M.A.H.R-507

Business and Human Rights

Master of Arts in Human Rights

Uttarakhand Open University

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UNIT 1

CONCEPTS AND DEFINITIONS OF LABOUR AND EVOLUTION OF LABOUR RIGHTS

1.1 INTRODUCTION

1.2 OBJECTIVES

1.3 DEFINITIONS

1.4.1 HISTORY AND PURPOSE OF LABOUR LAWS

1.4.2 KEY MILESTONES IN THE HISTORY OF LABOUR LAWS

1.4.3 EVOLUTION OF LABOUR LAW IN INDIA

1.4.4 PURPOSE OF LABOUR LEGISLATION

1.5 FACTORS INFLUENCING LABOUR LEGISLATIONS

1.5.1 SPECIFIC LABOUR LAWS

1.5.2 CONSTITUTIONAL PROVISIONS WITH REGARD TO LABOUR LAWS

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1.7 CLASSIFICATION OF LABOUR LEGISLATIONS

1.8 NEED AND IMPORTANCE OF LABOUR LEGISLATION IN INDIA

1.9 LABOUR LEGISLATIONS ACROSS THE WORLD

1.10 SUMMARY

1.11 TERMINAL QUESTIONS

1.12 SUGGESTED REFERENCES

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

ORIGIN AND DEVELOPMENT OF ILO, ILO STANDARDS WITH COLLECTIVE BARGAINING, FORCED LABOUR, EQUAL REMUNERATION AND HOURS OF WORK

2.1 INTRODUCTION

2.2 OBJECTIVES

2.3 HISTORY OF ILO

2.3.1 ORIGIN AND DEVELOPMENT

2.3.2 CONSTITUTION OF ILO

2.3.2.1 OBJECTIVES OF THE ILO

2.4 CONVENTIONS, PROTOCOLS AND RECOMMENDATIONS

2.5 ILO STANDARDS

2.6 INDIA & ILO

2.6.1. INTERNATIONAL LABOUR CONFERENCE

2.6.2. GOVERNING BODY

2.6.3. THE INTERNATIONAL LABOUR OFFICE

2.6.4. INTERNATIONAL LABOUR STANDARDS - ILO CONVENTIONS

2.7 ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

2.7.1 ILO DECLARATION ON SOCIAL JUSTICE FOR A FAIR GLOBALIZATION

2.8 SUMMARY

2.9 TERMINAL QUESTIONS

2.10 SUGGESTED REFERENCES

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.

32.5.2 Other 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

a. ilo.org/about/history-ilo

b. dictionary.cambridge.org/dictionary/English/labilo.org/resource/other/ilo-constitution

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

d.labour.gov.in/lcandilasdivision/india-ilo

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UNIT 3

SAFE WORKPLACE AND WORK ETHICS, PROTECTION AGAINST SEXUAL HARASSMENT, NON DISCRIMINATION

STRUCTURE

3.1 INTRODUCTION

3.2 OBJECTIVES

3.3 SAFE WORKPLACE AND ETHICS

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

3.4.1 OBJECTIVES OF POLICY

3.5 ETHICAL OBLIGATIONS AND LEGAL RESPONSIBILITIES3.6 PROTECTION AGAINST SEXUAL HARASSMENT

3.6 PROTECTION AGAINST SEXUAL HARASSMENT

3.6.1 VISHAKA CASE3.7 THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

3.8 NON DISCRIMINATION AT WORKPLACE

3.9 SUMMARY

3.10 TERMINAL QUESTIONS

3.11 SUGGESTED REFERENCES

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.

10. Conciliation.

11. Inquiry into complaint.

CHAPTER V- INQUIRY INTO COMPLAINT

12. Action during pendency of inquiry.

13. Inquiry report.

14. Punishment for false or malicious complaint and false evidence.

15. Determination of compensation.

16. Prohibition of publication or making known contents of complaint and inquiry proceedings.

17. Penalty for publication or making known contents of complaint and inquiry proceedings.

18. Appeal.

CHAPTER VI- DUTIES OF EMPLOYER SECTIONS

19. Duties of employer.

CHAPTER VII -DUTIES AND POWERS OF DISTRICT OFFICER

20. Duties and powers of District Officer.

CHAPTER VIII- MISCELLANEOUS

21. Committee to submit annual report.

22. Employer to include information in annual report.

23. Appropriate Government to monitor implementation and maintain data.

24. Appropriate Government to take measures to publicise the Act.

25. Power to call for information and inspection of records.

26. Penalty for non-compliance with provisions of Act.

27. Cognizance of offence by courts.

28. Act not in derogation of any other law.

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

4.1 INTRODUCTION

4.2 OBJECTIVES

4.3 SUBJECT

4.3.1 Objectives of Labour Welfare Laws

4.3.2 Approach to Labour Welfare Laws

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4.6 SAQS

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4.8 SUGGESTED READINGS

4.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

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

5.2 OBJECTIVES

5.3 SUBJECT

5.3.1 Organised Sector

5.3.1.1 Key Characteristics of the Organised Sector

5.3.2 Unorganised Sector

5.3.2.1 Key Characteristics of the Unorganised Sector

5.3.2.2 Unorganised Workers

5.3.2.3 Categorisation of Unorganised Workers

5.3.3 Labour Rights of Organised Sector

5.3.3.1 Working conditions

5.3.3.2 Employee Relations

5.3.3.3 Wages and Monetary Benefits

5.3.3.4 Social Security Laws

5.3.4 Labour Rights of Unorganised Sector

5.4 SUMMARY

5.5 GLOSSARY

5.6 SAQS

5.7 REFERENCES

5.8 SUGGESTED READINGS

5.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

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-Roles and Acts, right to Organise and Collective Bargaining, Freedom of Association

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6.4 SUMMARY

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6.7 REFERENCES

6.8 SUGGESTED READINGS

6.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

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)

6.7 REFERENCES

Dr. V.G. Goswami, Labour and Industrial laws, Central Law Agency, Allahabad, 2011.

Suresh C. Srivastava, Industrial Relations and Labour Laws, Vikas Publishing House Pvt. Ltd. 2013.

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

7.2 OBJECTIVES

7.3MAIN BODY

7.3.1 Settlement of Industrial Disputes

7.3.2 Strike and Lock Out

7.3.3 Lay off and Retrenchment

7.4SUMMARY

7.5 GLOSSARY

7.6SAQ

7.7REFERENCES/BIBLIOGRAPHY

7.8 SUGGESTED READINGS

7.9 TERMINAL AND MODEL QUESTIONS

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)

Penalty for illegal strikes and lock-outs (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.

Penalty for instigation, etc. (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.

Penalty for giving financial aid to illegal strikes and lock-outs. (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

MATERNITY BENEFIT ACT

8.1 INTRODUCTION

8.2 OBJECTIVES

8.3EMPLOYMENT OF WOMEN OR WORK BY WOMEN PROHIBITED DURING CERTAIN TIME

8.4 RIGHT TO PAYMENT OF MATERNITY BENEFIT

8.5 CONTINOUS PAYMENT OF MATERNITY BENEFIT

8.6 PAYMENT OF MATERNITY BENEFIT IN CERTAIN CASES

8.7 NOTICE FOR CLAIM OF MATERNITY BENEFIT AND PAYMENT OF IT

8.8 PAYMENT OF MATERNITY BENEFIT IN CASE OF DEATH OF WOMEN

8.9PAYMENT OF MEDICAL BONUS

8.10 LEAVE FOR MISCARRIAGE

8.11 LEAVE FOR TUBETOMY OPERATION

8.12 OTHER LEAVES

8.13 NURSING BREAKS

8.14 CRECHE FACILITY

8.15 DISMISSAL DURING ABSENCE OF PREGNANCY

8.16 DEDUCTION OF WAGES

8.17 INSPECTORS

8.18 FORFEITURE OF MATERNITY BENEFIT

8.19 EXEMPTION OF ESTABLISHMENTS

8.20 SUMMARY

8.21 GLOSSARY

8.22 SAQ

8.23 REFERENCES/BIBLIOGRAPHY

8.24 SUGGESTED READINGS

8.25 TERMINAL AND MODEL QUESTIONS

8.1 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

8.7 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.

8.8 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.

8.9 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.

8.10 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.

8.11 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.

8.12 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.

8.13 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.

8.14 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.

8.15 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.

8.16 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

8.17 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.

8.19 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.

8.20 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.

8.21 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.

8.22 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.

8.23 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

8.24 Suggested Readings

Malik, P.L., (2023), Industrial Law, Eastern Book Company, Allahabad

Seth, D.D, (2024), Industrial Disputes Act, 1947, Law Publishing House

8.25 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 9

EQUAL REMUNERATION ACT, 1976 AND MINIMUM WAGES ACT

9.1 INTRODUCTION

9.2 OBJECTIVES

9.3 EQUAL REMUNERATION ACT,1976

9.3.1 Payment of Remuneration at equal rates to men and women workers

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9.5SUMMARY

9.6 GLOSSARY

9.7SAQ

9.8REFERENCES/BIBLIOGRAPHY

9.9 SUGGESTED READINGS

9.10 TERMINAL AND MODEL QUESTIONS

9.1 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.

9.2 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.

9.3 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.

9.3.2 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.

9.3.3Advisory 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.

9.3.4Authorities 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.

9.3.5Appellate 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.

9.3.6 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.

9.3.7 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.

9.3.8 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.

9.3.9 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.

9.4 Minimum Wages Act

9.4.1 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.

9.4.2 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.

9.4.3 Committees and Advisory Boards

Committees (Section 5(1)(a))

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.

Advisory Board (Section7)

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.

Central Advisory Board (Section 8)

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.

9.4.4 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.

9.4.5Wages 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.

9.4.6 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.

9.4.7 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.

9.4.8 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.

9.4.9 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.

9.4.10 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.

9.4.11 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.

9.4.12 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.

9.4.13 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).

9.4.14 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).

9.5 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.

9.6 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

9.7 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.

9.8 References/Bibliography

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9.9 Suggested Readings

Malik, P.L., (2023), Industrial Law, Esatern Book Company, Allahabad

Seth,D.D,(2024), Industrial Disputes Act, 1947,Law Publishing House

9.10 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-10

THE PAYMENT OF BONUS ACT, 1965, EMPLOYEES' STATE INSURANCE ACT, 1948 AND THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

STRUCTURE

10.1 INTRODUCTION

10.2 OBJECTIVES

10.3 THE PAYMENT OF BONUS ACT, 1965

10.3.1Payment of Bonus

10.3.2 Disputes and Penalty

10.4 EMPLOYEES' STATE INSURANCE ACT, 1948

10.4.1Corporation, Standing Committee and Medical Benefit Council

10.4.2Employeees' State Insurance Fund

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10.5 THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

10.5.1 Schemes under EPF Act

10.5.2Authorities to administer fund

10.5.3Authorities to determine and recover money due from employer

10.5.4Cognizance of offences, Penalties and damages

10.6 SUMMARY

10.7 GLOSSARY

10.8 SAQ

10.9 REFERENCES/BIBLIOGRAPHY

10.10 SUGGESTED READINGS

10.11TERMINAL AND MODEL QUESTIONS

10.1 Introduction

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

10.2 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.

10.3 Payment of Bonus Act, 1965

10.3.1 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.

10.3.2 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.

10.4 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.

10.4.2 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.

10.4.3 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.

10.4.4 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.

10.4.5 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.

10.4.6 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.

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

10.5.1 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.

10.5.2 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.

10.5.3 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)

10.5.4 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.

10.6 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.

10.7 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.

10.8 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.

10.9 References/Bibliography

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10.10 Suggested Readings

Malik, P.L., (2023), Industrial Law, Esatern Book Company, Allahabad

Seth, D.D, (2024), Industrial Disputes Act, 1947, Law Publishing House

10.11 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 -11

RIGHTS OF EMPLOYEES WITH REGARD TO COMPENSATION AND BENEFITS

STRUCTURE

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11.3.7 Workplace safety and right to compensation

11.3.7.1 Liability to Compensation

11.3.7.2 Right to Timely Payment

11.3.7.3 Penalty for Delay in Payment

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11.3.7.6 Right to Medical Examination

11.3.7.7 Right to Legal Representation

11.3.7.8 Right to Appeal

11.3.7.9 Right to Protection Against Retaliation

11.3.7.10 Right to Compensation for Dependents

11.3.7.11 Compensation agreement should be registered

11.3.7.12 compensations is treated as a priority debt during insolvency or liquidation proceedings

11.3.8 Right to Rehabilitation

11.4 SUMMARY

11.5 GLOSSARY

11.6 SAQS

11.7 REFERENCES

11.8 SUGGESTED READINGS

11.1 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.

[1] Yet to be implemented

11.2 OBJECTIVES

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

11.3 SUBJECT

11.3.1 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.

[2] Section *2(k)* of the Code on Wages, 2019.

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:

- 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:

11.3.1.1 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.

11.3.1.2 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.

11.3.1.3 Right Against Unlawful Deductions

[3] Section 5 of the Payment of Wages Act, 1936,

[4] Section 7of the Payment of Wages Act, 1936,

Only specific deductions are allowed under the Act, such as:[5]

- Deductions for absence from duty
- 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.

11.3.1.4 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.

11.3.1.5 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

11.3.1.6 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]

11.3.1.7 Protection from Retaliation

[5] Section 7(2) of the Payment of Wages Act, 1936,

[6] Section 14 of the Payment of Wages Act, 1936,

[7] Section 20 of the Payment of Wages Act, 1936,

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.

11.3.2 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]

11.3.3 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:

[8] Article 15 of the Indian Constitution

[9] Section *4* of the Code on Wages, 2019.

1. **Overtime Rate:**

    - An employee who works beyond the normal working hours is entitled to overtime wages.

    - 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.

11.3.4 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:

11.3.4.1 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]

[10] [*Mahabir Tiles Work v. Union of India, A.I.R.* 1968 Ker. 143]

[11] Section 8 of the Payment of Bonus Act, 1965

11.3.4.2 Minimum and Maximum Bonus:

- The minimum bonus is 8.33% of the employee's salary or ₹100, whichever is higher.[12]
- The maximum bonus can reach up to 20% of the employee's salary, depending on the employer's profits.[13]

11.3.4.3 Timeframe for Bonus Payment:

Employers must pay the bonus within 8 months from the end of the financial year.[14]

11.3.4.4 Disqualification from Bonus:

Employees can be disqualified from receiving a bonus if dismissed for misconduct, such as fraud, violent behaviour, or theft.[15]

11.3.5 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.

11.3.5.1 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.

11.3.5.2 Eligibility for Gratuity[17]

[12] Section 10 of the Payment of Bonus Act, 1965

[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

- 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.

11.3.5.3 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.

11.3.5.4 Maximum Limit

As of the latest amendment, the maximum gratuity payable is ₹20 lakhs.

11.3.5.5 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]

11.3.5.6 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]

[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

11.3.5.7 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.
- 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.

11.3.6 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:

11.3.6.1 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.

11.3.6.2 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.

[21] Section 7 of the Payment of Gratuity Act, 1972

[22] Section 56 of the Employees' State Insurance Act, 1948 (ESI Act)

[23] Section 49 of the Employees' State Insurance Act, 1948 (ESI Act)

11.3.6.3 Right to Maternity Benefits[24]

- Female employees are entitled to 26 weeks of maternity leave with full wages.
- 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.

[24] Section 50 of the Employees' State Insurance Act, 1948 (ESI Act)

These amendments aim to support the health and well-being of mothers and children, while also encouraging women's participation in the workforce.

11.3.6.4 Right to Disablement Benefits[25]

- 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.

11.3.6.5 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.

11.3.6.6 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

11.3.6.7 Right to Legal Assistance

Employees have the right to approach the ESI Court for resolving disputes related to benefits, wages, or treatment.[28]

11.3.6.8 Protection Against Retaliation

Employees are protected from any form of harassment or termination by the employer for filing a claim under the ESI Act.

11.3.6.9 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

[25] Section 51 of the Employees' State Insurance Act, 1948 (ESI Act)

[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

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.

- 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.

11.3.7 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.

11.3.7.3 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.

[29] Section 4A of The Employees' Compensation Act, 1923

[30] Section 4A(3)(a) The Employees' Compensation Act, 1923

- **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.

11.3.7.4 Right to Compensation for Occupational Diseases

- 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.

11.3.7.5 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.

11.3.7.6 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.

