if such person

- ♦ Is **not less than fourteen years** of age and for designated trade related to hazardous industries not less than 18 years of age.

**AND**

- ♦ Satisfies such standards or education and prescribed **physical fitness**. However, different standards may be prescribed in relation to apprenticeship training in different designated trades.

**Quick Recap****[Section 4] Contract of Apprenticeship**

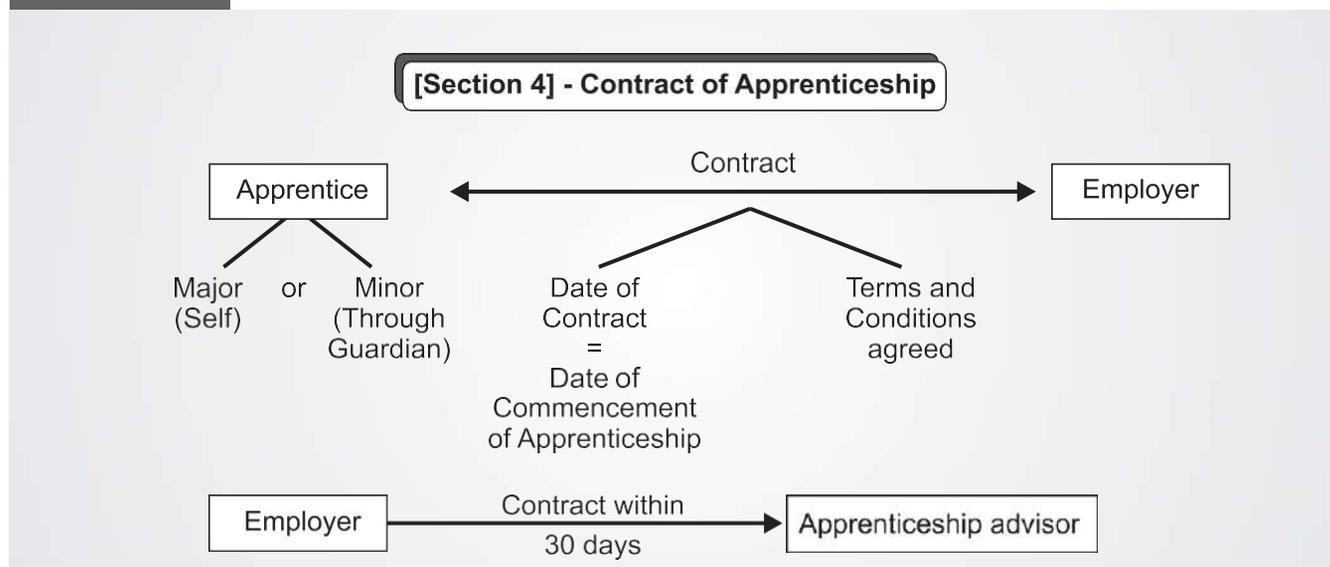
No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade **unless**

such person or, if he is a minor, his guardian has **entered into a contract** of apprenticeship **with** the **employer**.

The apprenticeship **training** shall be deemed to have **commenced** on the **date** of the **contract** of apprenticeship and it may contain such **terms and conditions** as may be **agreed by the parties** to the contract.

Every contract of apprenticeship shall be sent by the employer within 30 days to the Apprenticeship advisor until a portal site is developed by CG and thereafter the details of contract of apprenticeship shall be entered to the portal site within 7 days for verification and registration.

## Quick Recap

**[Section 4A]**

In case of objection in the contract of apprenticeship, the apprenticeship adviser shall convey the objection to the employer within 15 days from the date of its receipt.

**[Section 4B]**

The apprenticeship adviser shall register the contract of apprenticeship within 30 days from the date of its receipt.

**[Section 4(6)]** As per section 4(6) where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

**[Section 5A] Regulation of optional trade**

Section 5A provides that the qualification, period of apprenticeship training, holding of test, grant of certificate and other conditions relating to the apprentices in optional trade shall be such as may be prescribed.

**[Section 5B] Engagement of apprentices from other States**

Under section 5B the employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

**[Section 6] Period of apprenticeship training**

As per section 6 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.

**[Section 8] Number of apprentices for a designated trade and optional trade**

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.

**[Section 9] Practical and basic training of apprentices**

Section 9 deals with practical and basic training of apprentices. Section 9 states that:

- ♦ Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.
- ♦ The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme: Provided that the State Apprenticeship Adviser or any other person not below the rank of an Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall also be given such facilities in respect of apprentices undergoing training in establishments in relation to which the appropriate Government is the State Government.
- ♦ Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.
- ♦ In the case of an apprentice other than a graduate or technician apprentice or technician (vocational) apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- ♦ In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- ♦ Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of Section 6 shall be borne-
  - (i) If such employer employs two hundred and fifty workers or more, by the employer;
  - (ii) If such employer employs less than two hundred and fifty workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone;
- ♦ Recurring costs (including the cost of stipends), if any, incurred by an employer in connection with practical training, including basic training, imparted to trade apprentices referred to in clauses (a) and (aa) of Section 6 shall, in every case, be borne by the employer.
- ♦ Recurring costs (excluding the cost of stipends) incurred by an employer in connection with the practical training imparted to graduate or technician apprentice technician (vocational) apprentices shall be borne by the employer and the cost of stipends shall be borne by the Central Government and the employer in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone except apprentices who holds degree or diploma in no engineering.

## Obligations on Employers and Apprentices

### [Section 11] Obligations on Employers

Every employer shall have the following obligation 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.
- ♦ **Appointment of qualified person** in charge, if employer himself does not possess requisite qualification.
- ♦ To provide adequate instructional **staff** possessing qualifications for imparting **practical and theoretical training**.
- ♦ To carry out his **other obligations** under the contract of apprenticeship.

**NOTE:** [Section 19] Records and Returns are to be maintained by every employer

Every employer is required to maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed and also furnish such information and returns in such prescribed form to such authorities and at such intervals.

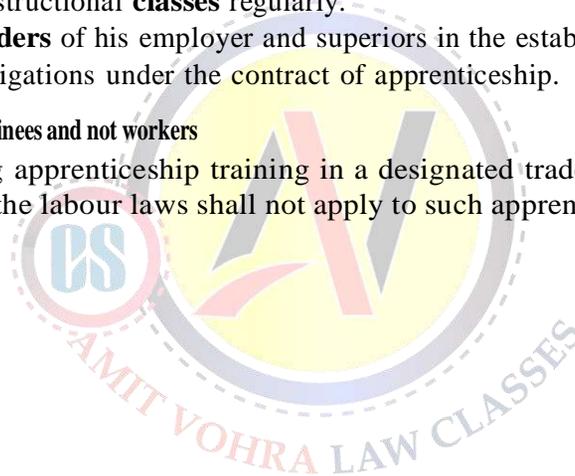
### [Section 12] Obligations on Apprentices

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely:

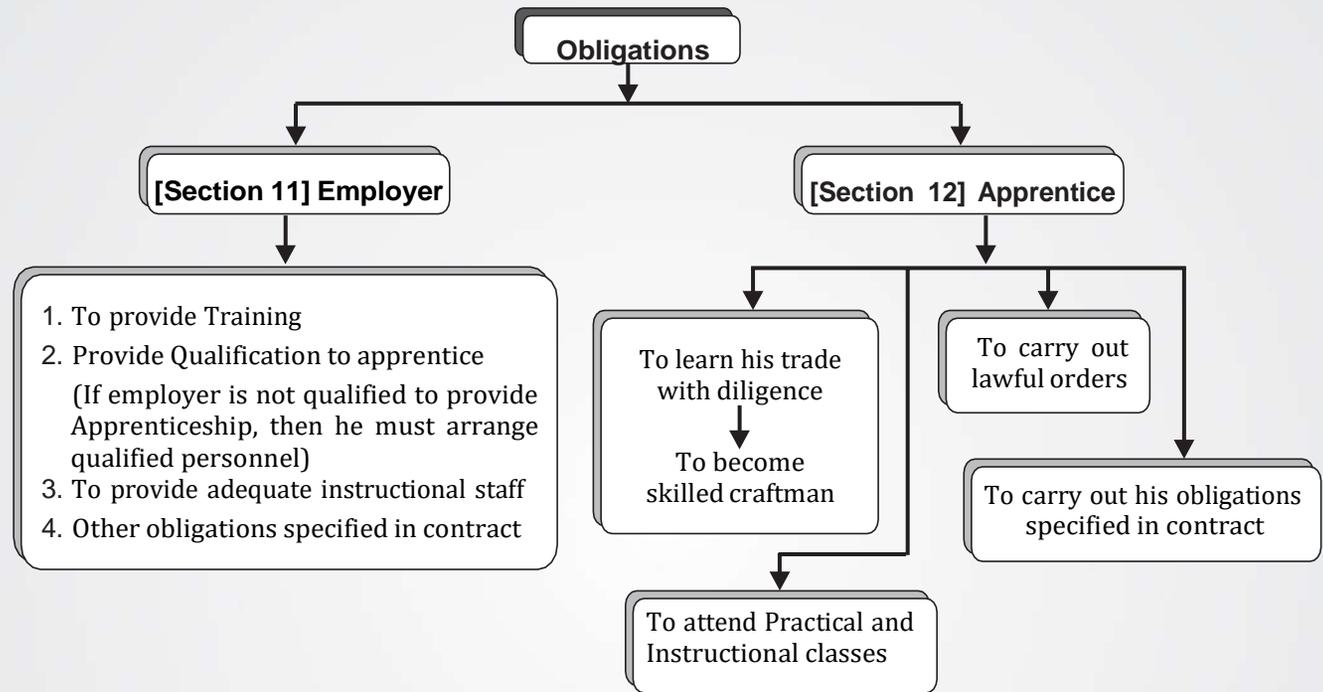
- ♦ To **learn his trade conscientiously** and diligently and endeavor to qualify himself as a skilled craftsman before the expiry of the period of training.
- ♦ To **attend** practical and instructional **classes** regularly.
- ♦ To **carry out** all lawful **orders** of his employer and superiors in the establishment.
- ♦ To **carry out** his other obligations under the contract of apprenticeship.

**NOTE:** [Section 18] Apprentices are trainees and not workers

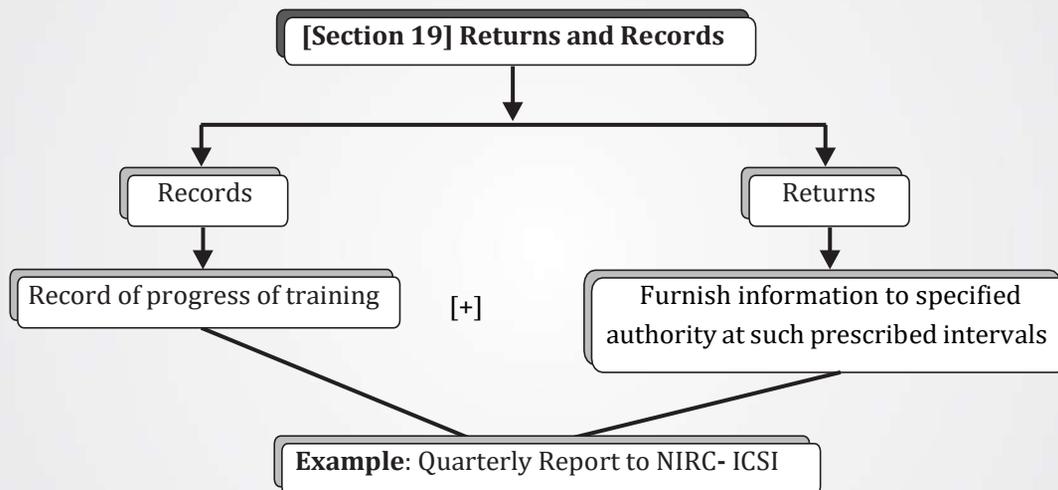
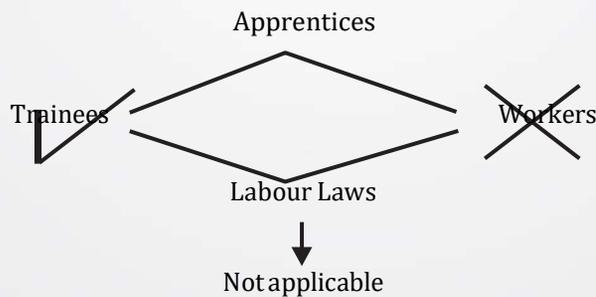
Every apprentice undergoing apprenticeship training in a designated trade in a establishment shall be a trainee and not a worker and the labour laws shall not apply to such apprentice.



Quick Recap



Note: [Section 18] -

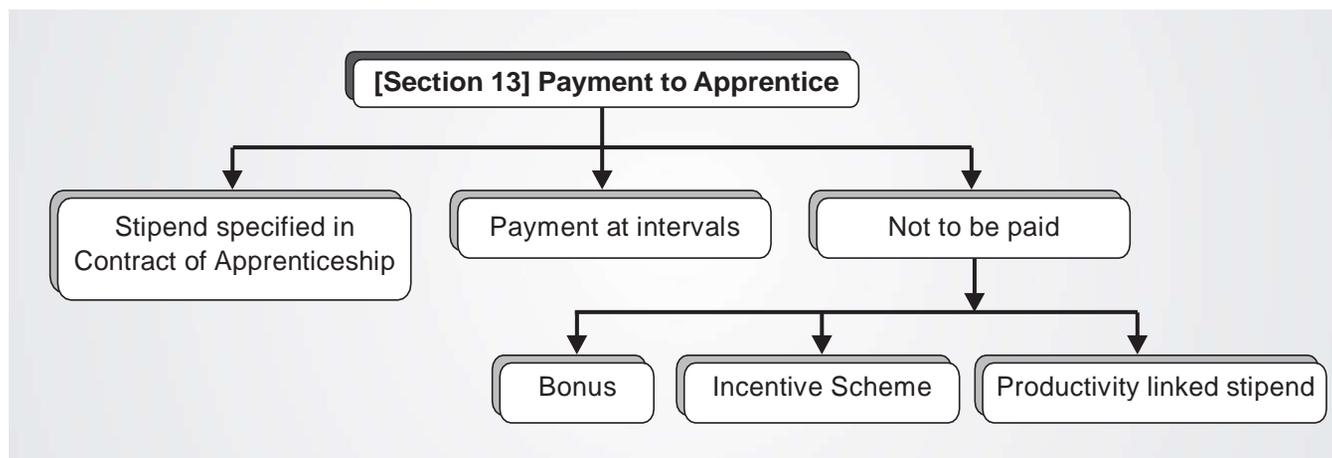


**[Section 13] Payment to Apprentices**

Section 13 provides that the employer shall pay to every apprentice during the period of apprenticeship training such **stipend**, at a rate **specified in the contract** of apprenticeship, and the stipend so specified shall be paid at such intervals.

An apprentice shall **NEITHER** be paid by his employer on the basis of **piece work** **NOR** shall he be required to take part in any **output bonus** or other **incentive scheme**.

**Quick Recap**

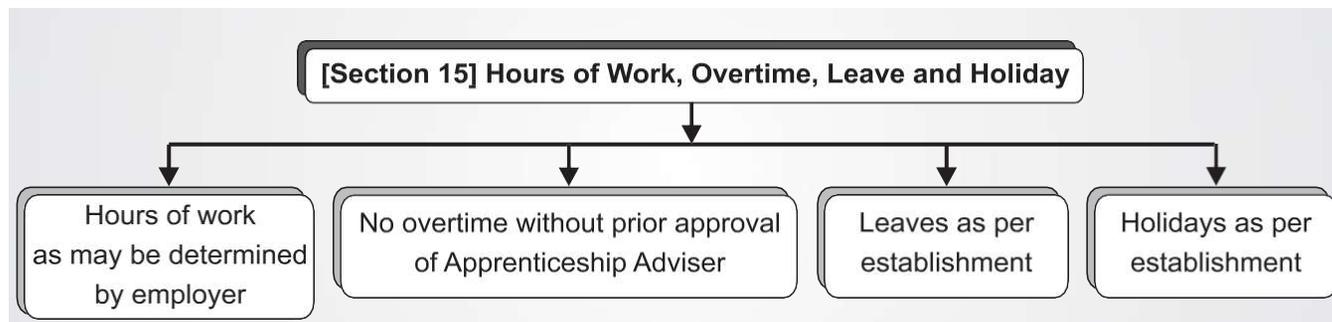


**[Section 15] Hours of Work, Overtime, Leave and Holidays**

As per section 15

- ♦ The weekly and daily **hours of work** of an apprentice while undergoing practical training in a workshop shall be as determined by the employer subject to the compliance within training duration, if prescribed.
- ♦ **Overtime** by apprentice only if such overtime is in his interest or public interest **with prior approval of Apprenticeship adviser**.
- ♦ An apprentice shall be entitled to such **leaves** and to such **holidays** as are **observed in the establishment** in which he is undergoing training.

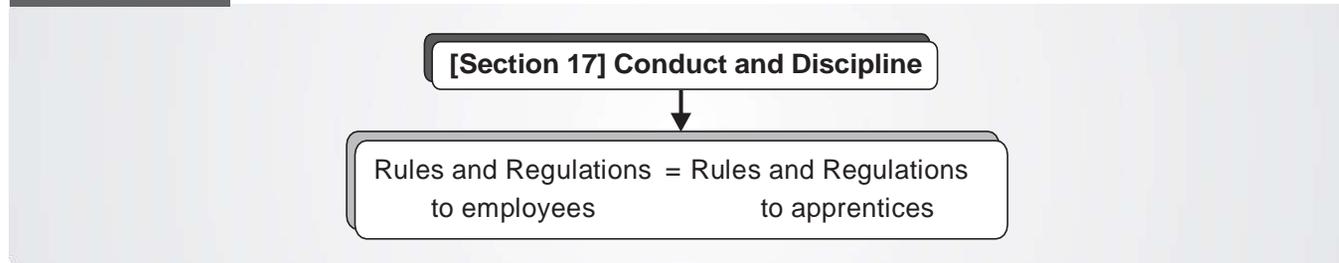
**Quick Recap**



**[Section 17] Conduct and Discipline**

Section 17 states the apprentice shall be **governed by the rules and regulations applicable to employees of the corresponding category** in the establishment in which the apprentice is undergoing training.

**Quick Recap**



**[Section 19] Records and returns**

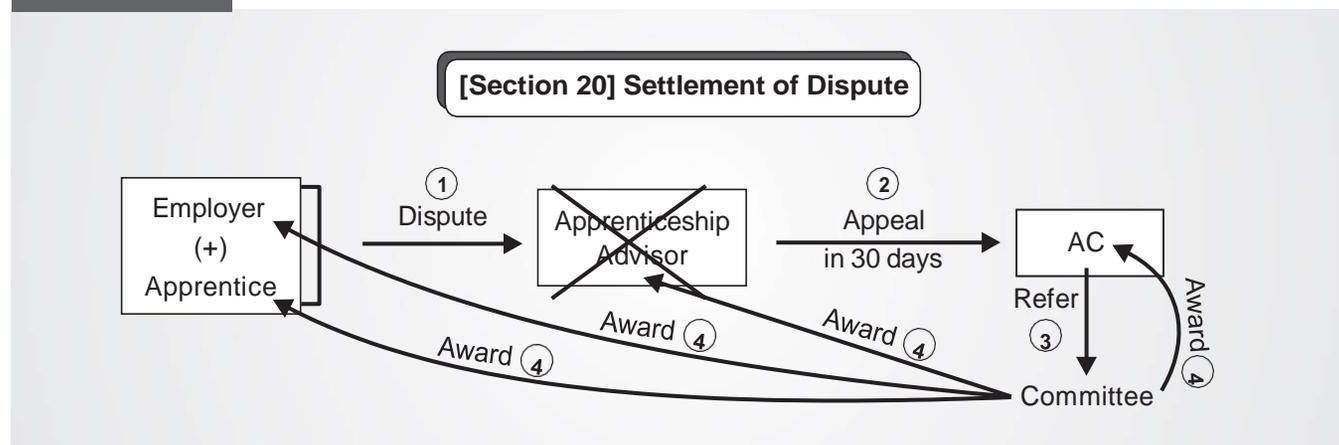
Section 19 of the Act provides that every employer shall maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed. Until a portal-site is developed by the Central Government, every employer shall furnish 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.

**[Section 20] Settlement of Disputes**

- ◆ As per section 20, 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 Council** appointed for the purpose.
- ◆ The **decision of the Committee shall be final.**

**Quick Recap**



states the apprentice shall be **governed by the rules and regulations applicable to employees of the corresponding category** in the establishment in which the apprentice is undergoing training.

Holding of test and grant of certificate and conclusion of training

**[Section 21] Holding of Test and Grant of Certificate and Conclusion of Training**

**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.

**[Section 22] Offer and acceptance of employment**

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 be the period of remuneration agreed to between the apprentice and the employer.

