D.H.R-108

LABOUR RIGHTS, WELFARE
AND
HUMAN RIGHTS

UTTARAKHAND OPEN UNIVERSITY

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UNIT 1

FOUNDATIONS OF LABOUR AND HUMAN RIGHTS

1.1 INTRODUCTION

In broader sense the word labour signifies to the physical or mental effort especially when hard or required, or the service performed by the workers for wages. The labour movement has been a reason in the enacting of laws protecting labour rights in the 19th and 20th centuries. Labour rights have been integral part to the social and economic development since the industrial revolution. Labour law also known as employment law is the body of laws, administrative rulings, and precedents which denotes the legal rights of working people and their organizations. As such, it defines many aspects of the relationship between trade unions, employers and employees. In other words, Labour law defines the rights and obligations as workers, union members and employers in their workplace. Broadly, labour law covers: Industrial relations – certification of unions, labour-management relations, collective bargaining and unfair labour practice, health and safety at workplace, Employment standards, like general holidays covering working hours, annual leave, unfair dismissals, layoff procedures, minimum wage and severance pay.

Need of labour law arose due to the demands of workers for better conditions, the right to organize, and the continuous demands of employers to restrict the powers of workers in many organizations and to keep labour costs low. The labour laws have changed from time to time since the time of Industrialization and the end of World War II. The workers were not fairly treated by their employers and because of the lack of awareness their safety used to be at risk all the time. The trade unions which were established during that time started raising the issues of workers and the voice started getting noticed by the governments.

1.2 OBJECTIVES –

After Completion of the unit the students should be able to understand:

1. To understand the meaning, nature, importance, scope, various classifications of labour laws in India and the principles by which modern labour laws are governed.

2. To review the status of labour laws in India.
3. To know labour laws of the world-wide

1.3 DEFINITIONS-

Some of the definitions of labour and labour law are as follows-

Merriam Webster Dictionary-

It provides various forms or definitions to describe the word Labour, which in consonance with the word labour rights can be understood as follows-

a. expenditure of physical or mental effort especially when difficult or compulsory

b. human activity that provides the goods or services in an economy
c. workers considered as a group- an economic group comprising those who do manual labour or who work for wages rather than a salary.

Cambridge Dictionary-

a. practical work, especially when involves hard physical effort.
b. workers, especially people who do practical work with their hands,
c. all the effort and hard work that have been involved in doing a particular piece of work

Collins Dictionary-

a. productive work, esp physical toil done for wages
b. The people,class,or workers involved in this, esp in contrast to management, capital, etc.

Dictionary (British) –

a. the people, class, or workers involved in this, esp in contrast to management, capital, etc
b. difficult or arduous work or effort

Definition of Workman-

As per Section 2(s) of Industrial Disputes Act,1947, "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

i) who is subject to the Air Force Act,1950 (45 of 1950), or the Army Act,1950(46 of 1950), or the Navy Act,1957(62 of 1957); or

ii) who is employed in the police service or as an officer or other employee of a prison; or

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

iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per menses or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Encyclopaedia Britannica-

The varied body of law applied to such matters as employment, remuneration, conditions of work, trade unions, and industrial relations. In its most comprehensive sense, the term includes social security and disability insurance as well. Unlike the laws of contract, tort, or property, the elements of labour law are somewhat less homogeneous than the rules governing a particular legal relationship. In addition to the individual contractual relationships growing out of the traditional employment situation, labour law deals with the statutory requirements and collective relationships that are increasingly important in mass-production societies, the legal relationships between organized economic interests and the state, and the various rights and obligations related to some types of social services. The term labour in classical economics is one of the three factors of production, along with land and capital. Labour and is also defined as the physical or mental effort exerted by human beings in the production of goods and services. In neoclassical economics, labour is a broader concept that incorporates all human activity that adds value to a product or service, including use of tools, machines, and other equipment. It also surrounds the time spent on planning, organizing, and supervising production.

1.4.1 HISTORY AND PURPOSE OF LABOUR LAWS –

The term ‘Labour Legislation’ is used to cover all the laws which have been enacted to deal with “employment and non-employment” wages, working conditions, industrial relations, social security and welfare of persons employed in industries. Labour law is the result of the demands of workers for better conditions, the right to organize, and also the simultaneous demands of employers to restrict the powers of workers in many organizations and to keep labour costs low. Employers' costs can increase due to many factors like workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Early laws focused on limiting child labour and regulating working hours, while later developments addressed issues like wages, social security, and trade unions.

Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three crucial roles:

- it establishes a legal system;

- provides a framework within which employers, workers and their representatives can interact with regard to work-related issues;
- gives guarantee of fundamental principles and rights at work which have received broad social acceptance.

1.4.2 KEY MILESTONES IN THE HISTORY OF LABOUR LAWS:

- **Industrial Revolution and Early Concerns:**

The rise of industrialization in the 18th and 19th centuries led to harsh working conditions, long hours, and exploitation, prompting the need for regulation.

- **Early Regulations:**

Early labour laws focused on limiting child labor and regulating working hours, with the British Health and Morals of Apprentices Act of 1802 being a landmark example.

- **Emergence of Trade Unions:**

As workers organized into unions, they began to advocate for better wages, working conditions, and worker rights, influencing the development of labour legislation.

- **International Labour Organization (ILO):**

The ILO, established in 1919, played a crucial role in setting international standards for labour rights and promoting social justice.

- **Post-World War II Developments:**

Following World War II, there was a surge in labour legislation, with many countries enacting laws to ensure workers' rights and improve social security.

- **Modern Labour Law:**

Today, labour laws cover a wide range of issues, including wages, working hours, safety, social security, and the right to organize and bargain collectively.

- **Indian Labour Law:**

In India, the history of labour law is intertwined with the Indian independence movement and the campaigns of passive resistance leading up to independence. The first labor regulations were created in India during the British colonial era to protect the interests of manufacturers and employers.

- **Key Indian Acts:**

Some important Indian Acts include the Factories Act of 1883, the Indian Trade Unions Act of 1926, and the Trade Disputes Act of 1929.

- **Recent Reforms:**

Modernizing and streamlining labor laws is the goal of recent initiatives in India, including the Code on Wages, Code on Industrial Relations, and Code on Social Security.

1.4.3 EVOLUTION OF LABOUR LAW IN INDIA –

The law relating to labour and employment is also known as Industrial law in India. The history of labour legislation in India is interlinked with the history of British colonialism. The industrial/labour legislations enacted by the British were primarily intended to protect the interests of the British employers only. So the considerations of British political economy were naturally paramount in shaping some of these early laws. Thus came the Factories Act.

It is well known that Indian textile goods offered tough competition to British textiles in the export market and hence in order to make India labour costlier the Factories Act was first introduced in 1883 because of the pressure brought on the British parliament by the textile operators of Manchester and Lancashire. Therefore, India received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. The earliest Indian Law to regulate the relationship between employer and his workmen was the Trade Dispute Act, 1929 (Act 7 of 1929). Provisions were incorporated in this Act for restraining the rights of strike and lock out but no machinery was provided to take care of disputes. The original colonial Law underwent certain modifications in the post-colonial era because independent India called for a clear partnership between labour and capital. The content of this partnership was unanimously approved in a tripartite conference in December 1947 in which it was agreed and included that labour would be given a fair wage and fair working conditions and in return capital would receive the fullest co-operation of labour for uninterrupted work for production and higher productivity as part of the strategy for national economic development. Ultimately the Industrial Disputes Act (the Act) brought into force on 01.04.1947 repealing the Trade Disputes Act 1929 has since remained on statute book.

1.4.4 PURPOSE OF LABOUR LEGISLATION –

Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three main crucial roles:

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

- it provides a clear and constant reminder and guarantee of fundamental principles and rights at work to all which have received broad social acceptance and establishes the processes through which the principles and rights can be implemented and enforced.

The most efficient and effective way of ensuring that these conditions and needs are taken fully into account is if those concerned are closely observed in the formulation of the legislation. The involvement of stakeholders in this way is also of great importance in developing a broad basis of support for labour legislation and in facilitating its application within and beyond the formal structured sectors of the economy.

1.5 FACTORS INFLUENCING LABOUR LEGISLATIONS

Several factors have shaped India's labour legislation, including the rise of trade unions, the need to protect workers from exploitation, the drive for social justice and economic equality, international labour standards, and the evolving nature of work.

Here is briefer look at these factors:

- **Rise of Trade Unions and Workers' Movements**: The growth of trade unions and workers' movements played a significant role in advocating for improved working conditions and workers' rights, which influenced the development of labor laws.

- **Need to Protect Workers from Exploitation**: Labor legislation in India emerged as a response to the need to protect workers from exploitation by employers, ensuring fair wages, safe working conditions, and other basic rights.

- **Promotion of Social Justice and Economic Equality**: The desire to promote social justice and economic equality has been a driving force behind labor laws, aiming to reduce disparities between employers and employees and ensure a more equitable distribution of resources.

- **Influence of International Labor Standards and Conventions**: India's labour legislation has been influenced by international labor standards and conventions, reflecting a commitment to global best practices in labor relations and worker protection.

- **Changing Nature of Work and the Workplace:** The evolving nature of work and the workplace, including the rise of gig economy and non-traditional employment models, has also influenced the need for updated and relevant labor laws.

1.5.1 SPECIFIC LABOUR LAWS:

Several key pieces of labor legislation in India include:

- Factories Act, 1948: Sets standards for working conditions, wages, and hours in factories.

- Industrial Disputes Act, 1947: Addresses the resolution of industrial disputes and the regulation of trade unions.

- Workmen's Compensation Act, 1923: Provides compensation to workers or their families in case of accidents or injuries at work.

- Employees' State Insurance Act, 1948: Provides social security benefits to employees, including sickness, maternity, and employment injury benefits.

- Employees' Provident Funds and Miscellaneous Provisions Act, 1952: Secures the financial well-being of employees through provident fund contributions.

- Payment of Wages Act, 1936: Mandates timely payment of wages and provides a legal framework for addressing wage disputes.

- The Indian Trade Union Act, 1926: Recognizes the right of workers to form unions and engage in collective bargaining.

- Maternity Benefit Act (Amendment) Act, 2017: Regulates the employment of women during pre and postnatal periods and provides maternity benefits.

- The Industrial Employment (Standing Orders) Act, 1946: Standardizes employment conditions to minimize industrial disputes.

- Equal Remuneration Act, 1976: Promotes gender equality in the workforce by ensuring equal pay for equal work.

- The Contract Labour (Regulation and Abolition) Act, 1970: Regulates the employment of contract labor.

- The Payment of Gratuity Act, 1972: Deals with the conditions under which gratuity is payable to employees.

- Payment of Bonus Act, 1965: Mandates payment of bonus to employees.

- Child and Adolescent Labour (Prohibition and Regulation) Act, 1986: Prohibits child labor and regulates adolescent labor.

1.5.2 CONSTITUTIONAL PROVISIONS WITH REGARD TO LABOUR LAWS

The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Labour is a concurrent subject in the Constitution of India implying that both the Union and the state governments are competent to legislate on labour matters and administer the same.

1.6 DIFFERENT OBJECTIVES OF LABOUR LAWS

Labour legislation in India has sought to achieve the following objectives:

(1) Establishment of justice- Social, Political and Economic

(2) Provision of opportunities to all workers, irrespective of caste, creed, religion, beliefs, for the development of their personality.

(3) Protection of weaker section in the community.

(4) Maintenance of Industrial Peace.

(5) Creation of conditions for economic growth.

(6) Protection and improvement of labour standards.

(7) Protect workers from exploitation

(8) Guarantee right of workmen to combine and form association or unions.

(9) Ensure right of workmen to bargain collectively for the betterment of their service conditions.

(10) Make state interfere as protector of social wellbeing than to remain an onlooker.

(11) Ensure human rights and human dignity. Proper regulation of employee-employer relationship is a condition precedent for planned, progressive and purposeful development of any society.

The objectives of labour legislation is a developing concept and require ceaseless efforts to achieve them on continuous basis. In its landmark judgement in Hindustan Antibiotics v. The Workmen (A.I.R. 1967, S.C. 948; (1967) 1, the Supreme Court of India made a significant observation. The object of the Industrial law, said the Court, was to bring in improvements in the service conditions of industrial labour by providing them the normal amenities of life which would lead to industrial peace. This would accelerate the productive activities of the nation, bringing prosperity to all and further improving the conditions of labour.

1.7 CLASSIFICATION OF LABOUR LEGISLATIONS

On the basis of specific objectives which it has sought to achieve, the labour legislations can be classified into following categories- (1) Regulative (2) Protective (3) Wage-Related (4) Social Security (5) Welfare both inside and outside the workplace

1.7.1 The Regulative Labour Legislations- The main objective of the regulative legislations is to regulate the relations between employees and employers and to provide for methods and manners of settling industrial disputes. Such laws also regulate the relationship between the workers and their trade unions, the rights and obligations of the organisations of employers and workers as well as their mutual relationships. Examples The Trade Unions Act, 1926, The Industrial Disputes Act,1947, Industrial Relations Legislations enacted by states of Maharashtra, MP, Gujarat, UP etc. Industrial Employment (Standing Orders) Act, 1946.

1.7.2 The Protective Labour Legislations -Under this category falls those legislations whose primary purpose is to protect labour standards and improve the working conditions. Laws laying down the minimum labour standards in the areas of hours of work, supply, employment of children and women etc. in the factories, mines, plantations, transport, shops and other establishments are included in this category. Some of these are the following: Factories Act,1948 The Mines Act,1952 The Plantations Labour Act,1951 The Motor Transport Workers Act,1961 The Shops and Establishments Acts Beedi and Cigar Workers Act 1966

1.7.3 Wage-Related Labour Legislations -Legislations laying down the methods and manner of wage payment as well as the minimum wages come under this category: The Payment of Wages Act,1936 The Minimum Wages Act, 1948 The Payment of Bonus Act, 1965 The Equal Remuneration Act, 1976

1.7.3 Social Security Labour Legislations -They cover those legislations which intend to provide to the workmen social security benefits under certain contingencies of life and work. The Workmen's Compensation Act, 1923 The Employees' State Insurance Act, 1948 The Coal Mines PF Act, 1948. The Employees PF and Miscellaneous Provisions Act, 1952 The Maternity Benefit Act, 1961 Payment of Gratuity Act, 1972 Chapter V A of the Industrial Disputes Act 1947 is also, in a manner of speaking, of the character of social security in so far as its provides for payment or lay-off, retrenchment and closure compensation.

1.7.4 Welfare Labour Legislations- Legislations coming under this category aim at promoting the general welfare of the workers and improve their living conditions. Though, in a sense all labour-laws can be said to be promoting the welfare of the workers and improving their living conditions and though many of the protective labour laws also contain chapters on labour welfare, the laws coming under this category have the specific aim of providing for the improvements in living conditions of workers. They also carry the term "Welfare" in their titles. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972. The Mica Mines Welfare

Fund Act, 1946 The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976 The Cine Workers Welfare Fund Act, 1981. In addition, some state governments have also enacted legislations for welfare funds. Beedi Workers Welfare Fund Act, 1976 3.4.6 Miscellaneous Besides the above there are other kinds of labour laws which are very important. Some of these are : The Contract Labour (Regulation & Abolition) Act, 1970 Child Labour (Prohibition and Regulation) Act 1986 Building and other construction workers (Regulation of Employment and Conditions of Service) Act 1996 Apprentices Act 1961 Emigration Act, 1983 Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979 Sales Promotion Employees (Condition of Service) Act 1976 Working Journalists and other Newspapers Employees (Condition of Service and Miscellaneous Provision) Act, 1955.

1.8 NEED AND IMPORTANCE OF LABOUR LEGISLATION IN INDIA

The need for labour legislations may be summarized as under:

- It is necessary for the health, safety and welfare of workers.
- It is necessary to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power. It encourages and facilitates the workers in the organization
- It provides a mechanism to settle industrial disputes of various nature.
- It helps in enforcing social insurance and labour welfare schemes.
- It is instrumental in improving industrial relation i.e. employee-employer relations and minimized industrial disputes.
- It helps workers in getting fair wages
- It helps in minimizing labour unrest.
- It ensures job security for workers
- It promotes welcome environment conditions in the industrial system
- It helps in fixing rest pauses and work hours etc.
- It helps in providing appropriate compensation to workers, who are victims of accidents.

1.9 LABOUR LEGISLATIONS ACROSS THE WORLD

1.9.1. Australia - Australian labour law has had a unique development that distinguishes it from other English speaking jurisdictions. In 1904 the Conciliation and Arbitration Act was passed mandating "Conciliation and Arbitration for the Prevention and Settlement of Industrial Disputes extending beyond the Limits of any one State". In 2005, the Work Choices Act removed unfair dismissal laws, removed the "no disadvantage test", and made it possible for workers to submit their certified agreements directly to Workplace

1.9.2. United Kingdom - United Kingdom labour law is that body of law which regulates the rights, and obligations of trade unions, workers and employers in the United Kingdom. In its current form, it is largely a creature of statute rather than Common Law. Leading employment law statutes include the Employment Rights Act 1996, the Employment Act 2002 and various legislative provisions outlawing discrimination on the grounds of sex, race, disability, sexual orientation, and religion and from 2006, age. The labour related laws of UK are Employment Rights Act, 1996, Health and Safety at Work etc. Act, 1974, National Minimum Wage Act, 1998, Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, Equality Act, 2006, Sex Discrimination Act 1975, Equal Pay Act 1970, Employment Equality (Religion or Belief) Regulations, 2003, Disability Discrimination Act, 1995, Trade Union Act 1871, Trade Union and Labour Relations (Consolidation) Act 1992, Employment Equality (Age) Regulations 2006

1.9.3. China Labour Law - In the People's Republic of China has become a very hot issue with the soaring numbers of factories and the fast pace of urbanization. The basic labour laws are the Labour Law of People's Republic of China (promulgated on 5 July 1994) and the Law of the People's Republic of China on Employment Contracts (Adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on June 29, 2007, Effective from January 1, 2008). The administrative regulations enacted by the State Council, the ministerial rules and the judicial explanations of the Supreme People’s Court stipulate detailed rules concerning the various aspects of the employment relationship. Labour Union in China is controlled by the government through the All-China Federation of Trade Unions, which is also the sole legal labour union in Mainland China. Strike is formally legal, but in fact is strictly forbidden. According to the new 98-article-long "Labor Contract Law", employees of at least 10 years standing are entitled to contracts that protect them from being dismissed without cause.

1.9.4. United States of America- United States labour law is a heterogeneous collection of state and federal laws. Federal law not only sets the standards that govern workers' rights to organize in the private sector, but overrides most state and local laws that attempt to regulate this area. Both federal and state laws protect workers from employment discrimination. Federal law does not provide employees of state and local governments with the right to organize or engage in union activities, except to the extent that the United States Constitution protects their rights to freedom of speech and freedom of association. The Constitution provides even less protection for governmental employees' right to engage in collective bargaining: while it bars public employers from retaliating against employees for forming a union, it does not require those employers to recognize that union, much less bargain with it. The Fair Labor Standards Act of 1938 (FLSA) establishes minimum wage and overtime rights for most private sector workers, with a number of exemptions and exceptions.

1.10 SUMMARY

The labour movement has been a reason in the enacting of laws protecting labour rights in the 19th and 20th centuries. Labour rights have been integral part to the social and economic development since the industrial revolution. Labour law also known as employment law is the body of laws, administrative rulings, and precedents which denotes the legal rights of working people and their organizations. The term labour in classical economics is one of the three factors of production, along with land and capital. Labour and is also defined as the physical or mental effort exerted by human beings in the production of goods and services. The term 'Labour Legislation' is used to cover all the laws which have been enacted to deal with "employment and non-employment" wages, working conditions, industrial relations, social security and welfare of persons employed in industries. Labour law is the result of the demands of workers for better conditions, the right to organize, and also the simultaneous demands of employers to restrict the powers of workers in many organizations and to keep labour costs low. The law relating to labour and employment is also known as Industrial law in India. The history of labour legislation in India is interlinked with the history of British colonialism. The industrial/labour legislations enacted by the British were primarily intended to protect the interests of the British employers only. So the considerations of British political economy were naturally paramount in shaping some of these early laws. Thus came the Factories Act. Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three main crucial roles Several factors have shaped India's labour legislation, including the rise of trade unions, the need to protect workers from exploitation, the drive for social justice and economic equality, international labour standards, and the evolving nature of work. On the basis of specific objectives which it has sought to achieve, the labour legislations can be classified into following categories- (1) Regulative (2) Protective (3) Wage-Related (4) Social Security (5) Welfare both inside and outside the workplace

1.11 TERMINAL QUESTIONS

1. Short Answer Questions

a. Illustrate purposes of labour legislations

b. Briefly give factors influencing labour legislations

Answers (a) 1.4.4

(b) 1.5

2. Long Answer Questions

A. Give various definitions of Labour

B. What are the key milestones in the history of Labour Laws?

Answers (A) 1.3 and (B) 1.4.2

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UNIT 2

EVOLUTION OF LABOUR RIGHTS AND HUMAN RIGHTS PERSPECTIVE

2.1 INTRODUCTION

The International Labour Organization was emerged in 1919 by part XIII of the Versailles Peace Treaty after World War I. It grew out of nineteenth-century labour and social movements which culminated in widespread demands for social justice and higher living standards for the world's working people aiming to promote social justice and internationally recognized human and labor rights, with a unique tripartite structure involving governments, employers, and workers. ILO standards, including those on collective bargaining, forced labour, equal remuneration, and hours of work, are crucial for ensuring decent and productive work in conditions of freedom, equity, and dignity. The ILO's founding mission was to promote social justice and internationally recognized human and labour rights. After the demise of the League of Nations, the ILO became the first specialized agency associated with the United Nations in 1946. The ILO's unique structure ensures that representatives of governments, employers, and workers have an equal voice in formulating policies. In 1969, on its 50th anniversary, the ILO was awarded the Nobel Peace Prize.

2.2 OBJECTIVES

After studying this unit students should be able to understand about the ILO (International Labour Organization), history, its origin, constitution and its various standards

2.3 HISTORY OF ILO

The International Labour Organization (ILO) is a United Nations agency whose mandate is to advance social and economic justice by setting international labour standards. It was created in 1919, as part of the Treaty of Versailles [PDF 837KB] that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice. The ILO moved to Geneva in the summer of 1920, with France's Albert Thomas as its first Director. Nine International Labour Conventions and 10 Recommendations were adopted in less than two years. These standards covered key issues, including:

- hours of work,
- unemployment,
- maternity protection,
- night work for women,
- minimum age, and
- night work for young persons.

2.3.1 ORIGIN AND DEVELOPMENT

The ILO was created in 1919 as part of the Treaty of Versailles, which ended World War I, reflecting the belief that universal and lasting peace requires social justice. In 1946, after the demise of the League of Nations, the ILO became the first specialized agency associated with the United Nations. The original membership of forty-five countries in 1919 has grown to 121 in 1971. In structure, the ILO is unique among world organizations in that the representatives of the workers and of the employers have an equal voice with those of governments in formulating its policies. The annual International Labour Conference, the ILO's supreme deliberative body, is composed of four representatives from each member country: two government delegates, one worker and one employer delegate, each of whom may speak and vote independently. Between conferences, the work of the ILO is guided by the Governing Body, comprising twenty-four governments, twelve worker and twelve employer members, plus twelve deputy members from each of these three groups. The International Labour Office in Geneva, Switzerland, is the Organization's secretariat, operational headquarters, research centre, and publishing house. Its operations are staffed at headquarters and around the world by more than 3,000 people of some 100 nationalities. Activities are decentralized to regional, area, and branch offices in over forty countries.

ILO Standards: There are certain standards recognised by ILO as briefly summarised below

- Fundamental Principles and Rights at Work
- Collective Bargaining
- Forced Labor
- Equal Remuneration
- Hours of Work

2.3.2 CONSTITUTION OF ILO

The Constitution of the ILO was drafted in early 1919 by the Labour Commission, chaired by Samuel Gompers, head of the American Federation of Labour (AFL) in the United States. It was composed of representatives from nine countries: Belgium, Cuba, Czechoslovakia, France, Italy, Japan, Poland, the United Kingdom and the United States. The process resulted in a tripartite organization, the only one of its kind, bringing together representatives of governments, employers and workers in its executive bodies.

The founders of the ILO recognized the importance of social justice in securing peace, against a background of the exploitation of workers in the industrializing nations of that time. There was also increasing understanding of the world's economic interdependence and the need for cooperation to obtain similarity of working conditions in countries competing for markets. Reflecting these ideas, the Preamble of the ILO Constitution states:

- Whereas universal and lasting peace can be established only if it is based upon social justice;

- And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required;

- Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.

The areas of improvement listed in the Preamble remain relevant today, including the regulation of working time and labour supply, the prevention of unemployment and the provision of an adequate living wage, social protection of workers, children, young persons and women. The Preamble also recognizes a number of key principles, for example equal remuneration for work of equal value and freedom of association, and highlights, among others, the importance of vocational and technical education.

2.3.2.1 OBJECTIVES OF THE ILO

- To promote and realize standards and fundamental principles and rights at work.

- To create greater opportunities for women and men to secure decent employment.

- To enhance the coverage and effectiveness of social protection for all.

- To strengthen tripartism and social dialogue.

2.4 CONVENTIONS, PROTOCOLS AND RECOMMENDATIONS

International labour standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers) and setting out basic principles and rights at work.

They are either:

- Conventions and Protocols, which are legally binding international treaties that may be ratified by member States, or

- Recommendations, which serve as non-binding guidelines.

In many cases, a Convention lays down the basic principles to be implemented by ratifying countries, while a related Recommendation supplements the Convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e., not linked to a Convention.

Conventions, Protocols and Recommendations are drawn up by representatives of governments, employers and workers and are adopted at the annual International Labour Conference.

Once a standard is adopted, member States are required under article 19(6) of the ILO Constitution, to submit it to their competent authority (normally Parliament) within a period of twelve months for consideration. In the case of Conventions, this means consideration for ratification. If it is ratified, a Convention generally comes into force for that country one year after the date of ratification. Ratifying countries undertake to apply the Convention in national law and practice and to report on its application at regular intervals. Technical assistance is provided by the ILO, if necessary. In addition, representation and complaint procedures can be initiated against countries for violations of a Convention that they have ratified.

2.5 ILO STANDARDS:

The ILO sets international labour standards with conventions, which are ratified by member states. These are non-binding. Conventions are drawn up with input from governments, workers' and employers' groups at the ILO and are adopted by the International Labour Conference.

- **Fundamental Principles and Rights at Work:**

The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, outlines core principles and rights at work that member states are committed to uphold.

2.5.1 Key ILO Conventions:

- **Freedom of Association and Collective Bargaining**: The right of workers to form and join trade unions and to bargain collectively.

- **Elimination of Forced or Compulsory Labour**: Combating all forms of forced labor, including slavery and debt bondage.

- **Abolition of Child Labour**: Protecting children from exploitation and ensuring their access to education.

- **Elimination of Discrimination**: Promoting equality and non-discrimination in employment and occupation.

- **Safe and Healthy Working Environment**: Ensuring a safe and healthy workplace for all workers.

32.5.2Other ILO Standards:

The ILO also develops standards on a wide range of other issues, including hours of work, equal remuneration, social security, and employment policies.

- Supervisory System: The ILO has a unique supervisory system to ensure that member states implement the conventions they ratify.

2.5.3 Specific ILO Standards:

- Collective Bargaining: The ILO recognizes collective bargaining as a fundamental right, enabling workers to negotiate terms and conditions of employment with their employers.

- Forced Labour: The ILO has developed conventions and protocols to combat forced labour, including the Protocol of 2014 to the Forced Labour Convention, 1930, and the Abolition of Forced Labour Convention, 1957 (No. 29).

- Equal Remuneration: The ILO promotes equal pay for work of equal value, regardless of gender or other protected characteristics.

- Hours of Work: The ILO sets standards for working hours, including maximum hours per week and daily rest periods, with Convention 1 on Hours of Work (Industry) 1919 setting the basic principle for the 8 hours' day or 48-hour week

In ratifying an ILO convention, a member state accepts it as a legally binding instrument. Many countries use conventions as a tool to bring national laws in line with international standards.

2.6 INDIA & ILO

India is a founder member of the International Labour Organization, which came into existence in 1919. At present the ILO has 187 Members. A unique feature of the ILO is its tripartite character. The membership of the ILO ensures the growth of tripartite system in the Member countries. At every level in the Organization, Governments are associated with the two other social partners, namely the workers and employers. All the three groups are represented on almost all the deliberative organs of the ILO and share responsibility in conducting its work. The three organs of the ILO are:

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

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

- **International Labour Office**: - A permanent secretariat.

The work of the Conference and the Governing Body is supplemented by Regional Conferences, Regional Advisory Committees, Industrial and Analogous

Committees, Committee of Experts, Panels of Consultants, Special Conference and meetings, etc.

2.6.1. INTERNATIONAL LABOUR CONFERENCE-

Except for the interruption caused by the Second World War, the International Labour Conference (ILC) has continued, since its first session in 1919 to meet at least once a year. The Conference, assisted by the Governing Body, adopts biennial programme and budget, adopts International Labour Standards in the form of Conventions and Recommendations and provides a forum for discussing social, economic and labour related issues. India has regularly and actively participated in the Conference through its tripartite delegations. The Conference has so far had 4 Indian Presidents viz., Sir. Atul Chatterjee (1927), Shri Jagjivan Ram, Minister for Labour (1950), Dr. Nagendra Singh, President, International Court of Justice (1970) and Shri RavindraVerma, Minister of Labour and Parliamentary Affairs (1979). There have also been 8 Indian Vice Presidents of the International Labour Conference, 2 from the Government group, 3 from the Employers and 3 from the Workers' Group. Indians have chaired the important Committees of the Conferences like Committee on Application of Standards, Selection Committee and Resolutions Committee.

2.6.2. GOVERNING BODY

The Governing Body of the ILO is the executive wing of the Organization. It is also tripartite in character. Since 1922 India has been holding a non-elective seat on the Governing Body as one of the 10 countries of chief industrial importance. Indian employers and workers' representatives have been elected as Members of the Governing Body from time to time. Four Indians have so far been elected Chairmen of the Governing Body. They are Sir Atul Chatterjee (1932-33), Shri Shamal Dharee Lall, Secretary, Ministry of Labour (1948-49), Shri S.T. Merani, Joint Secretary, Ministry of Labour (1961-62) and Shri B.G. Deshmukh, Secretary, Ministry of Labour (1984-85). Earlier, the Governing Body of ILO functioned through its various Committees. India was a member of all six committees of the Governing Body viz. (i) Programme, Planning & Administrative; (ii) Freedom of Association; (iii) Legal Issues and International Labour Standards; (iv) Employment & Social Policy; (v) Technical Cooperation and (vi) Sectoral and Technical Meetings and Related issues. Now the Governing Body of ILO functions through its various Sections and India takes part in all the proceedings of the Sections during the sessions of the Governing Body Viz. Institutional Section (INS); Policy Development Section(POL); Legal Issues and International Labour Standards Section (LILS); Programme, Financial and Administrative Section(PFA); High-level Section(HL); and Working Party on the Functioning of the Governing Body and the International Labour Conference (WP/GBC)

2.6.3. THE INTERNATIONAL LABOUR OFFICE

The International Labour Office, Geneva provides the Secretariat for all Conferences and other meetings and is responsible for the day-to-day implementation of decisions taken by the

Conference, Governing Body etc. Indians have held positions of importance in the International Labour Office

2.6.4. INTERNATIONAL LABOUR STANDARDS - ILO CONVENTIONS

The approach of India with regard to International Labour Standards has always been positive. The ILO instruments have provided guidelines and a useful framework for the evolution of legislative and administrative measures for the protection and advancement of the interest of labour. To that extent the influence of ILO Conventions as a standard of reference for labour legislation and practices in India, rather than as a legally binding norm, has been significant. Ratification of a Convention imposes legally binding obligations on the country concerned and, therefore, India has been careful in ratifying Conventions. It has always been the practice in India that we ratify a Convention when we are fully satisfied that our laws and practices are in conformity with the relevant ILO Convention. It is now considered that a better course of action is to proceed with progressive implementation of the standards, leave the formal ratification for consideration at a later stage when it becomes practicable. We have so far ratified 47 Conventions of the ILO and 1 protocol, which is much better than the position existing in many other countries. Even where for special reasons, India may not be in a position to ratify a Convention, India has generally voted in favour of the Conventions reserving its position as far as its future ratification is concerned.

Core Conventions of the ILO: -

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

i. Forced Labour Convention (No. 29)

ii Abolition of Forced Labour Convention (No.105)

iii Equal Remuneration Convention (No.100)

iv Discrimination (Employment Occupation) Convention (No.111)

v Minimum Age Convention (No.138)

vi Worst forms of Child Labour Convention (No.182)

(The above Six have been ratified by India)

Vii Freedom of Association and Protection of Right to Organised Convention (No.87)

Viii Right to Organise and Collective Bargaining Convention (No.98)

C155 - Occupational Safety and Health Convention, 1981 (No. 155)

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

(The above four conventions have not been ratified by India)

2.7 ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998 and amended in 2022, is an expression of commitment by governments, employers' and workers' organizations to uphold basic human values - values that are vital to our social and economic lives. It affirms the obligations and commitments that are inherent in membership of the ILO, namely:

1. freedom of association and the effective recognition of the right to collective bargaining;

2. the elimination of all forms of forced or compulsory labour;

3. the effective abolition of child labour;

4. the elimination of discrimination in respect of employment and occupation; and

5. a safe and healthy working environment.