11.3.7.7 Right to Legal Representation

- Employees can approach the Commissioner for Employees' Compensation for resolution of disputes.

[31] Section 4A(3)(b) The Employees' Compensation Act, 1923

[32] Section 3(2) of The Employees' Compensation Act, 1923

- **Section 11** of The Employees' Compensation Act, 1923 provides a legal mechanism for settling disputes related to compensation.

11.3.7.8 Right to Appeal

- If dissatisfied with the Commissioner's decision, employees have the right to appeal to the High Court on a substantial question of law.[33]

11.3.7.9 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.

11.3.7.10 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.

11.3.7.11 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]

11.3.7.12 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.

[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

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]

11.3.8 Right to Rehabilitation

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.

[36] For detail study refer unit 12
[37] Describe above
[38] Described above

- 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.

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.

11.4 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.

11.5 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.

11.6 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?

[39] Section *2(d)* of the Code on Wages, 2019.

3. Are apprentices covered under this regulation?

4. How should wages be paid to employees?

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.

11.7 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/

11.8 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
7. The Employees' Compensation Act, 1923
8. The Indian Constitution
9. https://labour.gov.in/

Unit 12

The Employee's Compensation Act, 1923

STRUCTURE

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12.1 INTRODUCTION

The Employee’s Compensation Act, 1923 was one of the earliest social security legislations in India, aimed at providing financial protection to employees and their families in cases of workplace injuries or deaths. The Employees' Compensation Act, 1923, remains a cornerstone of worker protection legislation in India. It ensures that employees who suffer from work-related injuries or diseases are compensated fairly and promptly, providing financial security to workers and their families.

The amendments and updates over the years reflect the commitment to improving worker welfare and adapting to changing industrial conditions. In the present unit, we discuss the applicability, key features, objectives and importance of The Employees' Compensation Act, 1923.

12.2 OBJECTIVES

After reading this unit you will be able to understand the following:

- Historical Background of the Employees' Compensation Act,
- Industrial Growth, Labour Exploitation and Influence of British Laws
- Amendments and Evolution tothe Employees' Compensation Act, 1923 in due course of time
- Objectives of The Employee’s Compensation Act, 1923
- Key definition to understand the Employee’s Compensation Act, 1923
- Provisions regarding compensation in case of any work place injury to the employee
- Employer's liability

- Employer’s liability for occupational Diseases
- The formulas for deciding amount of compensation in different cases of injury and work related disease
- Penalty in case of delay
- Right to review a compensation award
- Fair distribution of compensation in case of death of employee to their dependants
- Detailed procedure and mechanism for claiming compensation
- Rights of contract workers
- Employer’s duty and penalties for non-compliance
- Dispute settlement and appointment, power, responsibilities and procedure of commissioner
- Provisions for ship and aviation employees and employees abroad of companies and motor vehicles
- Right to appeal and recovery of compensation
- Power of making rule regarding the act

12.3 SUBJECT

12.3.1 Historical Background

The Employees' Compensation Act, 1923 was enacted during the british rule over India. It provides compensation to employees for injuries or occupational diseases. It ensures employer liability for workplace accidents and promotes workplace safety by holding employers accountable.

Here's a brief overview of its historical background:

12.3.1.1 Industrial Growth and Labour Exploitation

During the late 19th and early 20th centuries, the growth of industries, particularly in sectors like coal mining, textiles, and railways, led to hazardous working conditions. Workers faced frequent accidents, but there were no legal provisions ensuring compensation for injuries or fatalities.

12.3.1.2 Influence of British Laws

The British introduced laws in India to address labour issues, often mirroring legal developments in Britain. The Workmen's Compensation Act, 1897 (UK) was a key influence. This Act mandated compensation for injured workers, creating a precedent for similar laws in British colonies.

12.3.1.3 Enactment of the Act

Recognizing the need for social security, the Workmen's Compensation Act was drafted and enacted in 1923 in India. It came into effect on 1st July 1924. The Act was primarily introduced to provide financial support to employees or their dependents in the event of an accident arising out of and in the course of employment.

12.3.1.4 Amendments and Evolution

The Employee's Compensation Act, 1923, has undergone various changes since its inception to adapt to the evolving industrial landscape and enhance worker protections. Here is a chronological overview of the key events and amendments related to the Act:

Amendment of 1946

- ➢ Expanded the coverage of the Act to include more industries and hazardous occupations.
- ➢ Enhanced the calculation of compensation for fatal and non-fatal injuries.

Amendment of 1976

- ➢ Significant changes were made to improve benefits for workers.
- ➢ Compensation rates were revised to keep pace with inflation and economic changes.

Amendment of 2000

- ➢ Increased the maximum limit of wages for determining compensation.
- ➢ The concept of monthly wages was introduced to calculate the compensation more accurately.

Amendment of 2009

- ➢ The Act was renamed from Workmen's Compensation Act to Employees' Compensation Act to ensure gender-neutral terminology and broader inclusivity.
- ➢ Coverage was extended to all employees, including contractual and casual workers.
- ➢ The term "workmen" was replaced with "employees" to reflect a more inclusive approach.

Amendment of 2017

- ➢ The maximum penalty for non-compliance was increased from ₹1,000 to ₹50,000, extendable up to ₹1,00,000.
- ➢ Employers were mandated to inform employees of their rights under the Act, in a language they understand.
- ➢ Provisions were added to ensure timely payment of compensation to employees or their families.

Integration into the Code on Social Security, 2020[40]

- ➢ The Act will be subsumed under the Code on Social Security, 2020 once it is enforced.
- ➢ The Code aims to consolidate multiple labour laws, including the Employees' Compensation Act, into a single, streamlined framework.
- ➢ Enhanced social security benefits, streamlined processes, and unified regulations are expected under the new code.

These amendments reflect the Act's continuous evolution to ensure workers' protection in changing economic and industrial environments.

12.3.2 The Employee's Compensation Act,1923[41]

The Employee's 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. Below we gives a detailed analysis of the act:

12.3.2.1 Preliminary

Section 1. Short title, extent and commencement. -

This section specifies that the Act applies to the whole of India. It came into effect on 1st July 1924.

Section 2. Definitions. -

[40] Yet to be Implemented

[41] as amended through EC(Amendment)Act,2017

Definitions form the foundation for applying and interpreting the provisions of the Employees' Compensation Act. Here are some key definitions:

1. **Employee:** An employee[42] means a person who (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II[43]; or (ii) (a) a master, seaman or other members of the crew of a ship, (b) a captain or other member of the crew of an aircraft, (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle, (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II[44] and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or (iii) employed in any such capacity as is specified in Schedule II[45], whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing;

Exclusion: Armed forces personnel are excluded as they are covered under other laws like the Army Act.

2. **"Employer"** includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee is working for him;[46]

3. **"Wages",** includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a employee towards any pension or provident fund or a sum paid to a employee to cover any special expenses entailed on him by the nature of his employment;[47]

Exclusions: Bonuses, pensions, employer contributions to provident funds, or gratuity are not considered wages.

4. **"Dependant"** means any of the following relatives of deceased employee, namely:-- (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother; and (ii) if wholly dependent on the earnings of the

[42] Section 2(dd) of The Employees' Compensation Act, 1923

[43] Provides list of persons who are included in the definition of employees

[44] Refer bare act

[45] Refer The Employees' Compensation Act, 1923, bare act

[46]Section 2(e) of The Employees' Compensation Act, 1923

[47] Section 2(m) of The Employees' Compensation Act, 1923

employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm; (iii) if wholly or in part dependant on the earnings of the employee at the time of his death,-- (a) a widower, (b) a parent other than a widowed mother, (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor, (d) a minor brother or an unmarried sister or a widowed sister if a minor, (e) a widowed daughter-in-law, (f) a minor child of a pre-deceased son, (g) a minor child of a pre-deceased daughter where no parent of the child is alive, or (h) a paternal grandparent if no parent of the employee is alive; Explanation.--For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively.[48]

5. **"Partial disablement"** means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a employee]in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified [in Part II of Schedule I][49] shall be deemed to result in permanent partial disablement;[50]

6. "Total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a employee for all work which he was capable of performing at the time of the accident resulting in such disablement: Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. or more;[51]

7. **"Commissioner"** means a Commissioner for employee's Compensation appointed under section 20;[52]

12.3.2.2 Employer's liability

Section 3- Employer's 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

[48] Section 2(d) of The Employees' Compensation Act, 1923

[49] Refer schedule I, The Employees' Compensation Act, 1923

[50] Section 2(g) of The Employees' Compensation Act, 1923

[51] Section 2(l) of The Employees' Compensation Act, 1923

[52] Section 2(b) of The Employees' Compensation Act, 1923

be liable to pay compensation in accordance with the provisions. The injury can be physical or mental.

Liability for Occupational Diseases[53]

Employers are also liable for compensation if the employee suffers from an occupational disease that arises due to the nature of their work.

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.

Exceptions to Employer's Liability

The employer is not liable to pay compensation under the following circumstances:

Injury of temporary nature: any injury which does not result in the total or partial disablement of the employee for a period exceeding three days; Intentional Injury: If the injury is caused by the employee's deliberate act or self-harm.

Intoxication: If the employee was under the influence of drugs or alcohol at the time of the accident.

Violation of Safety Rules: If the injury occurred due to a wilful disregard of safety procedures.

Burden of Proof: In most cases, the burden is on the employer to prove that the injury was due to the employee's negligence if they deny liability.

Example 1: A construction worker falls from a scaffold while working at a site and sustains a spinal injury. Since the accident occurred during work, the employer is liable to pay compensation.
Example 2: A factory worker develops lung disease after years of exposure to harmful chemicals. This is an occupational disease covered under Schedule III, making the employer responsible for compensation.

Example 3: If an employee consumes alcohol during a break and gets injured due to intoxication, the employer is not liable for compensation.

Example 4: An employee intentionally damages machinery and gets injured in the process. Since the injury was self-inflicted, no compensation is payable.

12.3.2.3 Compensation and Penalty

[53] Section 3(2) of The Employees' Compensation Act, 1923

Section 4 of the Employees' Compensation Act, 1923 specifies how the amount of compensation is calculated when an employee suffers from an injury or dies due to a workplace accident or occupational disease. The Act provides clear guidelines based on the nature of the injury and the employee's wages.

1. Factors for Calculating Compensation: The amount of compensation depends on the following factors:

Nature of Injury: Death, Permanent total disablement, Permanent partial disablement, Temporary disablement (total or partial)

Age of the Employee: Younger employees may receive higher compensation as their remaining working years are more.

Monthly Wages: The employee's wages are used as the base to calculate the compensation. The maximum monthly wage for calculation purposes is capped at ₹15,000, as per the latest amendment.

2. Compensation in Case of Death

Amount Payable: 50% of the employee's monthly wages multiplied by the relevant factor from Schedule IV (based on the age of the employee) or a minimum of ₹1,20,000, whichever is higher and paid to the dependants of the deceased employee according to act.

Schedule IV: Schedule IV provides a table of factors based on the age of the employee at the time of injury or death. These factors are used to multiply the wages to calculate compensation. The younger the employee, the higher the factor, since they would have had more working years ahead.[54]

Age (years)	Factor
Not more than 20	224.00
Not more than 29	209.92
Not more than 41	181.37
65 or more	99.37

[54] For more detail see schedule IV of the Employee's Compensation Act, 1923

Example: If an employee earning ₹12,000 per month dies in a workplace accident at the age of 30, the compensation might be:

50% of ₹12,000 = ₹6,000

Suppose the factor for age 30 is 200.

₹6,000 × 200 = ₹12,00,000.

3. Compensation in Case of Permanent Total Disablement

Amount Payable: 60% of the employee's monthly wages multiplied by the relevant factor from Schedule IV or a minimum of ₹1,40,000, whichever is higher.

Example: An employee earning ₹15,000 per month is permanently disabled at age 40.

60% of ₹15,000 = ₹9,000

If the factor for age 40 is 180:

₹9,000 × 180 = ₹16,20,000.

4. Compensation in Case of Permanent Partial Disablement

Amount Payable: A proportionate percentage of the amount that would be payable in the case of permanent total disablement. The percentage is determined based on the severity of the disablement as listed in Schedule I.

Schedule I contains a detailed list of injuries that result in permanent partial disablement or permanent total disablement. Each injury is assigned a specific percentage to determine the compensation amount.[55]

[55] For more detail refer schedule I of The Employees' Compensation Act, 1923

Description of Injury	Disablement percentage
Loss of both hands or amputation at higher sites	100 (Permanent Total Disablement)
Loss of one leg above the knee	50 (Permanent Partial Disablement)
Loss of sight in one eye	40
Loss of hearing in both ears	50
Loss of four fingers of one hand	40
Amputation of a toe (except the big toe)	3

Example: Loss of one hand is considered 60% disablement. If the total disablement compensation was ₹12,00,000, the compensation for partial disablement would be:

60% of ₹12,00,000 = ₹7,20,000.

5. Compensation in Case of Temporary Disablement

Amount Payable: 25% of the employee's monthly wages as a half-monthly payment. The payment continues until the employee is fit to resume work or for 5 years, whichever is earlier.

Example: An employee earning ₹10,000 per month is temporarily disabled.

25% of ₹10,000 = ₹2,500 every fortnight until recovery.

6. Some other key point of section 4

Minimum Compensation: Even if the calculated compensation is lower than the minimum limit, the employee or their dependents are entitled to receive the minimum compensation (₹1,20,000 for death and ₹1,40,000 for total disablement).

Medical Expenses: The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during course of employment.[56]

Expenditure of the funeral: If the injury of the employee results in his death, a sum of *[not less than five thousand rupees] paid to the person who perform funeral for such deceased employee.

Period of Payment: Compensation should be paid promptly, within a specified time, to avoid penalties.

Section 4A. Compensation to be paid when due and penalty for default. - Section 4A serves as a strong deterrent against delays in compensation payments, ensuring the financial security of injured employees and their families. Employers are encouraged to make timely payments to avoid penalties and additional interest.

The employer is responsible for paying the compensation as soon as it becomes due. Generally, the compensation is considered due from the date of the accident or diagnosis of an occupational disease. The compensation becomes due immediately upon the death of the employee. If the injury results in permanent or temporary disablement, the compensation becomes due once the extent of the injury is determined by a medical report.

If the employer accepts liability, they must pay the compensation within one month[57] from the date it becomes due. If the employer disputes liability, they are still required to make a provisional payment based on a reasonable estimate, subject to final determination by the Commissioner.

Penalty for Delay in Payment

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[58] 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[59] as a penalty for unjustified delay. The Commissioner for Employees' Compensation has the authority to impose this penalty.

[56] Section 3(2A) The Employees' Compensation Act, 1923

[57] Section 4A(3) The Employees' Compensation Act, 1923

[58] Section 4A(3)(a) The Employees' Compensation Act, 1923

[59] Section 4A(3)(b) The Employees' Compensation Act, 1923

Exceptions to Penalty: The employer may be exempt from paying a penalty if they can prove that the delay in payment was due to a bona fide dispute regarding the liability to pay compensation or circumstances beyond their control.

Example 1:
An employee falls from a ladder at a construction site and sustains permanent disability. The employer does not pay the compensation within one month.
Consequence: The employer must pay compensation with 12% interest plus a penalty up to 50% of the total compensation.

Example 2: An employer disputes the cause of injury, claiming it did not occur during the course of employment. However, the Commissioner rules in favor of the employee. The employer will be liable to pay the compensation along with interest and possibly a penalty.

Example 3: If the employer can prove that the delay occurred due to a pending medical report or unavoidable reasons, they may avoid the penalty. However, they will still have to pay interest.

Section 5. Method of calculating wages. - This section provides guidelines on how to calculate the wages of an employee for determining the compensation amount in case of injury or death. Since compensation is directly linked to wages, the correct calculation is crucial.

Wages include any remuneration paid for work, including overtime, allowances, and bonuses (except bonuses not related to regular work).

Methods of Calculation: Section 5 offers different methods to calculate wages based on the employee's working pattern and employment duration.

(a) Regular Employment (Worked for 12 Months)

If an employee has been in continuous employment for 12 months preceding the accident:

Example: If an employee earned ₹1,80,000 in the last 12 months: ₹1,80,000 ÷ 12 = ₹15,000 per month.

(b) Employment Less than 12 Months

If the employee has worked for less than 12 months before the accident: Monthly Wages = Total Wages Earned ÷ Number of Months Worked

(c) Daily Wagers or Irregular Work

If the employee works on a daily wage basis or has an irregular working pattern:

Monthly Wages = Average Daily Wages × 30 Days

Example: An employee earns ₹600 per day:

₹600 × 30 = ₹18,000 per month.