**[Section 23] Authorities under the Act**

There are the following authorities under the Act, namely:

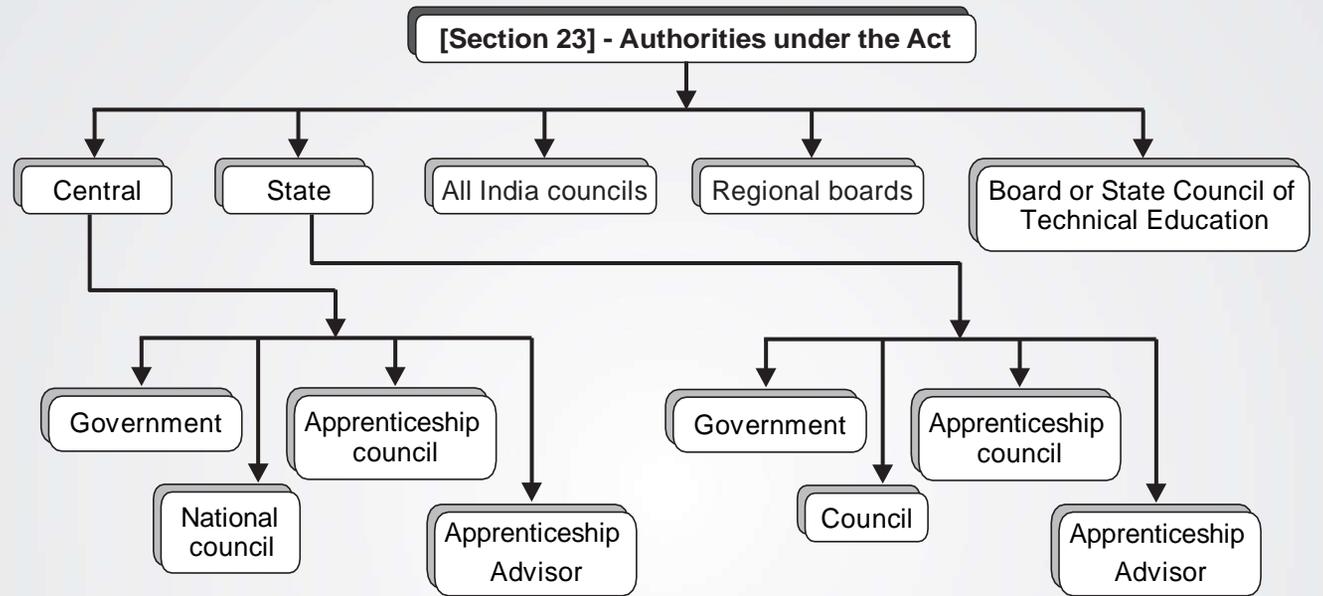
- ◆ The National Council
- ◆ The Central Apprenticeship Council
- ◆ The Central Apprenticeship Adviser
- ◆ The State Council
- ◆ The State Apprenticeship Council
- ◆ The State Apprenticeship Adviser
- ◆ The All India Council
- ◆ The Regional Boards
- ◆ The Boards or State councils of Technical Education

**NOTE:**

Every State Council shall be affiliated to the National Council and every State Apprenticeship Council shall be affiliated to the Central Apprenticeship Council.

Every Board or State Council of Technical Education and every Regional Board shall be affiliated to the Central Apprenticeship council.

**Quick Recap**



**Note:**

**Affiliation of Councils**

Council	Affiliated by
State Council	National Council
State Apprenticeship Council	Central Apprenticeship Council
State Council of Technical Education	Central Apprenticeship Council
Regional Board	Central Apprenticeship Council

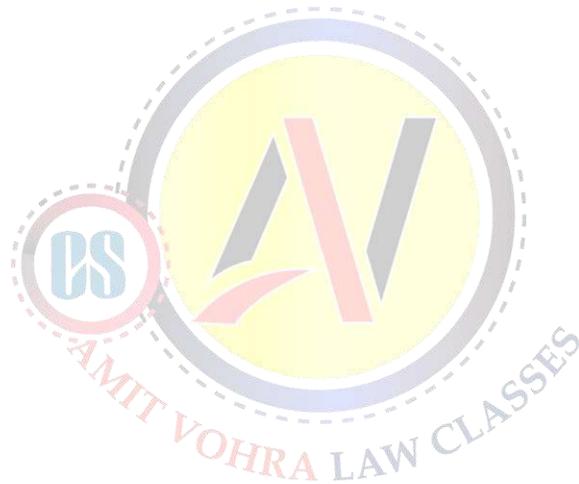
**[Section 30] Offences and Penalties**

**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 known or believed 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 wilfully 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
- (a) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or
- (b) employs an apprentice on any work which is not connected with his training, or
- (c) makes payment to an apprentice on the basis of piece-work, or
- (d) requires an apprentice to take part in any output bonus or incentive scheme.
- (e) engages as an apprentice a person who is not qualified for being so engaged, or
- (f) 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.



## Chapter - 13

# Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

### Regulatory Framework

- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

### 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.
- “...the time has come when **women must** be able to **feel liberated and emancipated** from what could be **fundamentally oppressive** conditions **against** which an **autonomous choice of freedom** can be exercised and made **available by women**. This is **sexual autonomy** in the **fullest degree**” **Late Chief Justice J.S. Verma, Justice Verma Committee Report, 2013.**
- 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**.
- 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, 1997 6 SCC 241: AIR 1997 SC 3011* (“**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.
- 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:**

- (a) **Physical contact and advances;**
- (b) **A demand or request for sexual favours;**
- (c) **Sexually coloured remarks;**
- (d) **Showing pornography;**
- (e) **Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.**

- The Vishaka judgment initiated a **nationwide discourse on workplace sexual harassment** and threw out **wide open an issue** that was swept under the carpet for the longest time. The **first case before the Supreme Court after Vishaka** in this respect was the case of *Apparel Export Promotion Council v. A.K Chopra, (1999)*. In this case, the **Supreme Court reiterated** the law laid down in the **Vishaka Judgment** and upheld the **dismissal of a superior officer of the Delhi based Apparel Export Promotion Council** who was **found guilty of sexually harassing a subordinate female employee** at the workplace.
- In this judgment, the **Supreme Court enlarged the definition of sexual harassment** by ruling that **physical contact was not essential** for it to amount to an act of sexual harassment. The Supreme Court explained that “**sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her.**”
- In light of the above judgment, the very **first efforts**, towards implementing a **law for protection of women from sexual harassment at workplace**, were taken in **2007** when the **Protection of Women against Sexual Harassment at Workplace Bill, 2007**, was introduced in the Parliament. However, this Bill never saw the light of the day. **On December 7, 2010**, the **Protection of Women against Sexual Harassment at Work Place Bill, 2010** (the “Original Bill”) was introduced in **Lok Sabha** and was referred to a **Parliamentary Standing Committee on Human Resource Development**, led by **Shri Oscar Fernandes** (“Standing Committee”), on **December 30, 2010** for examination, and the **Standing Committee** came out with its **report in December, 2011**.
- Further to the report, **subsequent changes** were made to the **Original Bill**, including to the **title of the Bill**, which was changed to **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2013** (the “Bill”).
- **India’s first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”)** was enacted by the **Ministry of Women and Child Development, India in 2013** — after **16 years** of the **Supreme Court judgment** in the case of **Vishaka & Ors. vs. State of Rajasthan & Ors. (1997 (7) SCC 323)**.
- The Act came into force **w.e.f. 9th December, 2013**. The Government also subsequently notified the **rules** under the **POSH Act** titled the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“POSH Rules”)**. The year 2013 also witnessed the **promulgation of the Criminal Law (Amendment) Act, 2013 (“Criminal Law Amendment Act”)** which has **criminalized offences** such as **sexual harassment, stalking and voyeurism**.

### 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.”

- **What is Workplace Sexual Harassment?**

Workplace sexual harassment is **sexual, unwelcome** and the **experience** is **subjective**. It is the **impact and not intent** that **matters** and it almost always occurs in a matrix of power. The **impact** of sexual harassment at workplace is far reaching and is an **injury to equal right of women**. Workplace sexual harassment not only **creates an insecure and hostile working environment for women** but also **impedes their ability to deliver** in today’s competing world. Apart from interfering with their performance at work, it also **adversely affects their social and economic growth** and puts them through **physical and emotional suffering**.

### **Forms of Workplace Sexual Harassment**

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.

### **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**.

### **[Section 2] Definitions**

1. **[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. **[Section 2(b)] “Appropriate Government”** means —
  - i. in relation to a **workplace** which is **established, owned, controlled** or **wholly or substantially financed by funds provided directly or indirectly** —
    - a. **by the Central Government or the Union territory administration**, the Central Government;
    - b. **by the State Government**, the State Government
  - ii. in relation to any **workplace not covered** under sub-clause (i) and **falling within its territory**, the

**State Government;** i.e. for the **private sector, appropriate Government** is the **concerned State Government.**

**3. [Section 2(e)] “Domestic worker” means**

- A woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis;
- But does not include any member of the family of the employer.

**4. [Section 2(f)] “Employee” means**

- A person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principalemmployer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and
- Includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

**5. [Section 2(g)] “Employer” means:’ —**

- i. in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;
- ii. in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.  
*Explanation.* — For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of polices for such organisation;
- iii. in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;
- iv. in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.

**6. [Section 2(m)] “Respondent” means a person against whom the aggrieved woman has made a complaint under section 9.**

**7. [Section 2(n)] “Sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: –**

- i. Physical contact and advances; or
- ii. A demand or request for sexual favours; or
- iii. Making sexually coloured remarks; or
- iv. Showing pornography; or
- v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The definition is very wide, as it provides for direct or implied sexual conduct, which may mean that what is “implied” sexual behaviour for one person, may not be the same for another person. Hence, the implied behaviour will depend only upon the interpretation of a person. The definition also provides that harassment may be a verbal or non-verbal conduct. Hence, a mere statement in a case where the plaintiff requested defendant No. 1 to instruct the attendants to switch off the A. C. Machine, but in reply defendant No. 1 said “... come close to me, you will start feeling hot”, can also be construed to be sexual harassment [*Albert Davit Limited vs. Anuradha Chowdhury and Ors., (2004) 2 CALLT 421 (HC)*].

**8. [Section 2(o)] “workplace” includes –**

- (a) Any **department, organisation, undertaking, establishment, enterprise, institution, office, branch** or unit which is established, **owned, controlled** or **wholly or substantially financed** by funds provided **directly or indirectly** by the **appropriate Government or the local authority** or a **Government company** or a **corporation** or a **co-operative society**;
- (b) Any **private sector organisation** or a **private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit** or **service provider** carrying on **commercial, professional, vocational, educational, entertainment, industrial, health services** or **financial activities** including **production, supply, sale, distribution** or **service**;
- (c) **Hospitals or nursing homes**;
- (d) Any **sports institute, stadium, sports complex** or **competition or games venue**, whether **residential or not used for training**, sports or other activities relating thereto;
- (e) Any **place visited** by the **employee arising out of or during** the course of **employment including transportation** provided by the **employer for undertaking such journey**;
- (f) A **dwelling place or a house**;

In the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*, WP(C) No. 8649/2007, the **respondent** who was **facing departmental inquiry** for allegedly indulging in **sexual harassment** of his **senior woman officer** contended that **he could not be accused** of **sexual harassment at workplace** as the alleged **misconduct** took place **not at the workplace but at an official mess** where the **woman officer** was **residing**.

It was also argued that the **complainant** was **even senior to the respondent** and therefore **no 'favour' could be extracted** by the **respondent from the complainant** and thus the **alleged act would not constitute 'sexual harassment'**.

The **Delhi Court** while considering this matter held this as **'clearly misconceived'**. The **Delhi Court** observed that **'the aim and objective** of formulating the **Vishaka Guidelines** was **obvious** in order to **ensure that sexual harassment of working women is prevented** and any person guilty of such an act is dealt with sternly. Keeping in view the objective behind the judgment, a **narrow and pedantic approach cannot be taken in defining** the term **'workplace'** by confining the meaning to the commonly understood expression "office". It is imperative to take into **consideration** the **recent trend** which has emerged with the **advent of computer and internet technology and advancement of information technology**. A **person can interact or do business conference** with another person while **sitting in some other country** by way of **videoconferencing**.

It has also become a **trend** that the **office is being run by CEOs from their residence**. In a case like this, if **such an officer indulges in an act of sexual harassment with an employee, say, his private secretary**, it would **not be open for him to say that he had not committed the act at 'workplace' but at his 'residence'** and get away with the same. Noting the above, the **High Court** observed that the **following factors** would have bearing on **determining whether the act has occurred in the 'workplace'**:

- **Proximity from the place of work;**
- **Control of the management over such a place/residence** where the **working woman is residing**; and
- **Such a residence has to be an extension or contiguous part of the working place.**

In **conclusion**, the **Delhi High Court** held that the **official mess** where the employee was alleged to have been sexually harassed definitely **falls under 'workplace'**.

9. [Section 2(p)] **"Unorganised sector"** in relation to a **workplace** means an **enterprise owned by individuals or self-employed workers** and **engaged in the production or sale of goods or providing service of any kind whatsoever**, and **where the enterprise employs workers, the number of such workers is less than ten**.

### Complaints Committee

The Act provides for **two kinds of complaints mechanisms**:

- (i) **Internal Complaints Committee (ICC)**; and
- (ii) **Local Complaints Committee (LCC)**.

#### **[Section 4] Constitution Internal Complaints Committee**

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 (3) 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.**

In *Vidya Akhawe ("Petitioner") v. Union of India and Ors*, Writ Petition 796 of 2015, The Bombay High

Court (“Court“) ruled that **it would not interfere with an order of punishment passed by the Internal Complaints Committee (“ICC”) in relation to a sexual harassment complaint, unless the order is shockingly disproportionate.**

### **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) **[Section-5] Notification of District Officer.**

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) **[Section-6] Constitution and jurisdiction of Local Committee**

**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 (7) days. The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.**

(iii) **[Section-7] Composition, tenure and other terms and conditions of Local Committee**

**[Section 7(1)] 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(2)] The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three (3) years, from the date of their appointment as may be specified by the District Officer.**

**[Section 7(3)] 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**

- forceis **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.

[Section 7(4)] 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.

### [Section 8] 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**.

### Complaint

#### [Section 9] Complaint of Sexual harassment

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 (3) months from the date of incident** and in case of a **series of incidents, within a period of three (3) months from the date of last incident**:

Provided that where such **complaint cannot be made in writing**, the **Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee**, as the case may be, **shall render all reasonable assistance to the woman for making the complaint in writing**:

Provided further that the **Internal Committee or, as the case may be, the Local Committee may, for thereasons to be recorded in writing, extend the time limit not exceeding three (3) months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period**.

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**.

In *Manjeet Singh vs. Indraprastha Gas Limited* 236 (2017) DLT 396, the **Delhi High Court** observed that **anonymous complaints** under the Act are **bound to be rejected**.

The **written complaint should contain a description of each incident(s)**. It should include

**relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties. A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.**

#### **[Section 10] 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.**

#### **[Section 11] Inquiry into Complaint**

- 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 (7) days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable.**
- It is provided that where the **aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under section 10(2) has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police.**
- It is provided further that where **both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.**
- Notwithstanding anything contained in **section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.**
- 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:-**
  - (a) **Summoning and enforcing the attendance of any person and examining him on oath;**
  - (b) **Requiring the discovery and production of documents; and**
  - (c) **Any other matter which may be prescribed.**

Such an **inquiry shall be completed within a period of ninety (90) days.**

#### **[Section 12] Action during pendency of inquiry.**

- 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 (3) 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 employers 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.**

### **[Section 13] Inquiry Report**

- **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 (10) 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.**
- **It is provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman.**
- **It is provided further that in case the respondent fails to pay the sum referred to in clause(ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.**
- **The employer or the District Officer shall act upon the recommendation within sixty (60) days of its receipt by him.**

### **[Section 14] Punishment for false or malicious complaint and false evidence**

- **There are strict provisions under section 14 of the Act for false or malicious complaint and false evidence under the Act. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.**
- **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.

#### **[Section 15] Determining of Compensation**

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.**

#### **[Section 16] Prohibition of publication or making known contents of complaint and inquiry proceedings**

- 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.

#### **[Section 17] Penalty for publication or making known contents of complaint and inquiry proceedings**

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.

#### **[Section 18] Appeal**

**Any person aggrieved from the recommendations** made under section 13(2) or under section 13(1) (i) or (ii) or section 14 (2) (i) 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 (90) days of the recommendations.**

#### **[Section 19] Duties of Employer**

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 —**

- (a) **Provide a safe working environment at the workplace** which shall **include safety from the persons coming into contact at the workplace;**
- (b) **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;
- (c) **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;

- (d) 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;
- (e) Assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- (f) 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;
- (g) Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code 1860 or any other law for the time being in force;
- (h) Cause to initiate action, 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;
- (i) Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (j) Monitor the timely submission of reports by the Internal Committee.

#### **[Section 20] Duties and Powers of Districts Officer**

Section 20 cast upon the following mandatory duties on the District Officer who shall, —

- (a) Monitor the timely submission of reports furnished by the Local Committee;
- (b) 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.

#### **Miscellaneous**

#### **[Section 21] Committee to submit annual report**

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.

#### **[Section 22] Employer to include information in annual report**

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.

#### **[Section 23] 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.

#### **[Section 24] Appropriate Government to take measures to publicise the Act**

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.

#### **[Section 25] Power to call for information and inspection of records**

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) **Authorize 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.**

#### **[Section 26] Penalty for non-compliance with provisions of Act**

- Section 26 provides for a **penalty with a fine up to rupees fifty thousand (50,000)** 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**.

#### **[Section 27] Cognizance of offence by courts**

- 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.**

#### **[Section 28] Act not in derogation of any other law**

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.

#### **[Section 29] Power of appropriate Government to make rules**

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.
  - In exercise of the powers conferred by section 29 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Central Government made the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

### Case Laws

- **Binoy Jacob vs. State of Kerala and Ors. (01.11.2022 - KERHC): CrI.MC No. 847 of 2022**  
In this case, petition has been filed to quash the proceedings on the ground that since the very same complaint raised by the 2nd respondent considered by the Internal Complaints Committee and found to be not proved, the criminal prosecution on same set of facts before a court will not stand. Court held that  
“Section 28 of the Act of 2013 stipulates that provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Thus, it is clear that the action under the Act of 2013 by the employer and a complaint registered at the instance of the employee for the offence under the Indian Penal Code is independent to each other. Two fold actions are permissible for the sexual harassment complaint. Hence, both actions are independent and permissible under law. There is absolutely no bar in proceeding with the criminal prosecution initiated against the petitioner.”
- **Rayala Satyanarayana vs. SBI Funds Management Pvt. Ltd. and Ors. (19.10.2022 - APHC) : Writ Petition No. 8042 of 2019**  
In this case, Andhra Pradesh High Court decided on whether the termination of services is, in fact, a major punishment, which cannot be imposed without conducting a separate departmental enquiry or without affording an opportunity of hearing or issuing a separate charge memo. Court held that Conclusions by Committee cannot be the basis for imposing a major penalty of removal from service, because it is a finding/ report in an enquiry into the misconduct of the delinquent and cannot be treated as a mere preliminary investigation or inquiry leading to a disciplinary action. Court stated  
“the conclusions arrived at by the Committee cannot be the basis for imposing a major penalty of removal from service, mainly on the ground that the conclusions arrived at by the Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action, but shall be treated as a finding/ report in an enquiry into the misconduct of the delinquent. The impugned

**proceedings further suffer from severe illegality as the said proceedings were issued without there being any regular departmental enquiry and without giving any opportunity as per the Service Rules, which mandate that initiation of disciplinary proceedings is a mandatory requirement and without conducting any enquiry, no employee can be imposed any major penalties.”**



## Chapter - 14

# Constitution and Labour Laws

### Regulatory Framework

- Constitution of India

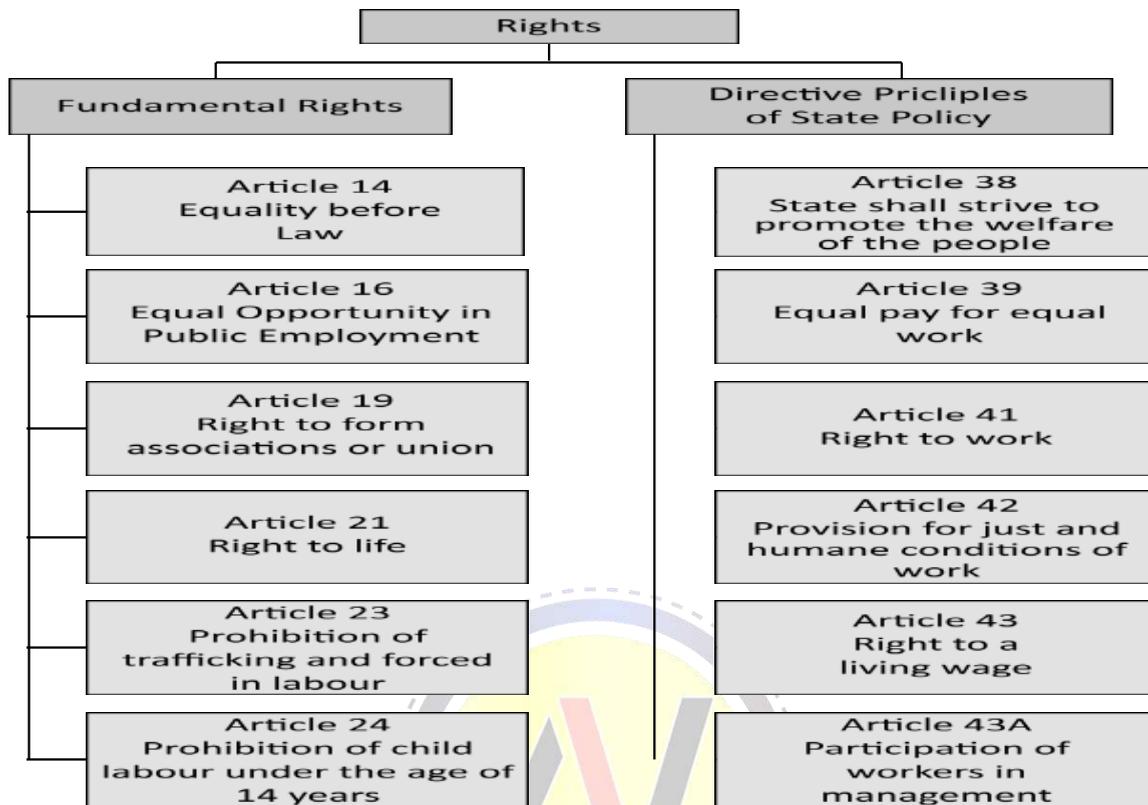
### Introduction

- The **Constitution** of a country is the **fundamental law** of the land. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the Constitution and there is **no authority, no department or branch** of the State, which is above the Constitution or has been vested with **unfettered and unrestricted powers** by the Constitution.
- 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.

