

CH-20 POSH - [8M]  
↳ [Case Based]

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1. It was in the Vishaka Judgment in 1992. when the Supreme court acknowledged the glaring problem in the legislature which was failing to adequately address the problem faced by working women in the form of SEXUAL HARASSMENT OF WOMEN AT WORKPLACE.
2. In the same case Supreme court issued Vishaka - Guideline to deal the problem of Sexual Harassment at workplace.
3. Sexual Harassment as per the Vishaka Judgment means:- Any unwelcoming sexual determined behavior which include, Physical contact and Advances, Demand or Request of Sexual Favour, Sexually coloured Remark, Showing Pornography, Any other unwelcoming physical, verbal or non verbal conduct of Sexual Nature.
4. Further in the case of Apprel Export promotion Council V.A.K Chopra. The supreme court Explained that sexual Harassment is a form of sex discrimination which can be in form of verbal or physical conduct of Sexual Nature, Request for the sexual favour which intwen affects the employment of the female employee and interfere with her work performance.

## 5. Workplace Sexual Harassment

when sexual Harassment is done at the workplace. It amounts to workplace Sexual Harassment and it almost occurs in Abuse in power.

## 6. Forms

A. Quid Pro Quo - [Something in → This for that written]

when there is implied or explicit promise of preferential Treatment in Employment or a Threat for detrimental treatment.

B. Hostile work Environment

- i. Creating an intimidating work environment,
- ii. Giving Humiliating Treatment which is likely to affect health and Safety.

## 7. Applicability

i) It applies to the whole of India on all organization [10 or more employee] as well as unorganized sector [including self employment or less than 10 employees]

ii Further it applies to all the Pvt, Pub, Govt. /

NGO / education institution / Sport's institution

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### 8. Sexual Harassment as per POSH

any of the following may amount to Sexual Harassment :-

- a. Implied or explicit promise of preferential Treatment.
- b. Threat of Detrimental Treatment
- c. Implied or explicit threat to employee's present or future employment
- d. Interfere with victim's work or creating Hostile work environment.
- e. Humiliating treatment which is likely to affect victims health and safety.

### 9. Workplace

a. Hospitles

b. Any department of Govt.

c. Pvt. organization

d. Sports institution

e. Dwelling House

f. Any place visited by the employee in the course of employment.

## 10. Saurabh Kumar Mallick v/s C&AG

A. In this case respondent was facing departmental inquiry for ~~alleged~~ indulging in sexual harassment but contended that the misconduct took a place which was a official mess & cannot be considered as workplace.

B. That the delhi high court stated that a narrow approach can<sup>not</sup> be taken in defining the term workplace. By confining the meaning to office.

C. The court stated the following factors must considered to check.

i Proximity with the place of work.

ii Control of the management on that place.

iii Is the place is an extension of the working place.

iv In conclusion the court held that official mess will be considered as workplace.



### - Tenure -

The presiding officer and every member shall hold office for a period not exceeding 3 years

### B. LCC - Local Complaint Committee

The state govt. at the district level is required to setup a local complaints committee to investigate and redress complaints of Sexual Harassment

i. The LCC generally hear complaints in the following matters:-

- a. ✓ Complaints from the reorganized sector.
- b. ✓ Complaints from establishment which are yet not required to form LCC.
- c. ✓ when the complaint is against the employee
- d. ✓ The ~~appropriate~~ appropriate govt. appoint a District Magistrate, Collector, Additional District Magistrate, Deputy collector as a District officer who shall be responsible to setup the LCC

ii. The LCC should comprise of the following:

- a. A chairperson [A senior <sup>women</sup> officer]
- b. One member to be nominated amongst the women working in any municipality or ward in the district.

c. Two [2] members from any NHO or Association working for the cause of women of which at least one [1] shall be

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a women.

Note: at least 1 such nominee should have a legal back ground and 1 of the nominees should be a women belonging to

ST, SC, OBC



d. Exofficio Member - The officer dealing with welfare of women and child development in the district.

- Tenure -

The tenure of <sup>the</sup> IC/CC is 3 years

## 12. Complaint

any women aggrieved of any conduct of sexual harassment can make a complaint in writing to the IC or the CC within the period of 3 months from the date of incident. Further this time period can be ~~extended~~ extended by 3 months, if sufficient case can be shown.

if of the aggrieved women request the IC/CC may take steps to settle the matter through conciliation and if a settlement has been arrived the IC/CC shall record the settlement and forward the same to the employer or the district officer as the case maybe.

### 13. Inquiry into Complaint

i The IC or the DC has the case maybe may take steps to resolve the dispute through conciliation provided a request for the same has been made by the agg. women.

ii

### 14. Inquiry <sup>into</sup> Complaint

A The IC/DC proceeds to settle the dispute as per the service rules and further if the case relates to a domestic worker the IC forwards the complaint to a police officer within the period of 7 day.

B Further if both the parties are employees DOBH must be given to both.

C Both IC and DC have the same power as that of a civil court, that is it can someone enforce attendance, examine people on both etc.

D The inquiry must be completed within the period of 90 days

### 15. Action during Pendency of Inquiry

a. Transfer the agg. woman or responded to any other workplace

b. Grant leave to Agg. women for ~~at~~ upto a ~~Per Period~~ Period of 3 months

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### 15. Inquiry Report

a. The IC/PC shall upon completion of the inquiry shall submit a ~~report~~ report within 10 days to the employer or District officer, recommending either to drop the matter or to take action against the person ~~as~~ accused of sexual harassment

b. The employer / District officer shall act on recommendation within 60 days

### \* 16. Prohibition of Publication of Identity and Address of the Agg. women

a. Prohibition of Publication of Identity and Address of Agg. women / victim / respondent, however information regarding justice secured to any victim, may be published, without disclosing the detail of the Agg. women & victims, witness

17. Any Agg. person may prefer an appeal within 90 days to the court or tribunal

### 18. Penalty

a. Any employer <sup>who</sup> fails to constitute ICC / fails to take action / contravenes the provision of this Act, shall be punishable with the fine upto 50,000 and for subsequent offences for a fine upto twice the above mention fine [100,000]

### 19. Binoj Jacob v/s State of Kerala and Ors.

in this the supreme court held that the provision of this act are in addition and not in derogation of any other law. Hence two different filing of the case is possible.

### • Duties of Employer

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## Social Security Legislation

Unit III - Maternity Benefit Act, 1961.

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1. The Maternity Benefit Act applies to factories, mines, shop & establishment, employing 10 or more person.
2. Under the act every working women is entitled to payment of Maternity Benefit at the average daily wages for the period of her absence. and in this case the average ~~of~~ daily wage means the average pay to the women in the preceding 3 months.
3. A women shall be entitled for maternity benefit only if his had worked for a ~~an~~ period of 80 days or more in the preceding 12 month.  
[1961]
4. The Maximum period for which a women is entitled shall be 26 weeks of which not more than 8 weeks shall precede before her expected delivery.
5. The above benefit is for a women having not more than 2 kids, post 2 surviving children the revised limit shall be 12 weeks of which not more than 6 week shall precede the expected date of delivery.

Spiral

6. These benefits shall be passed on to the women and in case she dies till the date of her death.

7. If the woman delivers a child and thereafter dies then in such case benefits will be passed on to the child and in the event of his death till the date of his death.

8. In case of adoption or commissioning <sup>mother</sup> the maternity benefit is for 12 weeks starting from where the child is handed over [in case adoption the child must be below the age of 3 months]

→ Prohibition of Employment

9. Section 4 provides that no employer shall appoint a woman in any establishment within 6 weeks for her delivery / miscarriage. Neither should a woman work during this period in any establishment.

10. A woman shall not be provided by any Aviduous nature during the period of 1 month preceding the 6 weeks prior to her expected delivery.

11. wages means any remuneration paid to the women including all the cash allowance, incentive bonus / money value of the supply of food or any other article. but wages does not include

- a. any other bonus
- b. overtime earnings
- c. any contribution PF / Gratuity (Provided fund)

### Notice of claim of Maternity

13. A woman entitled for Maternity benefit must give a notice to her employer and on the receipt of such notice the employer shall allow to absent her self.

14. The amount of Maternity benefit prior to be expected delivery shall be paid in advance and the balance within 48 hours of showing the proof of delivery

15. When such women resume work she shall be provided by 2 Nursing breaks till the time the child attends the age of 15 months

16. For every establishment employing 50 or more there shall be creche facility and the ~~the~~ women shall be allowed 4 visited in a day

### → Penalty

If the employer does not pay the Maternity benefit or dismisses the women during this period, then he shall be punished with imprisonment which shall not be less than 3 months but which may extend to 1 year and fine which should not be less than 2000 and which may extend to 5000. And in case where no other penalty is provided then fine upto 5000 or imprisonment upto one year (1)

### Unit-4. Gratuity

1. Gratuity is payable to an employee after he has served continuous period of 5 years at the time of Retirement, Death, Superannuation, Surrender, Retrenchment [The rule of 5 years does not apply on death and Disablement]

2. The act applies on whole of India, on every factory, mine, oil field, port, railway co. and every shop & establishment employing 10 or more person

[The G.G. may extend this act on any other establishment employing 10 or more employees]

3. Continuous Service → means the period of un- service provided by an employee which include service which may have been interrupted because of sickness, Leave, Accident, Strick, lockout, dayoff

4. Where an employee is not in continuous work for any period of 1 year or 6 months then he shall be deemed into continuous service :-

i° For a period of 1 year → if the employee has worked for 190 days in the previous 12 months in case of mines, & Establishment working in less the 6 day, and 240 in other case.

~~ii° Where an employee is not in continuous work for any period of 6 Month or 95 days then he shall~~

ii° For a period of 6 month → if the employee has worked for 6 days in previous 95 days in case of mines & establishment working in less the 120 days

iii) In case seasonal - The employee shall be deemed to be into continuous service if he has worked 75% - 1st of the operating days.

5 The maximum amount of gratuity earlier was 10% & now it has extended to 20%.

### Forfeiture of Gratuity -

In case of any loss ~~to the~~ cause to the employer because of the negligence or of the employee then the gratuity may be forfeited upto the amount of loss & in case of any riotous or disorderly conduct the whole of the gratuity might be forfeited.

## Labour Law

### unit 6.

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### Labour Simplification Procedure for Furnishing Return And Maintaining By certain Establishment Act - 1988

1. The act has been enacted to simplify the procedure to file the return as well as ~~dis~~ describing how different registers can be Maintain in lieu of all the applicable Reporting requirement

2. The act exempts the following 2 category from reporting under their respective Act, These are -:

a. Small Est. - Employeering not less than 10 and not more than 40 preceeding 12M

b. Very small Est. Employeering not less than 7 in preceed. 12M.

3. every small establishment- from the following reporting requirement

a. Form-1 - Annual Return [ to be filed by 30<sup>th</sup> April ]

b. Form-2 - Register of person Employee

2. Form-3 - muster Roll + wage register

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4. on the other hand very small Est has

Form-1 → Annual Return → to be filed by  
30th April

Form-3 → Muster Roll → wages Register

### ⇒ Penalty

a) For the first conviction a fine which may extend to 5000

b) In case of 2nd or subsequent conviction imprisonment not shall ~~not~~ be less than 1 month & Max 6 Months fine which will not be less than 1000 and can extend up to ₹ 5000

unit 5 Apprentices Act 1961 [0-3]

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1. The act was enacted to regulate the training of Apprentices in the deorganised Trade, where in Apprenticeship training means a contract ~~with~~ of apprenticeship through which apprentice enrolls for a course of Training in an establishment

2. In case of central Apprenticeship council / mine / oilfield / railway as well as establishment owned and controlled by C.G. The C.G. will be the appropriate govt.