2.7.1 ILO DECLARATION ON SOCIAL JUSTICE FOR A FAIR GLOBALIZATION

The International Labour Organization unanimously adopted the ILO Declaration on Social Justice for a Fair Globalization on 10 June 2008. This is the third major statement of principles and policies adopted by the International Labour Conference since the ILO’s Constitution of 1919. It builds on the Philadelphia Declaration of 1944 and the Declaration on Fundamental Principles and Rights at Work of 1998. The 2008 Declaration expresses the contemporary vision of the ILO’s mandate in the era of globalization

This landmark Declaration is a powerful reaffirmation of ILO values. It is the outcome of tripartite consultations that started in the wake of the Report of the World Commission on the Social Dimension of Globalization. By adopting this text, the representatives of governments, employers’ and workers’ organizations from 182 member States emphasize the key role of our tripartite Organization in helping to achieve progress and social justice in the context of globalization. Together, they commit to enhance the ILO’s capacity to advance these goals, through the Decent Work Agenda. The Declaration institutionalizes the Decent Work concept developed by the ILO since 1999, placing it at the core of the Organization’s policies to reach its constitutional objectives.

2.8 SUMMARY

The International Labour Organization was emerged in 1919 by part XIII of the Versailles Peace Treaty after World War I. It grew out of nineteenth-century labour and social movements which culminated in widespread demands for social justice and higher living standards for the world's working people aiming to promote social justice and internationally recognized human and labor rights, with a unique tripartite structure involving governments, employers, and workers. ILO standards, including those on collective bargaining, forced labour, equal remuneration, and hours of work, are crucial for ensuring decent and productive work in conditions of freedom, equity, and dignity. The International Labour Organization (ILO) is a United Nations agency whose mandate is to advance social and economic justice by setting international labour standards. It was created in 1919, as part of the Treaty of Versailles [PDF 837KB] that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice. . In structure, the ILO is unique among world organizations in that the representatives of the workers and of the employers have an equal voice with those of governments in formulating its policies. The Constitution of the ILO was drafted in early 1919 by the Labour Commission, chaired by Samuel Gompers, head of the American Federation of Labour (AFL) in the United States. It was composed of representatives from nine countries: Belgium, Cuba, Czechoslovakia, France, Italy, Japan, Poland, the United Kingdom and the United States India is a founder member of the International Labour Organization, which came into existence in 1919. At present the ILO has 187 Members. A unique feature of the ILO is its tripartite character. The membership of the ILO ensures the growth of tripartite system in the Member countries. At every level in the Organization, Governments are associated with the two other social partners, namely the workers and employers. The approach of India with regard to International Labour Standards has always been positive. The ILO instruments have provided guidelines and a useful framework for the evolution of legislative and administrative measures for the protection and advancement of the interest of labour. To that extent the influence of ILO Conventions as a standard of reference for labour legislation and practices in India, rather than as a legally binding norm, has been significant. Ratification of a Convention imposes legally binding obligations on the country concerned and, therefore, India has been careful in ratifying Conventions.

2.9 TERMINAL QUESTIONS

1. Short Answer Questions

a. In which year ILO was formed?

b. Which was the treaty by which ILO was emerged?

c. What are main 5 ILO standards

Answers (a) & (b) 2.1 (c) 2.3.1

2. Long Answer Questions

A. What does the preamble of Constitution of ILO states?

B. What are the objectives of ILO?

C. Write a note on India and International Labour standards.

Answers (A) 2.3.2 (B) 2.3.2.1 and (C) 2.6.7

2.10 SUGGESTED REFERENCES

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c. ilo.org/international-labour-standard/conventions-protocols-and- recommendations

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UNIT 3

SAFE WORK PLACE AND WORKPLACE ETHICS

STRUCTURE

3.1 INTRODUCTION

A safe workplace and strong work ethics are intertwined, with ethical leadership and employee engagement being crucial for fostering a positive and safe environment. This includes prioritizing safety, promoting integrity, and ensuring fair treatment and accountability. Ethics in workplace safety involves adhering to moral principles that guide our behaviour and decision-making. It means doing what is right, even when it is difficult or costly. In India, workplace anti-discrimination focuses on ensuring equal opportunities and prohibiting unfair treatment based on factors like religion, race, caste, sex, or place of birth, as outlined in the Constitution and various laws. There are provisions enacted in legal statutes as well as in the Constitution of India prohibiting any kind of discrimination. The Prevention of Sexual Harassment (POSH) at Workplace Act of India mandates every organisation to define their sexual harassment policies, prevention systems, procedures and service rules for its employees. The Vishaka Guidelines were a set of procedural guidelines for use in India in cases of sexual harassment. They were promulgated by the Indian Supreme Court in 1997 and were superseded in 2013 by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. Ensuring a workplace free from discrimination means treating all employees and job applicants fairly, regardless of protected characteristics like race, color, religion, sex, national origin, age, disability, or other legally protected attributes

3.2 OBJECTIVES

After studying this unit students should be able to know about the workplace safety and ethics along with the protection available legally against sexual harassment and also no discrimination of any kind at work places.

3.3 SAFE WORKPLACE AND ETHICS

A workplace safety policy is a document outlining an organization's commitment to managing health and safety, including roles, responsibilities, risk assessments, safety procedures, and emergency plans.

Here's a more detailed breakdown:

Key Elements of a Workplace Safety Policy:

- Statement of Intent: This section clearly articulates the organization's commitment to safety and its goals for a safe workplace.
- Roles and Responsibilities: This outlines who is responsible for managing health and safety, including supervisors, managers, and employees.
- Arrangements: This is the most detailed section, covering how risks are managed, including:
- Risk Assessments: Identifying potential hazards and assessing their likelihood and impact.
- Safety Procedures: Standard operating procedures for specific tasks and activities.
- Training: Ensuring employees are adequately trained on safety procedures and hazards.
- Consultations: Establishing channels for employees to raise safety concerns and participate in safety discussions.

- Emergency and Evacuation Procedures: Plans for responding to emergencies and safely evacuating the workplace.

- Review and Updates:

The policy should be reviewed regularly and updated as needed to reflect changes in workplace activities, risks, and regulations.

- Communication:

The policy should be communicated effectively to all employees, ensuring they understand their responsibilities and how to report safety concerns.

3.4 GOVERNMENT OF INDIA, MINISTRY OF LABOUR AND EMPLOYMENT NATIONAL POLICY ON SAFETY, HEALTH AND ENVIRONMENT AT WORK PLACE

Ministry of Labour and Employment, Government of India has made a Policy on Safety Health and Environment that is to be expected at the workplaces having its preamble in brief as follows-

- The Constitution of India provides detailed provisions for the rights of the citizens and also lays down the Directive Principles of State Policy.
- These Directive Principles provide
  (a) for securing the health and strength of employees, men and women;
  b) that the tender age of children is not abused;
  c) that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
  d) just and humane conditions of work and maternity relief are provided; and
  e) that the Government shall take steps, by suitable legislation or in any other way, to secure the participation of employee in the management of undertakings, establishments or other organisations engaged in any industry.
- On the basis of these Directive Principles as well as international instruments, Government is committed to regulate all economic activities for management of safety and health risks at workplaces and to provide measures so as to ensure safe and healthy working conditions for every working man and woman in the nation.
- The formulation of policy, priorities and strategies in occupational safety, health and environment at work places, is undertaken by national authorities in consultation with social partners for fulfilling such objectives.
- Government of India firmly believes that without safe, clean environment as well as healthy working conditions, social justice and economic growth cannot be achieved and that safe and healthy working environment is recognized as a fundamental human right.

- Particular attention needs to be paid to the hazardous operations and of employees in risk prone conditions such as migrant employees and various vulnerable groups of employees arising out of greater mobility in the 3 workforce with more people working for a number of employers, either consecutively or simultaneously.
- The fundamental purpose of this National Policy on Safety, Health and Environment at workplace, is not only to eliminate the incidence of work related injuries, diseases, fatalities, disaster and loss of national assets and ensuring achievement of a high level of occupational safety, health and environment performance through proactive approaches but also to enhance the well-being of the employee and society, at large.

3.4.1 OBJECTIVES OF POLICY

The policy seeks to bring the national objectives into focus as a step towards improvement in safety, health and environment at workplace. The objectives are to achieve: -

a) Continuous reduction in the incidence of work related injuries, fatalities, diseases, disasters and loss of national assets.

b) Improved coverage of work related injuries, fatalities and diseases and provide for a more comprehensive data base for facilitating better performance and monitoring.

c) Continuous enhancement of community awareness regarding safety, health and environment at workplace related areas.

d) Continually increasing community expectation of workplace health and safety standards.

3.5 ETHICAL OBLIGATIONS AND LEGAL RESPONSIBILITIES:

Employers have a duty to provide a safe workplace: This extends beyond legal obligations; it's an ethical imperative to ensure the well-being of employees.

Ethical leadership: Leaders must prioritize safety and model ethical behaviour, creating a culture where safety is valued.

Integrity: Acting with honesty and transparency about risks is essential for building trust and promoting safety.

Fairness: Providing equal access to safety measures for all employees is crucial.

Respect: Valuing and addressing employees' safety concerns is vital.

Workplace ethics refers to a specific set of moral and legal guidelines that organizations may abide by. These guidelines typically influence the way employees and customers alike interact with an organization—in essence, workplace ethics guide how organizations serve their clients and how they treat their employees.

3.6 PROTECTION AGAINST SEXUAL HARASSMENT

3.6.1 VISHAKA CASE-

Pre-1997 the person facing sexual harassment at workplace had to lodge a FIR under Section 354 of the Indian Penal Code 1860 that deals with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes an individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman. Later in the 1990s, Rajasthan state government employee Bhandari Devi tried to prevent child marriage as part of her duties as a worker of the Women Development Programme and she was raped by the landlords of the community. The rape survivor did not get justice from Rajasthan High Court and the rapists were acquitted. This gives a cause to a women's rights group called Vishaka which filed a public interest litigation in the Supreme Court of India.

3.6.2 Guidelines and norms laid down by the Hon'ble Supreme Court in Vishaka and Others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384)

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

a) Physical contact and advances;
b) A demand or request for sexual favours;
c) Sexually coloured remarks;
d) Showing pornography;
e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

Where any of these acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

Preventive Steps-

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

A. Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
B. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
C. As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
D. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules. Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organisation for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

3.7 THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The POSH Act is a legislation enacted by the Government of India in 2013 to address the issue of sexual harassment faced by women in the workplace. The Act aims to create a safe and conducive work environment for women and provide protection against sexual harassment. The Supreme Court in a landmark judgment in the Vishakha and others v State of Rajasthan 1997 case gave guidelines'. These guidelines formed the basis for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The preamble declares-

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business with includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

The aforesaid Act contains VIII chapters dealing with various provisions. The arrangement of sections is being reproduced as follows-

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

ARRANGEMENT OF SECTIONS

CHAPTER I -PRELIMINARY SECTIONS

1. Short title, extent and commencement.

2. Definitions.

3. Prevention of sexual harassment.

CHAPTER II- CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

4. Constitution of Internal Complaints Committee.

CHAPTER III- CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

5. Notification of District Officer.

6. Constitution and jurisdiction of Local Committee.

7. Composition tenure and other terms and conditions of Local Committee.

8. Grants and audit.

CHAPTER IV- COMPLAINT

9. Complaint of sexual harassment.

29. Power of appropriate Government to make rules. 30. Power to remove difficulties.

Section 2 defines '**aggrieved woman'** means-

(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
(ii) (ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

Section 9 provides the procedure for complaint as follows-

Section9. Complaint of sexual harassment. — (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Certain duties have been imposed upon the employer in the chapter VI under section 19 as follows-

19. Duties of employer. — Every employer shall—

(a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;

(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;

(h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place; 12

(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) monitor the timely submission of reports by the Internal Committee.

3.8 NON DISCRIMINATION AT WORKPLACE

In India, workplace discrimination laws, like the Constitution's Article 15 and the Equal Remuneration Act, 1976, prohibit discrimination based on religion, race, caste, sex, or place of birth, and ensure equal pay for equal work, regardless of gender.

Specific Areas of Protection:

- Gender: The Equal Remuneration Act, 1976, and the Indian Constitution, Article 15, protect against gender-based discrimination in hiring, wages, and conditions of employment.
- Disability: The Rights of Persons with Disabilities Act, 2016, prohibits discrimination against disabled persons in employment and mandates reasonable accommodations.
- Caste: While there isn't a specific law solely addressing caste discrimination in the workplace, the Constitution's Article 15 prohibits discrimination on the grounds of caste.

- Pregnancy: The Pregnancy Discrimination Act of 1978 prohibits employers from discriminating against employees based on pregnancy, childbirth, or pregnancy-related medical conditions.
- Age: Refusing to raise or promote an employee just because they are 40 years of age or above will be considered age-based discrimination within the workplace.

Key Laws and Provisions:

- Indian Constitution, Article 15:- Prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.
- The Equal Remuneration Act, 1976: Ensures that men and women are paid equal wages for the same or similar work, and prohibits discrimination in recruitment for the same or similar work.
- The Transgender Persons (Protection of Rights) Act, 2019: Provides for the appointment of a "Complaint Officer" at each establishment to hear and redress complaints raised by transgender persons.
- The Rights of Persons with Disabilities Act, 2016: Prohibits discrimination against disabled persons in employment and mandates that government establishments provide reasonable accommodations to disabled employees.

The International Labour Organization (ILO) defines discrimination as “unfair treatment based on characteristics like race, colour, sex, religion, political opinion, national origin, or social background, which harms equal opportunities in employment or occupation.”

3.9 SUMMARY

Ethics in workplace safety involves adhering to moral principles that guide our behaviour and decision-making. It means doing what is right, even when it is difficult or costly. In India, workplace anti-discrimination focuses on ensuring equal opportunities and prohibiting unfair treatment based on factors like religion, race, caste, sex, or place of birth, as outlined in the Constitution and various laws. There are provisions enacted in legal statutes as well as in the Constitution of India prohibiting any kind of discrimination. A workplace safety policy is a document outlining an organization's commitment to managing health and safety, including roles, responsibilities, risk assessments, safety procedures, and emergency plans. Ministry of Labour and Employment, Government of India has made a Policy on Safety Health and Environment that is to be expected at the workplaces. The policy seeks to bring the national objectives into focus as a step towards improvement in safety, health and environment at workplace. Later in the 1990s, Rajasthan state government employee Bhanwari Devi tried to prevent child marriage as part of her duties as a worker of the Women Development Programme and she was raped by the landlords of the community. The rape survivor did not get justice from Rajasthan High Court and the rapists were acquitted. This gives a cause to a women's rights group called Vishaka which filed a public interest litigation in the Supreme Court of India. The PoSH Act is a legislation enacted by the Government of India in 2013 to address the issue of sexual harassment faced by women in the workplace. The Act aims to create a safe and conducive work environment for women and provide protection against sexual harassment. The Supreme Court in a landmark judgment in the Vishakha and others v State of Rajasthan 1997 case gave guidelines'. These guidelines formed the basis for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

3.10 TERMINAL QUESTIONS

1. Short Answer Questions

a. What is the full form of POSH Act, 2013?

b. What are the objectives of National Policy on Safety, Health and Environment at workplace?

Answers (a) 3.1 & (b) 3.4.1

2. Long Answer Questions

A. Write guidelines of the Vishaka case?

B. What are the duties of employer under POSH Act, 2013?

C. Write a note on India and International Labour standards.

Answers (A) 3.6.2 (B) 3.8

3.11 SUGGESTED REFERENCES

a. labour.gov.in/sites/default/files/SafetyHealthandEnvironmentatWorkplace.pdf

b. doe.gov.in/files/inline-documents/DoE_Prevention_sexual_harassment.pdf

c. Guidelines and norms laid down by the Hon'ble Supreme Court in Vishaka and Others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384)

d.The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

UNIT 4

LABOUR WELFARE LAWS IN INDIA

4.1 INTRODUCTION

Labour welfare is an essential aspect of industrial relations and human resource management. It focuses on physical, mental, and social well-being of employees and workers. Labour welfare covers a wide range of facilities, services, and benefits provided by employers, government bodies, and other stakeholders to improve working conditions and boost employee morale. The concept of labour welfare has evolved over time, incorporating various dimensions such as health, safety, social security, and economic stability.

Labour welfare laws are a crucial component of employment legislation. These Laws aimed at ensuring the well-being, safety, and rights of workers in various industries. These laws provide a framework to protect employees from exploitation, promote fair working conditions, and enhance their quality of life. Labour welfare laws are the rules, regulations and policies designed to protect the well-being, dignity, and rights of workers. These laws seek to regulate the relations between an employer or class of employers and their employees. These laws cover many areas, such as ensuring fair pay, providing safe and healthy workplaces, and offering social security benefits like health insurance or retirement plans. Their main goal is to improve the quality of life for employees and create fair and equal work environments.

All over the world, these laws show how important workers are for economic growth and social stability. As jobs and workplaces change with new technology, globalization, and shifting social values, labour laws also change. These laws are not just about fairness—they help create strong economies and good relationships between employers and employees.

4.2 OBJECTIVES

After reading this Unit, the students will be able to:

1. Understand the importance and scope of labour welfare laws in various industries.
2. Identify the key objectives and provisions of major labour welfare legislations.
3. Analyse the impact of labour welfare measures on employee well-being and productivity.
4. Apply knowledge of labour laws to ensure compliance and fair treatment in the workplace.
5. Evaluate the effectiveness of existing welfare measures and suggest improvements.
6. Recognize the role of government and employers in implementing welfare schemes.

4.3.1 Objectives of Labour Welfare Laws

The primary objectives of labour welfare laws include:

1. **Protection of Workers' Rights:** Ensuring that workers are not exploited and their fundamental rights are upheld in the workplace.

2. **Improvement of Working Conditions:** Providing a safe, hygienic, and conducive work environment to promote productivity and well-being.

3. **Social Security Measures:** Offering provisions such as health insurance, maternity benefits, old-age pensions, and provident funds to support workers during various life stages.

4. **Occupational Safety and Health:** Reducing workplace hazards and ensuring compliance with safety standards to prevent accidents and injuries.

5. **Economic Stability:** Promoting fair wages, timely payments, and job security to enhance the economic well-being of workers.

6. **Enhancement of Productivity:** Motivating employees through welfare measures to improve their efficiency and job satisfaction.

7. **Industrial Harmony:** Promoting a sense of belonging and cooperation between employers and employees, reducing conflicts and enhancing industrial relations.

4.3.2 Approach to Labour Welfare Laws

There has been a remarkable change in the approach to labour law and industrial relations since World War II. Philadelphia Charter adopted in 1944 provided that ‘labour is not commodity’ and that ‘poverty anywhere is a danger to prosperity everywhere’. Many thinkers consider this branch of law as a ‘social duty’ on the part of the employer. Early labour legislations were enacted to safeguard the interests of employers. They were governed by the doctrine of *Laissez faire.* Modern labour legislation, on the other hand, aims to protect workers against exploitation by employers. The advent of doctrine of welfare state is based on the notion of progressive philosophy that has rendered the doctrine of *Laissez faire* obsolete. This branch of law changed the old rules between employers and workers, moving away from the idea that businesses should operate with complete freedom (doctrine of *Laissez faire)*. Instead, it focuses on protecting workers' rights for the good of society. It is based on the idea of ‘social justice’, which keeps evolving over time.

4.3.3 Evolution of Labour Welfare Laws

Labour welfare laws have evolved over time in response to industrialization, economic development, and social movements advocating for workers' rights. The historical development of labour welfare laws can be traced through the following stages:

a) Before the Industrial Revolution: Work arrangements were informal, based on tradition. Workers had no legal protection, leading to widespread exploitation.

b) Industrial Revolution (18th-19th Century): Factories grew rapidly, but working conditions were harsh—long hours, unsafe environments, and child labour were common. Early labour laws were introduced for the welfare of the employers.

c) After World Wars (20th Century): Global organizations like the ILO helped shape labour policies. Governments introduced benefits like pensions and healthcare to support workers.

d) Modern Era (21st Century): Focus shifted to fair workplaces, corporate responsibility, and equality. Technology and the gig economy brought new challenges for labour laws.

4.3.4 Principles of Labour Welfare Laws

Labour welfare laws are based on several guiding principles aimed at protecting workers' rights, promoting industrial harmony, and ensuring economic growth. These principles reflect the need to balance the interests of employers, employees, and society as a whole. They serve as the foundation for framing and implementing labour laws to create fair and just working conditions.

a. Social Justice

This principle ensures fairness and equality in the workplace by reducing social inequalities and promoting workers' well-being. It emphasizes equal pay for equal work, protection against discrimination based on gender, caste, religion, or economic status, and safeguards vulnerable groups such as women, children, and marginalized communities from exploitation.

Example: The **Equal Remuneration Act, 1976**, which mandates equal wages for men and women performing the same work.

b. Social Security

This principle protects workers from risks like illness, accidents, old age, and unemployment by providing social welfare benefits. It includes health insurance and medical care, retirement benefits such as pensions and gratuity, and support like disability and maternity benefits to ensure workers' well-being and financial security.

Example: The **Employees' State Insurance (ESI) Act, 1948**, which offers medical and cash benefits in cases of sickness and employment injury.

c. Economic Justice

This principle ensures that economic resources and benefits are shared fairly between employers and workers, helping to maintain stability and growth. It includes fair wages and bonuses, prevents exploitative practices like forced labour, and regulates working hours to promote a healthy work-life balance.

Example: The **Minimum Wages Act, 1948**, which prescribes minimum wages to prevent exploitation of workers.

d. Protection of Labour

The principle focuses on protecting workers from dangers at work, bad working conditions, and being taken advantage of by employers. It ensures that workplaces are safe and healthy, provides compensation for injuries that happen on the job, and regulates dangerous work practices to keep employees safe.

Example: The **Factories Act, 1948,** which mandates safety measures in workplaces dealing with hazardous processes.

e. National Economy and Development

The principle suggests that labour laws should help boost the economy by making industries more productive and efficient, while still protecting workers' rights. It focuses on promoting industrial growth without harming worker well-being, allowing workers to adapt to changes in the economy, and balancing the needs of both employers and employees to encourage overall economic progress.

Example: The **Industrial Disputes Act, 1947**, which provides mechanisms for dispute resolution and maintaining industrial peace.

f. Industrial Peace and Harmony

The principle aims to prevent and solve conflicts between employers and workers to maintain a stable and peaceful workplace. It includes setting up systems for mediation and arbitration, encouraging workers and employers to negotiate together, and regulating strikes and lockouts to avoid disruptions in the work environment.

Example: The **Trade Unions Act, 1926,** which provides legal recognition to trade unions and promotes collective bargaining.

g. International Obligations (ILO Conventions)

The principle states that labour laws should follow global standards and agreements to support good labour practices and human rights worldwide. This includes following the rules set by the International Labour Organization (ILO), adopting fair labour practices that meet international expectations, and working to eliminate child labour and forced labour.

Example: India's ratification of ILO conventions related to the abolition of child labour and forced labour.

h. Protection of Weaker Sections

The principle emphasizes the need to protect vulnerable groups, like women, children, and contract workers, from exploitation. It includes creating laws for women's safety and maternity benefits, banning child labour in dangerous industries, and ensuring fair working conditions for contract and unorganized workers.

Example: The **Maternity Benefit Act, 1961,** which ensures paid maternity leave and job security for women workers.

i. Adaptability and Flexibility

The principle says that labour laws should be flexible and change with the times, adjusting to new economic conditions, technology, and work environments. This includes updating laws to cover gig and platform workers, offering flexibility in working hours and job contracts, and supporting policies for digital and remote work.

Example: The recent introduction of the **Labour Codes,** which aim to simplify and modernize labour regulations in India.

j. Democratic Participation

The principle promotes workers' active involvement in decision-making at work by supporting their rights to form unions, engage in collective bargaining, and use grievance systems. It encourages workers to take part in decisions through works committees and supports negotiations between employers, workers, and government representatives.

Example: The establishment of **Works Committees** under the Industrial Disputes Act, 1947, for dispute resolution and employee participation.

4.3.5 International Labour Standards and their Influence

International Labour Organization (ILO) plays a significant role in shaping labour welfare policies worldwide. The key conventions and recommendations by the ILO influence national labour welfare policies, ensuring global standards for fair work practices. Some important aspects covered by ILO standards include:

a) **Freedom of Association and Collective Bargaining:** Encouraging formation of trade unions and collective agreements.

b) **Elimination of Child Labour:** Promoting laws to eradicate child labour and ensuring education for children.

c) **Equality and Non-Discrimination:** Addressing workplace discrimination based on gender, race, and other factors.

d) **Occupational Health and Safety:** Implementing preventive measures to ensure workplace safety and worker well-being.

4.3.6 Overview of Labour Welfare Laws

Labour welfare laws vary across countries and regions, but some of the key legislations in many jurisdictions include:

1. **The Factories Act:** Ensures safety, health, and welfare of workers in industrial establishments.

2. **The Employees' State Insurance Act (ESI):** Provides health benefits and insurance to employees in case of sickness, maternity, or workplace injuries.

3. **The Employees' Provident Fund Act (EPF):** A social security measure ensuring financial stability for employee’s post-retirement.

4. **The Minimum Wages Act:** Establishes minimum wage standards to prevent exploitation and ensure fair compensation.

5. **The Industrial Disputes Act:** Governs the resolution of industrial disputes and promotes peaceful industrial relations.

6. **The Maternity Benefit Act:** Provides maternity leave and related benefits to female employees.

7. **The Workmen's Compensation Act:** Offers compensation for work-related injuries or accidents.

Labour welfare laws continue to evolve with changing economic and social conditions, aiming to address the emerging needs of the workforce in a dynamic industrial landscape.

4.3.7 Challenges in Labour Welfare Implementation

Despite the existence of comprehensive labour welfare laws, several challenges hinder their effective implementation, such as:

1. **Lack of Awareness:**
    - Workers, especially in informal sectors, are often unaware of their rights and benefits.
2. **Compliance Issues:**
    - Many small and medium enterprises (SMEs) fail to comply with labour laws due to financial constraints.
3. **Changing Nature of Work:**
    - Rise of the gig economy and remote work has created new challenges for enforcement of labour welfare laws.
4. **Inspection and Enforcement Gaps:**
    - Lack of adequate monitoring and enforcement mechanisms leads to violations going unchecked.

4.3.8 Latest Trends in Labour Welfare Laws in India

The Indian Parliament has recently enacted four main codes to simplify its federal labour laws, consolidating 29 different labour laws namely: The Code on Wages, the Industrial Relations Code, the Occupational Safety**,** Health and Working Conditions Code, and the Code on Social Security. These law reforms were made to contribute to a better working environment, which will accelerate the pace of economic growth. The codes are yet to take effect.

a) Code on Wages Act: The Code on Wages Act, 2019 combines four existing labour laws into one comprehensive regulation. These laws include the Minimum Wages Act, Payment of Wages Act, Payment of Bonus Act, and Equal Remuneration Act. This new act ensures that workers receive at least the minimum wage set by the government, with provisions for regular review to keep up with changing living costs. It applies to workers across all industries and is enforced by both the central and state governments.

This means that labour regulations are overseen by authorities at both levels, ensuring comprehensive coverage and adherence to standards across different regions

b) **Industrial Relations Code:** The Industrial Relations Code, 2020, simplifies and updates laws related to trade unions, employment conditions, and dispute resolution in India. The code covers various aspects, including registration and management of trade unions, formation of work committees, and resolution of grievances. It also addresses issues like industrial tribunal formation, illegal strikes, retrenchment procedures, and compensation for workers during transfers or closures of industrial establishments.

c) **Occupational Safety, Health and Working Conditions Code**: The Occupational Safety, Health, and Working Conditions Code, 2020 prioritises the well-being of workers across different sectors like industry, trade, construction, transportation, and services. This code applies to workers in factories, mines, plantations, transportation, bidi and cigar industries, as well as contract and migrant workers. It covers various aspects of occupational safety, health, and working conditions to safeguard workers' interests and rights.

d) **Code on Social Security:** The Code on Social Security, 2020 aims to modernise and enhance social security laws for workers in both organised and unorganised sectors. It consolidates existing labour laws while introducing new provisions to adapt to contemporary work practices. One significant change is the expanded definition of "employee," which now includes gig workers, contractual workers, and self-employed individuals. This update ensures that workers in the gig economy and informal sectors are covered by social security benefits for the first time. The code also emphasises gender equality by extending maternity benefits to a wider range of women, including adoptive mothers.

4.4 SUMMARY

In this unit, we have discussed that the Labour welfare focuses on the well-being of workers by providing facilities and benefits that improve their working conditions and overall quality of life. It covers aspects such as health, safety, fair wages, and social security to protect employees from exploitation and promote a better work environment. Labour welfare laws play a crucial role in ensuring the dignity, rights, and economic stability of workers by setting legal standards for employers to follow. These laws are based on the principles of social justice, social equity and social security. These laws have evolved over time to address the changing nature of work, globalization, and technological advancements, highlighting the importance of workers in economic growth and social harmony. They aim to create a fair and safe workplace while fostering good relationships between employers and employees.

4.5 GLOSSARY

1. **Labour Welfare** – Efforts and measures taken to ensure the well-being, safety, and overall development of workers in an organization.
2. **Laissez-Faire** – An economic philosophy advocating minimal government intervention in business affairs, historically leading to worker exploitation.
3. **Social Equity** – Ensuring fairness and justice in employment opportunities and benefits for all workers, regardless of background.
4. **Social Justice** – Ensuring fairness and equality in employment, preventing discrimination based on gender, caste, or economic status.
5. **Social Security** – Programs designed to provide financial and social protection to workers, such as health insurance, pensions, and maternity benefits.

4.6 SAQS

1. Short Answer Questions-

a) Explain the main principles that guide labour welfare laws.

b) What are key areas covered by labour welfare laws?

2. Fill in the blanks-

a) Labour welfare laws aim to regulate the relations between **__________** and **__________** to ensure the safety and rights of workers.
b) The principle of **__________** ensures fairness and equality in the workplace by addressing social inequalities and promoting workers' welfare.

3. True or False Questions-

a) Labour welfare laws are solely concerned with economic stability and ignore social security measures. (True / False)
b) Labour welfare laws do not consider the protection of weaker sections, such as women and children. (True / False)

4.7 REFERENCES

a) Dr. V.G. Goswami, Labour and Industrial laws, Central Law Agency, Allahabad, 2011.
b) Suresh C. Srivastava, Industrial Relations and Labour Laws, Vikas Publishing House Pvt. Ltd. 2013.

4.8 SUGGESTED READINGS

S. N. Mishra, Labour Industrial laws, Labour & Industrial Laws, Central Law Publications, Allahabad, 2019.

4.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

a) What are the primary objectives of labour welfare laws?
b) Explain the evolution of labour welfare laws from the pre-industrial era to the modern era.
c) Discuss the role of the International Labour Organization (ILO) in shaping labour welfare laws worldwide.

d) What are the challenges faced in the implementation of labour welfare laws?

Answers

1. SAQS

(a)Refer 4.3.4 (b) Refer 4.3.6

2. Fill in the blanks

(a) employer, employee (b) Social Justice

3. True or False

(a) False (b) False

4. Terminal Questions and Answers

(a) Refer 4.3.1 (b) Refer 4.3.3 (c) Refer 4.3.5 (d) Refer 4.3.7

UNIT 5

LABOUR RIGHTS OF ORGANISED AND UNORGANISED SECTOR

5.1 INTRODUCTION

Labour rights are fundamental entitlements that ensure fair treatment, dignity, and protection for workers in all sectors of employment. These rights include fair wages, safe working conditions, job security, and access to social security benefits. In any economy, labour is broadly classified into two categories: the organised sector and the unorganised sector, each with distinct characteristics and challenges.

The organised sector consists of formal employment opportunities where workers enjoy legal protections, regular wages, and benefits such as health insurance, pensions, and job security. Examples include government jobs, corporate firms, and registered businesses that follow labour laws and regulations. Workers in this sector are protected by various labour laws such as the Industrial Disputes Act, Factories Act, and Minimum Wages Act.

On the other hand, the unorganised sector comprises informal and irregular employment, where workers often face job insecurity, low wages, and lack of social security benefits. This sector includes jobs in agriculture, construction, domestic work, and small-scale industries. Workers in the unorganised sector are more vulnerable to exploitation due to the absence of formal contracts and weak enforcement of labour laws.

The protection of labour rights is crucial to ensuring economic and social justice for all workers, especially those in vulnerable and marginalized positions. Governments and international organizations, such as the International Labour Organization (ILO), play a key role in establishing policies and frameworks that protect and promote the rights of workers in both sectors.

5.2 OBJECTIVES

After reading this Unit, the students will be able to:

- Define labour rights and explain their importance in ensuring fair treatment of workers.
- Differentiate between the organised and unorganised sectors in terms of employment conditions.
- Recognize the fundamental rights of workers, such as fair wages, job security, and safe working conditions.
- Compare and contrast the characteristics, challenges, and working conditions of both sectors.
- Identify issues like exploitation, wage disparity, lack of social security, and workplace safety concerns.