### Constitutional Bearing on Industrial Laws and Industrial Relations

- **Industrial relations** affect not merely the **interest of labour and management**, but also the **social and economic goals** to which the State is committed to materialise. Therefore, it **develops** within the **province and function** of the State to **regulate** these **relations in society** desirable channels.
- The extent of **State control or intervention** is **determined** by the **stage** of **economic development**. In **developed economy**, **work stoppages** to settle claim may **not** have much **impact**, unlike in **developing economy**.
- However, in **developing economy**, the **States rules** cover a **wider area** of **relationship** and there is **equally greater supervision** over the **enforcement** of these **rules**. This is emphatically so in **developing countries with labour surplus**. It is a concern of the state to **achieve a reasonable growth rate** in the economy and to **ensure the equitable distribution** thereof.
- **Entries** about **labour relations** are **represented in all the three lists** in the Constitution. Yet **most important ones** come under the **Concurrent list**.
- These are **industrial and labour disputes**, **trade unions** and many aspect of social securities and welfare like **employer's liability**, **employees' compensation**, **provident fund**, **old age pensions**, **maternity benefit**, etc. Thus, the **Industrial Disputes Act, 1947**, the **Minimum Wages Act, 1948**, the **Employees' State Insurance Act, 1948**, etc. come under the **concurrent list**.
- Some **States** have **enacted separate amendment Acts** to some of the above legislations to **meet local needs**. Such amendments are **recommended either with the assent** of the **President of India** or by promulgating rules pursuant to the powers delegated by the Central Act.
- Under the **rule making powers delegated** by the **Centre**, the **States** have often been **able to adopt Central Act to local needs without the President's assent**. The **Central acts often delegate such powers**. For example, Section 38 of the Industrial Disputes Act delegates to the appropriate government, which in many is the State Government, the power to promulgate such rules as may be needed for making the Act effective.
- Further, the **goals and values** to be secured by **labour legislation and workmen** have been **made clear in Part IV, Directive Principles** of the State Policy of the Constitution.
- Thus, the **State shall secure a social order for the promotion of welfare** of the **people** and certain **principles of policy** should be followed by the State towards **securing right to adequate means of livelihood**, **distribution** of the material resources of the community to sub serve the **common good**, **prevention of concentration of wealth** via the economic system, **equal pay for equal work for both men and women**, **health and strength** of workers including **men, women and children** are **not abused**, participation of workers in management of industries, just and humane **conditions of work** and that **childhood and youth** are **protected** against **exploitation** against exploitation and **against moral and material abandonment**.

### Constitution and Labour



#### Social Justice and Industrial Laws

- The **Preamble** of the Constitution highlights the **concept** of **socio-economic justice**, being the **main objectives** of the **State** required by the Constitution.
- **Article 38** of the Constitution provides the concept of **social justice** by providing that the State shall strive to **promote** the **welfare** of the **people** by securing and protecting, as effectively as it may, **social order** in which **justice, social, economic and political** shall inform **all institutions** of the **national life**.
- Further, **Article 39** says that it shall be the **duty** of the **state** to **apply** certain **principles** of **social justice** in **making laws**.
- “The **concept social and economic justice** is a living concept of **revolutionary import**, it gives sustenance to the rule of law, meaning and significance to the **ideal** of the **welfare state**.” (*Justice Gajendragadkar in the State of Mysore v. Workers of Gold Mines, AIR 1958 SC 923*).
- In the **economic sphere**, **social justice** means **opportunities** in greater measure **to the poor** and the **needy** for the **betterment** of their **social and economic conditions**. “It does **not mean** making **rich man poor** in order **to make poor men rich**. It does **not mean** that **all wealth** should be **shared equally** provision of basic minimum to all in response to **life and living facilities** for promoting one’s own values and manner worth are the essential contents of social justice.” (*K.N. Bhattacharya, Indian Plans, A Generalist Approach, (1963) p. 97*).
- It is the **responsibility** of **both the State and the citizens** to **work hand in hand** for **achieving social justice**. “The **State** has **constitutional responsibilities** and the **citizens** have **moral responsibility** and the combination of the **two types of responsibilities** tend to **create an ideal society worthy to live in**”. (*Chakradhar Jha, ‘Judicial Review of Legislative Acts’ (1974), p. 254.*)
- **Industrial laws** are **socio-economic justice oriented**  
The concept of **social justice** is so **innate and demonstrated** in the **industrial laws** of our country. The laws particularly the **industrial laws** of the country **revolve** on this **basic philosophy** of the **Constitution**.

Its **scope** is **comprehensive** and is founded to the **basic ideals** of **social economic equality** and it **aims** at **assisting** the **removal** of **social economic disparities** and **inequalities of birth** and the **competing claims** especially **between** the **employers and workers** by finding a **just, fair and equitable solution** to their **human relation** problem, so that **peace, harmony and collection** of the **highest order** prevails among them which may further the **growth and progress of nations**. (*Mahesh Chandra, 'Industrial Jurisprudence' (1976), p. 47*)

### 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**. Apart from the **writ jurisdiction** under Article 32, the **Supreme Court** is envisaged with **discretionary jurisdiction** to **entertain appeal by special leave** under **Article 136** from decree, sentence, or order passed by any court or tribunal in India.
- **High Courts** are vested with **writ jurisdiction** under **Article 226** and the **power of superintendence over all courts and tribunals** under **Article 227**. A **person aggrieved** by an award of the **High Court** can **appeal to the Supreme Court** under **Article 132** if any **constitutional question** is **involved** or under **Article 133** in **civil appeal**.
- **Can a Trade Union move the High Court under Article 226 to redress the fundamental rights of its members?**

This issue was discussed by the **Rajasthan High Court** in *Jaipur Division Irrigation Employees Union v. State of Rajasthan and others (1994) IILLJ 26 Raj*. Here a large number of the **employees of the irrigation department** were **declared surplus**. The **Union** challenged it in this **writ petition**. The **Single Bench** held that the **petition is not maintainable** holding that the **fundamental rights** of the **individual** are **not the rights** of the **union**. On **appeal**, the **Division Bench** **reversed it and sent back to the Single Bench** for disposal of the writ petition in accordance with the merits of the case.

The traditional concept of *locus standi* underwent sweeping **changes** in the **modern age of public action and public interest litigation**. In the famous case of *S.P. Gupta and Ors. v. President of India and Ors. (AIR 1982 SC 149)* the question of locus standi was discussed and it was held that where a **legal wrong or a legal injury** is caused to a **person** or to a **determinate class of persons** by **reason of violation of any constitutional or legal right** or any **burden is imposed** in **contravention** of any **constitutional or legal provision** or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and **such person or determinate class of persons** is by **reason of poverty, helplessness or disability** or **socially or economically disadvantageous position**, **unable to approach the Court** for relief, any member of the public can **maintain an application for an appropriate direction, order or writ** 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.

### Fundamental Rights and Industrial Relations

- **Articles 12 to 35** of the Constitution pertain to **Fundamental Rights** of the people. The Indian Constitution **guarantees essential human rights** in the form of **Fundamental Rights** under **Part III** and also **Directive Principles of State Policy** in **Part IV** which are **fundamental in the governance** of the country.
- **Freedom and civil rights** granted to **all** under **Part III** have been **liberally construed** by various **pronouncements** of the **Supreme Court**. The **object** has been to **place citizens at a centre stage** and **make the State accountable**.
- **Fundamental Rights** must **not** be **read in isolation** but **together with directive principles and fundamental duties**. 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

- **Equality** is one of the **magnificent corner-stones** of **Indian Democracy**. Article 14 of the Constitution of India reads as under:  
 “The **State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.**”
- Article 14 bars **discrimination and prohibits discriminatory laws**. The said Article is clearly in two parts — while it **commands the State not to deny to any person ‘equality before law’**, it **also commands the State not to deny the ‘equal protection of the laws’**.
- **Equality before law prohibits discrimination**. It is a **negative concept**.
- The concept of **‘equal protection of the laws’** requires the **State to give special treatment to persons in different situations** in order to **establish equality** amongst all. It is **positive** in character.
- Therefore, the **necessary corollary** to this would be that **equals would be treated equally**, whilst **unequals would have to be treated unequally**.
- In the case of the **Air India v. Nargesh Meerza (1981 AIR 1829)** Regulation 46 and 47 of 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**. 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 unreasonable and arbitrary** and it was in **violation of Article 14** of the constitution law of India.
- In **D.S Nakara v. Union of India, (1983 AIR 130)** the **supreme court** held Rule 34 of the Central Services (Pension) Rules, 1972 as **unconstitutional and was struck down** on the **ground** that the **classification made by it between pensioners retiring before a certain date and retiring after that date was not depend upon the any rational principal and it is arbitrary and violates Article 14** of Indian constitution.

### Article 16: Equality of opportunity in matters of public employment

1. There shall be **equality of opportunity for all citizens** in matters relating to **employment or appointment** to any office under the State
  2. **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.**
  3. **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**
  4. **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**
  5. **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.**
- Article 16 assures **equality of opportunity in matters of public employment** and **prevents the State from any sort of discrimination** on the grounds of **religion, race, caste, sex, descent, place of birth, residence** or any of them. This Article also **provides the autonomy to the State to grant special**

provisions for the backward classes, under-represented States, SC & ST for posts under the State. Local candidates may also be given preference in certain posts.

- Equality is for equals, that is to say, those who are similarly circumstanced are entitled to an equal treatment but the principle of equality under Articles 14 and 16 cannot be carried beyond a point.
- There is no bar of reasonable classification of various employees and there is no question of equality between separate and independent classes of employees. The court cannot interfere with a promotion policy unless it is vitiated by arbitrariness or discrimination; a court or Tribunal cannot issue directions in this regard.
- In the case of *Mewa Ram Kanojia vs. All India Institute of Medical Sciences and Ors.* (AIR 1989 SC 1256), the Court observed: “The doctrine of ‘Equal Pay for Equal Work’ is not an abstract one, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of ‘Equal Pay for Equal Work’ is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay.
- If the classification has reasonable nexus 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 public order or morality or the sovereignty and integrity of India.
- The right of association pre-supposes organization as an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union and political parties.
- 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.
- In the case of *All India Bank Employees vs. National Industrial Tribunal* 1962 SCR (3) 269, the court held: “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.

Collective bargaining in order to be effective must be enforceable labour withdrawing its co-operation from the employer and there is consequently a fundamental right to strike a right which is thus a natural deduction from the right to form unions guaranteed by Art. 19(1)(c) As strikes, however, produce economic dislocation of varying intensity or magnitude, a system has been devised by which compulsory industrial adjudication is substituted for the right to strike.

This is the ratio underlying the provisions of the Industrial Disputes Act 1947 under which Government is empowered in the event of an industrial dispute which may ultimately lead to a strike or lock-out or when such strikes or lock-outs occur, to refer the dispute to an impartial Tribunal for adjudication with a provision banning and making illegal strikes or lock-outs during the pendency of the adjudication proceedings. The provision of an alternative to a strike in the shape of industrial adjudication is a restriction on the fundamental right to strike and it would be reasonable and valid only if it were an effective substitute.”

- In the case of *Damyanti Naranga v. The Union of India* 1971 SCR (3) 840, the court observed that: “The right to form association necessarily implies that the persons forming the society have also the right to continue to be associated with only those whom they voluntarily admit in the association.

The **right guaranteed** by **Article 19(1)(c)** cannot be **confined** to the **initial stage** of **forming an association**. If it were to be so confined, the **right** would be **meaningless** because as soon as an **association is formed**, a **law** may be passed **interfering** with its **composition** so that the association formed may **not be able to function at all**.

The **right** can be **effective only if** it is held to **include within**, it the **right to continue the association** with its **composition** as **voluntarily agreed** upon by the **persons forming the association**. And, Article 19(4), on the face of it, **cannot be called in aid to claim validity for the Act.**”

### 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**.
- 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**. This **liberal interpretation** of Article 21 by judiciary has **led to two very spectacular results within the last two decades**, viz.:

(1) **Many Directive Principles** which, as such, are **not enforceable** have been **activated** and have become **enforceable**.

- (a) **Right to livelihood**
- (b) **Right to live with human dignity**
- (c) **Right to medical care**
- (d) **Health of labour**
- (e) **Sexual harassment**
- (f) **Right to health**
- (g) **Economic Rights.**

(2) The **Supreme Court** has **implied a number of Fundamental Rights from Art. 21**.

- In the case of *Olga Tellis & Ors v. Bombay Municipal Corporation*, AIR 1986 SC 180, the Court held: “As we have stated while **summing up** the **petitioners’ case**, the **main plank** of their **argument** is 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**.

For purposes of argument, we will assume the factual correctness of the **premise** that **if the petitioners are evicted from their dwellings**, they will be **deprived** of their **livelihood**. An **equally important facet** of that **right** is the **right to livelihood** because, **no person can live without the means of living**, that is, the means of **livelihood**. If the **right to livelihood** is **not treated** as a part of the **constitutional right to life**, the **easiest way of depriving a person his right to life** would be to deprive him of his means of livelihood to the point of abrogation.

Such **deprivation** would **not only denude the life** of its effective content and meaningfulness but it would **make life impossible to live**. That, which alone **makes it possible to live**, leave aside what makes life livable, must be deemed to be an **integral component** of the **right to life**. **Deprive a person of his right to livelihood** and you shall have **deprived** him of his **life**. Indeed, that **explains the massive migration** of the **rural population to big cities**.

They **migrate** because they have **no means of livelihood in the villages**. The motive force which people their **desertion of their hearths and homes in the village** is that **struggle for survival**, that is, the **struggle for life**. So unimpeachable is the **evidence of the nexus between life and the means of livelihood**. They have to **eat to Live. Only a handful can afford the luxury of living to eat**. That they can

do, namely, eat, only if they have the means of livelihood.

That is the context in which it was said by Douglas J. in *Baksey* that the **right to work** is the **most precious liberty** because, it **sustains and enables a man to live** and the **right to life** is a **precious freedom**. “**Life**”, as observed by Field, J. in *Munn v. Illinois*, (1877) 94 U.S. 113, means **something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed**”

- In the case of *D.K. Yadav v. J.M.A. Industries Ltd 1993 SCR (3) 930*, 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**. When it is interpreted that the **colour and content of procedure** established by law must be in **conformity with** the minimum **fairness and processual justice**, it would relieve legislative callousness despising **opportunity of being heard and fair opportunities of defence**. The order of **termination of the service of an employee/workman** visits with civil consequences of **jeopardising** not only his/ her **livelihood** but also **career and livelihood of dependents**. Therefore, **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**.”
- In the case of *Paschim Banga Khet Mazdoor Samity v. State of West Bengal (AIR 1996 SC 2426)*, 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 various government hospitals**, he **filed a writ petition in the Supreme Court under Art. 32**. The Court has ruled that: “**the Constitution envisages establishment of a welfare state, and in a welfare state, the primary duty of the government is to provide adequate medical facilities for the people. The Government discharges this obligation by running hospitals and health centres to provide medical care to those who need them. 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.**”
- In the case of *Vishakha & Ors. v. State of Rajasthan (1997) 6 SCC 241* whereby a **woman was assaulted and harassed at her workplace**, the **Supreme Court** observed: “**Each such incident results in violation of the fundamental rights of ‘Gender Equality’ and the ‘Right of Life and Liberty’**. It is clear **violation of the rights under Articles 14, 15 and 21 of Constitution**. One of the logical consequences of such an incident is also the **violation of the victim’s fundamental right under Article 19(1)(g) ‘to practice any profession or to carry out any occupation, trade or business’**.”

#### **Article 23 and Article 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**: 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. **Withholding of pay of a government employee as a punishment** has been held to be **invalid** in view of **Article 23** which **prohibits begar**. ‘**To ask a man to work and then not to pay him any salary or wages savours of begar**. It is a **Fundamental Right** of a citizen of India **not to be compelled to work without wages**.’ (*Suraj v. State of Madhya Pradesh, AIR 1960 MP 303*).
  - (2) **Traffic in human beings**: 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**.
  - (3) **Forced labour**; The words ‘**other similar forms of forced labour**’ in **Article 23(1)** are to be interpreted *ejusdem generis*. The **kind of ‘forced labour’** contemplated by the Article has to be **something in the nature of either traffic in human beings or begar**. The **prohibition against forced labour** is made **subject to one exception**.

- Under **Article 23(2)**, the **State** can **impose compulsory service for public purposes**, and in imposing such service the **State shall not make any discrimination on grounds only of religion, race, caste or class or any of them**. The **State may thus exempt women from compulsory service** for that will be **discrimination on the ground of sex** and this has **not been forbidden** by Article 23(2).
- The **Supreme Court** has given an **expansive significance** to the term “**forced labour**” used in Art. 23(1) in a series of cases beginning with the *Asiad* case in 1982. (*People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473). The Court has insisted that Article 23 is intended to **abolish every form of forced labour even if it has origin in a contract**. Article 23 **strikes at forced labour** in whatever form it may manifest itself, because it is **violative of human dignity** and is **contrary to the basic human values**.
- In *Sanjit Roy v. State of Rajasthan*, 1983, SCR (2) 271 case, it was held that when a **person provides labour or service to another for remuneration which is less than the prescribed minimum wages**, the labour so provided clearly **falls** within the ambit of the words ‘**forced labour**’ under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the **presumption** is that he or she is **working** under some **compulsion**. Hence it was held that such a person would be **entitled to approach the higher judiciary under writ jurisdiction (Article 226 or Article 32)** for the enforcement of **fundamental rights which include the payment of minimum wages**.
- **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**”.
- This is also in consonance with **Articles 39(e) and (f) in Part IV** of the Constitution which emphasizes the need to **protect the health and strength of workers, and also to protect children against exploitation**. The **Child Labour (Prohibition and Regulation) Act, 1986 specifically prohibits the employment of children** in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.
- In *Peoples Union for Democratic Rights v. Union of India: (AIR 1982 SC 1473)* also known as the *Asiad Workers* case the **Supreme Court** observed that though the **Employment of Children Act, 1938 did not include the construction work** because the **construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation** and under **Article 24 children under 14 years could not be employed** in a hazardous occupation. The **right of a child against exploitation under Article 24 is enforceable even in the absence of implementing legislation**.
- In *M.C. Mehta v. State of T.N.: (AIR 1997 SC 699)* the **Supreme Court** directed that the **employers of children below 14 years must comply with the provisions of the Child Labour (Prohibition and Regulation) Act** providing for **compensation, employment of their parents / guardians and their education**.
- **Article 39(f)** of the Constitution of India enumerates the **importance of protecting children from exploitation** and to give them proper **opportunities and facilities to develop** these ideas are in consonance with the **prohibitions against ‘forced labour’ and employment of children below the age of fourteen years**, which have been laid down under Article 23 and 24 respectively.

#### 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**.
- Today we are living in an era of **welfare state** which seeks to **promote the prosperity and well-being of the people**. 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**.
- While taking positive action, **government functions** under several **restraints**, the **most crucial** of these being that of **financial resources**. The constitution-makers, therefore, taking a **pragmatic view refrained from giving teeth to these principles**.
- The **Constitution declares** that the **Directive Principles**, though **not enforceable by any Court**, are **'fundamental'** in the governance of the country, and the **'state'** has been placed under an **obligation to apply them in making laws**.
- It has now become a **judicial strategy to read Fundamental Rights along with Directive Principles** with a view as the latter **defines the scope and ambit of former**. Mostly, **Directive Principles** have been used to **broaden, and to give depth to some Fundamental Rights** and to **imply some more rights** therefrom for the people over and above what are expressly stated in the Fundamental Rights.
- **Articles 38, 39, 41, 42 and 43** have a **special relevance** in the field of **industrial legislation and adjudication**. In fact, they are the substratum or rather **'magna carta'** of **industrial jurisprudence**. They **encompass the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country**.