(d) No Fixed Wages or Recent Employment: If it is not possible to calculate wages based on previous earnings, the wages of a worker in a similar role within the same locality are considered as the basis for the calculation.

Example: If no wage record is available, the Commissioner may refer to the wages of another worker doing a similar job in the region.

Exclusions in Wage Calculation:

Overtime Payments: Irregular overtime wages are generally excluded unless they are part of regular earnings.

Bonus and Gratuity: Bonuses that are not related to work performance or are seasonal are not included.

Travel and Other Allowances: Allowances for travel or other work-related expenses are excluded.

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

Section 6: Review: Section 6 of the Employees' Compensation Act, 1923 provides the right to review a compensation award under certain circumstances. This ensures that the compensation remains fair and appropriate if the employee's condition changes over time. Both the Employer and The Employee can apply for a review.

Ground for Review:

1. **Change in the Employee's Condition:** If there is a change in the injury or health condition of the employee. For example, if a temporary disability becomes permanent or if the employee's condition improves significantly.

2. **Increase or Decrease in Compensation:** The compensation can be increased if the injury worsens. It can be reduced if the employee recovers partially or fully.

Process of Review: The application for a review must be submitted to the Commissioner for Employees' Compensation. The Commissioner may conduct a medical examination to determine the employee's current condition. Based on the findings, the Commissioner may:

1. Confirm the previous compensation;

2. Increase the compensation;

3. Reduce the compensation; or

4. Terminate the compensation if the employee has fully recovered.

Example:

Case 1: An employee was awarded compensation for a temporary disability, but the condition later worsens, leading to a permanent disability. In this case, the employee can apply for a review to increase the compensation.

Case 2: An employee receiving compensation for a partial disability recovers completely after medical treatment. The employer can request a review to reduce or stop further compensation payments.

Section 7. Commutation of Half-Monthly Payments: Commutation refers to converting periodic payments (made every half-month) into a lump sum payment. This section ensures flexibility in the mode of compensation. Either the employee or the employer can apply to the Commissioner to commute these payments into a single lump sum. The Commissioner for Employees' Compensation has the authority to approve or deny the commutation request. Before granting commutation, the Commissioner ensures that the decision is in the best interest of the employee and if he feels necessary he may also consult a medical expert to assess the employee's health condition.

Example: An employee sustains a temporary disability in a workplace accident and is awarded ₹10,000 as a half-monthly payment. After a few months, the employee requests a commutation to receive the remaining payments as a lump sum for medical treatment or other financial needs. The Commissioner evaluates the case and approves the commutation. The lump sum is calculated based on the remaining payments.

Section 8. Distribution of Compensation: This section outlines the procedure for the distribution of compensation when it is payable to the employee's dependents, especially in cases of death. This section ensures that the compensation reaches the rightful beneficiaries fairly and transparently.

This section applies only in the case of Death of a employee or If the employee is mentally or physically unable to manage the compensation. In such cases the employer must deposit the compensation amount with the Commissioner for Employee's Compensation instead of paying directly to the dependent to prevent misuse or unfair distribution of the money.

Inquiry and Distribution: The Commissioner conducts an inquiry to identify the legal dependents of the deceased employee. After verification, the Commissioner distributes the compensation among the dependents based on their financial needs and legal entitlement. In

case of any dispute regarding the rightful dependents, the Commissioner's decision is considered final.

Provision for Minors and Disabled Dependents: If any dependant is a minor (under 18 years) or a person with disability, the compensation may be deposited in a bank account or trust, so the amount can be used for the child's education, medical care, or other essential needs, as directed by the Commissioner.

Penalty for Non-Compliance: If the employer fails to deposit the compensation with the Commissioner, they may face legal consequences and the Commissioner has the authority to enforce the payment through legal action.

Example: An employee dies in a workplace accident, leaving behind a wife, two minor children, and aged parents. The employer deposits the compensation with the Commissioner. After conducting an inquiry, the Commissioner fairly distributes the compensation by allocating a portion to the wife for household expenses, a portion for the children's education, and a smaller portion for the parents' needs.

The role of the Commissioner is pivotal in safeguarding the interests of the beneficiaries and preventing misuse of funds. In case, Commissioner varies his previous order by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.[60]

Section 9: Compensation Not to Be Assigned, Attached, or Charged: This section states, that:

- ➢ The compensation amount cannot be transferred or assigned to another person through a contract or agreement.
- ➢ Courts cannot seize or attach the compensation amount to settle debts or other liabilities of the employee.
- ➢ Compensation cannot be used as a security or collateral for loans.

Examples:

Case 1: An injured employee receives ₹5 lakhs as compensation. A moneylender demands repayment of a personal loan using this amount. Under Section 9, the creditor cannot legally claim this compensation for loan repayment.

[60]Section 8(9)The Employees' Compensation Act, 1923

Case 2: A deceased employee's family is awarded compensation. Another family member tries to transfer the compensation rights to a third party. Section 9 prohibits such an assignment.

Section 9 acts as a protective shield for employees and their families, ensuring that the compensation fulfils its purpose without interference. It promotes the financial well-being of vulnerable individuals in challenging times.

12.3.2 4 Notice, reporting and enquiry of accident and medical

Section 10. Notice and Claim: Provisions of this deals with the process of notifying the employer and making a claim for compensation in case of a workplace injury, occupational disease, or death. This section sets clear guidelines on how and when an employee or their dependents can claim compensation.

1. **Notice of Accident:** The injured employee, or in case of death, their dependent must give written notice to the employer about the accident. The notice should contain Date and time and place of accident and cause and nature of the injury. It can be delivered directly to the employer or to any responsible person at the workplace.

2. **Time Limit for Notice:** The notice should ideally be given as soon as possible after the accident. However, a delay in providing notice does not automatically cancel the right to claim compensation if a valid reason is provided.

3. **Claim for Compensation:** A formal claim for compensation must be made within 2 years from the date of the accident or from the date of death. In case of occupational diseases, the 2-year period begins from the time the employee is made aware of the disease.

4. **Exemptions from Notice Requirement:** If the employer was aware of the accident immediately (e.g., in cases of severe injuries or workplace fatalities), the requirement to give notice may be waived. If the employer has already provided medical treatment or has acknowledged the accident, the lack of a formal notice is not a barrier to claiming compensation.

Section 10A. Power to enquire from Employers Statements Regarding Fatal Accidents: Purpose of this section is to ensure that fatal accidents at workplaces are promptly reported to the relevant authorities. A proper investigation facilitates and ensure that the deceased employee’s dependents receive the compensation they are entitled to. In this way to maintain transparency and accountability on the part of the employer.

The employer’s statement must include full details of the accident. Name and details of the deceased employee. Circumstances leading to the accident. Also any additional relevant information that may assist in the investigation.

The employer must submit the statement within 7 days from the date of the accident. This ensures timely action and allows the Commissioner to initiate necessary procedures. Failure to submit the statement or providing false information may result in penalties and legal action against the employer.

The Commissioner uses this statement to determine the amount of compensation due to the dependents. It also helps in understanding whether any further legal action or safety measures are necessary.

Section 10B. Reports of Fatal Accidents and Serious Bodily Injuries: Section 10B introduces a legal obligation for employers to report cases of fatal accidents and serious bodily injuries occurring in the workplace. This section ensures prompt reporting and transparency for better investigation and appropriate compensation. This is also help to promote workplace safety by holding employers accountable for maintaining safety standards.

The provisions of this section is mandatory. Every employer must report any fatal accident or serious bodily injury to the Commissioner for Employees' Compensation. The report must also be sent to the State Government or other designated authorities. The report must be submitted within 7 days from the date of the accident, so that ensures quick compensation and effective investigation. The report includes all necessary detail of accident. **Consequences of Non-Compliance:** Failure to report a fatal accident or serious injury may lead to penalties under the Act. It could also affect the employer's legal standing in case of a compensation claim.

Section 11. Medical examination. - This section 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.

According to the provisions of this section, The employer has the right to request the injured employee to undergo a medical examination by a qualified medical professional. This request can be made before or after a claim for compensation is filed.

Employee's Obligation: An employee may be required to undergo periodic medical examinations to track recovery or evaluate the extent of permanent disability.[61] The injured employee is required to comply with the employer's request for a medical examination. Refusal to attend the examination without a valid reason may result in suspension of compensation until the examination is completed.[62]

[61] Section 11(1) of The Employees' Compensation Act, 1923

[62] Section 11(2) of The Employees' Compensation Act, 1923

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.

The medical report is a crucial piece of evidence in deciding the amount of compensation. It helps the Commissioner determine whether the injury has led to temporary or permanent disability and to what extent.

12.3.2.5 Contract workers

Section 12. Contracting: Section 12 deals with situations where an employer hires a contractor to perform work. It ensures that workers employed by contractors are also protected under the Act and are entitled to compensation in case of any injury or accident.

1. **Liability of Principal Employer:** If a principal employer engages a contractor to execute any work and a worker employed by the contractor suffers an injury, the principal employer is liable to pay compensation. This applies if the work is directly connected to the employer's trade, business, or operations.

2. **Right to Recover Compensation:** After paying compensation, the principal employer has the right to recover the amount from the contractor. This encourages contractors to fulfill their responsibilities and maintain workplace safety.

3. **Scope of Application:** Section 12 applies to situations where the work performed is an essential or integral part of the employer's business. It does not cover work that is casual or unrelated to the main operations of the employer.

4. **No Relief for Negligence:** The principal employer remains liable even if the contractor was negligent or failed to ensure safety. This ensures that injured workers are not left without compensation due to third-party negligence.

Example:

Case 1: A construction company hires a contractor to build a part of a factory. One of the contractor's workers falls from a scaffold and suffers a severe injury. Since the construction is directly linked to the company's business, the principal employer is liable to pay compensation.

Case 2: A textile factory outsources its machinery maintenance to a contractor. If a maintenance worker is injured during repairs, the factory owner (principal employer) is responsible for compensation, even though the worker is not directly employed by the factory.

Exclusion : This section shall not apply in any case where the accident occurred elsewhere that on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.[63]

12.3.2.6 Injury caused by third party and Insolvency of employer

Section 13. Remedies of Employer Against Stranger: Section 13 provides a legal remedy for employers in cases where an employee's injury is caused by a third party (stranger). It ensures that the employer can recover compensation from the responsible party if they had to pay compensation under the Act.

Employee's Choice: Employee may claim compensation under the Employees' Compensation Act from the employer or file a lawsuit directly against the third party for damages. However, the employee cannot claim both.

Subrogation Rights: Once the employer pays the compensation, they can step into the employee's shoes and initiate legal proceedings against the third party to recover the amount. This is called subrogation.

Section 14. Insolvency of Employer: Purpose of 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.

Claim Through Commissioner: The injured employee or their dependents can submit a claim for compensation to the Commissioner for Employees' Compensation. The Commissioner will ensure that the claim is included in the list of debts during insolvency proceedings.

Liability of Insurer: If the employer had taken an insurance policy to cover liability under the Act, the insurer will be responsible for paying the compensation, even if the employer is insolvent.

Example:

Case 1: A factory worker suffers a severe injury, and the employer is unable to pay the compensation due to insolvency. The worker files a claim, and the compensation is treated as a priority debt, ensuring the worker receives their rightful dues.

Case 2: A construction company goes into liquidation. Since the company had insurance coverage for employee compensation, the insurer is liable to pay the injured worker's compensation, even though the company is no longer financially solvent.

[63] Section 12(4) of The Employees' Compensation Act, 1923

Exclusion : This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.[64]

14A. Compensation to be first charge on assets transferred by employer: Section 14 A prevent employers from escaping their liability by transferring their assets to others.

If an employer transfers, sells, or disposes of any property after an injury has occurred, the compensation amount becomes a first charge[65] on that property.

The provision helps prevent employers from making fraudulent transfers of assets to avoid paying compensation.

Liability on Transferees: If the property is transferred to a third party, the claim for compensation remains valid and can be enforced against the transferred property. The Commissioner for Employees' Compensation has the authority to enforce the claim and ensure compensation is paid from the proceeds of the transferred assets.

12.3.2.7 Provisions for ship and aviation employees and employees abroad of companies and motor vehicles

15. Special provisions relating to masters and seamen. - Section 15 provides specific guidelines for the payment of compensation to masters and seamen who may suffer injuries during the course of their employment. Masters and seamen are individuals working on ships, including captains, officers, and other crew members. It addresses the unique risks faced by maritime workers, as their work environment is often hazardous.

1. **Employer's Liability:** The ship owner or employer is liable to pay compensation if the seaman is injured, disabled, or dies due to a workplace accident.

2. **Seamen on Foreign Ships:** If an Indian seaman is working on a foreign ship, they are still eligible for compensation under this Act, provided there is a contractual agreement.

3. **Jurisdiction:** The Commissioner for Employees' Compensation has the authority to hear and decide on claims made by masters and seamen.

4. **Calculation of Compensation:** Compensation is determined based on the nature of the injury and the seaman's wages.

[64] Section 14(7) of The Employees' Compensation Act, 1923

[65] It means that compensation must be paid before settling any other claims or debts related to that property.

Example: An Indian seaman working on a foreign vessel under a contract is injured in international waters. If the contract acknowledges Indian jurisdiction, the employee can claim compensation in India.

15A. Special provisions relating to captains and other members of crew of aircrafts. - Section 15A provides specific legal provisions for captains and crew members of aircrafts. This section acknowledges the unique nature of their work environment and ensures their right to compensation in case of accidents or injuries.

This section applies to captains, pilots, co-pilots, flight engineers, and other crew members working on aircrafts. It includes both commercial and private aircrafts, provided the individual is employed under a contract.

Accidents During Flight or Duty: Compensation is applicable for accidents occurring during a flight, on the ground, or while performing assigned tasks related to the aircraft's operation. Whether the accident happens within India or during an international flight, the crew member (or their dependents) can claim compensation under this Act if the employment contract applies Indian law.

Jurisdiction and Claims: Claims for compensation are to be filed before the Commissioner for Employees' Compensation. The Commissioner has the authority to adjudicate disputes and determine the compensation amount.

15B. Special provisions relating to employees abroad of companies and motor vehicles. - this section provides special provisions for employees who are employed abroad by Indian companies or are working with motor vehicles.

Purpose of Section 15B is to extend legal protection to employees working outside India for Indian companies ensuring that employees working with motor vehicles in hazardous conditions are compensated in case of an accident. It removes uncertainties regarding compensation for employees who may not be in India when the injury occurs.

This section saves the rights of compensation for Indian employees who are sent abroad for work by Indian companies, during any injury or accident occurs outside the country.

Employees engaged in operating, driving, or maintaining motor vehicles are covered under this section. It includes drivers, mechanics, cleaners, and other staff involved in the operation of vehicles for commercial purposes.

Jurisdiction: Compensation claims can be filed in India before the Commissioner for Employees' Compensation, providing a legal remedy for the employee or their dependents.

Contractual Agreements: If the employment contract includes terms for compensation in case of injury, those terms will apply alongside the provisions of this Act.

Example

Case 1: An Indian engineer working on an international project for an Indian company sustains injuries at the construction site. Under Section 15B, the company is liable to pay compensation.

Case 2: A driver working for a logistics company meets with an accident while transporting goods. The employer is responsible for compensation under this Act.

Case 3: An Indian mechanic is sent to a foreign country for vehicle repairs. If injured during work, the employer is liable to provide compensation as per Section 15B.

12.3.2.8 Employer's duty and penalties for non-compliance

Section 16. Returns as to compensation. -The provisions of this section deals with the requirement for employers to submit returns regarding compensation paid under the Act.

Employers are required to submit periodic reports or returns to the appropriate authority, typically the State Government. These returns must detail the compensation paid in cases of injury, disability, or death of employees. Failure to submit the required returns or providing false information may result in penalties.

Section 17. Contracting out. - Section 17 prohibits any agreement that attempts to take away or reduce the rights of employees to claim compensation under the Act.

Provision of this section protect employees from being forced into agreements that waive or reduce their right to compensation. It ensures that the employer's liability under the Act cannot be avoided through contracts or private agreements. It maintains the legality and fairness of the compensation system by preventing exploitation.

Prohibition of Contracting Out: Any agreement that restricts or negates an employee's right to claim compensation is considered null and void. Even if an employee signs such a contract, it will have no legal effect.