5.3.1 Organised Sector

The organised sector consists of enterprises that are registered under various government regulations and are subject to labour laws, taxation policies, and social security measures. These establishments include public sector enterprises, private corporations, and large businesses that provide job security, regular wages, and benefits such as provident funds, pensions, and health insurance.

5.3.1.1 Key Characteristics of the Organised Sector

The key characteristics of organised sector are as following:

a) **Formal Employment Structure**

- Jobs in the organised sector follow a structured system with clear roles, responsibilities, and employment contracts.
- Employees have defined working hours, job descriptions, and hierarchies.

b) **Legal Protection and Regulation**

- Various labour laws such as the Factories Act, Industrial Disputes Act, and Minimum Wages Act, ensuring compliance with rules and regulations, govern the sector.
- Workers have legal recourse in case of disputes or violations of their rights.

c) **Fixed Wages and Benefits**

- Employees receive regular salaries, increments, and bonuses as per company policies and government norms.
- Benefits such as provident fund (PF), gratuity, paid leave, and medical insurance are provided.

d) **Job Security and Stability**

- Workers in the organised sector enjoy greater job security with permanent or long-term employment contracts.
- Termination and layoffs typically follow legal procedures, ensuring protection from arbitrary dismissal.

e) Standardized Working Conditions

- Workplaces in this sector ensure adherence to occupational health and safety standards.
- Facilities such as proper infrastructure, canteens, restrooms, and safety measures are provided to employees.

f) Social Security Provisions

- Employees are entitled to social security schemes such as pensions, maternity leave, and insurance benefits under government policies like the Employees' Provident Fund (EPF) and Employees' State Insurance (ESI) schemes.

g) Presence of Trade Unions

- Workers in the organised sector often have the right to form and join trade unions, which help in collective bargaining and protecting their interests.
- Unions negotiate on behalf of employees for better wages, benefits, and working conditions.

h) Fixed Working Hours and Overtime Pay

- The organised sector follows specific working hour norms (e.g., 8-hour shifts) with provisions for overtime pay if employees work beyond the stipulated time.

i) Technology and Skill Development Opportunities

- Organised sector jobs often provide training and development programs to upgrade employee skills and improve productivity.
- Access to modern technology and professional growth opportunities are available.

j) Tax Compliance and Record Maintenance

- Companies in this sector maintain proper records of employees, such as payroll, attendance, and tax deductions (e.g., Income Tax, Provident Fund contributions).

Examples of the organised sector include government departments, multinational corporations (MNCs), public sector undertakings (PSUs), banks, educational institutions, and large factories.

5.3.2 Unorganised Sector

The unorganised sector, on the other hand, comprises small-scale, informal businesses and enterprises that are often not registered with the government. Workers in this sector include daily wage earners, agricultural labourers, street vendors, domestic workers, and artisans, who lack job security, benefits, and legal protections.

5.3.2.1 Key Characteristics of the Unorganised Sector

The key characteristics of organised sector are as following:

a) Informal Employment Structure

- Jobs in the unorganised sector are mostly informal and lack a structured system of employment contracts or job security.
- Employment is often based on verbal agreements rather than written contracts.

b) Lack of Legal Protection and Regulation

- Workers in this sector are not adequately covered by labour laws and government regulations.
- Compliance with labour standards, such as minimum wages and working hours, is often weak or absent.

c) Irregular and Low Wages

- Earnings are usually inconsistent, with wages often paid on a daily or weekly basis.
- Workers may face exploitation with no assurance of fair compensation or timely payments.

d) Job Insecurity and Vulnerability

- Employment in the unorganised sector is often temporary or seasonal, with no job stability.
- Workers can be dismissed without notice or compensation.

e) Poor Working Conditions

- Workplaces may lack basic amenities such as proper sanitation, drinking water, and safety measures.

- Workers are exposed to hazardous environments, especially in industries like construction, agriculture, and domestic work.

f) Absence of Social Security Benefits

- Workers typically do not receive benefits such as pensions, health insurance, paid leave, or gratuity.
- In case of illness, injury, or old age, there is little to no financial support available.

g) Long and Unregulated Working Hours

- Employees often work for extended hours beyond the standard norms without overtime pay.
- There is no fixed schedule, and workers may have to work on demand.

h) Limited or No Skill Development Opportunities

- Training and development opportunities are scarce, leading to stagnation in job roles and wages.
- Workers rely on traditional skills and manual labour with limited access to modern technologies.

i) No Trade Unions or Worker Representation

- Due to the informal nature of employment, workers often lack collective bargaining power or union representation.
- This makes it difficult to negotiate better wages and working conditions.

j) Cash-based Transactions and No Tax Compliance

- Workers are usually paid in cash, making it difficult to track earnings and ensure fair wages.
- Employers often evade taxes and social contributions.

11. High Dependency on Daily Wages

- Workers depend on daily income for their livelihood, making them highly vulnerable to economic fluctuations and job losses.

Examples of Unorganised Sector Employment include Agriculture, street vending, domestic work, construction labour, small-scale industries, tailoring, and gig economy jobs such as food delivery and ride-hailing services.

Due to the lack of formal protections, the unorganised sector faces numerous challenges, including economic insecurity and poor working conditions. Governments and NGOs have introduced welfare schemes to provide some relief, but significant gaps remain.

5.3.2.2 Unorganised Workers

The term 'unorganized worker' is defined in India under Section 2(m) of the Unorganized Workers Social Security Act, 2008.

An unorganised worker is a home-based worker or a self-employed worker or a wage-worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts pertaining to welfare Schemes as mentioned in Schedule-II of Unorganized Workers Social Security Act, 2008.

- **home based worker** refers to one who engages in production at his own home or at premises of his choice but not at the employer's work place, even if the employer might have provided him materials or equipment's for his work.
- **Self-employed worker** refers to one who is not working for an employer and is engaged in an unorganised sector job earning an income below a threshold or owning land below a notified limit.
- A **wage worker** is a person employed for a remuneration (in cash or kind) in the unorganised sector, by an employer or contractor for one or more employers, as a casual worker, or temporary worker, or migrant worker, or as domestic workers but on wage below a notified limit.

Unorganised sector refers to a production or service oriented enterprise owned by individuals or self-employed workers and if workers are employed, then the total number of workers cannot exceed 10.

The Acts mentioned in Schedule II of the Act are

- The Workmen's Compensation Act, 1923 (8 of 1923),
- The Industrial Disputes Act, 1947 (14 of 1947),
- The Employees' State Insurance Act, 1948 (34 of 1948),

- The Employees' Provident Funds and Miscellaneous Provision Act, 1952 (19 of 1952),
- The Maternity Benefit Act, 1961 (53 of 1961) and
- The Payment of Gratuity Act, 1972 (39 of 1972).

The Code on Social Security, 2020 (yet to be enforced) replaces the Unorganised Workers' Social Security Act, 2008. Section 2(86) of the Code on Social Security, 2020 defines unorganised worker asunder: "unorganised worker" means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code;

Thus, unorganised workers are essentially those who do not have the benefit of pension, provident fund, gratuity, maternity leave etc. and work mostly on daily / hourly wages. They are not represented by active trade unions

5.3.2.3 Categorisation of Unorganised Workers

Ministry of Labour has categorized the unorganized labour force under four groups as under:

- Occupation – In terms of occupation, it included small and marginal farmers, landless agricultural labourers, share croppers, fishermen and those engaged in animal husbandry, beedi (local cigarette) rolling, labelling and packing, building and construction workers, leather workers, weavers, artisans, salt workers, workers in brick kilns and stone quarries, workers in saw mills, oil mills etc.

- Nature of employment – In terms of nature of employment, they are attached agricultural labourers, bonded labourers, migrant workers, contract and casual labourers

- Specially distressed categories – Toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles and loaders and unloaders, belong to the specially distressed category

- Service categories – Midwives, domestic workers, fishermen and women, barbers, vegetable and fruit vendors, newspaper vendors etc. come under the service category.

In addition to the above categories, there exists a large section of unorganised labour force such as cobblers, hamals, handicraft artisans, handloom weavers, lady tailors, physically handicapped self-employed persons, rickshaw pullers/ auto drivers, sericulture workers, carpenters, leather and tannery workers, power loom workers and urban poor.

Government enacted the "Unorganised Workers' Social Security Act, 2008" with a view to provide social security to unorganized workers like those in hotels, private security etc. The Act provides for constitution of National / State Social Security Board at the central /State level to recommend social security schemes like life and disability cover, health and maternity benefits, old age protection and any other benefit as may be determined by the Government for unorganized workers. This Act also provides for registration of unorganised workers.

As such, all unorganised workers including those in hotel, private security and others covered as per the provisions of the Act are eligible to take benefits under the social security schemes/welfare schemes framed under the Act.

5.3.3 Labour Rights of Organised Sector

The various laws pertaining to labour welfare and regulation assert labour rights of organised sector. These can be classified under four heads as under:

(A) working conditions;

(B) employee relations;

(C) wages and monetary benefits;

(D) social security.

5.3.3.1 Working conditions

a) The Factories Act, 1948: The **Factories Act** defines a factory as any premises where manufacturing processes are carried out by 10 or more people using power or 20 or more without power. The Act mandates that all factories falling under this definition must be registered and licensed by the State government before operation. It establishes regulations to ensure the health, safety, and welfare of workers, including setting maximum working hours of 48 hours per week or 9 hours per day. It also prohibits child labour for those under 14 years. The Act lays down provisions related to factory conditions such as the space allotted to workers, machine safety, and fencing to prevent accidents. Inspections by government authorities are required to enforce these standards. In the wake of the 1984 Bhopal gas tragedy, the Act was amended in 1987 to tighten regulations around hazardous processes and increase penalties for violations, including longer imprisonment terms. The 2005 amendment focused on improving the working conditions for women by providing safeguards such as restrooms, protection from harassment, and safety measures. However, the Act faces criticism for excluding workers in small or unorganized sectors and for insufficient inspections, leading to poor enforcement of regulations.

b) The Plantation Labour Act, 1951: The conditions of workers employed in plantations are regulated by the Plantation Labour Act (PLA). The Act applies to plantations of coffee, rubber and cinchona. All plantations are required to be registered with a registration officer appointed under the Act. The provisions of PLA mainly deal with health and welfare measures. These include: drinking water, medical facilities, crèches, recreational facilities, educational facilities and housing for workers and their families.

c) The Mines Act, 1952: The Mines Act provides for health, safety and welfare of workers employed in mines. The term 'mine' refers to any excavation operation carried out for obtaining minerals. The Act provides for various health and welfare provisions for those working in the mines. These include supply of drinking water and medical appliances. A person who has not attained the age of eighteen years is prohibited from working in a mine.

d) The Contract Labour (Regulation and Abolition) Act, 1970: The **Contract Labour (Regulation and Abolition) Act (CLA)** aims to regulate the working conditions of contract workers and allows for their abolition in certain situations. The CLA requires employers who hire contract labor to register with a government-appointed registrar. Contractors working for these employers must also obtain a license from the authorities. This ensures that the use of contract labor follows legal guidelines. Over recent decades, the use of contract labor has grown significantly, especially with globalization. In India, the number of contract workers increased from 12% of registered manufacturing workers in 1999 to over 25% in 2010. The Act also outlines specific health and welfare measures for contract workers, which are detailed in Chapter V of the CLA.

e) The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979: Indian industries employ a good number of inter-state migrant workers. The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act (ISMWA) was enacted with a view to protecting the migrant workers from exploitation. The Act provides for certain minimum conditions of employment by issuing a passbook to every inter-state migrant worker which contains details about: (i) employment, (ii) payment of displacement allowance, (iii) payment of wages during the period of the journey, (iv) residential accommodation and medical facilities, (v) protective clothing and (vi) equal pay for equal work irrespective of gender.

f) Child Labour (Abolition and Regulation) Act, 1985: It is estimated that the largest number of child workers in the world are in India. The Child Labour (Abolition and Regulation) Act (CLARA) prohibits the employment of children below the age of fourteen years in factories and hazardous employment which includes glass and glassware, fireworks and match making, and carpet weaving. In cases where children are allowed to work, the Act regulates their working hours.

5.3.3.2 Employee Relations

Employee relations in India are governed by three main laws: (i) The **Trade Unions Act, 1926 (TUA)**, (ii) the **Industrial Employment (Standing Orders) Act, 1946 (IESOA)**, and (iii) the **Industrial Disputes Act, 1947 (IDA)**. Here's a brief overview of these laws:

a) **The Trade Unions Act, 1926 (TUA)**: This law allows for the registration of trade unions, giving workers a collective power to negotiate with employers. It lets all employees, including managers, join unions. Registered unions and their members are granted immunity from certain civil and criminal actions, enabling them to strike or withdraw labor if they feel exploited, using this leverage in negotiations.

b) **The Industrial Employment (Standing Orders) Act, 1946 (IESOA)**: This law sets clear terms of employment for different categories of workers, making them aware of their rights. It applies to industrial establishments with 100 or more workers.

c) **The Industrial Disputes Act, 1947 (IDA)**: The IDA establishes a process to resolve industrial disputes through conciliation, adjudication, and arbitration. If negotiations fail, the dispute moves through these stages, with labor courts, industrial tribunals, or national tribunals handling adjudication. Disputes can also be resolved by an arbitrator chosen by both parties. The Act allows the state to intervene in disputes and requires employers to inform the labor commissioner before a lockout or strike. Employers must also get approval from the labor commissioner to retrench workers in factories with 100 or more employees. Although the 1976 amendment raised the threshold to 300 workers, it was later reduced back to 100 in 1982, making it harder for businesses to lay off workers.

5.3.3.3 Wages and Monetary Benefits

Under this, we discuss the main features of four pieces of legislation viz. (a) the Payment of Wages Act (POWA), 1936; (b) the Minimum Wages Act (MWA), 1948; (c) the Payment of Bonus Act (POBA), 1965; and (d) the Equal Remuneration Act (ERA) 1976.

a) The Payment of Wages Act, 1936: This is one of the earliest labour laws enacted in colonial India with the objective of ensuring: (i) the payment of wages on time to the worker, (ii) that payment is made in current coin, and (iii) that no impermissible deductions are made from them. The Act applies to factories, railways and other establishments.

b) The Minimum Wages Act, 1948 (MWA): The Act provides for fixation, review, revision and enforcement of minimum wages in respect of 'scheduled employment'. The Act is aimed at preventing workers from being exploited. The Act does not discriminate between male and female workers for wages. The minimum wages can be fixed in the form of a time rate or a piece rate with a guaranteed time rate and an overtime rate. It is mandatory on the part of the employers to pay minimum wages. The shortcomings of this Act are that while this Act is observed by large and medium units, small units evade the provision. Another shortcoming relates to ensuring payment of fair wages to workers. As a result, not only the Act could not be enforced in rural areas, the entire agricultural sector employing 50 percent of workforce is left out of the ambit of this Act denying them the payment of even the minimum wage stipulated under this Act.

c) The Payment of Bonus Act (POBA), 1965: The Payment of Bonus Act (POBA), envisages a scheme of sharing the gains of industry between the employer and the employees. The Act applies to all factories defined under the Factories Act, 1948, and all establishments wherein twenty or more persons are employed on any day during the accounting year.

d) The Equal Remuneration Act, 1976: The Equal Remuneration Act (ERA), applies to all establishments whether belonging to the public or the private sector. It envisages a duty on the part of all employers to pay equal remuneration to men and women for doing the same work or work of similar nature.

5.3.3.4 Social Security Laws

Social security is the protection which society provides for its members against the economic and social distress. The State bears the primary responsibility for developing appropriate systems for providing protection and assistance to its workforce and their families.

In India, social security is treated as part of labour law. The principal social security laws enacted are the following: (a) The Workmen's Compensation Act (WCA) 1923; (b) The Employees' State Insurance Act (ESIA) 1948; (c) The Employee' Provident Funds (and Miscellaneous Provisions) Act (EPFA) 1952 [including the Employees' Pension Scheme (EPS) 1995]; (iv) The Maternity Benefit Act (MBA) 1961; and (d) The Payment of Gratuity Act (PGA) 1972.

a) The Workmen's Compensation Act (WPA) 1923: The Act provides for payment of compensation to workmen and their dependants in case of injury and accident (including certain occupational diseases) arising out of the course of employment resulting in disability or death. The Act covers persons employed in factories, mines and plantations and certain categories of railway workers, workers of mechanically propelled vehicles, construction works and certain other hazardous occupations. The Act suffers from poor implementation due to administrative difficulties.

b) The Employees' State Insurance Act (ESIA) 1948: The ESIA is the principal social insurance law in India. It applies to all workers in factories. The Act provisions an 'employee state insurance scheme' (ESIS) administered by the 'Employees State Insurance Corporation' (ESIC), an autonomous body. The coverage of the Act has been extended to shops, hotels, theatres, restaurants, and cinema and provides for medical care and cash benefits in the event of the death of a worker. The members of the deceased family of the insured persons (for permanent disablement and widow of the deceased) receive free and complete medical care for life.

c) Employees' Provident Funds (and Miscellaneous Provisions) Act [EPFA] 1952: The Act provides for compulsory contributory provident fund, including pension and insurance, for employees in factories and other establishments employing 20 or more persons. The Act provisions for three schemes viz. (i) Employees' Provident Funds Scheme, 1952, (ii) Employees' Deposit Linked Insurance Scheme, 1976 and (iii) Employees' Pension Scheme (EPS), 1995. The EPS, 1995, aims at providing economic sustenance during the old age and coverage for survivors. Under the EPS, pension at the rate of 50 percent of last drawn pay is payable to the employees on superannuation after completion of 33 years of contributory service.

d) Maternity Benefit Act (MBA) 1961: The Act aims to protect the earnings of women employees for a specified period of time both before and after child birth. The benefits under the Act are payable under three situations viz. childbirth, miscarriage and sickness arising out of pregnancy. Like other social security laws, the MBA also imposes unilateral responsibility on the employer to pay maternity benefit to women employees covered. This Act has been amended in 2008 to provide for extension of the provisions of the MBA to women workers employed in shops and establishments employing 10 or more workers. An amended Maternity Benefit (Amendment) Act, 2017 extends certain benefits to adoptive mothers and provides entitlement of 12 weeks of maternity leave from the date of adoption. 5) The Payment of Gratuity Act (PGA) 1972: Gratuity is a benefit payable to the employees on superannuation from the service. Regulated by the PGA, it is a protection for organised sector workers working in factories, mines, plantations, shops and establishments, etc. employing 20 or more persons.

5.3.4 Labour Rights of Unorganised Sector

The overwhelming majority in India's labour force works in the unorganised or informal sector, with low earnings and high social insecurity. Only 8 percent of India's labour force enjoy protection and social security of the organised sector. Realising this glaring lacunae, the GoI constituted a National Commission for Enterprises in the Unorganised Sector (NCEUS) in 2004. Following its recommendations, the government has enacted the Unorganised Workers Social Security Act in 2008. The Act stipulates formulation of welfare schemes for unorganised sector workers on matters relating to: (i) life and disability, (ii) health and maternity benefits, (iii) old age pension, etc. Various Schemes have since been formulated by the Government. These are: (i) Indira Gandhi National Old Age Pension Scheme, (ii) National Family Benefit Scheme, (iii) Janani Suraksha Yojana, (iv) Aam Admi Bima Yojana, (v) Rashtriya Swasthya Bima Yojana (a smart card based cashless health insurance scheme including maternity benefit) and (vi) Janashree Bima Yojna. Besides these, the government has also launched two more social security schemes for all citizens including unorganised workers. These are: Atal Pension Yojna and Pradhan Mantri Jeevan Jyoti Bima Yojana. Shops and Establishments Act (SEA): While the above schemes are launched by the central government, there is a 'Shops and Establishments' legislation in India. Different states have formulated their laws applicable to 'shops and establishments' more or less on similar lines. Most workers who are employed in shops and establishments are in the unorganised sector (or informal sector) although there are certain larger establishments like motor transport companies, insurance companies, etc. Thus, the SEA covers larger as well as smaller shops and establishments.

5.4 SUMMARY

Labour rights are essential entitlements that ensure fair treatment, dignity, and protection for workers across various employment sectors. Labour is categorized into the organised and unorganised sectors, each having distinct features and challenges.

The organised sector includes formal employment opportunities with legal protections, regular wages, and benefits such as health insurance and job security. This sector is governed by laws such as the Industrial Disputes Act and Minimum Wages Act.

The unorganised sector comprises informal employment with job insecurity, low wages, and lack of social security benefits. Examples include agriculture, domestic work, and construction. Workers in this sector face exploitation due to the absence of formal contracts and weak enforcement of labour laws.

Governments and organizations like the International Labour Organization (ILO) play a key role in establishing policies to protect workers' rights. Measures such as policy interventions and legal frameworks aim to address challenges faced by unorganised sector workers.

5.5 GLOSSARY

1. **Labour Rights** - Fundamental entitlements ensuring fair treatment and protection for workers.

2. **Organised Sector** - Formal employment with legal protection, job security, and benefits.

3. **Unorganised Sector** - Informal employment with job insecurity, low wages, and lack of benefits.

4. **Industrial Disputes Act** - Legislation governing industrial relations and dispute resolution.

5. **Minimum Wages Act** - Law ensuring minimum wages for workers in various industries.

5.6 SAQS

1. Short Answer Questions-

a) Differentiate between the organised and unorganised sectors.

b) List three key characteristics of the organised sector.

2. Fill in the blanks-

a) The unorganised sector is characterized by a lack of formal employment contracts and is often governed by ____ agreements rather than written contracts.

b) The Code on Social Security, 2020, defines an unorganised worker as a home-based worker, self-employed worker, or ____ in the unorganised sector.

3. True or False Questions-

a) Workers in the organised sector do not have access to social security schemes such as provident fund and medical insurance.

b) The unorganised sector includes informal jobs such as domestic work, street vending, and construction labour.

5.7 REFERENCES

c) Dr. V.G. Goswami, Labour and Industrial laws, Central Law Agency, Allahabad, 2011.
d) https://labour.gov.in/

5.8 SUGGESTED READINGS

S. N. Mishra, Labour Industrial laws, Labour & Industrial Laws, Central Law Publications, Allahabad, 2019.

5.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

a) Define the term 'unorganised worker' as per Indian law.

b) Discuss the challenges faced by workers in the unorganised sector.

Answers

- **SAQS**

(a)Refer 5.3.1.1 & 5.3.2.1 (b) **5.3.1.1**

- **Fill in the blanks**

(a) informal (b) wage worker

- **True or False**

(a) False (b) True

- **Terminal Questions and Answers**

(a) Refer 5.3.2.2 (b) Refer 5.3.3

Public Information Part IV - For Public Info

UNIT 6

TRADE UNIONS AND LABOUR WELFARE

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6.3.5.4 Challenges of Collective Bargaining in India

6.3.6 Trade Union Legislation in India

6.1 INTRODUCTION

Trade unions have become an important part of today's economy. They are instrumental in the way goods and services are produced and shared. As industries have grown, trade unions have also grown and become stronger. They now have a big influence on how work is done, how resources are used, and how economic decisions are made. Trade unions also affect government decisions, job availability, workers' rights, and the overall well-being of society. They help improve the lives of workers by fighting for better wages, working conditions, and job security.

In countries that are still developing, trade unions are even more important because they help support economic growth and protect workers from unfair treatment. Therefore, it is important to learn about how trade unions started, how they developed over time, and what helped them become as powerful as they are today.

6.2 OBJECTIVES

After reading this Unit, the students will be able to:

1. Learn what trade unions are, why they exist, and how they function in different industries and sectors.
2. Gain insights into how trade unions started, their growth over time, and their role in shaping labour movements globally.
3. Recognize the difficulties trade unions face, such as declining membership, legal restrictions, and changing work environments.
4. Explore how trade unions influence labour laws, social policies, and economic decisions made by governments.
5. Understand how trade unions negotiate with employers to achieve better wages, benefits, and working conditions through collective bargaining.

6.3.1 Meaning of Trade Union

A trade union is an organization formed by workers to protect and promote their common interests, such as fair wages, better working conditions, job security, and workplace rights. It acts as a collective voice for employees, representing them in discussions and negotiations with employers to ensure fair treatment and improved conditions at work.

Trade unions play a key role in advocating for labour rights, providing support to workers in disputes, and influencing labour policies and laws. They aim to achieve economic and social justice for their members through collective bargaining and mutual-cooperation.

As per section 2(h) of the Trade Union Act, 1926, a 'trade union' is a combination, whether temporary or permanent, formed for regulating the relations not only between workmen and employers but also between workmen and workmen or between employers and employers.

6.3.2 Origin and Growth of Trade Unions

The origin of trade unions can be traced back to the early stages of industrialization, when workers faced poor working conditions, low wages, and job insecurity. Before industrialization, workers were mostly engaged in small-scale, family-based crafts and agriculture. However, with the rise of factories and mass production in the 18th and 19th centuries, labourers started to experience harsh working environments, long hours, and exploitation by employers.

6.3.2.1 Early Beginnings

In medieval Europe, craftsmen and artisans formed **guilds** to regulate their trade, ensure fair wages, and protect their interests. These guilds can be considered as the earliest form of worker organizations, though they were mostly focused on skill development and trade regulation rather than worker rights.

During the **Industrial Revolution (18th–19th century),** rapid industrial growth in countries like Britain led to factories replacing traditional craft-based work. Workers had to endure long hours, unsafe working conditions, and job insecurity, which encouraged them to form worker associations to demand better treatment.

6.3.2.2 Development of Modern Trade Unions

The first modern trade unions emerged in **Great Britain** in the late 18th and early 19th centuries as workers united to demand better wages and safer working conditions. However, many early unions were considered illegal, and members often faced punishment.

Over time, with increasing industrial conflicts and worker protests, governments gradually began to recognize the rights of workers to organize and negotiate.

In the **United States and Europe**, trade unions grew stronger in the late 19th and early 20th centuries, gaining legal recognition and playing an important role in labour laws and social reforms.

6.3.2.3 Key Milestones in Trade Union History

Combination Acts (1799–1800, UK): These laws banned workers from forming unions, but they were later repealed due to growing demand for labour rights.

The Trade Union Act (1871, UK): This law legalized trade unions, allowing them to operate without interference from employers.

Rise of International Labour Organizations: In the 20th century, international bodies like the International Labour Organization (ILO) were established to promote workers' rights globally.

6.3.2.4 Right to Organise and Freedom of Association

The right to organize is a cornerstone of labour rights, enabling workers to establish and join trade unions that can negotiate improved wages, working conditions, and benefits on their behalf. It grants employees a collective voice to address workplace concerns, while safeguarding them from unfair treatment or exploitation by employers. This fundamental right is recognized globally by organizations like the International Labour Organization (ILO) and plays a key role in fostering democratic labour relations. By organizing, workers can more effectively advocate for their needs, creating a more equitable and productive work environment. Protecting this right is vital for advancing social justice and economic equality.

Freedom of association, as related to trade unions, is the fundamental right of workers and employers to form and join organizations of their choice without outside interference. This right allows individuals to unite in pursuit of better working conditions, enhanced job security, and the protection of their rights at work. Recognized by global labour standards such as those set by the International Labour Organization (ILO), freedom of association is crucial for ensuring fair labour practices and facilitating constructive dialogue between employers and employees. It ensures workers can organize peacefully, engage in collective bargaining, and seek legal protection without fear of discrimination or retaliation.

6.3.2.5 Trade Unions in Developing Countries

In developing economies, trade unions started forming in the early 20th century, influenced by labour movements in industrialized countries. They played a major role in fighting against colonial exploitation, unfair labour practices, and advocating for fair wages and benefits.

6.3.3 Objectives of Trade Unions

Objectives of Trade Unions include:

a) Workers' Rights Protection: Preventing unfair treatment and advocating for legal rights.
b) Better Wages and Benefits: Ensuring fair pay and additional benefits like health insurance.
c) Improved Working Conditions: Promoting safety measures and fair policies.
d) Job Security: Preventing layoffs and advocating for long-term contracts.
e) Collective Bargaining: Negotiating on behalf of workers for better employment terms.
f) Industrial Peace: Mediating disputes to avoid conflicts.
g) Skill Development: Providing training and career growth opportunities.
h) Social and Economic Welfare: Offering financial aid and social support.
i) Policy Representation: Influencing government labour policies.

6.3.4. Methods of Trade Unions

There is no method and means in the long history of trade unions which they have not used to

Achieve their goals and objectives. Trade unions use various methods to achieve their goals.

The classic description of trade union methods was provided by **Sidney and Beatrice Webb,** two prominent British economists and social reformers, in their influential work *"Industrial Democracy"* (1897). They analysed the role and strategies of trade unions in protecting workers' interests and categorized trade union methods into three main types. These include Mutual Insurance, Collective Bargaining, and Political Action.

6.3.4.1 Mutual Insurance

This method involves trade unions providing financial assistance and support to their members in times of need, such as unemployment, illness, accidents, or strikes. Workers contribute regularly to a common fund, which helps them during emergencies and enhances their job security. The goal is to reduce the financial hardships faced by workers and promote solidarity among members.

Examples: Strike funds to support workers during industrial action, Sickness and accident benefits, Unemployment benefits.

6.3.4.2 Collective Bargaining

Trade unions engage in negotiations with employers to secure better wages, working conditions, and other benefits for their members. Through collective action, unions strengthen their bargaining power to achieve fair agreements that benefit both workers and employers. This method focuses on reaching settlements without resorting to conflict, ensuring mutual understanding and cooperation.

Examples: Negotiating wage increases and better working hours, Improving workplace safety and benefits, Agreeing on grievance procedures and job security measures.

6.3.4.3 Legal Enactment (Political Action)

Trade unions work to influence government policies and labour laws to protect workers' rights on a larger scale. They campaign for legislative changes to improve working conditions, reduce exploitation, and ensure fair labour practices. This method involves lobbying, participating in political movements, and advocating for reforms that benefit workers.

Examples: Supporting the introduction of minimum wage laws, advocating for health and safety regulations, Influencing social security and labour welfare policies.

6.3.5 Collective Bargaining

Collective bargaining plays a crucial role in maintaining a fair and balanced relationship between employers and employees.

6.3.5.1 Meaning of Collective Bargaining

Collective bargaining is the process in which trade unions and employers negotiate to determine fair wages, working conditions, benefits, and other employment-related matters. It allows workers, through their union representatives, to discuss and agree on employment terms with employers in a structured and organized manner.

The goal of collective bargaining is to create a mutual agreement that benefits both workers and employers, promoting industrial peace and cooperation. It helps prevent conflicts, improves job security, and ensures that workers' voices are heard in decision-making.

6.3.5.2 Roles of Collective Bargaining

Collective bargaining provides a structured way for workers to voice their concerns and negotiate for better wages, working conditions, and job security. By fostering cooperation and understanding, collective bargaining helps create a productive and harmonious work environment.

a) Ensures Fair Wages and Benefits

Collective bargaining helps workers secure fair wages and benefits that match their skills, efforts, and living costs. It ensures that employees receive bonuses, health benefits, pensions, and other allowances that improve their quality of life.

b) Improves Working Conditions

Collective bargaining allows unions to demand better workplace conditions, such as proper safety measures, reasonable working hours, and health facilities. It helps in reducing workplace accidents and promotes a healthier work environment.

c) Promotes Industrial Peace and Harmony

Collective bargaining prevents conflicts and strikes by providing a platform for dialogue between workers and employers. Resolving disputes peacefully through negotiation leads to improved relationships and stability in the workplace.

d) Strengthens Job Security

Collective bargaining allows employees to negotiate long-term contracts, layoff policies, and fair termination procedures to ensure job stability. It protects workers from arbitrary dismissals and unfair labour practices.

e) Encourages Worker Participation in Decision-Making

Collective bargaining provides employees a say in workplace policies, ensuring that their opinions and needs are considered in company decisions. It fosters a sense of belonging and increases employee motivation and productivity.

f) Reduces Exploitation of Workers

Collective bargaining protects workers from being underpaid or overworked by setting fair employment standards. It Ensures compliance with labour laws and ethical employment practices.

g) Boosts Productivity and Efficiency

When workers are satisfied with their wages and working conditions, they become more motivated and productive. A fair and cooperative work environment enhances efficiency and reduces absenteeism.

h) Contributes to Economic and Social Development

Fair labour practices achieved through collective bargaining lead to better living standards, economic growth, and social stability. It ensures that wealth is distributed more equitably across society.

i) Legal Protection and Compliance

Ensures that both employers and employees adhere to labour laws and regulations. It helps businesses avoid legal disputes and maintain ethical employment practices.

j) Encourages Mutual Respect and Trust

Collective bargaining promotes open communication and builds trust and cooperation between employers and employees. It creates a culture of mutual respect and long-term partnership.

6.3.5.3 Units and Levels of Collective Bargaining

Collective bargaining can take place at different **units** and **levels**, depending on the structure of labour relations in a country, industry, or organization. The scope and impact of agreements vary depending on the level at which bargaining occurs.

A. Units of Collective Bargaining

A collective bargaining unit refers to the group of workers who are represented by a trade union in negotiations with the employer. The formation of bargaining units depends on factors such as job roles, industry, and the nature of employment. The major types of bargaining units include:

a) Plant-Level Bargaining Unit

This represents employees working in a single factory, office, or workplace. Negotiations focus on specific workplace issues such as wages, safety measures, and working hours.

b) Company-Level Bargaining Unit

It Covers employees working across different branches or locations of the same company. Agreements apply to all employees within the organization, ensuring uniform policies.

c) Industry-Level Bargaining Unit

This Involves workers across different companies within the same industry. It ensures standard wages and working conditions across the entire sector.

d) National-Level Bargaining Unit

This Represents workers from multiple industries or sectors at the national level. Negotiations involve large-scale policies, such as national wage regulations and employment laws.