#### **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"**.
- **Article 38** needs to be **read along with Article 14**. This directive reaffirms what has been **declared in the Preamble** to the Constitution, viz., the **function of the Republic** is to **secure, inter alia, social, economic and political justice**.
- On the concept of equality envisaged by Article 38, the **Supreme Court** has observed in the case **Sri Srinivasa Theatre v. Govt. of Tamil Nadu, AIR 1992 SC 999**: **"Equality before law is a dynamic concept having many facets. One facet--the most commonly acknowledged--is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the state to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution [viz. Directive Principles]. For, equality before law can be predicated meaningfully only in an equal society, i.e., in a society contemplated by Article 38 of the Constitution."**
- Reading **Articles 21, 38, 42, 43, 46 and 48A** together, the **Supreme Court** has concluded in **Consumer Education & Research Centre v. Union of India (AIR 1995 SC 923)**, that **"right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a Fundamental Right, to make the life of the workman meaningful and purposeful with dignity of person."** **Health of the worker** enables him to **enjoy the fruit of his labour, keeping him physically fit and mentally alert** for leading a **successful life, economically, socially and culturally**. **Medical facilities** to protect the health of the **workers** are, therefore, the **fundamental and human rights** of the workmen.

#### **Equal Pay For Equal Work**

- **Article 39** requires the state, in particular, **to direct its policy towards securing**:
  - (a) That **all citizens, irrespective of sex, equally have the right to an adequate means of livelihood**;
  - (b) That the **ownership and control of the material resources of the community are so distributed as best to subserve the common good**;

- (c) That the **operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;**
  - (d) That there is **equal work for both men and women;**
  - (e) That the **health and strength of workers, men and women, 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;**
  - (f) That **children are given opportunities and facilities to 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**
- In the case of **Randhir Singh v. Union of India (1982 AIR 879)** the **Supreme Court** has held that the principle of **“Equal pay for equal work though not a fundamental right”** is certainly a **constitutional goal.**

**Article 39(d)** of the Constitution proclaims **“equal pay for equal work for both men and women”** as a **Directive Principle of State Policy.** The doctrine of equal pay for equal work is **equally applicable to persons employed on a daily wage basis.** They are also **entitled to the same wages as other permanent employees** in the department employed to do the **identical work.** However, 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.**

- In the case of **Dhirendra Chamoli and Anr. v. State of U.P. (AIR 1982 SC 879),** the Court stated: **“The fact that these 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, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution.**

This Article declares that **there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value.** These **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.”**

- **National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) vs. Union of India (UOI) and Ors. (2018).** In this case, **petition was filed towards the non-implementation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (the BOCW Act) and the Building and Other Construction Workers’ Welfare Cess Act, 1996 (the Cess Act)** According to petitioner, **non- implementation violates the provisions of Articles 15(3), 39(e) and (f) and also Articles 45 and 47 of the Constitution, which impose a primary responsibility on the State to ensure that all the needs of workers are met and that their basic rights are fully protected.**

Supreme Court held that –

**“There can be no doubt that the BOCW Act and its sister legislation, the Cess Act are social justice legislations. They were enacted keeping in mind the Directive Principles of State Policy, particularly Article 39 of the Constitution which requires the State to direct its policy to secure the health and strength of workers and Article 42 of the Constitution concerning just and humane conditions of work. In addition, Article 21 of the Constitution cannot be forgotten. A life of dignity is a fundamental right given to all persons and that includes construction workers. The Rule of law must be respected and along with it the human rights and dignity of building and construction workers must also be respected and acknowledged, to avoid a complete breakdown of the BOCW Act compounded by serious violations of Part III of the Constitution guaranteeing fundamental rights.”**

- **Bandhua Mukti Morcha and Ors. vs. Union of India (UOI) and Ors. (1997).** In this case, **petitioner’s main contention was that 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. Court stated that—  
 “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.”**

### 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 **Maternity Benefit Scheme** is primarily designed to **provide maternity leave with full wages and security of employment**. The object of the **Payment of Gratuity Act, 1972** is to provide a **scheme for the payment of gratuity to employees employed in factories, mines, oil fields, plantations, ports, railways, shops and establishments**.
- Besides social security benefits, efforts have also been made to provide ample **opportunities for employment and for workers’ education**. The **Apprentices Act, 1961** was enacted to **supplement the programme of institutional training by on-the-job training** and to regulate the **training arrangements in industry**.
- **Employment exchanges** play an **important role** for the **job seekers**. The **Employment Exchanges (Compulsory Notification of Vacancies) Act, 1969** has made it **obligatory** on the **employers to notify vacancies** occurring in their establishments to the prescribed employment exchanges **before** they are filled. 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**.
- A ‘**living wage**’ is such **wage** as **enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes** including old age.
- A ‘**minimum wage**’, on the other hand, is just sufficient to cover the **bare physical needs of a worker and his family**.
- Minimum wage is to be **fixed in an industry irrespective of its capacity to pay**. Fixation of minimum wage is **in public interest** and does **not impose an unreasonable restriction on** the right to carry on a trade guaranteed by Article 19(1)(g). (*Edward Mills Co. v. Ajmer, AIR 1955 SC 25*).

### 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**.

### Case Laws

- **Janapareddy Surya Narayana and Ors. vs. The Municipal Administration and Urban Development and Ors. Writ Petition No. 25434 of 2020**
- In this case, **petition** was **filed questioning the proceedings** RC. No. 16394/P.O. (Balyam) dated 19.06.2017 as **illegal, arbitrary and violative of Articles 14, 16, 21 & 39(d)** of the Constitution of India and consequently **set-aside the same and directed the respondents to regularise the services of the petitioners**. **Andhra Pradesh High Court** stated that –  
 “When **part time workers** or NMRs are regularized, they are **entitled to get minimum time scale of pay** prescribed for the **post** they are **discharging their duties for limited office hours**, whereas, these **petitioners are discharging their duties for eight hours** as per the proceedings impugned in the **writ petition**. 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**.”

## Chapter – 15

# Employees' State Insurance Act, 1948

### List of Sections

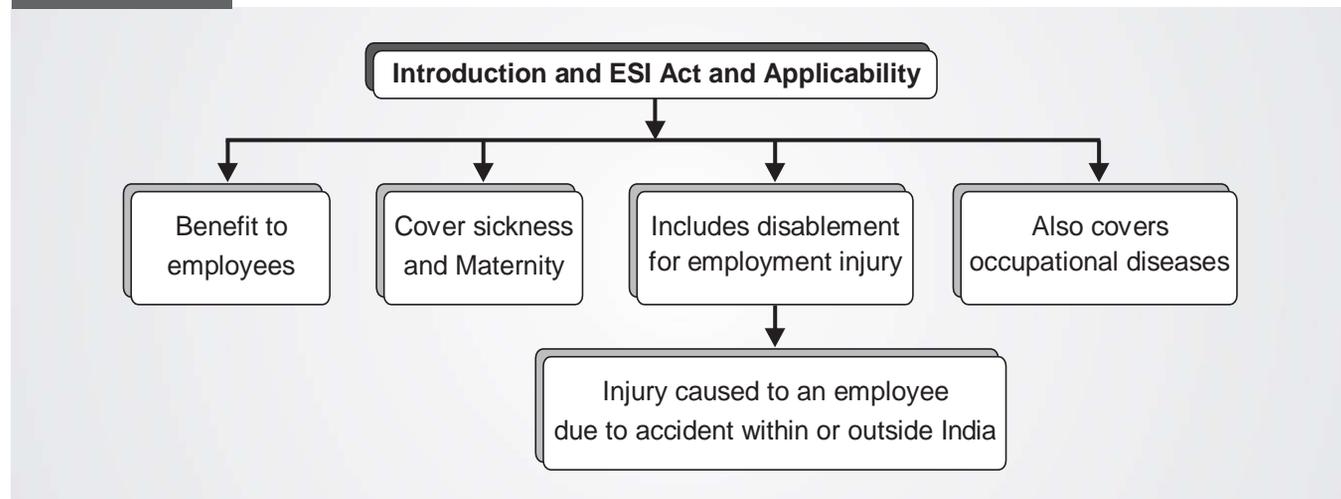
Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(9)	Employee
2(1)	Appropriate Government
2(3)	Confinement
2(4)	Contribution
2(10)	Exempted employee
2(13A)	Immediate employer
2(14)	Insured person
2(15A)	Permanent Partial Disablement
2(15B)	Permanent Total Disablement
2(17)	Principal Employer
2(19A)	Seasonal factory
2(21)	Temporary Disablement
2(22)	Wages
2A	Registration of Factories and Establishments
3	Establishment of Employees' State Insurance Corporation
4	Constitution of Corporation
19	Corporation's Power to Promote Measures for Health of Insured Persons
25	Regional Boards, Local Committees, Regional and Local Medical Benefit Councils
26	Employees' State Insurance Fund
28	Purposes for which the Fund may be Expended
29	Holding of Property, etc.
38	All Employees to be Insured
39	Contribution of ESIC Fund
40	Principal Employer to Pay Contribution in the First Instance
41	Recovery of Contributions from Immediate Employer
43	Method of Payment of Contribution
46	Benefits of ESIC
65	Benefits not to be Combined
6	Corporation's Rights where a Principal Employer Fails to Pay
73	Employer not to Dismiss or Punish Employee during Period of Sickness, etc.
74	Constitution of Employees' Insurance Court
75	Matters to be decided by Employees' Insurance Court
87	Exemption of a Factory or Establishment or Class of Factories Establishments
88	Exemption of Persons or Class of Persons

## Introduction

ESI Act has been passed to provides for certain benefits to employees in case of **sickness, maternity** and **employment injury** and to make provisions for matters related thereto. It is basically an insurance scheme i.e., employees get benefits if they are sick or disabled. An organization called ESI Corporation has been formed under the Act to supervise the scheme.

**Employment Injury** means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

### Quick RECAP



**Note:** Extends to whole of India.

### Applicability of the Act

ESI Act is applicable to all factories. Here, the term factory means any premises where the manufacturing process is carried out with or without the aid of power, if at least 10 to 20 persons respectively, are employed.

Employees' State Insurance Act, 1948 extends to the whole of India.

The Government can also make this Act applicable to any other industrial, commercial, agricultural, other establishments by issuing a notification.

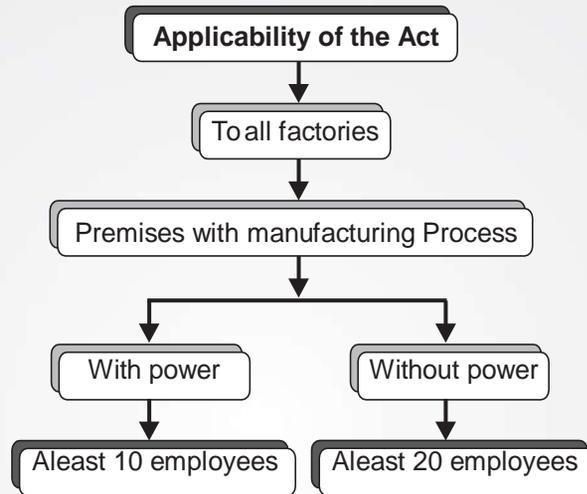
It may be noted that Government can exempt a factory or establishment from ESI Act if the employees are getting better medical facilities than what can be provided under this Act. For example, TISCO.

It may be further noted that an employer/establishment covered under the ESI Act is exempt from the provisions of Maternity Benefit Act, 1961 and Workman's Compensation Act, 1923.

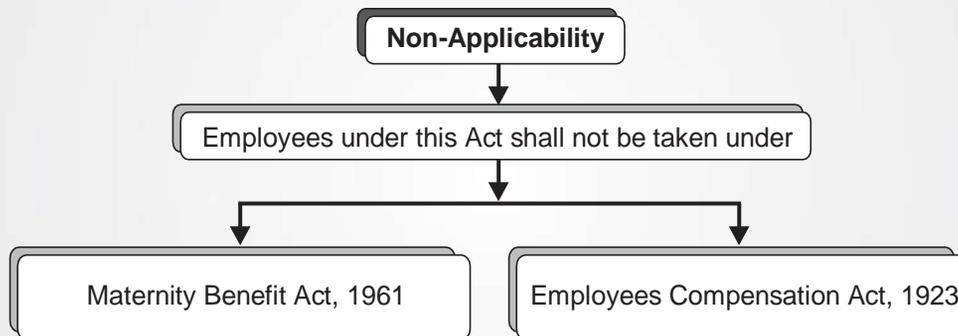
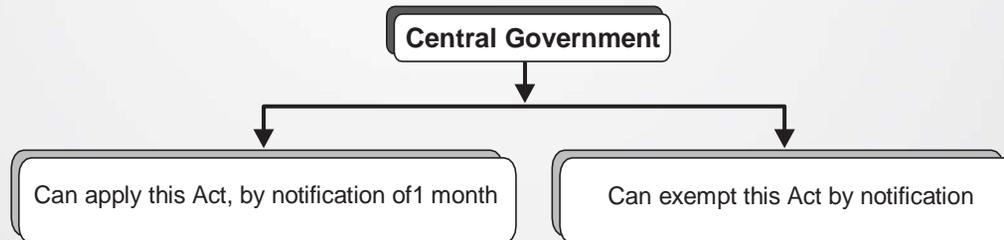
The **Appropriate Government** may, in consultation with the ESI Corporation and where the appropriate government is a State Government, with the approval of the Central Government, after giving **six months' notice** of its intention, of so doing by Notification in the Official Gazette, **extend the provisions of this Act**, to any other establishment or class of establishments industrial, commercial, agricultural or otherwise.

A factory or an establishment to which this Act applies **shall continue to be governed** by this Act **notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act** or manufacturing process therein ceases to be carried on with the aid of power.

Quick RECAP



**Note:** Seasonal factories are not covered under this act.



**[Section 2] Definitions****1. Employer**

Employer means the following:

- i. **Owner** of the factory;
- ii. Head of the department in case of Government departments;
- iii. Person responsible for **supervision and control** in the case of any other establishment.

In case of contracted labour, primary liability of ESI contribution is that of principal employer. However, he can recover the contribution paid by him from the contractor.

**2. [Section 2(9)] Employee**

Employee means any **person employed for wages** in or in connection with work of factory or establishment to which the ESI Act is applicable. The term employee further includes the following:

- i. Person employed **through contractor**;
- ii. **Apprentices** other than those covered under the Apprentices Act.

It may be noted that only those employees who are drawing wages **up to T25,000/- per month** are covered under this Act.

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

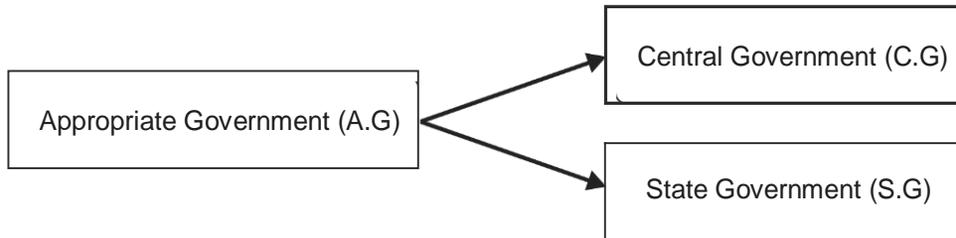
Wages means all remuneration **paid or payable in cash to** employees according to the terms of contract of employment and includes any **payment** made to an employee in respect of period of **authorized leave, lock out, lay off, strike**, which is not illegal, and other **additional remuneration** paid at an interval not exceeding 2 months. However, it does **not include** the following:

- i. Contribution made by the employer to any **Pension fund** or any **Provident Fund**;
- ii. **Travelling allowance**;
- iii. **Reimbursement of the** expenses incurred by the employee;
- iv. **Gratuity**.

**4. [Section 2(I)] Appropriate government** means, 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**.**5. [Section 2(4)] Contribution** means the sum of money **payable to the Corporation by the principal** employer in respect of employee **and includes** any amount payable by or on behalf of the employee in accordance with the provisions of this Act.**6. [Section 2(3)] Confinement** means the resulting in the **issue of a living child** or **Labour after twenty** - six weeks of pregnancy resulting in the issue of a child whether alive or dead.**7. Corporation** means the Employees' State Insurance Corporation set up under this Act.**8. [Section 2(10)] Exempted employee** means an employee who is not liable under this Act to pay the employee's contribution.**9. [Section 2(14)] Insured person** means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act.**10. [Section 2(ISA)] Permanent partial disablement** means 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.**11. [Section 2(ISB)] Permanent total disablement** means 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 resulting in such disablement.**12. [Section 2(21)] Temporary disablement** means a condition resulting from an employment injury 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**.

**Quick Recnp**

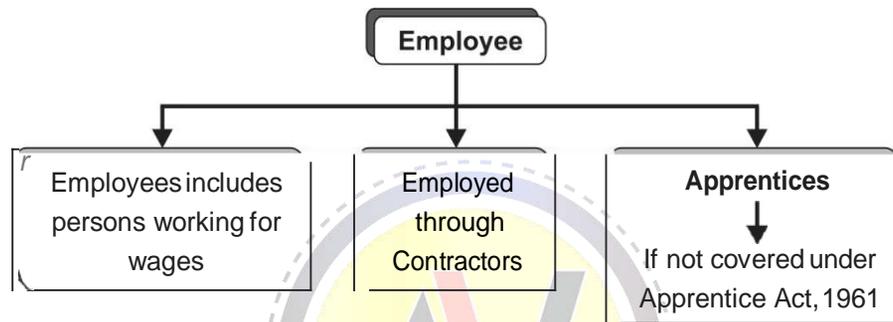
1.



2. **Contribution** → Amount Paid by employer as well as employee

3. **Corporation** → Employee State Insurance Corporation (ESIC)

4.



Excludes = Army (+) Navy (+) Air Force

Note: Employees earning Salary of more than 25,000 are not covered under this Act.

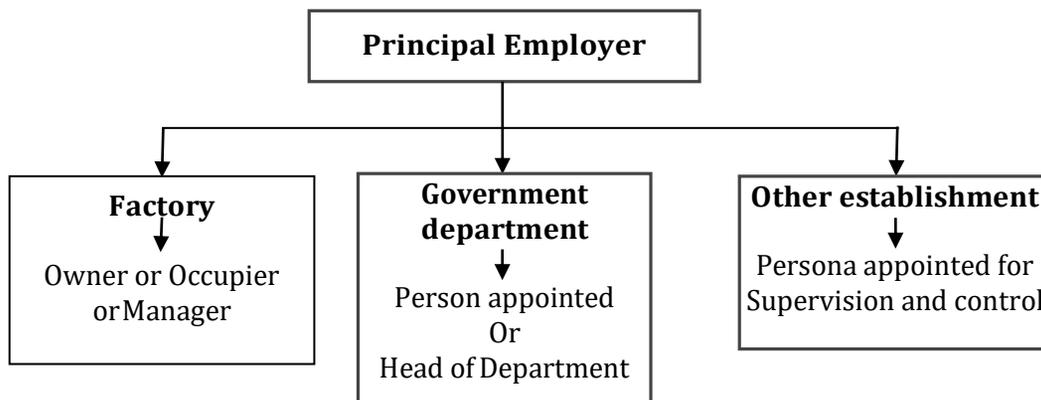
5. **Exempted employee** → An employee exempted from making contribution under Section 39.

6. **Insured Person** → An employee in respect of whom contribution is made.

7. **Permanent Partial Disablement** → Permanent reduction in earning capacity of employee.

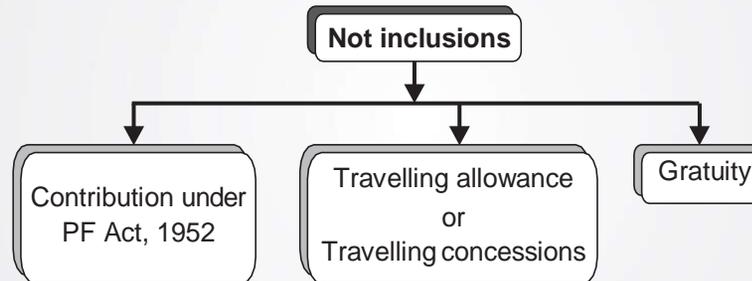
8. **Permanent Total Disablement** → Permanent total reduction in earning capacity of and employee.

9.



10. **Seasonal Factory** → Factory engaged for period not exceeding 7 months in year.

11. **Wages** → All remuneration+ leave with salary+ amount given by employer in case of legal strike+ lay off.



12. **Confinement** → Issue of living child or labour after 26 weeks of pregnancy.

13. **[Section 2(17)] Principal employer** means:

- i. **In a factory:** the owner or occupier of the factory, and includes the **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 the person so named;
- ii. **In any establishment under the control of any department of any government** in India, the **authority** appointed by such government in this behalf OR where no authority is so appointed, the **head of the department**;
- iii. **In any other establishment:** any person responsible **for the supervision and control of the establishment**.

14. **[Section 2(13A)] Immediate employer**, in relation to employees employed by or through him, means 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 or let on hire to the principal employer **and includes a contractor**.

15. **[Section 2(19A)] Seasonal factory** means 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.

16. **[Section 2(6A)] Dependent**

“Dependent” under Section 2(6A) of the Act (as amended by the Employees’ State Insurance (Amendment) Act, 2010) means any of the following relatives of a deceased insured person namely:

- (i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years,, an unmarried legitimate or adopted daughter,(ia) a widowed mother,
- (ii) 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;
- (iii) if wholly or in part dependent on the earnings of the insured person at the time his death: (a) a parent other than a widowed mother,
- (b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and minor or if widowed and a minor,
- (c) a minor brother or an unmarried sister or a widowed sister if a minor,
- (d) a widowed daughter-in-law,
- (e) a minor child of a pre-deceased son,
- (f) a minor child of a pre-deceased daughter where no parent of the child is alive or,

(g) a paternal grand parent if no parent of the insured person is alive.

