

UNIT – I

INTRODUCTION :

Historical Dimensions of Labour & Employee Legislation in India including the fillip from Indian Freedom Movement; Place of Tata Enterprise as a forerunner of Indian Labour Welfare Legislation; Labour Protection & Welfare (social security & social justice) and system of economic governance (open, regulated & controlled economies and globalize scenario); International Labour Standards & India – Evolution & Track record.

EMPLOYEE LEGISLATION

Introduction

*"Law is not an abstract thing, it is a living organism
since it is applied on living human beings".*

Industrialisation has brought with it, huge employment opportunities, mass production, distribution of goods and commodities but at the same time carried with it certain disadvantages to workmen as loss of freedom, unhygienic working conditions, no freedom of contract, the dynamics of market and self interest. Peter Drucker calls it "The age of discontinuity, turbulent environment and technocratic age". Technology has ushered in the following, (i) elimination of physical labour, (ii) mass production at low cost (iii) too much of control mechanisms, (iv) reduction in workers ability (v) heavy monitoring , maintaining, repairing, adjusting (vi) sense of alienation among workmen (vii) inter dependence and (viii) strict discipline. Industry demands interaction of people. Industrial relations involves inaction and violent action, conflict and co-operation. Labour management is based on labour policy, laws, rules, regulations, agreements, awards, social sciences, behaviour pattern, sociology,

psychology and human approach. Industrial relation is the process by which working people and their organisation interact at the place of work to establish terms and conditions of work. Professor Lester "when people sell their services and spend their lives in the premises of the purchaser of the services, a varying amount of dissatisfaction, discontent, industrial unrest likely to occur. Hence the need for employee legislations. The State has enacted many employee legislations to control the industries as to safeguard the interest of employees as well to cater to their welfare and security needs.

The Employee Legislation, The Labour Legislation or The Industrial Legislation or The Human Resources Legislation, whatever name it may be called refers to the one and the same concept that covers a number of legislations passed by the Parliament to procure for the employees, higher wages, healthy working condition, opportunity to advance, satisfaction at work, avenues for raising industrial dispute and protection against loss of wages, over work and arbitrary treatment. This concept could easily be comprehended when we undertake the study of all the characters who play the roles in an industrial organisation. The main characters are Employer, Employee, the Trade Union and the Government.

EMPLOYEE : Indian Labour generally speaking are exploited to the core. Most of them have migrated from rural areas to the urban areas and they are classified as illiterates, arrogant, undisciplined untrained, unskilled and uncontrollable. This assessment is made on the organised labour which constitutes merely 8 percent of the country's total labour force. The remaining work force falls under the category of unorganised sector who are not fully taken care of.

The Indian Employee Legislations were oriented towards safeguarding the interest of employees and protecting them against exploitation. These Legislations are mostly Government controlled under the banner of Labour Commissioner, Labour Officer Conciliation, Inspectorate, Enforcement Officers

and other officers. These officers have in the past only tried to shield the employers and the execution of the laws was in fact unfavourable to Employees whose plight presents a pathetic picture.

The Employees need to be groomed by applying Industrial Training which develops the mental and psychological capacity of workmen. The Industrial Training involves training in discipline, punctuality loyalty, leadership, communication skills, civics, ethics as to get the employees know their rights as well as their duties.

THE EMPLOYER : The Indian Employer having invested money on running the organisation through their own source or by joint venture or through loans obtained from financial institution, it is natural for them to aim for profit but on the contrary, since they have extended their arms towards the concept of maximization of profit, the result is the exploitation of Human Resource and the reduction in quality of the produce under the wrong option of More production at a low cost. The Employers are surrounded by 'Yes Sir', officers who do not give proper advise during crisis. The Labour Managers, The Personnel Managers The Human Resource Managers are ill-equipped to achieve Industrial Peace, Industrial harmony and Industrial Democracy. The executives need training in Labour Legislations, Sociology, Psychology, psychiatry and Humane Approach.

THE TRADE UNION : 'Trade Union is a necessary evil' as observed by experts of the labour field. The Trade Union Movement in India dates back to Colonial rule i.e. pre-independence period. The Employees of that era were Swinish Herd as Burke calls them. They were a ignorant lot not paid salary but provided with some food, shelter and some pieces of cloth to cover their body. Women and children were employed and were subjected to untold miseries and torture. Bonded Labour was commonly prevalent and slavery was practiced everywhere. Since individual worker is no match to the rich and arrogant

capitalist a combination of workmen had to form Trade Union to voice their grievances.

THE TRADE UNION MOVEMENT :

In India, the upheaval against the colonial rule was mainly by barristers, social workers, reformers, teachers preachers, editors and journalists. These elites had also voiced their concern over the plight of the working force in India. Most of the freedom fighters were Trade Union Leaders. To name some of them Annie Besant, C.R. Doss, Patel, Jawaharlal Nehru, Mahatma Gandhiji, Motilal Nehru, Iron man Patel, Balagangadara Tilak, Netaji Subash Chandra Bose and so on. They were selfless leaders who tried to liberate the Human Resources from slavery. Their concern over the plight of employees saw to the birth of several legislations.

The early employee legislation under the colonial rule are -

1. Fatal Accidents Act 1855.
2. The workmen's breach of Contract Act 1860.
3. The Employers and Workmen Disputes Act 1860.
4. The Factories Act of 1881 and 1891
5. The Mines Act 1901
6. The Workmen's Compensation Act 1923.
7. The Trade Union Act 1926.
8. The Payment of wages Act 1936.
9. The Employer's Liability Act 1938.
10. The Industrial Disputes Act 1947.

THE TRADE UNION ACT

The Trade Union Act 1926 was based on the British Trade Union Act. The definition of Trade Union as found in our act is a mere reproduction of the definition of the British Act.

"Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions".

This definition is defective in the sense that it has not elaborated on the words any combination. The use of the words any combination has allowed outsiders to form a trade union. In our country all the Trade Unions are formed by political parties. These political parties are loyal to their political bosses and carry certain ideologies that are outmoded and impractical. Socialism, Communism, can be preached but can never be practiced. These ideologies are stumbling blocks in the road to progress. The Trade Union Act has been amended as to ensure that Trade Union becomes an internal affair. Earlier to amendment any seven persons can form a trade union, now at least 10 percent or one hundred of the workmen whichever is less are needed to form a union. The amended act also demands that one half of the office bearers should be insiders which should be slowly enhanced to 75 percent.

The trade union leaders now are careerist who are little concerned with the interest of either the workmen or the employer. Trade Union is necessary but not in the current form but should be an internal affair managed by employees of the organisation and not abused by the political parties. However it is to be contended that Trade Unions are necessary to voice the concern and anguish of workmen.

The above comments are purely academic and not intended to offend any person or political party. These comments are oriented towards the welfare of the working force.

GOVERNMENT : What is the role of the government in the industrial theatre?
In fact it is the Government that plays the major role in employee legislation.

All employee legislations are state controlled and the courts of law are to give verdicts only. The state functions through its commissioners, conciliation officers, Inspectors, enforcement officers. Minimum wages are fixed by State Governments as per the cost of living index. Payment of wages is watched by the State. Payment of ESI fund and payment of EPF are regulated by Central Government through its Enforcement Officers. Industrial Dispute cannot go to the court of law directly. Any dispute has to be raised before Labour Officer Conciliation and only on failure of conciliation the government frames issues to be answered and refers it to the Labour court or Labour Tribunal. The Award (Judgment) passed by the Court of law gets the legal power only on its publication by the Government in the official Gazette. Any violation of the Award is reported to the Labour commissioner who initiates action against the defaulter. Prior intimation to the Government and permission from the Government has to be obtained for effecting closure of an industry that engages more than 100 workmen.

To sum up most of our labour legislations are either before our independence or immediately after independence. These laws are outmoded and it is high time the laws are re-enacted as to suit the changing climate.

Historical Dimension of Labour in India

The Evolution of industrial relations

1. Primitive stage
2. Agrarian Economy
3. Serfdom
4. Handicrafts
5. Cottage or Putting Out
6. Factory or Industrial Capitalisation stage.

1. Primitive Stage : People were nomads moving from one place to another. Their main occupation was fishing, hunting and pastoral. They lived as family

groups. Whatever they produced, they consumed, they had no savings no accumulations and no exchange of productions. They were governed either by matriarchs or patriarchs. There was no employer - employee relationship.

2. Agrarian Economy or Middle Age : Landlords had slaves working and cultivating their lands. No salary was paid to these men and women but they were given some food, old clothes and a place to live. Government had no control and no labour legislation could regulate the employer - employee relationship.

3. Serfdom : Land owners were crowned as feudal princes, landlords and land owning class. People who worked under them were slaves with limited intellect, ignorant, depraved, without personal ethics and hence subject to complete dominations. Burke calls these slaves as Swinish Herd.

4. Handicraft Stage: Craftsman started their own guilds. There was no employer - employee relations and so no employee legislations.

5. Cottage Industries: Use of steam and power created cottage industries. Workmen were hired on meager salaries. Government exercised no control on them and employee legislations were unknown to them.

6. Factory or Industries : This era invited untold miseries to workmen. It gave employment to many but the plight of the working class was deplorable. They were exploited to the core. Under the banner of Maximization of profit and with the help of technology, workmen had to work more than 12 hours in unhygienic conditions with low salaries. Added to this Women and children were employed in hazardous places. It was at this stage social reformers felt the necessity of employee legislations to save the workmen from the cruel treatment.

EMPLOYEE LEGISLATIONS IN INDIA: Kautilya's Asthasashtra spelt rules and regulations on labour, like guilds, co-operative undertaking. Kautilya spoke about privileges of workmen, high wages, sick leave, old age pension and dispute settlement methods. Vedic period advocated happiness and good mutual

relations between the employer and employees. As the years rolled the following important events took place.

Sequence of Events :

- 1877 : Emperor Mills Nagpur Stoppage
- 19th Century : Industrial Capitalism in Bombay and Surat.
- 18th and 19th Century : Industrialisation in Europe
- 1914 - 1918 : First World War – boon for employers because of raising prices - huge profits - Economic distress for workmen.
- 1917 : Trade Dispute Act enacted.
- 1921 : First Trade Union started at Madras by B.P. Wadia
- 1921 : Mahatma Gandhi advocated Collective Bargaining and re-opened the Ahmedabad Textile Mills.
- 1923 : Workmen's Compensation Act was enacted.
- 1926 : Trade Union Act was born
- 1945 : Second World War
- 1946 : Huge profits to capitalists - Indian Employment Standing Order enacted.
- 1946 - 1947 : Disturbed year
- 1947 : INTUC was born
- 1947 : Industrial Disputes Act
- 1948 : Minimum Wages Act,
Employees State Insurance Act & Factories Act

LEGISLATIVE HISTORY OF LABOUR LEGISLATION

The history of labour legislation is interwoven with the history of British colonialism. The early legislations were meant to protect the interest of British employers and to tame the Indian workers. The first Factories Act that was introduced in the year 1883 stipulated 8 hours work, abolition of child labour, restriction of women in night shifts and introduction of over-time wages. Though it was a welfare legislation, it was meant to protect the British Textile Magnates since the British Parliament was pressurized by the British Business people to make Indian Labour costlier to avoid export of textile goods from India.

The history of growth of modern employee legislation may be classified as below:

1. The beginning of Employee Legislation (1830-1918)
2. Employee legislation between two wars (1919-1942)
3. Employee legislation between 1942-1947.
4. Post Independence Employee Legislation 1947-1975
5. Post-emergency Legislation 1975 onwards.

The beginning of modern labour laws (1830 – 1918)

The beginning of modern labour legislation in India go back to the ‘thirties’ of the last century when the Government of India felt the need for regulating the recruitment, forwarding and employment of Indian labourers under the indenture system to the various British colonies. Although this legislation applied only to emigration to foreign countries, it exerted a profound influence on the development of labour legislation within India, especially in regard to the labour supply for the Assam tea gardens. The country was then semi-feudal in character and laissez faire was the ruling doctrine of the day; it was sincerely believed that any interference in the employee-employer relationship would prove detrimental to both parties. Far from protecting the interests of labour, the first attempts to ‘regulate’ labour consisted of enactments, such as the earlier

Assam Labour Acts, the Workmen's Breach of Contract Act of 1859 and the Employers' and Workmen's (Disputes) Act of 1860, which rendered workmen liable to criminal penalties for breach of contract and the Indian Penal Code of 1860 also contained provisions of this character.

Towards the close of the nineteenth century, however, efforts were made to enact legislation to correct the more serious abuses in the employment of workers in factories. The earliest of these were the Factories Acts of 1881 and 1891, which placed a limitation on the employment and working hours of women and children. The first Mines Act passed in 1901 also had a limited objective of securing safe conditions of work and there were no provisions for the special protection of women and children or for the regulation of hours of work. In factory industries, especially textiles, which were rapidly expanding in range and in the numbers employed, the workers were employed for fourteen and fifteen hours a day and the provisions regarding the minimum age of children and half-times were totally ineffective. This and several other serious abuses were brought to the notice of the authorities by the Factory Labour Commission appointed in 1907 by the Government of India. As a result, and in spite of opposition on the part of industries, an Act was passed in 1911 with the object of removing some of the obvious shortcomings of the existing law. The regulations about the employment of women and children were strengthened and, for the first time in India, there was a statutory limitation of hours of work for men, though this was confined to textile factories only. It would thus be seen that early labour legislation was haphazard and tardy.

Wartime Legislation (Between 1919 – 1942)

After the first World War, labour legislation took shape at a rapid rate. The reasons generally ascribed for this accelerated pace are many. In the political field the introduction of the Montague-Chelmsford reforms and the association of popular representatives in the central legislature and the governments in the

provinces served to bring the various problems of the country before public attention. The country received its first Constitution under the Reforms of 1919, conferring a modified degree of autonomy on the provinces. So far as labour was concerned the central legislature was given powers to legislate on all matters with the exception of housing. The provincial legislatures could, for their part, legislate on housing and also, with the approval of the Central Government and the overriding authority of the central legislature on all other subjects except mining.

(a) **Rise of Trade Union Movement** : Besides, at the conclusion of the first World War, there was a rising consciousness among workers through increased knowledge of general economic conditions and of the trade union movement in other countries. The industrial unrest which followed 1919 saw the birth of the first strong central organisation of workers in the All India Trade Union Congress. At about the same time the International Labour Organisation was set up and the attendance of workers', employers' and government representatives at its meetings and the ratifications by the Government of India of many of the International Labour Conventions resulted in giving a great fillip to labour legislation in India.

(b) **Birth of the international Labour Organisation** : The International Labour Organisation, is an inter-governmental agency, established by Peace Treaty of 1919 for promotion of industrial peace and social justice. Its structure is tripartite and includes representatives of Governments, employers and workers.

The basic principles of the Labour policy of the I.L.O. are : -

1. Labour is not a commodity.

2. Freedom of expression and of association are essential to continued progress.
3. Poverty anywhere constitutes a danger to prosperity everywhere.
4. War against want requires to be carried on with unending vigour within each nation and by continuous efforts in which the representatives of workers and employers, enjoying equal status with those of Governments, join with them in free discussions and democratic decisions with a view to the promotion of the common welfare.

India has been a member of the I.L.O. from 1919.

Labour Legislation between 1942 – 1947

The impact of International Labour Organisation's recommendations and conventions and the method of tripartite regulation has resulted in the enactment of a series of amendments to the Factories Act which gave workers in factories a 48 hour week, annual holidays with pay and canteen facilities; the Industrial Employment (Standing Orders) Act, 1946, which requires the larger industrial establishments in the country to frame and adopt regular standing orders; and the Industrial Disputes Act, 1947, which provides for the investigation and peaceful settlement of industrial disputes.

The two most important developments which affected the sphere of labour legislation in the post-war era were the complete transfer of power in India on 15 August 1947 and the partition of India into the Dominion of India and Pakistan and the rapid integration with the Union of India of the territories formerly known as the Indian States and the resultant automatic extension of the scope of the labour laws enacted by the Indian legislature.

Spectrum of Post-Independence legislation

The considerations discussed earlier have undoubtedly contributed to the progressive development of industrial law in the country. The post-

Independence labour laws classified by the problems they seek to tackle, may be divided into the following categories:-

1. Working conditions, industrial safety, hygiene, and welfare inside the works.
2. Wages.
3. Industrial Relations.
4. Trade Unionism.
5. Social Security.
6. Welfare outside the works.
7. Employment and unemployment.
8. Industrial housing.
9. Miscellaneous problems.

Laws have also been enacted to meet the special needs of particular industries or employments e.g., mines, plantations, factories, transport, shops and establishments, and working journalists.

Post Emergency has ushered in a new era of Industrial relations

With the declaration of national emergency with effect from 26th June 1975 and announcement of 20-point economic programme, the socio-economic policies including industrial relations, have taken a positive and a meaningful turn. Like in political and constitutional history of the country, this marks the beginning of a positive and new constructive era in industrial relations also. While on the one hand renewed and vigorous battle against poverty has been launched for mitigating the sufferings of the deprived, vulnerable and weaker sections of society, the attitudes, trends and activities of working classes leading to indiscipline, economic chaos and collapse of industrial production by interruptions, agitations etc., have also been controlled. The industrial manpower has been channelised for raising productivity. This era, therefore, witnesses not only laws for pruning the existing industrial and labour laws

structure but also carving out a positive role for it. Thus anti-inflationary laws like Payment of Bonus (Amendment) Act, 1975, Additional Emoluments (Compulsory Deposit) Amendment Act, 1976 and the 42nd Amendment of the Constitution Act, the Equal Remuneration ordinance and Consequential Act, the Bonded Labour Abolition Act, laws to free the low earning industrial workers from debts, introduction and / or revision of agricultural minimum wages, provisions for controlling lay-offs, retrenchments, closures and ensuring greater security of service, acquisition of surplus lands etc., for providing homes for landless and site-less labour joint management and shop councils, scheme for workers association in industries, enlargement of apprenticeship scheme, income tax relief to low-income groups and more schemes of social security characterize the new labour law approach. Undoubtedly this is the first ever pragmatic and firm approach to put the labour jurisprudence on a socially just base. This marks an end of the era of governmental hesitation and opportunism plagued approach in favour of a determined and positive effort for the formulation of a rational industrial order based on socio-economic justice. A new leaf has turned in the jural management of social engineering in the country.

TATA ENTERPRISE AS A FORERUNNER OF INDIAN LABOUR WELFARE LEGISLATION

Sustainable Development is the dream envisaged by the architects of Human Rights Movement. Today the corporate sector has the major role to play in creating a sustainable world in the domestic as well as in the global level, in a liberalized and globalised economic order. The globalised environment demands that economic growth is not sufficient and can in fact be detrimental without appropriate linkages to human, ethical and social dimensions. Governments feel that they must empower, build and work with the skills and resources of other sectors. The withdrawal of State from various sectors and the

privatisation process has created ample opportunities to the private sector to come forward and forge partnerships. Sustainable people - centered development is a global imperative for action and economic growth.

The sustainable development or the sustainable people centered development is possible in corporate sector only when the industrial relations cater to the following:

Industrial Peace

Industrial harmony

Industrial democracy

Workers participation in Management

Welfare and security of workmen

Hygienic Conditions at work

Job Satisfaction

Social security extended to family members of the workmen

Research and Development Departments conduct research on Human Resource.

In India the public sector was a Model Employer providing decent salary with proper working conditions. With the egoistic bureaucratic style of functioning and with policy changes of the government, the public sector barring a few have deteriorated and have gone down the levels. Traditionally corporate houses in India, though not in large numbers, have recognized and appreciated the growth and sustainability of economic development with matching social and neighbourhood community development. The Gandhian philosophy of 'trusteeship', individual's charity and philanthropy in 1950s and 1960s found a place in their corporate philosophy and hence business agenda. Tata's have been pioneers in this effort as you all would know, for example, the Tata Group pioneered Labour Welfare Measures – even before these were enforced by Law – for instance, the eight hour working day (in 1915), establishment of welfare

department (1917), ensuring maternity benefits (1928), to mention a few. In the modern day context as well, the Tata Community Development Guidelines reflects the Group's systematic and institutionalized approach to community development, and community welfare comes out as central to the value system of companies in the Tata Group.

To understand more about the functioning of the Tata Houses we have to study about its Founder Jamsetji Nusserivanji Tata and its pioneers.

The Founder : **Jamsetji Nusserwanji Tata** (1839-1904)

- Jamsetji Nusserwanji Tata ranks among the greatest visionaries of Industrial enterprises of all time.
- Gifted with the most extraordinary imagination and prescience, he laid the foundations of Indian industry, contributed to its consolidation, and became a key figure in India's industrial renaissance.
- Born on 3rd March, 1839 into a family descended from Parsi priests in Navsari, a centre for age-old Parsi culture, he was educated at Elphinstone College, Bombay.
- Initiated early into the techniques of trade by his father, he travelled wide, gained a scientific outlook, and set up at first, textile business in India, introducing new machinery that vastly improved the production of cotton yarn in the country. He however realised that India's real freedom depended upon her self-sufficiency in scientific knowledge, power and steel, and thus devoted the major part of his life, and his fortune to three great enterprises – The Indian Institute of Science at Bangalore, the hydro-electric schemes, and the Iron & Steel Works at Jamshedpur.
- Wealth to him was not the end but a means to an end, the increased prosperity of India. His attitude to labour was remarkably ahead of his times, constantly reinforcing the norm that the success of industry depended upon sound and straightforward business principles, the

interests of the shareholders, the health and welfare of the employees. As early as 1892, he established the J N Tata endowment for higher education abroad of outstanding Indian students.

- A pioneer in town planning, he was mainly responsible for modernising Bombay, he envisaged and conceived a steel town to the very last detail, later to be named Jamshedpur, after him.

Pioneers - Sir Dorabji Tata (1859-1933)

- J N Tata had exhorted to his sons to pursue and develop his life's work; his elder son, Dorab Tata carried out the bequest with scrupulous zeal, and distinction.
- Thus, even though it was Jamsetji Tata who had envisioned the mammoth projects, it was in fact Dorab Tata who actually brought the ventures to existence and fruition. He was the first Chairman of the gigantic Tata enterprises.
- He had a deep interest in people. The great labour strike in 1920 in Jamshedpur ended in a day due to his intervention. It demonstrated India could have no better employer of labour than Sir Dorab.
- A great sportsman (riding, tennis, football, cricket), he was President of the Indian Olympic Association which he served keenly with liberal funds, and total commitment. He was the Founder of the Parsi Gymkhana of Bombay, and a founder member of the Willingdon Sports Club.
- His charities were numerous and munificent. The Dorab Tata Charitable Trust that he executed, covering property and crores of rupees is used today for innumerable charitable causes and institutions.

Jehangir Ratanji Dadabhai Tata (1904-1993)

- JRD Tata has been one of the greatest builders and personalities of modern India in the twentieth century.

- He assumed Chairmanship of Tata Sons Limited at the young age of 34; but his charismatic, disciplined and forward-looking leadership over the next 50 years and more, led the Tata Group to new heights of achievement, expansion and modernisation. Under his stewardship, the number of Tata ventures grew from 13 to around 80, encompassing steel, power generation, engineering, hotels, consultancy services, information technology, art and culture, consumer goods, industrial products, etc.
- He was the pioneer of civil aviation in India. In 1932, he introduced air transport in the country--the enterprise later became Air India.
- He implicitly followed the principles of business ethics of the great visionary Jamsetji Tata, his ideal. He also personally crusaded for issues that he felt were imperative for India's development--family planning, women's education, spread of literacy. The 100% successful family welfare schemes at Tata Steel and the various educational programmes for all, directly emanate from JRD Tata's insight.
- Numerous national and international honours were bestowed on JRD Tata. These included Knight Commander's Cross of the Order of Merit of the Federal Republic of Germany, Bessemer Medal of the Institute of Metals, London, and the United Nations Population Award.
- Government of India conferred the highest civilian award of the land, Bharat Ratna to JRD Tata in 1992.
- For all his colossal achievements, JRD Tata was a modest, sensitive man, forever espousing the cause of his employees. His natural love for people endeared him to all... across the entire spectrum of society.

TATAs represent the spirit of adventure, humility and service to humanity.