B. Levels of Collective Bargaining

The level at which collective bargaining takes place determines the scope and impact of agreements. The main levels of collective bargaining include:

a) Plant-Level Bargaining

It takes place at an individual workplace or factory between union representatives and management. It focuses on resolving specific workplace issues such as wages, work conditions, and overtime.

b) Company-Level Bargaining

Conducted between the management of an entire company and representatives of the workforce. It ensures uniform policies across all company units or branches.

c) Industry-Level Bargaining

It takes place between trade unions and employer associations within a specific industry. It focuses on wages, working hours, and conditions applicable across the sector.

d) National-Level Bargaining

Involves negotiations at the national level, typically between national labour unions, employer federations, and the government. It covers broad policies, including minimum wages, social security, and labour laws.

e) International-Level Bargaining

Involves negotiations on labour standards at a global level, often through international organizations such as the International Labour Organization (ILO). It addresses issues like workers' rights, fair wages, and ethical labour practices in multinational companies.

6.3.5.4 Challenges of Collective Bargaining in India

Collective bargaining in India has continued to grow at a steady pace after independence, but there have been hurdles in its way. Some of the key challenges are as follows:

a) Voluntariness in recognition of trade unions.

The recognition of trade unions for the purpose of bargaining has continued to be voluntary. There is no statutory compulsion for the employers to recognise representative unions. They are only under moral obligation to so.

b) Ineffective Procedure for the determination of Representative Union

Even where the employers are willing to recognise the representative unions, the determination of the representative character of unions often becomes a very difficult task.

c) Outside Leadership in Trade Unions

Outside leadership in the Indian Trade union has also been a contributing factor. A large number of trade unions are dominated by outside leaders who are also active workers of one political party or the other. The rivalry and factionalism of the political parties are also reflected in the trade unions.

d) Restrictions on Strikes and Lock-outs

In collective bargaining, right to strike and lockout is considered essential weapon in the hands of workers and employers. Collective bargaining without this right has little significance. The Considerable restrictions imposed on the strikes affect the objectives of collective bargaining.

e) Inadequate Unionisation

In India, only a small percentage of workers has been organised on a regular basis. Moreover, organisations of workers at industry or regional level are confined only to few industries.

f) Other Factors

Some other factors inhibiting the growth of collective bargaining in India have been inadequacy of education among workers, unwillingness on the part of many employers to part with their freedom and sit along with their workers on the bargaining table, poverty of the workers and masses and inadequate capacity of the industry to pay.

6.3.6 Trade Union Legislation in India

The first legislation relating to trade union was formulated in 1926 called- 'Indian Trade Union Act' and enforced from 1st June 1927. The Indian Trade Union Act 1926 was passed to provide for the registration of trade unions with a view to render lawful association of workers. The act also defined law relating to registered trade unions and provided certain privileges and protection to the registered trade unions.

6.3.6.1 The Trade Unions Act, 1926

The foundational law that governs trade unions in India, providing legal recognition and protection. Establishes the rights, liabilities, and responsibilities of trade unions.

Requires a minimum of **7 members** to register a union. Grants the union a legal identity and privileges such as collective bargaining. Legal immunity from criminal conspiracy charges under Section 17 of the Indian Penal Code (IPC). Right to establish funds for political and welfare activities. Unions must maintain proper accounts and audits. Members are protected from legal action for legitimate trade union activities such as strikes and negotiations.

6.3.6.2 The Industrial Disputes Act, 1947

The **Industrial Disputes Act, 1947** regulates the resolution of industrial disputes and fosters harmony between employers and employees by recognizing trade unions for collective bargaining. It establishes mechanisms such as conciliation, arbitration, and adjudication through labour courts and tribunals to resolve disputes. The Act prohibits unfair labour practices, ensuring workers are not victimized for union activities, The Act also establishes rules for layoffs and retrenchments, outlining fair procedures and compensation to protect employees' rights during termination.

6.3.6.3 The Factories Act, 1948

The Factories Act, 1948 aims to ensure the safety, welfare, and proper working conditions in factories, with trade unions playing a vital role in advocating for compliance with health and safety standards. The Act grants workers the right to form safety committees and grievance redressal mechanisms to address workplace concerns effectively. It also mandates the inspection and enforcement of welfare measures to safeguard workers' well-being and promote a healthy work environment.

6.3.6.4 The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952

The **Employees’ Provident Funds and Miscellaneous Provisions Act, 1952** is designed to ensure financial security for workers by providing a structured savings scheme through social security programs. It mandates employers and employees to contribute a fixed percentage of wages to the Provident Fund, which serves as a financial cushion during retirement, emergencies, or unforeseen circumstances such as illness or unemployment. The Act covers various establishments and industries, aiming to promote long-term financial stability for workers. Trade unions play an essential role in advocating for higher employer contributions, improved withdrawal policies, and better fund management to maximize benefits for employees. They also work towards expanding the coverage of the scheme to include more workers, ensuring broader social protection and financial inclusion.

6.3.6.5 Challenges in Trade Union Legislation

a) **Multiplicity of Trade Unions:** Leads to conflicts and weak bargaining power.
b) **Political Influence:** Many unions are affiliated with political parties, causing bias in representation.
c) **Employer Resistance:** Increasing preference for contract labour to avoid union influence.
d) **Implementation Issues:** Enforcement of labour laws remains inconsistent, particularly in the informal sector.

6.4 SUMMARY

Trade unions play a crucial role in the modern economy by advocating for workers' rights, influencing economic policies, and shaping labour laws. As industries have expanded, trade unions have also grown stronger, impacting job availability, government decisions, and the overall well-being of workers by striving for better wages, improved working conditions, and job security. In developing countries, trade unions are particularly significant in safeguarding workers from exploitation and contributing to economic growth. Understanding their origins, evolution, and challenges is essential to appreciating their influence in today's workforce. Trade unions use methods such as mutual insurance, collective bargaining, and political action to achieve their objectives, which include protecting workers' rights, ensuring fair wages, and promoting industrial peace. Over time, trade unions have played a key role in the enactment of labour laws such as the Trade Unions Act, 1926, the Industrial Disputes Act, 1947, and the Factories Act, 1948, which provide legal recognition and protection for workers. However, trade unions face challenges such as declining membership, political interference, and employer resistance, which affect their effectiveness in representing workers.

6.5 GLOSSARY

a) **Collective Bargaining** – The process of negotiation between workers (via trade unions) and employers to agree on wages, working conditions, and benefits.

b) **Industrialization** – The shift from small-scale, manual labour to large-scale factory-based production that led to the rise of trade unions.
c) **Job Security** – Protection against sudden termination, ensuring stable employment for workers.
d) **Cooperation** – Collaboration between workers and employers to achieve fair labour practices and economic growth.
e) **Labour Rights** – The legal and social entitlements that ensure fair treatment, wages, and conditions for workers.

6.6 SAQS

1. Short Answer Questions-

a) What is the primary role of trade unions?
b) Write a short note on the Trade Union Act of 1926.

2. Fill in the blanks-

a) Trade unions aim to achieve ________ and social justice for workers through collective bargaining.
b) The ________ Act of 1926 provides for the registration of trade unions in India.
c) ________ bargaining is a process in which trade unions negotiate with employers for better wages and working conditions.

3. True or False Questions-

a) Trade unions only focus on increasing wages and have no role in improving working conditions. (True/False)
b) Collective bargaining is a method that is only used by trade unions in developed countries. (True/False)

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6.8 SUGGESTED READINGS

P.R.N.Sinha and Others, Industrial Relations, Trade Unions, and Labour Legislation, Pearson Publications, New Delhi, 2011.

6.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

a) Explain the importance of collective bargaining and the benefits it provides to both workers and employers.
b) Analyse the challenges faced by trade unions in India, including political influence and employer resistance.

Answers

1. SAQS

(a)Refer 6.3.3 (b) Refer 6.3.6.1

2. Fill in the blanks

(a) economic (b) Trade Unions, c) Collective

3. True or False

(a) False (b) False

4. Terminal Questions and Answers

(a) Refer 6.3.5.2 (b) Refer 6.3.6.5

UNIT: 7

INDUSTRIAL DISPUTES ACT, 1947

STRUCTURE

7.1 Introduction

During the post-independence era we have witnessed the development of new jurisprudence namely industrial flow the Industrial law in free independence days was in a rudimentary form but later on with the development of industry, the Industrial law developed side by side the growth of this law was flow in the beginning but gained its face in the recent years as is evident from the bulk of cases before the supreme court and various high courts on the Industrial law.

7.2 Objectives

The main objectives to this unit are to know measures for securing amity and good relations between the employer and workmen, to understand the investigation and settlement of industrial disputes between employees and workmen with right of Representation by register Trade union or Association of employees and to analyse the methods of prevention of illegal strike and lockouts for relief to work men in the matters of lay of retrenchment and closure of an Undertaking

7.3 Main Body

7.3.1 Settlement of Industrial Dispute

The industrial dispute can be settled by three methods namely conciliation, arbitration and adjudication.

I. Conciliation

Conciliation is a method of discussion or negotiation in which the parties to the dispute ly reach a mutually acceptable settlement. The discussions and negotiations between the parties maybe initiated by the parties themselves or with the help of a third neutral party to the disputes. The essential feature of conciliation is that the parties to the dispute arrive at a settlement voluntarily and not under any compulsion. It is an out of court settlement.

Following are the authorities for conciliation under the Industrial Disputes Act 1947

a) Works committee
b) Conciliation officer
c) Board of conciliation

Works Committee

Works Committee is constituted under Section 3. Conciliation officer is appointed under section 4 and Board of Conciliation officer is appointed under Section 5. The work committee is an Authority under this Act which performs the following functions:

1. promote measures for securing and preserving amity and good relations between the employers and workmen.
2. comment upon matters of common interest or concern of employers and workmen to achieve the above object.
3. endeavour to compose any material difference of opinion in respect of matter of common interest or concern between employers and workman

However, it is to be remembered that Works Committee is not a substitute of the trade union.

Conciliation Officer: Conciliation Officer is appointed under Section 4 by appropriate government by a notification in the official the number of the conciliation officer is decided by the appropriate government this officer is charged with the duty of mediating in and promoting the settlement of the industrial disputes.

Powers of the conciliation officer-

Following are the powers of the conciliation officer as lake down under section 11 of the Act:

To enter the premises (Section 11(2)):

Conciliation officer has the power to enter the premises occupied by any establishment to which the disputes relates with the purpose of enquiry into any existing or apprehended industrial dispute after serving a reasonable notice. The notice is given to a prime establishment that the person entering the premises is the conciliation officer and not a stranger. However, if during a conciliation proceeding the conciliation officer does not give a notice before entering the promises occupied by the establishment to which the disputes the entry does not become illegal.

To exam in any person and two inspect any document (Section 11(4)):

Conciliation officer has the power to enforce the attendance of any person for the purpose of examination of any document. Conciliation officer also inspect any document if:

i. he has ground for considering it to be relevant to the industrial dispute;
ii. it is necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act.

While exercising the power of examining a person or Inspecting any document under Section11(4), the conciliation officer has the same power as is vested in a civil court under the Code of Civil Procedure.

Duties of the conciliation officer

i. To hold conciliation proceedings (Section 12(1)): The main duty of conciliation officer is to hold conciliation proceedings. This duty is mandatory as well as discretionary.

A conciliation officer is under a mandatory duty to hold conciliation proceedings if-

a) The dispute relates to public utility service and a notice of strike or lay Lockout has been given either by the workman or by the employer us the case maybe under Section 22.
b) In all other cases the holding of conciliation preceding depends upon the discretion of the conciliation officer. According to Section 20(1) conciliation proceeding is deemed to have comment on the date on which are not to subscribe or Lockout has been received by the conciliation officer.

ii. To investigate the disputes-

With an object of bringing about a settlement of the industrial dispute the conciliation officer start investigation without delay he investigates all matters affecting the merit and the right of the settlement. He may do all such things are necessary for the purpose of introducing the parties to affair and amicable settlement of the dispute. The duty of a conciliation officer is only administrative in nature they are neither judicial nor quasi-judicial.

iii. To send a report of proceedings to appropriate government (section 12(3))-

If during the course of conciliation proceedings, a settlement between the parties is arrived at with the efforts of the conciliation officer, the conciliation officer sends a report of such proceedings to the appropriate government. The report of settlement is sent together with the Memorandum of Settlement signed by the parties to the dispute.

iv. Report in case of no settlement (Section 12(4))

If no settlement is arrived at with the efforts of conciliation officer, after the closing of Investigation report to the appropriate government. This report status taken by the conciliation officer for finding the facts and circumstances relating to the dispute and for bringing about a settlement in the matter. This report contains all the facts and circumstances and the reasons which according to the conciliation officer for not arriving at the settlement.

Time. According to Section 12(6) a conciliation officer must submit the report of the proceedings to the appropriate government within 14 days of the commencement of the conciliation proceedings. The conciliation officer has to submit its report within such shorter period as may be fixed by the appropriate government. This subsection that the time for submission of report may be extended by the conciliation officer if agreed to in writing by all the parties to dispute.

Validity of the settlement arrived at after the prescribed period

According to Section 9(2) no settlement arrived at in the course of a conciliation preceding before a conciliation officer shall be invalid only because of the fact that settlement was arrived at after the expiry of the expiry of the period referred to in Section 12(6).

Board of Conciliation (Section 5)

Board of Conciliation consists of a chairman and 2 to 4 other members as decided by the appropriate government. The chairman is an independent person and the other members are the persons appointed in equal number to represent the parties to the dispute.

Powers of the Board of Conciliation are as under:

a) To enter the premises (Section 11(2)):

A member of the board of conciliation has the power to enter the premises occupied by any establishment to which the dispute relates with the purpose of enquiry into any existing or apprehended industrial dispute.

b) *Powers of a Civil Court (Section 11(3)):*

Board of conciliation has the same powers are vested in the civil court under the code of civil procedure 1908 when trying a suit in respect of the following matters:

1. Enforcing the attendance of any person and examining him on both
2. Compelling the production of documents and material objects
3. Issuing commissions for the examination of witnesses
4. In respect of such matters as maybe prescribed

Every inquiry or investigation by a board of conciliation is Deemed to be a judicial proceeding within the meaning of Section 193 and 228 of the IPC. Duties of the board of conciliation the board of conciliation is interested with the responsibility to bring about a settlement of an industrial dispute when the dispute is referred to it by the appropriate and document under section 10(1)(a).

c)To investigate the dispute.

According to Section 13 sub section 1 the board of conciliation starts the investigation in connection with the disputes the board of conciliation investigate all the matters affecting the merit and the right settlement thereof.

Settlement binding on the party to dispute and other persons

According to Section 18 (3), if settlement is arrived at in the course of conciliation proceedings before the Board of Conciliation or Conciliation Officer, then it is binding on other parties in addition to the party to dispute. Following are the parties on whom the settlement is binding-

a) all parties to the industrial dispute
b) all other parties summoned to appear in the proceeding as parties to the dispute unless the Board of Conciliation records opinion that they were so summoned without proper cause
c) Where a party referred to above in (a) or (b) is an employer, his hair, styles in respect of the establishment in which the disputes relates
d) Where a party refer to above in (a) or (b) is composed of workman, all persons who were employed in the establishment or part of establishment, as the case maybe, the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Settlement binding only on the parties to dispute

According to Section 18(1), settlement is binding only on the parties to the dispute if the settlement of an industrial dispute between the parties have been arrived at the course of conciliation under the act.

Period of operation of settlement

According to Section 19(1) a settlement comes to operation on such date as is agreed upon by the parties to the dispute, if no such state is agreed upon the settlement comes into operation on the date on which the Memorandum of settlement is signed by the parties to the dispute.

Section 19 to provide start the settlement once comes into operation remains binding for such a period as is agreed upon by the parties. If no such time period is agreed, the settlement between the parties remains binding for a period of 6 months. The time period of 6 months is calculated from date on which the Memorandum of settlement is signed by the parties to the dispute. Such settlement continues to be binding on the parties after the expiry of the period of 6 months until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

Penalty for breach of settlement

According to Section 29 any person who commits a breach of any term of the settlement which is binding on him under the act is punishable with imprisonment for a term which may extent to 6 months with both imprisonment and fine. If a person continues to breach a settlement, after the conviction then the person is punishable with the father fine which may extent to 2000 rupees for everyday during which the breach continues after the conviction. Section 29 provides that the Court trying the offence may direct that the whole or any part of the fine imposed be realised from the offender by way of compensation to any person who in the opinion of the court has been injured by such a breach.

II. Arbitration

Arbitration is a method by which the parties to a dispute agree to refer the dispute for settlement to a third neutral person who is known as arbitrator to. This reference is made voluntarily by the parties to the dispute. The arbitrator here's both the parties to the dispute and then determinants the rights and duties of the parties to the dispute by its award. This award is binding on the parties. Arbitration is an out of court method of settlement of disputes so it is relatively in expensive and of the settlement of disputes. And industrial dispute is settled by arbitration under section 10A of the Industrial Disputes Act 1947. The parties to an industrial dispute may refer an industrial dispute by a written agreement to an arbitrator under this particular section.

The following authority is having been provided for arbitration under the industrial disputes act of 1947:

Arbitrator

The arbitrator is the person who is specified as an arbitrator in the arbitration agreement which has been framed between the employer and the work man under section 10A of the industrial disputes act. According to Section 2(aa) arbitrator of the industrial disputes act arbitrator includes an Umpire.

Umpire

The presiding officer of the Labour Court, Tribunal or National Tribunal may be appointed as an arbitrator. According to subsection 1A of section 10A where an arbitration agreement provides for the reference of an industrial dispute to and even number of arbitrators the agreement must also provide for the appointment of another person as umpire. The umpire enters the industrial disputes in a situation when the arbitrators are equally divided in their opinion. The award given by the empire in an industrial dispute is deemed to be the arbitration award.

According to Section 11(1) of the Act subject to any rules that may be made in this behalf the arbitrator may follow such procedure as it things fit to settle the industrial disputes. According to Section 17(1) every award shall be published in such a manner as the appropriate government things fit. Section 17A(1) provides that an arbitration award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. According to subsection 3 of section 20 the proceedings before an arbitrator are deemed to have commenced comment on the date on which the voluntary reference of industrial dispute is made to an arbitrator under

Section 10A of the Act. The proceedings before an arbitrator are deemed to have concluded on the date on which the award becomes enforceable under Section 17A of the Act.

III Adjudication

Settling an industrial dispute by adjudication is a compulsory method of the settlement of the dispute. The adjudicatory authorities after hearing all the parties to the dispute considered the merit of the dispute and the material or record. Based on these the rights and duties of the parties to the dispute are determinant and an award is given. The award of the abdicate tree authority is final and is binding on all the parties if this award is not appealed against to the appellate authority.

The Industrial Dispute Act 1947 provides that the industrial dispute maybe settled by way of adjudication if it is referred to an adjudicatory authority by the appropriate government under section 10 of the act. The appropriate government may refer and industrial dispute to the adjudicatory authority even if the party to the dispute has not applied to the appropriate government for such a reference. The appropriate government may refer the dispute for abdication to and adjudicatory authority at the first instance without resting it for conciliation or arbitration.

Following are the authorities under the Industrial Disputes Act of 1947:

Labour Court

Industrial Tribunal

National Tribunal

Labour Court (Section7): It consists of one person only known as presiding officer this presiding officer is appointed by the appropriate government under section 7 subsection 2 the appropriate government the qualification of the presiding officer of labour Court are asked follows:

1. He is or has been a judge of a High Court;

2. He has, for a period of 3 years been a district judge or an additional district judge;

3. he has held any judicial office in India for not less than 7 years or

he has been the presiding officer of a labour Court constituted under any provincial act or state act for not less than 5 years

4. he is or has been a Deputy Chief Labour Commissioner or joint commissioner of the state Labour Department having a degree is law and at least 7 years’ experience in the Labour Department including 3 years of experience as a conciliation officer.

5. He is an officer of Indian legal service in grade III with 3 years' experience in the grade.

Industrial Tribunal - Section 7A of the Industrial Disputes Act deals with Industrial Tribunal. It consists of one person only known as the presiding officer who is appointed by the appropriate government under section 7A(2). The qualifications for the presiding officer are as under:

1. he is or has been the High Court
2. He has, for a period of not less than 3 years been a district judge or an additional district judge
3. He is or has been a Deputy Chief Labour Commissioner or joint commissioner of the state Labour Department having a degree in law and at least 7 years' experience in the Labour Department including 3 years of experience as conciliation officer
4. he is an officer of Indian legal service in grade III with 3 years' experience in the grade.

National Tribunal - Section 7B of the Industrial Disputes Act provides for the National Tribunal. It consists of one person only known as the presiding officer who is appointed by the central government. A person to be qualified for appointment as presiding officer of the National Tribunal must be or must have been a judge of a High Court. The central government, if it so things fit, appoint two persons as assessors under section 7B(4). The central government may constitute one or more National Industrial Tribunal by notification in official gazette.

No person can be appointed to or continue in the office of presiding officer of the labour Court, Labour Tribunal or National Industrial Tribunal if:

1. he is not an independent person
2. he has attained the age of 65 years (Section 7C)

Powers of Labour Court, Industrial Tribunal and National Tribunal (section 11)

I. *To enter the premises.* According to Section 11(2), a member of Labour Court, Industrial Tribunal and National Tribunal may enter the premises occupied by an establishment to which the dispute relates after giving a reasonable notice and for the purpose of enquiry into the existing or apprehended dispute.

ii. *Examination of persons and inspection of documents* According to Section 11(3) Labour Court, Industrial Tribunal and National Tribunal has the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit in respect of the following matters, namely:

a) enforcing the attendance of any person and examining him on vote;
b) compelling the production of documents and material objects;

c) issuing commissions for the examination of witnesses;
d) in respect of such other matters as may be prescribed.

Every investigation or enquiry by the Labour Court, Industrial Tribunal and National Tribunal is deemed to be a judicial proceeding.

iii. *Appointment of the assessor or assessors*

A labour Court, Industrial Tribunal and National Tribunal may appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors under Section 11(5). The assessor or assessors advise the Labour Court, Industrial Tribunal and National Tribunal in the proceedings before it.

Duties of Labour Court, Industrial Tribunal and National Tribunal (Section 15)

The duty of Labour Court, Industrial Tribunal and National Tribunal is to hold proceeding expeditiously for the adjudication of industrial dispute whenever an industrial dispute is referred to them by the appropriate government under Section 10 of the Act.

Jurisdiction of the Labour Court, Industrial Tribunal and National Tribunal

According to Section 10(1)(c) the appropriate government may refer any industrial dispute or any matter appearing to be connected with the industrial dispute to any matter specified in the second schedule to the labour Court for adjudication.

Section 10(1)(d) provides that the appropriate government may refer any industrial dispute or any matter appearing to be connected with the industrial dispute whether it relates to any matter specified in second schedule or the third schedule to the Industrial Tribunal for adjudication.

As per Section 10(1)(d) where the dispute relate to any matter specified in the first schedule and if not likely to affect more than one hundred workmen, appropriate government, if it things fit, make a reference to Labour Court under section 10(1)(c).

According to Section 10(1-A) the National Tribunal exercises jurisdiction over an industrial dispute whether it relates to any matter specified in the second schedule or third schedule of the Act.

Transfer of proceedings before the adjudicatory authority by the appropriate government

Section 33B provides that the appropriate government may withdraw any proceeding pending before a Labour Court, Industrial Tribunal or National Tribunal and transfer it to another Labour Court, Industrial Tribunal or National Tribunal for disposal. In case of withdrawal and transfer of proceedings, the appropriate government gives an order in writing which contains the reasons for such transfer of proceedings. Labour Court, Industrial Tribunal or National Tribunal to which the proceeding is transferred may either proceed from the beginning or from the stage at which the dispute was so transferred. The parties to the dispute are bound by the award given by the Labour Court, Industrial Tribunal or National Tribunal to which the proceedings are transferred.

Award

Section 10(2-A) specifies the time period for submission of award by Labour Court, Tribunal or National Tribunal. According to this section the award shall be submitted within the time period specified by the appropriate government in the order of reference. However, where such an industrial dispute is connected with an individual workman, such period shall not exceed 3 months.

The party to industrial dispute may apply either jointly or separately to the labour Court tribunal or National Tribunal for extension of such period. The presiding officer of such an adjudicatory authority may extend the time period for the submission of award after providing the reasons for granting extension of time period are recorded in writing.

Form of award

Section 16(2) provides that the award of the Labour Court or Tribunal or National Tribunal must be inviting and must be signed by its presiding officer.

Publication of award

According to Section 17(1) every award of Labour Court or Tribunal or National Tribunal shall be published within the time period of thirty days from the date of its receipt by appropriate government in such manner as the appropriate government thinks fit. Subject to the provisions of section 17-The award so published shall be final and shall not be question by in any proceeding any court in any manner what so ever.

Commencement of award

According to Section 17A (1) an award becomes enforceable on the expiry of 30 days from the date of its Publication under section 17. The appropriate government or the central government may issue a notification in the official gazette, and declares that the award shall not become enforceable on the expiry of thirty days-

i. If the appropriate government is of the opinion that in any case where the award has been given by a labour Court or Tribunal in relation to industrial dispute to which it is a party or

ii. if central government is of the opinion, in any case where the award has been given by a National Tribunal that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award.

The appropriate government or the central government may within 90 days from the publication of award under section 17 make an order rejecting or modifying the award.

Penalty for the breach of award

According to Section 29 any person who commits a breach of any term of award which is binding on him under the Act shall be punishable with an imprisonment for a term which may extend to 6 months or with the file or with both. Where the breach of award is continuing one then the person is punishable with the further fine which may extent to rupees two hundred after the conviction for the first. Further the court trying the offence may direct that whole or any part of the fine realised from him shall be paid to any person who, is injured by such breach.

7.3.2 Strike and Lock Out

I. Strike

Section 2(q) defines strike. “strike” means a cessation of work by a body of persons employed in any industry acting in combination or a concerned refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;

Essentials of strike

Following are the essentials of strike:

1. Cessation of work by a body of persons employed in any industry.

Cessation of work means actual stoppage of work for any period of time. Even if the work is stopped for half an hour this requirement is full field.

2. Cessation of work is an act in combination by the persons employed in any industry

The stoppage of work must be with the common intention of the workman and in the authority of the employees.

To strike is not a fundamental right

The Supreme Court of India has in 1963 held that the right to go on strike is not included with in the score of freedom of speech and expression under article 19(1)(A) of the Indian Constitution. It was held in the case of *All India Bank Employees Association versus National Industrial Tribunal.*

II. Lock Out

According to section 2(l) of the Industrial Disputes Act “lockout” means the temporary closing of the place of employment or the suspension of work, the fusion by an employer to continue to employee any number of persons employed by him.

It is a settled principle of law that mere suspension of work does not amount to lockout. Rather it should be accompanied by an intention on the part of an employer to retaliate.

III. Prohibition of strike and lockout

The stoppage of work whether by the employees or the employer has a negative impact on the production and economy of the country as a whole. For this reason, the Industrial Disputes Act has not denied the right to workmen to strike but on the contrary it has tried to regulate along with the right of the employer to lockout. Section 22 of Industrial Disputes Act provides for specific prohibition of strike and lockout in public utilities services. Section 23 of this Act provides for general prohibition that apply to strike and lockout in all Industrial establishment whether they are public utility services or non-public utility services. According to Section 22(1) no person employed in a public utility service shall go on strike in breach of contract:

a) Without giving note to the employer 6 weeks
b) before striking within 14 days of giving such notice; or
c) before the expiry of the date of strike specified in 6 weeks’ notice; or
d) during the pendency of any conciliation proceeding before a conciliation officer and after the conclusion of such proceedings.

According to Section 22(2) no employer carrying on any public utility service shall lock out any of his workman:

a) Without giving the workman 6 weeks’ notice before locking out; or
b) within 14 days of giving such notice; or
c) before the expiry of the date of Lockout specified in 6 weeks’ notice; or
d) During the pendency of any conciliation proceedings before conciliation officer and 7 days after the conclusion of such proceedings.

IV. Report of notice of strike or lockout to appropriate authority

As per Section 22(6) when an employer receives any notice of strike from any person employed by him he must report it to the appropriate government within 5 days of receiving such notice.

Similarly, if an employer gives a notice of Lockout to any person employed by him, he must give report of the notice of Lockout given to him to the appropriate government within 5 days of giving such notice. The employee must also give report of the number of notices received or given. Such report must also be given to such authority as maybe prescribed by the government.

However, the notice of strike or lockout in public utility service is not necessary in certain conditions. According to Section 22(8) no notice of strike under section 22(1) is necessary where there is already in existence, lockout it public utility service. Similarly, no notice of lockout under section 22 (2) is necessary where there is already in existence a strike.

V. General prohibition of strikes and lockouts in any industrial establishment

Section 23 of Industrial Disputes Act provides that no workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such work man shall be declared shall declare lock out-

a) During the pendency of conciliation proceedings before upload of conciliation and seven days after the conclusion of such proceedings
b) During the pendency after the conclusion of such proceedings during the Pregnancy of arbitration proceedings before and arbitrator and 2 months after the conclusion of such proceedings where a notification has been issued under section 10A(3A)
c) During any period in which settlement or award is in operation in respect of any of the matters cover by the settlement or award.

VI. Illegal strikes and lockouts

According to Section 24 a strike or lockout is illegal if it is:

a) Declared without prior notice in public utility service;
b) Declared during the Pregnancy of any proceedings before the authorities; continued in contravention of an order made under section 10(3) or under section 10A (4A)

<u>Conditions in which a strike or lockout is not deemed to be illegal</u>

Section 24(2) provides that where a strike or lockout in pursuance of an industrial dispute has already been in existence at the time of the reference of dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal. The continuance of such strike or lockouts shall not deemed to be illegal, if such strike or lockout was not illegal at the time of commencement or the continuance of such a strike or knockout was not prohibited under section 10(3) or under section 10A (4A).

Further the according to Section 24 (3) strike or lockout which is declared as a result of an illegal strike is not deemed to be in legal.

<u>Protection of person refusing to take part or to continue to take part in an illegal strike or lock out</u>

According to Section 35(1), no person refusing to take part or to continue to take part in any strike or lockout which is illegal under the Industrial Disputes Act, by reason of such refusal or by reason of any action taken by him under section 35, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled , or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

VII. Penalties for illegal strikes and lock outs (Section 26-28)

<u>Penalty for illegal strikes and lock-outs</u> (Section 26)

(*1*) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.
(*2*) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

<u>Penalty for instigation, etc.</u> (Section 27)

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

<u>Penalty for giving financial aid to illegal strikes and lock-outs.</u> (Section 28)

Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

7.3.3 Layoff and retrenchment

An employer may lay off or retrench his workmen and may close down or transfer his industrial establishment in accordance with the provisions of Industrial Disputes Act. The Act provides for the compensation to the work man who is laid off to overcome economic hardship. The provision regarding compensation and the procedure for and retrenchment has been laid down under chapter V A and V B of the Act. Chapter VB provides for special provisions of lay off and retrenchment. It applies to industrial establishment which are employing less than 100 workmen and which are not seasonal in their character.

I. Lay off

Section 2(*kkk*) "lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery 5[or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched. *Explanation*.—Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;

II Retrenchment

Section 2(*oo*) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
(d) termination of the service of a workman on the ground of continued ill-health;

III. Procedure for layoff and retrenchment

The procedure for layoff and retrenchment has been provided under chapter VA and chapter VB of the Act.

Procedure of under chapter VA of the Act

Industrial establishments to which procedure for layoff and retrenchment apply under chapter VA of the act has been specified in Section 25A.

Section 25A of the Act states that this section applies:

i. to an industrial establishment in which less than 50 workmen on an average per working day have been employed in the proceeding calendar month or
ii. to industrial establishment which are of seasonal character in which work is performed only intermittently

If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Compensation to lay of work man

According to section 25c of chapter 5A employer must pay compensation to a laid of Walkman:

Who is not a badly work man or a casual work map semiconal whose name is born on the master role of the industrial establishment and who has complete it not less than 1 year of continuous service under the employee Walkman is paid compensation by his employer for all the days starting that she is laid of however about my is not entitle to compensation of layoff is equal to the 50% of the total of the basic And dearness allows dearness allowance that would have been payable to the work man are you not me late of not be lade of Limit of compensation a workman maybe laid of for more than 45 days during any. of. In such case No compensation shall be paid after 45 days if there is an agreement between the workman and the employer to the effect.

Retrenchment of the laid of workman and setting of of layer of compensation it is local for the employer to return a workman in the Gardens with the preventions of section 25 f at any time after the expiry of first 45 days of layer. In such a situation any compensation to be paid to the work man for having been laid of during the preceding 12 months may be set of against to the compensation payable for retrenchment.

Disentitlement to lay off compensation

Section 25E specifies the following grounds on the basis of which a workman is disentitled to get the layoff compensation:

a. Refusal to accept alternative employment
b. Absence from work at the establishment at the appointed time during normal working hours at least once a day
c. Participation in the strike

Lay off under chapter V B of the Act

Section 25K provides for the industrial establishments to which the provisions of chapter VB apply.