17. [Section 2(11)] Family

"Family" under Section 2(11) as amended by the Employees' State Insurance (Amendment) Act, 2010 means all or any of the following relatives of an insured person, namely:

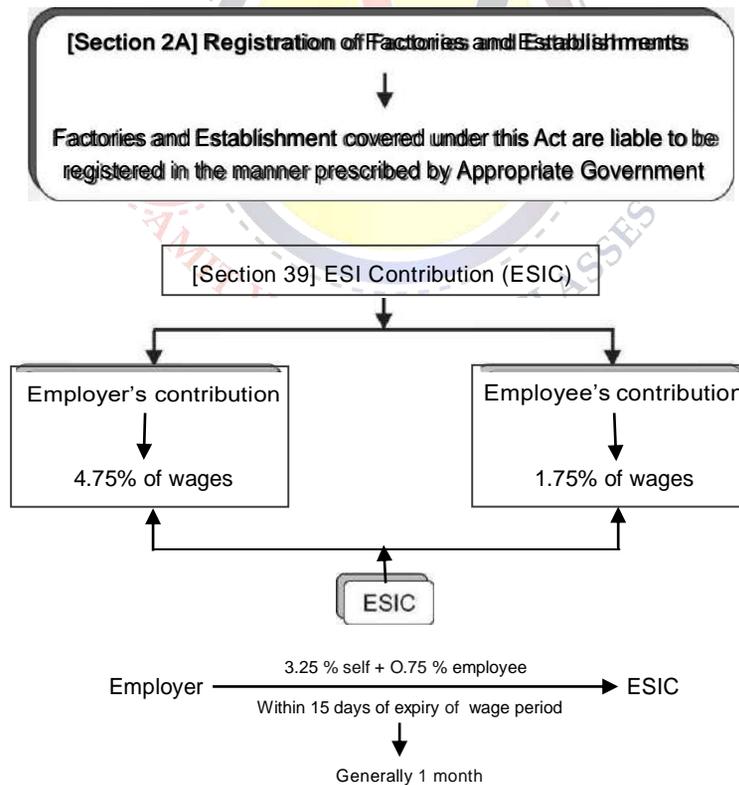
- (i) a spouse;
- (ii) a minor legitimate or adopted child dependent upon the insured person;
- (iii) a child who is wholly dependent on the earnings of the insured person and who is:
  - (a) receiving education, till he or she attains the age of twenty-one years,
  - (b) an unmarried daughter;
- (iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues.
- (v) dependent parents whose income from all sources does not exceed such income as may be prescribed by the Central Government.
- (vi) In case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person.

18. [Section 2(20)] Sickness

It means a condition which requires medical treatment and attendance and necessitates, abstention from work on medical grounds. [Section 2(20)]

[Section 2A] Registration of Factories and Establishments

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

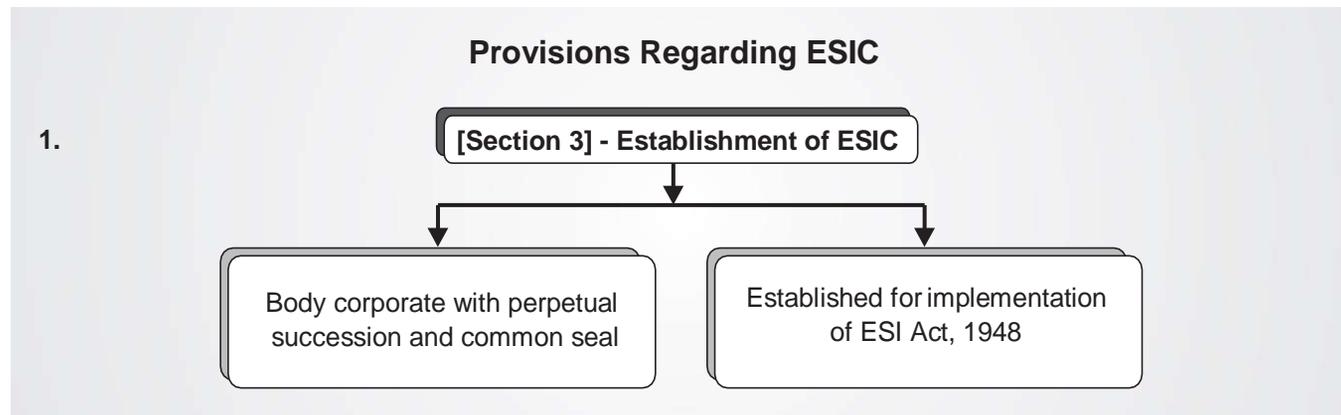


### [Section 3] Establishment of Employees' State Insurance Corporation

There **shall be** established for the administration of the scheme of Employees' State Insurance in accordance with the provisions of this Act, a Corporation to be known as the Employees' State Insurance Corporation.

The Corporation shall be a body corporate by the name of Employees' State Insurance Corporation having perpetual succession and a common seal and shall be the said name sue and be sued.

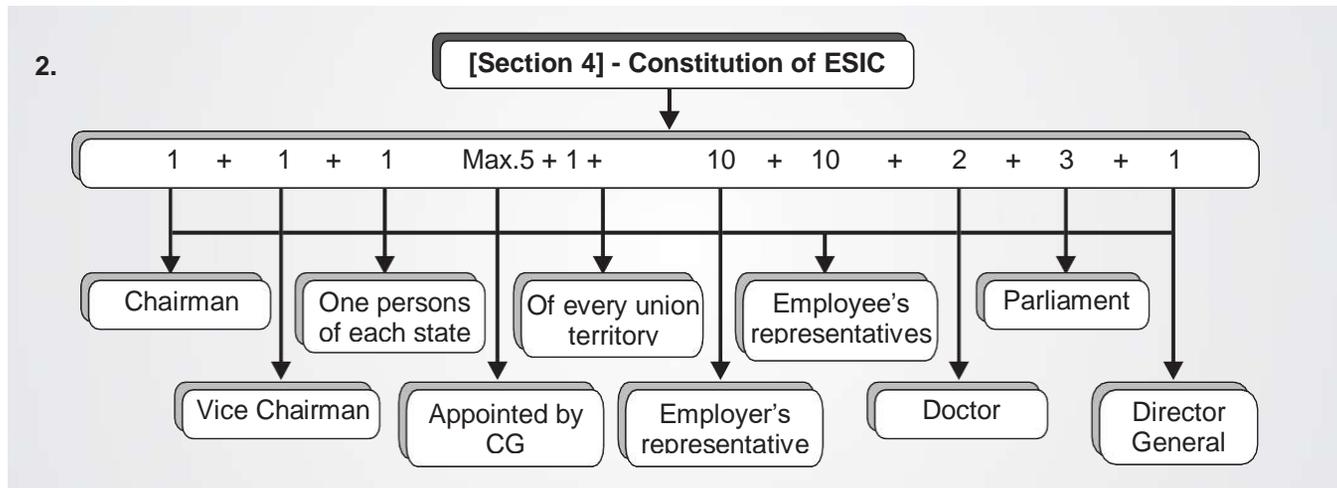
#### Quick RECAP



### [Section 4] Constitution of Corporation

The Corporation shall consist of the following members, namely:

- (a) A **chairman** to be appointed by the Central Government;
- (b) A **Vice-Chairman** to be appointed by the Central Government;
- (c) **Not more than five persons** to be appointed by the Central Government;
- (d) **One person each representing each of the States** in which this Act is in force to be appointed by the State Government concerned;
- (e) **One person** to be appointed by the Central Government **to represent the Union Territories;**
- (f) **Ten persons representing employers** to be appointed by the Central Government in Consultation with such organisations of employers as may be recognized for the purpose by the Central Government;
- (g) **Ten persons representing employees** to be appointed by the Central Government in consultation with such organisations of employees as may be reorganized for the purpose by the Central Government;
- (h) **Two persons representing the medical profession** to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government;
- (i) Three members of parliament; and
- (j) **The Director-General** of the Corporation.



**[Section 19] Corporation's Power to Promote Measures for Health of Insured Persons**

The Corporation may, in addition to the scheme of benefits specified in this Act, promote 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 may incur in respect of such measures expenditure from the funds of the Corporation **within such limits as may be prescribed by the Central Government.**

3. **[Section 19] - Power of Corporation to promote measures for health of Insured Person**

Additional measures for the improvement of health and welfare of insured person

**[Section 25] Regional Boards, Local Committees, Regional and Local Medical Benefit Councils**

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.

4. **[Section 25] - Corporation may appoint local bodies to delegate work, power and functions to be exercised by such bodies.**



**[Section 26] Employees' State Insurance Fund**

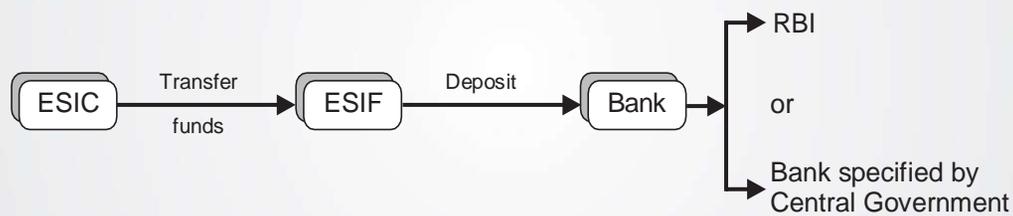
All Contributions paid under this Act and all other money received on behalf of the Corporation **shall be paid into a fund called the Employees' State Insurance fund** which shall be held and administered by the Corporation for the purposes of this Act.

The Corporation may accept grants, donations and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.

All money accruing or payable to the said fund shall be **paid into the Reserve Bank of India or such other bank as may be approved by the Central Government** to the credit on an account styled the Employees' State Insurance Fund.

Such account shall be operated on by such officers as may be authorised by the Standing Committee with the approval of the Corporation.

6.

**[Section 26] - Employer State Insurance Fund (ESIF)**

**[Section 28] Purposes for which the Fund may be Expended**

Employees' State Insurance fund shall be expended **only for the following purposes:**

- i. **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.
- ii. **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 Benefits Councils.
- iii. **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 officers and other services set up for the purpose of giving effect to the provisions of this Act.
- iv. **Establishment and maintenance of hospitals dispensaries** and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families.
- v. **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 person and, where the medical benefit is extended to their families, including the cost of any building and equipment in accordance with any agreement entered into by the Corporation.
- vi. **Defraying the cost (including all expenses) of auditing the accounts of the Corporation** and of the valuation of its assets and liabilities.
- vii. Defraying the cost (including all **expenses**) of the **Employees' State Insurance Courts** set up under this Act.
- viii. 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 authorised by the Corporation or the Standing Committee in that behalf.
- ix. **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.
- x. Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act.
- xi. Defraying expenditure within the limits prescribed, on measures for the improvement of the health and welfare of insured person and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- xii. Such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

7.

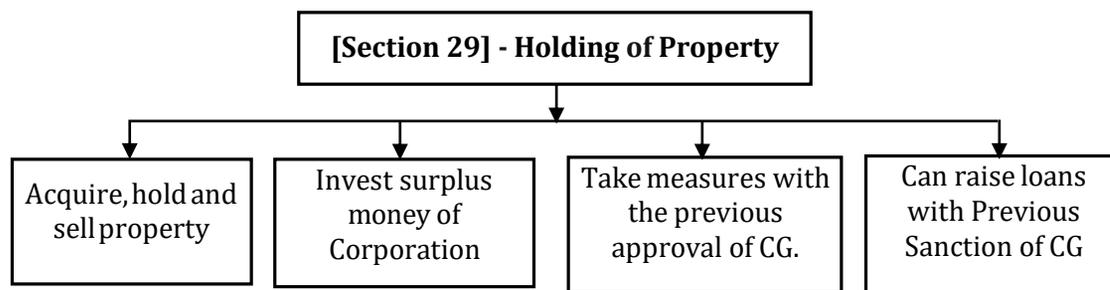
**[Section 28] - Purposes for which ESIF can be used**

- ➔ Payment of benefits to employees and their families.
- ➔ Payment of fees to the local bodies i.e., members of medical benefit council and standing committee.
- ➔ Payment of Salaries to the employees of ESIC.
- ➔ Establishment and maintenances of hospital and dispensaries
- ➔ Payment of contribution to Government.
- ➔ Expenditure of audit of accounts of ESIC.
- ➔ Expenses of Employees' Insurance Court
- ➔ Amount to be paid under any award or decree by Court.
- ➔ Any other purpose authorized by corporation with prior approval of Central Government.

**[Section 29] Holding of Property, etc.**

- i. The Corporation may acquire and hold property both movable and immovable, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it and **do all things necessary for the purposes for which the Corporation is established.**
- ii. The Corporation may, from time to time, **invest any money which is not immediately required for expenses** properly defrayable under this Act and may, subject as aforesaid, from time to time re-invest or realize such investments.
- iii. The Corporation may, with the **previous sanction of the Central Government** and on such terms as may be prescribed by it, **raise loans and take measure for discharging such loans.**
- iv. The Corporation may constitute for the **benefit of its staff** or any class of them, such provident or other benefit fund as it may think fit.

5.



**[Section 38] All Employees to be Insured**

All employees in factories or establishments to which this act applies shall be insured in the manner provided by this Act.

**[Section 39] Contribution of ESIC Fund**

Both employer and employee have to make contribution to ESIC Fund. Employer has to deduct contribution from wages of employees and pay to ESIC Fund both the employer as well as the employees' contribution. The contribution is payable for wage period and it has to be paid within 15 days from the close of the wage period. The employee's contribution is 0.75% of the wages whereas the employer's contribution is 3.25% of the total wage bill of all the employees in respect of every wage period.

It may be noted that the employees earning less than and up to 1137/- per day are exempt from the payment of contribution.

If any **contribution** payable under this Act 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 twelve per cent **per annum** or at higher rate as may be specified in the regulations till the date of its actual payment.

**Provided** that higher interest specified in the regulations shall not exceed the lending rate of interest charge any scheduled bank.

Scheduled bank means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

Note: Within first 24 months of applicability of ESI Act to an establishment, Employer and employee shall make the contribution of 3% and 1% of the wages respectively.

**[Section 40 and 41] Principal Employer to Pay Contribution in the First Instance and Subsequently to be reimbursed from immediate employer (Contractor)**

- i. The **principal employer shall pay** in respect of every employee, whether **directly** employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.
- ii. The principal employer shall, in the case of an employee **directly** employed by him (not being an exempted employee,) be **entitled to** recover from the employee the employee's contribution by deduction from his wages and not otherwise:

Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period.

- iii. Notwithstanding any contract to the contrary, **neither the principal employer nor** the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.
- iv. **Any sum deducted by the principal employer from wages** under this Act shall be **deemed to have been entrusted to him** by the employee for the purpose of paying the contribution in respect of which it was deducted.
- v. The principal employer shall bear the expenses of remitting the contribution to the Corporation.

**[Section 46] Benefits of ESIC**

1. The **insured persons, their dependents** or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely:
  - a. **Periodical payments to any insured person in case of his sickness** certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf (hereinafter referred to as sickness benefit).
  - b. **Periodical payments** to an insured woman in case of **confinement or miscarriage or sickness**

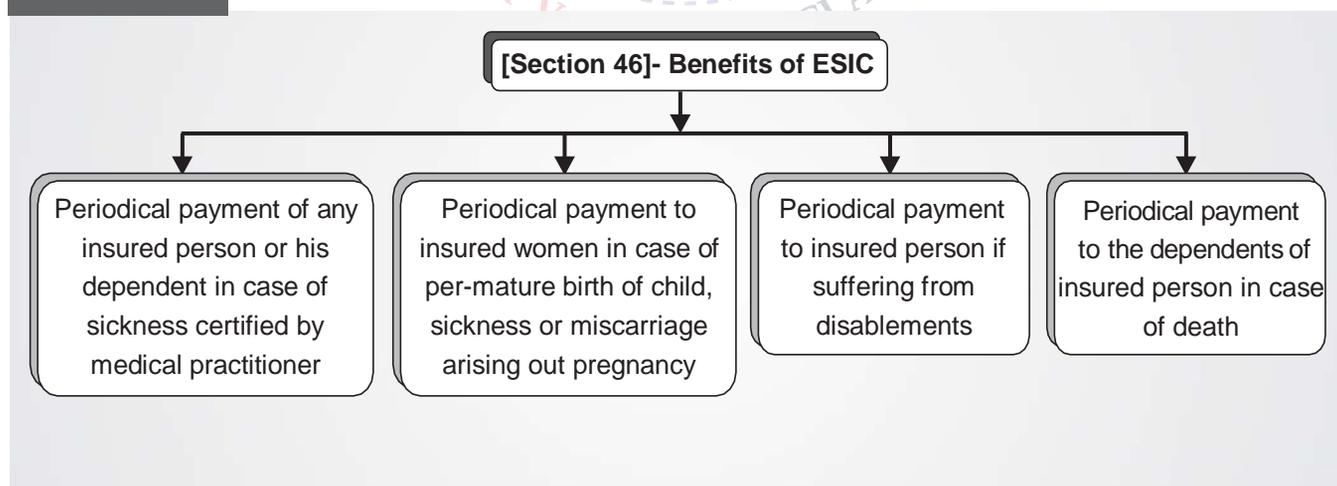
**arising out of pregnancy, confinement, premature birth of child** or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit).

- c. **Periodical payments** to an insured person suffering from **disablements** as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit).
- d. **Periodical payments to such dependents of an insured person who dies as a result of an employment injury** sustained as an employee under this Act, as are entitled to compensation under this Act, (hereinafter referred to as dependents' benefit).
- e. Medical treatment for and attendance on insured persons (i.e. medical benefit).
- f. Payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person or, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as funeral expenses).

Provided that the amount of such payment shall not exceed such amount as may be prescribed by the C.G. and the **Claim for such payment shall be made within three months** of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.

The Corporation may, at the request of the Appropriate Government, extend the medical benefit to the family of an insured person.

### Quick RECAP



**Note: [Section 73]** - Employer shall not dismiss or punish employee during period of sickness or maternity, if done so, then such order shall to be invalid or inoperative.

**[Section 65] Benefits not to be Combined [MSD]**

1. An insured person **shall not be entitled** to receive for the same period:
  - a. Both sickness benefit **and** maternity benefit; or
  - b. Both sickness benefit and disablement benefit for temporary disablement; or
  - c. Both maternity benefit and disablement benefit for temporary disablement.
2. Where a person is entitled to more than one of the benefits mentioned in sub-section (1), he/she shall be entitled to choose which benefit he shall receive.

**[Section 6] - Corporation's Rights where a Principal Employer Fails to Pay**

**If any principal employer fails or neglects** to pay any contribution which under this Act **he is liable to pay** in respect of any employee and by reason thereof such person becomes disentitled to any benefit or entitled to a benefit on a lower scale, **the Corporation may**, on being satisfied that the contribution should have been paid by the principal employer, **pay to the person the benefit** at the rate to which he would have been entitled, **if the failure or neglect had not occurred** AND the Corporation shall be **entitled to recover** from the principal employer either -

- i. **The difference between the amount of benefit** which is paid by the Corporation to the said person **and the amount of the benefit** which would have been payable on the basis of the contributions which were in fact paid by the employer; or
- ii. **Twice the amount of the contribution** which the employer failed or neglected to pay; whichever is greater.

**[Section 73] Employer not to Dismiss or Punish Employee during Period of Sickness, etc.**

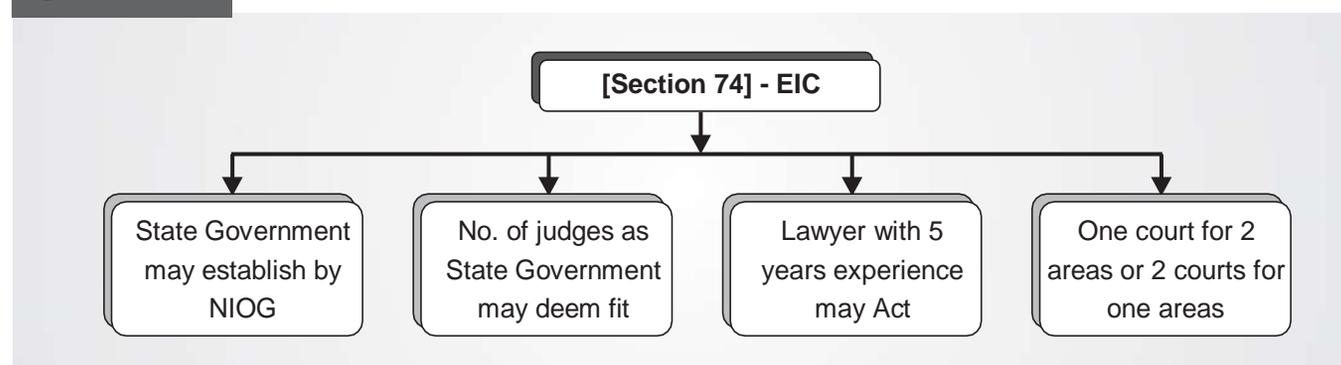
**No employer shall** dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit nor shall he, except as provided under the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

**No notice of dismissal or discharge or reduction given to an employee during the periods specified above shall be valid or operative.**

**[Section 74] Constitution of Employees' Insurance Court**

1. 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.
2. The Court shall consist of such **number of judges as the State Government may think fit.**
3. Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a judge of the Employees' Insurance Court.
4. The State Government may appoint the same court for two or more local areas or two or more courts for the same local area.
5. Where more than one court has been appointed for the same local area, the State Government may by general or special order, regulate the distribution of business between them.