3. In case of State Apprenticeship council or any other establishment ~~there~~ not covered above the appropriate govt shall be the state govt.

4. Apprentices could be of 2 Types

(a) Graduate / Technical Apprentice - An

Apprentice who hold or undergoing training he ~~he~~ may hold a degree or diploma in engineering / non engineering or any equivalent qualifications

(b) Technician [Vocational] - An Apprentice who hold or is undergoing training he may hold certificate in any vocational course involving 2 years of study after completion of

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stage of  
• the secondary school education.

### ⇒ Qualification to Become Apprentice

5. The person must be not below the age of 14 year ~~is~~ in hazardous industry not less than 18 years and he satisfy such as may be prescribed

⇒

### ⇒ Contract of Apprenticeship

6. Any person who ~~engage~~ must enter into contract of apprenticeship with the employer in case the apprentice is minor then by his guardian

7. Every contract shall be sent by the employer to the apprenticeship advisor within 30 days & the same shall be registered by the apprenticeship advisor within next 30 days

8. In case of any objection the apprenticeship adviser shall convey his objection within 15 day of the receipt

## ⇒ Novation

9. where an employee is unable to perform to his part under the contract of apprenticeship then he may with previous apprenticeship advisor, the apprentice, the new employee where he ~~will~~ <sup>will</sup> be engaged ~~reverts the contract~~ the contract of the apprenticeship.

10. The Apprentice <sup>then</sup> shall continue his training under the ~~new~~ new employee for the unexpired portion.

## ⇒ Practical and basic Training

11. It is the duty of every employer to make suitable arrangement in the workplace to adequately train all the Apprentices. And the central Apprenticeship Advisor or any other <sup>person</sup> authorised may reach out to such Apprentice for the purpose of conducting a review as to suitable training is being imparted or not.

12. For these apprentice who have not undergone institutional training they should be allowed to under go the basic training before they could go for practical training.

13.

All the recurring cost shall be paid by the employer in case the employer has 250 or more workers, in ~~all~~ cases where the no. of workers are less than 250 by the employer and govt in equal share upto a certain limit & then after by the employer.

14.

### ⇒ Obligation of the Employer

- a. To carry out his obligation under the act of contract ~~contract~~ of apprenticeship
- b. To provide proper training
- c. To provide instructional staff for theoretical & practical training
- d. To provide a person who possess the prescribed qualification for the training of the apprentice

### ⑬ ⇒ Obligations of the Apprentice

- a. To carry out all the obligations under the contract of apprenticeship
- b. To carry out all the orders of his employees

- c. To attend ~~to~~ all the training sessions
- d. To learn his trade diligently

### <sup>16.</sup> ⇒ Settlement of Dispute

a. Any dispute arising out of the contract of apprenticeship must be referred to the apprenticeship advisor and in the event of any person wants to make an appeal the same can be filed within 30 days to the apprenticeship council whose decision shall be final

<sup>17.</sup> Certificate of Proficiency - A test is conducted of every by the national council and if the apprentice passes the test he shall be.

### (18) Offences & Penalties

a. If the employer fails to reply to a notice or provides wrong information then he shall be punished with fine of 500 per short fall of the apprenticeship month for the first 3 months and thereafter 1000 per month

19. If an Employer does any other offence including the below mentioned then he should be liable to pay the amount of 1000

a) Engages the apprentice in any other work other than his training

b) Pays him on piece work basis

c) Requires him to do overtime work

d) Fails to carry out his part of term & conditions

e) engages him to take part in output bonus

## 1 Employee State Insurance Act.

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- 1) The ESI act applies to the whole of India on all the factories but not on those establishments which are receiving better benefits or equivalent and is under the control of the govt.
- 2) The act may be extended by the appropriate govt after giving 1 month notice in the official Gazette and the same has been extended upto upon shops, hotels, restaurants, cinema, preview, theatre, Road Transport undertaking employing 20 or more person
- 3) Once the act becomes applicable it continues to be applicable even after the no. of employee reduced below 20
- 4) The contribution is to be paid by the employer at the 1st instance but has to be shared by both where the employer has to pay 3.25% of the wages & employee has to pay 0.75%.
- 5) Dependent → means any of the relative of the insured namely
  - (a) A widow
  - (b) A widowed mother
  - (c) A parent other than the widowed mother if he is partially or wholly dependent on the deceased

(d) A son whether legitimate / adopted / illegitimate who has not attained the age of 25 & in case he attained the age of 25 but is infirm

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(e) Minor brother or unmarried or unwidowed sister

(f) A daughter whether legitimate / illegitimate / adopted who is unmarried or is married but minor or is a widow and a minor.

(g) Parental Grandparents if no parent of insured is alive

(h) child of a predeceased son

(i) child of a predeceased daughter

### ⇒ Employment Injury

6) It means an injury caused by accident or occupational disease arising out of or in the course of employment

7) It is immaterial as to where the accident occurred the only proof required that it is out of employment, there is no geographical limitation

8) The same was seen in ESI Corp. Corporation Indore v/s Babulal in which the worker was assaulted who went on to work during the period of strike was held to be an employee under the act.

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⇒ Employee

9) Any person employed in an establishment either directly by principal or immediate employer either for full time or for temporary services which further includes an apprentice.

10) But the above does not cover

- (a) a member of Indian naval / military / air force
- (b) An employee whose gross salary exceeds the threshold prescribed [currently it is ₹1,000]

⇒ Employee Disablement

11) Disablement either could be of temporary nature which means employe will be able to resume his work with his full potential in near future.

12) Or it can be permanent disablement where in the disablement will be of permanent nature and it further can be of 2 type i.e. Permanent partial disablement and permanent Total disablement.

13) Where in permanent partial disablement reduces the income earning capacity of the employee in all those professions in which he was

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capable of before the other hand in case of permanent total disablement it reduces the earning capacity by 100% or more  
[Part 2 schedule 2 cause partial, Part 1, schedule 2 is Total]

14) A seasonal factory means a factory which is engaged for a period not exceeding 7 months in a year

15) Wages → All remuneration paid in cash to employee including any amount paid in case of leave / lockout / strike but it does not include

- (a) any gratuity payable
- (b) contribution paid by the employer towards pension / provident fund.
- (c) Travelling allowances or any other amount to defray special expenses

⇒ Employee state insurance Scheme

16) The ESI Scheme is administered by the ESI corporation standing committee which works under the ESIC

17) The ESIC formed by the CG in which there is a chairman, vice chairman & other members representing the interest

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of employer / employees the govt. & the  
UTs

18) The wings of the corporation are

(a) standing committee to administer the affairs of corporation.

(b) Medical benefit council - which is responsible to advise the corporation in matters relating to medical benefit as well as to investigate the matters concerning medical practitioner

19) ESI fund this included all the contributions paid by the employer and employee to the ~~corpn~~ corporation and for which the corporation has to open a bank account either with the RBI or any other bank approved by the central govt.

⇒ Purpose which fund maybe used

20) For the following ~~for~~ purpose the funds may be ~~utilised~~: - utilised

(a) Payment of benefits, as well as provision of medical treatment of the insured

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(b) Fees & allowance or to the employee of the corporation

(c) Establishing hospitals and dispensaries

(d) paying the cost of outfit

(e) paying the cost of establishing employees insurance court

(f) Deferaying the cost for instituting or debenting any suit

(g) paying any amount as decreed by the court

⇒ Benefits

21) The insured and the dependents are entitled for the following:

(a) Periodical payment in case of certified sickness

(b) Periodical payment in case of miscarriage or sickness arising because of pregnancy

(c) Cost of medical treatment as well as funeral expenses on death of insured

(d) Periodical payment in case of injury arising in the course of employment

(e) Periodical Payment to the dependants.

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⇒ EI courts

- 22) These are established by the state government through a notification in official gazette for specified local area.
- 23) Any person who is or has a judicial office of legal practitioner with 5 years left is qualified to be a judge of EI court.

24) The EI court can adjudicate under the dispute such as whether a person is an employee wage as well as adjudication of claims like recovery of amount of contribution from employer or claim for recovery of benefit under the act.

\* NOTE If the employer fails to pay contribution on time then he has <sup>pay</sup> fine @ 1% p.a. at simple interest.

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Unit 2. Provident fund & Miscellaneous Provisions Act 1952

1) The act provides for 3 benefits

- (a) Provident fund scheme
- (b) pension scheme
- (c) Deposit linked insurance

2) The act applies to -:

(a) All the establishment which are for employeing 20 or more person.

(b) any other establishment employeing 20 or more person which the CG by the notification in the official gazette specify.

(c) The CG may apply the provision of this act to any establish employeing less than 20 person by giving 2 month notice in official gazette.

(d) The act can volantly adopted but the same becomes an obligation once the notification is issued & a party may opt out before the notification is issued. & a party may opt out before the notification is issued.

3) The Act does not apply to -:

(a) Co-operative society employing less than 50 workers & working without the aid of par.

(b) Establishment belonging to Govt/SC where the employees are getting equal & ~~better~~ better benefits.

(c) Any Establishment <sup>which has been</sup> created out of a special legislation giving better or equal benefits.

(4) Basic wages all the remuneration earned by the employee while on duty or on leave but does not include cash value of food ration / DAS Allowance.

(5) Employee includes any person who is employed for wages ~~or cooperative~~ irrespective of the kind of work ~~but~~ and also include a part-time employee.

## ⇒ Employees Provident Fund Scheme

(6) This is a scheme which provides a lumpsum payment to the person retiring.

(7) The employer is liable to pay 10% of the basic wages + DA + Retiring allowances and the employee contribution as that of the employer. [The max contribution exceeding the above limit but the same does not render the employer liable.]

(8) The amount received by the provident <sup>fund</sup> is invested by a body of trustees as ~~the~~ ~~per~~ ~~the~~ a self-investment pattern which has been approved by ~~the~~ the CG.

(9) All employees are covered other than the excluded employees, which are as follows:

(a) An employee who has ~~at~~ withdrawn the full amount of his accumulation.

(b) An employee whose pay exceeds 50,000 per month.

(C) Apprentice

⇒ **Advances & Withdrawal of Provident fund**

Following are the permissible advances & withdrawal

- (a) A non-refundable advance for payment towards life insurance premiums.
- (b) withdrawal for purchasing dwelling house / flat.
- (c) Non-refundable advance due to temporary closure of the factory for more than 15 days & refundable advance in case if factory is closed for a period exceeding 6 months.
- (d) Non-refundable advance for hospitalisation of person himself or his family member which last for 1 month or more or any major surgical operation.
- (e) Non-refundable advance <sup>of</sup> marriage / ~~Daughter~~ <sup>daughter</sup> / son marriage.
- (f) Non-refundable advance to physically handicapped to members for purchasing to ~~minimising~~ minimize the hardship.