The industrial establishments which are:

a. Non seasonal in their character or in which work is not performed only intermittently; and
b. In which not less than 100 workmen were employed on an average working day for the preceding 12 months.

Procedure for the valid lay off under Chapter VB

According to Section 25M no work man whose name is borne on the master rolls of an industrial establishment shall be laid off by his employer except without the prior permission of the appropriate government or such authority as has been specified by the government.

An application for prior permission for lay off is to be made by the employer to the appropriate government. According to section 25M (1) of Industrial Disputes Act, the prior permission by appropriate government or the specified authority is not necessary in the following cases:

a. lay off is due to shortage of power or due to natural calamity; and
b. lay off in a mine is due to fire, flood, excess of inflammable gas or explosion

Permission to continue lay off

According to Section 25M (3) where the layoff is due to shortage of power or natural calamity or in a mine, lay off is because of fire, flood, excess of inflammable gas or explosion, prior permission of government or specified authority is not required. But in such a case, the employer of such an establishment must within a period of thirty days from the date of commencement of such lay off apply to the appropriate government or specified authority for the permission to continue layoff.

Grant or refusal of permission after enquiry

Section 25M (4) provides that when an application for prior permission for lay off has been made under Section 25M (1) or an application for permission to continue lay off has been made under Section 25M (3) by the employer to the appropriate government or the specified authority, the appropriate government or the specified authority shall make an enquiry, if it things fit. After making such enquiry the appropriate government or the specified authority shall give reasonable opportunity of being heard to the employer, the workman concerned and the persons interested in such lay off. The appropriate government or the specified authority looks into the genuineness of the reasons of lay off, the interest of the workman and on other factors. Thereafter the appropriate government or the specified authority shall pass an order either granting or refusing to grant lay off. The order shall be speaking and shall specify the reasons for the grant or refusal to grant the permission for lay off.

Deemed grant of permission

Section 25M(5) states that where an application for prior permission for lay of has been made under section 25M(1) or an application for permission to continue has been made under section 25(M)3 by the employer and the appropriate government or the specified authority to whom such an application to grant the permission is made does not communicate the order granting or refusing to grant the permission within a period of sixty days from the date on which such an application is made the permission shall be deemed to have granted the permission after the expiry of 60 days.

Review of the order granting or refusing permission

An order of the Government or the specified authority granting or refusing to grant permission to lay off made under Section 25M (4) maybe reviewed under Section 25M (7) by the appropriate government or the specified authority either on its own motion or on an application made by the employer or workman. The appropriate government or the specified authority may refer the matter to the Tribunal for adjudication. The Tribunal must pass an award within a period of thirty days from the date of such reference.

Finality of the order

According to Section 25(M) 6 the order of appropriate government or the specified authority granting or refusing to grant permission under section 25M (4) if not reviewed is final and binding on all parties. It remains in force for a period of one year from the date of order.

Compensation to laid off workman

According to Section 25M (10), laid off workman must be paid compensation in accordance with the provisions of section 25C.

IV Illegal lay off and penalty thereof

Section 25M (8) states that any lay off in any industrial establishment to which Chapter VB applies is illegal if:

a. no application for prior permission has been made by the employer to the appropriate government or the specified authority under section 25 M (1);
b. no application to continue the layoff has been made by the employer under section 25M (3) either to the appropriate garment or to the specified authority where no prior permission is required;
c. where the prior permission or permission to continue layoff has been refused by appropriate government section 25M (4) of the Act

According to Section 25Q an employer who contravenes the provisions of Section 25M shall be punished with an imprisonment for a term which may extent to one month; or with fine; or with both imprisonment as well as fine.

7.4 Summary

The Industrial Disputes Act, 1947 was formed with an objective of having amicable relation between the industrialist and the workman. This Act lays down guidelines for the employers to follow good measures for the welfare of the workmen and in the interest of the business. It provides voluntary and compulsive methods of settlement of industrial disputes and at the same time regulates the pressure tools viz strikes and lock outs and retrenchments and lay off used by workers and employers respectively.

7.5 Glossary

1. **Board** (Section2(*c*), Industrial Disputes Act, 1947) means a Board of Conciliation constituted under this Act;

2. Conciliation officer (Section2 (*d*), Industrial Disputes Act, 1947) means a conciliation officer appointed under this Act;

3. **Conciliation proceeding** (Section2 (*e*), Industrial Disputes Act, 1947) means any proceeding held by a conciliation officer or Board under this Act;

4. **Employer** (Section2 (*g*), Industrial Disputes Act, 1947) means, —

(*i*) in relation to an industry carried on by or under the authority of any department of 9[the Central Government or a State Government], the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(*ii*) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

5. Industry (Section2 (*j*), Industrial Disputes Act, 1947) means any business, trade, undertaking, manufacture or calling of employers andincludes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

6. **Industrial Establishment Or Undertaking** (Section2(*ka*) ,Industrial Disputes Act,1947) means an establishment or undertaking in which any industry is carried on:
Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—
(*a*) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(*b*) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

7. National Tribunal (Section2 (*ll*), Industrial Disputes Act, 1947) means a National Industrial Tribunal constituted under section 7B;

8. Award (Section 2(b)) means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A;

9. Industry: Section 2(j) defines industry means any business trade undertaking manufacture or calling of equipment and includes any calling service employment handicraft or industrial occupation or evocation of workman.

But it does not include the following:

1. any agriculture except we are such agricultural operation is carried on in and integrated manner with any other activity and such other activity is the predominant one
2. hospitals or dispensaries
3. educational scientific research or training Institutions
4. Institutions on managed by any charitable services
5. khadi or village industry
6. any other domestic service
7. any activity being carried on by and cooperative society or a club.

10. Industrial dispute Section 2(k)- Industrial dispute means any dispute or difference between the employees and the employers or between employees and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the contestants of labour of any person.

11. Workman Section 2(s) of the Industrial Disputes Act defines workman. Workman means any any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward,whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(*i*) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(*ii*) who is employed in the police service or as an officer or other employee of a prison; or (*iii*) who is employed mainly in a managerial or administrative capacity; or (*iv*) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per menses or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

7.6 SAQ

1. Short Answer Questions

a) Explain essential conditions of Strike.

b) Write a note on adjudication of industrial dispute.

2. Fill in the blanks

a) National Industrial Tribunal constituted under section _____ Industrial Disputes Act.

b) Section 22 of Industrial Disputes Act provides for specific prohibition of strike and lockout in ___________

3. True or False

a) Settling an industrial dispute by adjudication is a compulsory method of settlement of industrial dispute.

b) To strike is not a fundamental right.

7.7 REFERENCES/BIBLIOGRAPHY

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7.10 TERMINAL AND MODEL QUESTIONS

a) Explain the law relating to voluntary arbitration under Industrial Disputes Act, 1947.
b) What is retrenchment? Explain the provisions regulating retrenchment.
c) Define lock out. Discuss the procedure for lock out.

Answers

SAQs

a) Para7.3.2

b) Para 7.3.1

Fill in the blanks

a)7B

b) Public Utility Services

True or False

a) True

b) True

Terminal Questions

a) Para 7.3.1

b) Para 7.3.3

c) Para 7.3.2

UNIT-8

LABOUR JUSTICE LAWS

STRUCTURE

8.1 Introduction

The Payment of Bonus Act, 1965, Employees' State Insurance Act, 1948 and The Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

8.2 Objectives

To know the provisions for the payment of bonus to persons employed in certain establishments and for matters connected therewith.

To understand certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

To learn about institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments.

8.3 Payment of Bonus Act, 1965

8.3.1 Payment of Bonus

Section 5 prescribes the eligibility for bonus. It says that every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

According to section 6, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for fraud; or riotous or violent behaviour while on the premises of the establishment; or theft, misappropriation or sabotage of any property of the establishment.

Section 10 makes provision that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent. of the salary of wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year: Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employees as if for the words “one hundred rupees”, the words “sixty rupees” were substituted.

Payment of maximum bonus has been provided in Section 11. According to this section where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

Section 15 makes provisions related to set on and set off of allocable surplus. It lays that where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.

Further where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 10, and there is no amount of sufficient amount carried forward and set on which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule. Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Special provisions with respect to certain establishments are provided under Section 16. Where an establishment newly set up, the employees are entitled to bonus as under:

In the first five accounting years if the employers derive profit from such establishment without applying the provisions of section 15;

in the sixth and seventh accounting years bonus shall be paid to the employees by modifying section 15 as follows:

a) for the sixth accounting year set on or set off, as the case may be, shall be made in the manner illustrated in the Fourth Schedule taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;

b) for the seventh accounting year**,** set on or set off, as the case may be, shall be made in the manner illustrated in the Fourth Schedule taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.

(*iii)* From the eighth accounting bonus is paid to employees without modification of , the provisions of section 15.

Time-limit for payment of bonus (Section 19) Bonus shall be paid in cash:

a) within one month from the date on which award or settlement comes into operation if there is dispute regarding payment of bonus;
b) within eight months from the close of the accounting year in every other case.

8.3.2 Disputes and Penalty

Section 22 relates to reference of disputes under the Act. It states that where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947, or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.

The appropriate Government may appoint Inspectors by notification in the Official Gazette, for the purposes of this Act and may define the limits within which they shall exercise jurisdiction. An Inspector so appointed may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with—

(a) require an employer to furnish such information as he may consider necessary;

(b) at any reasonable time and with such assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary of wage or bonus in the establishment;

(c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment;

(d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment;

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

Penalty for contravening any of the provisions of this Act or any rule made thereunder; or not following the direction is given or a requisition is made under this Act fails to comply with the direction or requisition is prescribed under section 25 which shall be imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

8.4 Employees State Insurance Act, 1948

10.4.1 Corporation, Standing Committee and Medical Benefit Council

a) Corporation

Section 3 provides for the establishment of Employees' State Insurance Corporation for the administration of the scheme of employees' state insurance in accordance with the provisions of this Act. The Corporation shall be a body corporate by the name of Employees' State Insurance Corporation having perpetual succession and a common seal and shall by the said name sue and be sued.

Section 4 provide for the Constitution of Corporation which shall be as under:

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

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

(c) not more than five persons to be appointed by the Central Government;

(d) one person each representing each of the States in which this Act is in force to be appointed by the State Government concerned;

(e) one person to be appointed by the Central Government; to represent the Union Territories;

(f) ten persons representing employers to be appointed by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government;

(g) ten persons representing employees to be appointed by the Central Government in consultation with such organisations of employees as may be reorganised for the purpose by the Central Government;

(h) two persons representing the medical profession to be appointed by the Central Government in consultation with such organisation of medical practitioners as may be recognised for the purpose by the Central Government;

(i) three members of Parliament of whom two shall be members of the House of the People (Lok Sabha) and one shall be a member of the Council of States (Rajya Sabha) elected respectively by the members of the House of the People and the members of the Council of States; and

(j) the Director-General of the Corporation ex-officio.

According to section 5 the following members hold office during the pleasure of government:

i. Chairman;
ii. Vice Chairman
iii. Five persons to be appointed by Central Government;
iv. one person each representing each state in which this Act is applicable
v. one person appointed by central government.

Apart from the above all other members hold office for a period of four years.

b) Standing committee

Constitution of Standing Committee is provided under Section 8. It shall be constituted from among its members, consisting of-

1. A Chairman, appointed by the Central Government;
2. three members of the Corporation appointed by the Central Government;
3. three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification Gazette, specify from time to time
4. eight members elected by the Corporation as follows-

i. three members from among the members of the Corporation representing employers;
ii. three members from among the members of the Corporation representing employees;
iii. one member from among the members of the Corporation representing the medical profession; and
iv. one member from among the members of the Corporation elected by Parliament;

Section 9 lays that the members of Standing Committee appointed by central government hold office during the pleasure of the government. For all other members, the term of office shall be two years.

The powers of the Standing Committee as given by Section 18 are administering the affairs of the Corporation and submitting for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf.

c) Medical Benefit Council

The Central Government shall constitute a Medical Benefit Council consisting of-

a) the Director General, Health Services, ex officio, as Chairman;
b) a Deputy Director General, Health Services, to be appointed by the Central Government;
c) the medical commissioner of the Corporation, ex officio;
d) one member each representing each of the States other than Union Territories in which this Act is in force to be appointed by the State Government concerned;
e) three members representing employers to be appointed by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government;
f) three members representing employees to be appointed by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government; and
g) three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government.

A member of the Medical Benefit Council referred appointed by the government shall hold office during the pleasure of the government appointing him. The term of office of all other members shall be four years.

The Medical Benefit Council has the following duties. It shall-

(a) advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;

(b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance; and

(c) perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

8.4.2 Employees' State Insurance Fund

Section 26 specifies that all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. The Corporation may accept grants, donations and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act. Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central Government to the credit on an account styled the account of the Employees' State Insurance Fund. Such account shall be operated on by such officers as may be authorised by the Standing Committee with the approval of the Corporation.

8.4.3 Payment of Contribution

All employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act (Section 38). Section 40 provides that the principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution. The principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise. However, no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period. Further neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him. Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted. The principal employer shall bear the expenses of remitting the contributions to the Corporation.

Section 41 states that a principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any) from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

8.4.4 Benefits

Section 45 provides that the following Benefits shall be available to the insured persons, their dependants or the persons hereinafter mentioned, namely, -

(a)periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner [83][or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf (hereinafter referred to as sickness benefit);

(b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);

(c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit);

(e) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit); and

(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as funeral expenses.

The amount of such payment shall not exceed the amount as prescribed by the Central Government and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow. The Corporation may, at the request of the appropriate government, and subject to such conditions as may be laid down in the regulations, extend the medical benefit to the family of an insured person. Section 49 stipulates that the qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government. Similarly, section 50 provides that the qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.

Disablement benefit is provided in Section 50. It states that a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment at such rates and for such period and subject to such conditions as may be prescribed by the Central Government. Similarly, a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment at such rates and for such period and subject to such conditions as may be prescribed by the Central Government.

Section 52 lays Dependants' benefit. It states that if an insured person dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependants' benefit shall be payable at such rates and for such period and subject to such conditions as may be prescribed by the Central Government to his dependants.

Provisions regarding occupational disease are given in Section 52A. If an employee employed in any employment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an 'employment injury' arising out of and in the course of employment.

The Act also provides for Medical benefit under Section 52. An insured person or a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit. Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution. A person shall be entitled to medical benefit during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations. A person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations. An insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement.

8.4.5 Dispute and Claims

Employees' Insurance Court (Section 74) is empowered to decide dispute and claims under the Act. The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence (Section 78). The question of law may be referred to the High Court. (Section 81)

No appeal shall lie from an order of an Employees' Insurance Court except as provided under this Act. An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves substantial question of law. The period of limitation for an appeal under this section shall be sixty days. (Section 82)

The following disputes may be decided by Employees' Insurance Court:

- **i.** whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution;
- ii. the rate of wages or average daily wages of an employee for the purposes of this Act;
- iii. the rate of contribution payable by a principal employer in respect of any employee;
- iv. the person who is or was the principal employer in respect of any employee;
- v. the right of any person to any benefit and as to the amount and duration thereof;
- vi. any direction issued by the Corporation under section 55A on a review of any payment of dependants benefits;
- vii. any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other related matter.

The following claims shall be decided by the Employees' Insurance Court, namely:-

- i. claim for the recovery of contributions from the principal employer;
- ii. claim by a principal employer to recover contributions from any immediate employer;
- iii. claim against a principal employer under section 68;
- iv. claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and
- v. any claim for the recovery of any benefit admissible under this Act.

8.4.6 PENALTIES

Section 64 prescribes punishment for false statements. A person knowingly making false statement shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding two thousand rupees, or with both.

Section 85 lays that if any person is proved guilty of any one or more of the following-

(a) fails to pay any contribution which under this Act he is liable to pay

(b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution

(c) in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee

(d) in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee

(e) fails or refuses to submit any return required by the regulations, or makes a false return

(f) obstructs any Inspector or other official of the Corporation in the discharge of his duties

(g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided

he shall be punishable-

(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees:

The Court may, for any adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a lesser term;

(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both. Section 85A provides enhanced punishment in certain cases after previous conviction which shall be imprisonment for a term which may extend to two years and with fine of five thousand rupees. Where such subsequent offence is for failure by the employer to pay any contribution which under this Act he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to five years but which shall not be less than two years and shall also be liable to fine of twenty-five thousand rupees.

8.5 The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

8.5.1 Schemes under EPF Act

The Central Government may frame any of the following schemes by notification in official gazette. Section 5 provide for Employees' Provident Fund Schemes which provide for the establishment of provident funds under this Act for employees or for any class of employees. The Fund vests in and is administered by the Central Board. The scheme so framed may provide for all or any of the matters specified in Schedule II of the Act. The provisions of such schemes may take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme.

Section 6A provides for Employees' Pension Scheme which shall be notified by the Central Government for the purpose of providing for—

a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and
b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

After framing of the Pension Scheme, a Pension Fund shall be established from which the following shall be paid to every employee who is a member of the Pension Scheme, —

(a) such sums from the employer's contribution under section 6, not exceeding eight and one-third per cent of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;

(b) such sums as are payable by the employers of exempted establishments under sub-section (*6*) of section 17;

(c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;

(d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

On the establishment of the Pension Fund, the Family Pension Scheme shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits they were entitled to under the ceased scheme, from the Pension Fund.

The Pension Fund shall vest in and be administered by the Central Board. The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

Section 6C relates to Employees' Deposit linked Insurance Scheme which is framed by the Central Government for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Act applies. There shall be established, as soon as may be after the framing of the Insurance Scheme, a Deposit-linked Insurance Fund into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one per cent of the aggregate of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable in relation to such employee as the Central Government may, by notification in the Official Gazette, specify.

The employer shall pay into the Insurance Fund such further sums of money, not exceeding one-fourth of the contribution which he is required to make under sub-section (*2*), as the Central Government may, from time to time, determine to meet all the expenses in connection with the administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that scheme.

The Insurance Fund shall vest in the Central Board and be administered by it in such manner as may be specified in the Insurance Scheme. The Insurance Scheme may provide for all or any of the matters specified in Schedule IV. The Insurance Scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme.

8.5.2 Authorities to administer the fund

For the effective administration of the fund, the EPF Act, 1952 provides for the following authorities:

a) Central Board (Section 5A)
b) Executive Committee (Section 5AA)
c) State Board (Section 5B)
d) Central Provident Fund Commissioner
e) Financial Advisor and Chief Accounts Officer

a) Central Board

The Central Board is constituted by the Central Government consisting of the following members namely: —

i. a Chairman and a Vice-Chairman to be appointed by the Central Government;

ii. the Central Provident Fund Commissioner, *ex officio*;

iii. not more than five persons appointed by the Central Government from amongst its officials;

iv. not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, appointed by the Central Government;
v. ten persons representing employers of the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employers as may be recognised by the Central Government in this behalf; and
vi. ten persons representing employees in the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employees as may be recognised by the Central Government in this behalf.

The Central Board shall perform such other functions as it may be required to perform by or under any provisions of the Scheme, the Pension Scheme and the Insurance Scheme. It shall maintain proper accounts of its income and expenditure. The accounts of the Central Board shall be audited annually by the Comptroller and Auditor- General of India and any expenditure incurred by him in connection with such audit shall be payable by the Central Board to the Comptroller and Auditor-General of India. It shall be the duty of the Central Board to submit also to the Central Government an annual report of its work and activities and the Central Government shall cause a copy of the annual report, the audited accounts together with the report of the Comptroller and Auditor-General of India and the comments of the Central Board thereon to be laid before each House of Parliament.

b) Executive Committee

The Central Government may constitute an Executive Committee to assist the Central Board in the performance of its functions. The Executive Committee shall consist of the following members, namely: —

(a) a Chairman appointed by the Central Government from amongst the members of the Central Board;

(b) two persons appointed by the Central Government from amongst the persons referred to in clause (*b*) of sub-section (*1*) of section 5A;

(c) three persons appointed by the Central Government from amongst the persons referred to in clause (*c*) of sub-section (*1*) of section 5A;

(d) three persons representing the employers elected by the Central Board from amongst the persons referred to in clause (*d*) of sub-section (*1*) of section 5A;

(e) three persons representing the employees elected by the Central Board from amongst the persons referred to in clause (*e*) of sub-section (*1*) of section 5A;

(f) the Central Provident Fund Commissioner, *ex officio*.

c) State Board

The Central Government may, after consultation with the Government of any State, by notification in the Official Gazette, constitute for that State a Board of Trustees in such manner as may be provided for in the Scheme. A State Board shall exercise such powers and perform such duties as the Central Government may assign to it from time to time.

d) Officers

The Central Government shall appoint a Central Provident Fund Commissioner who shall be the chief executive officer of the Central Board and shall be subject to the general control and superintendence of that Board. The Central Government may also appoint [a] Financial Adviser and Chief Accounts Officers to assist the Central Provident Fund Commissioner in the discharge of his duties.

8.5.3 Authorities to Determine and Recover Money Due from Employer

The EPF Act provides for the authorities to:

a) Determine money due from the employers;

b) recover money due from the employer

a) Determination of money due from the employers

Section7 provides that the Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order, —

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be,and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary;

The officer conducting the inquiry under this section shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of enforcing the attendance of any person or examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavit, issuing commissions for the examination of witnesses and any such inquiry shall be deemed to be a judicial proceeding.

No order shall be made under this section unless the employer concerned is given a reasonable opportunity of representing his case. Where the employer, employee or any other person required to attend the inquiry fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

Where an ex parte order has been passed against any employer he may apply to the officer who issued such order within three months from the date of communication of such order. If he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry.

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer. No order passed under this section shall be set aside on any application unless notice thereof has been served on the opposite party.

Section 7B relates to review of orders passed under section 7A but from which no appeal has been preferred under this Act. The aggrieved person may apply for a review stating the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason to the officer who passed the order.

Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application. Where the officer is of opinion that the application for review should be granted, he shall grant the same:

Provided that, —

i. no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and
ii. no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A.

Determination of escaped amount is provided under Section 7C. It states that where an order determining the amount due from an employer under section 7A or section 7B has been passed and if the officer who passed the order—

(a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under section 7A or section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (*a*) on the part of the employer,he may, within a period of five years from the date of communication of the order passed under section 7A or section 7B, re-open the case and pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act. No order re-determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case.

b) Recovery of money due from the employer (Section 8A)

The amount of contribution and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor, under any contract or as a debt payable by the contractor. The amount may be recovered by deduction from the basic wages, dearness allowance and retaining allowance (if any) payable to such employee.

Section 8 provides that the amount due as arrears from employers may be recovered by following modes:

a) Recovery by recovery officer (Section 8B)

b) Recovery by Central Fund Commissioner (Section 8F)

8.5.4 Cognizance of Offences, Penalties and Damages

a) Cognizance of Offences

14AB provides that an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable.

Cognizance of o any offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme under Section 14AC can be taken on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf.

Offences by companies are specified in Section 14A. It states that if the person committing an offence under this Act is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. However, if it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

b) Penalties (Section 14)

Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to [4][one year, or with fine of five thousand rupees, or with both. An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause (*a*) of sub-section (*3*) of section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to three years but—

(a) which shall not be less than one year and a fine of ten thousand rupees in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages;

(b) which shall not be less than six months and a fine of five thousand rupees, in any other case.

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

An employer who contravenes, or makes default in complying with, the provisions of section 6C, or clause (*a*) of sub-section (*3A*) of section 17 in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than six months and shall also be liable to fine which may extend to five thousand rupees.

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

Subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance Scheme may provide that any person who contravenes, or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend one year, or with fine which may extend to four thousand rupees, or with both.

Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees.

Section 14AA provides for enhanced punishment in certain cases after previous conviction. Whoever, having been convicted by a Court of an offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme, commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to [8][five years, but which shall not be less than two years, and shall also be liable to a fine of twenty-five thousand rupees.

c) Damages (Section 14B)

Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (*2*) of section 15 or sub-section (*5*) of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover [7][from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme. But before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard. The Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985,subject to such terms and conditions as may be specified in the Scheme.

8.6 Summary

The Payment of Bonus Act, Employees' State Insurance Act and Employees' Provident Fund Act are important pieces of legislation enacted by the legislature for the welfare of the employee. They contain exhaustive provisions which have been liberally interpreted by the courts over the years in the interest of the employees.

8.7 Glossary

1. "accounting year" means (Section 2(1), Payment of Bonus Act, 1965)

i. in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;

ii. in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;

iii. in any other case—

a) the year commencing on the 1st day of April; or

b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced:

Provided that an option once exercised by the employer under paragraph (*b*) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit;

2."allocable surplus" means (Section 2(2), Payment of Bonus Act, 1965)—

(a) in relation to an employer, being a company [1][(other than a banking company)] which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent. of the available surplus in an accounting year;

(b) in any other case, sixty per cent. of such available surplus;

3. "salary or wage" means(Section 2(21), Payment of Bonus Act, 1965) all remuneration (other than remuneration in respect of over- time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include—

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

4. "contribution"(Section 2(4), Employees' State Insurance Act,1948) means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act;

5. dependant (Section 2(6A), Employees' State Insurance Act,1948) means any of the following relatives of a deceased insured person, namely, -

(i) A widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter; a widowed mother;

(ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of eighteen years and is infirm;

(iii) if wholly or in part dependent on the earnings of the insured person at the time of his death, -

a) a parent other than a widowed mother,
b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,
c) a minor brother or an unmarried sister or a widowed sister if a minor,
d) a widowed daughter-in-law,
e) a minor child of a pre-deceased son,
f) a minor child of a pre-deceased daughter where no parent of the child is alive,
g) a paternal grand-parent if no parent of the insured person is alive,

6. employment injury (Section 2(8), Employees' State Insurance Act,1948) means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India;

7. basic wages (Section 2(b), Employees' Provident Funds and Miscellaneous Provisions Act, 1952) means all emoluments which are earned by an employee while on duty or [3][on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

i. the cash value of any food concession;
ii. any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

8. contribution (Section 2(c), Employees' Provident Funds and Miscellaneous Provisions Act, 1952) means a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies.

8.8 SAQ

a) Discuss the payment of bonus.

b) Explain the composition and function of Medical Benefit Council.

Fill in the blanks

a) Insurance Fund vests in _________.

b) Claim for the recovery of contributions from principal employer is decided by _________. Employees' Insurance Court.

True or False

a) Dependents' benefit is laid under section 52.

b) If an employee is dismissed from service for fraud, he shall be disqualified from receiving bonus.

8.9 References/Bibliography

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8.10 Suggested Readings

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Seth, D.D, (2024), Industrial Disputes Act, 1947, Law Publishing House

8.11 Terminal and Model Questions

a) Discuss the benefits available to the insured person and his dependents.

b) Explain the authorities to administer the Employees' Provident Fund.

Answers

SAQ

a) Para 10.3.2

b) Para 10.4.1

Fill in the blanks

a) Central Board

b) Employees' Insurance Court.

True or False

a) True

b) True

UNIT: 9

CONCILIATION, ARBITRATION AND ADJUDICATION

STRUCTURE

9.1 INTRODUCTION

Disputes are an inevitable part of human interaction, whether they arise in commercial transactions, industrial relations, family matters, or contractual dealings. Traditionally, litigation before courts of law has been the primary mechanism for resolving disputes. However, litigation is often slow, expensive, adversarial, and procedurally rigid. Over time, this has led to the development of alternative mechanisms of dispute resolution that are quicker, less formal, more cost-effective, and often more amicable in nature. These mechanisms are collectively known as Alternative Dispute Resolution (ADR).

Among the various methods of ADR, conciliation, arbitration, and adjudication occupy a place of special importance because they represent three distinct approaches to resolving disputes outside the ordinary court process, each with a different degree of formality, party control, and binding effect. Conciliation is essentially a facilitative process in which a neutral third party helps disputing parties reach a mutually acceptable settlement. Arbitration is a more structured, quasi-judicial process in which parties submit their dispute to one or more arbitrators who render a binding decision known as an award. Adjudication, in its broader sense, refers to the process of resolving disputes through the exercise of formal, often statutory, authority — this could refer to judicial adjudication by courts or specialized adjudication mechanisms established under particular statutes (e.g., adjudicating officers under labour law, consumer protection law, or construction contracts).

This unit examines the meaning, nature, process, and legal basis of these three mechanisms. It also draws comparisons between them, highlighting their respective strengths and limitations, and situates them within the broader framework of dispute resolution, with particular reference to the legal regime prevailing in India under the Arbitration and Conciliation Act, 1996, and other relevant statutes. Understanding these mechanisms is essential not only for students of law but also for professionals in business, human resource management, and public administration, since disputes touching upon contracts, employment, consumer relations, and international trade are increasingly resolved through these alternative channels rather than through prolonged litigation.

The growing importance of ADR mechanisms is closely linked to the global trend towards ensuring speedy, efficient, and party-centric justice. Courts across the world, including in India, actively encourage parties to first explore conciliation or arbitration before resorting to litigation. Statutory provisions such as Section 89 of the Code of Civil Procedure, 1908, and various sector-specific legislations mandate or encourage the use of ADR. This unit aims to provide learners with a comprehensive and structured understanding of these processes so that they may appreciate both their theoretical foundations and their practical application.

9.2 OBJECTIVES

After studying this unit, learners should be able to:

- Explain the meaning, nature, and significance of Alternative Dispute Resolution (ADR).
- Describe the concept, process, and legal framework of conciliation as a mode of dispute resolution.
- Explain the meaning, types, process, and legal framework of arbitration.
- Understand the concept of adjudication and distinguish it from conciliation and arbitration.
- Compare and contrast conciliation, arbitration, and adjudication on the basis of formality, binding nature, cost, time, and party autonomy.
- Identify the statutory framework governing these mechanisms, particularly the Arbitration and Conciliation Act, 1996 (as amended).
- Analyse the advantages and limitations of each mechanism.
- Apply the concepts learnt to practical situations involving contractual and commercial disputes.
- Critically evaluate the role of ADR mechanisms in reducing the burden on the judicial system.

9.3 Meaning and Nature of Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution refers to a set of processes and techniques that act as a means for disagreeing parties to reach an agreement short of, or as an alternative to, formal litigation. ADR mechanisms typically include negotiation, mediation, conciliation, arbitration, and adjudication, though the last two carry a more formal and binding character compared to negotiation and mediation.

The essential features of ADR mechanisms are:

- **Party Autonomy**: Parties generally have significant control over the process, including the choice of neutral third party, procedure, and, in many cases, the applicable rules.
- **Flexibility**: Unlike court proceedings governed by rigid procedural codes, ADR processes can be tailored to the needs of the parties and the nature of the dispute.
- **Confidentiality**: Most ADR processes, barring adjudication before statutory bodies, are conducted in private, preserving the confidentiality of commercial and personal matters.
- **Speed and Cost-effectiveness**: ADR mechanisms are generally faster and less expensive than protracted litigation.
- **Preservation of Relationships**: Especially in conciliation and mediation, the emphasis on cooperative problem-solving helps preserve business or personal relationships that adversarial litigation often damages.

While negotiation and mediation are largely non-binding facilitative processes, conciliation lies at a slightly more structured point on this spectrum, arbitration is a quasi-judicial and binding process, and adjudication (particularly statutory adjudication) approaches the formality of judicial determination while still being distinct from ordinary court litigation. It is useful to think of these mechanisms as existing along a continuum, ranging from the least formal (negotiation) to the most formal (adjudication and litigation), with conciliation and arbitration occupying the middle and upper-middle positions respectively.

9.4 Conciliation

Meaning: Conciliation is a voluntary, informal process in which a neutral third party, known as the conciliator, assists the disputing parties in reaching a mutually satisfactory resolution of their dispute. Unlike an arbitrator, a conciliator does not adjudicate the dispute or impose a decision; instead, the conciliator facilitates communication, identifies issues, explores options, and may even suggest possible terms of settlement, but the final agreement is entirely dependent upon the consent of the parties themselves.

Nature of the Process: Conciliation is fundamentally consensual at every stage — from initiation, through the process, to the outcome. The conciliator's role is that of a facilitator rather than a decision-maker. This distinguishes conciliation sharply from arbitration and adjudication, where a third party ultimately renders a binding decision regardless of one party's continued objection.

Statutory Basis in India: In India, conciliation is governed by Part III of the Arbitration and Conciliation Act, 1996 (Sections 61 to 81). The Act applies to conciliation of disputes arising out of a legal relationship, whether contractual or not, and to all proceedings relating thereto.

Process of Conciliation (as contemplated under the Act):

1. **Commencement**: Conciliation proceedings are initiated when one party sends a written invitation to the other party to conciliate, briefly identifying the dispute. Conciliation commences when the other party accepts the invitation in writing. If the other party rejects the invitation, there will be no conciliation proceedings.
2. **Number of Conciliators**: Ordinarily there is one conciliator, though parties may agree to have two or three conciliators, in which case, as a general rule, all conciliators should act jointly.
3. **Appointment of Conciliators**: Parties are free to agree on the name of a sole conciliator, or in the case of two or three conciliators, each party may appoint one conciliator, and in the case of three conciliators, a third conciliator may be appointed by agreement, who acts as the presiding conciliator.
4. **Submission of Statements**: The conciliator, upon appointment, requests each party to submit a brief written statement describing the general nature of the dispute and the points at issue, along with a copy to the other party.