**Quick RECAP**



**[Section 75] Matters to be decided by Employees' Insurance Court**

1. If any question or dispute arises as to:
  - (a) **Whether** any person is an **employee** within the meaning of this Act or whether he is liable to pay the employee's contribution, or
  - (b) The rate of wages or average daily wages of an employee for the purposes of this Act, or
  - (c) The rate of contribution payable by a principal employer in respect of any employee, or
  - (d) The person who is or was the principal employer in respect of any employee, or
  - (e) The right of any person to any benefit and as to the amount and duration thereof, or
  - (f) Any other matter which is in dispute between a principal employer and Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act.

Such question or dispute subject to the provision of sub-Section (2A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

Subject to the provisions of sub-Section (2A), the following claims shall be decided by the Employee' Insurance Court, namely:

- a. Claim for recovery of contributions from the principal employer;
  - b. Claim by a principal employer to recover contributions from any immediate employer;
  - c. Claim against a principal employer under Section 68;
  - d. Claim under Section 70 for the recovery of the value of amount of the benefits received by person when he is not lawfully entitled thereto; and
  - e. Any claim for the recovery of any benefit admissible under this Act.
- (2A) If, in any proceedings before the Employees' Insurance Court, a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

No civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by medical board, or by a medical appeal tribunal or by the Employees' Insurance.

**Exemptions****[Section 87] Exemption of a Factory or Establishment or Class of Factories Establishments**

The **Appropriate Government may, by Notification** in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods **not exceeding one year at a time**.

**[Section 88] Exemption of Persons or Class of Persons**

The **Appropriate Government may, by Notification** in the Official Gazette and subject to such conditions as it may deem fit to impose, exempt any person or class of persons employed in any factory or establishment, or class of factories or establishments to which this Act applies from the operation of the Act.

**Case Laws - 1**

<b>CASE LAW 1</b>	<b>Royal Talkies, Hyderabad vs. ESI Corporation</b>
It was held that employees of the cycle stand and the canteen run in a cinema theatre by contractors to whom the cycle stand and canteen have been leased are employees within the meaning of ESI Act.	
<b>CASE LAW 2</b>	<b>ESIC vs. MM Suri and Associates Pvt. Ltd.</b>
It is not sufficient that 20 persons are employed in the shop. They should also be covered under the meaning of 'employee' as per the Act.	
<b>CASE LAW 3</b>	<b>Regional Director, ESI vs. Francis de Costa</b>
The Supreme Court held that mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory. Thus the injury cannot be said to be caused by an accident arising out of and in the course of employment.	
<b>CASE LAW 4</b>	<b>ESIC vs. Babulal</b>
It was held that injury arose out of employment where a workman attending duty in spite of threats by person giving call for strike and was assaulted by them while returning after his duty was over.	
<b>CASE LAW 5</b>	<b>Jayanthilal Dhanji Co. vs. ESIC</b>
An injury caused to a worker while knocking the belt of the moving pulley was held to be an employment injury.	
<b>CASE LAW 6</b>	<b>Shyam Devi vs. ESIC</b>
The word injury does not mean only visible injury but also includes sickness, maternity and employment injury.	
<b>CASE LAW 7</b>	<b>Hyderabad Asbestos Cement Products vs. ESIC</b>
The word employee would include not only persons employed in a factory but also persons connected with the work of the factory.	
<b>CASE LAW 8</b>	<b>ESIC vs. Apex Engineering Pvt. Ltd.</b>
It was held that Managing director could also be an employee of the company and hence covered under the Act.	
<b>CASE LAW 9</b>	<b>Handloom House Ernakulum vs. Regional Director, ESIC</b>
<b>Wages</b> include other additional remuneration paid at intervals not exceeding two months <b>wages</b> .	
<b>CASE LAW 10</b>	<b>RD, ESI vs. L. Ranga Rao</b>
Time of place of accident shouldn't be totally unrelated to employment.	

## Chapter – 16

# The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

### List of Sections

Sections	Particulars of Section
1	Applicability
2	Definition
5A	Central Board
5AA	Executive Committee
6	Employee provident fund scheme
6A	Employee pension scheme
7A	Money due from employer
7B	Review of order
7C	Escaped Amount
(7I, 7L and 7O)	Appeal against order of officer
8B	Recovery
10	Protection Against Attachment
12	Not to reduce salary for the purpose of reduction in contribution towards PF
13	Inspector & Power
16	Non applicability
16A	Authorizing employer to maintain PF A/c
17	Exempted establishment
17A	Transfer of Account
17B	Liability of employee

### [Section 1] Applicability of PF Act

#### Factories

The Act applies to every establishment fulfilling the following conditions:

- (a) The establishment is a factory.
- (b) The establishment is engaged in any industry specified in Schedule I.
- (c) The establishment employs 20 or more persons.

#### Any other establishment

The Act applies to every establishment fulfilling the following conditions:

- (a) The establishment employs 20 or more persons.
- (b) The Act has been made applicable to such establishment (or to the class of establishments in which such establishment falls) by the Central Government by notification in the Official Gazette

The Act applies to every establishment employing less than 20 person Than 20 persons if the following conditions are satisfied:

- (a) The Act has been made applicable to such establishment by Central Government by notification in the Official Gazette.

- (b) Before issue of such notification, the Central Government shall give 2 months, notice to establishment.

#### **Applicability on request**

An establishment to which the provisions of the Act do not apply, shall also be covered under the Act if the following conditions are satisfied:

- (a) An application for this purpose is made to the Central Provident Fund Commissioner.
- (b) The application is made by the employer and majority of employees of the establishment.
- (c) The Central Provident Fund Commissioner issues a notification in the Official Gazette making the provisions of the Act applicable to such establishment.

#### **Applicability to departments and branches [Section 2A]**

If the provisions of the Act become applicable to all establishment, and to all the branches of the establishment (wherever they are situated) shall also be covered under the Act.

#### **Continued applicability of the Act**

If the provision of the Act become applicable to an establishment once, then Act shall continue to apply to such establishment even if the number of Employees falls below 20.

#### **Definitions [Section 2]**

##### **Factory [Section 2(g)]**

Factory means –

- ♦ 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 of power.

##### **Manufacture or Manufacturing Process [Section 2(ic)]**

Manufacture or manufacturing process means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

##### **Employer [Section 2(e)]**

- ♦ In relation to an establishment which is a factory, employer means-
  - (a) The owner or occupier of the factory (Occupier means the person who has ultimate control over the affairs of the factory).
  - (b) The agent of such owner or occupier.
  - (c) The legal representative of a deceased owner or occupier.
  - (d) Person named as a manager of the factory under the Factories Act.
- ♦ In relation to any other establishment, employer means –
  - (a) The person having the ultimate control over the affairs of the establishment;
  - (b) The manager or the managing director to whom the affairs of the establishment are entrusted.

##### **Employee [Section 2(f)]**

- ♦ Employee means any person –
  - (a) Who is employed for wages
  - (b) In any kind of work, whether manual or otherwise,
  - (c) In or in connection with the work of an establishment,
  - (d) Who gets his wages directly or indirectly from the employer.
- ♦ Employee includes any person –
  - i. Employed by or through a contractor in or in connection with the work of the establishment

- ii. Engaged as an apprentice (not being an apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment).

### Basic Wages [Section 2(b)]

- ♦ 'Basic wages' means –
  - (a) All emoluments
  - (b) Which are earned by an employee
  - (c) In accordance with the terms of the contract of employment
  - (d) Which are paid or payable in cash to him
  - (e) While
    - (a) on duty; or
    - (b) while on leave with wages; or
    - (c) while on holidays with wages.
- ♦ 'Basic wages' does not include –
  - i. The cash value of any food concession
  - ii. Any dearness allowance (i.e., all cash payments by whatever name called, paid to an employee on account of a rise in the cost of living)
  - iii. House-rent allowance, overtime allowance
  - iv. Bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment
  - v. Any present made by the employer.

### Authorized Officer [Section 2(aa)]

- ♦ Authorized officer means –
  - A. Central Provident Fund Commissioner
  - B. Additional Provident Fund Commissioner
  - C. Deputy Provident Fund Commissioner
  - D. Regional Provident Fund Commissioner
  - E. Such other officer as may be authorized by Central Government, by notification in Official Gazette.

### Appropriate Government [Section 2(a)]

- ♦ AG means Central Government in the following cases:
  - i. In relation to an establishment belonging to, or under the control of Central Government (Central Government).
  - ii. In relation to an establishment connected with a railway company, a major port, a mine or an oil field or a controlled industry.
  - iii. In relation to an establishment having departments or branches in more than one State.

In relation to any other establishment, AG means SG.

- ♦ Exempted employees [Section 2(ff)] Exempted employee means an employee in respect to which the Scheme does not apply  
By reason of an exemption granted under Section 17.
- ♦ Exempted establishment [Section 2(fff)] Exempted establishment means an establishment. In respect of which an exemption has been granted under Section 17 from the operation of all or any of the provisions of the Scheme.

### Non-Applicability of PF Act [Section 16]

#### Co-operative Society

- ♦ An establishment fulfilling the following conditions:
  - (a) The establishment has been registered under the Co-operative Societies Act.

- (b) It employs less than 50 persons.
- (c) It is working without the aid of power.

### **Government Undertaking**

- ♦ Any establishment fulfilling the following conditions:
  - (a) It belongs to the Central Government or State Government is under the control of Central Government or SG.
  - (b) The employees of the establishment are entitled to benefit of contributory provident fund or old age pension.

### **Undertaking Constituted under an Act**

- ♦ Any establishment fulfilling the following conditions:
  - (a) It has been set up under any Central or State Act.
  - (b) The employees of the establishment are entitled to benefit of contributory provident fund or old age pension.

### **Exemption by Notification**

- ♦ Any class of establishments may be given exemption from the provisions of the Act, if the following conditions are satisfied.
  - (a) The exemption can be given by the Central Government only by way of issue of a notification in the Officer Gazette.
  - (b) The exemption shall be given for such period and on such terms and conditions as may be specified in the notification. The exemption may be prospectively or retrospectively.
  - (c) Central Government shall consider the financial position of such class of establishments and other relevant circumstances before granting the exemption.

### **Authorising Certain Employers to Maintain Provident Fund Accounts [Section 16A]**

#### **1. Conditions for Authorization**

- ♦ Generally, the account of every employee is maintained in the provident fund office. However, an establishment may be permitted to maintain the PF accounts of its employees, if the following conditions are satisfied:
  - (a) An application is made to Central Government for seeking permission to maintain the PF accounts.
  - (b) The application must be made by the employer and the majority of employees.
  - (c) The establishment employs 100 or more persons.
  - (d) The establishment has not committed any default in the payment of provident fund contribution or any other offence under this Act during 3 years immediately preceding the date of application.
  - (e) The Central Government has authorized the employer, by an order in writing, to maintain the provident fund accounts.

#### **2. Terms and Conditions of Authorization**

- ♦ The authorization may contain the following terms and conditions to be complied with by the employer:
  - (a) Manner of maintenance of provident fund accounts
  - (b) Submission of returns
  - (c) Manner of depositing the contribution (i.e., the PF money shall be deposited with the PF Authorities)
  - (d) Facilities to be provided for inspection
  - (e) Payment of administrative charges
 Other terms and conditions.

### 3. Cancellation of Authorization

- ♦ Grounds of cancellation
- ♦ The authorization given by Authorization may be cancelled by Central Government. If the employer –
  - I. Fails to comply with any of the terms and conditions of the authorization; or
  - II. Commits any offence under any provisions of the Act.

### 4. Conditions for Cancellation

- (i) Before cancelling the authorization, Central Government shall give the employer a reasonable opportunity of being heard.
- (ii) The order of cancellation shall be in writing.

## Exempted Establishment [Section 17]

### A. Exemption from Provident Fund Scheme

- (a) Exemption by whom? The exemption may be given by Appropriate Government.
- (b) Manner of giving exemption. The exemption can be given only by way of a notification in the Official Gazette.
- (c) Terms of exemption such
  - I. The exemption shall be subject to conditions as may be specified in the notification.
  - II. The exemption may be given prospectively or retrospectively.
  - III. The exemption may be given from the operation of all or any of the provisions of any Scheme.
- (d) Conditions for giving exemption
  - (a) Appropriate Government must form an opinion that –
    - The rules of provident fund with respect to the rates of contribution are not less favorable than those specified in the Scheme; and
    - The employees are also in enjoyment of other provident fund benefits which on the whole are not less favorable to the employees than the benefits provided under this Act or Scheme.
  - (b) Before giving the exemption, AG shall consult the Central Board. The Central Board shall forward its view within such time limit as may be specified in the Scheme.

### 1. Applicability of Provisions on Exempted Establishment

- (a) The terms and conditions as may be specified in the notification granting exemption shall apply to the exempted establishment.
- (b) If the employer contravenes, or makes default in complying with any of the said provisions or conditions or any other provision of this Act., he shall be punishable under Section 14 as if the said establishment had not been exempted.

### 2. Duties of Employer

The employer shall establish a Board of Trustees for the administration of the Provident Fund.

### 3. Duties of Board of Trustees

- (a) The Board of trustees shall –
  - (i) Maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee.
  - (ii) Submit such returns as may be directed from time to time.
  - (iii) Invest the PF money in accordance with the directions issued by Central Government.
  - (iv) Transfer, where necessary, the Provident Fund Account of any employee, and

- (v) Perform such other duties as may be specified in the Scheme.
- (b) If the trustees contravene, or make default in complying with, any of the duties entrusted to them, they shall be deemed to have committed an offence under Section 14 and shall be punishable accordingly.

### **B. Exemption from Pension Scheme**

#### **1. Exemption by whom?**

The exemption may be given by the Appropriate Government.

#### **2. Manner of giving exemption**

The exemption can be given by way of a notification in the Official Gazette.

#### **3. Terms of exemption**

The exemption shall be subject to such conditions as may be specified in the notification.

The exemption may be given prospectively or retrospectively.

The exemption may be given from the operation of all or any of the provisions of any Scheme.

#### **4. Conditions for giving exemption**

Appropriate Government must form an opinion that the pensionary benefits available to the employees of the establishment are at par or more favourable than the Pension Scheme framed under this Act..

### **C. Exemption from Insurance Scheme**

#### **1. Exemption by whom?**

The exemption may be given by the Central Provident Fund Commissioner.

#### **2. Manner of giving exemption**

The exemption can be given by way of a notification in the Official Gazette.

#### **3. Terms of exemption**

The exemption shall be subject to such conditions as may be specified in the notification.

The exemption may be given prospectively or retrospectively.

The exemption may be given from the operation of all or any of the provision of any Scheme.

#### **4. Conditions for giving exemption**

The Central Provident Fund Commissioner must be satisfied that the employees of such establishment are, without making any separate contribution or payment of premium, in enjoyment of benefits in the nature of life insurance, and such benefits are more favourable to such employees than the benefits admissible under the Insurance Scheme.

### **The Central Board [Section 5A]**

#### **Meaning of 'Fund'**

The contributions to Provident Fund Scheme, Employees Pension Scheme and Employees Deposit Linked Insurance scheme are credited to a fund.

#### **Administration of Fund**

The fund vests in and is administered by Central board of Trustees, i.e., Board of Trustees or simply the Board.

The Central Board is formed by Central Government by notification in the Official Gazette. In other words, Central Board shall administer the following funds:

- (a) The Employees Provident Fund
- (b) The Employees Pension Fund

(c) The Employees Deposit Linked Insurance Fund.

### Board is a Body Corporate

The Board of Trustees is a body corporate having perpetual succession and common seal.

### Composition of Board

I	Chairman	Appointed by Central Govt.(Central Government)
I	Vice Chairman	
I	Central Provident Fund Commissioner	
Maximum 5 Officials	Representing Central Government	
Maximum 15 Officials	Representing State Government	
10 persons	Representing employers	Appointed by Central Government in consultation with association of employers
10 persons	Representing employees	Appointed by Central Government in consultation with organization of employees

### Functions of Central Board

The Central Board shall administer the Provident Fund Scheme, Employees Pension Scheme and Employee Deposit Linked Insurance Scheme in such manner as provided in the respective Schemes.

The Central Board shall take policy decisions.

#### Accounts, audit and annual report

**Accounts:** The Central Board shall maintain the accounts relating to income and expenditure.

The accounts shall be maintained in such form and such manner as specified by Central Government in consultation with Comptroller and Audit General of India (CAGI).

**Audit:** The accounts of the Central Board shall be audited annually.

The audit shall be conducted by CAGI.

**Annual:** The audited accounts and annual

**Report:** Report on the working of the Central Board shall be forwarded to Central Government.

### Delegation of Power by Central Board

- (a) The Central Board may delegate authority subject to such conditions and limitations as it may deemed fit.
- (b) The powers may be delegated to -Executive Committee, or State Board, or Chairman or any other officer of the Board.

### Executive Committee [Section 5AA]

#### Composition of the Committee

Executive Committee is constituted by Central Government by Notification in the Official Gazette.

Executive committee shall consist of 13 members.

The members of the Executive Committee are Selected out of the members of the Central

Board. The Executive Committee consists of the following members:

Chairman	From amongst the members of the Central Board	Appointed by Central Government
2 persons	From amongst the representatives of Central Government elected to the Central Board	
3 persons	From amongst the representatives of State Government elected to the Central Board	
3 persons	From amongst the representatives of employers elected to the Central Board	Elected by the Central Board
3 persons	From amongst the representatives of employees elected to the Central Board	
1 person	Central Provident Fund Commissioner	

#### **Purpose of constitution of Executive Committee**

The purpose of executive committee is to assist the Central Board in its functions.

The Scheme shall provide for –

- (a) Terms and conditions subject to which a member of the Central Board may be appointed or elected to the Executive Committee;
- (b) The time, place and procedure of the meetings of the Executive Committee

#### **Determination of Application of the Act and Moneys Due From the Employer [Section 7A]**

##### **Nature of Disputes**

- (a) Dispute regarding applicability of the Act to an establishment
- (b) Amount due from any employer under any provision of the Act and the Scheme. The amount due may be in respect of –
  - a. Contribution
  - b. Administration charges
  - c. Damages payable by employer for delayed payment
  - d. Any other amount payable by employer.

##### **Who is empowered to determine dispute?**

- a. Central Provident Fund Commissioner
- b. Additional Provident Fund Commissioner
- c. Deputy Provident Fund Commissioner
- d. Regional Provident Fund Commissioner

##### **Powers of Officers**

- a. He may make such enquiry as deemed fit. The enquiry shall be judicial proceeding.
- b. He shall follow the principle of natural justice. He may pass an order, in accordance with the provisions of the Act and the scheme, as he deems fit.
- c. He shall have same powers as are vested in Civil Court for
  - (a) Enforcing attendance
  - (b) Requesting discovery and production of documents
  - (c) Receiving evidence on affidavit
  - (d) Issuing commissions for examination of witnesses

**Power to order ex parte**

If employer does not attend hearing or does not produce any record, order can be passed ex parte, based on available evidence.

If ex parte order is passed, employer can request for setting aside the order and give fresh hearing, if the following conditions are satisfied:

- (a) The employer has to satisfy the officer that he could not attend or reply due to sufficient reasons.
- (b) The employer has not filed any appeal against the ex parte order.
- (c) Before setting aside the ex parte order, notice shall be given to the opposite party.

**Review of Order [Section 7B]****Rights Given under Section 7B**

Section 7B confers a right to make an application for review of an order made under Section 7A. Review at whose instance?

- a. Any person aggrieved by an order under Section 7A can make an application for review.
- b. The officer can himself review the order on his own motion.

No review if appeal is filed:- No application for review can be made if an appeal is filed against the order made under Section 7A.

**Time limit:** The application for review can be made within 45 days of order made under Section 7A.

Cases in which application can be made

- (a) If new and important evidence is discovered which could not be produced earlier as it was not within the employer's knowledge even after due diligence; or
- (b) There is some mistake or error apparent from the records; or
- (c) Any other sufficient reason.

**Action by the Officer**

The officer may -

- (a) Reject the application for review if there are not sufficient grounds for review; or
- (b) Grant the review.

**Appeal Against the Order of Officer**

- a. Appeal cannot be filed against order rejecting the application for review.
- b. If fresh order is passed after the review, appeal can be filed against such order.

**Escaped Amount [Section 7C]****Rights Given under Section 7C**

1. The officer is empowered to re-determine the amount due from employer if such amount has escaped from determination.
2. The re-determination can be made -
  - (a) If the employer had not disclosed all material facts for determining the correct amount payable; or
  - (b) Even if there was no omission or failure on the part of the employer in disclosing all the material facts.

**Conditions for Exercising Right under Section 7C**

- (a) Re-determination can be made only when determination was made under Section 7A or 7B.
- (b) The re-determination can be made at any time within 5 years from the date of communication of order under Section 7A or 7B.
- (c) Before re-determination of the amount due from employer, the employer shall be given reasonable opportunity of representing his case.

### **Appeal Against Order of Officer [Section 7I, 7L and 7O]**

#### **Appeal to whom?**

Appeal against various orders passed under the Act can be made to Employees 'Provident Funds appellate Tribunal' ('Tribunal').

#### **Conditions for Filing Appeal**

- (a) Appeal can be entertained only after depositing 75% of the amount demanded.
- (b) However, Tribunal can waive or reduce the deposit, for reasons to be recorded in writing.