⇒ **Final Withdrawal**

- 10) On the event of death / permanent disability / superannuation or payment settlement out of side India full accumulation with interest paid.

1) In any other case the permission of ~~to~~ ~~Commis~~ Commissioner has to be taken to withdraw the full amount & that shall only be granted when the person is not employed in any establishment on which the act applies for a continuous period ~~1 month~~ of 2 months

[This requirement is not application in case of female / women who are residing for the purpose of marriage]

### ⇒ Pension Scheme

The act apply to all the person who ~~at~~ have hav min. of 10 year of contributory service & are allowed for pension on a discounted rate after the age of 50 & ~~normal~~ <sup>normal</sup> rate at the age of 58.

12) The Scheme provides for monthly <sup>payment</sup> in the following cases

- (a) Permanent total disablement
- (b) Death during service
- (c) Death after retirement
- (d) withdrawn person
- (e) Orphan's pension

13) The recent contribution limit is set to 8.33% of the basic wages + DA + other allowances

14) The ceiling is fixed to 1250 per month [Any contribution to the pension scheme is made on the max. wages of 15000] [Contribution over & above is to be transfer to the provident fund]

### ⇒ Employee Depositing ~~provident~~ insurance Scheme

15) This act has been created to provide life insurance benefit to employees of any establishment.

16) The applicability of act is that similar to <sup>(provident fund)</sup> PF and the contribution is solely on the employees which has to pay ~~that~~ 1% of the total wages paid to employees

17) In case of death of a member & amount equal to the <sup>average</sup> ~~equated~~ balance in the A/c of the ~~deceased~~ in the preceding 12 months or membership period whichever ever is less must be paid to the person eligible.

18) The employer should not reduce directly or indirectly the wages of any employee

⇒ Transfer of Accounts

i) where an employee of an establishment to which the act apply resigns & obtains re-employment in another establishment to which the act does not apply. Then the amount ~~acc~~ accumulated ~~to the~~ credit of employee shall be transfer within the time specified by CG to the credit of his A/c in the provident fund of the establishment in which he is re-employed if the employee so desires

ii) - when the employee is a <sup>employed</sup> in a establishment on which the act does not apply & he resigns from the office & gets the re-employment in the new establishment then the amount of accumulation in the provident fund of the establishment may be transfer ~~to~~ if the employee so desires to the credit ~~to~~ of his A/c in the DL funds of in provident fund in which he is re-employed.

19) Note - The amount standing to the credit to the member shall not anyway be ~~acc~~ attached under and decree or order of the court-

## Law of Industrial Relations

## UNIT-1 [Industrial Disputes 1947]

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- 1) The Industrial Dispute Act was created with the following objective
  - a- Promoting the measures for processing good relation b/w Employer & workmen
  - b- Investigating & settling Industrial dispute b/w The
  - c- preventing illegal strike and ~~logout~~ lockout
  - d- In case of ~~inter~~ retrenchment & layoff
  - e- Promotion of collective bargaining

Case "Workmen of Dimakuchi Tea State v's Dimakuchi Tea"

- 2) Industrial Dispute means a dispute b/w employer & employer or employee & workmen or workmen & workmen which is connected to the employment/non-employment, Terms of employment or the condition of labour

Sec-2(J)

- 3) In "Bangalore water supply and sewerage Board v's A Rajappa", the Supreme Court gave the triple test to decide whether an establishment

is an industry or not -:

There shall be

(a) Systematic activity

(b) with the co-operation b/w employer and employee

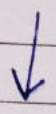
(c) Production & distribution of goods & services calculated to satisfy human wants.

4) The supreme court further held that the absence of profit motive is irrelevant in determining whether an establishment is industry or not.

5) It does not matter even if it is into charity or any other <sup>category</sup> filantrati, only five restricted ~~committee~~ <sup>sub-committee</sup> sub-committee may qualify for exemption if they can maintain their non-employee character & if they appointed some marginal employees without destroying the non-employee character they shall still be exempted from the ~~defi~~ definition of the industry.

6) If someone works for free or small and those who serve are not engaged for remuneration then the institution is not

an industry. It does not include:-



- a) Agriculture operation
- b) Hospital & Dispensaries (except Pvt. Hospitals)
- c) Educational & scientific research institute
- d) K-hold Industry
- e) Any activity of Govt. which are its sovereign functions

f) Any activity exercised as a profession by individuals <sup>if the</sup> no. of employes are less than 10. Institution owned for the purpose of charity & filantrific service

7) Workman - means any person appointed to do any work except those who exercising managerial function, supervisory capacity exceeding where remuneration is exceeding 1600 per month, police officer, person under Army Act, Navy Act, Airforce Act.

But it includes the person who has dismissed because of whom the act is dispute has arose

8) Strike - It is the temporary cessation of work or concerted refusal or refusal under a common understanding to push their demand ~~under~~ against the ~~managui~~ ~~managist~~ management

b. The duration of strike is <sup>the only thing not vestis</sup> is cessation of work.

2) Strike is a collective weapon of bargaining but major refusal to work when the employers ask for the work other than what is required to be performed does not amount to strike.

⇒ Types of Strike

(a) Stay in, sit down, pen down, tool down, these are called primary strike where the employees after taking their seats refuse to work.

(b) Go slow - it does not amount to strike as there is no cessation of work, in "Bharat Sugar Mills Ltd. v. Jain Singh" the supreme court declared such type of strike as a misconduct because during go slow strike the machines are kept on but at the reduced speed there by causing to the employee

(c) Sympathetic Strike - This is the strike in support ~~in~~ of the workman of other employer, these also does not amount to strike as there is no demand against the mangment, weather the mangment can take dispanary action.

(d) Hunger Strike - In this worker resort to fast near the place of work or near the ~~work~~ residence near of employer ~~the~~ if there is cessation of work it amounts to strike.

(e) work to rule - it this the workmen does not obey the order of the employer since there is no cessation of work it does not amount to strike.

⇒ Legality of Strike

(ca) Justifiability & Legality has no relation as legality refers to the legal aspect of strike that is if it has condented as per rule on the other hand Justifiability is a question of fact.

(b) If the strike is legal & justified & then the workmen are ~~intitled~~ intitled for full wages

(c) If both the lockout & strike against each other are unjustified then the doctrine of 'Apportionment of Blame' is applied and if both the party share the blame equally, the court avoid half of the wages.

⇒ Lockout

10) It is the act of the employer ~~in~~ in which the place of work is temporary closed, it is the weapon of the employer against the employees for enforcing his industrial demand through a coercive process.

11) In a lockout the employer refuse to continue to employ the workman though he does not intend to close down

19''

it was held that the employer employee relationship continues during the time of lockouts and the same was seen in

This case where the organization was shut for 30 days as a retaliation against the workman but the same was held to be lockout & not closure.

ment  
⇒ Layoff

13) It is the inability of ~~an~~ <sup>the</sup> employees to provide employment to workers but because of the following grounds.

- a) Shortage of coal & power
- b) Accumulation of stock
- c) Break-down of machine
- d) Natural calamity.

provided if the worker required available in the 2nd half of the day then he is considered as laidoff for the 1st half of the day.

14) It is not the closure of the business & the employees except expect the the business will resume in short span

15) The worker is paid full wages for the period of layoff therefore financial

1. Stenency can not be a ground of layoff.

⇒ Retrenchment

(16) It means the termination by the employer of the service of the employee, but it does not include termination because of punishment inflicted as disciplinary action.

(b) Retirement by Super ~~an~~ Annuity

(c) Voluntary retirement

(d) Termination due to ill health

(17) Average pay

(a) For those who are monthly paid → 3 Month Ave-

(b) Weekly paid → 4 Week Average

(c) Daily paid → 12 working days Average

⇒ ~~Public Utility Service~~

If the above is not available, then the would be taken on the bases of available data

⇒ Public Utility Service

- (a) Railway service / Air carriage / Transport service
- (b) any services in major port or dock
- (c) any Postal Telephone service
- (d) any industry which supply power & light
- (e) any system of public sanitation

(18) Wages

all remuneration paid in terms of money which includes DA / value of House accommodation / supply of food grains / Travelling concession.

But it does not include any bonus / contribution paid towards pension & provident fund  
 ग्राह्यी ग्राह्य, any commission paid or payable of sales

⇒ Authorities under the Act

(a) Works committee - To be created by the employer of those industrial establishments which had 100 or more workmen on any day in the preceding 12 months. It comprises equal representation of employee & employer & are entrusted with the duty to secure and preserve amity & good relation.

(b) Conciliation officers - They are appointed by App. Govt. by notification in official gazette for any specified area/industry & is appointed for the purpose of mediating & promoting settlements.

He is not an adjudicating person but rather the 1 who has to promote settlement.

(c) Board of conciliation -

The App. Govt. may by notification in official gazette form a board of conciliation for promoting of industrial dispute, the difference from conciliating officer being the power to investigate the dispute and for such purpose he may without delay conduct all such activity for promoting settlement. (consists of chairman & 2 or 4 members)

(d) Court of Enquiry -  
~~notification of in official gazette~~ The App. Govt. may by notification in official <sup>30/1/19</sup> form a court of <sup>enquiry</sup> consisting of independent person & such other member as may be necessary to conduct enquiry & submit the report to the App. Govt. within a period of 6 months.

(e) Labour Court -

The Labour Court are formed for ~~purpose~~ the purpose of (i) adjudication of industrial dispute for matters contained in schedule 2 & schedule 3 if the no. of ~~workmen~~ workman/employee is less than 100.

(ii) The court ~~may~~ shall may comprise who act as a presiding officer. The following people are qualified to act as a ~~presiding~~ presiding officer

- A sitting or retired judge of HC
- A district judge or Additional district judge with 3 years experience
- who has previously being presiding officer of labour court for not less than 5 years
- who has held any judicial position, not less than 7 years.

### f. Industrial Tribunal

It has been created by App. Govt for the purpose of Adjudication of ~~Judi~~ industrial dispute ~~specif~~ specified in 2nd/3rd schedule :

i) It ~~has~~ <sup>shall</sup> consist of one person, who shall either be:

- (i) he is or has been, a judge of High court.
- (ii) he has for a period of not less than 3 years been a district Judge or an additional. District Judge
- iii) If required the app. govt may Appoint 2 person as assessors to advice the Tribunal.
- iv) The maximum age in which they can continue in the office is 65 year
- v) The Tribunal can be constituted for a ~~limitation~~ limited time / particular area or for a particular case.

## g National Tribunal

It is to be constituted by CG by a notification in the official gazette to constitute in the name of National Tribunal which shall adjudicate disputes which involves question of national importance, or where the establishment is ~~constituted~~ <sup>constituted</sup> ~~constituted~~ <sup>constituted</sup> or where the establishment is ~~constituted~~ <sup>constituted</sup> ~~constituted~~ <sup>constituted</sup> It shall constitute 1 person to be appointed by the CG & if required the govt can appoint 2 or more

→ Only a sitting or retired judge of HC can become a judge of National Tribunal

19 Such a presiding officer must be an independent person who has not attained the age of 65.

## ⇒ Reference of Dispute

20 For any proceeding under the act in front of the conciliation board, court of inquiry, Labour court, Industrial Tribunal/National Tribunal, A reference is ~~is~~ <sup>is</sup> required by App. Govt under Sec-10

21 The app. govt may refer a dispute to the correct authority which could be a conciliation board



24 The app. Govt should ~~also~~ <sup>prescribed</sup> also ~~for~~ <sup>fix</sup> the time period by which the award shall be made. ~~as~~ however no <sup>such</sup> ~~not~~ period shall <sup>exceed</sup> 3M.