5. **Conduct of Conciliation Proceedings**: The conciliator is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. The conciliator is guided by principles of objectivity, fairness, and justice, giving consideration to the rights and obligations of the parties, usages of trade, and the circumstances surrounding the dispute, including any previous business practices between the parties. The conciliator may conduct the proceedings in a manner considered appropriate, taking into account the circumstances of the case and the wishes expressed by the parties.
6. **Communication Between Conciliator and Parties**: The conciliator may meet or communicate with the parties together or separately. When the conciliator receives factual information from a party, the conciliator may disclose the substance of that information to the other party, unless the disclosing party specifically requests confidentiality.
7. **Role of the Conciliator in Proposing Settlement Terms**: At any stage, the conciliator may make proposals for settlement, which need not be in writing or accompanied by a statement of reasons.
8. **Settlement Agreement**: If the parties reach an agreement on settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may assist in drawing up the agreement. Once signed by the parties, the settlement agreement is final and binding on the parties. Importantly, Section 74 of the Act provides that the settlement agreement has the same status and effect as if it were an arbitral award made on agreed terms, which itself is enforceable as a decree of the court.
9. **Termination of Conciliation Proceedings**: Conciliation proceedings terminate upon (a) signing of the settlement agreement, (b) a written declaration of the conciliator, after consultation with the parties, that further efforts at conciliation are no longer justified, (c) a written declaration by the parties addressed to the conciliator that the proceedings are terminated, or (d) a written declaration by one party to the other party and to the conciliator that the proceedings are terminated.

Confidentiality: Section 75 of the Act mandates that the conciliator and the parties must keep confidential all matters relating to the conciliation proceedings.

Admissibility of Evidence in Other Proceedings: Section 81 provides that parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute subject to the conciliation proceedings, matters such as views expressed, suggestions made, admissions made, or proposals put forward by the conciliator during the conciliation.

Role of the Conciliator versus a Judge: A conciliator does not have the power to impose a solution upon the parties. This is the fundamental point of distinction from adjudication and arbitration.

9.5 Arbitration

Meaning: Arbitration is a method of dispute resolution in which the parties agree to submit their dispute to one or more private individuals (arbitrators), whose decision, known as an "award," they agree in advance to accept as final and binding, in place of the ordinary judicial process of the courts. It is often described as a "private" method of adjudication, as it substitutes for the trial and judgment of a court with the process and decision of a privately chosen tribunal.

Nature of Arbitration: Arbitration is consensual in its origin (it arises from an arbitration agreement) but adjudicatory in its outcome (the arbitrator renders a binding decision). This makes it distinct from conciliation, where even the outcome depends on the consent of the parties.

Essentials of a Valid Arbitration Agreement (Section 7 of the Arbitration and Conciliation Act, 1996):

- It must be in writing (this includes agreement contained in a document signed by the parties, an exchange of letters, telex, telegrams, or other means of telecommunication, or an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other).
- It may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- The agreement must reflect the clear intention of the parties to refer disputes to arbitration.

Kinds of Arbitration:

1. **Ad hoc Arbitration**: The arbitration is conducted according to procedures independently agreed to by the parties, without the involvement of an institution, and the parties are responsible for determining all aspects of the arbitration, such as the number of arbitrators, the manner of their appointment, and the procedural rules.
2. **Institutional Arbitration**: The arbitration is administered by a specialized arbitral institution, such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), or the Indian Council of Arbitration (ICA), which provides administrative support and has its own set of procedural rules.
3. **Domestic Arbitration**: Arbitration in which the arbitration proceedings and the subject matter of the dispute are confined within one country, and the applicable law is domestic law.
4. **International Commercial Arbitration**: Arbitration relating to disputes arising out of legal relationships considered commercial, where at least one party is a foreign national, resident, or body corporate, or where the central management of a foreign company is exercised outside India (as defined under Section 2(1)(f) of the Act).

5. **Statutory Arbitration**: Arbitration mandated by a specific statute, where the statute itself provides that certain disputes must be referred to arbitration, such as under some public sector or infrastructure-related legislations.
6. **Fast Track Arbitration**: Introduced by the 2015 amendment to the Act (Section 29B), this allows parties to agree to have their dispute resolved through a fast-track procedure, generally involving a sole arbitrator, based on written pleadings without oral hearings, and with the award to be made within six months.

Process of Arbitration:

1. **Existence of an Arbitration Agreement**: The arbitration process is founded on the existence of a valid arbitration agreement, either as a clause in the main contract or a standalone agreement.
2. **Reference and Appointment of Arbitrators**: Parties are free to agree on the procedure for appointing the arbitrator or arbitral tribunal (Section 11). In default of agreement, and where a party fails to appoint an arbitrator, either party may approach the relevant High Court or the Supreme Court (or an institution designated by such courts) for appointment.
3. **Jurisdiction of the Arbitral Tribunal**: The tribunal has the power to rule on its own jurisdiction, including objections to the existence or validity of the arbitration agreement — this is known as the principle of "kompetenz-kompetenz" (Section 16).
4. **Interim Measures**: Both the arbitral tribunal (Section 17) and the court (Section 9) have powers to grant interim measures of protection, such as preservation of goods, securing the amount in dispute, or appointment of a receiver.
5. **Conduct of Proceedings**: The tribunal is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, and the parties are free to agree on the procedure to be followed, subject to the mandatory provisions of the Act, particularly the principles of equal treatment of parties and full opportunity to present one's case (Section 18).
6. **Statement of Claim and Defence**: The claimant states the facts supporting the claim, the points at issue, and the relief sought, while the respondent states its defence.
7. **Hearings and Written Proceedings**: The tribunal decides whether to hold oral hearings or conduct proceedings on the basis of documents alone, unless the parties have agreed that no oral hearing shall be held.
8. **Making of the Award**: The arbitral tribunal must decide the dispute in accordance with the substantive law chosen by the parties, or where no such choice is made, the law it considers appropriate. The award must be made in writing, signed by the members of the tribunal, state the reasons upon which it is based (unless the parties have agreed that no reasons are to be given), and state the date and place of arbitration (Section 31).
9. **Setting Aside of the Award**: An award may be set aside by the court under Section 34 of the Act on limited grounds, such as incapacity of a party, invalidity of the arbitration agreement, lack of proper notice, the award dealing with a dispute not contemplated by the arbitration agreement, improper composition of the tribunal, or the award being in conflict with the public policy of India.

10. **Enforcement of the Award**: Under Section 36, where the time for making an application to set aside the arbitral award has expired, or such an application has been refused, the award is enforced in the same manner as if it were a decree of the court.

Advantages of Arbitration: Arbitration allows for choice of a technically qualified arbitrator (for instance, an engineer for construction disputes), confidentiality, procedural flexibility, finality of the award (subject to limited grounds of challenge), and the possibility of resolving international disputes via a neutral forum and enforceable award (particularly under the New York Convention, 1958, to which India is a signatory).

9.6 Adjudication

Meaning: The term "adjudication" is used in two distinct senses:

1. **In its broadest, generic sense**, adjudication refers to any legal process in which a decision is made by an authoritative third party — this could be a court, tribunal, or anybody vested with the authority to determine rights and obligations. Under this broad meaning, both litigation before ordinary courts and even arbitration (in a sense) may be described as forms of adjudication, since a binding decision is imposed upon the parties.
2. **In its specific, statutory sense** (as commonly used in labour law, consumer protection law, construction and infrastructure contracts, and information technology/data protection statutes), adjudication refers to a distinct, often summary or expedited, quasi-judicial process before a designated adjudicating officer or authority, established under a particular statute to resolve specified categories of disputes swiftly, without recourse to the ordinary hierarchy of civil courts, at least in the first instance.

Illustrative Examples of Statutory Adjudication in India:

- **Industrial Disputes Act, 1947**: Provides for adjudication of industrial disputes through Labour Courts, Industrial Tribunals, and National Tribunals. Disputes concerning matters such as wrongful dismissal, retrenchment, or conditions of service are referred by the appropriate government for adjudication, and the resulting award is binding on the parties.
- **Consumer Protection Act, 2019**: Establishes a three-tier adjudicatory mechanism comprising the District Consumer Disputes Redressal Commission, the State Commission, and the National Commission, to adjudicate consumer complaints in a summary manner.
- **Information Technology Act, 2000**: Provides for an Adjudicating Officer to adjudicate on matters such as unauthorized access to computer systems and compensation for data breaches, up to a specified pecuniary limit.

- **Real Estate (Regulation and Development) Act, 2016 (RERA)**: Provides for adjudicating officers to determine compensation payable to allottees for contraventions by promoters.
- **Payment of Gratuity Act, 1972 and other labour welfare legislations**: Provide for adjudication by specified controlling or competent authorities.

Nature of the Adjudicatory Process: Statutory adjudication typically has the following features:

- It is established and governed entirely by statute, which prescribes the jurisdiction, powers, and procedure of the adjudicating authority.
- The adjudicating authority exercises quasi-judicial powers, meaning it must act judicially — following principles of natural justice, granting a fair hearing to both sides, and giving reasoned decisions — even though it may not be a "court" in the strict sense.
- Adjudication does not depend on the consent of parties in the way that arbitration and conciliation do — jurisdiction is often conferred by the state, and the process may be initiated unilaterally by an aggrieved party or, in some contexts (like the Industrial Disputes Act), through a reference made by the government.
- The decision rendered (often called an "award," "order," or "decision," depending on the statute) is legally binding, and appeals, if provided, generally lie to a higher forum such as an appellate tribunal or the courts, rather than the matter being reopened afresh.
- Adjudication is generally intended to be more accessible, less formal, and less expensive than ordinary civil litigation, while still retaining a higher degree of procedural formality compared to conciliation, and often a comparable degree of formality to arbitration.

Difference Between Adjudication and Ordinary Litigation: While both involve a binding determination by an authority, statutory adjudication is typically designed for specific categories of disputes (e.g., labour, consumer, or regulatory matters), often features simplified procedures, relaxed rules of evidence, and time-bound disposal, and is usually presided over by a specialized authority possessing subject-matter expertise, rather than a generalist civil court judge.

9.7 Comparative Analysis of Conciliation, Arbitration and Adjudication

Basis of Comparison	**Conciliation**	**Arbitration**	**Adjudication**
Nature	Facilitative and consensual	Quasi-judicial and binding	Quasi-judicial and binding (statutory)
Role of Third Party	Facilitator; may suggest terms but cannot impose decision	Decision-maker; renders binding award	Decision-maker; renders binding order/award

Basis of Comparison	Conciliation	Arbitration	Adjudication
Basis of Jurisdiction	Voluntary invitation and acceptance by parties	Arbitration agreement between parties	Conferred by statute; may not require party consent
Outcome	Settlement agreement (only if parties agree)	Arbitral award (binding regardless of one party's objection)	Order/Award of adjudicating authority (binding)
Formality of Procedure	Least formal; flexible, guided by fairness and objectivity	Formal but flexible; parties may agree on procedure	Formal; procedure largely prescribed by statute
Governing Law in India	Part III, Arbitration and Conciliation Act, 1996	Part I & II, Arbitration and Conciliation Act, 1996	Respective special statutes (e.g., Industrial Disputes Act, Consumer Protection Act)
Enforceability	Settlement agreement enforceable as an arbitral award/decree	Award enforceable as a decree of court	Order/award enforceable as per the statute, often as a decree
Confidentiality	High	High	Generally lower; many adjudicatory proceedings are public
Cost and Time	Low cost, relatively quick	Moderate cost, quicker than litigation	Varies; generally quicker and cheaper than ordinary litigation
Scope for Appeal	Not applicable (settlement is final by consent)	Very limited grounds under Section 34; not an appeal on merits	Statutory appeal usually available to a higher forum

9.8 Legal Framework Governing ADR in India

The principal legislative framework in India includes:

- **The Arbitration and Conciliation Act, 1996** (as amended in 2015, 2019, and 2021): Governs both domestic and international commercial arbitration, as well as conciliation, and gives effect to India's obligations under the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention.
- **Section 89 of the Code of Civil Procedure, 1908**: Empowers courts to refer disputes to arbitration, conciliation, judicial settlement (including through Lok Adalat), or mediation, where it appears that elements of a settlement exist, even after the suit has been instituted.

- **The Legal Services Authorities Act, 1987**: Provides for Lok Adalats, which combine features of conciliation and negotiated settlement, and awards passed by Lok Adalats are deemed to be decrees of a civil court.
- **The Industrial Disputes Act, 1947**: Provides for conciliation officers, boards of conciliation, and adjudication through Labour Courts and Industrial Tribunals.
- **The Commercial Courts Act, 2015**: Mandates pre-institution mediation and settlement for certain commercial disputes before the institution of a suit.
- **Sector-specific statutes**: Such as the Consumer Protection Act, 2019, the Real Estate (Regulation and Development) Act, 2016, and the Information Technology Act, 2000, which provide their own adjudicatory mechanisms.

9.9 Advantages and Limitations of ADR Mechanisms

Advantages:

- Reduction in the backlog of cases before civil courts.
- Speedier resolution of disputes compared to ordinary litigation.
- Cost-effectiveness for the parties involved.
- Preservation of business and personal relationships through cooperative processes such as conciliation.
- Flexibility of procedure suited to the nature of the dispute.
- Confidentiality of proceedings, particularly valuable in commercial and family disputes.
- Choice of a decision-maker with relevant subject-matter expertise, particularly in arbitration.

Limitations:

- Conciliation depends entirely on the willingness of both parties to cooperate; it may fail if one party is unwilling to negotiate in good faith.
- Arbitration, while faster than litigation, can still become expensive and prolonged in complex, high-value commercial disputes, particularly where multiple rounds of challenge to the award are pursued in court.
- Limited scope for appeal in arbitration can occasionally result in perceived injustice if the arbitrator errs on facts, since courts can only interfere on narrow grounds.
- Adjudicating authorities may sometimes lack adequate infrastructure or may face the same delays that afflict ordinary courts, undermining the intended speed of the process.
- Power imbalances between parties (for example, between an employer and employee, or a large corporation and an individual consumer) may affect the fairness of outcomes in conciliation in particular, since it relies on negotiation.

9.10 SUMMARY

This unit has examined three important mechanisms of dispute resolution — conciliation, arbitration, and adjudication — situating them within the broader framework of Alternative Dispute Resolution. Conciliation was explained as a voluntary, facilitative process governed in India under Part III of the Arbitration and Conciliation Act, 1996, in which a neutral conciliator assists parties in reaching a settlement, but cannot impose a binding decision; the resulting settlement agreement, once signed, carries the same legal status as an arbitral award. Arbitration was described as a consensual yet adjudicatory process, founded upon a valid arbitration agreement, in which the arbitral tribunal renders a binding award enforceable as a decree of the court, subject only to limited grounds of challenge under Section 34 of the Act. Different kinds of arbitration — ad hoc, institutional, domestic, international commercial, statutory, and fast-track — were discussed, along with the key stages of the arbitral process, from the appointment of arbitrators to the enforcement of the award.

Adjudication was explained in both its generic sense (any binding determination by an authoritative body) and its specific statutory sense, whereby designated adjudicating officers or authorities under particular legislations — such as the Industrial Disputes Act, 1947, the Consumer Protection Act, 2019, and the Information Technology Act, 2000 — resolve specified categories of disputes through a quasi-judicial process that need not rest on the consent of both parties. A comparative table was presented to highlight the differences between the three mechanisms on parameters such as the nature of the process, the role of the third party, the basis of jurisdiction, enforceability, confidentiality, cost, and scope for appeal. Finally, the unit surveyed the broader legislative framework in India supporting ADR, including Section 89 CPC, the Legal Services Authorities Act, 1987 (Lok Adalats), and the Commercial Courts Act, 2015, and considered both the advantages (speed, cost-effectiveness, flexibility, confidentiality, relationship preservation) and the limitations (dependence on cooperation, possibility of delay in complex arbitrations, restricted appellate scope, and potential power imbalances) of these mechanisms.

9.11 GLOSSARY

- **Adjudicating Officer**: A person or authority designated under a specific statute to determine disputes or impose penalties within that statute's framework, exercising quasi-judicial powers.
- **Adjudication**: The process of resolving a dispute through the exercise of judicial or quasi-judicial authority, resulting in a binding decision.
- **Alternative Dispute Resolution (ADR)**: A collective term for methods of resolving disputes outside the traditional court litigation process, including negotiation, mediation, conciliation, and arbitration.
- **Arbitral Award**: The final decision rendered by an arbitral tribunal, which is binding upon the parties and enforceable as a decree of the court.
- **Arbitration**: A method of dispute resolution in which parties refer their dispute, by agreement, to one or more arbitrators, whose decision is final and binding.

- **Arbitration Agreement**: A written agreement between parties to submit present or future disputes arising out of a defined legal relationship to arbitration.
- **Arbitral Tribunal**: A sole arbitrator or a panel of arbitrators constituted to adjudicate a dispute referred to arbitration.
- **Conciliation**: A voluntary process in which a neutral third party (conciliator) assists disputing parties to arrive at a mutually acceptable settlement, without imposing a binding decision.
- **Conciliator**: A neutral person who facilitates communication and negotiation between disputing parties in a conciliation process.
- **Institutional Arbitration**: Arbitration administered by a specialized arbitral institution under its own established rules and procedures.
- **Kompetenz-Kompetenz**: The principle empowering an arbitral tribunal to rule on its own jurisdiction, including objections to the existence or validity of the arbitration agreement.
- **Litigation**: The process of resolving disputes through the ordinary hierarchy of civil courts.
- **Lok Adalat**: A forum under the Legal Services Authorities Act, 1987, for amicable settlement of disputes, whose award is deemed to be a decree of a civil court.
- **Mediation**: A facilitative process similar to conciliation, in which a neutral mediator assists parties in negotiating a settlement.
- **New York Convention, 1958**: An international treaty facilitating the recognition and enforcement of foreign arbitral awards among signatory states, including India.
- **Quasi-Judicial**: Describing a body or authority that, while not a court, exercises powers and follows procedures similar to those of a court, particularly the principles of natural justice.

9.12 REFERENCES

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9.13 SUGGESTED READINGS

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3. Fali S. Nariman, *India's Legal System: Can It Be Saved?* Penguin Books, New Delhi.
4. Redfern and Hunter, *Law and Practice of International Commercial Arbitration*, Sweet & Maxwell, London (latest edition).
5. M.P. Jain, *Labour Law and Labour Relations*, LexisNexis, New Delhi.

9.14 SHORT ANSWER QUESTIONS

1. Define conciliation and state its statutory basis in India.
2. What is the essential difference between the role of a conciliator and that of an arbitrator?
3. State any four essential requirements of a valid arbitration agreement.
4. Explain the meaning of "kompetenz-kompetenz" in the context of arbitration.
5. What is meant by "fast track arbitration"? When was this concept introduced into Indian law?

9.15 TERMINAL QUESTIONS

1. "Conciliation, arbitration, and adjudication represent three distinct points on the spectrum of dispute resolution, ranging from facilitative negotiation to binding determination." Discuss this statement with reference to the nature, process, and legal consequences of each mechanism.
2. Explain in detail the process of arbitration under the Arbitration and Conciliation Act, 1996, from the constitution of the arbitral tribunal to the enforcement of the arbitral award.
3. Critically examine the concept of statutory adjudication in India, with special reference to the mechanisms provided under the Industrial Disputes Act, 1947 and the Consumer Protection Act, 2019.
4. Compare and contrast conciliation and arbitration as methods of alternative dispute resolution, highlighting at least six points of distinction.
5. "The settlement agreement arrived at through conciliation proceedings has the same status and effect as an arbitral award." Explain this statement with reference to the relevant statutory provisions.

9.16TRUE OR FALSE

1. A conciliator has the power to impose a binding decision on the parties even if they do not agree to the terms proposed. **(False)**
2. An arbitration agreement must necessarily be in writing under the Arbitration and Conciliation Act, 1996. **(True)**
3. A settlement agreement reached through conciliation has no binding legal effect and can be freely disregarded by either party. **(False)**
4. Statutory adjudication under specific legislations, such as the Industrial Disputes Act, 1947, does not always require the consent of both parties for the process to be initiated. **(True)**
5. Under Section 36 of the Arbitration and Conciliation Act, 1996, an arbitral award is enforced in the same manner as a decree of the court once the time for challenging it has expired. **(True)**

UNIT 10

EMPLOYEE WELFARE AND SOCIAL SECURITY

Unit Structure

10.1 Introduction

Human resources constitute the most valuable asset of any organization. The efficiency, productivity, and sustainability of an enterprise largely depend upon the physical, mental, and social well-being of its workforce. Employees who work under safe, healthy, and supportive conditions are more motivated, productive, and committed to organizational goals. Consequently, modern organizations recognize employee welfare and social security not merely as statutory obligations but as essential components of human resource management and sustainable development.

The concept of employee welfare encompasses all facilities, services, and amenities provided by employers, governments, or other agencies to improve the working and living conditions of employees. Employee welfare aims to create a healthy work environment, improve employee satisfaction, enhance productivity, reduce absenteeism, and foster harmonious industrial relations. Closely associated with employee welfare is the concept of social security, which seeks to protect individuals against economic and social risks arising from unemployment, sickness, disability, maternity, employment injury, old age, and death. Social security reflects the principle that every worker deserves a minimum level of economic security and social protection throughout different stages of life. It acts as a safety net that enables workers and their families to maintain a reasonable standard of living during periods of financial uncertainty.

In India, employee welfare and social security derive constitutional support from the Fundamental Rights and the Directive Principles of State Policy (DPSPs). Articles 14, 16, 21, 23, and 24 protect equality, dignity, and freedom from exploitation, while Articles 38, 39, 41, 42, 43, and 43A direct the State to promote social justice, humane working conditions, maternity relief, living wages, and workers' participation in management. These constitutional ideals have shaped India's labour welfare legislation and social security policies.

In recent years, the Government of India has undertaken significant labour law reforms through the enactment of four Labour Codes, namely the Code on Wages, 2019, the Industrial Relations Code, 2020, the Occupational Safety, Health and Working Conditions Code, 2020, and the Code on Social Security, 2020. These Codes seek to consolidate numerous labour laws, simplify compliance, expand social security coverage, and improve ease of doing business while safeguarding workers' rights.

10.2 Objectives

After studying this unit, learners will be able to:

- Explain the meaning and concept of employee welfare.
- Distinguish between various types of employee welfare measures.

- Examine the constitutional and legal framework relating to employee welfare and social security in India.
- Analyse major employee welfare measures and social security schemes available to workers.
- Identify contemporary challenges affecting labour welfare and social protection.

10.3 Concept of Employee Welfare

10.3.1 Meaning and Definition

Employee welfare refers to the various facilities, services, and benefits provided to employees to improve their physical, mental, social, and economic well-being. These measures are designed to create favourable working conditions, promote employee satisfaction, enhance productivity, and improve the quality of work life. The International Labour Organization (ILO) considers labour welfare as the services, facilities, and amenities established in or near workplaces that enable employees to perform their work in healthy, safe, and congenial conditions while contributing to their overall well-being.

According to the Committee on Labour Welfare (Government of India, 1969), labour welfare includes all services, amenities, and facilities provided to workers in addition to wages, with the objective of improving their health, efficiency, economic status, and social well-being. Employee welfare extends beyond statutory obligations. Progressive organizations voluntarily introduce additional welfare measures such as health insurance, flexible working hours, counselling services, wellness programmes, recreational facilities, scholarships for employees' children, transportation, housing assistance, and work-life balance initiatives.

Thus, employee welfare encompasses every effort aimed at improving the quality of employees' working and living conditions.

10.3.2 Importance of Employee Welfare

Employee welfare plays a vital role in ensuring sustainable industrial growth and social justice. Its significance extends beyond individual employees to organizations, society, and the national economy.

a) Improves Employee Health: Welfare measures such as healthcare facilities, occupational safety, nutritious food, sanitation, and health insurance help maintain the physical and mental well-being of employees. Healthy workers are more productive and less likely to suffer from occupational illnesses and accidents.

b) Enhances Productivity: Employees working in safe, comfortable, and supportive environments perform their duties more efficiently. Welfare measures increase motivation, improve concentration, and reduce workplace stress, thereby contributing to higher productivity.

c) Promotes Job Satisfaction: Employees who receive welfare benefits beyond wages generally experience greater job satisfaction and organizational commitment. Such benefits create a positive work culture and improve employee morale.

d) Reduces Absenteeism and Labour Turnover: Proper welfare facilities reduce work-related illnesses, accidents, and dissatisfaction, thereby lowering absenteeism and employee turnover. Organizations benefit from improved workforce stability and reduced recruitment costs.

e) Strengthens Industrial Relations: Employee welfare contributes to mutual trust between employers and employees. Workers who feel valued are more likely to cooperate with management, resulting in fewer industrial disputes and improved industrial harmony.

f) Promotes Social Justice: Employee welfare helps reduce social and economic inequalities by ensuring access to healthcare, education, housing, maternity benefits, and social protection. It reflects the principles of equity and human dignity enshrined in the Constitution.

g) Enhances Organizational Reputation: Organizations known for effective employee welfare policies often attract and retain skilled employees more easily. Good welfare practices also strengthen corporate image and contribute to corporate social responsibility.

h) Supports Sustainable Development: Employee welfare contributes to inclusive economic growth by improving human capital, reducing poverty, and promoting decent work. It aligns with Sustainable Development Goal 8, which emphasizes productive employment and decent working conditions for all.

10.3.3 Types of Employee Welfare

Employee welfare measures may be classified on the basis of their location, legal status, and nature of implementation.

a) Intra-Mural Welfare

Intra-mural welfare refers to welfare facilities provided within the workplace or factory premises.

These generally include:

- drinking water facilities;
- sanitation and toilets;
- canteens;
- first-aid and medical rooms;
- safety equipment;
- rest shelters;
- washing facilities;
- crèches;
- lighting and ventilation.

These facilities directly improve the working environment and ensure employees' safety and comfort during working hours.

b) Extra-Mural Welfare

Extra-mural welfare includes facilities provided outside the workplace to improve employees' overall quality of life.

Examples include:

- housing facilities;
- educational assistance;
- transportation;
- recreational clubs;
- sports facilities;
- scholarships;
- holiday homes;
- counselling services;
- community welfare programmes.

Such measures strengthen employees' social well-being and contribute to long-term organizational loyalty.

c) Statutory Welfare

Statutory welfare refers to welfare measures that employers are legally required to provide under labour laws.

Examples include:

- occupational safety measures;
- working hour regulations;
- maternity benefits;
- social security contributions;
- health and welfare facilities;
- compensation for employment injuries.

Compliance with statutory welfare provisions ensures protection of workers' legal rights.

d) Voluntary Welfare

Voluntary welfare consists of benefits provided by employers beyond statutory requirements.

These may include:

- group health insurance;
- performance incentives;
- employee wellness programmes;
- flexible work arrangements;
- mental health counselling;

- educational sponsorship;
- childcare assistance;
- retirement planning;
- financial counselling.

Such initiatives improve employee engagement and strengthen employer-employee relationships.

10.4 Social Security: Meaning and Concept

10.4.1 Meaning and Definition of Social Security

Social security refers to a system of protective measures designed to safeguard individuals and their families against economic and social risks arising from contingencies such as sickness, maternity, employment injury, disability, unemployment, old age, and death. It seeks to ensure a minimum standard of living by providing financial assistance, healthcare, and income security during periods when individuals are unable to earn their livelihood.

The concept is based on the principle that every worker has the right to live with dignity and should not be deprived of basic necessities due to circumstances beyond their control. It is therefore regarded as one of the fundamental pillars of social justice and a welfare state.

According to the International Labour Organization (ILO), social security is "the protection that society provides for its members through a series of public measures against economic and social distress caused by the stoppage or substantial reduction of earnings."

Similarly, the Code on Social Security, 2020 aims to extend social security benefits to workers in both the organized and unorganized sectors, including gig workers and platform workers, thereby expanding the scope of labour welfare in India.

10.4.2 Characteristics of Social Security

Social security possesses several distinguishing characteristics that make it an essential component of labour welfare.

a) Protective in Nature: Its primary purpose is to protect workers against unforeseen risks that may affect their earning capacity.

b) Based on Social Justice: Social security reflects the constitutional commitment to equality, dignity, and welfare by ensuring protection for vulnerable sections of society.

c) Collective Responsibility: The responsibility for providing social security is generally shared among the State, employers, employees, and society.

d) Legal Recognition: Most social security measures are provided through legislation, making them enforceable legal rights rather than charitable benefits.

e) Universal Objective: Modern social security policies increasingly aim to provide protection to all workers, irrespective of their occupation or employment status.

10.4.3 Principles of Social Security

Effective social security systems are guided by several important principles.

a) Principle of Social Justice: Every worker deserves protection against economic hardship and social insecurity. Social security seeks to ensure equitable distribution of resources and opportunities.

b) Principle of Human Dignity: Social security recognizes that every individual has the right to live with dignity even during illness, disability, unemployment, or old age.

c) Principle of Collective Responsibility: Society collectively shares the responsibility of protecting workers from risks that individuals cannot adequately bear alone.

d) Principle of Equality: Benefits should be provided without discrimination based on gender, caste, religion, disability, or other grounds.

e) Principle of Comprehensive Protection: Social security should cover all major contingencies affecting a worker's livelihood, including health, employment injury, maternity, old age, disability, and death.

10.4.4 Constitutional Provisions

The Constitution of India does not expressly use the term "employee welfare" or "social security" as a fundamental right. However, several Fundamental Rights and Directive Principles collectively establish the constitutional basis for labour welfare.

a) Article 14 – Equality Before Law

Article 14 guarantees equality before the law and equal protection of the laws. Labour welfare legislation must operate fairly and without arbitrary discrimination.

b) Article 16 – Equality of Opportunity

Article 16 ensures equality of opportunity in matters of public employment. It promotes fair recruitment and prohibits discrimination in public service.

c) Article 21 – Right to Life and Personal Liberty

The Supreme Court has interpreted Article 21 broadly to include the right to live with dignity, health, livelihood, and safe working conditions. This provision forms the constitutional basis for several welfare measures protecting employees.

d) Article 23 – Prohibition of Forced Labour

Article 23 prohibits trafficking in human beings, begar, and all forms of forced labour. It protects workers from exploitation and ensures that labour is performed voluntarily.

e) Article 24 – Prohibition of Child Labour

Article 24 prohibits the employment of children below the age of fourteen years in factories, mines, and hazardous occupations, thereby protecting children's welfare and development.

f) Article 38

Article 38 directs the State to promote social, economic, and political justice and reduce inequalities in income and opportunities.

g) Article 39

Article 39 requires the State to ensure:

- adequate means of livelihood;
- equal pay for equal work;
- protection of workers' health and strength;
- prevention of exploitation of children.

These principles have guided labour welfare legislation in India.

h) Article 41

Article 41 directs the State to provide public assistance in cases of unemployment, old age, sickness, disability, and other situations of undeserved want, subject to its economic capacity.

i) Article 42

Article 42 requires the State to secure just and humane conditions of work and provide maternity relief. It forms the constitutional basis for maternity benefits and occupational safety legislation.

j) Article 43

Article 43 directs the State to secure living wages, decent working conditions, leisure, and opportunities for workers to enjoy a reasonable standard of life.

k) Article 43A

Inserted through the Forty-second Constitutional Amendment, Article 43A encourages workers' participation in the management of industries, thereby promoting industrial democracy.

10.4.5 Social Security Schemes in India

India has developed several statutory social security schemes to protect workers against various economic contingencies. Many of these schemes have now been consolidated under the Code on Social Security, 2020.

a) Employees' Provident Fund (EPF)

The Employees' Provident Fund is one of India's largest retirement savings schemes. It Provides financial security after retirement, encourage long-term savings, support employees during emergencies. Both employers and employees contribute to the fund, which accumulates with interest throughout the employee's service.

b) Employees' Pension Scheme (EPS)

The Employees' Pension Scheme provides monthly pension benefits after retirement. Major Benefits includes Retirement pension, Family pension, Widow pension, Children's pension, Disability pension. The scheme ensures regular income after retirement and supports dependents in case of the employee's death.

c) **Employees' Deposit Linked Insurance Scheme (EDLI):**

The EDLI Scheme provides life insurance coverage to employees covered under the EPF. It provides Financial assistance to nominees, Social security for employees' families, Insurance protection without separate premium by employees The scheme offers financial support to dependents in the event of an employee's death during service.

d) Employees' State Insurance (ESI) Scheme:

The ESI Scheme provides medical care and cash benefits to eligible employees. Major Benefits of this scheme includes Medical treatment, Sickness benefit, Maternity benefit, Disablement benefit, Dependants' benefit, Funeral expenses

The scheme protects workers against income loss caused by sickness, injury, or maternity.

e) Gratuity:

Gratuity is a lump-sum payment made by employers to employees as a reward for long and continuous service. Financial support after retirement, Recognition of long service, Social security after separation from employment. Gratuity promotes financial stability during retirement.

f) Maternity Benefits:

Maternity benefits protect the health and economic security of women employees. Major Benefits of this scheme Paid maternity leave, Medical bonus, Nursing breaks, Crèche facilities, Protection against dismissal during maternity leave. These benefits contribute to gender equality and improve maternal and child health.

g) Social Security for Unorganised Workers:

A significant proportion of India's workforce is employed in the unorganised sector, where access to social security has traditionally been limited. The Code on Social Security, 2020 seeks to expand coverage by providing for Registration of unorganised workers, Welfare schemes, Social security funds and Government-supported assistance programmes. These initiatives aim to reduce social and economic vulnerability.

h) **Atal Pension Yojana (APY):**

The Atal Pension Yojana is a government-backed pension scheme primarily aimed at workers in the unorganised sector. This scheme provides Income security after retirement, Encouraging voluntary pension savings, and Financial protection during old age The scheme provides guaranteed pension benefits depending upon the level of contribution.