#### **Procedure Adopted by Tribunal**

Tribunal will give opportunity of being heard to the parties before passing any order.

Order of Tribunal

*Tribunal may pass any of the following orders:*

- (a) Confirm, modify or set aside the order appealed against
- (b) Remand the matter back to the authority for fresh decision, with such directions as Tribunal may deem fit.

#### **Effect of Order of Tribunal**

- (a) Copies of the order of Tribunal shall be sent to the parties to appeal.
- (b) The order passed by Tribunal is final. No appeal can be filed in any court against such order.

#### **Rectification of Order Passed**

The Tribunal has the power to rectify its own order.

The rectification can be made –

- (a) If the mistake is apparent from the records.
- (b) Within 5 years from date of order.
- (c) Only after giving notice and opportunity of being heard to the employer before passing the order, if the order has the effect of increasing the liability of the employer.

#### **Recovery of Money From Employer [Section 8 to 8E]**

Issue of certificate to recovery officer:- The authorized officer is required to issue a Certificate to Recovery Officers specifying the amount due from the employer.

#### **Which recovery officer?**

The recovery certificate shall be sent to the Recovery Officer within whose jurisdiction-

- (a) The business or profession is situated, or
- (b) Employer resides, or
- (c) Any immovable or movable property of establishment or employer is situated.

#### **Mode of Recovery**

- (a) Attachment and sale of the movable or immovable property of the establishment. If amount so recovered is insufficient for recovering the whole of the amount of arrears specified in the certificate, the movable and immovable property of the employer may also be attached and sold.
- (b) Arrest of the employer and his detention in prison.
- (c) Appointing a receiver for the management of the movable or immovable properties of the establishment or the employer.

#### **Stay of Proceedings**

- (a) The authorized officer may grant time for the payment of the amount, and thereupon the

Recovery Officer shall stay the proceedings until the expiry of the time so granted.

- (b) The stay of proceedings may be granted notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount.

### **Transfer of Accounts [Section 17A]**

#### **If the New Establishment is Covered under Provident Fund (PF) Act**

If an employee, who is a member of Provident Fund, leaves an establishment he obtains re-employment in another establishment the new establishment is also covered under PF Act

Then - the amount standing to his credit will be transferred to his account in the new establishment (i.e., the establishment where he is re-employed).

#### **If the New Establishment is not Covered under PF Act**

If an employee who is a member of PF, leaves an establishment he obtains re-employment in another establishment the new establishment is not covered under Provident Fund Act the new establishment has a Provident Fund of its own the rules of such provident fund permit such transfer.

Then at the request of employee within such time as may be specified by Central Government the amount standing to his credit will be transferred to his account in the new establishment.

#### **If the Old Establishment was Not Covered under PF Act**

If an employee is employed in an establishment to which the provisions of the PF Act do not apply such establishment has its own Provident fund the rules of such provident fund permit such transfer the employee leaves such establishment he obtains re-employment in another establishment the new establishment is covered under PF Act.

Then at the request of employee the amount standing to his credit will be transferred to his account in the new establishment.

### **Protection Against Attachment [Section 10]**

**Nature of protections:** The amount standing to the credit of any member in the fund –

- (a) Shall not in any way be capable of being assigned or charged.
- (b) Shall not be liable to attachment under any decree or order of any court in respect of any debt or liability.
- (c) Shall not be capable of being claimed by the official assignee or the official receiver.
- (d) Shall be free from any debt or other liability (in the hands of the nominee) incurred by the deceased member.

**No protection:** The employee cannot claim any protection in respect of the money which has been withdrawn by him from the PF Account.

### **Liability of Employer in Case of Transfer of Establishment [Section 17B]**

**Contribution due upto the date of transfer:** - If an employer transfer (whether by way of gift, sale, lease or any other mode) an establishment, he as well as transferee of the establishment shall be jointly and severally responsible for contributions and other sums due upto the date of transfer of establishment.

**Limitation on liability:** Liability of transferor:- The liability of transferor shall be limited with respect to the period upto the date of transfer

**Liability of transferee:** The liability of transferee shall be limited to the assets obtained by him by way of transfer of establishment.

### **Inspectors [Section 13]**

#### **Appointment**

- (a) Appropriate Government empowered to appoint the inspectors for the Purposes of

Employee Provident fund Act, EPF Scheme, Pension Scheme, and Insurance Scheme. The appointment of inspector shall be made by issue of a notification in the Official Gazette.

- (b) The respective jurisdiction of the inspectors shall be specified by the Appropriate Government.
- (c) The inspector is a 'public servant' within the meaning of Section 21 of Indian Penal Code.

#### **Powers of Inspector**

- (a) To call such information from the employer or contractor as he considers necessary.
- (b) To enter into any establishment and require production of any books, registers and documents.
- (c) To examine the employer, his agent or servants.
- (d) To make copies and take extracts of any book, register or other document.
- (e) To seize the books, registers or other documents as he considers necessary if he has reason to believe that any offence under this Act has been committed by an employer.
- (f) To exercise such other powers as may be provided in Provident Fund Scheme, Pension Scheme or Insurance Scheme.

### **[Section 6] Employees Provident Fund Scheme (1952)**

#### **Quantum of Contribution**

Employer's contribution	10% of pay (i.e., basic wages plus dearness allowance plus retaining allowance).
Employer's contribution	10% of pay. Employee may voluntarily contribute a higher amount.
Rounding off	The contribution has to be round off to nearest rupee.
'Dearness allowance'	Dearness allowance includes cash value of any food concession allowed to the employee.
'Retaining allowance'	Retaining allowance means an allowance payable to an employee during any period during which the establishment is not working for retaining his services.

#### **Increase in Rate of Contribution**

- (a) Central Government is empowered to increase the rate of contribution to 12%.
- (b) The power shall be exercised by way of a notification in the Official Gazette.

**Employee earning more than `15,000:** If the pay of an employee exceeds `15,000, the employer's contribution shall be 10%/12% of `15,000.

**Diversion to Employees' Pension Scheme:** Out of employer's contribution of 10% / 12%, the Employer's contribution of 8.33% shall be diverted to Employees' Pension Scheme.

### **[Section 6A] Employees Pension Scheme (1995)**

#### **Quantum of Contribution**

- (a) Employer's contribution of 8.33% shall be diverted to Employees' Pension Scheme.
- (b) Central Government can contribute @ 1.16% of pay to maximum. of `15000/- month.

#### **Benefits Under the Scheme**

- (a) Members will get pension –
  - i. on superannuation; or
  - ii. on retirement from service; or
  - iii. upon permanent total disablement during employment.
- (b) Pension will be available to widow/ widower for life or till he/she remarries.
- (c) Children will be entitled to pension, upto 25 years of their age. Benefit of pension to children is restricted only for 2 orphans.
- (d) Orphans will be entitled to pension at enhanced rate

- Benefits of pension to orphans is restricted only for 2 orphans
- (e) If the person is unmarried or has no family, pension is available to nominee for a specified period.

### Employee's Deposit Linked Insurance Scheme (1976)

Employer	The employer is required to pay contribution which cannot be more than 1% of pay of employee. Presently, the rate of contribution is 1%.
Employee	The employees do not contribute any amount to the scheme.
Central Government contribution	Central Government also contributes to the Insurance Fund at the rate of 0.25% of pay of every employee.

Section 12 – Employer not to reduce wages in order to reduce contribution of Provident Fund.

### Practical Questions

**2008 – Dec (8):** Attempt the following in stating relevant legal provisions and case law, if any:

- (i) An establishment discontinued deduction towards contribution to provident fund from its employees' salary and stopped remitting contribution of its share of provident fund when the number of its employees on rolls fell to fifteen. Do the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 cease to be applicable to the establishment under such circumstances? (4 marks)

**Ans.** No, the provisions of the Employer's Provident Fund Miscellaneous Provisions Act, 1952 will not cease to be applicable to the establishment merely on the ground that the number of employees has rolled down to fifteen. Though the applicability of the Act takes place on 20 employees yet if the number fall below, even then the Act remains applicable.

**2009 – Dec (8):** Attempt the following in stating relevant legal provisions and decided case law, if any :

- (ii) Raju has been employed by Fancy Bazar as a part-time sweeper to clean the floor twice during the day. The provident fund inspector visited the establishment and raised objections for non-inclusion of his name in the muster roll and not paying provident fund contributions. Is the view held by the inspector valid? (4 marks)

**Ans.** The contention of the inspector is legally tenable.

As per Section 2(f) of the Employees provident Funds Act, 1952 the term 'employee' includes a part time employee. Thus Raju who has been employed by fancy Bazar as part time sweeper shall be covered within the ambit of employee by virtue of Section 2(f) of the Act.

**2002 – Dec (7) (C) (b):** Calculate the pension of an employee who has rendered 33 years of services and his salary at the time of retirement is `5,000 per month. (3 marks)

**Ans.** Pension amount as per the provisions of the Employees provident Fund & Miscellaneous Provisions Act, 1952 is calculated as follows

$$\text{Monthly pension} = \frac{\text{Pension salary} \times (\text{Pensionable Service}) + 2}{70}$$

In the above case, monthly pension is

$$\text{Monthly pension} = \frac{5000 \times (33 + 2)}{70}$$

Monthly Pension = `2500 per month.

**2003 - Dec (7) (C) (b):** Attempt the following stating the relevant legal provisions and case law :

- (iii) Two partners of a partnership firm are taking salaries from the firm. Will they be treated as 'employees' under the Employees Provident Funds and Miscellaneous provisions Act, 1952? (3 marks)

**Ans.** According to Employee Provident Funds & Miscellaneous provisions Act, 1952, working partners drawing salary or other allowances are not employees. Hence, the two partners of a partnership firm taking salaries from the firm will not be treated as employees under the act.

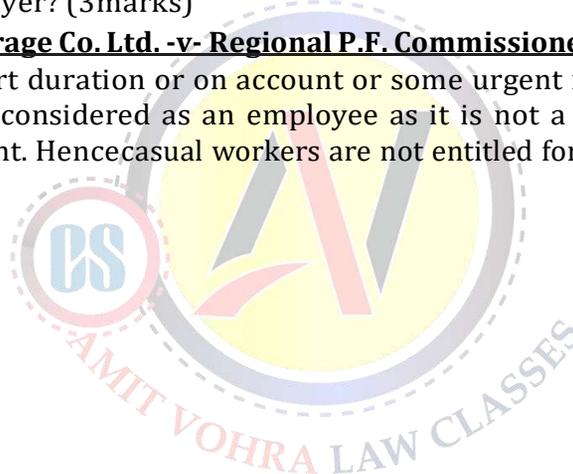
- (iv) A company recruits trainees who will not be paid anything in cash. However, the company will provide for their board and lodging. Will they cover under the Employees's State Insurance Act, 1948? (3 marks)

**Ans.** Employees under the Employee's State Insurance Act, 1948 means any person employed for wages in connection with the work in an establishment.

**2007 - June (7) (C) (b):** Attempt the following stating the relevant legal provisions and case law:-

- (iv) Jay-Kay Ltd. employed casual workmen for a short duration of two months to execute a contingency plan of its operations. Are the casual workmen entitled for provident fund contribution from the employer? (3 marks)

**Ans.** In a case of **Bikaner cold Storage Co. Ltd. -v- Regional P.F. Commissioner**, Rajasthan states that a person employed for a short duration or on account of some urgent necessity or abnormal contingency should not be considered as an employee as it is not a regular feature of the Business of the establishment. Hence casual workers are not entitled for P.F. contribution from the employers.



## Chapter - 17

### The Labour Laws (Exemption from Furnishing Returns and Maintaining Register by Certain Establishments) Act, 1988

OR

### Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

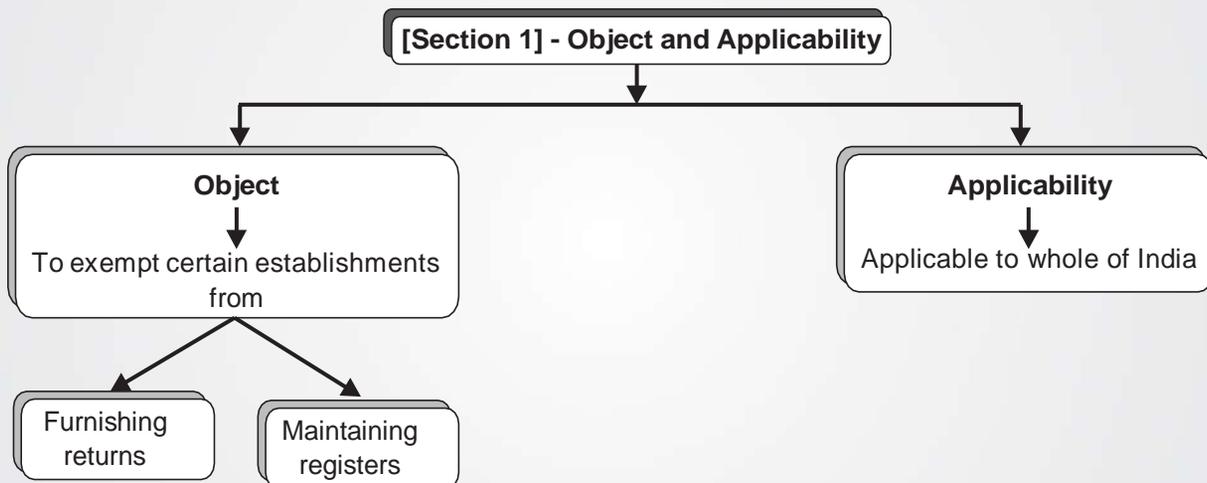
#### List of Sections

Section	Particulars of Section
1	Extent and Applicability
2	Definitions
2(d)	Scheduled Act
2(e)	Small establishments
2(f)	Very small establishments
6	Penalty

#### [Section 1] Introduction and Objective

- The act provides for the exemption of employers in relation to establishments enjoying a smaller number of persons from furnishing returns and maintaining registers under certain labour laws.
- It extends to **whole of India**.

#### Quick Recap



### [Section 2] Define the Following Terms

#### [Section 2(d)] Scheduled Act

Scheduled Act means the acts specified in the **first Schedule**:

- ♦ The Payment of Wages Act, 1936
- ♦ The Weekly Holidays Act, 1942
- ♦ The Factories Act, 1948
- ♦ The minimum wages Act, 1948
- ♦ The motor transport workers Act, 1961
- ♦ The Plantation Labour Act, 1951
- ♦ The Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous provisions Act, 1955
- ♦ The Contract Labour (regulation and Abolition) Act, 1970
- ♦ The Sales Promotion Employees (Conditions of service) Act, 1976
- ♦ The Equal Remuneration Act, 1976
- ♦ The Payment of Bonus Act, 1965
- ♦ The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
- ♦ The Dock Workers (safety, health and welfare) Act, 1986.
- ♦ The Child Labour (Prohibition and regulation) Act, 1986.
- ♦ The Building and other Construction Workers (regulation, employment and conditions of service) Act, 1996.
- ♦ The Beedi and Cigarette Workers (Conditions of Employment) Act, 1966.

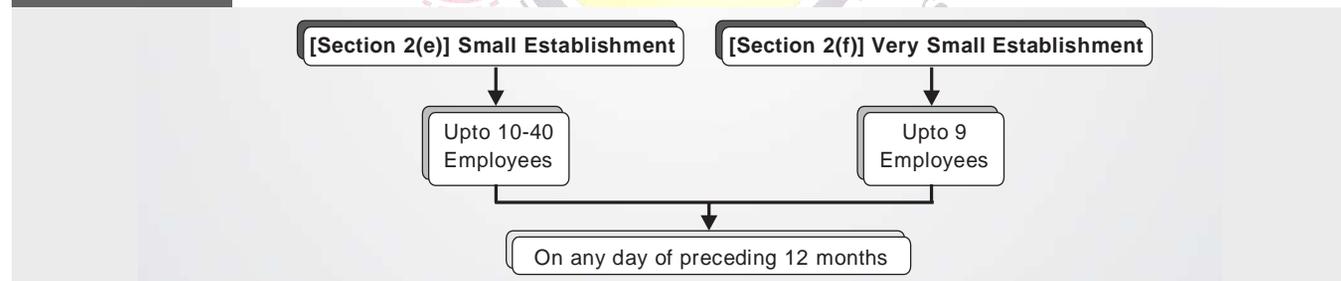
#### [Section 2(e)] Small Establishment

Small establishment means an establishment in which **not less than ten and not more than forty persons are employed** or were employed on any day of the preceding twelve months.

#### [Section 2(f)] Very Small Establishment

Very small establishment means an establishment in which **not more than nine persons are employed** or were employed on any day of the preceding twelve months.

#### Quick Recap



### Exemption from Furnishing or Maintaining of Returns and Registers Required under Certain Labour Laws

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.

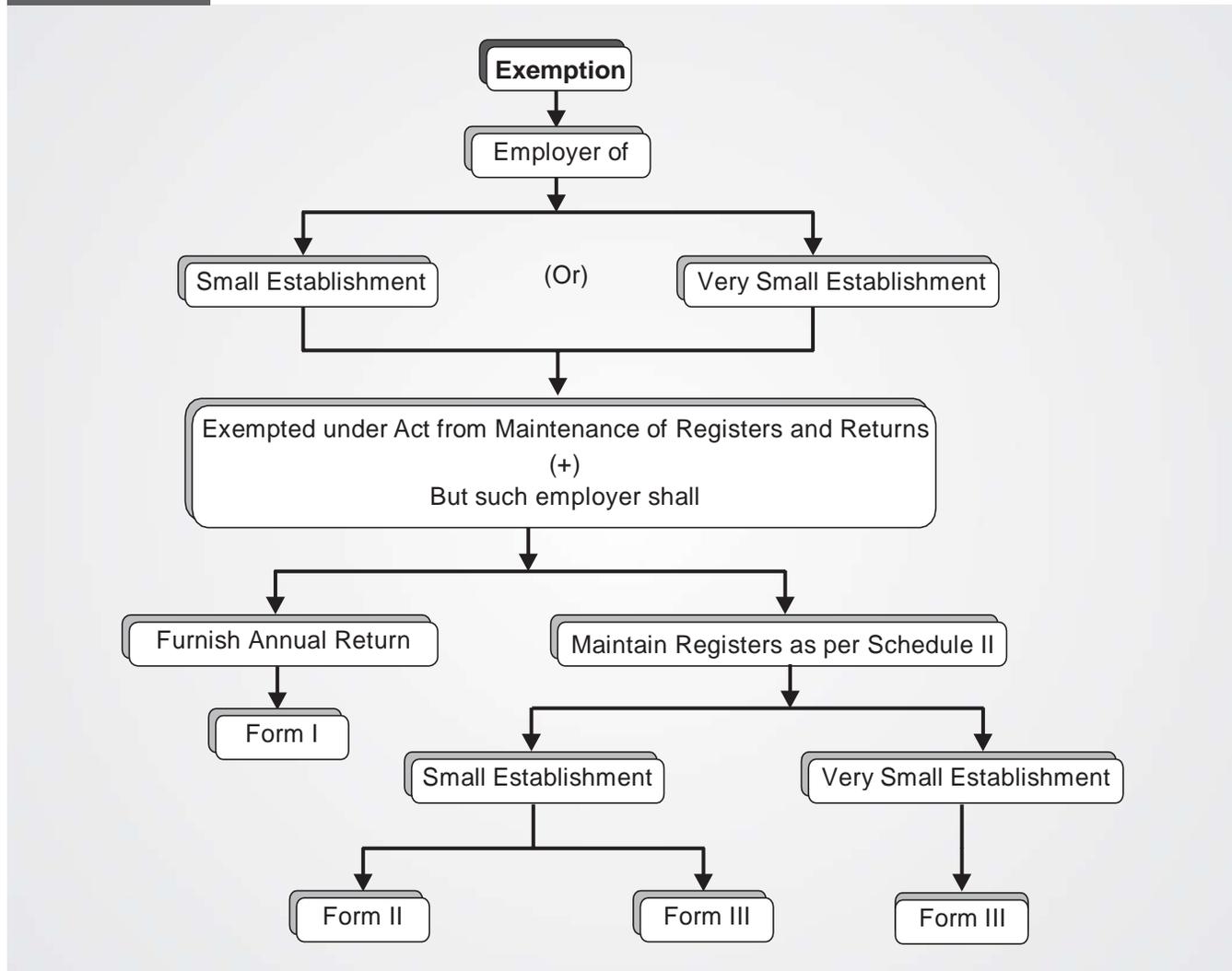
However, such employers are required to:

- ♦ Furnish a **Annual return in Form I**.
- ♦ Maintain registers

In **Form II, and Form III** in the case of small establishments **and**  
In **Form III** in the case of very small establishments.

It may be noted that as per section 2(d) “Scheduled Act” means the acts specified in the first schedule and includes the rules made there under.