Many industrialists believe that man was meant to serve industry. Sri Jamsetji Tata believed that industry was meant to serve man. He said "I believe that the

social responsibilities of our industrial enterprise should now extend even beyond serving people, to the environment. This need is now fairly well recognized but there is still considerable scope for most industrial ventures to extend their support not only to human beings but also to the land, to the forests, to the waters, and to the creations that inhabit them.” JRD’s working philosophy was rooted in *Preserving nature’s wealth to promote human health*. The Tatas believed “*Never start with diffidence, Always start with confidence*”, “*To be a leader, you’ve got to lead human beings with affection.*” Probably no other family have ever contributed as much in the way of wise guidance, industrial development and advancing philanthropy to any country as the Tatas have to India, both before and since independence (1947).

The following are the 5-guiding principles of JRD:

1. Nothing worthwhile is ever achieved without deep thought and hard work;
2. One must think for oneself and never accept at their face value slogans and catch phrases to which, unfortunately, our people are too easily susceptible;
3. One must forever strive for excellence, or even perfection, in any task however small, and never be satisfied with the second best;
4. No success or achievement in material terms is worthwhile unless it serves the needs or interests of the country and its people and is achieved by fair and honest means;
5. Good human relations not only bring great personal rewards but also are essential to the success of any enterprise.

TATA PATERNALISM

In many ways Jamshedpur is the manifestation of Tata paternalism. This section would explore the meaning and implication of Tata paternalism in Jamshedpur. The word paternalism derives its meaning from the Latin-English kinship term.

It is a type of behaviour by a superior towards an inferior resembling that of a male parent to his child - in most cases, a son. However, the precise forms of this behaviour vary from society to society because the culture of kinship varies, and also because the nature of the tasks performed in paternalistic societies vary. Max Weber, who developed the concept of patrimonialism, first noted the theoretical relevance of paternalism. But the focus on patrimonial relations by Weber cannot lead us to equate patrimonialism with paternalism. In fact paternalism is different from patriarchy or patrimonialism, an error, which comes from the assumption that male domination is the prime element in every category.

We would be distinguishing these categories for the greater clarity in our discussion. This would be carried forward by focusing on the idea of paternalism as practiced by the Tatas in Jamshedpur. We have referred to this idea cursorily in the preceding chapters. By giving it a separate focus we would attempt a synthesis where the question of the urban would be amalgamated with different streams of our discussion namely planning processes, the labour in the city and the factor of paternalism. The survival or creation of a paternalistic system depends on the needs and on the existing social organizational patterns and traditions. This is clearly visible in Jamshedpur.

In fact our concern with the planning activities in the town and the study of the general morphological development of Jamshedpur reflects flashes of paternalistic idea recurring many times. In the development of Indian capitalism Jamshedpur perhaps is the most celebrated case of this idea. The development of the steel works in the jungles of Chotanagpur forced the Company to develop infrastructure that would enable and sustain the steel works. One could argue that since the sustenance of the steel works needed this kind of preliminary investments Jamshedpur was more a matter of practical exigency on the part of the Tatas rather than a paternalistic benevolence. But then to argue in this

manner would be to gloss over the sophistication involved in the deliberation of the idea of paternalism by the Tatas. Moreover we saw that the Tatas were not completely oblivious of their moral concern to provide for their employees. J. N. Tata and others down the line consistently spoke of making Jamshedpur an ideal industrial nucleus.

Regulation and intrusion in other aspects of worker's life was a logical extension of the above beginning in setting up an industrial township. The idea of being an employer and protector of the welfare of the workers saw its manifestations in the act of the Company undertaking rural development projects in the surrounding villages, including health, education, family planning and economic sustenance initiatives. Even when the eastern half of the city was being leased to ancillary industries, most of which were Tata controlled, the Companies were impressed upon to build and maintain their own workers' colony following the model of TISCO.

Paternalism is rare in Indian industries, although the Indian socio economic condition gives much space to allow this idea to thrive. Indian society continued to be a traditional patriarchal one where a strong emphasis on paternal power does not appear to have been much eroded by modernisation or urbanisation. Even after independence this is valid for India. But the extension of this idea could be hardly seen in the industrial sector. In the Western case many small capitalists could be found extending the paternalistic privileges to their workers as done by the big enterprises. One of the reasons of this might be the lack of resources which constricted Indian businessmen's efforts. Since majority of the workers remained uneducated and unskilled the employer did not feel obliged to give more to the worker than what was required by law or union contract. For an enterprise like that of the Tatas in Jamshedpur, which started in the very beginning of the twentieth century with a conscious realisation of their role in

Indian industrialisation, this attitude of paternal guidance was obvious and simultaneously an unique effort.

The paternalism of the Tata Company had a profound philosophical base in its founder's objective. We have already traced the origins of the corporate culture of the Tata group in its founder's philosophy who passed on his social values to his sons and his successors. The Tatas like many other progressive nationalists and leaders of the late nineteenth and early twentieth centuries were advocates of swadeshi. As early as 1840s Indian intellectuals realised that the key to Britain's power was its economic strength and that the only way India could become a free and a great nation was through industrialisation.

J. N. Tata promoted many industries in his eventful lifetime and every venture of his became a model for successful industrial management and enterprise. His early focus was the cotton textiles. In its conception, the Empress Mill was the precursor of TISCO which he opened in Nagpur in 1877. He not only invested the mill with the state of the art technology like proper ventilators and automatic fire sprinklers but also with an employee welfare policy. He provided housing, recreational, and educational facilities for his workers and instituted provident fund and pension schemes. According to J. R. D. Tata, Jamsetji imbued the future Tata Management with a sense of social consciousness and trusteeship.

FAMILY VALUES BY TATA

The Tata Group's relationship with its employees has changed from the patriarchal to the practical, but this is a bond that continues to be nourished with compassion and care.

"What exercise is to the body, employment is to the mind and morals," said American writer and thinker Henry David Thoreau. With some 220,000 members in its diverse and widespread family, the Tata Group touches and moulds the everyday lives of more people than any private sector employer in the country. The richness of this relationship, fashioned by a tradition of

benevolence and empathy, represents a workplace culture that goes way beyond work.

As any 'Tata person' will tell you, there's something positively distinctive, something less than completely explainable, about working for the group the experience is cast in a hue quite different from the ordinary. This view continues to hold despite the changes that have altered the way the Tatas interact with their people, moving from the paternalistic philosophy of yours to bring the group in line with ever-evolving human - resource methodologies.

The transition from then to now has not eroded what remains a central theme with the group : providing its employees more than mere jobs. Workers and their welfare were of utmost importance to group founder Jamsetji Tata, who, writing to his son Dorab Tata in 1902, five years before a site for his proposed steel enterprise had been decided, stated: "Be sure to lay wide streets planted with shady trees, every other of a quick-growing variety. Be sure that there is plenty of space for lawns and gardens. Reserve large areas for football, hockey and parks. Earmark areas for Hindu temples, Mohammedan mosques and Christian churches." It was but natural that the city built on this munificence came to be called Jamshedpur.

To understand the dynamics of the present, it is necessary to peep into the past. The Tatas pioneered a slew of employee benefits that would later be mandated through legislation in India and elsewhere in the world. The eight-hour working day, free medical aid, welfare departments, grievance cells, leave with pay, provident fund, accident compensation, training institutes, maternity benefits, bonus and gratuity - all of these and more were introduced by the group before any legal rules were framed on them. To give but one example of how far ahead of the times the Tatas were, while its first provident fund scheme was started in 1920, the government regulation on this issue came into force in 1952.

These workplace measures were complemented by what Tata companies created to enable their employees to live fuller lives away from their offices and factories, and to realise their vocational potential. The Tata townships in Jamshedpur, Mithapur, Babarala, Hosur and elsewhere are epitomes of communal existence. The management training programmes conducted by dedicated group institutions are devised to help employees give expression to their talent. The volunteering and community work that have now become a ritual in Tata companies fulfils another employee objective, while delivering succour to the poor and needy.

Driving every one of the group's initiatives in the wide sphere of employee relations is a value system that, slowly but surely, percolates to each person looking to craft a career in the Tatas. R. Gopalakrishnan, a member of the Tata Group Corporate Centre (GCC), divides the imbibing process into implicit and explicit ways. "Our induction and training programmes give new employees an opportunity to understand the history and background of the Group", he explains. "A second forum comprises the physical structures we have, such as the Tata archives in Jamshedpur and Pune. The third is the books, magazines and other publications that detail the Tata heritage. This is how we convert the implicit into the explicit".

Mr. Gopalakrishnan is under no illusions that the Tata value system does, by itself, attract people to join the group, but he is certain it has a role to play in their decision. "I don't think young people join the Tatas because of the culture and all that. I think whenever somebody makes a career choice, he or she will have a repertoire of influences and some of them are what I call entry tickets; they don't enhance the value of being in the Tatas but they have the assurance that this is a decent, upstanding group".

More about Tata Group

The following script is borrowed from publication effected by TATA Sons Ltd., for the benefit of students and with due thanks:

Grooming the managers of today into the leaders of tomorrow, that's the broad objective of the Tata Group's leadership development programmes and processes. The Group's high-value, superior-quality training interventions are targeted at maximising the potential of its pool of managers. This is done by encouraging their cross-functional exposure and by making cross-company mobility an integral aspect of all leadership development efforts.

The primary instruments of the Group's learning and development endeavours for its people are the Tata Management Training Centre (TMTC), which aims to provide training to high performers within the Group and to act as a cradle of change for Tata executives, and TAS, which recruits fresh graduates and postgraduates from leading business schools with the objective of putting them on the business leadership path.

TMTC offers management development and leadership development programmes for high-potential Tata managers. TAS is perhaps the only employment brand in Indian business that consciously recruits for lifelong mobility — across companies, industries and functions — in order to impart a macro view of business. The Tata Group has also created a basket of high-value leadership development programmes in partnership with some of the best universities in the world.

At the Tatas the mix of leadership development inputs differs by level. At the entry level there is a greater focus on results; at the top level the management of people is of greater importance. The Group's human resources division has crafted a 'leadership development series' whose aim is to equip Tata managers with the knowledge that will enable Tata companies to stay competitive in a global business environment. These distinctive courses draw on the best of

international faculty from the world's top business schools and specialised institutes.

Additionally, the Tata Group is a member of the International Consortium Programme, an executive education partnership involving, besides the group, six top-notch companies: Asea Brown Boveri, Zurich; Benfield Group, London; BHP Billiton, Australia and South Africa; Standard Bank, South Africa; ABN Amro Bank, Amsterdam; and the Boeing Company, USA. Some of the Consortium's goals are to bring leaders together from diverse regions of the world; develop and deliver an exceptional global leadership development experience for senior executives; and focus on executive development through business driven, action-learning projects.

The 'Tata Work Levels', yet another of the Group's employee initiatives, is a methodology wherein high-potential managers are identified after putting them through various performance potential filters. These managers are then given specific developmental inputs, including training initiatives and cross-company mobility. The goal is to develop leaders who will deliver organisational results.

'It is time to liberalise labour legislation'

India's labour laws were intended to be friendly to employees, but they have ended up being anti-employment, says T. Damu, vice president of the Indian Hotels Company, who adds that a holistic approach based on 'welfare economics' is required to pave the road to reform

Labour reform in India, in the context of globalisation, is much desired, but also feared and misinterpreted. The issue has been a touchy one ever since the liberalisation era began under the Narasimha Rao government in the early 1990s. This is because of the enormity and uniqueness of the subject, and also due to the initial approach the government and industry adopted to address it.

In the hurry to reform and keep up with the globalisation trend set in motion by the General Agreement on Tariffs and Trade (now replaced by the World Trade

Organisation), the immediate focus was on the retrenchment of ‘surplus workers’ and the closure of ‘sick’ public and private sector units. The knee-jerk reaction from the workforce and trade unions was to resist this move. Massive rallies were organised in protest, and the government was called a puppet in the hands of the developed countries.

This trend continues today, as seen in the response of the labour unions to recent government policies which follow the cut-the-flab, closing-shop philosophy without realising the significance of socio-economic factors in such an important exercise. So, whenever there is a talk about labour reforms, there is suspicion in the minds of the working class, a majority of which belongs to the socially and economically backward communities of India.

Labour reform is a very sensitive subject in the Indian context, given the ground realities of poverty, illiteracy, diseases, deprivation, exploitation, low per-capita income, etc. This means that whatever is taken up in the name of labour reforms, be it in the sphere of employment, welfare or human resources, needs careful handling. This should have started not as part of the second-generation reforms, but when initial economic reforms were undertaken. However, better late than never.

The Tatas were the pioneers in introducing a number of ‘firsts’ in the field of labour welfare. The group felt that unless a worker’s welfare needs were met, there would be no profits for industry and no progress for the nation. Well ahead of any Indian legislation on this front, several benefits — the eight-hour working day, free medical aid, provident fund, gratuity, leave with pay, maternity leave, accident compensation, etc — were incorporated by the Tatas into their workplace culture.

Reform positive

I mention these facts to emphasise the positive side of labour reforms that focus on social welfare, which is primarily the responsibility of industry. The Tatas are

now considering labour reforms very carefully, with a view to ease the social burden of their employees and at the same time preserve the equilibrium of job security.

Indian industry is going through a crucial phase of restructuring as competition increases. Countries such as China, where labour is cheap and labour disputes comparatively fewer, are entering our markets. With high productivity and mass production, China is a good example for Indian labour to emulate in terms of costs and productivity.

Given the Indian track record of getting financial help from outside for development, the trade and economic policies of the government come under closer scrutiny from world bodies such as the International Monetary Fund, the Asian Development Bank and the WTO. Thus, it becomes inevitable for reforms of many kinds: economic and fiscal, market, law, and labour.

Dr Charles W. Baird, the director of the Smith Centre for Private Enterprise Studies at California State University, said recently: "India will have to opt for labour reforms and brave the pangs of change in the short-term in the interest of long-term economic sustainability." It is estimated that about 16 per cent of employees in the organised sector are actually redundant. How are we going to deal with this problem?

It is worth noting that labour reforms in India are discussed mostly in the context of organised labour, and this constitutes merely 8 per cent of the country's total labour force. Are we concerned about only this sector? How about the majority of India's workforce, which is in the unorganised sector?

Two-fold benefits

We must have proper labour reforms in both organised and unorganised sectors. There will be more industries coming up in our country, and it naturally follows that there will be more employment opportunities generated. Many multinational companies view India, sans its archaic and anachronistic labour laws, and to

some extent its militant labour force, as an ideal place for economic activity. If prompt and correct measures are taken up with honesty and transparency, then both industry and the labour community will benefit.

Labour reform is not just about facilitating the closure of a sick industrial unit or about laying off employees. The core issues of labour reforms centre on a few major points: wage policy, employment security, labour redundancy, industrial relations, labour market information and human resources development. These issues can be solved by liberalising existing labour legislation, enacting a flexible exit policy, 'rightsizing', reforming trade unions, by continuously retraining and updating workforce skills, worker participation in management, and by good and clean corporate governance.

One of the major issues of labour reform in India has to do with repealing certain laws. Various countries, including Britain, New Zealand and the United States, have liberalised their labour legislation, but India remains hesitant about amending laws that are detrimental to economic growth. It is unfortunate that while labour laws in India were designed to be employee-friendly, they have ended up becoming anti-employment.

Government, industry, trade unions, industry associations, economists, sociologists, constitutional experts, intellectuals, institutes of management and social sciences, and the media, all of these should be involved in the labour reform process. A holistic and multi-disciplinary approach is required to solve the problems relating to labour reforms.

Unfortunately, the concerned parties in this issue are playing the blame game. Industry feels that the government is not doing enough, and the trade unions argue that the government is dancing to industry's tune. The government, which is, sadly, a conglomeration of opportunistic political parties, ought to take bold and visionary decisions, but it is more concerned with vote banks and extending its grip on power.

Cooperation required

All three parties — government, industry and trade unions — are equally responsible when it comes to putting effective labour reforms in place. Let's consider Tata Tea. This company has been undertaking a lot of welfare measures for its employees and their children, measures that are beyond the scope of any legal requirement. These activities are costing Tata Tea a lot, and at a time when the tea industry is passing through a serious crisis.

So the Tata Tea management requested its unions to cooperate with the company to increase productivity. This would have helped both the company and its workers, but the union leaders were not agreeable to the idea. Because of their adamant nature the company and its employees suffered. This sort of irrational and destructive approach is detrimental to India's industry and economy. This kind of old-order trade unionism has to go.

Some suggestions to ease the path to labour reform.

- Two of the major impediments in bringing about desired labour reforms are the anti-labour stand in the management mindset, and labour prejudices. These must be researched and corrective action taken to smoothen the road to reform.
- Good and clean corporate governance is a vital necessity if labour reform is to happen.
- More and better attention has to be paid to human resource development.
- Industrial bodies have to take up worker education. The worker education models adopted by the Productivity Council of India, etc need a thorough revamping.
- There is tremendous labour potential in the rural sector. This has to be tapped by industry, with a renewed focus on unorganised labour.

- The media has been covering labour reforms and related issues for long. A media-relations strategy should be worked out to highlight issues relating to the subject.

While India is labour intensive, it also boasts top-notch intellectual capital. The country's human talent and rich economic capital investment potential make it highly suited for industrial development. What is required is objectivity in understanding the problems at hand, strong political will, changes in the country's legal system and labour market flexibility.

Neither an indifferent management approach nor trade union militancy is going to lead to labour reform. A positive and careful approach is required to bring about painless labour reform in this country, and the mainstay has to be 'welfare economics'.

This is an edited version of the paper presented by Mr Damu at a seminar held in Kochi on May 21, 2002, under the aegis of the Associated Chambers of Commerce and Industry of India, New Delhi, in association with the Indian Chamber of Commerce and Industry and the National Institute of Personnel Management. The theme for the seminar was: 'Labour reforms and the social safety net in the context of globalisation'

This edited version is reproduced for the benefit of Management Students.

ACTIVITY: Students are requested to visit any TATA establishment and to record the relations that exist between the employees and the management and also to take stock of welfare measures undertaken by the establishment.

LABOUR PROTECTION AND WELFARE

(SOCIAL SECURITY AND SOCIAL JUSTICE)

The preamble to our Indian Constitution promises justice - social, economic and political. It also stresses Equality of status and of opportunity. Article 23 of the Constitution prohibits traffic in human beings and forced labour. Article 24

prohibits employment of children in factories. The article 38 and 39 spelt under Directive Principles of State Policy are now enforceable as per the dictums laid by our Supreme Court.

Constitution of India, Article 38: State to secure a social order for the promotion of welfare of the people.- {(1)} The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]

Constitution of India, Article 39: Certain principles of policy to be followed by the State. - The State shall, in particular, direct its policy towards securing -

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood ;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

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

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength ;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment }.

Through social security and social justice are spelt in our Constitution, they are never put into practice thanks to our Executives who only pretend to implement the programmes of the State. Some of the important Employee Legislations that promise but do not guarantee Labour Protection and Social Security are:

- (i) The Factories Act of 1948
- (ii) The Employees State Insurance Act 1948
- (iii) The payment of Wages Act 1936
- (iv) The Minimum Wages Act
- (v) The Workmen's Compensation Act 1923
- (vi) The Employees' Provident Funds and Miscellaneous Provisions Act 1952.
- (vii) The Payment of Bonus Act, 1965
- (viii) The Payment of Gratuity Act, 1962
- (ix) Industrial Disputes Act, 1947
- (x) The Child Labour (Prohibition and Regulation) Act, 1986
- (xi) The Industrial Employment Standing Orders Act, 1946
- (xii) The Maternity Benefit Act, 1961

Let us now analyse the intention of the legislators in enacting the above employee legislations and how these legislations are implemented.

FACTORIES ACT OF 1948

Purpose of this Act. An act to consolidate and amend the law regulating labour in factories.

The Factories Act is meant to provide protection to the workers from being exploited by the greedy business employments and provides for the improvement of working conditions within the factory premises. The main function of this act is to look after the welfare of the workers, to protect the workers from exploitations and unhygienic working conditions, to provide safety measurers and to ensure social justice.

Sections 11 to 20 of the Factories Act deal about Health.

HEALTH

- Section 11: Cleanliness
- Section 12: Disposal of wastes and effluents
- Section 13: Providing proper ventilation and maintaining proper temperature
- Section 14: Removal of Dust and fume
- Section 15: Providing Artificial humidification
- Section 16: No Overcrowding
- Section 17: Proper Lighting
- Section 18: Providing pure Drinking water
- Section 19: Providing Latrines and urinals
- Section 20: Providing Spittoons

Sections 21 to 40 discuss about safety measures.

SAFETY

- Section 21: Proper Fencing of machinery
- Section 22: Precautions - Work on or near machinery in motion
- Section 23: No Employment of young persons on dangerous machines
- Section 24: Providing Striking gear and devices for cutting off power
- Section 25: Precautions near Self-acting machines
- Section 26: Casing of new machinery
- Section 27: Prohibition of employment of women and children near cotton-openers
- Section 28: Providing Hoists and lifts
- Section 29: Provision for Lifting machines, chains, ropes and lifting tackles

- Section 30: Protection near Revolving machinery
- Section 31: Protection near Pressure plant
- Section 32: Provision for Floors, stairs and means of access
- Section 33: Providing and precautions near Pits, sumps openings in floors, etc.
- Section 34: No Excessive weights
- Section 35: Protection of eyes
- Section 36: Precautions against dangerous fumes, gases, etc
- Section 36A: Precautions regarding the use of portable electric light
- Section 37: Explosive or inflammable dust, gas etc.
- Section 38: Precautions in case of fire
- Section 39: Power to require specifications of defective parts or tests of stability
- Section 40: Safety of buildings and machinery.
- Section 40A: Maintenance of buildings
- Section 40B: Appointment of Safety Officers

Sections 42 to 49 speak about Welfare measures:

WELFARE

- Section 42: Providing Washing facilities
- Section 43: Providing Facilities for storing and drying clothing
- Section 44: Providing Facilities for sitting
- Section 45: First-aid appliances to be kept.
- Section 46: Canteens at subsidised rates.
- Section 47: Shelters, rest rooms and lunch rooms for workmen.
- Section 48: Creches for babies of working women.
- Section 49: Appointment of Welfare officers.

The other important features of Factories Act

The Factories Act defines an adult as a person who has completed eighteenth years of age, an adolescent as a person who has completed fifteenth years but has not completed eighteenth year. The child is a person who has not completed fifteenth years of age. Young person means a person who is either a child or an adolescent. Section 7 of the Act demands the occupier of a factory to give 15 days notice to the Chief Inspector of factories before commissioning a factory. Section 8 deals about the appointment of Factory Inspector by the State. This act prescribes weekly hours of work, weekly holidays, compensatory holidays, daily hours, intervals for rest, shifts extra wages for over-time and annual leave. Section 67 of the Act prohibits the employment young children in factories. Section 89 of the Act directs the occupier to serve notice to the concerned authorities if any workman contracts any occupational disease. The Third schedule notifies the following as occupational diseases.

LIST OF NOTIFIABLE DISEASES

1. Lead poisoning, including poisoning by any preparation or compound of lead or their sequelae.
2. Lead-tetra-ethyl poisoning
3. Phosphorus poisoning or its sequelae
4. Mercury poisoning or its sequelae.
5. Manganese poisoning or its sequelae.
6. Arsenic poisoning or its sequelae.
7. Poisoning by nitrous fumes
8. Carbon bisulphide poisoning.
9. Benzene poisoning, including poisoning by any of its homologues, their nitro or amide derivatives or its sequelae.
10. Chrome ulceration or its sequelae.
11. Anthrax.
12. Silicosis.
13. Poisoning by halogens or halogen derivatives of the hydrocarbons of the aliphatic series.
14. Pathological manifestations due to -
 - (a) radium or other radio-active substances;
 - (b) X-ray.
15. Primary epitheliomatous cancer of the skin.

16. Toxic anaemia
17. Toxic jaundice due to poisonous substances.
18. Oil acne or dermatitis due to mineral oils and compounds containing mineral oil base.
19. Byssionosis.
20. Asbestosis.
21. Occupational or contact dermatitis caused by direct contact with chemicals and paints. These are of two types, that is, primary irritants and allergic sensitizers.
22. Noise induced hearing loss (exposure to high noise levels).
23. Beryllium poisoning
24. Carbon monoxide
25. Coal miners' pneumoconiosis.
26. Phosgene poisoning
27. Occupational cancer
28. Isocyanates poisoning
29. Toxic nephritis.