10.5 Challenges in Employee Welfare and Social Security

Despite significant legislative reforms, several challenges continue to affect the effective implementation of employee welfare and social security programmes.

a) Informal Sector Employment: A large proportion of India's workforce remains employed in the informal sector, where workers often lack written contracts, job security, health insurance, pension benefits, and other social security protections.
b) Gig Economy and Platform Work: The rapid expansion of digital platforms has created flexible employment opportunities but also raised concerns regarding employment status, social security coverage, insurance, and labour rights. Ensuring adequate protection for gig workers remains an evolving policy challenge.
c) Labour Migration: Migrant workers frequently encounter difficulties in accessing welfare benefits due to mobility, documentation issues, and lack of portability of social security benefits across states.
d) Contract Labour: Contract workers often receive fewer welfare benefits than permanent employees despite performing similar work. Ensuring equitable treatment remains an important labour policy objective.
e) Gender Inequality: Women workers continue to face challenges such as unequal wages, workplace discrimination, inadequate childcare facilities, and limited representation in leadership positions. Strengthening gender-sensitive welfare policies is essential for achieving workplace equality.
f) Occupational Hazards: Employees engaged in mining, construction, manufacturing, healthcare, and chemical industries remain exposed to occupational risks despite legal safeguards.
g) g) Lack of Awareness: Many workers, particularly those in the informal sector, remain unaware of their legal rights and available welfare schemes. This limits the effectiveness of social security programmes.

10.6 Recent Developments and Future Reforms

The nature of employment has undergone significant transformation in recent decades due to globalization, technological advancement, digitalization, and changing business models. Consequently, employee welfare and social security systems must evolve to address emerging labour market challenges. India has initiated several reforms aimed at modernizing labour laws, expanding social security coverage, and improving workplace welfare.

a) **Labour Law Reforms:** One of the most significant developments in India's labour administration is the consolidation of numerous labour laws into four Labour Codes. These reforms seek to simplify compliance, improve ease of doing business, and strengthen workers' rights. The Labour Codes aim to balance economic growth with employee welfare by creating a more transparent and efficient regulatory framework.

b) **Expansion of Social Security Coverage:** Traditionally, social security benefits were largely limited to workers employed in the organized sector. However, the Code on Social Security, 2020 has broadened the scope of social protection by recognizing unorganized workers, gig workers, and platform workers. The key Initiatives which were taken are Registration of unorganized workers, Welfare schemes for gig and platform workers, Social security funds, Improved portability of benefits and Integration of technology in welfare delivery. These initiatives reflect India's commitment towards inclusive social protection.

c) **Digitalization of Labour Administration:** Digital technology has transformed labour governance by making welfare services more efficient and accessible. Some major Digital Initiatives are Online registration of workers, Electronic maintenance of records, Digital payment of benefits, Online grievance redressal systems, Unified labour portals, Digital compliance mechanisms.

d) **Corporate Social Responsibility (CSR) and Employee Welfare:** Corporate Social Responsibility has expanded the role of employers in promoting employee welfare beyond statutory obligations. Many organizations now invest in employee wellness programmes, mental health initiatives, skill development, diversity and inclusion, environmental sustainability;

Responsible corporate governance recognizes employees as key stakeholders in organizational success etc.

10.7 Summary

Employee welfare and social security are fundamental components of a just, productive, and inclusive labour system. Employee welfare encompasses a wide range of facilities and services designed to improve the physical, mental, social, and economic well-being of employees. These measures include healthcare, occupational safety, housing, education, recreation, transportation, work-life balance initiatives, and employee assistance programmes. Effective welfare policies contribute to higher productivity, improved industrial relations, reduced absenteeism, and enhanced organizational commitment.

Social security complements employee welfare by providing financial protection against contingencies such as sickness, maternity, disability, employment injury, unemployment, old age, and death. The country has also established several social security schemes, including the Employees' Provident Fund (EPF), Employees' Pension Scheme (EPS), Employees' State Insurance (ESI), Employees' Deposit Linked Insurance Scheme (EDLI), gratuity, maternity benefits, and welfare schemes for workers in the unorganized sector. The recognition of gig and platform workers under the Code on Social Security, 2020 marks a significant step toward expanding social protection.

Despite these advancements, several challenges remain, including informal employment, labour migration, gender inequality, limited awareness, inadequate implementation, and the changing nature of work due to technological developments. Addressing these challenges requires coordinated efforts by the government, employers, trade unions, civil society organizations, and employees themselves.

10.8 Glossary

Employee Welfare – Facilities, services, and benefits provided to employees to improve their physical, mental, social, and economic well-being.

Social Security – A system of protection that provides financial and social assistance against contingencies such as sickness, unemployment, disability, maternity, old age, and death.

Provident Fund (EPF) – A contributory retirement savings scheme providing long-term financial security to employees.

Employees' State Insurance (ESI) – A statutory social insurance scheme providing medical and cash benefits to eligible employees.

Occupational Safety – Measures adopted to prevent workplace accidents, injuries, and occupational diseases.

Gig Worker – A person who performs work outside traditional employer-employee relationships through digital platforms or short-term contracts.

Industrial Relations – The relationship between employers, employees, trade unions, and the government concerning employment matters.

Work-Life Balance – The ability of employees to effectively manage professional responsibilities along with personal and family life.

10.9 SAQs (Short Answer Questions)

1. Define employee welfare and explain its objectives.
2. Distinguish between statutory and voluntary welfare measures.
3. Explain the concept and importance of social security.
4. Discuss the significance of the Employees' State Insurance (ESI) Scheme.
5. What are the major challenges in implementing employee welfare programmes in India?

10.10 MCQs (Multiple Choice Questions)

1. Which Labour Code primarily deals with social security benefits for workers?

(a) Code on Wages, 2019
(b) Industrial Relations Code, 2020
(c) Code on Social Security, 2020
(d) Occupational Safety, Health and Working Conditions Code, 2020

2. Which of the following is a retirement savings scheme for employees?

(a) Employees' State Insurance Scheme
(b) Employees' Provident Fund
(c) Atal Pension Yojana only
(d) Gratuity Fund only

3. Which constitutional provision directs the State to secure just and humane conditions of work and maternity relief?

(a) Article 42
(b) Article 41
(c) Article 39
(d) Article 43A

4. Which of the following is an example of extra-mural welfare?

(a) Safe drinking water in the factory
(b) Protective equipment at the workplace
(c) Housing facilities for employees
(d) Fire safety equipment

5. The Employees' State Insurance Scheme primarily provides:

(a) Pension only
(b) Educational scholarships
(c) Housing loans
(d) Medical and cash benefits

Answers: 1.C 2.B 3.A 4.C 5.D

10.11 True/False

1. Employee welfare includes only monetary benefits provided to employees.
   Answer: False
2. Social security aims to protect workers against contingencies such as sickness, old age, and disability.
   Answer: True
3. The Code on Social Security, 2020 extends coverage to gig and platform workers.
   Answer: True
4. Occupational safety has no relation to employee welfare.
   Answer: False
5. Employee welfare contributes to higher productivity and better industrial relations.
   Answer: True

Answers: 1.F 2.T 3.T 4.F 5.T

10.12 Terminal Questions

1. Explain the concept, objectives, and importance of employee welfare in modern organizations.
2. Discuss the constitutional and legal framework governing employee welfare and social security in India.
3. Examine the major social security schemes available to employees in India.
4. Critically analyze the challenges relating to employee welfare and social security in the era of globalization and the gig economy.
5. Evaluate the impact of the Labor Codes on employee welfare and social security in India.

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UNIT 11

MATERNITY AND WORKPLACE PROTECTION LAWS

11.1 Introduction

The maternity benefit law of today draws inspiration from the colonial laws. In 1922 an attempt was made by Kanji Dwarkadas to introduce maternity benefit for working women. But the government of the time rejected it stating that such a law could only be made by the central government. Two years later, in 1924, MM Joshi presented a bill to give vacations for six weeks to woman before and after childbirth. It could not be passed due to strong oppositions from mill owners as well as the colonial administration. In 1929, the legislative council passed Bombay Maternity Act. After Independence the Maternity Benefit Act, 1961 was passed on December 12, 1961 by the Parliament of India. This statute protects women's employment during the period of maternity and entitles her of maternity benefit i.e fully paid wages during her absence from work.". It draws strength from preamble which seeks to provide social and economic fairness to all and Articles 14 and 15 ensuring gender equality and providing special protection for women respectively.

This Act gives effect to Article 42 of the Constitution of India which reads as follows: "the state should ensure just and humane working conditions and maternity benefits The Maternity (Amendment) Bill 2017 amended the Act of 1961. Passed by Lok Sabha on 9 March 2017 and Rajya Sabha on 11 August 2016, the Bill received the assent of the President on 27 March 2017. The provisions of The Maternity Benefit (Amendment) Act 2017 were implemented from 1 April 2017. The provisions related to crèche facility were enforced from 1 July 2017.

11.2 Objectives

To know the law that regulates the employment of women in certain establishments for some periods before and after child birth.

To understand maternity and some other benefits provided by the law.

11.3 Employment of women or work by women prohibited during certain time

Section 4 prohibits the employer from knowingly employing a woman in any establishment during six weeks immediately after her delivery, miscarriage or medical termination of pregnancy. Further without prejudice to the provisions of section 6, no pregnant woman shall, during the period of one month immediately preceding the period of six weeks before the date of her expected delivery and during the period of six weeks immediately preceding her delivery when she does not avail the leave of absence, on a request being made by her, be required by her employer to do any work which:

1. is of arduous nature;
2. involves long hours of standing;
3. in any way is likely to interfere with her pregnancy or the normal development of foetus or likely to cause her miscarriage or otherwise adversely affect her health.

11.4 Right to payment of Maternity Benefit

Section 5 defines Maternity Benefit. Its states that the maternity benefit to which every pregnant women is entitled, is a payment to a worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for 6 weeks immediately after the day of her delivery. No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom maternity benefit is claimed for at least 160 days in the twelve months immediately preceding the date of expected delivery.

Maximum period for which a woman is entitled to maternity benefit shall be 26 weeks of which not more than 8 weeks shall proceed the date of her expected delivery. The maximum period for which a woman is entitled to maternity benefit when having two or more than two surviving children shall be 12 weeks out of which not more than 6 weeks shall proceed the date of her expected delivery.

Where a woman dies during this period, the maternity benefits shall be payable only for the days up to and including the day of the death. Where a woman dies during her delivery or during the period of immediately following the date of a delivery leaving behind in either case the child, the employee shall be liable to pay the Maternity Benefit for the entire period of six weeks immediately following the day of her delivery but if the child dies during this period, then for the days up to and including the day of the death of the child.

In case a woman legally adopts a child below the age of 3 months or a commissioning mother shall be entitled to Maternity Benefit for a period of 12 weeks from the date the child is handed over to the adopting mother or the commissioning mother.

In a case where the nature of work a signed to the women is such that she may work from home, the employer may allow her to do so after availing the Maternity Benefit for such period of time as is mutually agreeable to the employer and the woman.

11.5 Continuous of payment of Maternity Benefit

Section 5A of the Maternity Benefit Act 1961 provides that a woman is entitled to Maternity Benefit under this act even if she is employed in factory or other establishment to which the Employees State Insurance Act applies until she qualifies for maternity benefit under Section 50 of that Act.

11.6 Payment of Maternity Benefit in certain cases

Section 5 B states that every woman –

1. Who is employed in a factory or other establishment to which the provisions of the Employees State Insurance act 1948 apply;
2. Whose wages for a month exceed the amount specified in Section 2 (9)(b) of that Act
3. Who full fills the conditions specified in Section 5(2),

shall be entitled to the payment of maternity benefit under this Act.

11.7 Notice of claim for maternity benefit and payment of it

Section 6 states that a woman who is employed in an establishment and who is entitled to get maternity benefit under the provisions of the Maternity Benefit Act shall give a written notice to her employer stating that the maternity benefit and other amount to which she may be entitled under this Act may be paid to her or any other person nominated in the notice. Such woman shall not work in any establishment during the period for which she receives maternity benefit. Where the women is pregnant the notice shall state the date from which she will be absent from work. This date cannot be earlier than 6 weeks from the date of her expected delivery. A woman who has not given notice when she was pregnant may give such a notice as soon as possible after delivery.

The employer shall pay the amount of maternity benefit for the period preceding the date of her expected delivery in advance to the women, when the women produces the proof that she is pregnant. After the delivery of the child, the women shall submit a proof to the employer that she has delivered a child. The employer shall pay the amount due as Maternity Benefit within 48 hours of receiving the proof.

The failure on part of a pregnant women to give notice under the section does not dis entitle her from the Maternity Benefit or any other amount due under this Act.

11.8 Payment of Maternity Benefit in case of the death of a woman

Section 7 of Maternity Benefit Act 1961 provides that if a woman who is entitled to receive Maternity Benefit or any other amount under this act dies before receiving such Maternity Benefit or amount or where the employer is liable to pay Maternity Benefit under proviso 2 of section 5(3), the employer shall pay such benefit to the person nominated by the women in the notice given under section 6. In case no such person has been nominated by the women in the notice, the Maternity Benefit or other amount payable under this act, shell be paid to her legal representative.

11.9 Payment of medical bonus

Section 8 provides that every woman who is entitled to Maternity Benefit under this act shall also be entitled to receive medical bonus of rupees one thousand from her employer, if no prenatal consignment or post-natal care is provided for by the employer free of charge. The central government may increase medical bonus by issuing a notification in official gazette not earlier than 3 years' subject to a maximum of rupees twenty thousand.

11.10 Leave for miscarriage

Section 9 makes provisions for leave for miscarriage or medical termination of pregnancy. The woman is entitled for leave with wages at the rate of Maternity Benefit in case of miscarriage or medical termination of pregnancy and on production of such proof as may be required. The period for which the women is entitled for leave with wages is 6 weeks immediately following the day of her miscarriage or medical termination of pregnancy.

11.11 Leave for tubectomy operation

Section 9A states that Where a woman undergoes Tommy operation she is entitled to leave with wages for a period of two weeks immediately following the day of her tubectomy operation. The rate of wages to be paid for leave for such operation is the same as the rate of Maternity Benefit.

11.12 Other leaves

In addition to the maternity leave, leave for miscarriage, leaf for medical termination of pregnancy and tubectomy operation, section 10 provides for some other types of leaves to which a woman is entitled. A woman who is suffering from illness arising out of pregnancy, delivery premature childbirth, miscarriage, medical termination of pregnancy is entitled to additional leave with wages for a maximum period of month. The rate of wages for this additional leave shall be same as the rate of Maternity Benefit.

11.13 Nursing breaks

Every woman who have delivered a child and has returned to her duty shanti allowed interval for the rest and two brakes of prescribe duration for nursing until the child attains the age of 15 months. This profession has been made under section 11 of the Act.

11.14 Creche Facility

Every establishment having 50 or more employees shall have the facility of scratch either separately or along with common facilities. The employer shall allow four visits in a day to the women which shall also include the interval for rest allowed to her. Every establishment in writing and electronic regarding every benefit available under the ACT.

11.15 Dismissal during absence of pregnancy

When a woman absents herself from work in accordance with the provisions of this Act,it shall be unlawful for her employer to dismiss her or discharge her during such absence or because of such absence. it shall be unlawful for her employer to give notice of discharge or dismissal on such a day that the notice will expire during such absence. Further changing the conditions of service to her disadvantage during the absence of women on account of pregnancy shall also be unlawful. Even if a woman is discharged or dismissed at any time there in her pregnancy, she would still be entitled to the Maternity Benefit or the medical bonus except in cases where the dismissal is for any prescribed cross misconduct. Any woman deprived of Maternity Benefit or medical bonus or both 60 days from the date on which the order of such deprivation is communicated to her. The decision of the appellate authority shall be final.

11.16 Deduction of wages

No deduction from the normal and usual daily wages of a woman entitled to Maternity in benefit shall be made only because of the reason that:

1. The nature of work assign to her by virtue of the provisions of section 4(3);or
2. Breaks for nursing the child allowed to her under section 11

11.17 Inspectors

Section 14 of Maternity Benefit Act 1961 provides for the appointment of inspectors by the appropriate government by issuing a notification in the official gazette. Section 15 lay down the following powers and duties of inspectors. However, these powers are not absolute in nature.

An inspector may enter any establishment which employees given to the women, with such assistant who are in the service of government of any local or other public authority, at all reasonable time for the purposes of the registers, records, and notices required to be kept or exhibited by this Act and require the production for inspection.

He may examine any person whom he finds in the place and who he thinks is employed in the establishment. But he cannot compel any person to answer any question or give any evidence having the potential to incriminate him. He may require the employer to give information regarding the name and addresses of the women employed, payments made to them and application or notice received from them under this Act. He may take copies of any registers and records or notices or any portion thereof. Section 16 provides that every Inspector appointed under this act shall be deemed to be Public Servant.

Section 17 empowers the inspector to direct certain payments to be made to a woman under this Act.

Any woman claiming that maternity benefit or any other amount to which she is entitled has been in properly with health by the employer may make a complaint to the inspector. The inspector of a complaint and enquiry or cause an enquiry to be made and if he is satisfied that the payment has wrongly withheld, may direct the payment to be made in the accordance with his orders.

Section 22 provides for penalty for obstructing inspector. It states that the following acts shall be punishable with imprisonment which may extend up to 3 months to rupees 500:

1. Failure to produce on demand by the Inspector any register or document kept in custody of the person in pursuance of this act or rules made their under; and

2 concealing or preventing any person from appearing before or being exam by an inspector.

8.18 Forfeiture of Maternity Benefit

Section 18 provides that if a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 , for any period during such authorised absence, shall forfeit her claim to maternity benefit for such period.

11.19 Exemption of establishments

Section 26 states that if the appropriate government is satisfied that having regard to an establishment or a class of establishments providing for grant of benefits which are not less favorable than those provided in this Act, it may by notification in the official gazette exempt such establishments or class of establishments from the operation of any or all provisions of this Act or rules made their under.

11.20 Summary

It is often said that women empowerment cannot be achieved without ensuring financial independence of women. The number of women needs to be increased in the workforce. The traditional gender roles of women provide hindrance to achieve this. Therefore, it is the responsibility of the society to provide conducive conditions that help women balance her role as the creator of future human generation and at the same time be economically independent. The Maternity Benefit Act of 1961 is formulated based on this principle. The Global Maternity Convention hosted by the International Labour Organisation in 2000 induced amendment in the maternity law in India. The 2017 amendment to maternity benefit law is hailed as one of the most progressive pieces of legislations in the area of women empowerment. It provides for extended paid leave, childcare facilities and visiting privileges for mothers. However a segment of the society criticizes it on the ground that the employer bears increased economic obligation.

11.21 Glossary

The Maternity Benefit Act, 1961 in Section 2 defines the following term:

1. Commissioning mother (Section 2(ba), The Maternity Benefit Act, 1961) means a biological mother who uses her egg to create an embryo implanted in any other woman;

2. Delivery (Section 2(c), The Maternity Benefit Act, 1961) means the birth of a child;

3.Employer (Section 2(d), The Maternity Benefit Act, 1961) means— (i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

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

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

4. Establishment (Section 2(e), The Maternity Benefit Act, 1961) means—

(i) a factory;

(ii) a mine;

(iii) a plantation;

(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(iv) a shop or establishment; or

(v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable;]

5. Miscarriage (Section 2(j), The Maternity Benefit Act, 1961) means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (45 of 1860);

6. Wages (Section 2(n), The Maternity Benefit Act, 1961) means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes—

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

(2) incentive bonus; and

(3) the money value of the concessional supply of food grains and other articles, but does not include— (i) any bonus other than incentive bonus; (ii) over-time earnings and any deduction or payment made on account of fines; (iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and (iv) any gratuity payable on the termination of service;

7. Woman (Section 2(o),The Maternity Benefit Act, 1961) means a woman employed, whether directly or through any agency, for wages in any establishment.

11.22 SAQ

a) What is the objective of Maternity Benefit Act?

b) Explain the right to payment of maternity benefit.

Fill in the blanks

a) **_________**means a biological mother who uses her egg to create an embryo implanted in another woman.

b)" establishment" is defined under Section _________ of the Maternity Benefit Act.

True or False

a) A woman is not entitled to leave for miscarriage.

b) Maternity benefit is the right of every woman.

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11.25 Terminal and Model Questions

a) Discuss the maternity and other leaves to which a woman is entitled under "Maternity Benefit Act".

b) Explain the payment of maternity benefit.

Answers

SAQ

a) para 8.2

b) para 8.4

Fill in the blanks

a) Commissioning mother

b) 2(e)

True or False

a) False

b) True

UNIT 12

EQUAL REMUNERATION AND GENDER JUSTICE

12.1 Introduction

The objective of The Equal Remuneration Act is to provide for the payment of equal remuneration irrespective of the gender. This Act aids at preventing discrimination, in the payment of remuneration on the ground of sex against the women, in particular.

This Act gives effect to Article 39(d) of the Constitution of India and the Equal Remuneration Convention 1951 of International Labour Organisation. Article 39(d) of the Indian Constitution provides that the state shall direct policy towards securing that there is equal pay for equal work for both men and women. Remuneration Convention provides for the equal remuneration for men and women workers for the same or the similar work done which is of equal value. On 26 September 1975 by the President of India issued an ordinance. This ordnance provided for the payment of equal remuneration to men and women workers for the same work on the work of a similar nature. It was later on replaced by The Equal Remuneration Act in 1976.

The Minimum Wages Act was passed for the welfare of the labour. This Act has been enacted to secure the welfare of workers in a competitive market by providing a minimum limit of wages in certain employment. Draft Convention on the question of minimum wages was adopted at the International Labour conference held in Geneva in 1928. Article 43 of the Indian Constitution provides for securing living wages to labourers.

12.2 Objectives

To know the law enacted for providing equality of pay for equal work between men and women.

To know minimum rate of wages to be paid to workers discharging same work irrespective of their gender.

12.3 Equal Remuneration Act

9.3.1 Payment Of Remuneration At Equal Rates To Men And Women Workers

According to Section 4 it is the duty of every employer to pay equal remuneration to men and women workers;

a. for the same work, or

b. work of similar nature

Section 4(1) states that no employer shall pay to any worker employed by him in establishment or employment, remuneration at less favourable rate the those at which the remuneration is made by him to the workers of opposite sex in such establishment or employment for performing the same work or a work of similar nature. It is immaterial whether the remuneration is paid in cash or kind. In *State of M.P. v Pramod Bhartiya* 1993 I LLJ 490 9SC), the SC held that the lecturers working in Higher Secondary Schools performed different duties from non-technical lecturers in Technical Schools. So the difference in their pay scale is justified.

Section 4(2) states that for complying with the provisions of section 4(1) the employer shall not to reduce the rate of remuneration of any worker.

Section 4(3) provides that in those establishments or employment where the rate of remuneration payable before the commencement of this Act for men and women workers for the same work or work of similar nature is different only on the ground of sex then the higher rate of remuneration from the date of the commencement of this Act shall prevail. Section 16 of the Act allows difference of remuneration of men and women if it is based on factors other than sex.

The Supreme Court in *Air India v Nargesh Meerza* (1981)4 SCC 335 held that the benefits conferred on the females under Section 4 of the Equal Remuneration Act are not absolute and unconditional.

12.3.2 No discrimination by employee while recruiting men and women workers

Section 5 provides that no employer shall make any discrimination against women while making recruitment for the same work or work of a similar nature; or in any condition of service subsequent to recruitment like promotions training or transfer. Section 5 does not affect any priority or reservation for Scheduled Castes, Scheduled Tribe or ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the post in an establishment for employment.

12.3.3Advisory Committee

Section 6 provides for the constitution of Advisory Committee by the appropriate government. The purpose of this advisory committee is to provide increasing employment opportunities for women. Advisory Committee shall consist of a minimum of 10 persons out of which at least 50% are to be women.

While giving any advice, the Advisory Committee shall take into consideration the number of women were employed in a concerned establishment or employment, the nature of the work, suitability of women for employment, need for providing increasing employment opportunities for women and such other factors as the committee may be fit.

The Advisory Committee shall regulate its own procedure. The appropriate government issues the directions which it thinks are proper after considering the advice tendered to it by the Advisory Committee with respect of employment of women workers.

12.3.4Authorities to hear and decide claims and complaint

Section 7(1) provides for the power of appropriate government to appoint authorities for hearing and deciding claims and complaints by issuing a notification in the official gazette. The appropriate government may appoint an officer not below the rank of a Labour Officer for the hearing and deciding-

a. complaints regarding the contravention of any provision of The Equal Remuneration Act 1976;

b. claims arising out of non-payment of wages at equal rate to men and women workers for the same work or work of a similar nature.

The claim is decided by the authority after giving an opportunity of being heard to the claimant and the employer. The authority appointed under section 7(1) has all the powers of a civil court under Section 195 Chapter XXVI of The Code Of Civil Procedure 1908 which includes:

a. taking evidence, and

b. enforcing the attendance of witnesses and

c. compelling the production of documents.

12.3.5Appellate Authority

The Appellate Authority is provided for under section 7(6). The appropriate government specifies by issuing a notification in the official gazette, the appellate authority to which any employer or worker aggrieved by an order of the authority appointed under section 7(1) make an appeal. The appeal shall be made within 30 days from the date of order. This authority shall hear the appeal and may confirm, modify or reverse the order appealed against. If the appellate authority is satisfied that the appellant was prevented by sufficient cause from making the appeal within the period specified in section 7(6), it may allow the appeal to be preferred within a further period of 30 days but not thereafter.

12.3.6 Maintenance of registers

Section 8 provides that it is the duty of every employer to maintain registers and other documents in relation to the workers employed by him.

12.3.7 Inspectors

(1) The appropriate Government may, by notification, appoint such persons as it think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.

(2) Every Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

(3) An Inspector may, at any place within the local limits of his jurisdiction, --
(a) enter, at any reasonable time with such assistance as he thinks fit, any building, factory, premises or vessel:

(b) require any employer to produce any register, mister-roll or other documents relating to the employment of workers, and examine such documents;
(c) take on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with:
(d) examine the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be, or to have been a worker in the establishment;
(e) make copies, or take extracts from, any register or other document maintained in relation to the establishment under this Act.

(4) Any person required by an Inspector to produce any register or other document or to give any information shall comply with such requisition.

12.3.8 Penalties (Section 10)

(1) If after the commencement of this Act, any employer, being required by or under this act, so to do—

(a) omits or fails to maintain any register or other document in relation to workers employed by him, or

(b) omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or

(c) omits or refuses to gives any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or

(d) omits or refuses to give any information, he shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.

(2) If, after the commencement of this Act, any employer—

(a) makes any recruitment in contravention of the provisions of his Act, or
(b) makes any payment or remuneration at unequal rates to men and women worker, for the same work or work of a similar nature, or

(c) makes any discrimination between men and women workers in contravention of the provisions of this Act, or

(d) omits or fails to carry out any direction made by the appropriate Government under sub-section (5) of Section 6. he shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

(3) If any person being required so to do, omits or refuses to produce to an Inspector any register or other document or to give any information, he shall be punishable with fine, which may extend to five thousand rupees.

12.3.9 Offences by companies (Section 11)

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

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

12.4 Minimum Wages Act

12.4.1 Fixation of minimum rates of wages

Section 3 lays down that the appropriate government shall be empowered to fix the minimum rates of pages payable who employees employed in an employment specified in Part 1 or Part II of the Schedule and in an employment added to either part by notification under Section 27. The appropriate government may in respect of the employees who are employed in any employment specified in Part II of the Schedule fix fix sat rates for a part of the state or the whole of the state.

The appropriate government shall review the minimum rates of wages to fix at revise the minimum rates at such intervals not exceeding 5 years as it may think it. Are revised, the minimum rates in force immediately before the expiry of the period of 5 years.

In respect of any schedule environment in which there is there are less than 1000 employees in such employment in the whole state. Of employees the minimum rates of pages' payable to the employees in such employment.

The government may fix the following as per Section 3(2):

a) a minimum rate of wages for time work
b) a minimum rate of wages for piece work
c) a minimum of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis which is known as "a guaranteed time right".
d) a minimum rate to apply in substitution for the minimum rate which would otherwise be applicable it respects of overtime work done by the employees which is known as overtime.

Infixing or revising minimum rate of pages under section 3 a different minimum rate of pages maybe fixed for-

a) different scheduled employment
b) different classes of work in the same schedule employment
c) adults, adolescents, children and apprentice
d) different localities

Minimum rates of wages may be fixed by one or more of the following page periods namely-

a) by the hour
b) by the day
c) by the month or
d) by such other longer which period as maybe prescribed

In the case of *Private Hospital and Nursing Homes Association* versus *Karnataka* W.A. No 1611/ 2019 the Karnataka High Court relied on the decision of the Supreme Court of India in the matter of *Bhikusha Yamasa Kshatriya* versus *Sangamner Aloka Taluka Bidi Kamgar*

Union AIR 1963 SC 806 different rates of minimum wages can be fixed for different localities in the same state.

12.4.2 Minimum Rate of Wages

Section 4 provides that any minimum rates of wages fixed or revised by the appropriate government me consist of a basic rate of wages and special allowance at a rate to be adjusted at such intervals and in such manner as the appropriate government made direct to Accord as practical with the variation in which the cost of living index number applicable to search workers or a basic rate of pages with or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities where so authorised or, and all-inclusive rate alloy for the basic rate because cost of living allowance and the cash of the concessions if any in *Karnataka film Chamber of Commerce versus state of Karnataka* (1987) ILLJ 182(Karn) it was held that the language of Section 4 does not itself to the interpretation that a minimum wage under section 41necessarily should consist of a basic rate of pages and their less alarms.

Non relevant considerations in fixation of minimum wages:

a. the following considerations are not relevant in fixation of wages-
b. and the fact than find difficult to carry on his business on the basis of minimum wages;
c. the financial capacity of the employee;
d. the fact of the employer company having in curd losses during the previous years;
e. employer’s difficulties in importing raw materials;
f. the region cum industry principles.

12.4.3 Committees and Advisory Boards

<u>Committees (Section 5(1)(a))</u>

The appropriate government may appoint as many committees and sub committees as it considered necessary to hold inquiry is and advise it in respect of fixation or revision of minimum wages.

<u>Advisory Board (Section7)</u>

The appropriate government may also appoint advisory board to coordinate the work of committees and sub committees appointed under section 5(1)(a). The advisory board also gives advise to the appropriate government in the matters related to fixing and revising the minimum rate of wages.

<u>Central Advisory Board (Section 8)</u>

The central government may appoint the Central Advisory Board to co-ordinate of the advisory boards appointed by the appropriate governments under section 7. This board also advises the central and state governments in matters related to the fixation and revision of the minimum wages.

Composition of Committees And Advisory Boards

According to Section 9 the committees sub committees and the advisory board appointed by the appropriate government consists of persons representing employers and employees in equal number in the schedule employment. One third of the total number of members are independent persons nominated by the appropriate government. Section 8(2) states that the central advisory board shall consist of members representing employees and employers in the schedule employment in equal number. One third of the total number of members of the central advisory board consist of independence persons nominated by the central government.

It state of *AP v. Beedi Mfg Factory* 1973 Lab IC 878 (SC) it was held that the words independent persons in section 9 have been used in contradistinction to representatives of employers and employees. Another words about from the representative of employers and employees there should be persons who should be independent of them.

12.4.4 Correction of errors (Section 10)

The appropriate Government may, at any time, by notification in the Official Gazette, correct clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under this Act, or errors arising therein from any accidental slip or omission. Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information.

12.4.5Wages in kind (Section 12)

The minimum wages payable under this act shall we paid in cash. Where there is a custom to pay the wages either wholly or partly in kind, the appropriate government may issue notification in an official gazette authorising the payment of wages in kind either wholly or partly. Where the appropriate government is of the opinion that provision should be made for supply of essential commodities article at concessional rates, it may make a notification in the official gazette.

12.4.6 Payment of Minimum Rates of Wages (Section 12)

The employer shall pay to every employee who is engaged in the scheduled employment under him, wages at a rate which is not less than the minimum rate of wages fixed by the government for that class of employees in that employment without any deductions except the deductions which may be authorised within such time and subject to the conditions as may be prescribed.

12.4.7 Hours of normal working day (Section 13)

Section 13(1) makes provisions with respect to any scheduled employment according to the section the appropriate government may fix the number of hours of work which cell constitute a normal working day inclusive of one or more specified intervals;

a. Provide for day of rest in every. of which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such day of rest;
b. Provide for payment of work on a day of rest at not less than overtime rate.

Section 13(2) provides that the provisions of section 13(1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed:

(a) Employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented;

(b) employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

(c) Employees whose employment is essentially intermittent;

(d) Employees engaged-in any work which for technical reasons has to be completed before the duty is over;

(e) Employees engaged in a work which could not be carried on except attimes dependent on the irregular action of natural forces.