25 When an order of reference has been made then the app. govt may order to prohibit the continues of strike & lockout, if no order is made then the continues of ~~strike~~ illegal.

26 Even if the govt. initially refused to refer the matter it does not mean that there was not industrial dispute, & the same can be refer to later ~~sta~~ stage.

### ⇒ Voluntary Ref. Reference of Disputes to Arbitration

a) The parties may voluntarily decide to settle the dispute.

b) If a dispute has not been referred for adjudication then the employer and workman may by an agreement agree to settle the dispute through arbitration consisting of a single ~~at~~ arbitrator or any m. which is valid even

(c) A copy of the arbitration agreement shall be sent to a appropriate govt. who shall within 1 month publish the same in the gazette

(d) The app. govt. if it feels then it feels then she may order prohibition of strike or lockout during the continuation of the arbitration proceeding

(e) The arbitration shall investigate the dispute & pass the arbitration award and report the same to the app govt

⇒ Strikes & Lockout.

i General Prohibition of Strikes & lock-outs

NO workman should go on strike & neither should a employer declare lockout during:

a- Pendency of conciliation proceeding and 7 day from its conclusion.

b- Pendency of proceeding before labour court / Arbitration Industrial & Nation Tribunal & 2M then after

c- During any period in which settlement is an operation.

⇒ Strike & Strikes

27- No person who is employed - shall go on strike & neither an employer should declare Lockout

a. without giving a notice within 6 week before the strike / Lockout

b. By atleast giving a notice 14 days previous to strike

c. Before the date mentioned in the notice

d. During pendency of 7 Day & there after

⇒ Penalties

a) Penalty for illegal strike → imprisonment extended to 1 month & Fine of 50 rupees.

b) Penalty for illegal lock-outs → imprisonment extended to 1 month, Fine of 1000 rupees

c) Penalty for instigation etc → Imprisonment - 6M

d) Penalty for giving financial aid to illegal strikes & lockout → Imprisonment - 6M } Both  
Fine 1000

(e) Penalty for ~~the~~ closure without notice

Imprisonment - 6M } BOTH  
Fine - 500 } →

— X — X — X —

## UNIT-2 The Industrial Employment (Standing Orders) Act 1946

### Standing Order

1) Standing order means rule relating to the employment which generally consists the following

a) Shift working.

b) Hours of work, How to apply for Holidays/Leaves.

c) The closing and reopening of industrial <sup>establishment</sup> & the action which may be taken in the event of temporary stoppage of work.

d) Process of Termination of Employment & the notice to be given by employer & workmen.

e) The process of <sup>arbitration</sup> ~~arbitration~~ of workman complaining against unfair Treatment.

f) Classification of workman as they are Temporary, permanent.

2) From the time the act become applicable sec. 3 complain establishment to submit within 6 months the draft standing orders.

3) Generally 5 copies are submitted, also the draft should be in conformity with the existing standing orders.

- 4) Establishment in the same industry may submit a joint application for the same.
- 5) The certifying officer shall approve or reject the same after adjudicating <sup>upon</sup> its fairness & reasonableness and also it conforms with the maiden standing order.

### ⇒ Certification

- 6) Upon receiving application the certifying officer shall forward a copy to Trade Union & if no trade union is there then to any workman with a notice requiring objection which are to be submitted within 15 days.
- 7) Upon the receipt of objections the officer should provide DOBN to both party & recommend a man after which the same shall be certified.
- 8) A copy of a approved / certified order shall be sent to emp<sup>lyer</sup> within 7 days of certification as well as the employee.
- 9) Appeal against such order can be made to the appeal authority within 30 days from the date on which ~~copies~~ copies are sent to the party's copies

10) The decision of <sup>the</sup> ~~the~~ authority shall be final & a copy of the same should be sent within 7 day.

⇒ Duration & Modification of Standing orders

11) Firstly it prohibits an employees to modify the approved standing <sup>Jordan</sup> except by an agreement.

12) on the part of the employees the modification cannot be done until the expiry of 6 months from the it <sup>was</sup> last modify / certify.

13) The Sec. empowers the workman to file for modification of standing order as ~~an~~ when they want & the rule of 6 Month doesn't apply on this case.

14) Such an Application for modification shall be complained by 5 copies & if the ~~no~~ modification is happening pursuant to an agreement then ~~a~~ a certified copy of an agreement should also ~~be~~ submitted

⇒ Payment of Subsistence Allowance

15) Where an employee has been suspended pending

any investigation then the employee shall allow him subsistence allowance at the rate of 50% for the first 90 days & thereafter <sup>TSI</sup> and there after for the remaining part, only if the delay is not because of the workmen default.

16) Untill the standing order are certified the model standing orders shall be deemed to be accepted.

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CH-16

# Law of Welfare & working condition

Page No. /

Date / /

## UNIT-1 FACTORIES, 1948

- 1) Factory means premises where in manufacturing process is being carried on & where there are 10 or more workers are working or were working on any day in preceeding 12 months with the aid of power or 20 or more workers working without the aid of power.
- 2) The act applies <sup>to</sup> ~~on~~ the whole of India on all the factories but it does not apply on the following:-
  - a) Mines
  - b) Mobile unit of the Army <sup>or</sup> forces
  - c) Railway running shed
  - d) Hotels & Restaurants
- 3) Under the act manufacturing process means any process by which:-
  - a. Any article is manufactured / repair / packed / washing / oiling for the purpose of its use / sale / disposal.
  - b. Pumping oil, water, or sewage
  - c. ~~Generation~~ <sup>transmating</sup> generating & power
  - d. ~~to~~ Reconstruction, construction or breaking up of ships
  - e. Preserving into cold storage.

4) Worker ~~man~~ A person who has been employed either directly or indirectly or through any agency for any manufacturing process or any work incidental but does not include any member of the armed forces of union.

5) Occupier under this act means any person who has the ultimate control over the affairs of the ~~to~~ factory, which includes -:

a- In case of firm any of the ~~for~~ individual partners

b- In case of co. any of its directors.

c- In case of factory belonging to the CG or SG then the person nominated <sup>by</sup> ~~by~~ should be the deemed occupier <sub>govt.</sub>

d In case of a ship being repaired in a dry dock then the owner of the dock shall be deemed to be the occupier.

6) The purpose of an occupier is to set ~~to~~ the liability however an occupier would not be held liable if he ~~proof~~ <sup>proves</sup> the court that <sup>one</sup> ~~some~~ <sup>one</sup> else has been interested with the work & the occupier used ~~due~~ <sup>due</sup> diligence but

the offence was committed without his knowledge

## ⇒ Duties of Occupier

### a- NOTICE

The occupier shall send written notice ~~at least~~ at least 15 days before occupying any place, ~~as a~~ The notice shall include the following factory

- i- The name & address of the occupier
- ii- The name & situation of the factory
- iii- The name & address of the owner of the premises
- iv- The address to which communication relating to the factory
- v- The nature of the manufacture process to be carried on in the next 12 months
- vi- The name of the manager.
- vii- The no. of ~~men~~ workers likely to be employed.

\* NOTE in case of seasonal ~~resuming~~ <sup>factory's</sup> resuming their work an notice of 30 days prior days has to be given.

7) In case of appointment of new manager. ~~the~~ the same shall be intermitted to Chief ~~Inspector~~ <sup>Inspector</sup> within the period of 7 days from the date such person takes ~~charge~~ over charge.

### ⇒ General Duties of the occupier

8) The occupier shall ensure that -:

(a) That the provision of plant & machinery are safe and without any risk.

(b) That all <sup>any</sup> necessary arrangements in the factory, are <sup>done</sup> for <sup>not</sup> for <sup>the safety of</sup> <sup>the</sup> workers in connection of <sup>the</sup> articles & substances.

(c) Sufficient information / instruction has been provided to ensure the health & safety of the workers.

(d) The maintenance & <sup>maintaining</sup> of the working environment that the same is safe & without any risk.

### ⇒ General Duties of Manufacturer

9) Any person who designs / Manufactures / imports any article for use in ~~any~~ any factory shall -:

(a) ensure that the article is safe to be used & without any risk to the workers.

(b) Carry out necessary test to examine the same.

(c) Insure that there is adequate information about the use of the article, the necessary condition which must be followed when it is put to use.

(d) If the product is manufactured outside India then the ~~man~~ importer must check that the article must check ~~then the article~~ conforms to the Indian standard & if the standards used abroad are higher then the to check the articles with those standards.  
complies.

⇒ Authority / Agencies Under the Act  
(Chief Inspector)

1. **Inspector** The SG appoints the CI, Inspectors & additional inspectors.

(b) A Chief Inspector is appointed for the whole state where as a inspector for ~~individual~~ is for a territorial state/district (every district magistrate is an inspector for his district)

(c) The CI have all power under the act which also include the power of an inspector, so FAIC is an inspector through out the state.

(d) All appointments are to be made ~~the~~ through a 1 in official ~~gazet~~ notification a official gazette.

## Powers of Inspector

- Enter any premise which is being use as a factory.
- Make examination of a premise/Plant/Machinery
- Require the production of any registry.
- See any record or any register if required.
- Inquire into any accident.
- In case if he feels any article or substance may cause any injury to the workers then it may ordered to be dismantled

## II Certifying Surgeons

Medical Practitioner

(a) The S.G. appoints a qualified <sup>medical practitioner</sup> to act as an certifying surgeons for the purpose of this act.

(b) he may further appoint other medical <sup>Practitioner</sup> to aid him in discharging the function under the Act.

(e) Following are the duties of Certifying Surgeons:-

(i) Certifying & examining young person.

(ii) Examination of those person who are engaged in dangerous ~~occupations~~ <sup>supervision</sup> occupations

(iii) Exercises ~~are~~ the following medical <sup>supervision</sup> for any factory where:

>> Cases of illness have occurred & that can be because of the manufacturing process carried on.

>> The illness & injury could be because of the change in the manufacturing ~~process~~ <sup>process</sup> substance used.

>> where young person are appointed in connection of work which may cause injury.

### III Welfare officer

appoint a welfare officer

a. The occupier is responsible to 1 where in 500 or more workers are appointed.

### IV Safety officer

a welfare officer

The occupier is responsible to appoint <sup>where</sup> in 100 or more workers are appointed

## ⇒ Measures Taken by Factories

### I Health

#### a. Cleanliness

→ The factory should be kept clean ~~any~~ particularly thing should be taken care of the following:

- i - accumulation of dust must be removed daily
- ii - washing of the floor using disinfectant at least once in every week
- iii - where a floor might ~~be~~ <sup>become wet because of</sup> manufacture process, effective <sup>drainage</sup> should be provided.

iv - PAINTING - In case of non washable paint & doors & windows should be done in 5 years & where the paint is washable then the same should be washed every 6 months & one coat of colour in every 3 years

#### b. Overcrowding

→ i There should be ~~adequate~~ adequate space for workers to discharge their duties effectively & hence there should not be overcrowding

ii under the act every worker is entitled ~~to a~~ to ~~to a~~ a minimum of 14.2 ~~sq~~ cubic meter <sup>space</sup> workplace in

in every workroom provided further, the space over & above  $\neq$  of 4.2 meter above the floor will not be taken into consideration

### iii DRINKING WATER -

Suitable arrangement made in every factory for the sufficient supply of drinking water & such point should not be situated within 6 meter of any urinal or spitting.