Any violation of the provisions of this Act is liable to penal sanction.

ACTIVITY

The author would request the students to visit factories to check whether the provisions of this Act are strictly followed and whether the Inspectorate is implementing these laws - collect statistical data.

STATISTICAL DATA: It is reported that more than million workers die each year from occupational diseases. About 250 million accidents and 160 million cases of work related diseases occur each year round the globe. Poverty is likely to remain the principal killer world wide because of lack of access to drugs, vaccinations water and sanitation.

THE WORKMEN'S COMPENSATION ACT 1923

Purpose of the Act : An Act to provide for the payment of certain classes of employers to their workmen of compensation for injury by accident. The workmen's compensation Act 1923 is one of the earliest pieces of labour legislation. This act encompasses all cases of accidents arising out of and in course of employment. The rate of Compensation to be paid in a lump sum, is

determined by a schedule provided in the act proportionate to the extent of injury and the loss of earning capacity. The younger the age of the worker and higher the wage the greater is the compensation. The Act provides the formula for calculating the compensation. The injured person can claim compensation and in the case of death, the compensation is claimed by dependents of the deceased. This law applies to the organised as well as unorganised sectors who are not covered by the E.S.I. scheme. The following definitions and the sections of law are presented for the students to take note of them.

Section 2 (1) (d): "dependent" means any of the following relatives of a deceased workman, namely:-

- (i) a widow, a minor (legitimate or adopted) son and unmarried (legitimate or adopted) daughter or a widowed mother; and
- (ii) if wholly dependent on the earnings of the workman at the time of the 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 workman 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 workman is alive.

Section 2 (1) (g) : "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman 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 shall be deemed to result in permanent partial disablement.

Section 2 (1) (l) : "total disablement" means, such disablement, whether of a temporary or permanent nature, as incapacitates a workman 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.

Section 3 of the Act is exhaustive and so only a portion of the section is reproduced here.

Section 3. Employer's liability for compensation.- (1) If personal injury is caused to a workman 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 of this Chapter:

Provided that the employer shall not be so liable -

- (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding (three) days;

- (b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to -
- (i) the workman having been at the time thereof under the influence of drink or drugs, or
 - (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
 - (iii) the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman

THE E.S.I. Act

The purpose of the Act: An act to provide for certain benefits to employees in case of sickness maternity and employment injury and to make provisions for certain other matters in relation there to.

The Employees State Insurance Act provides a scheme under which the employer and the employee must contribute a certain percentage of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities. It facilitates both outpatient and in-patient care and freely dispenses medicines and covers hospitalisation needs and costs. Leave Certificates for health reasons are forwarded to the employer who is obliged to honour them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical

attention rarely approach this facility though they use it quite liberally to obtain medical leave. There are interesting cases where workers have gone to court seeking exemption from the scheme in order to avail of better facilities available through collective bargaining.

The following definitions and the sections of law need a closer look:

Section 6A:- "dependant" 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;
- (ia) a widowed mother;
- (ii) if wholly dependant 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 dependant 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, or
 - (g) a paternal grand-parent if no parent of the insured person is alive;

Section 11:- "family" means all or any of the following relatives of an insured person namely:-

- (i) a spouse;
- (ii) a minor legitimate or adopted child dependant upon the insured person;
- (iii) a child who is wholly dependant on the earnings of the insured person and who is -
 - (a) receiving education, till he or she attains the age of twenty-one years,
 - (b) an unmarried daughter;
- (iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependant on the earnings of the injured person, so long as the infirmity continues;
- (v) dependant parents;

Section 12:- "factory" means any premises including the precincts thereof -

- (a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or
- (b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on,

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) or a railway running shed;

Section 26. Employees' State Insurance Fund. - (1) 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 purpose of this Act.

(2) 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.

(3) 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 of an account styled the account of the Employees' State Insurance Fund.

(4) Such account shall be operated on by such officers as may be authorised by the standing Committee with the approval of the Corporation.

Section 28. Purposes for which the Fund may be expended. - Subject to the provisions of this Act of any rules made by the Central Government in that behalf, the Employees' State Insurance Fund shall be expended only for the following purposes, namely :

- (i) payment of benefits and provisions of medical treatment and attendance to insured persons and where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;
- (ii) payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the

Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;

- (iii) payment of salaries, leave and joining time allowances, traveling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the corporation and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of this Act ;
- (iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;
- (v) payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons, and, where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation ;
- (vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
- (vii) defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;
- (viii) payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;
- (ix) payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants

for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;

- (x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- (xi) defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- (xii) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

Section 38. All employees to be insured. - Subject to the provisions of this Act, all employees in factories, or establishments to which this Act applies shall be insured in the manner provided by this Act.

Section 39. Contributions. - (1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

(2) The contributions shall be paid at such rates as may be prescribed by the Central Government.

Provided that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989.

(3) The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act.

(4) The contributions payable in respect of each {wage period} shall ordinarily fall due on the last day of the {wage period}, and where an employee is employed for part of the {wage period}, or is employed under two or more employers during the same {wage period}, the contributions shall fall due on such days as may be specified in the regulations.

(5) (a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve percent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment :

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45C to section 45I.

Explanation. - In this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

Section 41. Recovery of contribution from immediate employer. -

(1) 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.

(1A) The immediate employer shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the principal employer before the settlement of any amount payable under sub-section (1).

(2) In the case referred to in sub-section (1), the immediate employer shall be entitled to recover the employer's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to the conditions specified in the proviso to sub-section (2) of section 40.

THE PAYMENT OF WAGES ACT:

The Payment of Wages Act was enacted as early as 1936 during the colonial rule. The purpose of this act is to regulate payment of wages. This insists on the payment of wages by the seventh day or the tenth day of the succeeding month and in case of weekly payment the last day of the week.

Section 3: Responsibility for payment of wages. - Every employer shall be responsible for the payment to person employed by him of all wages required to be paid under this Act.

Provided that, in the case of persons employed (otherwise than by a contractor) -

(a) in factories, if a person has been named as the manager of the factory under {clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948)};

(b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;

(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned, the person so named, the person so responsible to the employer, or the person so nominated, as the case may be (shall also be responsible) for such payment.

Section 4: Fixation of wage-periods.- (1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

Section 5: Time of payment of wages. - (1) The wages of every person employed upon or in -

(a) any railway, factory or {industrial or other establishment} upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

(b) any other railway, factory or {industrial or other establishment}, shall be paid before the expiry of the tenth day,

after the last day of the wage-period in respect of which the wages are payable:

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

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

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

(3) The State Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) {or to persons employed as daily-read workers in the Public Works Department of the Central Government or the State Government} from the operation of this section in respect of the wages of any such persons or class of such persons:

{Provided that in the case of persons employed as daily-rated workers as aforesaid, no such order shall be made except in consultation with the Central Government}.

(4) {Save as otherwise provided in sub-section (2), all payments} of wages shall be made on a working day.

THE MINIMUM WAGES ACT

The Minimum Wages Act 1948 is to provide for fixing the minimum rates of wages. Minimum wages are fixed by the State Governments based on the cost of living index on hourly basis, day basis, monthly basis and any larger period. The Minimum thus fixed is below poverty line and has to be restructured and reconsidered by the officials.

Section 3: Fixing of minimum rate of wages.- {(1) The appropriate Government shall, in the manner hereinafter provided, -

{(a) fix the minimum rate of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

Provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rate of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;}

(b) review at such intervals, as it may think fit, such intervals not exceeding five years, the minimum rate of wages so fixed and revise the minimum rates, if necessary:

{Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry

of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force. }

(1A) Notwithstanding anything contained in sub-section (1), the appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time, the appropriate Government comes to a finding after such inquiry, as it may make or cause to be made in this behalf, that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment {as soon as may be after such finding}},

(2) The appropriate Government may fix -

(a) a minimum rate of wages for time work (hereinafter referred to as 'a minimum time rate');

(b) a minimum rate of wages for piece work (hereinafter referred to as 'a minimum piece rate');

(c) a minimum rate 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 (hereinafter referred to as 'a guaranteed time rate');

(d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as 'overtime rate').

{(2A) Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment,

any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 (14 of 1947) or before any like authority under any other law, for the time being in force, or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be, where the notification is issued during the period of operation of an award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period }

(3) In fixing or revising minimum rates of wages under this section, -

(a) different minimum rates of wages may be fixed for -

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

(b) minimum rates of wages may be fixed by any one or more of the following wage-periods, namely -

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or
- (iv) by such other larger wage-period as may be prescribed,

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

Provided that where any wage-periods have been fixed under section 4 of the Payment of Wages Act, 1936 (4 of 1936), minimum wages shall be fixed in accordance therewith.

THE EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

The purpose of this Act: An Act to provide for the institution of Provident Funds, pension funds and deposit linked fund for employees in factories and other establishments. Contributions of 10% of the wages are paid by the employer and another 10% by the employees. This amount is deposited with the government which pays an interest. This Act also now has provisions for pension scheme.

Section 5: Employees' Provident Fund Schemes. - {(1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the {establishment} or class of {establishments} to which the said Scheme shall apply {and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.}

{(1A) The Fund shall vest in, and be administered by, the Central Board constituted under section 5A.

(1B) Subject to the provisions of this Act, a scheme framed under sub-section (1) may provide for all or any of the matters specified in Schedule II. }

{(2) A Scheme framed under sub-section (1) 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 the Scheme.}

Section 6A: Employees' Pension Scheme.- (1) The Central government may, by notification in the Official Gazette, frame a scheme to be called the employees' Pension Scheme 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.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of 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 percent of the basic wages, dearness allowances 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.

(3) On the establishment of the Pension Fund, the Family Pension scheme (hereinafter referred to as the ceased 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.

(4) The Pension fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all of any of the matters specified in Schedule III.

(6) 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.

(7) A Pension Scheme, framed under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under hat scheme.

THE PAYMENT OF GRATUITY ACT, 1972

Purpose: An act to provide for scheme for the payment of gratuity to employees engaged in factories, mines, oil fields, plantations, ports, railway companies, shops or other establishments and matters connected therewith or incidental thereto.

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years.

- (a) on his superannuation
- (b) on his retirement or resignation

(c) on his death or disablement

For every completed year of service or part thereof in excess of six months the employer shall pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned.

Section 4: Payment of gratuity. - (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease;

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement;

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

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

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned;

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three

months immediately preceding the termination of his employment, and, for the purpose, the wages paid for any overtime work shall not be taken into account; Provided further that that in the case of {an employee who is employed in a seasonal establishment and who is not so employed throughout the year} the employer shall pay the gratuity at the rate of seven days' wages for each season. Explanation. - In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty six and multiplying the quotient by fifteen. }

(3) The amount of gratuity payable to an employee shall not exceed {three lakhs and fifty thousand} rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1) -

(a) the gratuity of an employee, whose services have been terminated for any act, willful 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 ;

(b) the gratuity payable to an employee {may be wholly or partially forfeited} -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

- (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

INDUSTRIAL DISPUTES ACT 1947

Purpose : An Act to make provisions for the investigation and settlement of industrial disputes and for certain other purposes.

The Authorities under this act

Works Committee : In establishments where more than 100 workmen are employed, the employer is required to constitute works committee with equal number of representatives from the employer and the employees.

It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

4. Conciliation officers. - (1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of Industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

5. Boards of Conciliation. - (1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of any industrial dispute.

(2) A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit.

(3) The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or of any of its members or any vacancy in its number:

Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be has been appointed.

6. Courts of Inquiry - (1) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.

(3) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number.

Provided that, if the appropriate Government notifies the Court that the services of the chairman have ceased to be available, the Court shall not act until a new chairman has been appointed.

7. Labour Courts. - (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of

industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a Labour court, unless -

{(a)} he is, or has been, a Judge of a High Court; or

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

{(c)} he has held any judicial office in India for not less than seven years; or

{(d)} he has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

7-A Tribunals. - (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule {and for performing such other functions as may be assigned to them under this Act}.

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless -

(a) he is, or has been, a Judge of a High Court; or

(aa) he has, for a period of not less than three years, been a District Judge or an Additional District Judge ;

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

7-B National Tribunals. - (1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the

adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal {unless he is, or has been, a Judge of a High Court}.

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

9-C. Grievance Settlement. Setting up of Grievance Settlement Authorities and reference of certain individual disputes to such Authorities. - (1) The employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the preceding twelve months, shall provide for, in accordance with the rules made in that behalf under this Act, a Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment.

(2) Where an industrial dispute connected with an individual workman arises in an establishment referred to in sub-section (1), a workman or any trade union of workmen of which such workman is a member, refer, in such manner as may be prescribed such dispute to the Grievance Settlement Authority provided for by the employer under that sub-section for settlement.

(3) The Grievance Settlement Authority referred to in Sub-section (1) shall follow such procedure and complete its proceedings within such period as may be prescribed.

(4) No reference shall be made under Chapter III with respect to any dispute referred to in this section unless such dispute has been referred to the Grievance

Settlement Authority concerned and the decision of the Grievance Settlement Authority is not acceptable to any of the parties to the dispute.

To understand the process of settlement of Industrial Dispute we must have the knowledge of the following definitions given under the Act :

(b) "award" means an interim or a final determination of any Industrial Dispute or any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A.

{(cc)} "closure" means the permanent closing down of a place of employment or part thereof.

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

This definition has been amended on the observation made by his Lordship Justice Krishna Iyyer while delivering the judgement Bangalore Water Supply and Sewage Board V Rajappa AIR 1978 SC 548.

Amended definition

j I. industry means

- (a) any systematic activity
- (b) carried on by co-operation between Employer and Employee
- (c) for production, supply or distribution of goods or services required to satisfy human wants or wishes (not religious or spiritual)

II. Whether or not

- (a) any gain or profit made out
- (b) any capital invested

III. It includes

- (a) Dock Labour
- (b) Promotion of sales or business

IV. It does not include

- (a) industry (not integrated)
- (b) hospitals or dispensaries
- (c) educational, scientific, research, training institutions
- (d) charitable, social or philanthropic institutes
- (e) Khadi or village industries
- (f) Sovereign functions of government
- (g) domestic service
- (h) professional activities (less than ten)
- (i) co-operative society

(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

(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 breakdown of machinery (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.

(l) "lock-out" means the {temporary closing of a place of employment} or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

{(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

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

(c) termination of the service of a workman on the ground of continued ill-health;}

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

(q) "strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment ;

{(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be 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 mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. }

2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. - Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

Other Salient Features of the Act

Settlement Procedure

Any industrial dispute is presented by the aggrieved party to the Conciliation officer who summons both the parties at dispute.

Powers of Conciliation Officer

Summoning parties or issuing directions to produce documents or relevant records.

The role of the Conciliation Officer

It is limited. He can only guide, advise, give solutions and request parties to opt for settlement. He cannot compel the parties to arrive at any particular settlement. The Parties are at liberty to break away from conciliation.

If a settlement is arrived, the terms of the settlement are reduced into writing, signed by the parties at dispute. This settlement is sent by the conciliation officer to the government which notifies the settlement in the Gazette. When no settlement is possible the conciliation officer drafts a failure report and sends the report to the Government. The Government through the Labour Commissioner frames issues and refers the dispute to the Labour Court under sec. 10 of the Act.

The Labour Court

The dispute on being referred to court under sec.10, the Labour Court issues summons to both the parties. The aggrieved party has to file the claim statement and the other party has to file the counter statement. Oral and documentary evidence recorded and arguments heard. Then the Labour Court passes the award which is sent to the Government. This award is published in Gazette. From the date of publications the award has a life for one year during which period the aggrieved party has to approach the Government for the enforcement of the award.

Strikes and Lock outs

Strike is the weapon in the hands of workmen and Lock out is the weapon in the hands of the Employer. Right to protest is an inherent right and this act has legalised strikes and lock outs. Even in public utility service establishment strike and lock out can be declared by giving prior notice of six weeks.

Lay off, Retrenchment and Closure

The act prescribes rules, conditions for declaring lay off, retrenchment and closure and any isolation of the rules would invite penal sanction.

Unfair Labour Practices

Sec.25.T prohibits Unfair Labour Practices that are listed in the fifth schedule Sec.25.U imposes penal sanction on Unfair Labour Practice which may be

imprisonment extending to six months or with fine extending to one thousand rupees or with both.

UNFAIR LABOUR PRACTICES

I - On the part of employers and trade unions of employers

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say -

- (a) threatening workmen with discharge or dismissal, if they join a trade union ;
- (b) threatening a lock-out or closure, if a trade union is organised ;
- (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.

2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say :-

- (a) an employer taking an active interest in organising a trade union of his workmen ; and
- (b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.

3. To establish employer-sponsored trade unions of workmen.

4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say :-

- (a) discharging or punishing a workman because he urged other workmen to join or organise a trade union ;
- (b) discharging or dismissing a workman for taking part in any strike (not being a strike which it deemed to be an illegal strike under this Act) ;
- (c) changing seniority rating of workmen because of trade union activities ;

(d) refusing to promote workmen to higher posts on account of their trade union activities ;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union ;

(f) discharging office bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen -

(a) by way of victimisation ;

(b) not in good faith, but in the colourable exercise of the employer's rights ;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence ;

(d) for patently false reasons ;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste ;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

7. To transfer a workman mala fide from one place to another, under the guise of following management policy.

8. to insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.

9. To show favouritism or partiality to one set of workers regardless of merit.

10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
12. To recruit workmen during a strike which is not an illegal strike.
13. Failure to implement award, settlement or agreement.
14. To indulge in acts of force or violence.
15. To refuse to bargain collectively, in good faith with the recognised trade unions.
16. Proposing or continuing a lock-out deemed to be illegal under this Act.

II - On the part of workmen and trade unions of workmen

1. To advice or actively support or instigate any strike deemed to be illegal under this Act.
2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say -
 - (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
 - (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of a bargaining representative.

5. To stage, encourage or instigate such forms of coercive actions as wilful 'go slow', squatting on the work premises after working hours or 'gherao' of any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

CHILD LABOUR (PROHIBITION AND REGULATION) ACT 1986

Purpose of this Act : An act to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. The following sections needs to be studied under the Act:

"child" means a person who has not completed his fourteenth year of age.

"family" in relation to an occupier, means the individual, the wife or husband as the case may be, of such individual, and their children, brother or sister of such individual ;

Section 3 : Prohibition of employment of children in certain occupations and processes. - No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on :

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

Section 7 : Hours and period of work. - (1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

(3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

(4) No child shall be permitted or required to work between 7 PM and 8 AM.

(5) No child shall be required or permitted to work overtime.

(6) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Section 8: Weekly holidays. - Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Section 13 : Health and safety.- (1) The appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

(2) Without prejudice to the generality of the foregoing provisions the said rules may provide for all or any of the following matters, namely:-

(a) cleanliness in the place of work and its freedom from nuisance;

(b) disposal of wastes and effluents;

(c) ventilation and temperature;

(d) dust and fume;

(e) artificial humidification;

(f) lighting;

(g) drinking water;

- (h) latrine and urinals ;
- (i) spittoons;
- (j) fencing of machinery ;
- (k) work at or near machinery in motion;
- (l) employment of children on dangerous machines;
- (m) instructions, training and supervision in relation to employment of children on dangerous machines;
- (n) device for cutting off power;
- (o) self-acting machines;
- (p) easing of new machinery;
- (q) floor, stairs and means of access;
- (r) pits, sumps, openings in floors, etc.,;
- (s) excessive weights;
- (t) protection of eyes;
- (u) explosive or inflammable dust, gas, etc.,;
- (v) precautions in case of fire;
- (w) maintenance of buildings; and
- (x) safety of buildings and machinery.

THE PAYMENT OF BONUS ACT, 1965

Purpose of the Act : An Act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

Section 8. : Eligibility for bonus. - 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.

Section 10. : Payment of minimum bonus. - 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 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year :

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

Section 11: Payment of maximum bonus. - (1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty percent of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.

THE MATERNITY BENEFIT ACT, 1961

Purpose of this Act: An Act to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.

Section 4: Employment of or work by, women, prohibited during certain periods.- (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, (miscarriage or medical termination of pregnancy).

(2) No women shall work in any establishment during the six weeks immediately following the day of her delivery (miscarriage or medical termination of pregnancy).

(3) Without prejudice to the provisions of section 6, no pregnant women shall, on a request being made by her in his behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4) The period referred to in sub-section (3) shall be -

(a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

Section 5: Right to payment of maternity benefits.- (1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

Explanation : For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity. (The minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948) or ten rupees, whichever is the highest.)

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity

benefit, for a period of not less than {eighty days} in the twelve months immediately preceding the date of her expected delivery.

Provided that the qualifying period of {eighty days} aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation. - For the purpose of calculating under the sub-section the days on which a woman has actually worked in the establishment {the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages} during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery.

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death ;

Provided further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS)

ACT, 1946

Purpose: An Act to require employees in industrial establishments formally to define conditions of employment under them.

Section 3. Submission of draft standing orders. - (1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the

employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and when model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

(3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employees in similar industrial establishments may submit a joint draft of standing orders under this section

Section 4. Conditions for certification of standing orders.- Standing orders shall be certifiable under this Act if -

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment; and

(b) the standing orders are otherwise in conformity with the provisions of this Act,

and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

THE SCHEDULE

(See sections 2(g) and 3(2))

MATTERS TO BE PROVIDED IN STANDING ORDER UNDER THIS ACT

1. Classification of workmen, eg., whether permanent, temporary, apprentices, probationers, or badis.

2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of procedure in applying for, and the authority which may grant, leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising there from.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

NON STATUTORY WELFARE MEASURES

We have scanned across some of the Labour Welfare legislations of our country. These legislations spell only statutory welfare measures. We are here to discuss what are non-statutory welfare measures. In India TATA houses were pioneers in carrying out these non-statutory welfare measures followed by our public sector units. The non-statutory welfare measures are based on the maintenance of the family members of the working force. In our industries we find the Research and Development Wing is almost dormant and in such industries where it functions, the research is oriented towards the quality, quantity of the produce and related to marketing problems. In a multi-national company, about 10 to 15 workmen were found to be arrogant, lethargic, lazy and disobedient.

The company conducted research on them and invariably found that in each of these workmen houses, someone was bed-ridden and required long-term medical care. It was mother or wife or son or daughter or father or a close relative and dependent of the workman. The management immediately shifted these sick persons to hospitals and spent on their medical bills. They were brought home hale and healthy. There was a total change in the behaviour of the above-said workmen. They became sincere and loyal workers. This incident clearly would expose that family members of the workmen need to be cared by the establishment so that the workmen would utilize their energies for the upliftment of the establishment. The following are a few of non-statutory welfare measures that are demanded from the employer:

- (a) Health and medical care of the dependents of the workmen.
- (b) Running schools or providing education facilities for the children of the workmen.
- (c) Recreation facilities to the workmen and to the family members.
 - (i) Television rooms
 - (ii) indoor games.
 - (iii) outdoor games.
 - (iv) annual sports
 - (v) get-together with family members
 - (vi) arranging tours and outings
 - (vii) dinner meetings with family members
 - (viii) Parks and playgrounds
- (d) Transport facilities to the workmen, to school going children.
- (e) Gifts during festivals as TV sets, refrigerators, air-conditioners, furnitures, etc.
- (f) Supermarkets at subsidized rates.
- (g) canteens at subsidized rates.

- (h) proper uniform to workmen with safety gadgets.
- (i) allowances as washing, etc.
- (j) dress materials to children and family members of the workmen.

OTHER IMPORTANT EMPLOYEE LEGISLATIONS OF INDIA.

The other important employee legislations are :

1. The Bonded Labour System (Abolition) Act, 1976
2. The Contract Labour (Regulation and Abolition) Act, 1970.
3. The Environment (Protection) Act, 1986.
4. The Equal Remuneration Act, 1976.
5. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
6. The Mines Act, 1952.

ACTIVITY:

The students are requested to collect the bare Acts of the above legislations and to give a reading on them.