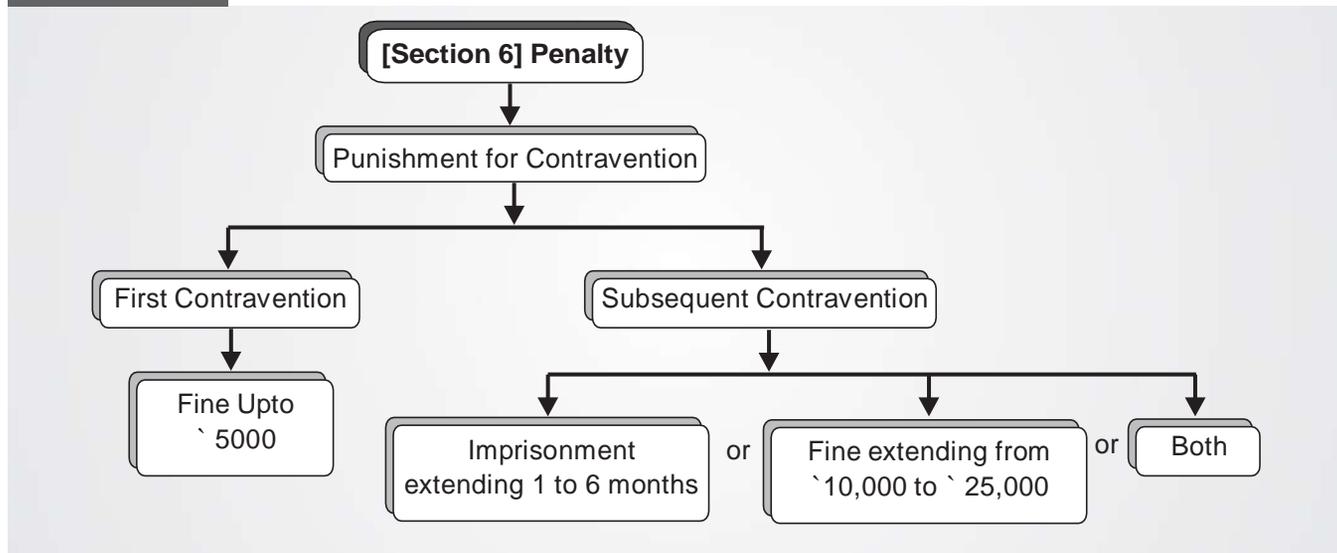
## Quick Recap

**[Section 6] Penalty**

**Any employer** who fails to comply with the provisions of this Act, shall, on conviction, be punishable in the case of the

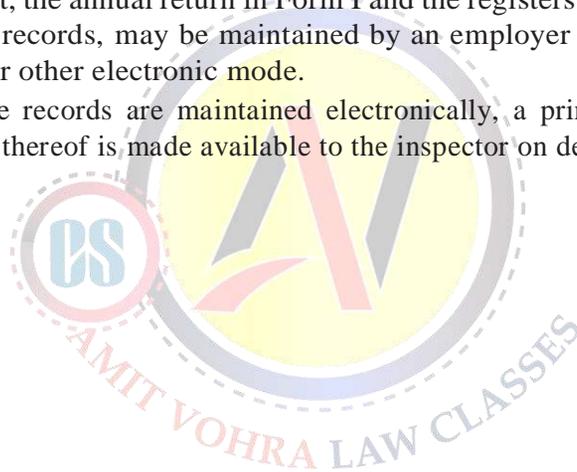
- ♦ **First conviction**, with fine which may extend to rupees five thousand  
**AND**
- ♦ **Subsequent conviction**, with imprisonment for a period of at least **one month but which may extend to six months** or with fine of **at least rupees ten thousand but may extend to rupees twenty – five thousand**, or with **both**.

## Quick Recap

**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 the Form II and III and wage slips, wage books and other records, may be maintained by an employer either in physical form or on a computer, floppy, diskette or other electronic mode.

It may be noted that in case records are maintained electronically, a print out of such return, registers, books and records or portion thereof is made available to the inspector on demand.



## Chapter - 18

# Evaluation of Labour Legislation and Need of Labour Code

### Regulatory Framework

- Code on Wages 2019
- Code on Social Security, 2020
- Occupational Safety, Health and Working Conditions Code, 2020
- Industrial Relations Code, 2020

### 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.
- **Reforms** in labour laws are an ongoing process to **update the legislative system** to **address the need** of the hour so as to make them more **effective, flexible and in sync with emerging economic and industrial scenario**.
- The **Second National Commission on Labour** has recommended that the existing Labour Laws should be broadly **grouped into four or five Labour Codes on functional basis**. Accordingly, the **Government** has **taken steps for drafting four Labour Codes on Wages, Industrial Relations, Social Security & Welfare and Occupation Safety, Health and Working Conditions** respectively, by **simplifying, amalgamating and rationalizing** the relevant **provisions** of the existing Central Labour Laws.

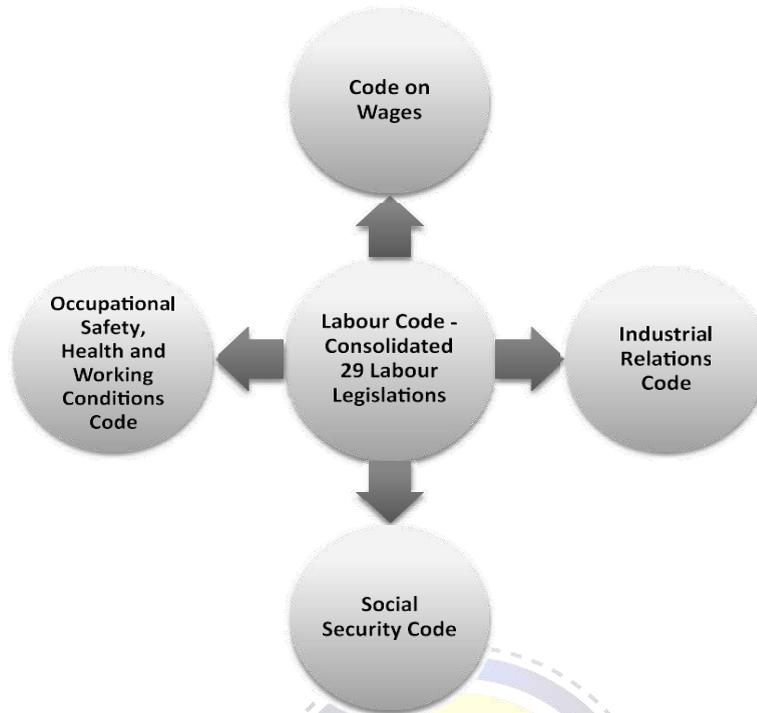
### History of Labour Laws

- The **need for better working conditions**, the right to organise, and **employer demands to limit employee rights in numerous groups and keep labour costs down** led to the **development of labour law**. When **employees band together to demand better pay**, or when laws impose expensive requirements like **equal opportunity or health and safety standards**, employers' costs may rise.
- **Trade unions** and other worker organisations have the **potential to become political forces**, which some companies may find objectionable. Therefore, the situation of labour law at any one time is both a result of and a component of **conflicts between various interests in society**.
- The **labour movement** has been **instrumental** in the **enacting of laws protecting labour rights** in the **19th and 20th centuries**. Labour rights have been **integral to the social and economic development** since the industrial revolution.
- **International Labour Organisation (ILO)** is one of the **first organisations to deal with labour issues**. The ILO was established as an **agency of the League of Nations following the Treaty of Versailles**, which **ended World War I**. **Post-war reconstruction** and the **protection of labour unions** occupied the attention of many nations during and immediately **after World War I**.
- **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**.
- **Even after 75 years of Independence, approximately 90% of workers work in the unorganized sector** that do **not have access to all the social securities**. The **total number of workers**, comprising of

**organized and unorganized sectors, is more than 50 crores.** The **Central Government** has taken a **revolutionary step** in the **right direction** to provide them **freedom** in true sense. For this, the Central Government has taken historical step of **codifying 29 laws into 4 Codes**, so that workers can get security along with respect, health and other welfare measures with ease.

### **Need to Bring in New Legislations**

- **Labour** is covered under the **Concurrent List** of the Constitution. Therefore, rules **governing labour** can be **passed by both the Parliament and state legislatures**. The **resolution of labour disputes, working conditions, social security**, and pay are only a few of the labor-related issues that are **governed by more than 100 state and 40 federal laws**, according to the central government. **Labour Reforms** also remained **untouched** during the **economic reforms** carried out in **1991**.
- The **Second National Commission of Labour** had submitted its **report** in **2002** which said that there was **multiplicity of Labour Laws** in India and therefore, recommended that at the **Central level multiple Labour Laws** should be **codified in 4 or 5 Labour Codes** namely
  - (a) **Industrial relations;**
  - (b) **Wages;**
  - (c) **Social security;**
  - (d) **Safety; and**
  - (e) **Welfare and working conditions.**
- The **brainstorming on Labour Codes** were **fast-tracked** when the **GST, as One Nation One Tax**, was made **applicable** in the Country with **consensus and aligned with motto “Sabka Sath Sabka Vikas aur Sabka Vishwas”**.
- **During 2015 to 2019**, the **Ministry** organized **9 tripartite discussions** in which **all the Central Trade Unions, Employers’ Associations and representatives of State Governments** were invited to give their opinions/suggestions on **Labour reforms**. All the **four Bills** were also **examined** by the **Parliamentary Standing Committee** which gave its recommendations to the Government.
- In order to **codify 29 central legislations**, the **Ministry of Labour and Employment** submitted **four labour code bills in 2019**. While the Code on Wages, 2019, was **approved by Parliament**, the **Standing Committee on Labour** was tasked with **handling the three other bills**. On **all three Bills**, the Standing Committee **delivered its reports**. In **September 2020**, the **government repealed these Bills and enacted new ones**. They broadly **categorized labour codes into 4 different category-**
  1. Code on Wages
  2. Industrial Relations Code
  3. Social Security Code
  4. Occupational Safety, Health and Working Conditions Code



### Purpose of Labour Legislation

**Labour legislation** that is adapted to the **economic and social challenges** of the **modern world** of work fulfils **three crucial roles**:

- 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**.

### Classification of Labour Laws In India

Labour Laws may be classified under the following heads:

#### I. Laws related to Industrial Relations such as:

1. Trade Unions Act, 1926
2. Industrial Employment Standing Order Act, 1946
3. Industrial Disputes Act, 1947

#### II. Laws related to Wages such as:

4. Payment of Wages Act, 1936
5. Minimum Wages Act, 1948
6. Payment of Bonus Act, 1965

7. Working Journalists (Fixation of Rates of Wages) Act, 1958

**III. Laws related to Working Hours, Conditions of Service and Employment such as:**

8. Factories Act, 1948
9. Plantation Labour Act, 1951
10. Mines Act, 1952
11. Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Act, 1955
12. Merchant Shipping Act, 1958
13. Motor Transport Workers Act, 1961
14. Beedi & Cigar Workers (Conditions of Employment) Act, 1966
15. Contract Labour (Regulation & Abolition) Act, 1970
16. Sales Promotion Employees Act, 1976
17. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
18. Dock Workers (Safety, Health & Welfare) Act, 1986
19. Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996
20. Building and Other Construction Workers Welfare Cess Act, 1996
21. Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
22. Dangerous Machines (Regulation) Act, 1983
23. Dock Workers (Regulation of Employment) Act, 1948
24. Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997
25. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
26. Industrial Employment (Standing Orders) Act, 1946
27. Mines and Mineral (Development and Regulation) Act, 1957
28. Plantation Labour Act, 1951
29. Private Security Agencies (Regulation) Act, 2005

**IV. Laws related to Equality and Empowerment of Women such as:**

30. Maternity Benefit Act, 1961
31. Equal Remuneration Act, 1976

**V. Laws related to Deprived and Disadvantaged Sections of the Society such as:**

32. Bonded Labour System (Abolition) Act, 1976
33. Child and Adolescent Labour (Prohibition & Regulation) Act, 1986
34. Children (Pledging of Labour) Act, 1933.

#### VI. Laws related to Social Security such as:

35. Employees' Compensation Act, 1923
36. Employees' State Insurance Act, 1948
37. Employees' Provident Fund & Miscellaneous Provisions Act, 1952.
38. Payment of Gratuity Act, 1972
39. Employers' Liability Act, 1938
40. Beedi Workers Welfare Cess Act, 1976
41. Beedi Workers Welfare Fund Act, 1976
42. Cine workers Welfare Cess Act, 1981
43. Cine Workers Welfare Fund Act, 1981
44. Fatal Accidents Act, 1855
45. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976
46. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
47. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
48. Mica Mines Labour Welfare Fund Act, 1946
49. Personal Injuries (Compensation Insurance) Act, 1963
50. Personal Injuries (Emergency Provisions) Act, 1962
51. Unorganised Workers' Social Security Act, 2008.

#### Objective of New Labour Codes

- For the sake of **clarity, standardisation in terminology, and consistency in approach**, the Commission emphasised the necessity to **streamline and unify labour legislation**. **Consolidating labour laws** would also enable **more comprehensive labour coverage** because separate labour rules apply to different employment classifications and across different thresholds. The **four Codes** on wages, industrial relations, social security, and occupational safety were introduced in Parliament as a **result of NCL's recommendations**.
- While the **Codes** do a **good job of combining and streamlining existing legislation**, there are several areas where they fall short. For instance, even if the **Occupational Safety Code** includes provisions on **leaves for all employees, sales promotion staff** continue to be **entitled to additional leave entitlements** (such as earned **medical leave for 1/18th** of the **period on duty**).
- Similar to this, even if the **definitions of various terms** are largely **rationalised by the Codes**, they are **not consistent throughout**. For instance, the definition of "**contractor**" is the **same in the Codes on Wages, Occupational Safety, and Social Security** but **not in the Code on Industrial Relations**. Finally, after much discussions **only 29 laws** have been **replaced by the four Codes**.
- **Facilitating employment development** while preserving employees' rights is the main problem of labour reforms. The **coverage of small businesses, choosing cut off points for prior approval of layoffs, bolstering labour enforcement, enabling flexible forms of labour, and supporting collective bargaining** are important topics of discussion. In addition, as time goes on, it is necessary to **update and simplify the labour laws** in order to include clauses that can accommodate new kinds of employment (e.g., gig work).

### Features of New Labour Codes

1. Most labour rules are applicable to **businesses larger than a particular size** (typically **10 or above**). Thresholds based on **company size** could ease the **burden of compliance** for businesses. One would counter that **all businesses** should be **subject to fundamental protections** including pay, social security, and working conditions. Such size-based limits are still present in some codes.
2. **Simple and accountable system will simplify the processes. One Registration one License, single return** for all the Codes.
3. **Government approval** is required for **establishments that employ 100 or more employees to close, lay off, or retrench**. It has been suggested that this has made it harder for businesses to leave and has interfered with their **capacity to change their staff to meet production demands**. This **number is increased to 300** by the **Industrial Relations Code**, and the government is permitted to raise it further by notification.
4. The **complexity of labour laws has led to many compliances**, which has **increased the burden of compliance** on businesses. On the other side, the **labour enforcement** apparatus has been **unsuccessful** due to **weak enforcement, insufficient sanctions, and inspectors' rent-seeking behaviour**. Some of these issues are covered by the Codes.
5. **Contract labour** is now used more frequently as a result of **economic factors** and **labour compliance requirements**. However, **fundamental rights** like guaranteed salaries have been denied to **contract workers**. These issues are not entirely addressed by the Codes. Fixed-term employment, however, is a new type of short-term labour that is introduced by the Industrial Relations Code.
6. There are many **registered trade unions**, but there are **no standards** by which to **"recognise" unions** that can **formally bargain** with employers. Provisions for **recognition** are created by the **Industrial Relations Code**.
7. The Codes greatly **simplify labour rules**, yet there are several **areas** where they **fall short**. Additionally, the **Code on Social Security** has **enabling** measures to **notify programmes for "gig" and "platform" workers**; **nonetheless, these classifications lack precision**.
8. The **Codes delegate rule-making authority** over a number of significant issues, including the **applicability of social security programmes and health and safety regulations**. The **debate** is on whether the **legislature** or the **executive branch** should **decide these issues**.
9. The **law forbids discrimination** based on **gender** when it comes to **hiring new employees for similar or identical jobs and determining pay**. Work of a similar kind is defined as **work requiring the same level of expertise, effort, responsibility, and experience**.
10. The **advisory boards** will be made up of the **federal and state governments. Employers, employees (equal in number to employers), independent individuals, and five state government representatives make up the Central Advisory Board**.

**State Advisory Boards** will be made up of **independent individuals, employers, and workers. Women will make up one-third of both the central and state boards' overall membership. The Boards will give their respective governments advice on matters such as;**

- (i) **Setting minimum wages** and
  - (ii) **Expanding possibilities for women in the workforce.**
11. The **Code outlines punishments** for **offences** committed by an **employer**, such as (i) **Underpaying required wages** or (ii) **Violating any Code requirement**. The **maximum punishment** is **three (3) months in prison and a fine of up to one (1) lakh rupees**. Penalties **varies** based on the **type of offence**.

### Acts Subsumed by The Four Labour Codes

<i>Labour Codes</i>	<i>Acts being subsumed</i>
<b>Code on Wages, 2019</b>	<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>
<b>Occupational Safety, Health and Working Conditions Code, 2019</b>	<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 Provisions) 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>
<b>Industrial Relations Code, 2019</b>	<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>
<b>Code on Social Security, 2019</b>	<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> </ul>

<i>Labour Codes</i>	<i>Acts being subsumed</i>
	<ul style="list-style-type: none"> <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>

### Reforms Proposed by New Labour Codes

#### Code on Social Security, 2020

- A Code to **amend and consolidate** the laws relating to **social security** with the goal to **extend social security to all employees and workers** either in the **organised or unorganised** or any other sectors or for matters connected therewith or incidental thereto. To **ensure security for all workers**, the Central Government has **amalgamated 9 Labour Laws into the Social Security Code** in order to **secure the**

**right of workers** for insurance, pension, gratuity, maternity benefit etc. The **Government can fund the contribution of workers from disadvantaged section.**

- 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.**
  - To **define** various expressions used in the Code such as, “**career centre**”, “**aggregator**”, “**gig worker**”, “**platform worker**”, “**wage ceiling**”, etc. Further, the definition of “**employee**” has been comprehensively elaborated to **cover maximum number of employees and workers.**
  - **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.**
  - **Constitution of various social security organisations for the administration of the Code**, namely,
    - (a) **The Central Board of Trustees of the Employees’ Provident Fund (Central Board),**
    - (b) **The Employees’ State Insurance Corporation (Corporation),**
    - (c) **The National Social Security Board for Unorganised Workers (National Social Security Board),**
    - (d) **The State Unorganised Workers’ Social Security Board and**
    - (e) **The State Building Workers Welfare Boards.**
  - 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.
  - **Requirement of minimum service** has been **removed for payment of gratuity** in case of **fixed term employees.**
  - **Employees engaged on fixed term to get same social security benefit as permanent employees.**
  - **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.**
  - To **empower the Central Government** by order, to **defer or reduce employer’s contribution**, or **employee’s contribution**, or both.

- To provide for **establishment and maintenance of separate accounts under social security fund, for the welfare of unorganised workers, gig workers and platform workers; and a separate account for the amount received from the composition of offences under the Code or under any other central labour laws.**

### **Occupational Safety, Health and Working Conditions Code, 2020**

- A Code to **consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto. The security of interests of workers engaged in factories, mines, plantations, motor transport sector, bidi and cigar workers, contract and migrant workers has been ensured.**
- 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.**
  - **Anomalies of the Inter-State Migrant Workers Act, 1979 have been comprehensively addressed in the OSHWC Code. Earlier only workers appointed by a contractor were recognized as Inter-State Migrant Workers. By this provision, the worker would get a legal identity which would enable them to get benefits of all social security schemes.**
  - 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 make provision of **“common license” for factory, contract labour and beedi and cigar establishments** and to introduce the concept of a **single all India license** for a period of **five years** to engage the contract labour.
- To enable the **courts** to **give a portion of monetary penalties up to fifty per cent (50%) 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**.

#### Code on Wages, 2019

- A Code to **amend and consolidate** the laws relating to **wages and bonus** and matters connected therewith or incidental thereto. **Four Labour Laws** have been **amalgamated into the Minimum Wages Code**. Due to this, for the first time, **all the workers have got the Right to Minimum Wages**.
- 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 **graded penalty for different types of contraventions** of the provisions of the legislation.
- It provides that the **Inspector-cum-Facilitator** shall give an **opportunity to the employer before initiation of prosecution** proceedings in cases of contravention, so as to **comply with the provisions** of the legislation. However, in case of **repetition of the contravention within a period of five (5) years** such **opportunity shall not be provided**.
- 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 (3) 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.

### Industrial Relations Code, 2020

- A code to **consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes** and for matters connected therewith or incidental thereto.
- By **amalgamating 3 Labour Laws** into the **Industrial Relations Code** the Central Government has taken steps for **safeguarding the interests of Trade Unions** as well as the **workers**. In this Code, all possible steps have been taken for **industrial units and workers** so that **disputes do not arise in future**.
- 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 (18,000) 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 (10)** in an **industrial establishment employing twenty (20) 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 (300) 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 Tribunal** as 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 (14) days**.
- To provide for a **new feature of recognition of negotiating union and negotiating council** in an industrial establishment by an employer for the purpose of negotiations. The **criterion** for recognition of **negotiating union** has been **fixed at fifty-one per cent (51%) or more workers on a muster roll** of that industrial establishment. As regards **negotiating council**, a Trade Union having support of **every twenty per cent (20%) of workers will get one seat in the negotiating council and the fraction above twenty per cent. shall be disregarded**.
- **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 (300) 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 (50%) of the maximum fine** provided for such **offence punishable with fine only and for a sum of seventy-five per cent (75%) provided** for such **offence punishable with imprisonment** for a **term** which is **not more than one (1) 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**.