→ In case of the no. of workers exceeds 250 there should be provision of cooling drinking water during hot weather.

iv - Artificial Humidification - Humidity is the presence moisture in the air. Humidity is the presence moisture in the air. Artificial Humidity creating moisture in the air with the help of Technology.

→ Certain industries require higher humidity to carry out its manufacturing process & for those industry the SH may make rules for

a. Prescribing standards for humidification

b. Methods to be adopted for adequate ventilation.

c. Methods for increasing humidity.

v- Ventilation & Temperature - Every factory should have suitable arrangement for adequate <sup>ventilation</sup> ~~arrangement~~ of fresh air.

vi- Spittoons - There should be adequate no. of spittoons at <sup>convenient</sup> place which should be maintain in a clean & hygienic style.

vii

## 2. Safety-

i. Fencing of Machinery - Any machinery which is in motion must be fence, for instance every moving part of the prime mover or the blades of a fan, of a water wheel or Turbine.

ii Self Acting Machine - For those machines which move its own & is operating from where workers may pass through then there must be distance of 45 cm. from the place where workers can pass.

### iii Hoists and Lifts

- (a) Every hoists & lift should be made of sound material having adequate strength.
- (b) Must be examined by a competent person every 6 months.
- (c) The max safe working load should be mention.
- (d) There should be cage / gate which shall be fitted on each side from where ~~access~~ access is afforded.
- (e) The gate should be with interlocking system that, which ~~is~~ means it should not <sup>open</sup> except at the landing.

### iv Precautions regarding the use of portable electric light

The act prohibits any appliance including a ~~portable~~ <sup>voltable</sup> electric light exceeding 24 volts.

### v. Safety officer.

The occupier is responsible to appoint a welfare officer where 1000 or more workers are appointed.

VI- Protection of eyes - For those manufacturing process which may involve any chance of injury to the workmen's eyes then suitable arrangement should be made for their eyes.

⇒ Welfare Measure -

1. Washing Facilities - There should be suitable facility for washing, maintained separately for the use of male & female workers.
2. Facilities for Dry & string - There should be suitable place for keeping clothes for the worker & for the drying of the wet clothes.
3. Facilities for sitting - There should be place for sitting for people so that they can rest.
4. Shelters, Rest-room & Lunch Room - in any factory <sup>any</sup> where in <sup>any</sup> 150 or more are employed it shall mandatorily provide a rest room & a lunch room where workers eat their meals.

5 Canteens

In any factory where in 250 or more workers are employed, adequate provision should be made for the creation & maintenance of functioning canteens.

6. Creches - ~~the~~ Creche facility is compulsory in those factories where in more than 30 women workers are employed. where they can take their children under the age of 6 years.

7 First Aid Appliances - In every factory there should be first aid boxes equipt with

- a) the prescrible ~~contents~~ contents
- b) Further provided <sup>that</sup> there should be at least one box for every 150 workers employed.
- c) Further in case of workers <sup>being</sup> more than 500 in employment, an ambulance room should be provided.
- d) The above should be with a person who hold a certificate in first aid treatment ~~or nursing~~ ~~staff~~ or any medical or nursing staff.

## ⇒ Site Appraisal Committees

8) The state Govt is the authority which approve the proposal of any factory involving and ~~hazardous process~~ hazardous process.

9) For the above purpose it constitute a site appraisal committee which shall ~~advise~~ <sup>advise</sup> the govt within ~~within~~ 90 days of the receipt of application recit of application.

10) Where the proposal<sup>s</sup> of the CG, 1 person nominated the ~~to~~ Central government joins the site appraisal committee.

11) Once the approval of the SG is obtained no further approval under the air <sup>or</sup> water ~~to not~~ act is required.

## UNIT-2 - The Contract Labour (Regulation & Abolition Act 1970)

- 1) The act apply on whole of India any establishment employeing 20 or more workmen or every contractor appointing 20 or more workmen
- 2) Further this act can be applied by the App. Govt on establishment employeing less than 20 workmen but before that they have to get 2 months notice in official gazzet in the same.
- 3) The act does not apply in case of intermittent or casual nature is performed
- 4) Any workmen who is appointed in connection with the work of an establishment where he is appointed through a contractor either he is having or not having knowlege of principle employees
- 5) He is not added in the muster rule of the employees.

6) A contractor means a person who undertakes to produce the result for the establishment through contract labour, or who supply contract labour to any establishment & includes a sub-contractor

7 Workman - A workman means a person who is appointed to do any skilled, unskilled work but does not include:-

(a) A person employed in managerial capacity.

(b) who is appointed in a supervisory capacity drawing more than 500 per month.

(c) Outworker

=> Advisory Boards

The boards are constituted at 2 levels

### a- Constitution of Central Board

i It is created by the CG to give the advice to the CG upon the administrative as well as to perform any function refer to them

ii The composition of the Board is -> A chairman, the Chief central labour commissioner (ex-officio), such the number of member which are not less than 11 but which may extend to 17.

\* NOTE → The representative of the employer & the worker should be in equal number  
→ It is mandatory to be formed.

### b) State Advisory Boards -

It is created by the CG by the CG to give advice to the SG on the admin of the act as well as to perform any function referred to them.

The composition - a chair man, the labour commissioner [Ex-officio] such other number of members which are not less than 9 but which may extend upto 11

\* Note → The representative of the workmen should be in equal number

→ It is not mandatory & is the ~~to~~ discretion of SG

## ⇒ Registration of Establishment

8) Every <sup>PE</sup> Principle & <sup>emp.</sup> upon whom the act applies need to make an application to the registering officer.

9) For this purpose the app. Govt may by notification in the official gazette, appoint any gazetted officer to act as a registering officer.

10) If the Registering officer statifies that the application he may grant certificate of Registration.

11) If he is of the opinion that the registration is obtained through misrepresentation then he may after giving DBM & taking approval from the app gov. evoked the reg.

12) If the registration has been declined or has been evoked then the employer can not appoint contract labour.

13) Like registration is for Principle employees licencing is for the contracts & for this

purpose the app. govt appoints co. & a contractor should not undertake or execute any work unless he has got license org.

⇒ The power of App. Govt. to prohibit employment of labour

14 The app. Govt after consulting the Board prohibit by a notification in official gazette employment of contract labour in any process or operation.

15 But before passing such a notification it considers the following factors:

- (a) whether the work/process is necessary for that industry
- (b) The duration of work regarding the nature of the industry
- (c) whether the work is done ordinarily through a regular workmen.
- (d) Based upon the it is sufficient to employ considerable number of whole time workmen

Note - Based upon the above it <sup>decide</sup> weather to prohibit the Appointment in the work or not

⇒ Welfare & Health of contract Labourer

a) Canteens

b) Res-room

c) Other Facilities — i) A sufficient no. of latrines & urinals, supply of water, & washing facilities

d) First Aid

e) Liability of principle employer in certain cases —

§ All the above amenities is to be provided by the contractor & if he fails to do the same then the p.e should provide the same & deduct all the expenses from the payment of the contractor or recover it as a debt.

§ 16. It is the responsibility of the contractor to make the payment of wages of worker before the expiry of the period stipulated.

⇒ Penalties ⊕

~~a) Obstruction of Inspector which may extend upto 3 months - # which may be with fine of 500~~

a) Obstructions of Inspector - which may extend upto 3 months & or with fine upto 500

b) Contravention of provision & other offence - which may extend up to 3 Months or with fine upto 1000

## UNIT-3 The child & Adolescent (Prohibition & Regulation) Act 1986

1. The act has been enacted to regulate the employment of adolescent & to prohibit the ~~to~~ employment of children in all occupation

2. No child ~~to~~ should be permitted to work in any occupation except



a) ~~with~~ with his family which is not a hazardous and after his schooling hours or during vacation

b) As an Artist however the should not effect education of the child

c) ~~No adolescent~~ <sup>adolescent</sup> shall <sup>be permitted</sup> to work in any hazardous occupation or process.

d) Hazardous & occupation includes -:

i- Mines

ii Explosives

iii Hazardous process.

### 3 HOURS & Period of work

a. The total spread over cannot be more than 6 hours

b. One period of work can not be more than 3 hour.

c. Mandatory interval of 1 hour.

d. Not to be permitted to work b/w 7pm to 8pm

e. No over time allowed.

f. No Double employment.

g. A complete ~~holding~~ holiday in each week which can be on any day fixed by the occupier the day can not change more than 1 in 3 Month.

### 4 Maintenance of Register

Every occupier should maintain a register to be available for inspection  $\times$   $\times$  during working hours showcasing the following -:

a. Name & DOB of every every adolescent employee

- b. The Hours & period of work of such ~~Adult~~ Adolescent
- c. The nature of work ~~per~~ perform by the ~~adolescent~~ Adolescent

### 5 Notice to Inspector

Every employer who employs Adolescent shall within 30 day of the employment sent to the inspector a notice containing the following :-

- a. Name & address of establishment
- b. Name of the person in actual management
- c. Address to which <sup>communication</sup> ~~communication~~ relating to establishment should be send.
- d. The nature of the occupation & Process.

### => Penalties

#### Case-3

-> Who-ever employs a child or an ~~adult~~ adolescent in contravention of <sup>provision</sup> act shall be liable for punishment which shall not be less than 6 month but may ~~can~~ extend to 2 years. ~~the~~ <sup>fine</sup> ~~or~~ with this ~~but~~ <sup>and</sup> ~~or~~ which may extend to 50,000. - parents are not liable in 1st offence

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Case - 2

Whoever do the same offence <sup>ntly</sup> subsequently then the punishment should not be less than 1 year but which may extend to 3 years of imprisonment

In subsequent ~~case~~ cases parents <sup>shall be punishable</sup> with a fine which may extend upto 10,000

# Evaluation of Labour Legislation & Need of Labour Code

- 1 The (ILO) International <sup>organization</sup> Labour is the first organization dealing with labour issue & was established at least of World war 1 for post war reconstruction.
- 2 India is the founding member of ILO, the ILO works as a ~~bipartical~~ <sup>bi-partisical</sup> of body & every decision is taken by the govt. after considering the opinion of two other social, namely the workers & employers <sup>partner</sup>.
- 3 The new labour court have the following features:-
  - (a) Compling with all the legislation was a difficult task & now the ~~court~~ <sup>code</sup> are provided by 1 registration <sup>code</sup> licence & a single return for all the ~~courts~~ <sup>code</sup>.
  - (b) Prior the govt. <sup>was require</sup> approval by those establishment employing 100 or more employees in matters of laying of ~~rebranch~~ <sup>re-branch</sup> or closing, now this number is increased to 300.
  - (c) Prior there was no standard for reconganizing trade union, now the provision for reconganization is introduced.