ECONOMIC GOVERNANCE

What is it and why is it important?

Economic governance encompasses the policy, institutional, and legal environment within which an economy functions. Macroeconomic, microeconomic and fiscal policies, government economic agencies, regulatory policies and bodies, company law and legal institutions all form part of an economy's economic governance.

All Asia-Pacific economies have made considerable progress in developing appropriate economic governance frameworks. However, the pace of economic change in the past two decades, both domestically and in global capital markets, has given rise to significant challenges in this area for developed and developing economies alike. Many East Asian economies have witnessed the swift growth of private sectors, a dramatic increase in foreign capital flows and rapid

evolution of financial markets and instruments; some have found it difficult to ensure all aspects of economic governance have kept in step with these changes. The financial crisis that has swept through many East Asian economies and beyond has exposed aspects of economic governance that need strengthening to meet the demands, and reap the benefits, of an increasingly integrated world economy. In particular, the need for effective regulatory and policy environments for the banking and financial services sectors has been brought into sharp focus. Strengthened economic governance across a broad spectrum of policy, administrative and institutional issues is now widely accepted as a key factor in rebuilding domestic and international confidence in East Asian economies.

These reasons underscore the priority for concerted international and regional efforts to enhance economic governance. As economies in the Asia Pacific region become increasingly integrated, the level of shared interest in the economic governance systems of regional partners also grows. The Asian financial crisis has clearly demonstrated that, in an increasingly integrated region and globe, prospects for each economy are enmeshed with the strengths and weaknesses of others. Indeed, all economies in the region have learnt the danger of complacency in relation to domestic economic governance institutions - building good institutions is an ongoing imperative for all economies. These are further strong motivations for cooperation to improve economic governance.

IMPROVING GLOBAL ECONOMIC GOVERNANCE

Global economic governance refers to the institutions, norms, practices and decision-making processes from which rules, guidelines, standards, and codes arise in order to manage the global economy. There are various actors who can be identified in the global economic governance landscape. The major role is played by the intergovernmental organisations, mainly the International

Monetary Fund (IMF), World Bank (IMF and WB also being known as the Bretton Woods institutions), and World Trade Organisation (WTO).

These three institutions warrant specific attention as they have emerged as central pillars of global economic governance. As such, they are an essential and obvious starting point for considering any improvements to governance of the world economy.

On the one hand, poverty and inequality continue and in fact are on the rise in much of Africa and parts of Latin America and Asia, covering a third of the world's population, whilst on the other hand, the global economy proceeds to evolve in a rapid and complex manner in the absence of any institutional framework to regulate it.

Trade liberalisation, together with the explosion in international finance through deregulation of the financial sector and capital account liberalisation, have worked to promote global interdependence, therefore presenting developing countries with a heightened level of vulnerability in the form of volatility, contagion, and marginalisation, or in some cases, exclusion. These trends have become salient features of the global economy and pose a serious challenge to the current institutional arrangements of global economic governance.

HISTORICAL BACKGROUND

Birth of the Bretton Woods institutions

After World War II, plans for the emergence of the Bretton Woods institutions came about in the context of rhetoric for enhanced economic coordination amongst states as a way to ensure economic renewal, prosperity, and peace. This signified a prominent shift in approach to global economic management, moving away from one which was based on ad-hoc bilateral cooperative arrangements, in the form of gentlemen's agreements primarily amongst central banks in the major economies, to one which was centred on a formalised

multilateral system. Hence the Bretton Woods institutions were established at the New Hampshire Conference in 1944 in the presence of 44 countries.

The need for rules and principles for the conduct of monetary affairs was seen as the priority in light of the problems being experienced at the time, including exchange instability, shortage of gold, erratic movements of 'hot' money, and an absence of mechanisms to adjust balance of payments problems. In addition, it was seen as a much easier area for agreement than trade. (Braithwaite and Drahos 2000)

Notably, the inclusion of movement of international capital was absent from this vision of a global framework covering exchange rates/international payments, reconstruction, and trade, and remains so today.

The IMF was designed to oversee a stable monetary and financial system which would provide the basis for an open trading environment. This would be done through an adjustable peg system and currency convertibility to ensure a stable exchange rate regime; provision of short-term balance of payments financial relief to avoid resort to deflationary or import restriction policies; and surveillance powers. This approach clearly recognised the role of intervention and regulation.

The World Bank's (International Bank for Reconstruction and Development - IBRD) main responsibility was to assist in the economic and industrial reconstruction of Europe, together with industrialisation in developing countries, by 'facilitating the (longer term) investment of capital for productive purposes'. The Bank's main role would be to act as an intermediary between governments in need of financial resources for development and reconstruction and for the capital market, and to offer funds at reduced rates to governments.

ITO

The International Trade Organisation (ITO), while a trade treaty (Havana Charter), was to include on its ambitious agenda rules relating to employment,

development, and reconstruction objectives, commodity agreements, restrictive business practices, and recognition of the role of governments. However, the establishment of the ITO was not to be realized due to the failure of the US to bring the treaty before Congress for ratification as a result of the political and economic climate at the time. (Shukla 2000) Instead, the General Agreement on Tariffs and Trade (GATT) came into existence in 1947 on a provisional basis on merchandise goods. GATT's prime purpose would be to steer countries on the path of free trade and prevent them from resorting to protectionism as a way of responding to balance of payments problems (Nayyar 2000).

Relationship to UN

Whilst the Bretton Woods institutions were discussed ahead of the establishment of the UN, the UN Charter gave the latter the authority for dealing with all aspects of international relations, whether economic, political, or social. Under the economic sphere, the idea was that various specialised agencies, including the IMF and World Bank, would be under the aegis of the UN (as the overseer and centrepiece) to assist it in undertaking its duties. (Article 57 of UN Charter) It is clear that the underlying premise of the relationship between the UN and Bretton Woods Institutions was one of international cooperation and coordination. (Taylor 2000).

However, a break away of the Bretton Woods institutions from the UN can actually be traced to the time of their establishment, at which point the negotiations for the Articles of Agreement for both the IMF and the World Bank were undertaken independently of the launch of the UN Charter. Although Association Agreements with the UN Economic and Social Council (ECOSOC) were signed by both the IMF and the World Bank, the latter organisations were able to remain 'independent organisations' - and this has since been interpreted in the widest sense possible. As for the GATT, it remained even further outside of the UN system due to its provisional character.

The stronghold of the IMF and World Bank within global governance can be owed to the advent of conditionality, which has ensured infiltration into the domestic policies of developing countries, together with mechanisms for constant surveillance.

The IMF moved into development financing accompanied by structural reform programmes -- thus moving beyond its mandate -- whilst the World Bank increased its role in providing loans for balance of payments support (as opposed to specific projects or sectors) to developing countries, together with specific conditionalities for policy reform.

This overlap in the division of labour has led more to the convergence of approaches (rather than conflict) as far as developing countries are concerned, culminating in the 'Washington Consensus' which characterised much of the Bretton Woods activities in developing countries throughout the 1980s and 90s (Helleiner 2000b). This involved the coming together of the IMF's agenda of antideficit and anti-inflationary policies with the World Bank's efficiency prescriptions for deregulation, privatisation, and liberalisation. Moving beyond macroeconomics indicators and Sectoral reform, the conditionality programmes of each have deeply extended into areas such as governance, corruption, and judicial reform.

Even more recently, the division of labour between the IMF and World Bank with respect to development keeps blurring. For example, much IMF lending is dependent on conditions which have direct implications for achieving development objectives. This is something which goes beyond the mandate and expertise of the IMF.

The IMF's ESAF (Enhanced Structural Adjustment Facility) structural adjustment programmes have been heavily criticised due to their harsh impact,

especially on the poorest, and due to their failure to promote economic growth and macroeconomic stabilisation, which is mainly attributed to their short-sighted, one-size-fits-all/ tunnel vision approach (which lacks regard for local conditions and lack of ownership & participation by developing countries). (Heinrich Boll Foundation Report 2000)

The PRGF (Poverty Reduction and Growth Facility) which takes shape through the PRSP (Poverty Reduction Strategy Paper) process, is the successor to the ESAF and is the IMF's way of justifying its existence and role in the face of increasing criticism by 'fighting poverty' - a goal to which it had never aspired previously. Rather than being used as an opportunity to learn lessons from past experiences and to challenge the assumptions made in relation to their traditional structural and stabilisation measures (and the impact of this on poverty) with a view to reform, the PRSP process can be perceived as a way for the IMF and World Bank to further micro-manage developing countries, covering health, environment, labour issues etc (Mosely et al 1995). With this expansion, the role of the UN and its specialised agencies diminish, and without a strengthened UN system, these issues will keep accruing within the remit of the Bretton Woods Institutions.

Moreover, the PRSP process is still predicated on conditionality (thus PRSP is termed by some as 'second generation conditionality') and this clearly negates any potential for developing countries having any ownership over their national plans for poverty reduction. Then there is the enhanced HIPC initiative which in essence is based on the acceptance and continuation of debt management whereby a PRSP must be developed as a precondition for HIPC debt relief - however, the actual relief will only be forthcoming once the strategy is implemented, a rather time-consuming process.

In the context of the financial crises in parts of Latin America, Asia, and Russia, the IMF's dose of strict fiscal and monetary policies exacerbated the crises --

especially in Asia by ‘turning slowdowns into recessions and recessions into economic depressions’ (Rodrik 2000). This is largely because the IMF does not have a good track record on distinguishing between solvency and liquidity crises, as demonstrated so clearly during the Asian crisis when it imposed structural reform during a short-term liquidity crisis. Also, the IMF’s policy prescription advice of financial and capital liberalisation which was so fervently pursued especially from the mid 1990s, was seen as one of the main causes of the crises.

Little risk is actually born by shareholders or creditors, nor the institutions for that matter, as seen in cases of World Bank project failures and the IMF’s role in several financial crises, all of which means that the developing countries are left to bear the main costs of such crises.

In parallel to the expansion of the domains of both IMF and World Bank, the WTO was established in 1995 as an intergovernmental negotiating forum for formulating international trade rules. Although the WTO’s budget is nowhere near as large as those of the Bretton Woods institutions, which partly contribute to their clout, the WTO’s power comes from its sanctions-based dispute settlement mechanism which in reality is accessible only to the wealthier countries.

Also a departure from the GATT, the Uruguay Round was adopted as a single undertaking whereby Members were required to adopt the full menu of obligations, including in the area of non-tariff barriers reductions (sanitary and phytosanitary measures, technical barriers to trade, anti-dumping, subsidies and countervailing duties, trade related investment measures) and other areas such as services (not to mention non trade-related areas such as intellectual property), as the condition for accession into the WTO, thus further consolidating the organisation’s central role (within economic governance) and the on-going process of liberalisation. This encroachment has continued since the Doha

Ministerial Conference in 2001, with the inclusion of environment and the possibility of additional areas, such as investment, competition policy, trade facilitation and transparency in government procurement.

However, it should be noted that the liberalisation which has taken place has been on an asymmetrical basis. It has occurred and rapidly continues to do so in areas of interest to developed countries (and often to the detriment of developing countries), such as services and, although not trade-related, intellectual property rights -- all heavily pushed by US and EU multinational interests. However, in areas of interest to developing countries such as agriculture, textiles, movement of labour, barriers remain in developed countries, whilst at the same time developing countries are denied the same right to safeguard their developmental interests. Thus, the benefits of trade liberalisation have yet to be seen, especially when considered in the context of the least developed countries who continue to be marginalised from the international trading system and have in fact experienced a decline in their share of world trade (WTO 2002).

There is also a trend towards the WTO not only deepening liberalisation in a given area but also subsuming regulation of that area into its own regulatory system. This represents a movement of regulatory sovereignty away from national governments to a global system in the pursuit of a particular model of regulation (ie deregulation) which largely meets the needs of transnational interests (Lunde 2000). This involves an organic form of cooperation between the WTO and various 'relevant' organisations such as the Bretton Woods institutions.

Increasing cooperation between the WTO and Bretton Woods institutions (mainly in the form of information exchange, participation at meetings, joint seminars, and technical cooperation) has raised particular concerns given it represents a partnership between the most powerful actors in the global economy pursuing an agenda of convergence.

Through their structural reform programmes and conditionalities, the Bretton Woods institutions have instituted an extensive series of trade liberalization measures within developing countries which have served as significant tools for supporting the trade liberalisation objectives of the WTO. For example, between 1995-99, 65 percent of all World Bank adjustment operations supported trade policy reforms and between 1995-2001, under IMF loans, 36 countries were obligated to reform their trade regime in line with WTO accession requirements or accelerate implementation of WTO commitments (Rowden 2002).

The implications of IMF-World Bank-WTO 'coherence' are threefold: the proliferation of a tunnel vision or singular and therefore flawed model of development based on trade liberalisation as the vehicle to growth and poverty reduction; the 'locking in' of liberalisation commitments through the WTO's dispute settlement mechanism; and the permanent loss of the national sovereignty to pursue any chosen path of development based on national interests and needs.

UN

The original central role envisaged for the UN in global economic affairs remains unfulfilled. From the outset, major 'multilateral' developments in the economic sphere took place outside the UN framework, such as the Marshall Plan and the European Payments Union (Nayyar 2000). This has been an intentional move as the G7 have preferred to work through mainly the Bretton Woods institutions, GATT/WTO and other initiatives - all outside the UN framework - where they can extend full control (Centre of Concern 2002). Although a consultative and selective forum of the richest seven countries to discuss a range of global issues covering macroeconomic, political and security policies, the G7 acts as the engine of current global economic governance, using its influence to provide direction and to set the agenda for global governance, and directly undermining the role of the UN in general. It has no secretariat,

headquarters, rules of operation nor legal/ formal powers. Yet its actions have consequences on a global level and therefore its legitimacy and representation is facing increasing challenge.

As a result, the functioning of ECOSOC has had little impact and overall, the UN agencies are viewed more as a fora where opinion polls are taken on issues of global interest than as a fora where hard decisions are made and implemented, in contrast to, for example, the recent Monterrey Conference on Financing for Development. In the few cases where ambitious objectives are made, their impact is weakened due to the deliberate lack of resources provided to implement them, such as in the case of the Third UN Conference on LDCs.

The role of UNCTAD in terms of policy advice, research, and analysis on an extensive range of economic and financial issues is of great importance to developing countries, however its work remains marginalised from having any tangible role in the dominant economic fora and it is often subject to the political pressures of the time. 50. Not only have the Bretton Woods institutions undermined the economic decision making authority of the UN, but they have also moved into those areas of human development which have been traditionally under the purview of the UN, posing a serious challenge to its functions. This process has been driven by donor governments. For example, World Bank lending for human development in areas such as health and education has increased ten-fold between 1985-1995, whereas the budget of UNDP has been on the decline. World Bank spending in these areas also exceeds that of both operational agencies, UNESCO and WHO. (Lunde 2000)

REFORMING GLOBAL ECONOMIC GOVERNANCE - BASIC PRINCIPLES

Looking to the current global economic framework, elimination is not a sensible option. There is certainly a constructive role for the IMF, World Bank, and

WTO as long as they are reformed accordingly. Between them, these institutions have accumulated much experience and have the resources to fulfil roles which are currently missing yet needed. At the same time, rather than consolidating their power and roles, their reform should be viewed as an exercise in re-alignment to fit within a wider framework (which is currently missing), and which needs to emerge based on broader objectives such as economic stability and redistribution.

It is clear that good governance within international institutions should fulfil the function of being both effective and legitimate. While this can often create a tension between democracy and efficiency, the objective should be to reach a balance between the two, rather than having one pursued at the expense of the other. This becomes easier to understand once put into the wider perspective of what is the purpose of global governance, together with the process for reaching that point: one should reflect the other. In other words, the 'means' are just as important as the 'ends', if not more so.

Today, more than 50 years later after the Bretton Woods institutions were established, effective governance of the global economy remains an outstanding issue yet to be addressed. This is mainly due to the fact that there is neither an institutional framework to discuss global economic policies nor any corresponding regulatory regime to coordinate and support it. Instead, overall global economic management is left to the markets or ad hoc initiatives by consultative fora of the major industrial countries, namely the G7. Efforts to address the governance of international finance is a case in point.

Partly as a result of this void, the Bretton Woods institutions have adjusted their roles over time in response to on the ground realities, however it is has not necessarily been in the right direction. Instead of acting as constructive agents in coordinating and promoting global stability and development, they have focused their efforts on micromanaging developing countries with a standard and stern

dose of neo-liberal policy prescriptions and conditionalities (usually under the direction of the G7) with implications for a wide range of domestic policy areas. This level of penetration has provided them and the WTO with the power and authority to become monopoly actors in the global economy. At the same time, this has taken away focus on the need for any surveillance and coordination among the major industrial countries in terms of the implications of their macroeconomic policies, such as interest rate policy, for global economic prospects. This has directly worked to the detriment of the potential role of the UN and has led to a skewed global economic agenda in terms of orientation and policies by these organizations.

The current system of economic governance is characterized by governance structures which work to the detriment of developing countries. This includes the exercise of unilateral power and veto power by the most powerful countries through subtle (consensus) and less than subtle ways (opting out) in terms of agenda setting and decision-making; intrusive and asymmetrical rights and obligations through the domination of three institutions; and Northern driven 'network governance' (i.e. BIS etc). It follows then that the focus of this type of system is more on output rather than process. However, the universal character of the Bretton Woods institutions and WTO require them to fulfil this aspect of governance, and the power and influence of the Northern driven organizations require them to take into account this aspect of governance.

Clearly, a fundamental overhaul of these institutions is necessary. In order for that to be achieved, their internal governance structures and processes must be drastically changed in order to include developing countries as active and equal participants. Otherwise the existing asymmetry in the global economic agenda will continue to exist.

Any agenda for pursuing reform of these organizations should be done in congruence with each other and with a view to contributing to shaping a new

system of economic governance which is especially geared towards addressing the persistent challenge of poverty and inequality, in addition to designing a more stable financial system. Principles such as balanced and equitable representation and participation; fair and consistent decision-making rules which are constitutional and culturally reinforced; transparency; effective information flows; objectives which meet the interests of the full membership, evolve accordingly, and which are reflected in the nature and work of the organization; are all important in considering the effective and legitimate functioning of international institutions of governance. This requires a combination of fair rules and equitable participation by developing countries in decision-making processes, serious reform and strengthening of existing institutions (at all levels), and being open to the possibility of the creation of new institutions in order to fulfill overriding objectives and cover areas where governance is missing, yet needed.

INTERNATIONAL LABOUR STANDARDS

The global labour force has doubled over the past fifteen years with the entry of China, India and Russia into the global economy. Millions of the new entrants work for wages and in conditions inferior to those of workers in OECD countries. Unless appropriate policies to regulate globalisation and provide decent work and sustainable development are adopted by governments and the international institutions, globalisation, rather than bidding up living standards for everyone, will contribute to even greater inequality between rich and poor; between capital and labour.

Global leaders have failed to galvanise an ethical and human rights dimension in globalisation. This is manifest in many developing countries or when fundamental rights are denied to workers in export-processing zones and companies threaten to shift production to China where free trade unions are banned. Assuring human rights for workers must become at least as important

an objective of international policy, including trade and investment agreements, as protecting investors' right or intellectual property rights.

More than a billion men and women are unemployed or underemployed while nearly 1.4 billion - almost half of the world's total workforce - struggle to survive below the US \$2 a day poverty line. In Global countries themselves growth prospects remain unsustainably out of balance, share of national income has shifted alarmingly from wages to profits and unemployment remains in key countries unacceptably high. Free markets will not rectify these imbalances. Government need to put in place the right regulations and a framework that helps create jobs and links the creation of decent work in the 'North' with the same objective in the 'South'.

Debt cancellation, universal access to AIDS treatment, provision of vaccines for the poorest countries, a doubling of official development assistance as well as the introduction of innovative methods of development finance were among the central, declared commitments of the Global Summit in Gleneagles a year ago. As Global leaders meet for the Saint-Petersburg Summit few of these commitments have even been acted upon. Deadlines for meeting the Millennium Development Goals (MDGs) look ever more unattainable without a fundamental shift in priorities on the part of the Global nations present here in this forum today. Nearly one and a half billion people still lack access to safe drinking water. The world continues to face the scourge of an AIDS and malaria emergency with 40 million adults and children infected with HIV AIDS. No fewer than 104 million children lack access to primary education and 860 million adults are illiterate. For many individuals and peoples in this world poverty is closer and life is less secure and more violent than it was a year ago.

The world has sufficient resources, knowledge and technology to stamp out poverty. Progress depends on creating decent and sustainable jobs and livelihoods throughout the global economy. Building on the campaign work of

the Global Call to Action against Poverty (GCAP) since 2005, the international trade union movement will be working with our allies in civil society to pressure governments to get attainment of the MDGs back on track.

Achievement of peace and security is a prerequisite for trade union goals of democracy, social justice, employment and development. The fight against terrorism can only succeed if be conducted on the basis civilised human values. While the Global nations meet; the tragedy of the Middle East is escalating, armed conflicts affecting people worldwide in more than 40 countries are taking place. Apart from, the direct tragedy of the loss of human life, this represents a massive diversion of resources badly needed for development. Many conflicts have their origins in extreme injustice, in poverty, inequality, corruption, and the denial of human rights and democracy by those wielding power, whether governments or those fighting against governments. Trade unionists are often singled out as the targets of terror. Promoting and defending the rights of working people to form and join unions is a key component of the quest for peace and security.

Core workers' rights such as the right to freedom of association and of collective bargaining are fundamental human rights and must be respected. Some of the most flagrant cases of repeated violation of union rights in countries such as Colombia, Burma, and Belarus, have been exposed and clearly condemned under ILO procedures. yet these abuses continue. Respect for trade union rights seems to be weakening worldwide, CIS countries included.

Globalisation in itself draws dramatic attention to the need to strengthen protection of workers' rights. Core workers' rights are under threat in many developing countries as companies threaten to shift production to China where the rights of workers to organise are not respected. Assuring the human rights of workers must become at least as important an objective of international trade

and investment agreements as protecting intellectual property rights or rights of foreign investment.

Respect for fundamental workers rights also leads to long term economic gains. Economic development requires institutions that are capable of ensuring social justice, a condition which cannot be dictated solely by market forces. This in turn confirms the importance of democratic institutions, of good governance and dialogue with the whole of civil society and the world of work. Over the past 15 years, particularly in transition economies and in Russia itself, reform processes that have taken place have too often been simplistically based on the idea of 'less state' and on preaching the virtues of a market economy that, we are supposed to believe, is supposed automatically to bring us growth and prosperity. Unless there is parallel work by the institutions, unless trade union rights are respected and unless states and governments are able to regulate, support and direct the forces of the market, what results is the explosion of inequality and the surge of an informal economy with its destructive impact on institutions, social protection systems, industrial relations and the 'formal' economy itself, as represented by those companies that do strictly adhere to the legal framework and rules.

The challenge for the international community is to deliver on commitments for debt relief, increased financing assistance for development and new sources of development funding as well as a new 'development contract' establishing good governance in developing countries and fair trading arrangements. Donor governments and international institutions must provide the major increase in the quality and quantity of resources needed for the eradication of poverty and promotion of social justice, the achievement of the MDGs, and the creation of decent work. This is a matter of the utmost urgency. These resources must also support sustainable development workers' rights, migrants' rights and interests of marginalized groups including indigenous peoples. Resources must serve to

rebuild not to undermine governments and the public sector. Rebuilding means enabling them to implement the rights of their citizens.

Over the past decade, average life expectancy in the world has increased with notable progress made toward the eradication or elimination of various major infectious diseases. However, average life expectancy in the least developed countries remains stuck at 49 years, which compares to 75 years in developed countries. In Russia it has fallen with the transition to a market economy, thus the problem of demographic growth has become a challenge of national dimension. Six major communicable diseases currently cause 90% of avoidable deaths: AIDS, malaria, tuberculosis, pneumonia, diarrhoeal diseases and measles. About 40 million adults and children are now living with HIV/AIDS, 95% of them in developing countries. More than 12 million Africans have died of AIDS (more than two million in a single year), and many millions have been orphaned due to HIV/AIDS. Rising infection rates are manifest in many other parts of the world and it is now together with TB a major problem and potential cause of death worldwide. In developing countries, many deaths could be prevented by the use of low-cost antibiotics and improved access to primary health care. Improving access to water supplies for 1 billion people and improved sanitation for 2.4 billion would have a sizeable impact on health, as would the elimination of malnutrition among 30% of the world's population.