Non-Waivable Rights: Rights provided under the Employees' Compensation Act are statutory rights. Employees cannot voluntarily give up these rights, even if they agree to it. If an employer attempts to enforce an unlawful contract under this section, the employee can approach the appropriate legal authority for justice and compensation.

Section 17A bound every employer that, immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.

Section 18. Proof of age[66]

18A. Penalties. -Section 18A prescribes penalties for employers who fail to comply with the provisions of the Act.

Punishment for Non-Compliance: If an employer fails to comply with any provision of the Act, they can face a fine up to ₹5,000 depending on the severity of the violation.

Applicable Offenses under section 18A: Employers may be penalized for:

- Non-payment of compensation.
- Failure to submit returns or reports as required under the Act.
- Not reporting accidents that result in death or serious injury.
- Obstructing authorities during inspections or investigations.

Legal Proceedings: Cases under Section 18A are handled by a competent court. In case of Continuous Offenses even after a penalty, further legal action can be taken.

12.3.2.9 Dispute settlement and appointment, power, responsibilities and procedure of commissioner

19. Reference to Commissioners. - Section 19 specifies that any dispute arising under the Act should be referred to a Commissioner for Employees' Compensation for adjudication. This section provides a legal mechanism for settling disputes related to compensation. It assigns the responsibility of adjudicating disputes to a Commissioner who has the authority to determine the claim.

Section 19 applies to disputes regarding:

- ➢ The existence of liability for compensation.
- ➢ The amount of compensation payable.
- ➢ The person(s) to whom compensation is payable.

If the employer and employee disagree on these points, the dispute is referred to the Commissioner. The Commissioner for Employees' Compensation has the power to investigate and resolve disputes. The decision of the Commissioner is legally binding.

[66] Repealed by the Workmen's Compensation (Amendment) Act, 1959 (8 of 1959), section 11 (w.e.f. 1-6-1959).

Exclusion of Civil Courts: Civil courts have no jurisdiction to hear cases related to employee compensation. Only the Commissioner can decide such disputes.[67]

20.Appointment of Commissioners. - Section 20 provides for the appointment of Commissioners for Employees' Compensation. These officials are responsible for adjudicating disputes related to compensation claims under the Act.

Appointment Authority: The State Government has the power to appoint Commissioners. The government may appoint one or more Commissioners depending on the need and workload.

Eligibility of Commissioners: A person appointed as a Commissioner should have judicial experience.

Jurisdiction: Each Commissioner is assigned a specific territorial jurisdiction within the state. All disputes arising in that region related to compensation will be adjudicated by the appointed Commissioner.

Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).[68]

Responsibilities of the Commissioner

- ➢ To receive and hear complaints regarding disputes over compensation.
- ➢ To examine evidence and determine whether an employee is entitled to compensation.
- ➢ To decide the amount of compensation and ensure it is paid to the rightful claimant.
- ➢ To enforce the provisions of the Employees' Compensation Act efficiently and fairly.

21. Venue of proceeding and transfer : Section 21 specifies the rules regarding the place where compensation-related disputes will be heard and the circumstances under which cases can be transferred from one Commissioner to another. Purpose of this section is to ensure that proceedings are held at a convenient and accessible location for all parties involved.

Venue of Proceedings: A claim for compensation should generally be filed with the Commissioner within the area where:

- ➢ The accident occurred.

[67] Section 19(2) of The Employees' Compensation Act, 1923

[68] Section 20(4) of The Employees' Compensation Act, 1923

- ➢ The employee ordinarily resides.
- ➢ The employer has a registered office or business.

Transfer of Cases: If it is deemed necessary for the sake of justice or convenience, the case can be transferred to another Commissioner. Transfers can be ordered by the State Government; or the Commissioner with the approval of the State Government. Transfers are often done to ensure:

- ➢ Impartiality if there is a conflict of interest.
- ➢ Convenience of witnesses or parties.
- ➢ Faster resolution if the original Commissioner is overburdened.

22. Form of application. -Section 22 lays down the process for filing an application before the Commissioner for Employees' Compensation. Purpose of this section is to provide a clear and structured procedure for filing a claim for compensation to facilitate a systematic resolution of compensation disputes. An application for compensation may be filed by the employee, he dependents of an employee in case of death or an authorized representative on behalf of the employee or dependent. The application should include:

- ➢ Details of the employee and employer.
- ➢ Details of the accident (date, place, and nature of injury).
- ➢ Nature and extent of injury or disability.
- ➢ Amount of compensation claimed.
- ➢ Supporting documents like medical reports and witness statements.

Generally, the application must be filed within two years from the date of the accident or from when the injury results in death. If there is a valid reason for the delay, the Commissioner may accept the application beyond this period.

Employees are not required to pay any court fees for submitting a compensation claim.

22A. Power of Commissioner to require further deposit in cases of fatal accident. -Section 22A empowers the Commissioner for Employees' Compensation to demand an additional deposit in cases involving fatal accidents.

In case of fatal accident, the employer is required to deposit a sum as compensation. However, if the amount deposited seems insufficient compared to the actual liability, the Commissioner

has the right to demand a further deposit. The Commissioner assesses the total amount of compensation payable under the Act, considering factors like:

- ➢ Age and wages of the deceased.
- ➢ Nature of employment.
- ➢ Number of dependents.

It empowers the Commissioner to correct underpayments and promote fairness and justice in cases of fatal workplace accidents.

23. Powers and procedure of Commissioners. -Section 23 outlines the powers and procedures that Commissioners follow while handling cases related to compensation claims.

Power of a commissioner: A Commissioner has powers equivalent to a civil court under the Code of Civil Procedure, 1908. This includes powers to:

- ➢ Summon witnesses.
- ➢ Examine evidence under oath.
- ➢ Order the production of documents.
- ➢ Enforce attendance of any person for evidence.

Inquiry Process: The Commissioner has the authority to conduct a detailed inquiry to determine:

- ➢ The validity of claims.
- ➢ The extent of injury and compensation due.
- ➢ Any disputes between the parties.

Unlike formal court procedures, the Commissioner has flexibility to follow a less technical and simplified procedure. The aim is to provide quick and effective justice without unnecessary legal complexities.

24. Appearance of parties. -Section 24 outlines the rules regarding how parties involved in a compensation case can appear before the Commissioner for Employees' Compensation.

Personal Appearance: Parties involved in a compensation claim (such as the employee, employer, or their dependents) can choose to appear personally before the Commissioner to present their case.

Representation Through an Authorized Person: If a party is unable to appear personally or prefers representation, they may appoint a legal representative or authorized agent. This can include:

- ➢ A lawyer.
- ➢ A trade union representative.
- ➢ A family member or guardian in case of minors or legal incompetency.
- ➢ with the permission of the Commissioner, any other person so authorised.

25. Method of recording evidence. -Section 25 ensures that evidence is documented appropriately, maintaining a fair and transparent legal process. The provisions of this section are as follows:

- ➢ The Commissioner has the authority to adopt a simple and informal method for recording evidence. Unlike civil courts, the focus is on conducting the proceedings in a more accessible and efficient manner.
- ➢ The Commissioner may record both oral evidence (statements from witnesses) and documentary evidence (medical reports, accident records, wage details, etc.).
- ➢ The Commissioner is not required to record every word of the evidence instead, a brief summary of the evidence may be prepared, capturing the key points.
- ➢ The recording can be done in a question-answer format or as a narrative statement.
- ➢ Witnesses may be required to give their statements under oath, ensuring the authenticity

25A. Time limit for disposal of cases relating to compensation.-Section 25A[69] was introduced in to ensure that compensation claims are resolved within a reasonable time. Every case related to compensation under the Act must be disposed of within 3 months from the date of filing the application. The Commissioner is responsible for ensuring that the proceedings are conducted promptly without undue adjournments. In cases where a delay is unavoidable due to exceptional circumstances (such as complex evidence or legal challenges), the Commissioner may justify the reason for the delay.

Section 25A serves as an essential provision to ensure that compensation claims are resolved swiftly and fairly. By setting a clear time frame, it promotes transparency and accountability in the legal process. This provision significantly benefits injured employees and their families by providing timely financial support.

[69] inserted by Act 45 of 2009

Section 26. Costs. - All costs, incidental to any proceedings before a Commissioner, shall, subject to rules made under this Act, be in the discretion of the Commissioner. Section 26 provides the Commissioner with the authority to decide who will bear the legal expenses incurred during the case. Purpose of this section is to ensure that the party responsible for unnecessary litigation or unreasonable conduct bears the costs and to discourage frivolous claims and unjustified defences.

27. Power to submit cases. -Section 27 gives the Commissioner for Employees' Compensation the authority to refer legal questions to a higher court for its opinion. This ensures that complex legal issues are resolved accurately by seeking guidance from a more experienced judicial authority. The Commissioner has the power to submit a legal question arising in a compensation case to the High Court for its opinion.

28. Registration of agreements. -Section 28 of the Employees' Compensation Act, 1923 deals with the registration of agreements made between an employer and an employee (or their dependents) regarding the payment of compensation. Some highlight of this section are as follows:

- ➢ Any agreement regarding the payment of compensation must be registered with the Commissioner.
- ➢ The Commissioner ensures that the agreement is genuine, voluntary, and lawful before registering it.
- ➢ Once registered, the agreement has the same legal effect as an order passed by the Commissioner.

29. Effect of failure to register agreement. - Section 29 outlines the consequences if an agreement regarding compensation is not registered with the Commissioner. This section ensures that only those agreements that undergo proper scrutiny and registration hold legal validity.

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.

12.3.2.10 Right to appeal and recovery of compensation

30. Appeals.-Section 30 provides the right to appeal against certain decisions made by the Commissioner. This section ensures that parties involved in a compensation case have a legal remedy if they are dissatisfied with the Commissioner's decision.

According to the Provisions of Section 30:

Right to Appeal: An aggrieved party (either the employer, employee, or dependents) can appeal against the Commissioner's decision.

Appeal to High Court: Appeals must be filed before the High Court within 60 days[70] from the date of the order. The High Court may entertain appeals even after the 60-day period if sufficient cause for the delay is shown. The provisions of section 5 of the Limitation Act, 1963 (36 of 1963)], shall be applicable to appeals under this section.[71]

Grounds for Appeal: An appeal can be made only on a substantial question of law and not on minor factual disagreements. Examples include misinterpretation of the Act, improper application of legal principles, or jurisdictional errors.

Exceptions – No appeal is allowed if the disputed compensation amount is below ₹10,000, unless the High Court grants special permission.

Deposit of Compensation: If the employer is the one filing the appeal, they must first deposit the amount of compensation as directed by the Commissioner before the appeal is heard.

31. Recovery. -Section 31 deals with the recovery of compensation in cases where the employer fails to pay the awarded compensation.

Recovery Process: If an employer refuses or neglects to pay compensation, the amount can be recovered as an arrear of land revenue. This means the government has the authority to seize the employer's property to recover the amount.

The Commissioner for Employees' Compensation plays a key role in initiating the recovery process by notifying the appropriate authorities.[72]

Additional Penalties: If the employer continues to evade payment, additional penalties or legal action may be imposed.

12.3.2.11 Power of making rules

32. Power of the State Government to make rules. - Section 32 of the Employees' Compensation Act, 1923 empowers the State Governments to make rules for the effective implementation of the Act within their respective states. The purpose of this section is decentralize rule-making authority and provide flexibility to states and allow the states to

[70] Section 30(2) of The Employees' Compensation Act, 1923

[71] Section 30(3) of The Employees' Compensation Act, 1923

[72] The Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890 (1 of 1890).

address state-specific challenges in the application of the Act. All rules made by the State Government must be consistent with the Employees' Compensation Act, 1923.

Scope of Rules: The rules may cover various aspects, including:

Procedure for Compensation Claims – Defining how applications for compensation should be submitted and processed.

Powers of the Commissioner – Specifying how the Commissioner will conduct inquiries and hearings.

Maintenance of Records – Laying down guidelines for maintaining records of compensation payments.

Medical Examination Procedures – Establishing rules for conducting medical examinations of injured employees.

Reporting of Accidents – Regulating how fatal accidents and serious injuries should be reported.

Publication of Rules: After drafting, the rules must be published in the Official Gazette for public knowledge.[73]

35. Rules to give effect to arrangements with other countries for the transfer of money paid as compensation. -Section 35 provides the Central Government with the authority to create rules to facilitate the transfer of compensation to individuals residing in other countries.

The purpose of this section is:

- ➢ To ensure that the compensation awarded under the Act reaches the rightful beneficiaries even if they live outside India.
- ➢ To promote international cooperation by making arrangements with other countries for the transfer of money.
- ➢ To simplify the remittance process and provide a legal framework for the cross-border transfer of funds.

The rules may be framed to give effect to any agreements or arrangements made between India and a foreign country for this purpose.

[73] Section 34(3) of The Employees' Compensation Act, 1923

36. Rules made by Central Government to be laid before Parliament. -Section 36 mandates that all rules framed by the Central Government must be presented before both Houses of Parliament for review and approval.

12.4 SUMMARY

The Employees' Compensation Act, 1923, plays a crucial role in protecting the rights of workers by ensuring they receive fair compensation for injuries or diseases arising out of their employment. It imposes a legal obligation on employers to provide a safe working environment and financial support in case of workplace accidents. The Employees' Compensation Act, 1923 remains a significant piece of legislation in protecting workers' rights and promoting industrial safety in India.

Over the years, the Act has undergone multiple amendments to expand its coverage and ensure fair compensation. Amendments is made to address procedural and definitional issues, enhancing the implementation of the Act.

The name of the Act was changed from **Workmen's Compensation Act** to **Employees' Compensation Act** in 2009 to make it more inclusive.

2019: The Code on Social Security, 2019, is introduced, aiming to consolidate multiple social security laws, including the Employees' Compensation Act. This effort is part of broader labor reforms to streamline and simplify the legal framework for worker protection in India.

Key Provisions and Changes Over Time:

Expansion of Coverage: Over the years, the Act has been amended to cover a wider range of occupations and industries, ensuring more workers are protected.

Increase in Compensation Limits: Regular updates have been made to increase the compensation amounts in line with inflation and economic changes.

Introduction of Occupational Diseases: The Act has been expanded to include a comprehensive list of occupational diseases for which employees can claim compensation.

Procedural Simplifications: Amendments have focused on simplifying the claims process, reducing delays, and ensuring that workers receive timely compensation.

Section 2 of the Employees' Compensation Act provides definitions for key terms such as employee, employer, dependents, disablement, and wages.

Employer's Liability for Compensation (**Section 3**): Employers are liable to pay compensation if an employee suffers an injury or disease arising out of and in the course of employment.

Amount of Compensation (**Section 4**): The amount depends on factors like the nature of injury, monthly wages of the employee, and the extent of disability. In case of death, compensation is paid to the dependents.

Time Limit for Compensation (**Section 4A**): Compensation must be paid promptly. A penalty may apply for delayed payments.

Notice and Claim (**Section 10**): The injured employee or their family must provide notice to the employer and submit a claim for compensation within a specified period.

Section 11 ensures fairness and accuracy in compensation claims by relying on professional medical assessments. It protects both the rights of the employee and the interests of the employer, ensuring that claims are genuine and compensation is appropriate.

Section 12 protects the rights of contract workers and ensures they receive compensation in case of workplace injuries. By holding the principal employer accountable, it encourages safer working conditions and responsible outsourcing.

Section 13 serves as a protective measure for employers who may be unfairly burdened with compensation costs when a third party is responsible for the injury. It ensures that the actual wrongdoer is held financially accountable, promoting fairness and justice in workplace injury cases.

Section 14 ensures that employees are not left without financial support due to the employer's insolvency. It provides a sense of financial security in difficult situations.

Section 14A is a protective measure that ensures employees receive their compensation without being denied due to the employer's financial tactics. It reinforces the principle that workers' rights take precedence over other financial interests.

Section 15 ensures that masters and seamen, who often work under hazardous conditions, receive the necessary protection and financial support in case of injuries. It upholds their rights and provides a safety net for maritime workers.

Similarly **section 15A** provides essential legal protection for aviation workers and recognizes the unique risks faced by aircraft crew members.

Section 15B serves as a protective provision for employees working abroad or in motor vehicle-related jobs. It upholds the principle of social security and guarantees their legal rights.

Section 16 ensures effective monitoring of the compensation process and promotes accountability among employers.