(d) The <sup>cont.</sup> court has introduced punishment for certain offences like - Under paying or violation of the Code

(e) Max. punishment is 3 Month in <sup>Prison</sup> & fine up to 10,000, partly as per the offences

⇒ Code of Social Security 2008

(a) The salient features of this code are the -

(a) The benefits of pension <sup>shom.</sup> now available to all sector that is organized / unorganized / self employment. employees.

(b) A Social Security fund has been created to provide social security to unorganized sector.

(c) ESIC now covers unorganized sectors as well

(d) Expansion of ESIC Hospitals & ~~branches~~ branches is now as reached at district level as well

(e) ESIC now covers the workers of in plantation as well. even if there is a single worker engaged in hazardous work, he shall be getting the benefit of ESIC

f The new code covers all the provision of maternity benefits / nursing berates / crech facility

g Now the employers employeing 20 or more workers are manditorily required to report vacancy's online

⇒ Occupational Safety, Health, & Working Condition <sup>22</sup> of this code

The salient features are as followed: -

(a) To apply the provision of this code on ~~the~~ all those establishment having 10 or more employes workers, other than establishments mines and docks

(b) A new provision has been added to compele the employes to provide Travelling allowances to interstate migrant workers, who under take ~~the~~ Journey from & to the native place

(c) To provide appointment letters to workers

(d) Manditory & free ~~annua~~ annual health <sup>checkup</sup> to ~~the~~ the workers.

(e) ~~Earlier~~ Earlier ~~in~~ in order to be eligible to receive annua leave with wages a worker should ~~to~~ have worked for 240 day

, this limit has been decreased to 180.

f) The code empathize women's empowerment. lastely (g) it enables the code court- to give <sup>upto</sup> 50% of the penalty is received to the victim of the accident ~~of~~ ~~it~~ or its legal heirs

⇒ Code on Wages, 2019

The feature of this codes are as followed:-

(a) Guarantee of minimum wages, workers of both organized & as well as unorganized ~~secto~~ sector

(b) Mandatory review of minimum wage in every 5 year.

(c) Guarantee of timely payment of wages to all workers.

(d) Unorganized sector has been recognized under this code under protection extended to them

(e) The period of limitation <sup>has been</sup> ~~is~~ increased to 3 years.

(f) It assure equal remuneration male & female worker for same work

⇒ Industrial Relation Code, 2020

The salient feature of the industrial Relation code follows -

- (a) The new code brings concerted casual leave within the ambit of the strike
- (b) In the event of any job loss a worker will get benefit under "Atal Bimit Vajkti Kalyan Yojna"
- (c) Faster Justice to the worker through tribunal, all the worker dispute must be resolved within a year.
- (d) The old adjudicating bodies like the court of Enquiry / Board of conciliation & labour court will be replaced with industrial tribunal.
- (e) It prohibit strikes and lock-outs in any industrial establishment without giving a notice of fourteen days
- (f) Trade unions have got statutory recognition & have been endowed with new right

# CH-18 - Law of wages

## UNIT-1 Payment of wages Act, 1936

Industrial or other establishment means

- (a) Motor transport } → carrying passengers or goods  
(b) Air transport } → other than army / Military / naval union.

(c) Dock or Jetty

(d) Plantation / Any other establishment in which articles are manufactured for their use, transport on sale.

(e) Establishment in which work relating to maintenance of building, road, bridges, canals or relating to generation and distribution of electricity or any other form of power.

Wages - It means all remuneration which shall be paid to the worker in the event the terms & conditions of the employment are fulfilled, further it includes -:

(a) Any remuneration payable under any settlement or award.

(b) Remuneration in respect of overtime or any holidays or any leave period.

- (c) Any amount payable by reason of termination of employment.
- (d) Any other sum for which he is entitled but it does not include -
  - (i) Bonus
  - (ii) Value of house - accommodation
  - (iii) Contribution paid by the employer towards pension or provident fund
  - (iv) Any gratuity payable to employee
  - (v) Any travelling allowance
  - (vi) Any sum paid to the employed person to defray special expenses

⇒ Responsibility for payment of wages

- 1) It is the responsibility of every employer for the payment of wages to all the employees/workers
- 2) In case of factory if any person has been named as a manager, then his responsibility.
- 3) In case of railways any person nominated by the railway administration shall be responsible
- 4) In case of factory if any person has been

4) In case of contraction the contractor himself or any person designated by such person in which case the designated person

Wage period - The one who responsible to make the payments has the right to fix the wage period but which shall not exceed more than 17 month

### Time payment of wages

1) In case of establishment employing less than 100, the payment should be made before the expiry of seven days

2) In case of establishment employing 100 or more, the payment should be made before the expiry of 10 days.

3) In case of person employed on a Telty or in a mine, the balance of wages shall be paid before the expiry of the seventh day of such completion

4) where the employment has been terminated, the balance of the wages earned must be transferred before the expiry of second working days.

5) In the event of employment is terminated to the closure of employment establishment the wages shall be paid before the expiry of the second day from the day of termination.

NOTE. All payments are made on working days & same should be done paid through current coin or currency notes or by crediting the account of the workers

### Deduction from the wages of a Employee

- a) Fine
- b) Absence from duty
- c) Damage to goods expressly entrusted to the worker.
- d) Housing accommodation
- e) Recovery of any advance paid
- f) Recovery of any loan ~~for~~ from any fund
- g) Income tax payable
- h) Payment to any co-operative societies mandated by any govt.
- i) Deduction because of payment of premium to wards the life insurance policy premium

## ⇒ Fines

- a) No fine to be imposed until the same has been approved by the SG.
- b) No fine upon a person with less than 15 years of age.
- c) Before imposing any fine OOBH must be given
- d) No fine to be imposed in instalment
- e) No fine to be imposed in instalments
- f) No fine to be recovered after the expiry of 90 days.

- A registers for the above imposed fine have to maintain which shall be preserved for a minimum period of 3 years

- 1) For the purpose of heaving claims against wrongful deduction delay in payment or imposed penalty to malicious claims the appropriate govt shall by notification in the official Gazette appoint.
- 2) When any wrongful deduction have been made then the above mentioned person can order for any compensation amount which may be upto 10 times of the amount deducted & all a refund of the amount deducted.
- 3) In case of settlement of dispute before the judgement still a fine of 2000 may be imposed.
- 4) In case of of delay payment the authority can order payment of the claim along with penalty which shall not be less than 15% but which may extend upto 30%.
- 5) A complain regarding should be made within 12 months.

(6) In the event of any malicious or vexatious claim the worker shall be liable to of an amount not exceeding three seventy fine rupees.

X ————— X

## UNIT-2 - MINIMUM WAGES ACT-1948

1) The act applies to all the ~~sectors~~ <sup>scheduled</sup> ~~sectors~~ <sup>scheduled</sup> employment, where in scheduled employment means those which are been added in the schedule by the App. Govt

2) The schedule is further divided into 2 parts where in part 1 has 12 entries & part 2 relates to employment in agriculture.

3) The App. Govt can fix <sup>any part</sup> wages for <sup>Part</sup> of the state in case of employment in part 2 & for the whole state in case of employment in part 1

4) wage. All remunerations capable for being expressed in money but does not include. :-

(a) value of house accommodation

(b) any amunity

(c) Contribution to pension/Provident

(d) TA

(e) any sum to defray special expenses

(5) The app govt. may not fix min rate of wages in respect of any scheduled employment in which less than 1000 employees in the whole state are engaged/~~not~~ employed

(6)

⇒ Manner of Fixations / Revision of Min wages

6 The app govt can fix min. wages for any of the wage period following

- (a) By the Hour
- (b) By the Day
- (c) By the week
- (d) By the Month

8 The app govt may fix min. rate of wages for -

- (a) Time work to be known as min. Time rate
- (b) piec work to be known as Min piec rate
- (c) Guaranteed time rate for those employed in piec work for securing the min. wages

⇒ Procedure for Fixing & Revising Min. wages

X X X

While fixing Procedure what are the steps to  
fix & Revising wages

The app. govt is mandatorily required to fix  
& Revise in the fixed scheduled employment  
for this reason it may adopt any of the  
2 following methods

#### (i) COMMITTEE METHOD

(a) in the method app. govt appoint committ. &  
subcommit to hold enquiry & the advice  
the govt. in fixing & Revising the min.  
wages

(b) The committees are advisory in nature & the app govt may or may not accept the recommendation

(c) The composition of the committee shall be equal no. of representatives the employer & employee & independent person not exceeding  $\frac{1}{3}$  of the total no. of members, one such independent person

(d) The wage rate so decided in the notification in the official gazette. & if no date is specified then it shall come in force in the expiry of 3 months

### 2. 2<sup>nd</sup> Method - Notification Method.

(a) Under this method app govt notify in the official gazette a rate in the form of proposal to be declared as min wages allowing a min. of 3 months to take into consideration all the objections.

(b) Once the representations are received then the app-govt shall convene the advisory board then agree fix the rate of min wages

& notify the same in official gazette

(c) If not date is specified ~~then~~ <sup>then</sup> at the expiry of 3 Months

⇒ Advisory Board -

(a) Formed by the app govt for co-ordinating the work of all the committees & advising the ~~act~~ app govt & matter specified under the act

(b) The ~~Advisory~~ Advisory Board shall consist equal no. of representatives of employer & employee

(c) Further the CG ~~should~~ shall form Central Advisory Board for advising the CG & SG on fixing & revising min wage & co-ordinating the work of advisory board

(Central Advisory Board)

(d) The CAB consist of equal no. of representatives of employer & employee

Note:- Min wages should always be paid in cash but if the app govt is satisfied the it may authorise payment in the form of supply of essential commodity or any other community amenity

⇒ Fixing Hours For A Normal Working hours

The app govt may:-

- (a) Fix the no. of working hours as well as interval period
- (b) providing a day of rest in every period of 7 days as well as the payment that day of rest
- (c) provide of payment at overtime rate if the worker is make to work on the day of rest
- (d) The above provision may not apply to be same extend in the following cases
  - (a) Employee engaged in any emergency/<sup>urgent</sup> work
  - (b) in any work which for technical reason has to be complete before the employee leave

(c) Employee engaged in work which is preparatory work

(d) A work which can not be carried on except at times dependent on irregular natural forces

Note - Standing normal w.h are 48 hours in a week

⇒ Wages - to workers should be paid for full working day even if they worked less than required no. of hours, provided the failure to work is not caused because of his unwillingness to work.

⇒ Offences & Penalties Penalties

6M - imp or with fine which may extend 500 or both

Date / /

## UNIT-III - Payment of Bonus Act, 1965

1) This act applies to the whole of India & specifically on every factory & other establishment employing 20 or more person on any day in the preceeding year.

2) The App. Govt. by may by notice in the official gazette of a ~~max~~ <sup>per</sup> period not less than 2M employment of the act on that establishment employing less than 20 but not less than 10.

3) <sup>question</sup> A ~~question~~ case was weather this act applies only with profit bonus, the SC in Mumbai *Kamgar Sahab v. Abdulabhai Faizullahbhai* held that the act deals with profit bonus & is silent on other forms of bonus, which means it leave untouched all the other form of bonus & it can be as per the discretion of the employer.

4) once the act is applicable it remains applicable through out.

5) The act does not apply in the ~~for~~ following classes of employment

(a) employee of insurer in \_\_\_\_\_ in general insurance  
& the employees of LIC.