Poverty is likely to remain the principal killer world-wide because of lack of access to drugs, vaccinations, water and sanitation, as well as proper ill-health detection and treatment services. The disproportionate burden of disease will continue to be borne by disadvantaged or marginalised sectors of society. Many key determinants of health and disease - as well as solutions to ill-health -- lie beyond the direct control of the health sectors, in areas concerned with environment, water and sanitation, agriculture education, employment, urban and rural livelihoods, trade, tourism, energy and housing.

China's continuing high rates of growth and the associated increase in foreign direct investment have turned out to be the economic phenomenon of the 21st century. Yet the Chinese growth model is threatened by serious imbalances - between regions, as a result of growing inequality, due to capital inefficiency and insolvency of the banking system, as well as resource depletion and environmental pillaging. A generation of migrant workers, young and old, within China constitute an exploited underclass. Meanwhile, the Chinese model of export-led growth has increased competitive pressures on markets in the OECD countries. The net effect of China's conduct is to undermine labour standards in other developing countries while raising demand for commodities. The export orientation of growth is based upon the suppression of workers' core rights, all in order to obtain labour-cost advantage coupled with an administered foreign exchange rate and a foreign investment regime 'a la carte'.

The priority for China must be to evolve from being an outlier in terms of respect for internationally recognised standards and to shift to better balanced and qualitative growth that is sustainable both socially and environmentally. With the growth of the private sector, state authorities should acknowledge the need to strengthen their capacity to introduce and enforce decent labour-market regulation to protect workers against the extremes of the market system and to manage change in a socially sustainable way. This cannot be done from the 'top down'-it needs vibrant civil society, fundamental civil and political liberties plus strong and effective unions operating on ILO standards of freedom of association and the right to strike.

As employment and living standards of workers depend on policies which can deliver secure, clean, environmentally friendly and affordable energy, trade unions favour a policy approach to achieve those three goals. Employment is directly affected by high and volatile prices, as can be seen in their current impact on energy intensive industries and on the least developed, fuel-importing

countries as well. High prices cut into living standards and push more working people into fuel poverty. Policies for employment need to be linked with the strengthening of pollution control through the promotion of renewable energy - a labour-intensive sector.

The ILO was created in 1919 primarily for the purpose of adopting international standards to cope with the problem of labour conditions involving “injustice, hardship and privation”. With the incorporation of the Declaration of Philadelphia into its Constitution in 1944, the Organization’s standard setting mandate was broadened to include more general, but related, social policy, human and civil rights matters. International labour standards are essentially expressions of international tripartite agreement on these matters.

The International Labour Organization is the UN specialized agency which seeks the promotion of social justice and internationally recognized human and labour rights. It was founded in 1919 and is the only surviving major creation of the Treaty of Versailles which brought the League of Nations into being and it became the first specialized agency of the UN in 1946.

The ILO formulates international labour standards in the form of Conventions and Recommendations setting minimum standards of basic labour rights: freedom of association, the right to organize, collective bargaining, abolition of forced labour, equality of opportunity and treatment, and other standards regulating conditions across the entire spectrum of work related issues. It provides technical assistance primarily in the fields of vocational training and vocational rehabilitation; employment policy; labour administration; labour law and industrial relations; working conditions; management development; cooperatives; social security; labour statistics and occupational safety and health. It promotes the development of independent employers' and workers' organizations and provides training and advisory services to those organizations. Within the UN system, the ILO has a unique tripartite structure with workers

and employers participating as equal partners with governments in the work of its governing organs.

The ILO's standards take the form of international labour Conventions and Recommendations. The ILO's Conventions are international treaties, subject to ratification by ILO member States. Its Recommendations are non-binding instruments -- typically dealing with the same subjects as Conventions -- which set out guidelines which can orient national policy and action. Both forms are intended to have a concrete impact on working conditions and practices in every country of the world.

The annual International Labour Conference, as well as other ILO bodies, often agree upon documents less formal than Conventions and Recommendations. These take such forms as codes of conduct, resolutions and declarations. These documents are often intended to have a normative effect but are not referred to as part of the ILO's system of international labour standards. There are a number of important examples of these.

Declarations, resolutions and conclusions of the Governing Body and of other ILO organs can be said to be other, more informal, "normative instruments" -- They are not, however, recognised as international labour standards in the ILO's Constitution

The Governing Body's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy is perhaps the most well known of the "informal" international labour standards.

In addition to Conventions and Recommendations, there are resolutions and conclusions agreed by various ILO organs, such as the International Labour Conference (ILC), technical committees of experts, special conferences, bodies set up to cover specific sectors (industrial committees, Joint Maritime Commission, etc.), and regional conferences and technical meetings in Asia and the Pacific, the Americas, Africa and Europe.

These resolutions and conclusions take various forms. These differ considerably in their content. Some cover basic principles, while others are of a very technical nature. They also differ as to the weight given to them in practice. A resolution or conclusions adopted by the International Labour Conference necessarily carry the highest authority.

In general, resolutions and conclusions respond to specific situations and needs, which makes them particularly valuable when planning the ILO's technical cooperation activities.

They may cover specific categories of workers or deal in a detailed manner with particular technical themes, sometimes including new definitions and concepts, and the most recent socioeconomic developments on which the Organization expresses itself. Often, such resolutions and conclusions refer directly to relevant international labour standards, giving both the international labour standards referred to and the document mentioning the international labour standards a fresh, sometimes new, emphasis.

A list of some titles of resolutions adopted by the International Labour Conference between 1984 and 1999 may suggest their relevance to international labour standards.

International labour standards are *universal* in character as their drafters intend that all countries be able to implement and ratify them -- regardless of each's stage of economic development, or social or economic system. Because of this intent, standards are often written with certain *flexibility* in their obligations. Related to the universality of standards and the flexibility they must sometimes have as a result, several very important standards set only goals for national policy and a broad framework for national action. When ratified, these *promotional* standards oblige a country to use means appropriate to national circumstance to promote these goals -- and to be able to demonstrate progress over time in achieving the goals.

The tripartite deliberation which goes into standards' adoption is aimed, amongst other things, at ensuring that the results are *viable*. That is, that the final piece of international law can, in fact, be implemented and accepted by member States as the international standard on the subject at hand. In connection with this, international labour standards are set sensitive to the possibility that they may need to be modified or *adapted* as time goes on.

These characteristics come together in a unique way in international labour standards. In addition, the systematic regularity with which international labour standards are adopted enhances their influence as even in the absence of obligations arising out of ratification, it has become routine for those concerned with social problems to refer to international labour standards for guidance as reflecting the considered views of a representative world assembly.

International labour standards are debated and adopted by delegates from all parts of the world. Consideration of prevailing diverse national practices goes into their preparation and framing. They provide for widely accepted goals and rules for national action that all countries can follow. The desire all along is to set a labour standard which can be used internationally.

Transforming these universally accepted goals and rules into a binding legal obligation is each State's sovereign privilege. This is done through ratification. Even before this is done in any particular State, the standards nevertheless remain a reference point for developing policy and action on the matter at hand.

ILO bodies have consistently opposed the idea of having different standards for different regions or groups of countries. ILO delegations "refuse categorically to accept the very idea that there could be sub-standards for sub-humans".

Since 1919 international labour standards have had to adapt to a rapidly changing world, scarred by two world wars and other conflicts, confronted by economic crises and rapid cultural changes. During this same period, the colonial era ended. Many newly independent nations entered the international

community, determined to pursue their own development in co-operation with the rest of the world.

In such an environment, standards are adopted with a view to the possibility that they may need to be modified in the future. Features of the system have been developed with this in mind, and all along, new standards have been adopted and older standards have been revised whenever necessary to bring them up to date.

In recent years, the Governing Body has been systematically reviewing individual standards with an eye to the viability of each. The objective has been to maintain the reputation of the system of standards as one which is relevant and well adapted to the global situation.

INDIAN LABOUR STANDARDS

India presents a confused and a gloomy picture when we probe into labour standards practiced in India. When we analyse, the labour in India we have to study the Trade Union Movement in India. As stated in earlier paragraphs, the Trade Union Movement in India was pioneered by Barristers, social reformers, editors, teachers and preachers. Most of our national leaders who fought for the liberation of India from the clutches of the colonial rule, have also waged a war with the colonial Government to liberate the working force from slavery. It was this long drawn battle that saw to the birth of many employee legislations during the colonial period. The Indian National Trade Union Congress was born in 1947 and it was under the banner of the then Congress Party. The other Trade Unions that followed took a leaf from INTUC and owed allegiance to political parties. All the Trade Unions in India are only organized by political parties. The Trade Unions carry with them certain ideologies which are totally outmoded and away from the current demand of economic governance. The economic governance demands privatization of all fields which policy is totally opposed by many of the Trade Unions in India.

The evolution of trade unionism in India can be classified under four phases. The first phase (1950 to mid-1960s) corresponds to an era of state planning and import substitution, when public-sector employment and public-sector unionism rose phenomenally. Unions and bargaining structures were highly centralized; the two main federations were the nationalist Indian National Trade Union Congress and the communist All India Trade Union Congress. State intervention in the determination of wages and working conditions was the norm and "state-dominated pluralism" was the labour regime during this first phase.

The second phase (mid-1960s to 1979) is associated with a period of economic stagnation and political turmoil. Employment slowed down, there were massive inter-union rivalries, and industrial conflict increased. Centralized bargaining institutions now started feeling the pressure of dissent from below, and both the Hind Mazdoor Sabha and the Centre of Indian Trade Unions made significant progress in the labour movement. The crisis culminated in the May 1974 railway strike that was followed by the 1975-77 Emergency Regime of Mrs. Gandhi. An "involved" pluralism dominated Indian labour relations during this second phase.

The third phase (1980-1991) corresponds to a period of segmented and uneven economic development. Decentralized bargaining and independent trade unionism enter the stage in a significant way. Two major strikes (the 1980/81 Bangalore public-sector strike and the 1982 Mumbai textile workers strike) marked this phase, and inter-state and inter-regional variations in the nature of labour-management regimes became much wider. In the more profitable economic sectors the unions gained, but in the unorganized and declining sector, workers lost out and unions were left with few strategies.

Finally, the fourth phase of unionism (as yet incomplete, 1991-2000) represents the post-economic reform period. The stabilization and structural adjustment programmes led to demands for increased labour market flexibility, especially

employment flexibility. This has led to a recruitment freeze in many public sector sites, and unions in these sectors now have to cope with competition at local level. In non-viable public enterprises, unions are coming to terms with "voluntary" retirement schemes. In the early years of economic reform there were sincere attempts by all parties to engage in tripartite consultations, but there now seem to be several barriers to this form of engagement.

The crucial issues relevant to the Trade Union movement in India are the relationship between the Trade Union and employment, wages and working conditions, the nature of collective bargaining, the industrial disputes, labour-management relations, interstate and regional variations in labour regimes, the plight of women workers. The following findings would bring about the labour standards in India:

- In both the public and private sectors, employment in industry has substantially declined, especially since the economic reforms; however, employment in public sector services has increased since the third phase of unionism. The trend in most industries is to reduce permanent employment and to use more contract, temporary and casual workers.
- Trade unions have performed well in profitable industries, mainly in private (often multinational) enterprises, but also in some public sector firms with decentralized bargaining structures. However, they lack new strategies in the older and declining sectors of production where industry-wide bargaining structures are typically the norm. Whereas workers and unions in non-viable public enterprises are facing closure and an uncertain future, centralized unions representing employees in public services remain strong due to the monopolistic nature of their product markets.

- The number of plant-based independent and unaffiliated trade unions has risen, which may have caused a decline in the power of centralized affiliated unions, especially in the private sector.
- Two critical changes in collective bargaining are the expansion of coverage and scope of long-term agreements. Competitive market pressures, especially since the beginning of economic reform, have forced bargaining outcomes to be decided at local level.
- The procedural environment required for competitive industrial pluralism to work at its best is still absent from the Indian industrial relations system (absence of a secret ballot, absence of a single bargaining agent, absence of third-party arbitration and strong restraints on "legal" strikes). This makes the organized labour movement still very dependent on state recognition and patronage. All parties recognize the urgent need for comprehensive labour law reform.
- Modern human resources management has significantly altered labour-management relations in the advanced sectors of production without necessarily leading to a decline in union bargaining power.
- Inter-state and inter-city variations in labour-management relations have increased since the mid-1980s, and in the absence of a concerted effort on the part of the central government to reform labour laws, these variations are likely to be accentuated with the progress of economic reform.
- Women workers are largely concentrated in the self-employed and unorganized sectors with little representation in trade unions. Non-governmental organizations have made considerable efforts to organize women in these vulnerable occupations.

Unionisation and Employment

Unionisation in India has in fact reduced the employment opportunities. The capitalist employer do not like the presence of Union in the premises controlling the functioning of the factory.

Wages and working conditions

The wage structure in India is very low when compared with those provided in western countries. The employer and employees have now opted to arbitration and collective bargaining to get their wage raise and periodical revision of wages instead of raising industrial disputes.

Collective bargaining

Management and Union reconciled conflicts through collective bargaining. In collective bargaining, representatives of the Union and representatives of the Management hold joint sessions and solved problems through negotiations and discussions. Collective bargaining creates industrial harmony and peace, brings about better understanding between the labour and management. There is no work stoppage or outside intervention and minor differences are sorted out immediately through discussion and interaction. Encyclopedia of social sciences defines collective bargaining: *'It is a process through discussion and negotiation between two parties wherein the employer and workmen agree upon the conditions of work'*.

RF. Hoxie : 'Collective Bargaining is the mode of fixing the terms of employment by means of bargaining between organized bodies of employees and employer acting through their agents. The essence of collective bargaining is a bargain between interested parties and not a decree from outside parties'.

Serlig Perlman: 'Collective bargaining is not just a means of raising wages and improving conditions of employment nor is it merely a democratic Government in industry. It is above all a technique whereby an inferior social class or group exerts a never-slackening pressure for a bigger share in social sovereignty as

well for the welfare and greater security and liberty for its members. It manifests in politics, legislation, Government, administration, religion, education and propaganda.'

Important factors about Collective Bargaining:

1. It is collective and not individual.
2. It is between representatives of the employers and the representatives of the Union.
3. It is a civilized bipartite confrontation.
4. It involves discussion and negotiation.
5. It is flexible and mobile.
6. It is not fixed and static.
7. It is a two-party process.
8. It is a continuous process.
9. It creates industrial democracy at work.
10. It is not competitive but complementary.
11. It increases economic strength.
12. It builds up uniform conditions.
13. It avoids industrial disputes and creates stable peace.
14. It secures fair redressal of grievances.
15. It avoids strikes and coercive methods.
16. It accords fair wages and decent working conditions.
17. It creates stability and prosperity.

Arnold Campo gives the following advice to both the parties as to how to behave at the collective bargaining table:

1. Be friendly.
2. Release tension.
3. Listen carefully.
4. Give opportunity to all.

5. Learn the personal history of representatives present.
6. Be right and fair.
7. Think rather than feel.
8. Let the discussion wander.
9. No stalemate.
10. Define the issues.
11. Search for solutions.
12. Keep members as small.
13. Respect all.

Collective Bargaining was effected as early as 1920 by the employer and employees of Ahmedabad Textile Industry on the request made by Mahatma Gandhi. All disputes were resolved and the textile mill started functioning within a month. Collective bargaining is the best method of solving disputes between employer and labour and a best method of agreeing upon the conditions of work.

Labour Management Relations

Since the mid-1980s the practice of human resources management (HRM) has significantly altered traditional union-management relations in the advanced sectors of production, notably in multinationals and other private firms. Since the economic reforms of 1991, some public sector firms have also incorporated modern HRM practices into their otherwise traditional labour-management relationship. Some of the essential characteristics of these HRM practices are: attempts at direct communication between managers and employees; individualized and/or contingency pay systems; modular organization of production through work teams with team leaders who often form part of the management structure; carefully designed and fairly implemented performance appraisal systems; and so on. While many would argue that modern HRM

practices undercut union effectiveness at enterprise level, there is no clear evidence of this in India. Unions have a strong presence in the firms where modern HRM practices are implemented successfully, and it is only with cooperative union-management behaviour that this has been possible. But this applies mainly to the manufacturing sector.

In the skill-intensive service sectors such as information technology, HRM practices continue to pose a challenge and possibly create permanent barriers to union entry and organization. To the extent that information technology redefines the nature of work in banking and insurance, unions will have little success if they resist modernization, given the entry of new, mainly foreign, players in these sites. It is no coincidence that the most publicized post-reform industrial conflict at national level has been in banking and insurance.

If labour law reforms facilitate competitive pluralism and lead to efficient collective bargaining in the private sector, and to tripartism with responsibility and accountability in the public sector, we can postulate that the effectiveness of unions would not necessarily diminish if modern HRM practices were introduced in enterprises.

Inter-state variations

One of the most important concerns of social scientists in India today is the effect that economic liberalization will have on inter-state variations in human development, social productivity and civil society at large. States with a less organized labour movement, if controlled by pro-capital state governments, may attempt to attract capital with implicit promises of a union-free environment. This has clearly happened to some extent and has often taken violent forms. Ruling governments in other states with a long history of proletarian politics are desperately attempting to change their signals. These attempts are causing confusion within the union movement, both among the leaders and the rank and file, and also leading to chasms between political parties and their affiliated

unions. In several instances, temporary or issue-based alliances have been formed between unions affiliated to opposition parties, especially with regard to privatization of public sector services and utilities.

Other Factors

As suggested earlier, the employee legislations in India are totally out-moded and impractical. The Union Government has been suggesting on legislating a new labour code in tune with the demand made by the global economic governance as to eradicate poverty, regularize wage fixation, raise the standard of living of the working class and to opt for privatization of all sectors to improve the functioning of the industries in India and to free the Government-controlled industries from the egoistic and bureaucratic style of functioning. The Trade Unions with their age-long ideologies are opposing every move of the Government on the above lines. Apart from the TATA companies, the multinational companies have become model employers catering to the statutory and non-statutory welfare measures of the workmen. The declaration on the Human Rights and the covenants that follow, clearly reiterate that the standard of living means that every citizen on the globe must enjoy the standard of living that is given to the American citizen. It is not the question of minimum standard of living but the real and the actual standard of living. It is high time that the Government of India raises the labour standards in India as currently such standards are appalling and pathetic. Women and Children employed in factories need better care. Abolition of child labour is voiced vociferously in India currently and we fondly believe all children are sent to school and not to working places.

To conclude, let us recall the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work. The core labour rights are :

1. *freedom of association and the effective recognition of the right to collective bargaining,*
 2. *the elimination of all forms of forced or compulsory labor,*
 3. *the effective abolition of child labor, and*
 4. *the elimination of discrimination in respect of employment and occupation.”*
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UNIT – II

LESSON – I

INTRODUCTION AND OVERVIEW OF EMPLOYEE LEGISLATION

INTRODUCTION: In this unit we are going to analyze the purpose of employee legislation and the employee legislation as enacted by the Government, both Central and State and the improvements which could be incorporated in the law due to the development of international trade and commerce due to liberalization, globalization and privatization. Further the experience from implementation of the laws from employers', employees' government and society's angle is discussed with reference to landmark judgments. Lastly the imperatives of labour reforms are discussed critically giving certain suggestions for the improvement of the existing employee legislation.

ORIGIN OF LABOUR LAW: The origin and growth of labour law can be traced to the rise of the modern factory system. Under the handicrafts system every production unit was small and there was direct personal contact between the employer and the craftsman. After the industrial revolution large scale industry came into being. In a modern industrial unit a large number of workers are employed. As the workers had no bargaining a capacity with the capitalist employer they had to work on nominal wages for long hours and under the

unhealthiest conditions. Even women and children were employed under conditions which were detrimental to their health, safety and welfare. The workers were unable to protect themselves from exploitation by the industrialist. As a Welfare State, the Government stepped into protect the interests of workers. It enacted labour laws to impose statutory obligations on employers to provide reasonably good working conditions.

However the labour laws enacted before the World War I were designed mainly to protect the interests of Great Britain. Such protective legislation was of elementary and haphazard in nature. After the World War I, politicians and trade unions became increasingly aware of the plight of workers. In 1919 India became a member of I.L.O. In 1918 the textile workers of Ahmedabad successfully launched a strike under the leadership of Mahatma Gandhi. In 1926 the Trade Unions Act was passed. The Act granted immunity to registered trade unions and their members from legal proceedings in civil and criminal courts. But the Act made no provision for settlement of industrial disputes. In 1942 permanent tripartite labour machinery was set up to promote uniformity in labour legislation. This machinery consisted of a Standing Committee and an annual Labour Conference. After independence the Government of India passed a number of labour statutes, comprehensively covering every aspect of labour.

Despite most comprehensive labour legislation, India has not been able to maintain peaceful employer employee relations. There has been a spurt in industrial disputes and work stoppages which have hampered faster industrial development of the country. More than 100 labour laws have not succeeded in checking growing militancy in industrial relations, embezzlement of provident fund money and other undesirable trends in industrial relations. Too many labour laws have been enacted due to emphasis on high ideals. But faulty implementation has instead of protecting labour deprived them of their due benefits.

EMPLOYEE LEGISLATION-AN OVERVIEW: The term ‘Labour Law’ or ‘Employee Legislation’ refers to that body of laws which are enacted to protect and promote the interests of the working class in society. Labour laws comprise all those laws by which relationships between employers and employees are governed. All laws which have a bearing on labour are included in the category of labour laws. Labour laws deal with the employment, wages working conditions, industrial relations, social security, labour welfare, etc. Labour law seeks to establish a harmonious relationship between the employers and the employees and to strike a right-balance between capital ad labour. Labour legislation is the ex-pression of the feelings of the people and gives practical shape to current human and social values of the community. Further labour legislation in any country should be based on the principles of social justice and social equity.

The major industrial disputes legislation in India are:-

1. The Trade Unions Act, 1926.
2. The Industrial Employment (Standing Orders) Act, 1946.
3. The Industrial Disputes Act, 1947.
4. Payment of Wages Act, 1936.
5. The Minimum Wages Act, 1948.
6. The Payment of Bonus act, 1965
7. The Factories Act, 1948

Further the state has enacted labour laws, since labour is in the concurrent list and also introduced measures for social security of the workers in the Employees State Insurance Act, 1948, Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 and The Payment of Gratuity Act, 1972, through State amendments.

THE OBJECTIVES OF LABOUR LAWS: The objectives are to ensure good working and living conditions for workers and to maintain industrial peace and cordial relations between employers and workers.

PRINCIPLES OF LABOUR LEGISLATION: The fundamental principles on which legislation is based are as follows:

1. SOCIAL JUSTICE: Our constitution enshrines the concept of social justice as the basic object of state Policy and action. The tune of social justice is most vibrant in industrial jurisprudence. In industry social justice implies an equitable distribution of the benefits of industry among employers and employees. It also means protection of the health safety and welfare of workers. The Workmen's Compensation Act, 1923, the Minimum Wages Act, 1948, The Factories Act, 1948 are attempts at securing social justice to labour.

2. SOCIAL EQUITY: Social justice provides definite standards to be adopted in labour legislation. But as the conditions change there arises need to change the standards and the law. The Government has acquired the power of changing the law. It can make rules regarding certain specified matters to enforce the law. The Government may modify or amend the law to suit the changing circumstances. Such legislation is based on the principle of social equity.

3. NATIONAL ECONOMY: The general economic situation of the country is another principle on which labour legislation is based. The purpose of the law may be defeated if this is not considered while enacting labour legislation. For example the quantum of minimum wages, the level of compensation, the standard of safety, etc are all influenced by the state of the national economy.

4. INTERNATIONAL UNIFORMITY: The International Labour Organisation (I.L.O.) has done commendable work to develop uniform standards of labour legislation among the member countries. It has formulated several conventions and recommendations for the welfare of labour. Member countries that ratify these conventions are required to implement them through appropriate

legislation. The I.L.O. Conventions have served as the guide to most of the labour law of India.