Employees are often in a weaker bargaining position compared to employers. **Section 17** ensures they are not forced into unfair agreements. It serves as a strong safeguard for

employees, preventing employers from exploiting their workforce through unfair contracts. It is the duty of every employer to inform each employee about his right of compensation at the timing of joining under **section 17A.**

Section 18A acts as a deterrent against non-compliance by imposing financial penalties.

Section 19 ensures a fair and efficient resolution of disputes related to compensation claims.

Section 20 ensures the establishment of a specialized and accessible legal authority for workers to resolve their compensation disputes. By appointing qualified Commissioners, the Act guarantees that cases are handled professionally, fairly, and efficiently.

Section 21 ensures fairness, accessibility, and efficiency in resolving compensation disputes. By allowing flexibility in choosing the venue and permitting the transfer of cases when necessary, it protects the rights of employees and ensures smooth legal proceedings.

Section 22 specifying the form and contents of the application and makes it easier for workers and their families to seek justice. Section 22A serves as a protective measure to ensure that the dependents of a deceased employee receive the rightful compensation.

Section 23 ensures that Commissioners have adequate powers to conduct fair and effective inquiries into compensation claims.

Section 24 provides flexibility and ensures both parties in a compensation claim have the opportunity to present their case, whether through personal appearance or legal representation.

Section 25 provides a practical and simplified approach for recording evidence in compensation claims. Section 25A serves as an essential provision to ensure that compensation claims are resolved swiftly and fairly. By setting a clear time frame, it promotes transparency and accountability in the legal process.

Section 26 acts as a mechanism to ensure fairness in the legal process by holding the responsible party accountable for legal expenses. It also discourages unnecessary litigation and promotes quicker dispute resolution.

Section 27 ensures that complex legal issues are resolved with the help of a higher judicial authority, maintaining legal clarity and consistency. Provision of **section 28** prevents employers from forcing employees to accept inadequate compensation through unjust agreements.

Section 29 ensures that compensation agreements are fair, transparent, and legally enforceable by making registration mandatory.

Section 30 ensures that all parties receive fair justice by providing a legal route to challenge incorrect decisions. It maintains accountability in the decision-making process and upholds the rights of employees and employers.

Section 31 ensures that employees and their families are not deprived of their rightful compensation due to non-compliance by employers. Section 32 gives power of the State Government to make rules.

Section 35 ensures that beneficiaries residing in other countries are not deprived of their rightful compensation. It reflects India's commitment to upholding the rights of employees and their families beyond its borders.

Section 36 acts as a safeguard to ensure that the rules made by the Central Government are in the best interest of employees and employers. This democratic process ensures fair governance and the protection of workers' rights.

Significance of the Act

- ➢ Provides financial security to workers and their families.
- ➢ Promotes a safe working environment as employers become more cautious about workplace safety.
- ➢ Ensures social justice by holding employers accountable for workplace injuries.

12.5 GLOSSARY

Bona fide: Bona Fide is a Latin term that means "in good faith." It refers to something that is done sincerely, honestly, and without any intention of deceit or fraud. In legal context it is often used to describe actions, agreements, or claims that are genuine and made with honest intent. such as an employer genuinely trying to compensate an injured employee as per legal obligations.

Serious bodily injury: A serious bodily injury refers to any injury that incapacitates the employee for more than 48 hours. This includes both temporary and permanent disabilities.

Priority debt: Priority debt means the debt will be paid before other unsecured debts like loans or payments to suppliers.

First Charge : First Charge refers to a legal right that gives a particular claim or liability priority over other claims on a property or asset. When a person or entity has a first charge over a property, it means their dues will be settled before any other claims if the property is sold or liquidated. A first charge is a powerful legal tool to ensure that essential payments, like employee compensation or wages, are prioritized. It upholds the rights of workers and creditors by guaranteeing fair payment in situations of financial distress or insolvency.

Summary recording: Summary recording is an effective way to document evidence during compensation claim proceedings. It ensures that the facts are clearly captured while maintaining the procedural fairness of the hearing. This approach is especially beneficial in ensuring timely justice for injured workers and their families.

12.6 SAQS

A. SHORT ANSWRE QUESTION

1. What is the primary objective of the Employees' Compensation Act, 1923?
2. Who is eligible for compensation under the Act?
3. What is the employer's liability under the Employees' Compensation Act?
4. Within how many days should compensation be paid to the employee?
5. What is the role of a Commissioner under the Act?

B. TRUE AND FALSE TYPE QUESTION

1. The Employees' Compensation Act, 1923 applies to all employees, including those covered under the Employee State Insurance (ESI) Act.
2. An employer is liable to pay compensation if an employee suffers an injury in the course of employment, even if the employee was partially negligent.
3. Compensation under the Act must be paid within six months from the date it becomes due.
4. A Commissioner appointed under the Act has the authority to resolve disputes related to the amount of compensation.
5. An employee cannot appeal against a Commissioner's decision under any circumstances.

C. FILL IN THE BLANKS

1. The Employees' Compensation Act, 1923 provides compensation to employees for _____ injuries arising out of and in the course of employment.

2. An appeal against the Commissioner's decision can be made to the _____ if it involves a substantial question of law.

3. Under Section 4, the amount of compensation is determined based on the employee's _____ and the nature of the injury.

4. In case of a fatal accident, the compensation is paid to the _____ of the deceased employee.

5. The authority appointed to resolve disputes under the Act is known as a _____.

12.7 REFERENCES

1. https://labour.gov.in/sites/default/files/ec_act.pdf (Ministry of Labour and Employment)

2. The Employees' Compensation Act, 1923 bare Act

3. The Employees' Compensation Act, 1923

12.8 SUGGESTED READINGS

1. "The Employees' Compensation Act, 1923" by Universal's Legal Publications

2. S. N. Mishra's Labour and Industrial Laws - Comprehensive coverage of labor laws in India, including the Employees' Compensation Act.

3. Dr. H.L. Kumar's Handbook on Labour Laws

4. https://www.sci.gov.in (Supreme Court of India)

5. https://www.indiankanoon.org (Free legal database)

12.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Explain the objectives and significance of the Employees' Compensation Act, 1923.

2. Discuss the employer's liability for compensation under the Act.

3. What are the provisions regarding the amount of compensation? Explain with relevant sections.

4. Describe the role and powers of the Commissioner under the Act.

5. Explain the procedure for claiming compensation in case of a workplace injury or death.

Answers

SAQS

1. Refer 12.3.4; 2. Refer 12.3.2.1; 3. Refer 12.3.2.2 ; 4. One month 8; 5. Refer12.3.2.9;

6. Yes, Refer 12.3.2.10; 7. Refer 12.3.2.3; 8. Refer 12.3.2.4 ; 9. Yes, compensation can still be claimed. ; 10. Refer glossary

B. 1. False; 2. True; 3. False; 4. True; 5. False;

C. 1. Work-related; 2. High Court; 3. Monthly wages; 4.Dependant; 5. Commissioner; 6. Penalty; 7. Employees' Compensation; 8. Notice;

TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Refer 12.3.4
2. Refer 12.3.2.2
3. Refer 12.3.2.3
4. Refer 12.3.2.3 and 12.3.2.9
5. Refer 12.3.2.4

Unit 13

Forced Labour Convention, 1930

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13.3.9 India's Ratification of the Protocol of 2014 to the Forced Labour Convention, 1930 (Protocol 29)

13.4 SUMMARY

13.5 GLOSSARY

13.6 SAQS

13.7 REFERENCES

13.8 SUGGESTED READINGS

13.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

13.1 INTRODUCTION

The Forced Labour Convention, 1930 (Convention No. 29) is an international treaty established by the International Labour Organization (ILO) aimed at combating forced labour in all its forms.

The Forced Labour Convention, 1930, has been widely ratified by ILO member states. Currently, 181 out of 187 ILO member countries have ratified the convention, reflecting a broad global commitment to eliminating forced labour.

India ratified the Forced Labour Convention, 1930, on November 30, 1954. This ratification signifies India's commitment to eradicating forced labour and ensuring compliance with the convention's provisions.

The Abolition of Forced Labour Convention, 1957 (No. 105) was adopted by the International Labour Organization (ILO) to build upon and strengthen the measures established in the Forced Labour Convention, 1930 (No. 29).

The Protocol of 2014 to the Forced Labour Convention, 1930, represents a significant advancement in the international fight against forced labor. Its adoption and subsequent ratifications underscore the ongoing commitment of the global community to eradicate forced labour and address the challenges posed by its modern forms. Continuous efforts in implementation, monitoring, and international cooperation are crucial to achieving the goals set forth by Protocol 29 and ensuring the protection of workers' rights worldwide. In this unit, we discuss the convention's current status and key points.

13.2 OBJECTIVES

After reading this unit you will be able to understand:

- What is The Forced Labour Convention, 1930;
- Aim of The Forced Labour Convention, 1930;
- Key Components of Protocol 29
- Adoption of the Forced Labour Convention, 1930;
- Global Ratification and Implementation;
- Introduction of the Abolition of Forced Labour Convention, 1957;
- Development of the Protocol of 2014 to the Forced Labour Convention, 1930;
- Adoption of the Protocol of 2014 (Protocol 29);

- Current Efforts and Challenges of forced labour;

13.3 SUBJECT

13.3.1 The Forced Labour Convention, 1930 (Convention No. 29)

A General Conference of the International Labour Organisation (ILO) convened in Geneva. This meeting was part of the ILO's Fourteenth Session, held on June 10, 1930. The main focus of this session was to address the issue of forced or compulsory labour, which was the fourth item on their agenda. After discussing the issue, the conference decided to adopt certain proposals aimed at tackling forced labour. It was determined that these proposals would be formalized as an international convention, signifying a binding agreement between the member states. The convention was officially adopted on June 28, 1930, and it is formally known as the Forced Labour Convention, 1930 (No. 29).[74] The Convention defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily", with few exceptions like compulsory military service. The preamble of the Forced Labour Convention, 1930 underscores the international community's recognition of forced labour as a significant problem and the collective decision to address it through a formal and binding convention.

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

(Article 1(2) was a transitional provision and is no longer applicable.)

3. At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.

Article 2 Defines "forced or compulsory labour" and also outlines exceptions. It says:

1. For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

[74] Preamble of the Forced Labour Convention, 1930 (No. 29).

2. Nevertheless, for the purposes of this Convention, the term forced or compulsory labour shall not include--

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;
(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

(Articles 3-24 were transitional provisions and are no longer applicable.)

Article 25

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

Article 26

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to apply it to the territories placed under its sovereignty, jurisdiction, protection, suzerainty, tutelage or authority, so far as it has the right to accept obligations affecting matters of internal jurisdiction; provided that, if such Member may desire to take advantage of the

provisions of article 35 of the Constitution of the International Labour Organisation[75], it shall append to its ratification a declaration stating--

(1) the territories to which it intends to apply the provisions of this Convention without modification;

(2) the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;

(3) the territories in respect of which it reserves its decision.

2. The aforesaid declaration shall be deemed to be an integral part of the ratification and shall have the force of ratification. It shall be open to any Member, by a subsequent declaration, to cancel in whole or in part the reservations made, in pursuance of the provisions of subparagraphs (2) and (3) of this Article, in the original declaration.

Article 29

As soon as the ratifications of two Members of the International Labour Organisation have been registered with the International Labour Office, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

Article 30

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the International Labour Office.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the terms provided for in this Article.

Article 31

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and

[75] Article 35 of the Constitution of the International Labour Organisation (ILO) outlines how member states can apply the conventions adopted by the ILO to their territories.(see glossary)

shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 32

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, the ratification by a Member of the new revising Convention shall *ipso jure*[76] involve denunciation of this Convention without any requirement of delay, notwithstanding the provisions of Article 30 above, if and when the new revising Convention shall have come into force.

2. As from the date of the coming into force of the new revising Convention, the present Convention shall cease to be open to ratification by the Members.

3. Nevertheless, this Convention shall remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising convention.

Thus we see that, the Forced Labour Convention, 1930 (No. 29) primarily focuses on the suppression and abolition of forced labour. In essence, it aims to eradicate forced labour in all its forms, setting a framework for member states to follow in ensuring fair and humane treatment of workers and providing guidelines for the progressive elimination of forced labour practices.

The Forced Labour Convention, 1930, remains a cornerstone of international labour rights. Its continued relevance and the adoption of supplementary measures underscore the global commitment to eradicating forced labour in all its forms, ensuring the protection of fundamental human rights for all workers.

13.3.2 Adoption of the Forced Labour Convention, 1930

The convention was adopted in Geneva 28 June 1930 and came into force on 1 May 1932 with aims to suppress the use of forced or compulsory labour in all its forms.

The original text of the Forced Labour Convention, 1930 (No. 29) made reference to a transitional period during which recourse to forced or compulsory labour might be had subject to specific conditions, as set out in Article 1, paragraphs 2 and 3, and Articles 3 to 24. Over the years, the Governing Body, the International Labour Conference but also the ILO supervisory bodies, such as the Committee of Experts on the Application of Conventions and Recommendations, acknowledged that these provisions, commonly known as “transitional provisions” were no longer applicable. In 2014, the International Labour Conference adopted

[76] "Ipso jure" is a Latin term that means "by the law itself" or "by the operation of the law." For detail see glossary.

a protocol to Convention No.29, which expressly provided for the deletion of the transitional provisions.

13.3.3 Global Ratification and Implementation

Over the decades, the convention is widely ratified by ILO member states, becoming one of the most universally ratified ILO conventions. Member states enact national laws and regulations to comply with the convention's requirements.

13.3.3.1 Widespread Ratification

By the end of 1932 ten countries had ratified the convention (Japan, Bulgaria, Spain, Norway, Denmark, Australia, Sweden, United Kingdom, Liberia, and Ireland). Austria in 1960, Luxembourg in 1964 and Malta in 1965 were the last Western European countries to ratify the convention. Canada ratified it in 2011 and as of 2022, the United States has not ratified it.The Forced Labour Convention, 1930 (No. 29) has been widely ratified. As of 2023, it has been ratified by 181 member states of the International Labour Organization (ILO).

Commitment:

Ratifying the convention signifies a country's commitment to eliminating forced or compulsory labour in all its forms. This includes various forms of modern slavery, such as human trafficking, debt bondage, and forced child labour.

13.3.3.2 Implementation

1. **National Legislation**:
    - Member states that ratify the convention are required to align their national laws with its provisions, through enacting or amending legislation to criminalize all forms of forced or compulsory labour.
2. **Enforcement Mechanisms**:
    - Effective enforcement mechanisms are crucial for implementation. This includes establishing law enforcement agencies dedicated to investigating and prosecuting forced labour cases, as well as training law enforcement personnel and judicial officers.
3. **Penalties**:
    - Adequate penalties must be imposed for violations. Article 25 of the convention requires that the illegal exaction of forced or compulsory labour be punishable as a penal offense with penalties that are genuinely adequate and strictly enforced.

4. **Victim Protection and Rehabilitation**:

    - Countries are also obligated to provide protection and rehabilitation services for victims of forced labour. This may include medical care, psychological support, legal assistance, and programs to reintegrate victims into society.

5. **Monitoring and Reporting**:

    - Regular monitoring and reporting are essential to ensure compliance. Member states must report to the ILO on the measures they have taken to implement the convention, and the ILO provides oversight through its supervisory mechanisms.

6. **International Cooperation**:

    - International cooperation is emphasized for combating forced labour, especially in cases involving cross-border human trafficking. Countries often work together to share information, provide mutual legal assistance, and support joint operations.

13.3.4 Introduction of The Abolition of Forced Labour Convention, 1957

The ILO adopts the Abolition of Forced Labour Convention (Convention No. 105) on June 25, 1957. This convention supplements Convention No. 29 by prohibiting certain forms of forced labour that were not covered by the 1930 convention, such as forced labour used for political coercion or punishment. **The key aspects of this convention are summarised here:**

13.3.4.1 Adoption and Ratification

The convention was adopted on June 25, 1957, during the 40th session of the ILO General Conference. It has been widely ratified by ILO member states, reflecting a global commitment to eliminating forced labour.[77]

13.3.4.2 Prohibited Uses of Forced Labour

The convention explicitly prohibits the use of forced or compulsory labour for[78]

- ➢ Political coercion or education.
- ➢ Economic development.