(b) seaman employee regd. under the dock act

(c) ~~Employee registered under the dock worker act~~

(d) employes in any department CG/SG/ local authority

(e) Employee of indian cross <sup>↔</sup> seed society / university /  
NPS

(f) ~~Employee~~ Employee of RBI

(g) Employee employed by any of the following

(a) SIDBI

(b) Nabard NBARD

(c) VTI

(d) Deposit

(e) financial co-operation / <sup>↳</sup> Deposit insurance & reparation

## 6. Allocable Surplus -

For those employer who have not made arrangement for the declaration of dividend 67% of the available surplus & in any other case 60%.

7. Employee - A worker employed for any work whose wage does not exceed ₹1500 per month.

8. Establishment in Public Sector - it means any establishment owned, controlled by the govt. or any co-operation of which not less than 40% share is held by the govt. or the RBI or any of their co-operation.

9. Wages under the act shall include :-

(a) Basic wages

(b) DDA Allowance

but does not include the following

→ does not include :-

(a) any other allowance

(b) any bonus

(c) contribution to pension or

(d) gratuity or any Retirement compensation

(e) HRA (Travel, Rent, Allowance)

### ⇒ Establishment

10 The word establishment includes any branch, department, situated at the same or some any place, the act shall treat all of them as same establishment for the purpose of computation of bonus, however where the branch ~~is~~ prepare separate B/S & P/L then such department shall be treated as separate establishment

### 11 Calculation of Amt. Payable as bonus

(a) Netly gross pt.

(b) Deduction from this are made, which are as follows

(i) Dep.

(ii) Any amt. which the employer is allowed to deduct from his income in income Tax

⇒

(c) any direct tax which the employee is liable to pay for the respective Accounting year.

To this amt. add a sum equal to the diff b/w the direct Tax calculated on gross pt. of the previous yr & direct tax calculated gross profit ~~the bonus~~ after deducting the bonus

(d) This sum is the available surplus of which 67% or 60% shall be <sup>be</sup> allowable surplus.

## 12 Eligibility

(a) Every employee who has ~~not~~ work not less than 30 days is entitled to bonus in that year

(b) An employee who is dismissed because of the committing and fraud, theft or serious shall be disqualified by from receiving bonus

(13) Min Bonus - 8.33% or 100 ₹ which ever is higher  
[60 ₹ under the age of 15]

(14) Max Bonus - 20% [if the wages of the employee exceed 700 then the calculation of Bonus would be at 700]

(15) Even if the employer suffer losses he is bound to pay min. Bonus

(16) If the worker suffer loss & the worker is entitled to get the bonus higher than 8.33%, the Bonus ₹ shall be ~~pro~~ proportionate decrease

17. An employee is deemed on working even on those days on which he has been del on / leave on wages / Absent due to disablement arising out of accident in the case of employment or worker is on maternity leave

\* => Set on & Set of allocable surplus

1. where in any year even after ~~paying~~ paying of max. Bonus there is still allocable surplus the same can be carried forward in the next year for set on, & can be used upto 4 accounting year for the purpose of paying bonus
2. Set off- where in any year there is no surplus or the allocable surplus can not payout the min Bonus under the act & neither there is any carried forward surplus for set on, in such cases the deficiency shall be carried forward in the next year for set off in the succeeding year and can be carried forward upto 4 consecutive year
3. While utilizing the payment for Bonus IFR priority is given to the money carried forward from the earliest accounting year

Miss

→ if an employer has paid any kind of ~~costs~~ ~~statutory~~ statutory bonus as ~~in~~ any even in any part of 'statutory bonus before the date of bonus', then he shall be allowed to deduct the amt. already paid from the total bonus payable.

→ Bonus should be paid within the period of 8 months from the end of Accounting year & which may further be extended with the approval of app. Govt. for a period exceeding 8 months but not exceeding 2 years.

→ In case of any dispute regarding payment of bonus, it should be paid within a month from the date of the award.

→ when any amt. of bonus is due to an employee & in case of his death, to his legal heir, then he may file the application to the app. Govt. for the recovery of money. The app. Govt. if satisfied shall send a certificate containing the amt. of the collector for recovery.

- Every such application shall be made within a period of 1 year. (delay may be entertained)

accepted if sufficient case is shown)

→ Punishment for any contravention under the act - imprisonment upto 6 months or fine 1000

## UNIT-4 EQUAL REMUNERATION ACT-1976

1) It is the duty of the state to secure equal pay for equal work for both men & women, & for the same the parliament enacted the Equal Remuneration Act 1976

2) Remuneration in this act means basic wages & all other emolument payable in cash or in kind payable to a person for any work done by him

3) It is the duty of the employer to pay equal remuneration to men & women for same work or of a similar nature

4) Here same work or work of similar nature means work in which the skill, the effort & responsibility are the same, when performed under similar conditions by a man or a woman & even if either of them have any difference in skill the same is not of practical importance in regards to that employment

5) Every employer while recruiting for same or work of similar nature or on the time of promotion, training transfer shall not make any discrimination against women, except where the employment

restricted or prohibited. → this act does not  
affecting any priority for ST/SC/OBC or  
previous employees

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## Ch-1 Selection of Business Organization

1 Choosing a form of business organization is very important for a successful running of an organization but the choice depends on various factors which include the following

### 1 Nature of business activity

→ in case of small business or which are ~~retail~~ ~~wholesale~~, ~~retail~~ houses, ~~the~~ into personal services sole proprietorship would be appropriate structure.

→ in case of other trading enterprise like ~~retail~~ ~~wholesale~~, ~~retail~~ houses, they can be structured as a partnership.

→ in case of business carrying large ~~retail~~ ~~wholesale~~ stores like ~~the~~ super bazar, engineering, they can be structured in a co. form

→ if any person who may be advised to start sole proprietorship, wants the business to be clothed with legal entity then they may decide to form OPC, same is case of partnership they can be structured, LLP

## 2 Scale of operation

Means the scale of activity if it is for a small area the sole proprietorship, ope will be suitable if the scale of operation is moderate then partnership or LLP can be preferred, in case of large scale company form the most preferred.

\* (MSME) Enterprise can be classified as: on the basis of following criteria

Type	Investment	Turnover <small>everything in cr</small>
Micro	1	50
Small	5	5
Medium	10	250

### 3 Capital Requirements

- Capital is the most important factor affecting the choice of the business organization
- The requirement of cap is <sup>very closely related</sup> to the type of business, <sup>for investment</sup> ~~investor~~
- ~~at or a lot~~ those enterprises which require heavy investment or a lot of working cap. should be structured as a co., depending up the requirement it may be as a public co. or listed.
- For enterprise which required little or no capital can be established as a sole proprietorship or partnership
- apart from this future cap. requirement is also an initial part in deciding the form of business organization

### 4 ⇒ Managerial ability

(i) For those business which require professional or more expertise shall be established in the form of a company, if the work is less & can be divided amongs few then it can be structure in the form of a partnership, further in case of sole proprietor it is difficult to find expert-people as the size of business may not permit.

## 5. Degree of Risk & Liability

(i) Risk & liability are 2 different things, in case of sole proprietorship since the scale of business is small the risk is also less but there is unlimited liability.

(ii) In case of partnership the risk is moderate & the liability is joint & several.

(iii) In case of companies and LLP the real advantage is ~~to~~ even in the <sup>category risk</sup> risk is highest but liability is limited.

## 6. Stability of business

Both sole proprietorship & partnership are unstable as their continuation is also dependent on the people forming it, on the contrary co. & LLP's have perpetual succession which makes them the most suitable with the perspective of stability.

## 7. Costs, procedure & Govt.

(a) Sole proprietorship is the easiest to start as the cost is very low, there is little to know the procedure & very little Govt. Regulation.

(b) Partnerships are also easy to form even though they have relatively less cost, one still has to know the procedure & lesser Govt. Regulation.

(c) Company form is the most complicated in all these factors, as the cost is higher, the procedure is complex & there are many Govt. Regulations to comply with.

## 8. Transferability of ownership

(a) There is no provision of transferability of ownership in case of sole proprietorship, in case of partnership the transferability is dependent on the consent of other partners, whereas in the case of shares they are freely transferable.

## 9. Degree of control & Management

There are many factors which a business owner should consider before deciding upon the suitable business structure, it depends upon the nature of the

business, scale of operation, Cap. Requirement, but the most crucial factor is the ~~to~~ ~~have~~ degree of control ~~to~~ ~~have~~ & management that an entrepreneur desires to have.

(b) If he desires to have complete over the business and management then a appropriate ~~sole structure or~~ ~~one~~ sole proprietor or ~~one~~ ~~one~~.

(c) If he is open to sharing the control among few then partnership or LLP can be a suitable ~~str.~~ structure.

(d) Lastly if he is not interested over the control and management of <sup>organization</sup> and the activities are large and professional manager's are required then company form of structure would be most suitable.

⇒ Type of business Organization

# ~~sole~~  
 (i) ~~sole proprietor~~ - In this form of business a single person own all the assets of the business & also have and the liabilities upon ~~it~~ ~~from~~ it.

(ii) The benefits includes low cost to start, full control, no sharing of management

(iii) The demerits are unlimited liability, unseparate legal entity, no perpetual succession, etc.

### # Partnership -

i-

2 or more person can start a partnership firm in which a max. of 50 partners can be added [Sec 464, Rule 10, Companies Act 2014]

ii- The benefits of partnership structure are:-

(a) easy to start

(b) inexpensive

(c) suitable for mortgage business

=> Demerits of the structure are:-

(a) Joint and ~~several~~ several liability

(b) No stability

(c) Not a separate legal entity

(d) ~~Not a~~

=> Other form

(1) Pvt

(2) Pub

(3) OPC

# Corporate Entities - Companies

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## Classification of Companies

1. Companies can be classified on the basis of incorporation or its liability.

On the basis of incorporation it can either be a statutory co. that is incorporated a special act like RBI, LIC or a registered ~~co~~ company under the Act 2013 or any previous legislation.

2. Further companies can also be classified on the basis of their liability structure, which are as follows:

(a) Limited by Guarantee - In this the liability of member is limited upto <sup>the</sup> amt. under taken by them as Guarantee. Another special feature of these type of co. is that the liability ~~that~~ <sup>to</sup> pay arises only at the time of winding up.

(b) Limited by Shares - In this type <sup>of co</sup> the liability ~~the~~ of member is limited upto the unpaid amt. of the face value of share.

(c) Unlimited Liability Co. - In this type of co, the liability of the member goes unlimited.

### 3. Other form of Co. :-

- (a) Sec 8
- (b) Foreign Co.
- (c) Listed Co.

(d) Small Co. - A small co is a status given to a prt. co. who's paid up cap. sh. cap does not exceed 4cr [the limit may be increased upto 10cr] & turnover does not exceed 40cr [the limit may be increased upto 100cr]

This clause does not apply in case of holding subsidiary  
Sec. 8 / Co. governed by special Act

### (e) Pvt Co.

→ The min member to start a prt co. are 2 & the max is limited upto 200 [further current / ex-employees ~~are~~ shall not be counted in the limit of the 200] & Joint Sh. holder <sup>is</sup> ~~is~~ <sup>are</sup> treated as one.

→ It limits the transferability of <sup>shares</sup> & prohibits invitation to the public.