CONSTITUTIONAL FRAMEWORK OF LABOUR LEGISLATION:

Indian Constitution serves as the most important basis for labour laws in our country. Labour Legislation in India is designed to fulfill the pledge and ideology enshrined in the Indian Constitution. The Fundamental Rights and the Directive Principles of state Policy enshrined in our Constitution provides guidelines for labour legislation in the country.

FUNDAMENTAL RIGHTS: The Constitution of India has guaranteed some fundamental rights to all the citizens of the country. Some of these are:

- (i)The State shall not deny to any person equality before the law or the equal protection of laws.
- (ii)There shall be equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State.
- (iii)All citizens will have the right to form association or unions
- (iv) People will have freedom of speech and freedom of assembly.
- (v)All citizens have the freedom to practice any profession
- (vi) No discrimination will be made on grounds of religion, race, caste, sex or place of birth.
- (vii)All citizens enjoy protection of life and personal liberty.
- (viii)People have the right to be protected against exploitation.
- (ix)Article 24 of the Constitution specifically provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Individuals can enforce the Fundamental Rights in Courts. Any law which contravenes a fundamental right can be declared by the appropriate court to be void. Labour is the concurrent list on which both the Centre as well as the States gave the power to make laws. In case of any repugnancy between the

Union and the State legislation naturally the legislation of the Union shall prevail.

DIRECTIVE PRINCIPLES OF STATE POLICY: The Directive Principles of State Policy as enshrined in the Constitution lay down the guiding principles which the State ought to follow in framing and enforcing various laws. However they are not enforceable by any court and provide no legal rights to individuals. Nevertheless, these are a good guide to the State in the governance of the country. They are the sheet anchor of the labour legislation and constitute the substratum of the industrial jurisprudence.

The Directive Principles which are relevant to labour legislation are given hereunder:

1. Art. 38 lays down that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which there is economic, social and political justice for all.

2. Art. 39 lays down the basic philosophy of the ideal of democratic socialism which is enshrined in the Preamble of Indian constitution and which is the motivating force behind the 'Directive Principles'. It states that the State shall direct its policy towards securing-

- (a) That the citizens men and women equally, have the right to an adequate means of livelihood
- (b) That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good.
- (c) That the operation of the economic system does not result in the concentration of the wealth and means of production to the common detriment.
- (d) That there is equal pay for equal work for both men and women.
- (e) that the health and strength of workers, men and women and the tender age of children are not abused and that citizen are not forced by economic necessity to enter into vocations unsuited to their age or strength;

(f) That childhood and youth are protected against exploitation and against moral and material abandonment

3. Art.39-A provides that the State shall secure that the operation of the legal system promote justice, on a basis of equal opportunity and shall in particular provide for legal aid, by suitable legislation or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reasons of economic or other disabilities.

4. Art.41 lays down that the State shall make effective provision for securing the right to work, to education, and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want.

5. Art.42 lays down that the State shall make provision for securing just and humane conditions of work and for maternity relief.

6. Art.43 provides that the State shall endeavor to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise work a living wage conditions of work ensuring decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular, the state shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas.

7. Art.43-A lays down that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engage in any industry.

8. Art.46 mentions that the State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the scheduled castes and the scheduled tribes and shall protect them from social injustice and all forms of exploitation.

9. Art.47 describes that the State shall raise level of nutrition and the standards of living and to improve public health and shall endeavor to bring about

prohibition of the consumption (except for medicinal purposes) of intoxicating drinks and of drugs which are injurious to health.

CLASSIFICATION OF LABOUR LEGISLATION

Acts Regulating conditions of Work	Acts Regulating Terms and Conditions of Employment	Acts providing Social Security Benefits	Acts providing Medical facilities/Compensation for Accidents	Acts Regulating payment of wages/subsistence Allowance
1. Factories Act 2. Shops & Establishments Act 3. Contract Labour Regulation & Abolition Act	1. Standing Orders Act 2. Industrial Disputes Act 3. National & Festival Holidays Act 4. Conferment of permanent status to workmen Act	1. Payment of Bonus Act 2. Payment of Gratuity Act 3. Employees Provident Fund Act	1. Workmen's Compensation Act 2. E.S.I. Act	1. Payment of Wages Act 2. Subsistence Allowance Act

LESSON – II

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

INTRODUCTION: The genesis of the Industrial Employment (Standing Orders) Act, 1946 goes to the year 1944, when the question of framing Standing Orders were considered by the Sixth Indian Labour Conference. The main reason for the passage of The Industrial Employment (Standing Orders) Act on 23rd April, 1946, was the feeling that “experience has shown that ‘Standing Orders’ defining the conditions of recruitment, discharge, disciplinary action, holidays, leave etc., goes a long way towards minimizing friction between the

management and the workers in industrial undertaking'. This Act came into force from 1st April, 1947.

PROVISIONS OF LAW:

The Preamble of the Act clearly says that the "Standing Orders shall deal with the conditions of employment of workers in industrial establishment. It is obligatory upon all employers covered by this Act to define precisely the conditions of employment under them which will govern relations between the employer and the employees and to make the said conditions known to the workmen employed by them"

This is a Central Act and as such extends to the whole of India. It applies to (1) every industrial establishment wherein 100 or more workmen are employed or (b) wherein 100 or more persons were employed on any day of the preceding 12 months and (c) the establishment of a contractor who employs workmen in order to fulfill a contract with the owner of an industrial establishment.

The main features of the Act are:-

- (a) Defining conditions of employment in industrial establishments and to make these known to the workmen concerned.
- (b) Regulating standards of conduct of employers and employees to improve workplace relations.
- (c) Maintenance of proper discipline and detailing the principles and procedure.
- (d) Provisions of grievance redressal arising out of unfair treatment or wrongful exaction.
- (e) Provision for sanctity to standing orders and
- (f) Clarifying misconduct.

The Act has 15 sections in all and a schedule.

Section 1 deals with the title and applicability of the Act. Section 2 defines various terms connected with industrial establishments, such as employer,

workman, Certifying Officers, Appellate Authority, Appropriate Government Standing Orders etc. Section 3 casts upon the employer a duty of drafting within 6 months from the date on which the Act becomes applicable to an industrial establishment, the Standing Orders and submitting them to the Certifying Officer. Section 4 says that Standing Orders become certifiable if every matter is included (as given in the Schedule) and is found by the Certifying Officer to be in conformity with the provisions of the Act. Section 5 prescribes the procedure to be followed by the Certifying Officer before certification and the procedure is intended to provide an opportunity to both the employer and workmen, to be heard before the final order is passed. Section 6 provides for an appeal against the decision of the certifying officer. Section 7 lays down the date from which the Standing Order shall come into operation and from that date they are binding upon the employer and the employees. Section 8 provides for the maintenance of a Register of all Standing Orders which are finally certified by the Certifying Officer under the Act. Section 9 provides for their passing in English and in a language understood by the majority of the workers on a notice board. Section 10 deals with the duration and for the modification of the Certifying Orders at the instance of either party after they have been in force for 6 months, or upon an agreement between the employer and the employee. Section 10 A deals with the payment of subsistence allowance to the suspended employee pending investigation or inquiry into complaints or charges of misconduct against him at rates specified in the said section. Section 11 gives the Certifying Officer and the appellate authorities the powers of a Civil Court. Section 12 specifies that no oral evidence shall be admitted in any Court which has the effect of varying or contradicting the standing orders finally certified. Section 12A states about the application of the Model Standing Orders, pending certification of the Standing Orders. Section 13 provides for penalties and procedures to enforce them. Section 14 provides

that the employer may specify therein, the acts and omissions which will constitute misconduct and which entails the employer to take disciplinary action against an employee. Section 15 confers upon the appropriate government the power to make rules to carry out the purposes of the Act.

The Schedule to the Act contains 11 items regarding matters to be provided in the Standing Orders. Clause 1 to 10 specifies several topics in respect of which the Standing Orders have to make provisions (Refer to Annexure I to this lesson). Clause 11 authorises the government to make addition of any matter it thinks necessary to do so.

Annexure I

THE SCHEDULE

[See Sections 2(g) and 3(2)]

Matters to be provided in standing Orders under the Act

1. Classification of Workment, e.g., whether permanent, temporary, apprentices, probationers, or badlies.
2. Manner of intimating to workmen periods and hours of work, holidays, paydays and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of procedure in applying for, and the authority, which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising there from.
8. Termination of employment, and the notice thereof to be given by employer and workmen.

9. Suspension or dismissal for misconduct, and acts or omissions, which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

LESSON – III

THE TRADE UNIONS ACT, 1926

INTRODUCTION: In Independent India, we are naturally attaching considerable importance to the growth of industry. One of the objectives of our Five Year Plans is rapid and balanced industrialization, particularly in the sector of basic or key industries. Since 1956, the government has also entered the industrial field in a big way with the development of the public sector. We are witnessing, during the last few decades, a sort of an industrial revolution with the development of big medium and small industrial units both in the public and private sectors.

The modern industrialization process creates the labour problems in such forms as employment of women and children even for heavy manual work, long hours of work, low wages, lack of elementary facilities, bad working conditions heavy work load and inhuman treatment of workers by their superiors. Individually, the workers find it difficult to stop such exploitation by the management; so they organize themselves into trade unions and fight the employers directly in the industrial field. Through their collective action, workers ask for more wages, fewer hours of work, reasonable amenities and human treatment. Thus trade union is born.

Even though a Trade Union is thus an economic organisation, asking for more wages and less hours of work, it may also serve as a moral institution, or a

militant, revolutionary body, a welfare agency or an agent for social change. A trade union can perform a variety of roles.

Our trade unions still have serious set backs, such as low membership, unsound finances lack of welfare measures, pre-occupation with strikes and litigation, dominance of outsiders and political interference. If our trade union movement is to be developed on sound lines, these defects have to be removed. Hence the need arises to study of the past and present of the Indian trade union movement. Lastly, an intensive and elaborate study of trade union is made and further there is a discussion on the remedial measures to be taken for the proper development of a strong, healthy and constructive trade union movement in India.

BIRTH OF THE TRADE UNION LEGISLATION: The need for a trade union law in India was felt because of a legal decision of the Madras High Court in the case of Madras Labour Union led by B.P.Wadia and the Buckingham & Carnatic Mills. The company filed a complaint against the union, charging that the organisation incited the workers. In the absence of trade union law, this legitimate activity became conspiracy under the common law and the High Court granted injunction, restraining the union from interfering with the business of the Mills, Union leaders were sentenced and the union was broken. The necessity of a law was felt to give freedom of association to workers and provide for their right to voice their grievances and to agitate for their redress through organized action. With this purpose in view a Bill was introduced in 1921 in the Indian legislature, which in due course became the Trade Unions Act of 1926.

OBJECT AND SCOPE OF ACT: Article 19(1) (a) and (c) of our Constitution guarantees to every citizen freedom of speech and expression and right to form association to ventilate their views and grievances. Any group of persons whether workers or employers can unite themselves to protect their interest, economic or otherwise.

SCHEME OF THE ACT: The procedure for registration enumerated in the following paragraphs are carved out from the provisions of The Trade Unions Act and the Central Trade Union Regulations 1938, which are in relation to a Trade Union, whose objects, are not confined to one State.

Section 2(h) of The Trade Union act, 1926 defines ‘Trade Union’ thus “Trade Union” means any combination, whether temporary or permanent, formed primarily for the purposes of:

- (a) regulating the relations (i) between workmen and employer, or (ii) between workmen and workmen or (iii) between employers and employers; or
- (b) for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

Provided that this Act shall not affect:

- (a) any agreement between partners as their own business:
- (b) any agreement between employer and those employed by him as to such employment; or
- (c) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

As is evident from the preamble itself that the Act enacted to provide for registration of Trade Unions, the Act lays down in a comprehensive manner the procedure for registering a Trade Union. However, it should be noted that registration of Trade Union is not mandatory under the Act. In view of a number of immunities granted to a registered trade union from civil and criminal proceedings, registration of trade union is desired.

Any seven or more members of a Trade Union may apply for registration by subscribing their names to the rules of a Trade Union and complying with other requirements in relation to registration under the Act. The application for registration referred to above shall be made in Form A.(Regulation 3 of Central Trade Union Regulations, 1938)

Every application for registration shall be made to the registrar along with the fee as prescribed under the regulations and it shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars:

- (i) the names, addresses and occupations of members making the application;
- (ii) the name of the Trade Union and the address of its Head Office; and
- (iii) the titles, names, ages, addresses and occupations of the officers of the Trade Union (if the Trade Union has been in existence for more than one year before the making of an application, there shall be delivered to the Registrar, together along with the application, a general statement of the assets and liabilities of the Trade Union).

Before granting registration, the Registrar is empowered to call for further information, if he is not satisfied with the particulars he may refuse to register the Trade Union and if such information required by him is not supplied to him. The Registrar may refuse to register the Trade Union if the name resembles with the name of an existing Trade Union. After being satisfied the Registrar shall register the Trade Union by entering in a register to be maintained in Form B the particulars relating to the Trade Union after being satisfied that the Trade Union has complied with all the requirements in regard to registration. The Registrar on registering a Trade Union shall issue a Certificate of registration in Form "C" which shall be conclusive evidence that the Trade Union has been duly registered under the Act.

According to Sec.10 of the Act, the Registrar may withdraw or cancel the Certificate of Registration on the following grounds:

- (a) Certificate has been obtained by fraud or mistake
- (b) Trade Union has ceased to exist
- (c) Trade Union has willfully and after notice from the registrar contravened any provisions of the Act

(d) Trade Union has allowed any rule to continue in force which is inconsistent with any provisions of the Act

(e) Trade Union has rescinded any rule providing for any matters, provision for which is required by Sec.6

(f) Trade Union has on its own applied for its withdrawal.

Further the Registrar shall before withdrawing or canceling the registration shall give two months notice and it is not necessary if the Trade Union has itself made an application for the same.

Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed from the date on which the registrar passed the order appeal

(a) where the head office of the Trade Union is situated within the limits of a Presidency town to the High Court; or

(b) where the head office is situated in any other area, to such Court not inferior to the Court of an Additional or assistant Judge or a principal Civil Court of original jurisdiction, as the appropriate Government may appoint in this behalf for that area.

The appellate court may dismiss the appeal, **or** pass an order directing the Registrar to register the union and to issue a certificate of registration under the provisions of the Act **or** set aside the order of withdrawal or cancellation of the certificate, as the case may be and the Registrar shall comply with such order

Every registered Trade Union shall be a body corporate by the name under which it is registered and shall have perpetual succession and a common seal with power to acquire and hold both moveable and immovable property and to contract and shall by the said name sue and be sued.

The following Acts shall not apply for the registration of Trade Union

(a) The Societies Registration Act

(b)The Co-operatives Societies Act

(c)The Companies Act

The Act provides for two types of funds viz.

(i)General Funds and

(ii)Funds for political purposes

General Fund may be utilized for payment of salaries, allowances and expenses of office bearers of the Trade Union, administrative expenses, the prosecution or defence of legal proceedings etc.

The Political fund shall be constituted from separate contributions made towards that fund by the members. Such fund shall be used in furtherance of any of the objects specified below for the promotion of Civil and Political interests of its members like payment for any expenses incurred either directly or indirectly by a candidate or prospective candidate for election, holding of any meeting or the distribution of literature, the maintenance of any person who is an M.L.A., M.L.C etc.

No member can be compelled to contribute to this fund and for non contribution of money towards political fund, a member cannot be excluded from the benefits of Trade Union

The Trade Unions Act protects the members of the registered Trade Union and the office bearers from certain criminal and civil acts provided such acts are necessary in carrying out the lawful objectives of the Trade Union. They are namely

(1) Immunity from prosecution under Sec.120B I.P.C.

(2)Immunity from civil suits for breach of contract, interference with the trade business or employment of some other person or

(3)interference with the right of some other person to dispose of his capital or his labour as he wills

Further Sec.18 (2) provides that a registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of or contrary to express instruction given the executive of the Trade Union.

Disqualification for being office bearers: the following persons cannot be appointed as office bearer or member of the executive

- (a) a person who had not attained the age of eighteen years;
- (b) a person who has been convicted by a Court in India of any offences involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release

Composition of office bearers: At least half of the office bearers of registered Trade Union should be persons actually engaged or employed in an industry with which Trade Union is connected

Membership rights: Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary.

Change in the name and structure: Under Sec.23 a registered Trade Union may with the consent of not less than two-thirds of the total members of its members change its name.

Amalgamation of Trade Unions: Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of funds of such Trade Unions or either or any of them. For this the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recovered and that at least 60 per cent of the votes recorded are in favour of the proposal.

Dissolution of a Trade Union: A notice signed by members and secretary of the Union shall be given to the Registrar within 14 days of its dissolution and if it is

in accordance with the rules the Registrar shall dissolve the trade union and it shall have effect from the date of such registration.

VICIOUS CIRLE OF TRADE UNIONISM:

1. Outside leadership: The outside leadership has provided an improper leadership with or care for their personal growth or that of the political party to which they belong. An outside leadership leading many trade unions with very little or no knowledge of the industry which he leads, may neither have time nor knowledge to discuss problem faced by the workers of that industry.

2. Political Unionism: Most of the unions in our country are run by different political parties and their respective political ideologies are given more importance than the real cause of the workers.

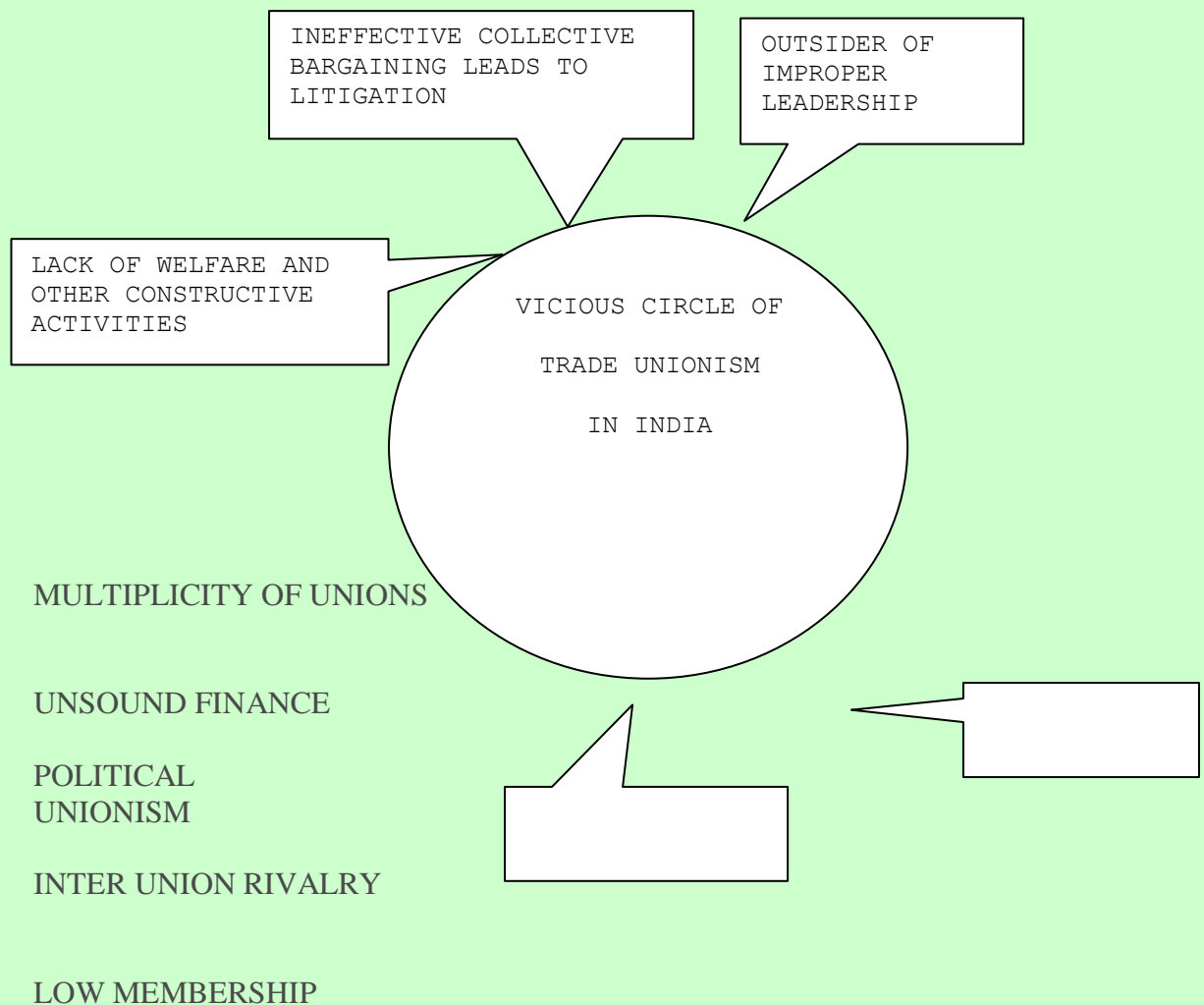
3. Multiplicity of Unions: Whatever good the British had our political bosses and industrialists did not learn. But the bad legacy of divide and rule left behind by them is followed by this people, both in letter and spirit. As a result of this, more than one union in an industry is encouraged. This multiplicity of unions results in pocketing of one or more unions by the management, and ignoring the real needs of the workers. The intra-union rivalry helps the management and the Government a great deal. Added to this, each union has different groups within itself and this intra union rivalry also culminates the rival group of workers being punished by the management with the support of the other the rival group.

4. Low membership: Hardly 30% of the workers in any industry become members of trade unions. The other 70% remains away from the trade unions with the feeling that the 30% fights and gets whatever they genuinely deserve and by this success they will also be benefited. In case of any punishment for union activities this 70% is safe. In other words, they play a role of only “take” and not “give”. The 30% will also be members of different trade unions in the same industry and even this microscopic minority of membership in each union

will have several groups. Even out of these 30% of the members, most of them do not pay regular subscription.

5. Unsound Finance: Man is, by nature, self-centered and wants to share the benefits and never the loss. This happens in the trade union field also. With the low membership as also the non-payment of subscriptions regularly, the finance of the unions is also so low tat they cannot even give regular programmes of gate meeting, dharna, wearing of black badges etc., and leave along contributing to the retrenched or victimized worker.

DIAGRAM OF THE VICIOUS CIRCLE OF TRADE UNIONS IN INDIA



The average trade unionist pay Rs.3/- per year in India, L 2 per year in the in the United Kingdom and \$36 per year in U.S.A., the proportion being 1:9:58 the percentage of wages paid as trade union fees in these three countries are 0.3, 3 and 1 to 2.

Due to unsound finances, the leadership indulges in making money for his subsistence by unfair practices such as furnishing false information about the industry or asking for donations as and when some demands are taken up. Some of the leaders even collect large funds from the employers, thus making the workers hood-winked.

6. Lack of welfare and other activities: Lack of welfare and constructive activities in an industry is mainly due to poor finances of the trade unions and as also due to lack of proper training of the union leaders and cadres. This also occurs due to outside leadership who has very little time or no time at all to concentrate on such good activities.

7. Ineffective Collective Bargaining: To persuade a determined, employer to yield to reason is an art requiring exceptional abilities, which most of the unions lack. They have neither the patience nor the ability to convince the employer. This constitutes as the main cause for lack of effective collective bargaining. Added to all these, the low membership and unsound finances of the union does not permit the leader to outright refusal of the offers of the employer as he knows this will not stand for a longer duration, if he has to call for any methods of agitation. Thus it will be seen that this is a vicious circle and to come out of this is very difficult with the present set of laws and the manner of functioning of the trade unions in India.

8. Ineffective trade bargaining leads to litigation: Ineffective trade bargaining is an important step in solving trade disputes and it lies in skill and effective leadership and if these qualities are lacking it may lead to litigation.