[77] Preamble, the Abolition of Forced Labour Convention (Convention No. 105)

[78] *Article 1* of the Abolition of Forced Labour Convention (Convention No. 105)

- ➢ Means of labour discipline.
- ➢ Punishment for having participated in strikes.
- ➢ Discrimination based on race, social, national, or religious grounds.

13.3.4.3 Scope and Definitions

Similar to Convention No. 29, Convention No. 105 defines forced or compulsory labour as work or service exacted from any person under the menace of any penalty and for which the person has not offered themselves voluntarily.

13.3.5.4 Legal and Practical Measures

Ratifying countries are required to take effective measures to abolish any forms of forced or compulsory labour within their jurisdictions that fall under the prohibited categories.[79] This includes enacting and enforcing relevant legislation.

13.3.4.5 Reporting and Monitoring

Member states must report on the measures they have taken to implement the convention. The ILO monitors compliance through its supervisory mechanisms, which include regular reporting and examination by the Committee of Experts on the Application of Conventions and Recommendations.

13.3.4.6 Significance of The Abolition of Forced Labor Convention, 1957

The Abolition of Forced Labour Convention, 1957 (No. 105) reinforces the global commitment to human rights and labour standards by targeting specific abuses of forced labour. It complements the earlier convention by addressing the changing contexts in which forced labour was being used, particularly during the mid-20th century when issues such as political repression and economic exploitation were prevalent.

13.3.5 Development of the Protocol of 2014 to the Forced Labour Convention, 1930

Recognizing the persistence of forced labour in new forms, such as human trafficking and modern slavery, (during 2012-2014) the ILO begins drafting a supplementary protocol to strengthen the Forced Labour Convention, 1930.

13.3.5.1 Adoption of the Protocol of 2014 (Protocol 29)

[79] *Article 2* of the Abolition of Forced Labour Convention (Convention No. 105)

On June 11, 2014, the ILO adopts the Protocol of 2014 to the Forced Labour Convention, 1930 (Protocol 29). The protocol aims to address contemporary forms of forced labour and enhance measures for prevention, protection, and remediation.[80]

13.3.5.2 Ratification and Implementation of Protocol 29

Since its adoption, Protocol 29 has been ratified by numerous ILO member states. Countries undertake efforts to align their national laws and policies with the protocol's provisions, focusing on preventing forced labour, protecting victims, and ensuring access to remedies.

13.3.6.3 Key Components of Protocol 29

1. **Prevention:**
    - Development and implementation of national policies and action plans to prevent forced labour.[81]
    - Public awareness campaigns and education programs targeting vulnerable populations.[82]
2. **Protection and Support:**
    - Provision of protection and support services for victims of forced labour, including legal assistance, rehabilitation, and social reintegration.[83]
    - Ensuring victims are not prosecuted for unlawful activities they were compelled to commit.[84]
3. **Access to Remedies:**
    - Ensuring that victims have access to effective remedies, including compensation for damages suffered.[85]

[80] Preamble of Protocol of 2014 to the Forced Labour Convention, 1930.

[81] Article 1 of Protocol of 2014 to the Forced Labour Convention, 1930.

[82] *Article 2* of Protocol of 2014 to the Forced Labour Convention, 1930.

[83] *Article 3* of Protocol of 2014 to the Forced Labour Convention, 1930

[84] *Article 4* of Protocol of 2014 to the Forced Labour Convention, 1930

[85] *Article 4* of Protocol of 2014 to the Forced Labour Convention, 1930

- Strengthening judicial and non-judicial mechanisms for the redress of grievances related to forced labour.

4. **Law Enforcement:**

   - Enhancing the capacity of law enforcement agencies to detect, investigate, and prosecute cases of forced labour.

   - Imposing effective penalties on perpetrators to deter forced labour practices.

13.3.6.4 Milestones in the Implementation of Protocol 29

1. **Early Ratifications:**

   - **2015-2016:** The first wave of countries ratifies Protocol 29, demonstrating early international commitment to the strengthened measures against forced labour.

   - **2015:** Niger becomes the first country to ratify the protocol on May 14, 2015.

2. **Global Advocacy and Awareness:**

   - **2015-Present:** The ILO and various international organizations launch campaigns and initiatives to promote the ratification and implementation of Protocol 29. Efforts focus on raising awareness, building capacity, and providing technical assistance to member states.

3. **Increased Ratifications:**

   - **2017-2020:** The number of ratifications continues to grow, with more countries committing to the protocol's enhanced measures.

   - **2020:** By the end of 2020, over 40 countries have ratified Protocol 29, reflecting a broadening global consensus on the need to combat modern forms of forced labour.

4. **National Action Plans and Legal Reforms:**

   - **2014-Present:** Ratifying countries develop and implement national action plans and legal reforms to comply with the protocol. These plans often include measures for victim support, law enforcement training, public awareness campaigns, and improved labour inspection systems.

The Protocol of 2014 to the Forced Labour Convention, 1930, represents a significant advancement in the international fight against forced labour. Its adoption and subsequent ratifications underscore the ongoing commitment of the global community to eradicate forced

labour and address the challenges posed by its modern forms. Continuous efforts in implementation, monitoring, and international cooperation are crucial to achieving the goals set forth by Protocol 29 and ensuring the protection of workers' rights worldwide.

13.3.6 Sustainable Development Goals (SDGs)

The United Nations' 2030 Agenda for Sustainable Development includes targets to eradicate forced labour, end modern slavery and human trafficking, and secure the prohibition and elimination of the worst forms of child labour (Target 8.7)[86]. Target 8.7 represents a comprehensive and ambitious commitment to address some of the most severe violations of human rights and labour standards, aiming for a world where everyone can enjoy decent work and economic opportunities without exploitation or coercion.

13.3.7 Challenges for the Forced Labour Convention, 1930

Achieving the goals set out in the Forced Labour Convention, 1930 (No. 29) involves numerous challenges. Here are some of the key difficulties faced by countries striving to eliminate forced labour:

13.3.7.1 Legal and Regulatory Challenges

1. **Inadequate Legislation**:
    - Some countries may lack comprehensive laws that adequately address all forms of forced labour. Existing laws might not be specific or stringent enough to deter violations.
2. **Weak Enforcement**:
    - Even where laws exist, enforcement can be inconsistent. Factors such as corruption, lack of resources, and insufficient training for law enforcement officials can hinder effective enforcement.
3. **Judicial Inefficiencies**:
    - Delays in the judicial process, lack of awareness among judges about forced labour issues, and inadequate penalties can weaken the impact of laws designed to combat forced labour.

13.3.7.2 Socio-Economic Challenges

[86] Target 8.7 is a specific goal within the United Nations' 2030 Agenda for Sustainable Development, which is part of Sustainable Development Goal 8 (SDG 8)(see glossary)

1. **Poverty**:
    - Poverty is a significant driver of forced labour. Individuals in desperate economic circumstances may be more vulnerable to exploitation.
2. **Lack of Education**:
    - Limited access to education reduces awareness about workers' rights and increases vulnerability to exploitation.
3. **Unemployment and Underemployment**:
    - High rates of unemployment and underemployment force individuals to accept any available work, sometimes under exploitative conditions.

13.3.7.3 Social and Cultural Challenges

1. **Social Norms and Practices**:
    - In some cultures, certain forms of forced labour, such as bonded labour or child labour, are normalized or overlooked, making it difficult to eradicate these practices.
2. **Discrimination**:
    - Discrimination based on gender, caste, ethnicity, or migration status can exacerbate vulnerabilities to forced labour.

13.3.7.4 Institutional and Structural Challenges

1. **Informal Economy**:
    - A large informal sector, where regulatory oversight is minimal, can hide instances of forced labour. Workers in the informal economy often lack legal protections and are more vulnerable to exploitation.
2. **Fragmented Efforts**:
    - Lack of coordination between various government agencies, non-governmental organizations, and international bodies can lead to fragmented efforts and reduced effectiveness in combating forced labour.

13.3.7.5 Victim Identification and Protection

1. **Identification of Victims**:

- Identifying victims of forced labour is challenging, especially when they are hidden in remote areas or behind the closed doors of private homes and businesses.

2. **Fear of Retaliation**:

   - Victims often fear retaliation from their exploiters or mistrust authorities, which can prevent them from seeking help.

3. **Insufficient Support Services**:

   - Lack of adequate support services, such as shelters, legal aid, and rehabilitation programs, can hinder the recovery and reintegration of victims.

13.3.7.6 Political and Economic Factors

1. **Political Will**:

   - Achieving the goals of the Forced Labour Convention requires strong political commitment. In some countries, forced labour may not be a priority on the political agenda.

2. **Economic Interests**:

   - Economic interests, such as the desire to attract investment or maintain competitiveness, can sometimes conflict with efforts to eliminate forced labour, especially in industries reliant on cheap labour.

13.3.7.7 International Factors

1. **Cross-Border Trafficking**:

   - Forced labour often involves cross-border trafficking, which requires international cooperation to address effectively. Differences in legal frameworks and enforcement capabilities between countries can complicate these efforts.

2. **Global Supply Chains**:

   - The complexity of global supply chains can obscure the presence of forced labour. Ensuring transparency and accountability in supply chains is a significant challenge for both governments and businesses.

Thus we see that combating forced labour is a complex task that demands sustained effort, political commitment, and collaboration at all levels, that includes:

- Strengthening legal frameworks and enforcement mechanisms.
- Enhancing education and awareness programs.
- Providing adequate support and protection for victims.
- Promoting international cooperation.
- Addressing underlying socio-economic issues such as poverty and unemployment.

13.3.8 India's ratification to the Forced Labour Convention, 1930 (No. 29)

India ratified the Forced Labour Convention, 1930 (No. 29) on November 30, 1954. This ratification signifies India's commitment to eliminating all forms of forced or compulsory labour within its territory. Here is a brief summary of India's ratification and implementation efforts:

13.3.8.1 Legal Framework

1. **The Bonded Labour System (Abolition) Act, 1976**:
    - This act was a significant legislative step to fulfil India's obligations under the Forced Labour Convention. It abolished all forms of bonded labour and provided for the release and rehabilitation of bonded labourers.
2. **The Child Labour (Prohibition and Regulation) Act, 1986**:
    - This act prohibits the employment of children below the age of 14 in certain hazardous occupations and processes and regulates the working conditions of children in other occupations. It has undergone several amendments to strengthen child labour regulations in India
3. **The Minimum Wages Act, 1948**:
    - This act ensures that workers are paid minimum wages, which helps in preventing forced labour by ensuring that workers receive fair remuneration for their work. **With its integration into the Code on Wages, 2019,** the scope and coverage of minimum wage laws have been expanded to include a broader range of workers.
4. **Indian Penal Code (IPC), 1860**:
    - The IPC contains provisions that criminalize acts related to forced labour, such as wrongful confinement, kidnapping, and abduction.

13.3.8.2 Implementation Efforts

1. **Law Enforcement**:
    - India has established various law enforcement agencies and mechanisms to identify and prosecute cases of forced labour. Special task forces and vigilance committees have been formed in some states to monitor and combat bonded labour.
2. **Rescue and Rehabilitation**:
    - The government has implemented schemes and programs for the rescue, rehabilitation, and reintegration of victims of forced labour. This includes providing financial assistance, vocational training, and support for self-employment.
3. **Awareness and Education**:
    - Awareness campaigns and educational programs are conducted to inform workers and the general public about the rights and protections against forced labour. Non-governmental organizations (NGOs) play a significant role in these efforts.
4. **Coordination with International Organizations**:
    - India collaborates with international organizations such as the ILO to strengthen its efforts to combat forced labour. This includes participating in international forums, sharing best practices, and receiving technical assistance.

13.3.8.3 Challenges

1. **Enforcement Issues**:
    - Despite strong legal frameworks, enforcement remains a challenge due to factors such as corruption, lack of resources, and the vast informal sector where many forced labour cases occur.
2. **Identification of Victims**:
    - Identifying victims of forced labour, especially in remote and rural areas, can be difficult. Many victims are unaware of their rights or fear retaliation from their employers.
3. **Socio-Economic Factors**:

- Poverty, lack of education, and limited economic opportunities are underlying factors that contribute to the persistence of forced labour. Addressing these root causes is crucial for long-term eradication.

13.3.8.4 Progress and Future Directions

1. **Strengthening Legislation**:
    - India continues to amend and strengthen its laws to better protect workers and address emerging challenges related to forced labour.
2. **Enhanced Monitoring**:
    - Improving monitoring and data collection mechanisms to accurately track the prevalence of forced labour and the effectiveness of interventions.
3. **International Collaboration**:
    - Continued collaboration with international bodies, NGOs, and other stakeholders to enhance strategies and implement best practices for eradicating forced labour.
4. **Comprehensive Approach**:
    - Adopting a comprehensive approach that includes legal, social, and economic measures to address the issue holistically and sustainably.

India's ratification of the Forced Labour Convention, 1930, and its ongoing efforts to eliminate forced labour reflect its commitment to protecting workers' rights and ensuring fair labour practices. However, continued vigilance, stronger enforcement, and collaborative efforts are essential to fully eradicate forced labour in the country.

13.3.9 India's Ratification of the Protocol of 2014 to the Forced Labour Convention, 1930 (Protocol 29)

India ratified the Protocol of 2014 to the Forced Labour Convention, 1930, on January 17, 2018. India’s ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, demonstrates a strong commitment to eradicating forced labour and enhancing the protection of workers' rights. While significant progress has been made, continuous efforts are needed to address the challenges of implementation, ensure effective enforcement, and provide comprehensive support to victims. The ratification also aligns India with international standards and strengthens its role in the global fight against forced labour.

13.4 SUMMARY

The Forced Labour Convention, 1930 (No. 29) primarily focuses on the suppression and abolition of forced labour. Article 1 of this convention establishes the commitment of each member state to abolish forced labour within the shortest possible period. **Article 2** Defines "forced or compulsory labour" as any work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. It also outlines exceptions, such as compulsory military service, normal civic obligations, and emergency situations.

The Abolition of Forced Labour Convention, 1957 (No. 105) was adopted by the International Labour Organization (ILO) to build upon and strengthen the measures established in the Forced Labour Convention, 1930 (No. 29). The primary goal of Convention No. 105 is to ensure the abolition of forced or compulsory labour in specific contexts, particularly where it is used as a means of political coercion or punishment, economic development, labour discipline, or racial, social, national, or religious discrimination.

The Protocol of 2014 to the Forced Labour Convention, 1930, was adopted to supplement and strengthen the original convention. It requires ratifying states to take additional measures for prevention, protection, and remedy, including developing national action plans and ensuring access to justice and compensation for victims.

Despite widespread ratification, challenges remain in effectively eradicating forced labour. These include weak enforcement of laws, corruption, lack of resources, and difficulties in identifying and rescuing victims. Addressing these challenges requires a multi-faceted approach that includes:

- Strengthening legal frameworks and enforcement mechanisms.
- Enhancing education and awareness programs.
- Providing adequate support and protection for victims.
- Promoting international cooperation.
- Addressing underlying socio-economic issues such as poverty and unemployment.

India ratified the Forced Labour Convention, 1930 (No. 29) on November 30, 1954. India has established various law enforcement agencies and mechanisms to identify and prosecute cases of forced labour. However, continued vigilance, stronger enforcement, and collaborative efforts are essential to fully eradicate forced labour in the country

India ratified the Protocol of 2014 to the Forced Labour Convention, 1930, on January 17, 2018. This ratification signifies India's commitment to eradicating forced labour and improving the protection and rights of workers. Ratification enhances India’s collaboration with other countries and international organizations in combating forced labour. This includes sharing

information, best practices, and participating in joint efforts to tackle cross-border forced labour issues.

The global ratification and implementation of the Forced Labour Convention, 1930, demonstrate a strong international commitment to eradicating forced labour. While significant challenges remain, continued efforts at the national and international levels are essential to achieving the convention's goals and ensuring the protection and rights of all workers.

13.5 GLOSSARY

1. **Key points of Article 35** of the Constitution of the International Labour Organisation (ILO);

(a)Declaration on Territories:

- When a member state ratifies an ILO convention, it must declare how the convention will apply to territories under its sovereignty, jurisdiction, protection, suzerainty, tutelage, or authority.

- The member state must specify:

    1. Territories to which the convention will apply without modifications.

    2. Territories to which the convention will apply with modifications, detailing those modifications.

    3. Territories for which it reserves its decision on the application of the convention.

(b) Integral Part of Ratification:

- This declaration becomes an integral part of the ratification process and holds the same legal weight.