Note - The limit of 200 specified above is only for member not for other stakeholders. but the only condition is that they can not invite the public

(1) Public Co.

→ A co which is not a pub. co. is a public co.  
 [A pub. co. which is a subsidiary of public co. is deemed to be a public co.]

→ The sh. are freely transferable, further the company can ~~the public~~ invite the public

• (g) OPC

→ This is a new form of corporate entity in which one single person owns <sup>the</sup> ~~the~~ entity, it can be started only by an indian citizen & residence, it can further run with 1 director but may have more than 1 director.

→ The owner of the co. has to nominate a person who in such case ~~or~~ should also be a residence and citizen of Indian & shall not associate with another opo

Note - One person can make one opo at a time.

→ Further the purpose residence the criteria is 120 day in preceding financial year

→ Following are the exemptions for OpC

(i) Financial statements <sup>may</sup> ~~does~~ not include cash flow Statement.

(ii) Where ~~an~~ other co. the annual return shall be sign by CS, in case of OpC the same may be sign by any director as well

(iii) They are not required to hold AGM

(iv) If there is only 1 director then they are not required to hold a Board meeting rather ~~they~~ it can directly enter the decision in minute book

(v) in case of 2 or more dir. the required to hold atleast 2 board meeting in each calendar half with min. gap of 90 days

(vi) In place of subscriber clause an OpC can have a nominee clause, who in any ~~in~~ uncertain event become the member of OpC

→ NIDHI Co.

1 means a co. ~~to~~ which has in with the object of cultivating / saving among its members. & which further deals with its member for ~~reciprocity~~ deposit as well as lending ~~members to~~ its members.

2 → These rules apply to all the co's which has been declared, registered or is acting / functioning in the lines of ~~the~~<sup>a</sup> Nidhi co.

### 3 Characteristics

(a) Every nidhi must be incorporated as a public co with min. 200 members, min. paid up sh. of 102, min net own funds of 202.

(b) every nidhi shall within 120 day of its incorporation file an application in NIDH-4 conforming that the members are 200 and net own fund is not less than 202.

(c) Every nidhi shall allot a min of 10 shares or sh. equivalent to 100, further in case of of Rs. 10.

#### 4. Membership of Nidhi

- (a) A membership of Nidhi is <sup>open to body corporate</sup> not a trust, further a minor can not be a member of Nidhi but deposit may be accepted in his name provided it is through his legal guardian, who should be the member of Nidhi.
- (b) Further no member should transfer his holding exceeding 50% during the substance of any loan or deposit.

#### 5. Branches of Nidhi

- (a) Those Nidhi co. which have earned money after Tax for three consecutive F.Y are eligible to open branches.
- (b) It can open upto 3 branches within the same district without the approval of ~~RD~~ BRD and above that RD's approval is required.
- (c) If an Nidhi intend to <sup>branches</sup> open outside the district then it has to take prior approval of RD.

(d) A ~~midhi~~ midhi can not open the branch out of the state

(e) NDH 2 is to be used to <sup>take any provision or</sup> approval from RD

(f) if a midhi ~~intends~~ <sup>intends</sup> then it has to take prior approval of RD supported with a proposal as to how the co. intends to recover all the loans & how it will be paying off all the deposits

(g) The RD's approval has to be applied 60 days prior to the ~~closure~~ closure, further an advertisement regarding the same is to be issued in a <sup>same</sup> ~~same~~ <sup>at least</sup> 30 day prior ~~to~~ to the closure. <sup>copy</sup> ~~copy~~ copy of ~~the same~~ the same has to be fixed upon the notice board of the branch of the midhi which is proposed to close.

(h) once the above is done the midhi co. can close its branch & intimate the registrar within 30 days of ~~closure~~ closure.

### (6) ~~A~~ Acceptance of deposits.

(a) For FD min - 6M Max 60M

(b) For RD min - 6M Max 60M

(c) The max. amt on which interest can be given in a Saving A/c is 1,00,000 & the interest on such deposit shall not exceed 2% over & above the int. rate offered on a saving A/c. in any nationalized bank.

(d) The interest <sup>rate on</sup> FD/RD shall not exceed the max. rate of interest which is allowed by the RBI to ~~RB~~ NBFC's for public deposits.

Note - In case of recurring deposits relating to Mortgage loan the repayment period and the tenure of deposit shall correspond

### 7 On-encumbered term deposits

→ Every nidhi must deposit at least 10% of its outstanding deposit on the last day of 2nd preceeding month [It has to be always in unencumbered position]. Further any withdrawal in the event of v can be done with the approval of RD by making any contingency application in NDM-2

### 8 Loans to Nidhi

(a) up to 2L Rs. where the total deposit from members does not exceed 2cr

(b) upto 7L 50K, when the total limit is more than 2 cr but less than 20 cr

(c) upto 12L, where total amt. is more than 20 cr but less than 50 cr.

(d) 50L, where total amt. of deposit is more than 50 cr <sup>has not made</sup>

Note - Further a Nidhi which <sup>has not made</sup> profit continuously in the preceding 3 yrs then the above limit has to be reduced by 50%.

(g) The maximum rate of interest which is <sup>a nidhi can charge on the</sup> non the loans given by it shall not exceed 7.5% over and above the interest on deposit offered by it.

(10) Maximum dividend not to exceed 25%.

11) A director can hold office for a term upto <sup>consecutive</sup> 1 year <sup>and</sup> after which he should <sup>have 2 yrs of cooling</sup> vacate <sup>period</sup> and thereafter he can be re-appointed.

⇒ Section 8 companies

1. It is a non-profit co. established for promoting art, sci., commerce, education, sports, research, charity or any other like project provided no dividend is paid to its members ~~under~~ & the profits if any shall be applied for the fulfillment of the object.
2. Such co. needs to obtain a licence from the CG and can be registered as a priv. or pub. limited co. but are not required to use the word priv. or pub. limited.
3. Any alteration to AOA or MOA can only be done with the previous approval of the CG, & the govt may revoke the licence if there happens to be any violation.
4. When a licence is revoked the govt can order winding up of the NPO or merger / amalgamation with another NPO with the same object.
5. If it opts for winding up then all the assets to be retained, liab. to be paid & surplus if any can be transfer to another NPO having same objective or transfer to BC funds.

6. Contravention of the above provision will make  
penalizable liable for Fine not less than 1000 but  
which may exceed to 1000. For Direct. not less than 25%  
but which may extend to 25% [The dir.  
may also liable to 447]

⇒ Producer Co.

• The Member of a Producer co. is for those people  
who them self are primary producer, its objective  
include the following -

(a) It helps in production / procurement / grading / selling /  
exporting or importing goods & services for the  
members benefit.

(b) Processing & packing produce of its member

(c) Manufacturing / selling, supplying equipment, to  
its member

(d) Providing edu. to its members on a mutual  
& assessment principle.

• ~~Insurance~~

(e) Insurance of producers & their primary produce.

(f) All other well are measure for the benefit of their  
members

## Foreign Co.

1) It is a co. incorporated outside india which has a place in india (physically / electronically) and conduct business in india

2) Where such a co. propose to windup its operation in india then notwithstanding that whether it is outside india or not, it shall be woundup as an unregistered co.

3) Where ~~are~~ not less than 50% of paidup sh. cap (whether eq. or pref. is held by indian citizen or indian body corporate then such a co. must comply with all the provision of the act.

4) A foreign co. must maintain book of ~~of~~ <sup>discr. b.</sup> as ~~may~~ <sup>per</sup> prescribed the format 1 with the ROC every contender year, which should also be <sup>accompany</sup> by a list of places where the foreign co. in india has established its offices in india.

5) Having sh. transfer office or registered <sup>office</sup> in india will constitute a place of business

## ⇒ MOA

it is the chartered doc. of the co. which act in a co. constitution & define the scope of the business activity.

### 2. Forms of AOA

- (a) Table-A - Co. limited by sh's
- (b) Table-B - Co. limited by guarantee not having sh' cap
- (c) Table-C - Co. limited by guarantee having sh' cap.
- (d) Table-D - Co. unlimited not having sh. cap
- (e) Table-E - Unlimited co. having a sh. cap.

### 3. Content of MOA

#### (a) Name Clause -

The name of a co. must end with ~~with~~ private ltd or limited in case of a private or pub. co. [part co. & see 8 co. exempt]

→ The name of the co. should not be identical or resemble to near to the near existing co. [the name of the co. should not constitute an offence or be undesirable in the opinion of (a)]

(b) What is undesirable name -

- (i) prohibited under the emblem and name act
- (ii) the name includes a trademark
- (iii) the name includes a word which is too offensive to any sec. of people

(iv) The proposed name contains the word 'state' british India

(v) The proposed name contain the name of any country or state.

(vi) the proposed name contains the word 'state' without the approval of the CG.

(c) Further the following names/ words shall not be used without the previous approval of CG Board (National / central / republic / President / maharajputi / nation / statute or judiciary / court / governor / bureau.

\* Pre conditions to be taken before applying for a name

- (d) (i) that the name should not be identical
- (ii) Not already registered as a trademark
- (iii) Is not descriptive
- (iv) there no significance of the abbreviation used

(v) The proposed name suggest finance/capital holding as the object but it does not actually is the object.

Note: in case of new companies the name will be reserved for 20 days & in case of existing companies for 60 days (if the name was obtained by providing false info. then the reserved name shall be cancelled & penalty which may extend upto ₹ 1,02,000 can be imposed. provided no dividend is paid to its members and the profit if any shall be applied for the fulfillments of the object.

~~(12) Such co. needs to obtain a license from the Cx and can be registered as a private or public limited co. but are not required to use the word private or public limited~~

Note-2 If the co. has been incorporated already then it may direct change the name within next 3 months or may strike off the name of the co. or make a petition for winding up of the co.

### (b) Registered office / situation clause

under this clause the name of the state is to be mentioned [the exact address was not required]

### (c) Object clause

It indicates the purpose for which the co. is incorporated, further it can be divided into 2 sub-categories -

- (i) Main object
- (ii) Ancillary object

Note- Any act done beyond this shall be ultra vires & void

### (d) Liability clause

The liability of the co. differs based on its structure and in case of-

→ Co. limited by sh. - the liability is limited up to the unpaid amt. on the face value of shares.

→ Co. limited by Guarantee - the liability is limited up to the amt. guarantee payable at the time of winding up.

→ Co. unlimited - in this the liability of member is unlimited.

(e) Capital clause -

in this clause the authorised cap. of the co. with which it is registered is given [if the cap. is consisting of eq. & pref. then the both should be provided under the ~~se~~ separate heads]

(f) Subscription clause -

This is the only clause which cannot be altered & contains the name of the initial subscribers [name of nominee in case of opo]

⇒ ADA

Articles are the rules & regulations set up by the co. for its internal functioning the contents of the articles are as follow :-

- (a) Allotment of sh. / call on sh.
- (b) Lien on sh.
- (c) Transfer / Transmission of sh.
- (d) Nomination

- (e) Buy back
- (f) Alteration of capital
- (g) Dematerialization
- (h) voting rights and proxies
- (i) Nominee directors
- (j) Audit committee
- (k) Remuneration of directors
- (l) winding up
- (m) Secrecy
- (n) sh. certificates
- (o) Meetings & rules regarding committees of the board