Suggestions for improvement of Trade Union Movement:

- (1) It is better to have leaders from among the workers who can understand the management and to work better and act according to the situation.
- (2) The politicians and the political parties should not be allowed to enter the trade union field and thus encourage internal leadership.
- (3) One industry one union concept should be encouraged. Such unions should be non political and should be aloof from external leadership.
- (4) In some foreign countries, the moment a worker enters the industry he is automatically made a member of the trade union in that industry. The recovery of the membership fee of the trade union is recovered through the salary bill and remitted to the union. This will make every worker to involve actively in trade union instead of present 30% only.
- (5) The unions should extend its members, financial and other such welfare activities in the need of the hour.
- (6) The leaders and the executives in general should be given sufficient training in knowing the various labour laws and other benefits that are due to the workers and educate them about the rights and responsibilities of the workers. Such training of workers, in turn, should educate the rank and file.
- (7) The participation of workers in management should be in the real sense and not just for consultation.
- (8) Only union with central trade union organisation should be allowed to function, even if required, by bringing legislation.
- (9) It would be desirable if the law provides for a ceiling of the total number of unions of which an 'outsider' can be a member of executive bodies.
- (10) A specific provision may be made to enable workers in the unorganized sector to form trade unions and get them registered even where an employer-employee relationship does not exist or is difficult to establish; and the proviso stipulating 10% of membership shall not apply in their case.

The worker should be made to realize that the growth or fall of the nation is linked with the growth and fall of the worker and he must realize that he is also a part of the society.

TRADE UNIONS AND THEIR POSITION: In India, trade unions may be on the decline in old industries, and difficult to organize in new high- tech industries. But the vast untapped informal sector that accounts for 90 % of the main workers as per the 1991 census holds much promise for the resurgence of the trade union movement, should it take up more seriously the organizing of the labour force in the informal sector.

The World Employment Report (I.L.O. 1992) has tried its best to summarise the trade union situation in the country in the early 1990's "Indian Unions are very fragmented. In many work places several trade unions compete for the loyalty of the same body of workers and their rivalry is usually bitter and sometimes violent. It is difficult even to say how many trade unions operate at the national level since many are not affiliated to any all India federation. The early splits in India Trade Unionism tended to be on ideological grounds – each linked to a particular political party. Much of the recent fragmentation however, has centered on personalities and occasionally on caste or regional considerations".

TYPES OF UNIONS:

Trade Unions may be of different types depending on their size, where they function and their membership. The earliest unions were generally craft unions with members from just one craft or trade, such as weavers or engine drivers. A modern equivalent is the pilot's association.

As industry became more complex and the differentiation within the workforce grew, the craft union began to federate or join with other craft unions to form larger pressure groups in order to gain more power and thus general and industrial unions were born, which are the commonest form today in large industry.

The location of the union may determine the level of its operation or functioning. For instance plant or enterprise-level unions which operate at the factory level, industry-level unions which operate at the industry level comprising several or many factories or enterprises. In addition federations exist where two or more plant level unions operating at company level or at industry level. There are also central union in bodies or apex organisations which function as the mouth piece of the labour movement, in general. In U.S.A., the AFL-CIO and in the U.K, the Trade Union Congress (TUC) serves this purpose. In India there are also central unions or forums, which are not registered under the Trade Unions Act, but which act as the apex bodies of politically oriented unions. Thus all types of unions owing allegiance to one political party are affiliated to the central forum of that party and are easily identifiable in India and in other countries like Germany or France, where political links are close.

According to Punekar, the most basic function of trade unions is to build up its own organisation and to give weight to its collective actions. Once this is accomplished, its other functions follow: Economic, or attainment of the financial interests of workers, as well as political, legal, welfare functions. The social functions are not what are usually meant by social purpose. Social purpose may be the object of changing society. But there is a paradox in it. The social purpose of yesterday, once accomplished, becomes the social function of today.

The National Commission on Labour (1968) provides a very simple definition of the functions of unions. 'In our opinion, the primary function of a union is to promote and protect the interests of its members ... and education of its members in all aspects of their working life, including improvement of their civic environment'.

RECOGNITION OF TRADE UNIONS:

Recognition is the process through which management acknowledges and accepts a trade union as representative of some or all of the workers in an establishment or industry and with which it is willing to conduct discussions on all issues concerning those workers.

In some countries several unions may be recognized in a particular undertaking as in France and India. In Canada and the U.S.A. only one union can be the sole bargaining agent in an undertaking or for a certain category of employees.

The national Commission on Labour also attached considerable importance to the matter of recognition of unions. It noted that the need for a provision for union recognition has been realized as is evident from the... BIR Act and certain other State Acts (Madhya Pradesh and Rajasthan), the amendments incorporated (but not enforced) in the Trade Unions Act and the Code of Discipline.

The Important Central Labour Organisations in India:

The major labour organisations are:

- 1.A.I.T.U.C.
- 2.I.N.T.U.C.
- 3.H.M.S.
- 3.C.I.T.U.

1)The All India Trade Union Congress: The AITUC has a distinction of being the first national trade union organisation in India.

The need to bring the workers under one group to fight against the tyranny and suppression of the employers was felt for a long time. But nobody came forward to do this job. Finally, all the trade unions were amalgamated to come under one central trade union organisation and the Indian National Congress was the prime mover towards this. This led to the formation of All India Trade Union Congress on October 31, 1920. Till the Second World War all Indian Leaders, including those of Congress and Communists were encouraging the cause of AITUC. The AITUC was totally captured by the communists since most of the National leaders were arrested during the independence struggle. Thus AITUC

became the labour wing of the Communist Party of India. As on 31.12.1980, AITUC had 1,080 unions with a membership of 3, 44,746 as per the figures given by the then central government after verification.

2)Indian National Trade Union Congress: After independence, the congress party formed the Government at the centre and states. The congress party felt the dominance of communists over the entire labour force in the country and wanted to have its pocket of influence also.

The Hindustan Mazdoor Sevak Sangh which had many congress people in its fold was asked to organize a Central Trade Union Organisation for the party. Today, it is the largest trade union organisation in the country with a membership of 22, 36,128 comprising of 10,444 unions as on 31.12.1980. Later with the split in the Congress Party and the socialist forming a separate political party the Hindu Mazdoor Sabha was formed next.

3)Hindu Mazdoor Sabha:With the splitting of congress party and formation of socialist party the need for a separate trade union organisation of the socialist was also felt. The unions having sympathy towards the socialist leaders came out INTUC and found the Hindu Mazdoor Sabha in December 1947. As on 31.12.1980, it has 409 unions under which it with a membership of 7, 35,027.

4)Centre of Indian Trade Union: With the split of the Communist Party of India due to their respective affiliation towards communism of Russia and China, the Communist Party of India (Marxist) came into being. This political party also felt to have its own central trade union organisation and with their sympathizer unions coming out of AIUTC formed the CITU in May 1970. It has 1474 unions under its fold with the membership of 1, 31,031 as on 31.12.1980.

LESSON – IV

INDUSTRIAL DISPUTES ACT

After having gone through two of the industrial legislations like The Trade Unions Act and The Industrial Employment (Standing Orders) Act in the previous two lessons now let us examine the last of the triumvirate legislation namely The Industrial Disputes Act.

During the Wars Rule 81-A of the Defence of India Rules (DIR) was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication, by making the awards legally binding on the parties and by prohibiting strikes or lock outs during the pendency of conciliation or adjudication proceedings and for two months thereafter. The said rule also put a blanket ban on strikes which did not arise out of genuine trade disputes. With the termination of World War II, Rule 81-A was to lapse on 1st October, 1946 but it was also kept alive by issuing an ordinance in the exercise of the government's emergency powers. This was followed by the Industrial Disputes Act.

This Act makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees. The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes.

OBJECTIVES: The primary objective of the Industrial Disputes Act was **making provision for investigation and settlement of industrial disputes and for certain other purposes.** Apart from the primary objective the other main objectives are:-

- (a) to provide an internal machinery for resolving conflicts.
- (b) to provide a permanent conciliation machinery for speedy dispute settlement.
- (c) to provide compulsory arbitration or adjudication in public utility services.
- (d) to reduce delays in dispute settlement.
- (e) to put restrictions on strikes and lockouts in public utility services prevent them during pendency of conciliation or arbitration proceedings and to provide for sufficient notice to the other party.
- (f) to clarify duties of employers in case of changes in service conditions or requirements.
- (g) to clarify status of collective agreements and their bindings.
- (h) to identify unfair labour practices.
- (i) to provide for compensation in case of lay-off and retrenchment and
- (j) to restrict closure of establishments .

IMPORTANT DEFINITIONS: According to Sec.2 (j) of The Industrial Disputes Act “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen.

In **Bangalore Water Supply and Sewerage Board Vs. A.Rajappa 1978 I.L.L.J.349** the Supreme Court gave a wide implication to the meaning of ‘industry’. It laid down a triple test to decide the applicability of the I.D. Act to them. The triple test is (1)Systematic Activity (2)Cooperation between employer and employees (3)Production and / or Distribution of goods and services calculated to satisfy human wants and wishes.

Sec.2 (k) of The Industrial Disputes Act defines “Industrial Dispute” as any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the

employment or non-employment or the terms of the employment or with the conditions of labour of any person.

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

Sec.2 (l) states that “Lock Out” means the temporary closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him.

Sec.2(kkk) defines “Lay Off” as the failure, refusal or inability of an employer to give employment due to following reasons, to a workman whose name appears on the muster rolls of his industrial establishment and who has not been retrenched shortage of coal, power or raw materials, or accumulation of stocks, or break-down of machinery, or natural calamity, or for any other connected reasons

Table

Percentage Distribution of Disputes from 1991 (New Classification)

Causes	1991	1992	1993	1994	1995	1996	1997
Wages and Allowances	24.5	23.0	26.8	30.0	32.4	24.4	23.4
Personnel	15.2	15.8	18.8	16.4	18.1	18.3	20.0
Retrenchment	2.2	1.7	1.5	1.6	1.3	0.9	0.5
Lay-off	0.2	0.3	0.1	0.3	0.4	0.3	0.5
Leave and hours of work	1.3	1.7	1.7	1.5	1.9	1.8	2.4
Bonus	3.9	8.0	7.0	7.8	3.9	8.2	8.6
Indiscipline	18.1	21.2	18.7	15.4	15.4	17.2	18.9
Violence	0.8	1.0	1.4	1.7	1.1	1.0	1.0
Inter-union rivalry	0.3	0.8	1.4	0.8	0.8	1.0	0.9
Gherao	0.1	0.1	0.1	0.1	0.1	0	0
Non-implementation of awards/agreements/law	0.6	0.6	2.2	3.1	3.7	4.2	3.3
Charter of demands	7.1	4.6	2.4	4.7	6.3	6.1	5.2
Workload/worknorms	0.3	0.9	0.7	0.8	1.5	0.5	0.7

Shortage of work/surplus labour	0.1	0.1	0.1	0.1	---	0.1	0.1
Demands for amenities	1.7	1.8	1.0	1.4	2.8	1.8	2.6
Change of manufacturing process	0.2	0.1	0.1	0.1	---	0.1	0
Violation of SO's/ rules	6.5	3.9	4.0	4.2	5.1	2.8	2.6
Others	16.9	14.4	12.0	10.0	5.2	11.3	9.3

Source: Indian Labour Statistics, and Pocket Book of Labour Statistics, Various Issues, Ministry of Labour, Government of India.

The Act provides the following authorities for investigation and settlement of industrial disputes

(I)Works Committee: Section 3 of the Act provides that the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee in industrial establishments, where 100 or more workmen are employed or have been employed on any working day in the preceding 12 months. The Works Committee will be comprised of the representatives of employers and workmen engaged in the establishment.

It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and the employee and to that end, to comment upon matters of their common interest or concern and endeavor to compose any material difference of opinion in respect of such matters.

(II)Conciliation: Conciliation is a process by which the services of a neutral third party, the government conciliation officer or board are used in a dispute as a means of helping the disputing parties reduce the extent of differences arrive at a mutually acceptable solution. It is equated with mediation. A unique and essential characteristic of conciliation is its flexibility of conciliation must allow the observance of different procedures in different circumstances. The conciliator cannot substitute his judgment for that of the disputants. He may

only make suggestions. His task is to reduce the gap in perceptions among the two parties and point out the framework of the law. He cannot act as a judge.

A Conciliation Officer may be appointed under the Act by the appropriate government for specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

The main object of appointing the Conciliation Officer, by the appropriate Government, is to create congenial atmosphere with the establishment where workers and employers can reconcile on their disputes through the mediation of the Conciliation Officers. Thus they help in promoting the settlement of the disputes.

Conciliation has not been a resounding success in solving IR disputes. The percentage of disputes referred to conciliation reaching some solution has never exceeded 50 percent and is generally less.

(III) Boards of Conciliation: For promoting the settlement of an industrial dispute, the appropriate Government may, as occasion arises, constitute by a notification in the Official Gazette, a Board of Conciliation. A Board shall consist of a Chairman and two or four other members as the appropriate Government thinks fit.

It shall be the duty of the Board to endeavor to bring about a settlement of the dispute and for such purpose it shall without delay, investigate into the dispute and all matters affecting the merit and the right settlement. The Board may also do all such things which may be considered fit by it, including the parties to come for a fair and free settlement and send a report to the appropriate Government together with a memorandum of settlement signed by all parties to the dispute. In case no settlement is arrived at, the Board shall forward a report to the appropriate Government enlisting therein the steps taken by the Board for ascertaining the facts and circumstances related to the dispute and for bringing

about a settlement thereof. The Board will also enlist the reasons on account of which in its opinion a settlement could not be arrived at and its recommendations for determining the disputes.

(IV) Court of Inquiry: The appropriate Government may as occasion arises, by notification in the Official Gazette constitute a Court of Inquiry into any matter appearing to be connected with or relevant to an industrial dispute. A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as Chairman. It is the duty of such a Court to inquire into the matters referred to it and submit its report to the appropriate Government ordinarily within such period of six months from the commencement of the inquiry. The period within which the report is to be submitted is not mandatory and the report may be submitted even beyond the period of six months without affecting the legality of the inquiry.

(V) Labour Courts: The appropriate Government is empowered to constitute one or more Labour Courts for adjudication of industrial disputes relating to any matter specified in the second Schedule and for performing such other functions as may be assigned to them under the Act.

When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the Labour Court to (1) hold its proceedings expeditiously and (ii) submit its award to the appropriate Government soon after the conclusion of the proceedings. No time period has been laid down for the completion of proceedings but it is expected that such Courts will hold their proceedings without going into the technicalities of a Civil Court.

(VI) Tribunals: The appropriate Government may by notification in the Official Gazette constitute one or more industrial tribunals for the adjudication of industrial disputes relating to any matter whether specified in the Second

Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

A Tribunal shall consist of one person only to be appointed by the appropriate Government and if the appropriate government thinks fit appoint two persons as assessors to advise the Tribunal in the proceedings before it.

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

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

A National Tribunal shall consist of one person only to be appointed by the Central Government. When a matter has been referred to a National Tribunal, it must adjudicate the dispute expeditiously and submit its award to the Central Government.

(VIII) Arbitration: The first arbitration board, comprising Gandhi, Vallabhai Patel, Shankerlal Banker, representing workers and three mill owners led by Ambalal Sarabhai, representing employers and the Collector as umpire was constituted in Ahmedabad, in the early twenties. Although the board failed to arrive at a settlement, which was ultimately given by the umpire of another board (Madan Mohan Malaviya), it gave an impetus to the concept of voluntary arbitration.

Arbitration is a quasi judicial process where the arbitrator sits in judgment on the proceeding and after coming to a decision makes it known to the parties.

The parties make their presentation to the arbitrator and not to each other. It is not like conciliation a persuasive proceeding. In making the award, which is legally binding on both the parties and all others involved in the organisation, the arbitrator of course has to keep in mind the acceptability of the decision to parties. But the award once made can be imposed. Arbitration may be voluntary or compulsory. In the former the parties may approach a mutually acceptable person and after formalising it under the ID Act, get an award. If the parties fail to agree on a common person or if conciliation itself fails, the case may be referred by the concerned government for **compulsory arbitration or adjudication** in a labour court or industrial tribunal.

When Mr.V.V.Giri, a union leader, with long experience in the railway industry succeeded Mr.Jagajivan Ram as Minister of Labour in 1952, he became an articulate spokesman for the view that voluntary negotiation between the parties was generally preferable to taking a dispute before a tribunal for decisions. He held further that the availability of compulsory adjudication discouraged genuine collective bargaining. This view became known as the 'Giri's Approach' and received wide publicity and generated discussions in 1952-53

Mr.V.V.Giri framed a set o three questions to labour and management on the most vital issue of whether voluntary methods or compulsory methods should be used to settle disputes. Views were solicited on three important alternatives

1. The parties be left to settle all disputes and differences by negotiation and collective bargaining among themselves without the intervention of the State, except for voluntary conciliation or arbitration in extreme cases.
2. The State should take an active role in the settlement of disputes by making both conciliation and arbitration compulsory in the event of a failure of negotiations and by reserving to itself the power to refer disputes of adjudication, and

3. The law should put restrictions on the freedom of the parties in the earlier stages of a dispute by making notice of change of conditions and of strikes and lockouts obligatory, and by making conciliation compulsory, or by prohibiting strikes or lockouts for certain periods, though not for all time.

In spite of arguments pro and against the view of Mr.V.V.Giri one fact remains clear that more than 50 per cent disputes are being settled bilaterally or lapsing. Thus the conciliation and adjudication machinery has never taken care of the majority of disputes. Both systems therefore prevail and it is clear that both serve certain purposes.

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

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

Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

An arbitration agreement referred to in sub section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed. Further a copy of the arbitration agreement shall be forwarded to appropriate Government and the Conciliation Officer and the appropriate Government shall within one month from the date of the receipt of such copy, publish the same in

the Official Gazette . Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred above, issue a notification in such manner as may be prescribed and when any such notification is issued, the employer and workman who are not parties to the arbitration agreement but are concerned in the dispute shall be given an opportunity of presenting their case before the arbitrator or arbitrators. The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or arbitrators, as the case may be. Where an industrial dispute has been referred to arbitration and the notification has been issued, the appropriate Government may, by order, prohibit the continuance of any strike or lock out in connection with such dispute which may be in existence on the date of the reference. Nothing in the Arbitration Act of 1940 (now The Arbitration and Conciliation Act) shall apply to arbitrations under this section.

The main difference between the settlement signed under section 18 (1) and the settlement signed under section 12 (3) are as follows:

Significant of 18 (1) settlement	Significance of 12 (3) settlement
A settlement signed under section 18 (1) of the Industrial Disputes Act will be binding only on the parties to the settlement. That means, if a settlement takes place between management and one of the 3 trade unions functioning in the organisation the settlement will be binding on the management and only on the number of the union which signed the settlement. The members of the other two trade unions are not practice to the settlement and therefore been to observe the terms of the settlement.	In contract, when a settlement is signed in the course of conciliation proceedings that is under section 12 (3) of the ID Act, the settlement will binding on all workers, even if the union representing some of the workers did not sign it. The settlement will still have a binding effect on the members of all the unions. Similarly as regards the employers of the settlement will be binding on even those who may subsequently buy the company.

Strikes and Lock Outs:

Strikes and lock Outs are the two weapons in the hands of workers and employers respectively, which they can use to press their viewpoints in the process of collective bargaining. The Industrial disputes Act, 1947 does not grant an unrestricted right of strike or lockout. Under Section 10 (3) and Section 10 A (4A), the Government is empowered to issue order for prohibiting continuance of strikes or lockouts. Section 22 and 23 make further provisions restricting the commencement of strikes and lockouts.

(1)General prohibition of strikes and lock outs: No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock out:

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings

(b)during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub section (3A) of Section 10 A or

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award .

The purpose of above provisions is to ensure peaceful atmosphere during the pendency of any proceeding before a Conciliation Officer, Labour Court, Tribunal or National Tribunal or Arbitrator.

(2) Prohibiton of strikes and lock outs in public utility services:

No person employed in a public utility service shall go on strike in breach of contract

- (a) without giving to the employer notice of strike, as hereinafter provided within six weeks before striking i.e from the date of the notice to the date of strike a period of six weeks should not have elapsed; or
- (b) within 14 days of giving of such notice i.e., a period of 14 days must have lapsed from the date of notice to the date of the strike
- (c) before the expiry of the date of strike specified in any such notice as aforesaid i.e., the date specified in the notice must have expired on the day of strike; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conciliation of such proceedings.

(2) No employer carrying on any public utility service shall lock out any of his workmen

- (a) without giving them notice of lock out as hereinafter provided within six weeks before locking out; or
- (b) within 14 days of giving such notice: or
- (c) before the expiry of the date of lock out specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conciliation of such proceedings.

(3)Illegal strikes and lock outs:

(1) A strike or lock out shall be illegal if;

- (i) it is commenced or declared in contravention of Section 22 or Section 23; or
- (ii) it is continued in contravention of an order made under section 10(3) or Section 10A(4A)

(2)Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal the continuance of

such strike or lock out shall not be deemed to be illegal provided that such strike or lock out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under Section 10 (3) or Section 10A (4A).

(3)A lock out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock out shall not be deemed to be illegal

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock out.

LAYOFF COMPENSATION: Chapter V A of the Act makes it obligatory for all industrial establishments which (a) are not seasonal or do not work intermittently and (b) employ 50 or more workmen, to pay off, compensation to their workmen at the rate of 50% of the total of basic wages and dearness allowance which would have been payable to them if they had not been laid off.

The important conditions which qualify a workman for this compensation are:-

(1)The workman who is laid off must be on the muster roll of the establishment and he should not be a casual or Badli (substitute) worker

(2)The workman has completed not less than one year of continuous service under an employer, or has actually worked for 190 days if employed underground (mines) and 240 days in any other case in a period of 12 calendar months preceding the date relevant for making calculation. The days on which a worker has been laid off under agreement, or as permitted by standing orders, or the days on which he has been on leave with wages or the days on which he could not work due to employment injury or the days on which a woman worker has been on maternity leave not exceeding 12 weeks, are to be considered as the days on which a worker has really worked.

The compensation payable only for working days and not for weekly holidays which may intervene. If the lay off exceeds 45 days in any period of 12 months, no compensation is payable for the days exceeding first 45 days if there is an

agreement between the employers and workmen to that effect. In such cases it will also be lawful for the employers to retrench workmen and set lay off compensation paid to workmen against the amount payable to them for retrenchment.

The laid off workmen is not entitled to lay off compensation if:-

1. He refuses to accept alternative employment in the same establishment or in any other establishment belonging to the same employer located within five miles from the establishment to which he belongs and if his new place of employment does not involve any loss of pay or position or any other special skill;
2. If he does not present himself for work at the establishment and at the appointed time during normal working hours every day and
3. If the lay off is due to any strike or go slow on the part of the workmen in any other part of the establishment.

Explanation: If a question arises whether an establishment is of a seasonal character, or whether work performed there is intermittent the decision of the Government thereon is to be final.

In the case of establishments employing 100 or more workers on an average per working day for the preceding 12 months, no workman can be laid off by his employer except with the previous permission of the authority specified by the Government, unless such lay-off is due to the shortage of power or due to natural calamity. Such an establishment has also to pay compensation even when lay-off is due to strike or slow down on the part of workmen in another part of the establishment. For obtaining prior permission the employer has to apply to the specified authority with necessary particulars prescribed under the rules, and if he does not hear from the authority, he can presume the permission to have been granted.

RETRENCHMENT COMPENSATION: No workman who has been in continuous service of not less than one year under an employer, or has actually worked for 190 days if employed underground and 240 days in any other cases in a period of 12 calendar months preceding the date of relevant for making calculations, can be retrenched unless

He has been given one month's notice in writing indicating the reasons for retrenchment, or he has been paid one month's wages in lieu of notice.

He has been paid retrenchment compensation equivalent to 15 days average wage for every completed year of continuous service or any part thereof in excess of six months

Notice is served in a prescribed manner to the Government or such authority as notified by the Government in the Official Gazette.

In the case of factories, mining and plantation establishments employing 100 or more workmen, a workman cannot be retrenched unless (i) he is given three months notice in writing, or is paid three months wages in lieu of such notice, and prior permission of the Government is obtained for retrenchment to which the notice relates. The Government has to be communicated its decision within three months from the date of the notice is served, otherwise the permission will be presumed to be granted. If the permission is refused, the notice of retrenchment becomes null and void, and the employees concerned are considered to have remained in service with all the benefits which they are entitled.