12.4.8 Overtime (Section 14)

Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher. Nothing in this Act shall prejudice the operation of the provisions of section 59 Of the Factories Act, 1948 where those provisions are applicable.

12.4.9 Wages of worker who works for less than normal working day. (Section 15)

If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day:

Provided, however, that he shall not be entitled to receive wages for a full normal working day-

(i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and
(ii) in such other cases and circumstances as,,-nay be prescribed.

12.4.10 Wages for two or more classes of work (Section 16)

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in- force in respect of each such class.

12.4.11 Minimum time rate wages for piece work (Section 17)

Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act, the employer shall pay to such employee wages at not less than the minimum time rate.

12.4.12 Inspectors (Section 19)

The appropriate judgement is authorised the appropriate judgement is authorised to appoint for the purpose of this act by issuing a notification in the official gazette. the appropriate government define the local limits within which the inspectors shall exercise their functions. the powers of inspectors are defined under section 19 clause 2 which are as follows-

(a) he may enter at all reasonable hours any premises or place where employees are employed or what is given out to out workers in any scheduled employment in respect of which rates of wages have been fixed under this act for the purpose of examining any registered code of pages or notices required to be kept or exhibited by or under this act or rules made their under.

(b) he may examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee employed therein or an employee to whom work is given out therein;

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

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

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

Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code. Any person required to produce any document or thing or to give any information by an inspector under sub-section (2) shall be deemed to be

Legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

12.4.13 Claims (Section 19)

Section 20(1) empowers the appropriate government to appoint and authority to hear and decide any specified area the following claims by issuing a notification in official gazette:

i. any claim arising out of payment of less than minimum rate of wages; or

ii. anything introspect of payment of remuneration for days of rest; or

iii. anything in respect of payment of remuneration for work done on such days; or

iv. any claim of wages at the overtime rate under section 14 or employees employed or paid in that area.

In ***Anand Oil Industries v Labour Court, Hyderabad*** AIR 1979 AP 182 it was held that Section 20(1) of the Act does not cover all claims in respect of minimum wages; it covers only those cases where there is a dispute as to the minimum rate of wages.

The following may apply to get claims to Authority for a direction:

a) the employee himself, or

b) any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or

c) any Inspector, or

d) any person acting with the permission of the Authority appointed under Section 20 subsection (1).

12.4.14 Offences and *Penalties*

Employer is punishable with imprisonment for a term which may extend to six months or with fine which may extend o five hundred rupees or with both, in the following cases (Section 22):

a) where employer pays less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him.

b) where employer pays contravene any rule or order made under section 13.

If any employer who contravenes any provision of this Act or any order or Rule made under this Act, he shall be punishable with a fine which may extend upto five hundred rupees. (Section 22A).

Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid.(Section 22-E).

Where an employer is charged with an offence against this Act, he shall be entitled, upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the Satisfaction of the Court -
(a) that he has used due diligence to enforce the execution of this Act, and
(b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to, the like punishment as if he were the employer and the employer shall be discharged:
Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination by or on behalf of the person whom the

employer charges as the actual offender and by the prosecution.(Section 23).

12.5 Summary

The Equal Remuneration Act provides that there should not be any discrimination while recruiting men and women workers and that there should be same remuneration for the same or similar type of work. This Act is important because it has given woman workers a weapon by which they can claim parity in remuneration for the same work done by them as is done by their male colleagues.

Minimum Wages Act is another welfare legislation which specifies the minimum rate of wages which a employer must give to the workmen and thus it helps to stop the exploitation of the workers.

12.6 Glossary

1. Employer (Section 2(c)Equal Remuneration Act) has the meaning assigned to it in clause (f) of Section 2 of the Payment of Gratuity Act, 1972 (39 of 1972);

2. Man and woman (Section 2(d)Equal Remuneration Act) mean male and female human beings, respectively, of anyage;

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

4. Same work or work of a similar nature (Section 2(c)Equal Remuneration Act) means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman worker in any establishment or employment in respect of which this Act has come into force;

5. Adolescent (section 2(a) Minimum Wages Act) means a person who has completed his fourteenth year of age but has not completed his eighteenth year;

6.Employer (section 2(g) Minimum Wages Act) means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub section (3) of section 26,-

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under [6] [clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948)], as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in

12.7 SAQ

a) Briefly explain the objective of Equal Remuneration Act.

b) Write a note on overtime.

Fill in the blanks

a) “remuneration” is defined under section________ of Equal Remuneration Act.

b) “employer” is defined in section________ Minimum Wages Act.

True or False

a) Equal Remuneration Act does not affect any reservation for Scheduled Caste and Scheduled Tribe.

b) The wages cannot be paid in kind.

12.8 References/Bibliography

Mishra, S.N. (2024), Labour and Industrial Laws, Central Law Publications, Prayagraj

Paul Meenu(2017), Labour and Industrial Laws, Allahabad Law Agency, Faridabad

12.9 Suggested Readings

Malik, P.L., (2023), Industrial Law, Esatern Book Company, Allahabad

Seth,D.D,(2024), Industrial Disputes Act, 1947,Law Publishing House

12.10 Terminal and Model Questions

a) Discuss the fixation of minimum rate of wages.

b) Explain the payment of equal remuneration to man and woman.

Answers

a) para 9.2

b) para 9.4.8

Fill in the blanks

a) section 2(g)

b) section 2(e)

True or False

a) True

b) False

Terminal and Model Questions

a) para 9.4.1

b) para 9.3.1

UNIT -13

CONTEMPORARY CHALLENGES

AND RIGHTS OF EMPLOYEES

STRUCTURE

13.1 INTRODUCTION

In India, several key labour laws govern the rights of employees regarding compensation and benefits. India inherited most of its labour laws and practices from British Rule. Some of the major acts are:

- The Payment of Wages Act, 1936: Ensures timely payment of wages without unauthorised deductions.
- The Minimum Wages Act, 1948: Sets minimum wage rates for different types of work.
- The Payment of Bonus Act, 1965: Provides for the payment of bonuses to employees based on profit or productivity.
- The Equal Remuneration Act, 1976: Mandates equal pay for men and women for the same work.
- The Payment of Gratuity Act, 1972: Ensures gratuity payment to employees upon termination of employment after a certain period of service.

- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952: Provides for a contributory provident fund, pension scheme, and insurance scheme for employees.
- The Employees' State Insurance Act, 1948: Provides for health and social security benefits to employees.
- The Maternity Benefit Act, 1961: Provides for maternity leave and benefits to female employees.
- The Workmen's Compensation Act, 1923: Provides compensation to employees or their dependents in case of injury or death by accident during employment.
- The Industrial Disputes Act, 1947: Governs the resolution of industrial disputes and conditions of employment. Repealed by The Industrial Relations Code, 2020.
- The Shops and Establishments Act (varies by state): Regulates working conditions, hours of work, and overtime payment in shops and commercial establishments.
- The Factories Act, 1948: Regulates labour welfare, health, safety, and working hours in factories. Repealed by The Occupational Safety, Health and Working Conditions Code, 2020.

In recent years, the Indian government has consolidated 29 labour laws into four labour codes to simplify and streamline the regulatory framework:

- The Code on Wages, 2019: Consolidates laws relating to wages and bonuses.

The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976 shall get subsumed in the Code on Wages, 2019 as mentioned in Section 69 of the Code, from the effective date of the Code.

- The Industrial Relations Code, 2020: Merges laws related to industrial disputes, trade unions, and employment standing orders.
- The Code on Social Security, 2020: Integrates laws related to social security and welfare.
- The Occupational Safety, Health and Working Conditions Code, 2020: Merges laws concerning occupational safety, health, and working conditions.

These codes aim to provide clearer and more comprehensive coverage of labour rights, including compensation and benefits, ensuring better compliance and enforcement.[1]

In light of the above acts and laws we discussed here the rights of employees concerning compensation and benefits.

13.2 OBJECTIVES

[1] Yet to be implemented

After reading this unit you will be able to understand the following:

- Right of employees to receive a minimum wage for their work

- Right to Timely and Full and Fair Payment of Wages
- Right to Equal Treatment and equal pay
- Right to Raise Complaints and to Compensation in Case of Violations
- Protection of employee from Retaliation
- Right to Overtime Pay
- Employee Rights Under the Payment of Bonus Act, 1965
- Employee Rights Under the Payment of Gratuity Act, 1972
- Right to Health Insurance and other Medical Benefits
- Provisions of The Employees’ State Insurance Act, 1948 (ESI Act)
- Right to Maternity Benefits
- Right to Legal Assistance
- Preventive provisions to double compensation for the same incident.
- Workplace safety and right to compensation in case of work place injuries and death of employee
- In case of permanent disablement right of employee to rehabilitation

13.3 SUBJECT

13.3.1 Right of employees to receive remuneration for their work

Any employee has right to minimum wages and equal pay for equal work, regardless of gender, race, or other protected characteristics. "Employee"[2] means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.

Under the Payment of Wages Act, 1936, employees are entitled to specific rights related to compensation and benefits. The Act ensures that workers receive their wages on time and without unauthorised deductions.

Under the Payment of Wages Act, 1936, the term "wages" is defined as all remuneration capable of being expressed in terms of money, which would be payable to an employee for their work under a contract of employment. It includes:

[2] Section *2(k)* of the Code on Wages, 2019.

- Basic Salary or agreed payment for work.
- Allowances (e.g., Dearness Allowance, House Rent Allowance).
- Incentives and Bonuses (if applicable).
- Remuneration for Overtime Work.
- Any other payments under the terms of employment

However, Employer's Contribution to Provident Fund or Pension Fund, Gratuity or Retrenchment Compensation and Traveling Allowances or expenses for work-related travel are not included in "wages".

Here are the key rights of employees under this Act:

13.3.1.1 Right to Timely Payment of Wages[3]

Employees are entitled to receive their wages within the prescribed time frame:

- For establishments with less than 1,000 employees, wages must be paid by the 7th day of the following month.
- For establishments with 1,000 or more employees, wages must be paid by the 10th day of the following month.
- In the case of termination, wages must be paid within two working days.

13.3.1.2 Right to Full and Fair Wages[4]

Employees have the right to receive the full wages they are entitled to for the work performed. The Act prohibits unauthorised deductions and ensures that wages are calculated accurately.

13.3.1.3 Right Against Unlawful Deductions

Only specific deductions are allowed under the Act, such as:[5]

- Deductions for absence from duty

[3] Section 5 of the Payment of Wages Act, 1936,

[4] Section 7of the Payment of Wages Act, 1936,

[5] Section 7(2) of the Payment of Wages Act, 1936,

- Fines (subject to proper notice)
- Income tax or other statutory deductions
- Deductions for amenities and services (approved by the government)
- Employees have the right to challenge unlawful deductions.

13.3.1.4 Right to Equal Treatment

The Act ensures no discrimination in the payment of wages based on gender, caste, or religion. Equal pay for equal work is mandated under other laws like the Equal Remuneration Act, 1976.

13.3.1.5 Right to Raise Complaints

Employees have the right to file a complaint with the Inspector appointed under the Act in case of:[6]

- Non-payment or delayed payment of wages
- Unjust deductions
- Violation of their rights under the Act

13.3.1.6 Right to Compensation in Case of Violations

If the employer violates the provisions of the Act, employees may be entitled to:

- Compensation for delayed wages or unauthorised deductions
- Penalties imposed on the employer by the authorities[7]

13.3.1.7 Protection from Retaliation

Employers are prohibited from terminating or harassing employees for filing complaints under the Act. every employee has the right to seek legal recourse without fear of retaliation.

These rights ensure financial protection for employees and promote fair labour practices in India.

[6] Section 14 of the Payment of Wages Act, 1936,

[7] Section 20 of the Payment of Wages Act, 1936,

13.3.2 Right to Equal Pay

Every employee has the right to receive equal pay for equal work, regardless of gender, race, or other protected characteristics. Our constitution guarantees the gender equality to the Indian citizens. Indian Constitution clearly states that no citizen shall be discriminated on the grounds only of religion, caste, gender etc.[8]

The Equal Remuneration Act, 1976 mandates equal pay for men and women for the same work. Section 3 of the code on wages, 2019 says, *(1)* There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee. *(2)* No employer shall, — *(i)* for the purposes of complying with the provisions of sub-section *(1)*, reduce the rate of wages of any employee; and *(ii)* make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

In case of any dispute as to whether a work is of the same or similar nature for the purposes of section 3, the dispute shall be decided by such authority as may be notified by the appropriate Government.[9]

13.3.3 Right to Overtime Pay

Section 59 of The Factories Act, 1948 deals with overtime payment to workers who work beyond the prescribed working hours. The Shops and Establishments Act says, that each state has its own Shops and Establishments Act, which governs the working conditions of employees in shops and commercial establishments. The Minimum Wages Act, 1948 provides that workers who work on any day for more than the prescribed hours are entitled to overtime wages at a rate not less than twice the normal rate.

Section 14 of The Minimum Wages Act, 1948, deals with overtime payment. Here is a summary of its provisions:

1. **Overtime Rate:**

    - An employee who works beyond the normal working hours is entitled to overtime wages.

[8] Article 15 of the Indian Constitution

[9] Section *4* of the Code on Wages, 2019.

- The rate for overtime wages must be at least twice the ordinary rate of wages.

2. **Hours of Work:**

   - The appropriate government will determine the normal working hours for employees.

3. **Calculation of Overtime:**

   - Overtime will be calculated based on the ordinary rate of wages, which includes the basic wage and any dearness allowance or other components that the government specifies.

4. **Applicability:**

   - These provisions apply to all employees unless explicitly exempted by the code or any specific rule.

Therefore, employers must ensure compliance with these laws to avoid legal repercussions and to promote fair labour practices. Employees should be aware of their rights regarding overtime pay to ensure they receive fair compensation for extra work.

13.3.4 Payment of bonus

The Payment of Bonus Act, 1965, enacted by the Indian Parliament, mandates the payment of bonuses to employees in certain establishments, aiming to share profits between employers and employees and promote industrial harmony.

Employee Rights Under the Payment of Bonus Act, 1965 are as follows:

13.3.4.1 Eligibility for Bonus:

Every employee is entitled to bonus.[10] .They must have worked in the establishment for at least 30 days in the financial year.[11]

13.3.4.2 Minimum and Maximum Bonus:

- The minimum bonus is 8.33% of the employee's salary or ₹100, whichever is higher.[12]

[10] [*Mahabir Tiles Work v. Union of India, A.I.R.* 1968 Ker. 143]

[11] Section 8 of the Payment of Bonus Act, 1965

[12] Section 10 of the Payment of Bonus Act, 1965

- The maximum bonus can reach up to 20% of the employee's salary, depending on the employer's profits.[13]

13.3.4.3 Timeframe for Bonus Payment:

Employers must pay the bonus within 8 months from the end of the financial year.[14]

13.3.4.4 Disqualification from Bonus:

Employees can be disqualified from receiving a bonus if dismissed for misconduct, such as fraud, violent behaviour, or theft.[15]

13.3.5 Employee Rights Under the Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 is a pivotal legislation in India designed to provide financial benefits to employees upon the termination of their employment due to retirement, resignation, death, or disablement. This Act ensures that employees receive a gratuity, which serves as a token of appreciation for their long-term service.

13.3.5.1 Applicability of the Act

The Act applies to:[16]

- Factories, mines, oilfields, plantations, ports, and railway companies.
- Shops or establishments with 10 or more employees on any day of the preceding 12 months.

13.3.5.2 Eligibility for Gratuity[17]

- Employees who have completed five years of continuous service with an establishment are entitled to gratuity.
- The five-year requirement is waived in cases of termination due to death or disablement.

[13] Section 11 of the Payment of Bonus Act, 1965

[14] Section 19 of the Payment of Bonus Act, 1965

[15] Section 9 of the Payment of Bonus Act, 1965

[16] Section 1(3) of the Payment of Gratuity Act, 1972

[17] Section 4 of the Payment of Gratuity Act, 1972

13.3.5.3 Calculation of Gratuity

- Gratuity is calculated as 15 days' wages for each completed year of service or part thereof exceeding six months.[18]

- The formula used is: Gratuity=Last drawn salary×15×Number of years of service/26

  Here, the last drawn salary includes basic pay and dearness allowance.

13.3.5.4 Maximum Limit

As of the latest amendment, the maximum gratuity payable is ₹20 lakhs.

13.3.5.5 Nomination Facility

Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for his gratuity on his retirement or resignation. An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee. A nomination maybe modified by an employee at any time.[19]

13.3.5.6 Forfeiture of Gratuity

The gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

Employers have the right to forfeit gratuity (wholly or partially) if an employee is terminated for reasons involving moral turpitude or misconduct[20]

13.3.5.7 How to Claim Gratuity[21]

- The employee or their nominee (in case of death) needs to submit a written application to the employer using **Form I**.
- The employer is responsible for calculating the gratuity amount and making the payment within **30 days** from the date it becomes payable.

[18] Section 4 of the Payment of Gratuity Act, 1972

[19] Section 6 of the Payment of Gratuity Act, 1972

[20] Section 4(6) of the Payment of Gratuity Act, 1972
[21] Section 7 of the Payment of Gratuity Act, 1972

- If the employer refuses to pay or delays the payment, the employee can approach the **Controlling Authority** under the Act for redressal.

It is clear for above provisions that, the Payment of Gratuity Act, 1972 ensures financial support and recognition for employees after their service tenure.

13.3.6 Health Insurance

In India, several laws ensure that employees have access to health coverage either through employer-provided schemes or mandatory social security systems.

The Employees' State Insurance Act, 1948 (ESI Act) provides various rights and benefits to employees regarding compensation and other welfare measures. The Act applies to factories and establishments with 10 or more employees (in most states) and covers employees earning up to a specified wage limit.

Here are the key rights of employees under the ESI Act:

13.3.6.1 Right to Medical Benefits[22]

- Employees and their families are entitled to free medical treatment through ESI hospitals, dispensaries, and clinics.

- This includes outpatient services, hospitalization, specialist consultations, and maternity care.

13.3.6.2 Right to Sickness Benefits[23]

- Employees can claim sickness benefits at the rate of 70% of their wages for a maximum of 91 days in a year if they are unable to work due to illness.

- Extended sickness benefits may be available in case of chronic or long-term diseases.

13.3.6.3 Right to Maternity Benefits[24]

- Female employees are entitled to 26 weeks of maternity leave with full wages.

[22] Section 56 of the Employees' State Insurance Act, 1948 (ESI Act)

[23] Section 49 of the Employees' State Insurance Act, 1948 (ESI Act)

[24] Section 50 of the Employees' State Insurance Act, 1948 (ESI Act)

- Additional medical bonuses and extended benefits are available in case of complications.

The **Maternity Benefit (Amendment) Act, 2017** introduced significant changes to maternity leave provisions in India, enhancing support for working mothers. It include the following:

Extended Maternity Leave:

- Paid maternity leave increased from 12 weeks to 26 weeks for women employed in establishments with 10 or more employees. Up to 8 weeks can be availed before the expected delivery date.
- For women with two or more surviving children, the entitlement remains 12 weeks (6 weeks pre-delivery and 6 weeks post-delivery).

Adoptive and Commissioning Mothers:

- Adopting mothers of a child below three months and commissioning mothers (biological mothers using a surrogate) are eligible for 12 weeks of maternity leave from the date the child is handed over.

Crèche Facility:

- Establishments with 50 or more employees must provide a crèche facility within a prescribed distance. Women employees are permitted four visits to the crèche daily, including rest intervals.

Work from Home Option:

- Depending on the nature of work, employers may allow women to work from home after the maternity leave period, on mutually agreed terms.

Awareness about Benefits:

- Employers are required to inform women employees about their maternity benefits, both in writing and electronically, at the time of appointment.

These amendments aim to support the health and well-being of mothers and children, while also encouraging women's participation in the workforce.

13.3.6.4 Right to Disablement Benefits[25]

[25] Section 51 of the Employees' State Insurance Act, 1948 (ESI Act)

- In case of temporary disablement due to a workplace injury, employees receive 90% of their wages until they recover.

- For permanent disablement, employees receive lifetime compensation depending on the severity of the disability.

13.3.6.5 Right to Dependents' Benefits[26]

If an employee dies due to a workplace injury or occupational disease, the dependents (spouse, children, or parents) are entitled to receive monthly payments at the rate of 90% of the deceased's wages.

13.3.6.6 Right to Funeral Expenses[27]

- The family of a deceased employee is eligible to receive a lump sum amount for funeral expenses, subject to a maximum limit

13.3.6.7 Right to Legal Assistance

Employees have the right to approach the ESI Court for resolving disputes related to benefits, wages, or treatment.[28]

13.3.6.8 Protection Against Retaliation

Employees are protected from any form of harassment or termination by the employer for filing a claim under the ESI Act.

13.3.6.9 Preventive provisions to double compensation for the same incident.

- **Section 53 of the ESI Act** bar against receiving or recovery of compensation or damages under any other law an insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act. This provision aims to streamline the compensation process and prevent misuse of legal avenues.

[26] Section 52 of the Employees' State Insurance Act, 1948 (ESI Act)

[27] Section 46(f) of the Employees' State Insurance Act, 1948 (ESI Act)

[28] See chapter VI of ESI Act

- Section 61 also bar of benefits under other enactments: it states that, when a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

These comprehensive rights ensure financial security, medical care, and protection for employees and their families in case of illness, injury, or death.

13.3.7 Workplace safety and right to compensation

The Employees' Compensation Act, 1923 remains a significant piece of legislation in protecting workers' rights and promoting industrial safety in India. It imposes a legal obligation on employers to provide a safe working environment and financial support in case of workplace accidents.

11.3.7.1 Liability to Compensation

Section 3 of the Employees' Compensation Act, 1923 imposes Employer liability for compensation. (1) If personal injury is caused to a employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions. The injury can be physical or mental.

11.3.7.2 Right to Timely Payment

- Employees or their dependents have the right to receive compensation within one month of the accident or the date it becomes due.

13.3.7.3 Penalty for Delay in Payment[29]

- **Interest:** If the employer fails to pay the compensation within one month, they are liable to pay interest on the amount due. The rate of interest is generally 12% per annum[30] or as prescribed by the government.

- **Penalty:** In addition to interest, the employer may be directed to pay a further sum not exceeding 50% of the compensation amount[31] as a penalty for unjustified delay.

13.3.7.4 Right to Compensation for Occupational Diseases

[29] Section 4A of The Employees' Compensation Act, 1923

[30] Section 4A(3)(a) The Employees' Compensation Act, 1923

[31] Section 4A(3)(b) The Employees' Compensation Act, 1923

- Employers are also liable[32]for compensation if the employee suffers from an occupational disease that arises due to the nature of their work. The Act specifically covers diseases caused due to hazardous working environments.
- Schedule III of the Act lists specific occupational diseases like lung diseases from coal mining, hearing loss from excessive noise, or skin diseases caused by chemicals.

13.3.7.5 Right to Claim Without Proving Employer's Negligence

- Employees do not have to prove that the employer was negligent to claim compensation.

- Compensation is payable even in cases of accidental injury during the course of employment.

13.3.7.6 Right to Medical Examination

- Employees have the right to undergo a medical examination to assess the nature and extent of their injuries.

- **Section 11** of the Employees' Compensation Act, 1923 provides the legal framework for conducting a medical examination of an injured employee to assess the extent of the injury and determine the appropriate compensation.

Employer's Responsibility: The employer must bear the cost of the medical examination. If the examination requires the employee to travel, the employer must cover the travel and related expenses.

- Employers may also request a medical examination for verification, but it must be conducted fairly.

13.3.7.7 Right to Legal Representation

- Employees can approach the Commissioner for Employees' Compensation for resolution of disputes.

- **Section 11** of The Employees' Compensation Act, 1923 provides a legal mechanism for settling disputes related to compensation.

13.3.7.8 Right to Appeal

[32] Section 3(2) of The Employees' Compensation Act, 1923

- If dissatisfied with the Commissioner's decision, employees have the right to appeal to the High Court on a substantial question of law.[33]

13.3.7.9 Right to Protection Against Retaliation

- Employers cannot terminate or harass employees for filing a compensation claim.
- Any retaliatory action by the employer is illegal and punishable under the Act.

13.3.7.10 Right to Compensation for Dependents

- In the event of an employee's death due to a workplace accident, the dependents (spouse, children, or parents) are entitled to receive compensation.

13.3.7.11 Compensation agreement should be registered

- Any agreement regarding the payment of compensation must be registered with the Commissioner. So that, The Commissioner ensures that the agreement is genuine, voluntary, and lawful before registering it.[34]
- If a compensation agreement is not registered with the Commissioner, it has no legal effect. The section safeguards employees from accepting inadequate compensation under pressure or misinformation.[35]

13.3.7.12 Compensation is treated as a priority debt during insolvency or liquidation proceedings

Section 14 is to safeguard the rights of employees when an employer is financially incapable of paying compensation. It ensures that compensation is treated as a priority debt during insolvency or liquidation proceedings and also provide employees with a fair chance of receiving their due compensation.

The Employees' Compensation Act, 1923 is a comprehensive document that ensure fair treatment and financial support for employees and their families in case of workplace-related mishaps.[36]

13.3.7 Right to Rehabilitation

[33] Section 30 of the Employees' Compensation Act, 1923

[34] Section 28 of the Employees' Compensation Act, 1923

[35] Section 29 of the Employees' Compensation Act, 1923

[36] For detail study refer unit 12

Employees suffering from permanent disablement are entitled to vocational rehabilitation for acquiring skills to pursue an alternative occupation. In India, employees suffering from permanent disablement due to workplace injuries are entitled to rehabilitation programs under various laws and schemes. A brief summary is as follow:

1. The Employees' Compensation Act, 1923[37]

- Provides compensation for permanent disablement caused by workplace accidents.
- Employers are required to pay compensation based on the percentage of disability.
- Medical rehabilitation and vocational training may be offered to help employees regain employability.

2. The Employees' State Insurance Act, 1948 (ESI Act)[38]

- Provides cash benefits and medical care to employees suffering from permanent disablement.
- Offers Physical Rehabilitation Centres and physiotherapy for disabled employees.
- Provides vocational rehabilitation to help them acquire new skills.

3. The Rights of Persons with Disabilities Act, 2016

- Ensures equal opportunities for people with disabilities in employment.
- Employers are encouraged to create inclusive work environments.
- Rehabilitation services and skill development programs are provided.

4. Rajiv Gandhi Shramik Kalyan Yojana

- Offers **unemployment allowance** to insured employees under the ESI Act who become unemployed due to permanent disablement.
- Employees who lose their jobs due to retrenchment, closure, or permanent disability are entitled to receive unemployment allowance for a period of up to 24 months. Additionally, the Atal Beemit Vyakti Kalyan Yojana (ABVKY) was introduced on a pilot basis on July 1, 2018, to provide relief to insured persons who became unemployed. The ABVKY scheme has been extended up to June 30, 2022.

[37] Describe above
[38] Described above

5. Central and State Government Rehabilitation Centres

- Provide medical support, physical rehabilitation, and counselling.
- Offer skill training programs for alternative employment.

6. Employers' Responsibility

- Employers may provide financial assistance for rehabilitation.
- Some companies have in-house rehabilitation programs or tie-ups with rehabilitation centres.

Employees suffering from permanent disablement can approach their employer, the ESI Corporation, or a Commissioner for Employee Compensation to claim benefits and assistance under these programs.

13.4 SUMMARY

In India a number of laws govern the right of employees in every field, weather private or government sector. Most of India's labour laws and practices are inherited from British Rule. However, amendments and revolution occur in course of time to fulfil the need of employee with changing technologies and in harmony of other factor for time being. In recent years, the Indian government has consolidated 29 labour laws into four labour codes to simplify and streamline the regulatory framework. Which are waiting for their implementation.

T**he Payment of Wages Act, 1936**, outlines the key provisions and regulations governing wage payment, including legal rights and obligations of both employers and employees. It covers areas such as wage fixation, payment methods, deductions, overtime, compliance measures, and grievance redressal mechanisms.

The Equal Remuneration Act, 1976 mandates equal pay for men and women for the same work. Our constitution guarantees the gender equality to the Indian citizens. Indian Constitution clearly states that no citizen shall be discriminated on the grounds only of religion, caste, gender etc.

Employees must be compensated for any hours worked beyond the normal working hours. The standard rate for overtime is twice the ordinary rate of wages, which is a common requirement across various laws. State laws may have additional or specific provisions regarding overtime, especially in the context of shops and commercial establishments. Section 14 of The Minimum Wages Act, 1948, deals with overtime payment.

The Payment of Bonus Act, 1965, enacted by the Indian Parliament, mandates the payment of bonuses to employees in certain establishments, aiming to share profits between employers and employees and promote industrial harmony.

The Payment of Gratuity Act, 1972 is a pivotal legislation in India designed to provide financial benefits to employees upon the termination of their employment due to retirement, resignation, death, or disablement.

Many laws in India ensure that employees have access to health coverage either through employer-provided schemes or mandatory social security systems. For example, **The Employees' State Insurance Act, 1948 (ESI Act)** provides various rights and benefits to employees regarding compensation and other welfare measures. The Act applies to factories and establishments with 10 or more employees.

The **Maternity Benefit (Amendment) Act, 2017** introduced significant changes to maternity leave provisions in India, enhancing support for working mothers. Paid maternity leave increased from 12 weeks to 26 weeks for women employed in establishments with 10 or more employees.

The Employees' Compensation Act, 1923 remains a significant piece of legislation in protecting workers' rights and promoting industrial safety in India. It imposes a legal obligation on employers to provide a safe working environment and financial support in case of workplace accidents. It ensures fair treatment and financial support for employees and their families in case of workplace-related mishaps.

In India, employees suffering from permanent disablement due to workplace injuries are entitled to rehabilitation programs under various laws and schemes.

In summary, we can say that, all regulations are established to protect employees from exploitation, ensure fair compensation, and promote workplace equality. Compliance with these laws benefits both employers and employees by fostering a fair and productive working environment. It is essential for all stakeholders to be aware of their rights and responsibilities under the applicable laws.

13.5 GLOSSARY

1. **Appropriate government :** "appropriate Government" means,— (i) in relation to, an establishment carried on by or under the authority of the Central Government or the establishment of railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set up by central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector

undertakings, subsidiary companies or autonomous bodies, as the case may be, the Central Government; (ii) in relation to any other establishment, the State Government;[39]

2. **Remuneration:** Remuneration refers to the total amount of money or compensation that an employee receives from an employer for the work they perform. It includes not only the basic salary but also additional benefits like bonuses, incentives, allowances, and other financial perks.

3. ***Article 15* of The Indian Constitution**: It prohibit discrimination on various ground. This article is a key part of the Right to Equality under Part III (Fundamental Rights) of the Indian Constitution. The provision stating that no citizen shall be discriminated on the grounds only of religion, race, caste, sex, or place of birth. According to ***Article 15(2),*** no citizen shall be subjected to any restriction, condition, or disability with regard to access to public places like shops, restaurants, hotels, and places of public entertainment.

4. **Retaliation: Retaliation** refers to an act of revenge or punishment against someone, often for their actions or decisions. In a workplace context, **retaliation** usually means taking adverse action against an employee for engaging in legally protected activities, like:

- Filing a complaint about discrimination or harassment
- Reporting unethical or illegal activities (whistleblowing)
- Participating in workplace investigations

Laws like the **Industrial Disputes Act, 1947** and other labour laws in India protect employees from retaliation.

13.6 SAQS

A. SHORT ANSWER QUESTION

1. **What is the primary objective of the** Payment of Wages Act, 1936**?**
2. **Who is covered under the minimum wage regulation?**
3. **Are apprentices covered under this regulation?**
4. **How should wages be paid to employees?**

[39] Section *2(d)* of the Code on Wages, 2019.

5. **What constitutes a legal deduction from wages?**

B. FILL IN THE BLANKS

1. Wages should be paid to employees through __________ or in cash within the stipulated time frame.
2. Overtime is generally compensated at __________ the regular hourly wage.
3. Employees not satisfied with their wages can file a __________ with the appropriate authority.
4. The Payment of Wages Act, 1936 aims to ensure fair wages and prevent __________.

5. Under the Payment of Bonus Act, 1965, employees are entitled to receive a minimum bonus of ___________ of their salary or wages.

C. TRUE AND FALSE

1. **Employees are always entitled to receive wages through bank transfers only.**
2. **Overtime pay is usually calculated at double the regular hourly wage.**
3. **Employers can deduct any amount from wages without any legal restrictions.**
4. **Employees can file a complaint if they are not satisfied with their wages.**
5. **Apprentices are entitled to receive the same minimum wage as regular employees.**

13.7 REFERENCES

1. https://labour.gov.in/
2. The Employee's State Insurance Act, 1948
3. The Payment of Wages Act, 1936
4. The Equal Remuneration Act, 1976
5. The Minimum Wages Act, 1948,
6. The Payment of Bonus Act, 1965,
7. The Maternity Benefit (Amendment) Act, 2017
8. The Employees' Compensation Act, 1923
9. The Indian Constitution
10. https://www.indiacode.nic.in/

13.8 SUGGESTED READINGS

1. The Employee's State Insurance Act, 1948
2. The Payment of Wages Act, 1936
3. The Equal Remuneration Act, 1976
4. The Minimum Wages Act, 1948,
5. The Payment of Bonus Act, 1965,
6. The Maternity Benefit (Amendment) Act, 2017
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9. https://labour.gov.in/