(c) Subsequent Declarations:

- The member state can later modify or cancel the reservations made in the original declaration, either wholly or partially.

2. *ipso jure* : It is a Latin term that means "by the law itself" or "by the operation of the law." It is used in legal contexts to indicate that something is the case as a matter of law, without the need for any further action or declaration. Essentially, it signifies that a certain legal effect or status automatically results from the law, without any additional formalities. For example, if a law states that a person is entitled to a certain right upon fulfilling specific conditions, they

acquire that right "ipso jure" once those conditions are met, without needing further approval or recognition.

3.Target 8.7: Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking, and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.

13.6 SAQS

A. SHORT ANSWRE QUESTION

1. Define the forced labour.
2. When did the Forced Labour Convention, 1930 was adopted. 28 June 1930
3. What do you understand by the SDGs?

B. TRUE AND FALSE TYPE QUESTION

1. The illegal exaction of forced or compulsory labour shall be punishable as a penal civil offence. False
   (i) True (ii) False
2. The Abolition of Forced Labour Convention (Convention No. 105) prohibiting certain forms of forced labour that were not covered by the 1930 convention. True refer 13.3.4
   (i) True (ii) False
3. The forced labour is a legal as well as social problem.
   (i) True (ii) False

C. FILL IN THE BLANKS

a) The illegal exaction of forced or compulsory labour shall be punishable as a …. offence.
b) As of 2023, the Forced Labour Convention, 1930 (No. 29) has been ratified by …. member states of the International Labour Organization (ILO).
c) ……. becomes the first country to ratify the protocol 29 on May 14, 2015.

13.7 REFERENCES

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13.8 SUGGESTED READINGS

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2. "Human Rights and Labour Rights: Perspectives from India and International Labour Standards" by R. S. Gavai

3. "Bonded Labour System in India: A Socio-Legal Perspective" by Vijay Prakash Sharma
4. "Trafficking, Bonded Labour, and Forced Labour in India: A Study on Human Rights and Laws" by Ravi S. Srivastava

5. "Labour and Human Rights: A Critical Commentary on ILO Conventions and Indian Law" by **S.** N. Mishra

6. The Forced Labour Convention, 1930(No. 29)

7. The Abolition of Forced Labour Convention, 1957 (No. 105)

8. Protocol P029 - Protocol of 2014 to the Forced Labour Convention, 1930

13.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. What do you understand by the forced labor? Underlined the work that not include the forced labor.
2. Give a brief account of The Forced Labour Convention, 1930 (Convention No. 29).
3. Write a short not on the implementation of The Forced Labour Convention, 1930.
4. Write an essay on The Abolition of Forced Labour Convention, 1957.
5. What is the objective of the Protocol of 2014 to the Forced Labour Convention, 1930?

Answers: **SAQS**

A. a) Refer 13.3.1; b) 28 June 1930; c) Refer 13.3.6;

B. a) false; b) true; c) true

C. a) penal; b) 181; c) Niger;

TERMINAL QUESTIONS AND MODEL QUESTIONS

6. Refer 13.3.1;
7. Refer 13.3.1
8. Refer 13.3.3.2
9. Refer 13.3.4
10. Refer 13.3.5
11. Refer 13.3.7
12. Refer 13.3.8

Unit 14

Bonded Labour Abolition Act, 1976

STRUCTURE

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14.3.3.4 Chapter IV: Implementing Authorities (*Sections 10–12*)

14.3.3.5 Chapter V Vigilance Committees

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14.4SUMMARY

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14.10 TERMINAL QUESTIONS AND MODEL QUESTIONS

14.1 INTRODUCTION

Bonded labour is a type of forced work in which a person has to work to repay a loan or debt. The person is paid very little or nothing at all, and they cannot leave the job until the debt is cleared. Often, the debt keeps increasing lifelong due to unfair interest rates, making it impossible to repay. After the person's death, their daughter or son is forced to work in place, hence no end to this for generations.

Many times, bonded labourers are tricked or forced into these jobs, and their basic rights, like fair wages and freedom, are taken away. This practice is illegal in India under the Bonded Labour System (Abolition) Act, 1976. It is a landmark legislation in India that was enacted to eradicate the practice of bonded labour. The act was a major step towards social justice in India. It helped free millions of people from exploitative labour conditions, particularly in rural areas. However, enforcement challenges persist, and bonded labour remains an issue in some parts of the country, requiring continuous monitoring and intervention by authorities.

In this unit, we read about the historical perspective of bonded labour in India, constitutional provisions and Key Provisions of the act, such as the Abolition of Bonded Labour, Immediate Release of Bonded Labourers, Penalty for Violators and Government Rehabilitation Measures.

14.2 OBJECTIVES

After reading this unit you will be able to understand the following:

- Historical perspective of bonded labour in India
- Constitutional provisions regarding bonded labour in India
- Other statutory provisions regarding bonded labour in India
- Provisions under Indian Penal Code related t bonded labour
- Abolition of bonded labour system
- Extinguishment of liability to repay bonded debt
- Implementing Authorities under the Bonded Labour Act, 1976
- Offences and procedure for trial under the Bonded Labour Act, 1976
- Implementation challenges to the Bonded Labour Act, 1976
- Other challenges to the bonded labour in India

14.3 SUBJECT

14.3.1 History of Bonded Labour in India

Bonded labour, also called debt bondage, has existed in India for centuries. It is a system where a person is forced to work to repay a debt, often under unfair and exploitative conditions. This practice has been deeply connected to poverty, caste discrimination, and unequal land ownership.

14.3.1.1 Ancient and Medieval Periods

In ancient India, many texts like 'Arthshashtra' mention forms of debt bondage and slavery. During the medieval period, feudal landowners (zamindars) and moneylenders (mahajans) often forced peasants and lower-caste workers into unpaid labour to settle debts.

14.3.1.2 Colonial Period (British Rule: 1757–1947)

Under British rule, indigo plantation workers, tea estate labourers, and railway construction workers were forced into bonded labour through systems like the indentured labour system[87]. Under this system Indian workers also were sent to plantations in the Caribbean, Fiji, and Mauritius under unfair contracts, leading to a new form of bonded labour.

The British introduced land revenue systems (such as the Zamindari and Ryotwari systems) made farmers pay high taxes, forcing them to borrow money from landlords and moneylenders

[87] See glossary

forcing them into lifelong debt bondage. Many poor workers in tea estates, indigo plantations, and railway construction were forced to work under harsh and unpaid conditions.

14.3.1.3 Post-Independence Era (1947-Present)

Even after independence, landlords, industrialists, and moneylenders continued to exploit poor workers, especially in rural India.

The Bonded Labour System (Abolition) Act, 1976 was passed to eradicate bonded labour and free millions of workers from forced servitude. Despite legal protections, bonded labour still exists in some parts of India, particularly in brick kilns, agriculture, construction, carpet weaving, and mining industries. Bonded labour remains a serious issue in India, affecting marginalized communities.

14.3.2 Constitutional and Other Statutory Provisions Regarding Bonded Labour in India

14.3.2.1 Constitutional provisions

The Indian Constitution provides several safeguards to protect people from bonded labour and forced work. These provisions aim to ensure freedom, equality, and dignity for every citizen.

14.3.2.1.1 Fundamental Rights

Part III of the Constitution provided certain fundamental rights to citizens of India. Among them are:

1. **Article 23** provided Prohibition of Forced Labour, which forbids human trafficking and forced labour, including bonded labour. Any violation of this provision is punishable by law.

2. **Article 21** gives Right to Life and Personal Liberty, which includes the right to live with dignity, which means no person can be forced into bonded labour.

3. **Article 24** clearly Prohibited of Child Labour, thus bans the employment of children below 14 years in hazardous work like factories, mines, and industries where bonded labour is common.

14.3.2.1.2 Directive Principles of State Policy (DPSP)

Part IV of the Indian constitution deals with the Directive Principles of State Policy, which lies fundamental principles to guide the functioning of the state in establishing social and economic democracy. Among them:

1. **Article 39(e)** & **(f)** Ensures that workers are not forced to work under inhumane or unjust conditions, also promotes the protection of children and workers from exploitation.

2. **Article 42** Directs the government to make laws ensuring fair working conditions and humane treatment of workers.

3. **Article 46** Promotes the welfare of Scheduled Castes (SCs), Scheduled Tribes (STs), and weaker sections, who are most vulnerable to bonded labour.

14.3.2.2 Other Statutory Provisions against Bonded Labour

1. **Section 370 & 370A (Indian penal code) – Human Trafficking and Exploitation**

It Protects victims of forced labour and human trafficking and provides punishment of up to life imprisonment, depending on the crime.

2. **Section 374 (Indian penal code)– Unlawful Compulsory Labour**

It states, ' Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.'

3. The Child Labour (Prohibition and Regulation) Act, 1986, banned child labour in hazardous industries like brick kilns, agriculture, mining, and factories. The act was revised in 2016 to completely prohibit the employment of children below 14 years in such industries. Violation of this provides punishment of 6 months to 2 years of imprisonment and a fine up to ₹50,000.

4. The Minimum Wages Act, 1948 ensures that workers receive fair wages for their work. It also prevents exploitation by employers who force people into bonded labour.

5. The Contract Labour (Regulation and Abolition) Act, 1970 Protects workers from exploitation by contractors. It also ensures fair wages, proper working conditions, and prohibits forced work.

6. The Interstate Migrant Workmen Act, 1979 Protects migrant workers, who are often at risk of bonded labour and Ensures fair wages, working hours, and prevents exploitation by middlemen.

Other laws applicable to bonded labour are, **The Protection of Children from Sexual Offences Act, (Amendment), 2019, The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Weekly Holidays Act, 1942.** The most important enactment in this field is the **Bonded Labour System (Abolition) Act, 1976.**

14.3.3 Bonded Labour System (Abolition) Act, 1976

This Act is based on *Article 23* of the Indian Constitution, aiming abolishes bonded labour in India and made it a punishable offense. It also provides for the rehabilitation of freed bonded labourers.

The Bonded Labour System (Abolition) Act, 1976 is divided into six chapters that explain the abolition of bonded labour, its consequences, enforcement mechanisms, and penalties for violations. Here we provided detailed chapter-wise analysis of the Act.

14.3.3.1 Chapter I: Preliminary (*Sections 1–3*)

Section 1 of the Act defines its title, extent, and commencement. The Act applies to the whole of India and came into effect on February 9, 1976.

Section 2 states about key Definitions.

"bonded debt" means an advance obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system.[88]

"bonded labour" means any labour or service rendered under the bonded labour system.[89]

"bonded labourer" means a labourer who incurs, or has, or is presumed to have, incurred, a bonded debt.[90]

A creditor means the person (landlord, moneylender, or employer) who gives the loan and exploits the labourer.[91]

Section 3: Act to have overriding effect. —The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.

[88] *Section 2(d)* of the Bonded Labour System (Abolition) Act, 1976.

[89] *Section 2(e)* of the Bonded Labour System (Abolition) Act, 1976.

[90] *Section 2(f)* of the Bonded Labour System (Abolition) Act, 1976.

[91] *Section 2(a)* of the Bonded Labour System (Abolition) Act, 1976.

14.3.3.2 Chapter II: Abolition of Bonded Labour System (*Sections 4-5*)

Abolition of Bonded Labour (*Section 4*): Declares the bonded labour system illegal and states that no person can be forced to work to repay a debt.

Freedom from Debt (*Section 4*): All bonded labourers are immediately freed from their obligations.

Agreement, custom, etc., to be void. (*Section 5*): Any debt related to bonded labour is considered null and void.

14.3.3.3 Chapter III Extinguishment of Liability to Repay Bonded Debt (*Sections 6-9*)

Section 6 of the Bonded Labour System (Abolition) Act, 1976 states that, 'On the commencement of this Act, every obligation of a bonded labourer to repay any bonded debt, or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall be deemed to have been extinguished.'

It also freed victim from any suit or other proceeding that lie in any civil court or before any other authority for the recovery of any bonded debt or any part thereof.[92]

All bonded debts are automatically cancelled after the commencement of this act. The bonded labourer is not required to repay any part of the debt that led to their exploitation.

Purpose of *Section 6* is to free bonded labourers from financial oppression and prevent creditors from taking advantage of their vulnerability. It also ensures that no legal or financial burden remains on the bonded labourer.

This section is crucial for the complete rehabilitation and freedom of bonded labourers. If the creditor tries to enforce repayment, it is a punishable offense under the Act.

Section 7 of the Bonded Labour System (Abolition) Act, 1976 ensures that any property that was used as security or mortgaged in connection with a bonded debt is freed after the commencement of this act.

In other words, if a bonded labourer had mortgaged property (such as land, house, or belongings) to secure a loan, that property is freed from any liability. The creditor or lender cannot claim ownership or demand repayment using the mortgaged property. Any agreement that allowed the creditor to keep the property becomes null and void under this Act. If a creditor

[92] *Section 6(2)* of the Bonded Labour System (Abolition) Act, 1976.

refuses to release the property, the labourer can approach the authorities or a court for enforcement under the provisions of the Act.[93]

Purpose of *Section 7* is to ensure economic independence for freed bonded labourers and prevent further exploitation by creditors. Hence this section restores the dignity and financial stability of bonded labourers.

Section 8 provides protection to freed bonded labourers by ensuring they are not evicted from their homes or land.

Provisions of this section are applicable to residential (houses or shelters where they reside) and Agricultural Land (land used for cultivation). Even if the land or house was provided by the creditor or employer, they cannot forcibly evict the freed bonded labourer. Further If any person attempts to evict a freed bonded labourer, the government has the power to intervene and provide protection.[94]

Purpose of *Section 8* is protecting the right to shelter and livelihood for freed bonded labourers to protect the right to shelter and livelihood and promote the rehabilitation of bonded labourers without fear of displacement.

Section 9 is designed to protect freed bonded labourers from further exploitation by ensuring that no creditor can demand or accept repayment of a bonded debt that has been legally extinguished under the Act. If a creditor tries to recover money from the freed bonded labourer, it is considered a criminal act and can lead to punishment.[95]

This provision ensures that labourers are not tricked, coerced, or threatened into repaying a cancelled debt.

14.3.3.4 Chapter IV: Implementing Authorities (*Sections 10–12*)

Section 10 states, authorities who may be specified for implementing the provisions of this Act. The State Governments must form district and sub-divisional vigilance committees. These committees will identify bonded labourers, monitor enforcement, and assist in rehabilitation.

Section 11 ensures duty of District Magistrates and other officers. These are responsible to promote the welfare of the freed bonded labourer by securing and protecting the economic

[93] *Section 7(2)* of the Bonded Labour System (Abolition) Act, 1976.

[94] *Section 8(2)* of the Bonded Labour System (Abolition) Act, 1976.

[95] "…shall be punishable with imprisonment for a term which may extend to three years and also with fine." *Section 9(2)* of the Bonded Labour System (Abolition) Act, 1976.

interests of such bonded labourer so that he may not have any occasion or reason to contract any further bonded debt.

Section 12 highlights the important role of the District Magistrate in enforcing the Bonded Labour System (Abolition) Act, ensuring justice for freed labourers, and preventing further exploitation.

Purpose of Section 12 is to ensure that the Act is effectively implemented at the ground level through assigning clear responsibilities to government officials for the protection of bonded labourers.

14.3.3.5 Chapter V Vigilance Committees

Section 13 of the Bonded Labour System (Abolition) Act, 1976 mandates the state government for formation of Vigilance Committees at district and sub-divisional level to ensure the effective implementation of the Act. These committees play a crucial role in identifying, freeing, and rehabilitating bonded labourers.

The district vigilance committee includes representatives from government officials (District Magistrate, Labour Department, etc.), social workers, especially those experienced in labour welfare representatives of rural and urban local bodies, three persons belonging to the Scheduled Castes or Scheduled Tribes and one person to represent the financial and credit institutions in the district.[96] Similarly, Sub-Divisional Vigilance Committee is constituted.[97] Each Vigilance Committee shall regulate its own procedure and secretarial assistance in accordance to the provisions of act.[98]

Section 14 states the Functions of Vigilance Committees, includes the following:

- Identification of bonded labourers within their jurisdiction,
- Provide assistance for their rehabilitation and resettlement.
- Monitor the implementation of the Act
- Prevent the re-emergence of the bonded labour system.
- Report violations of the Act to the authorities.

[96] *Section 13(2*) of the Bonded Labour System (Abolition) Act, 1976.

[97] *Section 13(3)* of the Bonded Labour System (Abolition) Act, 1976.

[98] *Section 13(4)* of the Bonded Labour System (Abolition) Act, 1976.

The committees have the authority to investigate cases of bonded labour and ensure legal action against violators. A Vigilance Committee may authorise one of its members to defend a suit against a freed bonded labourer. Such member shall be deemed, an authorised agent of the freed bonded labourer.[99]

Burden of proof—Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.[100]

14.3.3.6 Chapter VI: Offences and Procedure for Trial (*Sections 16–23*)

Punishment for Violating the Act

Anyone who forces a person into bonded labour[101] and for advancement of bonded debt[102] can be punished with Imprisonment of up to 3 years, and a fine up to ₹2,000 (or more in some cases).

Punishment for extracting bonded labour under the bonded labour system is also Imprisonment of up to 3 years, and a fine up to ₹2,000 and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day for which the bonded labour was extracted from him.[103]

Section 19 says that punishment for omission or failure to restore possession of property to bonded labourers is imprisonment up to one year, or with a fine up to one thousand rupees, or with both; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day during which possession of the property was not restored to him.

According to ***section 20***, any act of abetment i.e. encouraging, assisting, or instigating which is an offence under the Bonded Labour System (Abolition) Act, 1976 is also punishable with the same punishment as is provided for the offence which has been abetted.

Section 21 of the Bonded Labour System (Abolition) Act, 1976 specifies the authority responsible for handling offences under the Act. Executive Magistrates have the power to try

[99] *Section 14(2)* of the Bonded Labour System (Abolition) Act, 1976.

[100] *Section 15* of the Bonded Labour System (Abolition) Act, 1976.

[101] *Section 16* of the Bonded Labour System (Abolition) Act, 1976.

[102] *Section 17* of the Bonded Labour System (Abolition) Act, 1976.

[103] *Section 18* of the Bonded Labour System (Abolition) Act, 1976.

offences under this Act. Assigning the authority to Executive Magistrates ensures speedy trials and effective enforcement of the law.

Section 21(2) of the Bonded Labour System (Abolition) Act, 1976 allows certain cases to be tried summarily by a Magistrate. Allowing summary trials under the Bonded Labour System (Abolition) Act, 1976 ensures that victims receive justice without unnecessary delays. It also acts as a deterrent against bonded labour practices by ensuring timely punishment for offenders.

Section 22 of the Bonded Labour System (Abolition) Act, 1976 deals with the procedure for taking cognizance of offences committed under this Act. The court can take cognizance of an offence under the Act in the following ways:

- ➢ Upon receiving a complaint.
- ➢ Upon a police report of facts that constitute the offence.
- ➢ Upon receiving information from any other source.

The provision ensures that victims of bonded labour can directly approach the judicial system for justice.

Section 23 of the Bonded Labour System (Abolition) Act, 1976 deals with the legal responsibility of companies when an offence is committed under this Act. it serves as an essential legal provision to hold companies and their officers accountable for bonded labour violations. It ensures that companies act responsibly and comply with the provisions of the Bonded Labour System (Abolition) Act, 1976.

14.3.3.7 Chapter VII: Miscellaneous (*Sections 24–27*)

Section 24 ensures that people implementing the Act are not unfairly penalized for their honest efforts. For example, if a District Magistrate orders the release of a bonded labourer from a factory and the factory owner files a case against the Magistrate, *Section 24* provides legal protection if the Magistrate acted in good faith under the provisions of the Act. Similarly, if a member of a vigilance committee reports a bonded labour case and faces retaliation through legal means, they are safeguarded under this section.

The purpose of *section 24* is to encourage officers and individuals to perform their duties without fear of legal repercussions. And to ensure efficient enforcement of the Act without hesitation or delay.

Section 25 ensures that civil courts do not interfere with the effective implementation of the Act. It plays a vital role in maintaining the efficiency of the legal process in freeing bonded labourers and holding offenders accountable. For example, if a bonded labourer is released by the order of a District Magistrate, and the employer tries to challenge this decision in a civil

court, ***Section 25*** prohibits the court from hearing the case. The employer may have other legal remedies like approaching higher administrative authorities, but civil litigation is not an option.

Section 26 of the Bonded Labour System (Abolition) Act, 1976 provides the legal authority for the Central Government and State Governments to create rules for the proper implementation of the Act. The rules may cover matters such as:

- ➢ Identification, Release, and Rehabilitation of bonded labourers.
- ➢ Monitoring and Reporting Mechanisms to check compliance.
- ➢ Functions and Responsibilities of authorities like the District Magistrate and Vigilance Committees.
- ➢ Procedures for Filing Complaints and conducting inquiries.
- ➢ Awareness and Education Programs to prevent bonded labour.

Section 27 of the Bonded Labour System (Abolition) Act, 1976 deals with the repeal of previous laws and the continuation of actions taken under those laws. Despite the repeal, any actions taken under the repealed laws are still considered valid. If there were any ongoing legal proceedings or actions initiated under the previous laws, they may continue as if the new Act had not been enacted. It preserves the legality of past actions and ensures that justice is not affected due to the repeal of old laws.

14.3.4 Current Scenario

The Bonded Labour System (Abolition) Act legally abolished the bonded labour system across India, freeing labourers from existing debts and obligations. Despite its intentions, the Act's effectiveness has been mixed, facing several challenges in its implementation.

14.3.4.1 Rehabilitation Efforts

Government schemes have been introduced to assist freed bonded labourers. For instance, as of 2003, over 285,000 individuals benefited from financial or in-kind grants aimed at rehabilitation.[104] The government provides financial assistance, housing, education, and skill development for freed bonded labourers. Central Sector Scheme for **Rehabilitation of Bonded Labour (2016):**

- ➢ ₹1 lakh for each freed bonded labourer.

[104] International labour Organization

- ₹2 lakhs if the labourer is from SC/ST or a woman/child.
- ₹3 lakhs for victims of extreme cases like sexual exploitation or human trafficking.

Recent reports suggest that bonded labour persists in various forms across India. The government's efforts since 2016 have resulted in the release of approximately 32,873 individuals from bonded labour, averaging about 4,696 releases per year. At this rate, achieving the target of eradicating bonded labour remains a significant challenge.[105]

14.3.4.2 Challenges in the implementation of the act

Here are the key challenges:

1. Lack of Awareness

Many bonded labourers, especially in rural areas, are unaware of their rights under the Act. Employers often exploit this lack of knowledge to continue the practice.

2. Ineffective Enforcement

Enforcement of the Act is weak due to limited resources and lack of commitment from authorities. Corruption and political influence sometimes protect offenders from legal consequences.

3. Inadequate Identification of Bonded Labourers

Bonded labour often occurs in informal sectors, like agriculture, brick kilns, and domestic work, making identification difficult. This leads to underreporting and hampers enforcement efforts.[106] Fear of retaliation from employers prevents labourers from speaking out.

4. Insufficient Rehabilitation

While schemes exist, the reach and effectiveness of rehabilitation programs have been inconsistent, leaving many freed labourers without adequate support. Despite government rehabilitation packages, the support is often delayed, inadequate, or mismanaged. Freed labourers frequently relapse into bonded labour due to lack of employment opportunities.

[105] India Development Review

[106] International Labour Organization

5. Socio-Economic Factors

Poverty, illiteracy, and unemployment force vulnerable populations into bonded labour. Caste-based discrimination further perpetuates the system; as marginalised communities are disproportionately affected.

6. Judicial Delays

Slow judicial processes hinder timely justice for victims. Convictions under the Act remain low due to weak prosecution and lack of evidence. As of 2003, almost 5,000 prosecutions had been recorded under the Act, but convictions were rare, indicating challenges in legal enforcement.

7. Limited Role of Vigilance Committees

The Act mandates the formation of Vigilance Committees to monitor bonded labour cases, but they are often inactive or lack the necessary resources.

8. Lack of Coordination

Poor coordination between state and central authorities results in inconsistent enforcement across regions.

To effectively eliminate bonded labour, the following measures are essential:

- ➢ Strengthening legal enforcement through strict monitoring and accountability.
- ➢ Enhancing awareness campaigns to educate labourers about their rights.
- ➢ Improving rehabilitation programs with sustainable livelihood options.
- ➢ Empowering Vigilance Committees with adequate resources.
- ➢ Promoting inter-agency coordination for better implementation.

The Bonded Labour System (Abolition) Act, 1976 is a strong legal framework to end bonded labour in India. However, despite this law, bonded labour still exists in some parts of the country due to weak enforcement, corruption, and poverty. Strict implementation, awareness programs, and rehabilitation efforts are necessary to completely eliminate this system.

14.4 SUMMARY

Bonded labour is a type of forced work in which a person has to work to repay a loan or debt. The loan or debt passes through generation, if not paid in one's life. It is a type of social evil.

The Indian Constitution strongly opposes bonded labour and guarantees freedom, dignity, and equal rights to all citizens. **Article 23 Article 21 Article 24 Article 39(e)** & **(f) Article 42 Article *46*** have provisions against this evil practice.

Section 370 & 370A and **Section 374 of Indian penal code** also have strong provisions against the forced labour. Many other statuary law are there but proper enforcement of laws is necessary to completely eliminate bonded labour in India.

The Bonded Labour System (Abolition) Act, 1976 is a law passed by the Indian government to end bonded labour. Before this law, many poor people were forced to work without fair wages to repay loans or debts. They had no freedom to leave the work, and sometimes, this continued for generations. **The main highlights of this act are summarise here:**

Abolition of Bonded Labour: The Act declares the bonded labour system as illegal and prohibits anyone from forcing individuals to work under bondage.

Immediate Release of Bonded Labourers: Any person who was working as a bonded laborer is freed from all obligations, including debt repayment.

Protection of Property: If a bonded labourer lost property due to debt, the property must be restored to them.

Penalty for Violators: Those who continue to engage in or enforce bonded labor can face imprisonment up to 3 years and fines up to ₹2,000.

Vigilance Committees (*Section 13*): State governments must establish Vigilance Committees to monitor and ensure implementation. These committees help in identifying, releasing, and rehabilitating bonded labourers.

Government Rehabilitation Measures: The Act empowers the government to rehabilitate and support freed bonded labourers so that they can integrate into society.

Offences and Procedure for Trial: Offences under this Act may be tried summarily by an Executive Magistrate. Only a District Magistrate or an officer authorized by the State Government can take cognizance (awareness and acceptance) of offences under this Act. **Chapter VI** ensures that offenders are prosecuted effectively while protecting officials acting in the public interest. It also emphasizes a speedy trial process and prevents unnecessary legal interference, thus aiding in the proper enforcement of the Act.

The Central Government has the authority to make rules for carrying out the purposes of the Act. **Section 27** repeals any previous laws or regulations that conflict with the provisions of this Act. However, it contains a saving clause to ensure that any actions taken, orders passed, or legal proceedings initiated under the old laws remain valid and unaffected by the repeal. This ensures a smooth legal transition and prevents legal gaps.

Government Rehabilitation Programs and Legal Aid and Protection: The government provides financial assistance, housing, education, and skill development for freed bonded labourers.

Under Central Sector Scheme for Rehabilitation of Bonded Labour (2016) ₹1 lakh provided for each freed bonded labourer and ₹2 lakhs if the labourer is from SC/ST or a woman/child also ₹3 lakhs for victims of extreme cases like sexual exploitation or human trafficking.

Labour departments and NGOs help victims file complaints against employers. District Magistrates (DMs) have the power to free bonded labourers and take legal action against offenders.

Challenges in Implementation: Even though this law was passed, bonded labour still exists in some industries like brick kilns, agriculture, and mining. The government and NGOs continue to work to completely end this practice. Many cases of bonded labour go unreported due to fear of employers. Corruption and lack of strict enforcement slow down the process. Some freed labourers fall back into debt bondage due to poverty.

The Bonded Labour System (Abolition) Act, 1976 is a strong legal framework to end bonded labour in India. However, despite this law, bonded labour still exists in some parts of the country due to weak enforcement, corruption, and poverty. Strict implementation, awareness programs, and rehabilitation efforts are necessary to completely eliminated bonded labour in India.

14.5 GLOSSARY

1. **Indentured labour:** Indentured labour is a form of contract labour where individuals agree to work for a specific period or until a debt is paid, often in exchange for passage to a new country or other services, and is sometimes compared to slavery. This system was used in the British Empire and European colonies in the 19th century.

2. **Abetment:** According to **section 107 of the Indian Penal Code**, "Abetment of a thing. — A person abets the doing of a thing, who— (i) Instigates any person to do that thing; or (ii) Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or (iii) Intentionally aids, by

any act or illegal omission, the doing of that thing." The person who abets a crime is known as an abettor.

3. **Summary trial:** A summary trial means that:
   - ➢ The case is conducted quickly without going through lengthy legal procedures.
   - ➢ Evidence is recorded in a brief manner.
   - ➢ The case is usually disposed of in a short time.
   - ➢ Only less complex cases are handled this way.
4. **Cognizance:** Cognizance refers to the legal process where a court officially recognizes and starts proceedings against a person accused of an offence. It is the first step in a criminal trial where the court decides whether there is enough evidence to proceed with the case.

14.6 SAQS

SHORT ANSWRE QUESTION

1. What is the purpose of the Bonded Labour System (Abolition) Act, 1976?

2. Who is responsible for implementing the provisions of the Act at the district level?

3. What happens to the bonded labourer's debt under the Act?

4. Can a freed bonded labourer be evicted from their homestead or land?

5. What is the role of Vigilance Committees under the Act?

B. TRUE AND FALSE TYPE QUESTION

1. The Bonded Labour System (Abolition) Act, 1976 abolished the practice of bonded labour across India.
2. Bonded labourers are required to repay their debts even after their release under the Act.
3. Only civil courts have the authority to try offences under the Act.
4. The Act provides protection to freed bonded labourers from eviction from their homesteads.

5. The Vigilance Committees under the Act are responsible for identifying and rehabilitating bonded labourers.

C. FILL IN THE BLANKS

1. _____ are responsible for enforcing the law and ensuring that bonded labourers are freed and rehabilitated.
2. The Bonded Labour System (Abolition) Act was enacted in the year **_____.**
3. Under Section 6 of the Act, all bonded debts are deemed to be **_____.**
4. The authority responsible for ensuring the implementation of the Act at the district level is the **_____.**
5. Section 9 of the Act states that a creditor shall not accept **_____** against an extinguished debt.

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5. Indian Constitution

6. Indian Penal Code

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7. National Human Rights Commission (NHRC) Reports on Bonded Labour
8. International Labour Organization (ILO) Reports
9. Supreme Court and High Court Judgments
10. Landmark judgments like Bandhua Mukti Morcha vs. Union of India (1984) provide judicial interpretation of the Act.
11. Ministry of Labour and Employment Website *(www.labour.gov.in)*
12. National Human Rights Commission (NHRC) Website *(*www.nhrc.nic.in*)*
13. International Labour Organization (ILO) *(www.ilo.org)*

14.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. What is the primary objective of the Bonded Labour System (Abolition) Act, 1976?

2. Explain the role of the District Magistrate under the Act in identifying and rehabilitating bonded labourers.

3. What are the key penalties prescribed under the Act for those engaging in or promoting bonded labour?

4. Describe the powers and responsibilities of the Vigilance Committees as per the Act.

5. How does the Act ensure the protection of freed bonded labourers from eviction from their homesteads?

Answers: SAQS

A. 1. Refer 14.3.3; 2. District Magistrate; 3. Refer 14.3.3.3, Section 6; 4. No refer section 8; 5. Refer 14.3.3.5, chapter V; 6. Executive Magistrates; 7. No, refer Section 9; 8. imprisonment up to 3 years and/or a fine up to ₹2,000; 9. Refer 14.3.3.7, chapter VII; 10. No refer Section 25
B. 1. True; 2. False; 3. False; 4. True; 5. True; 6. False; 7. True; 8. False; 9. True; 10. False;
C. 1. District Magistrates (DMs); 2. 1976; 3. Extinguished; 4. District Magistrate; 5. Payment; 6. Executive Magistrate; 7. Abolish; 8. Homestead or land; 9. Vigilance Committees; 10. Punishment; 11. No jurisdiction;

TERMINAL QUESTIONS AND MODEL QUESTIONS

13. Refer 14.3.3
14. Refer 14.3.3.4 and 14.3.3.5
15. Refer 14.3.3.6
16. Refer 14.3.3.5
17. Refer 14.3.3.3
18. Refer 14.3.3.7