COMPENSATION ON CLOSURE: Compensation is also payable if an undertaking is closed down, or if its ownership is transferred and the transfer involves interruption in the service of the workman, if the closure is due to unavoidable circumstances beyond the control of the employer, the total amount of compensation payable is not to exceed three months average wages. Circumstances such as financial difficulties, including financial losses, or

accumulation of undisposed stocks or the expiry of the period of the lease or license granted to the undertaking are not to be considered as unavoidable circumstances beyond the control of the employer.

LESSON V

FACTORIES ACT, 1948

OBJECT AND SCOPE OF THE ACT: The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc.

The Act extends to whole of India including Jammu and Kashmir and covers all manufacturing processes and establishments falling within the definition of 'factory' as defined under Section 2 (m) of the Act. Unless otherwise provided it is also applicable to factories belonging to Central/State Governments. (Section 116)

Important Definitions

Adult:

“Adult” means a person who has completed his eighteenth year of age (Section 2 (a))

Adolescent:

“Adolescent” means a person who has completed his fifteenth year of age but has not completed his eighteenth year. (Section 2 (b))

Child:

“Child” means a person who has not completed his fifteenth year of age (Section 2(c))

Factory:

“Factory” includes any premises including the precincts thereof-

(i) Whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on; or

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

HEALTH PROVISIONS UNDER THE FACTORIES ACT

Chapter III of the Act deals with the following aspects.

(i) Cleanliness: Section 11 of The Factories Act ensures the cleanliness in the factory. It must be seen that a factory is kept clean and it is free from effluvia arising from any drain, privy or other nuisance and various measures have been stipulated in the above said section.

(ii) Disposable of waste and effluents:

Every occupier of a factory, as per rules, shall make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on in the factory so as to render them innocuous and for their disposal.

(iii) Ventilation and temperature: Section 13 provides that every factory should make suitable and effective provisions for securing and maintaining (1) adequate ventilation by the circulation of fresh air; and (2) such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to health

(iv) Dust and fume: There are certain manufacturing processes like chemical, textile or jute etc., which generates lot of dust, fume or other impurities. It is injurious to the health of workers employed in such manufacturing process. Suitable measures have to be taken to keep the level of dust and fumes under control so that they do not affect the health of the workers.

(v) Artificial humidification: Humidity means the presence of moisture in the air. In certain industries like cotton, textile, cigarette, etc., higher degree of humidity is required for carrying out the manufacturing process. For this purpose, humidity of the air is artificially increased. This increase or decrease in

humidity artificially adversely affects the health of workers and hence certain provisions have been made regarding them.

(vi) Overcrowding: Overcrowding in the work room not only affect the workers in their efficient discharge of duties but their health also. Section 16(2) states that there shall be in every workroom of a factory in existence on the date of the commencement of this act at least 9.9 cubic metres and of a factory built after the commencement of this Act at least 14.2 cubic metres of space for every worker employed therein and for the purposes of this sub-section no account shall be taken of any space which is more than 4.2 metres above the level of the floor of the room.

(viii) Lighting: Every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial or both.

(ix) Drinking Water: In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water. Further if more than two hundred and fifty workers are working in a factory they shall be provided with cooled drinking water during hot weather.

(x) Latrines and urinals: In every factory sufficient latrine and urinal accommodation of prescribed types shall be provided for men and women separately. All such accommodation shall be maintained in a clean and sanitary condition.

SAFETY PROVISIONS UNDER THE FACTORIES ACT

(i) Fencing of machinery: In every factory every moving part of a prime mover and every flywheel connected to a prime mover shall be securely fenced by safeguards of substantial construction which shall be constantly maintained and kept in position while the parts of machinery they are fencing are in motion or in use.

(ii) Work on or near in motion: If in any factory it becomes necessary to examine any part of machinery, while the machinery is in motion such examination or operation shall be made or carried out by only by a specially trained adult male worker wearing tight fitting clothing.

(iii) Employment of young persons on dangerous machines: No young person shall be required or allowed to work at any machine to which Sec.21 applies unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed.

(iv) Striking gears and devices for cutting off power: In every factory suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery.

(v) Self acting machines: No traversing part of a self acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty five centimeters from any fixed structure which is not part of the machine.

(vi) Casing of new machinery: All machinery driven by power and installed in any factory shall be encased or otherwise effectively guarded as to prevent danger.

(vii) Prohibition of employment of women and children near cotton openers: No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work, unless the feed end of a cotton opener is in a room separated from the delivery end by a partition.

(viii) Hoists and Lifts: Every hoist and lift shall be of good mechanical construction, sound material and adequate strength and it shall be properly

maintained and shall be thoroughly examined by a competent person, once in every six months.

(ix) Lifts, Machines, chains, ropes and lifting tackles: Every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle shall be of good construction, sound material and adequate strength and free from defects and it shall be properly maintained and it shall be thoroughly examined once in 12 months by a competent person.

(x) Revolving machinery: In every factory in which the said process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(xi) Pressure Plant: In any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.

(xii) Floors stairs and means of access: In a factory all floors, steps, passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstructions and substances likely to cause persons to slip and if necessary handrails may be provided.

(xiii) Pits, sumps, openings in floors: In every factory fixed vessel, sump, tank, pit or opening in the ground or in a floor which by reasons of its depth situation construction or contents is or may be a source of danger, shall be either securely covered or securely fenced.

(xiv) Excessive weights: No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

(xv)Protection of eyes: If in a factory where the manufacturing process involves risk of injury to the eyes from particles or fragments thrown off in the course of the process or risk to the eyes by reason of exposure to excessive light then effective screen or goggles may be provided to the protection of the workers.

(xvi)Precaution against dangerous fumes, gases etc.: No person shall be required or allowed to enter any chamber, tank or vat, pit, pipe flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(xvii)Precautions regarding the use of portable electric light: No portable electric light or any other electric appliance of voltage exceeding 24volts shall be permitted of the use inside any chamber, tank, pit, pipe, flue, or other confined space unless adequate devices are provided for safety.

(xviii)Explosive or inflammable gas: In any factory if the manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode to ignition all practicable measures shall be taken to prevent any such explosion.

(xix) Precautions in case of fire: In every factory all practical measures shall be taken to prevent outbreak of fire and its spread, both internally and externally and to provide and maintain safety measures like equipments for fire extinguishing devices and to have emergency exits.

(xx) Safety of buildings and machinery: If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety then the occupier or manager or both may by order in writing specify the measures to be

taken and if necessary prohibit the use until it has been properly repaired or altered.

(xxi) Maintenance of buildings: If it appears to the Inspector that any building or part of a building is detrimental to the health and welfare of the workers, he may serve on the occupier or manager or both of the factory an order regarding the remedial measures.

(xxii) Safety Officers: In every factory wherein one thousand or more workers are ordinarily employed the occupier shall, if so required by the State Government by notification in the official Gazette, employ such number of Safety Officers as may be specified on that notification.

WELFARE PROVISIONS IN THE FACTORIES ACT

(i) Washing Facilities: In every factory adequate facilities for washing shall be provided and maintained for the use of the workers. Separately and adequately screened facilities shall be provided for the use of male and female workers.

(ii) Facilities for storing and drying facility: The State Government shall make rules in respect of a factory or class or description of factories requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

(iii) Facilities for sitting: In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they take advantage of any opportunities for rest which may occur in the course of the work.

(iv) First aid appliances: Every factory shall maintain and provide one first aid box with prescribed contents for every 150 workers and it shall be in charge of a responsible person who holds a certificate in first aid treatment, recognized by State Government.

(v)**Canteen:** The State Government may make rules requiring that in any specified factory wherein two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(vi)**Shelters rest rooms and lunch rooms:** In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room with provision for drinking water, where workers can eat meals brought by them.

(vii)**Creches:** In every factory where more than thirty women are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(viii)**Welfare Officers:** In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of Welfare Officers as may be prescribed.

WORKING HOURS FOR ADULTS

(i)**Weekly hours:** No adult worker shall be required or allowed to work in a factory for more than forty eight hours in any week.

(ii)**Weekly Holidays:** No adult worker shall be required or allowed to work in a factory on the first day of the week unless he has or will have a holiday for a whole day on one of the three days immediately before or after the said day.

(iii)**Compensatory Holidays:** In case of exempting a factory from the above said provision, the worker shall be provided within the month, compensatory holidays of equal number to the holidays so lost.

(iv) **Intervals for rest:** The period of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has an interval for rest of at least half an hour.

(v) **Spread over:** The period of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest they shall not spread over more than ten and half hours in a day.

(vi) **Prohibition of overlapping shifts:** Work shall not be carried in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged, in work of the same kind at the same time.

(vii) **Extra wages for overtime:** Where a worker works in a factory for more than nine hours in any day or for more than forty eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

(viii) **Restriction on double employment:** No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save on prescribed circumstances.

(ix) **Notice of period of work for adults:** There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub- section (2) of section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work.

(x) **Register of adult workers:** The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours or when any work is being carried on in the factory.

EMPLOYMENT OF YOUNG PERSONS

(i) **Prohibition of employment of young children:** No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

(ii) **Non adult workers to carry tokens:** A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless he is possession of a token, referring to a certificate of a fitness issued and in the custody of manager.

(iii) Working Hours for Children: No child shall be employed or permitted to work, in any factory

(a) for more than four and half hours in any day

(b) during night

Further no child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.

(iv) Register of child workers: The manager of every factory in which children are employed shall maintain a register a child workers available to the Inspector at all times during working hours or when any work is being carried on in a factory.

ANNUAL LEAVE WITH WAGES

A worker in a factory if entitled under any other law or under the terms of any award, provided for longer annual leave with wages than provided under this Act, is exempted from the under mentioned provisions of The Factories Act.

(i) Annual leave with wages: Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of-

(a) if an adult one day for every twenty days of work performed by him during the previous calendar year.

(b) if a child one day for every fifteen days of work performed by him during the previous calendar year.

The lay off days, maternity leave and earned leave shall be taken as days worked for the purposes of computation of working days.

The annual leave shall be computed, exclusive of all holidays whether occurring during or at either end of the period of leave.

(ii) Wages during leave period: For the leave allowed to him under the provisions a worker shall be entitled to wages at a rate equal to the daily average wage of his total full time earnings for the days on which he actually worked during the month immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles.

(iii) Payment in advance in certain case: A worker who has been allowed leave for not less than four days, in the case of an adult, and five days, in the case of a child, shall, before his leave begins be paid the wages due for the period of the leave allowed.

(iv) Mode of recovery of unpaid wages: Any sum due and payable if not paid as stipulated it shall be recoverable as delayed wages under the provisions of The Payment of Wages Act.

Further under The Factories Act various provisions (Sections 92 to 106A) have been enacted for providing penalty for offences, cognizance, limitation enhanced penalty and jurisdiction of Court to entertain proceedings under the Factories Act.

LESSON VI

CHANGING ROLES OF PRINCIPAL ACTORS IN INDUSTRIAL RELATIONS

After having learnt about the history of labour legislation and going through various industrial legislation and the Factories Act, which contains various provisions regarding health, safety and welfare of workers in factories it is imperative for us to analyse the present situation, after the globalization, liberalization and privatisation, with regard to the various provisions of law and

the necessity to recast few of them to improve the industrial relations in India while taking into consideration industrial relation practices in other countries.

In some countries like Japan and Germany, the Government's attitude to business and industry is one of partnership to promote the growth of the national economy. In others, for political reasons, the government views private business with suspicion. Unless the government's attitude towards private business is positive, little can be accomplished through changes in other spheres – which will then be no more than cosmetic.

The government's role is changing. Strengthening of the forces of deregulation, denationalization and disinvestment is causing the state to gradually withdrawn from some social and economic sectors. Governments are increasingly under pressure to become facilitators rather than regulators and controllers. Legal reform is under way in many countries and overdue in several others. Madrid's (1994) analysis of the situation in Argentina provides the much needed caution for the state everywhere: The increase in the powers of employers is 'giving a market authoritarian character to the employment relationship. As a result, the principles of labour law have faced a crisis with declining protection afforded to workers and the disregard, in fact or in law, of the guiding principles of the ILO'.

Rising employment, underemployment and inflation, fall in living standards, increasing disparity in incomes and growing imbalances in the development of different regions within a state are influencing some governments to adopt policies aimed at wooing domestic and foreign investment but wily-nily nullifying the accumulated social benefits and rights. Export-oriented production activities and zones where such firms are located are exempt by governments in several developing countries, such as Bangladesh, from the purview of certain labour laws and trade union and workers' rights. This is a matter of great concern. In Sri Lanka, the change in government escalated expectations about

the reversal of such regressive policies which led to about 80 strikes in the last quarter of 1994 in the export processing zone near Colombo airport alone. Liberalization and globalization presuppose that the differences in competition within and across national borders will vanish. In that case, the relevance of separate export-processing zones and 100 percent export-oriented units and special conditions for labour market reforms have been particularly harsh on workers and unions. The industrial and labour policy changes in Kerala, the easing of requirements for labour inspection in Rajasthan, the relatively higher incidence of approvals for closure, retrenchments, etc., in Tamilnadu and the cancellation of the registration of a few thousand unions in West Bengal for non-submission of statutory returns to the Registrar of Trade Unions in good time illustrate the changes at the state level. The central government has also tried to usurp more power from the states through exclusive control over industrial relations issues in regard to multinational corporations, contract labour in central public sector undertakings and introducing a proposal for a national minimum wage.

The 1998 ILO Declaration on Fundamental Principles defines and sets in motion the mutual steps for ensuring universal compliance with minimal, core labour standards covering the abolition of child and forced labour, elimination of discrimination and promotion of equality. International pressure through WTO, Non-Governmental Organization (NGO) campaigns, social labeling and consumer labeling will aid the ILO Initiative.

(I) EMPLOYERS:

The comparative history of business organization and human resource utilization suggests a linear and upward evolution of capitalism in which an individual capitalist owned a firm, to America's and Germany's managerial capitalism in which numerous individuals subscribed to the capital of a firm managed by professional managers, to Japan's collective capitalism in which control of the

firm is democratized and in which workers also take on some managerial functions and assume risks, augmenting the managerial resources of the firm... Organizational and human resource efficiencies as well as scale of organization increase along this evolutionary path. Firms under managerial capitalism are larger and more efficient than those under proprietary capitalism. Likewise, firms under collective capitalism are larger and more efficient than those under managerial capitalism. The scope of inter-firm coordination of economic activities under collective capitalism is larger than under any other type of capitalism, because of alliances among firms..... To sum up, managerial capitalism overtakes proprietary capitalism, and collective capitalism overtakes managerial capitalism.

Though in several countries significant sections of employers in the organized private sector have welcomed structural changes, they argue that these changes should be achieved through policies that give an impetus to local industry to expand and grow. Encouragement to multinationals, easing of restrictions on expatriate employment and ownership of the means of production and other resources are reminiscent of colonialism. Also, employers' interests vary depending on whether they represent foreign or domestic interests – large or small – export or import oriented businesses, etc.. Market reform policies lead to improved business climate and performance. However, the opposite is equally true. In Nigeria, one cement plant incurred substantial foreign debt in the late 1970s in order to finance expansion, but after devaluation the local cost of this debt rose five-fold.

In India, when liberalization and globalization measures were initiated in parallel, some domestic companies found that their foreign debt on capital investment multiplied overnight due to devaluation. Fresh capital for long-term capital and working capital needs could only be borrowed in India at much higher interest rates than their competitors from overseas and imported materials

and components too became costlier. As a result, some domestic entrepreneurs had a 30 to 50 percent strategic cost disadvantage. Also, countries in dire need of foreign investment offer incentives that are attractive to foreign investors but considered detrimental to the interests of domestic investors.

Privatization of Central and East European economies resulted in the emergence of employers as an interest group, distinct from the State. In Central and East European countries no separate employer function was officially recognized till 1989 since everybody was supposedly united in the construction of socialism. Industrial relations, taken for granted in pluralistic societies, did not exist. The prevailing ideology made no allowance for any possible conflicts of interests. Trade unions were anything but independent and were as a rule used to organize and administer social services and run personnel departments in the state enterprises. Now employers' organizations are emerging in these countries as elsewhere. The challenges before employers' organizations through out the world are many. The changes in the system of government and economic management, with emphasis on pluralism and economic liberalization, have thrust employers and their organizations into the centre stage of economic development debate and action. The role of the private sector as an engine of development has gained credibility. Recognition of this is one thing, but for the government to divest themselves of some of the tools of power will take time. The struggle for true partnership in development will not be easy.

(II) TRADE UNIONS:

Over time the labour movement has changed from craft unionism to industrial unionism to enterprise unionism. Tiara argues, 'one may graft stages of production technology and the labour movement on the Lazonick model of capitalist evolution'. Production technology has changed from craft production, to mass production, to lean production, roughly co-varying with proprietary, managerial, and collective capitalism. As he argues further, 'For lean

production, workplace innovations are largely firm-specific and often carefully guarded as intellectual property. Productivity and gain sharing are maximized when employees put in long years of service and get involved in continuous Kaizen. To ensure employment security and improve terms of employment, the union is just as much concerned about the conditions of the firm as management. The union then becomes increasingly localized and autonomous. The ultimate localization of a union is an autonomous enterprise union. Enterprise unionism is one of the four pillars of the industrial relations system in Japan. The trend towards enterprise unionism is growing in the US too.

At one time, bringing together workers across an entire industrial sector was considered essential to take wages out of competition and ensure the equitable distribution of wealth. Now, in several countries enterprise-based unionism is becoming the predominant form of union organization. Of course, enterprise-based unions do not exist in isolation and still are, in many cases, federated across sectors or industries and further, at a different level, into national centres. Union membership is declining in traditional industries in several countries. Union organization is becoming difficult in new industries. In the countries that have changed to democracy and are moving towards the market economy, the newly constituted trade unions are coming up against all manner of constraints, their difficulties aggravated by an excessive fragmentation which is scarcely conducive to the unity of expression and participation so indispensable to these organizations if they aspire to play an effective part in the consolidation of trade union structures and policies and in the genuine participation in their economic and social life.

Since the 1980s, as in the US, in Western Europe too unions have been on the defensive. In Japan as well, union density declined from 45.3 percent in 1947 to 24.2 percent in 1993. Shifts in employment patterns and the disinterest of non-union workers in unionization are the major determinants of decline in union

density. The explanations for low or declining union density vary across countries even within Asia. Revolutionary changes in technology are shifting the locus of control away from blue-collar to white-collar workers and managers and the dramatic decline in employment intensity in many sectors of manufacturing is not only eroding the traditional base of the unions but also destabilizing the traditional trade union structures. The overall rate of unionization will decline, particularly as unions find it hard to become established in the type of small scale firms that are emerging. Organizing the unorganized in the small and tiny sectors will indeed be a major challenge for trade unions in the years ahead. The ongoing internet debate on trade unions in 2000 and some of the recent successes unions have had in countering employer militancy through cyber unionism and internet campaign provide useful pointers to the new challenges and opportunities before trade unions.

Frenkel's (1993) analysis of the factors affecting trade union characteristics in nine countries in the Asia Pacific region tests several hypotheses and theoretical approaches. It portends little change in countries that follow state corporatist policies (e.g. China and Singapore), moderate change in countries which follow state exclusionary policies (Thailand, Malaysia and Hong Kong) and major changes in countries where state collaborative is nurtured with autonomous market bargained corporatism (New Zealand). The exceptions to his categorization, he notes, are Japan and Australia which, though they both follow state corporatist and state collaborative policies, may see only moderate change. In India, trade unions may be on the decline in old industries, and difficult to organize in new high-tech industries. But the vast untapped informal sector that accounts for 90 per cent of the main workers as per the 1991 census holds much promise for the resurgence of the trade union movement, should it take up more seriously the organizing of the labour force in the informal sector.

(III) STATE:

The role of the State is manifested through three main modes – policy formulation, legislation and administration. A fourth role is political intervention, which does not operate independently, but is woven into the other roles. Policy formulation leads to legislation. But legislation itself is enforced through administrative system. The most regular and frequent expression of the administrative role is through the state labour machinery and the labour directorates. Indian labour legislation could be favourably compared with that of most industrialized countries (Gonsalves et al 1995). However one of the drawbacks have been the laxity and discrimination in enforcement of labour legislation. A simple example is in the matter of provident fund. While the law for compulsory employer contributions to retirement was enacted in 1948, the Government hands rests lightly on employers who default for years and years on payments to workers under the Act. Another example is the Contract Labour Act. Even though it was passed in 1970 to prevent exploitation of contract workers, but the government itself is the biggest employer of contract workers in perennial jobs and it cannot thus prevent private employers from taking advantage of the labour market, which is adverse for labour in India.

The brighter side of the State intervention in the industrial scene is the starting of public sector enterprises and they assumed the role of model employer after independence, clearly understanding the imperatives of nascent India. Even this is slowly after privatization move have been watered down and has brought fresh controversies.

(IV) NEW ACTORS ON THE HORIZON:

Traditionally, all aspects relating to industrial relations were considered matters for discussing between organizations of employers and workers with or without the involvement of the government. But, gradually the consumer and the public have begun to play an increasingly decisive role. Also, where the principal

social partners are not addressing the real issues concerning, for instance, child labour, gender inequities, unorganized labour, environment and occupational safety, NGOs and other public interest groups are seeking to step in fill the vacuum effectively. Where trade union leaders are reluctant or indifferent, social groups and public interest groups are taking up these causes. Pressure is building up from all sides for public policy to pay attention to the neglected sectors of society. Information technology and the media are also playing a much greater role in bringing into sharp focus what otherwise may have been suppressed or marginalized.

Further banks which have advanced monies to industrialists are also interested in the functioning and policy formulation within the organisation since the return of principal lies in the proper functioning and the earning of profit by these organisations.

CASE STUDY-1

Air Craft Maintenance Engineers of Indian Airlines Corporation formed the bulk of engineers having AME license. The recent pay revision announced by Government ha resulted in wide disparity between wages and allowance between Engineers and pilots. Engineers accordingly joined together and formed the union and got it registered. Nearly 90% of serving of serving Engineers joined the union.

During the recent negotiation with the management, Engineers insisted to introduce a clause to make union membership mandatory to all employed engineers which in other words called “union shop”.

A section of union leaders preferred “maintenance shop” characters to their union where as some others insisted an “Agency shop” status. Opinions are also divided whether they should get themselves affiliated to National Union. They decided to seek the opinion of a Consultant.

Questions:

(1)As a consultant what status you recommend for the Engineers Union. Illustrate your answer with proper justification.

(2)What will be your advice regarding their affiliation to the national union?

CASE STUDY-II

Mani an employee was granted leave by the Company from 10th January to 18th January. He was to have joined duty on 19th January. He did not join duty till 11th March. He came to the company on 11th March and found his name removed from the service rolls. He applied to the company for treating his absence as one on medical leave. He enclosed with his letter of request a medical certificate issued by the Civil Assistant surgeon, Government Hospital, Krishnagiri, Tamil Nadu. This certificate states that he was suffering from fever and Dysentery for a period of two months from 15th January to 8th March. Mani was covered by ESI and therefore he reported to the ESI Doctor at Madras who in turn asked him to report to the Company Doctor. Mani reported to the Company doctor and the Company Doctor made the following report to the Management.

“I have examined the worker and am unable to confirm that he was ill for a period of nearly two months”

The management refused to accept the certificate produced by Mani and reinstate him. Thereupon Mani produced the medical certificate to the ESI authorities and the same was accepted by them as alternative evidence and Mani was granted sickness for 56 days under the ESI Act.

Despite the ESI authorities accepting the medical certificate and bringing it under the preview of Sec.73 of the Act, the Management refused to reinstate Mani relying on its Standing Orders. The SO of the Company reads as follows:

Absence without leave: Any employee who absents himself for eight consecutive working days without leave shall be deemed to have left the company's service without notice thereby terminating his contract of service. If he gives an explanation to the satisfaction of the management, the absence shall be converted into leave without pay or D.A

But if the absence is proved to the satisfaction of the management to be one due to sickness then such absence shall be converted into medical leave for such period as the employee is eligible with the permissible allowance.

Section 73 of ESI act reads as follows: (1) No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he be except as provided under the regulations dismiss, discharge or reduce or otherwise punish an employee during the period if he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

No notice of dismissal, discharge or reduction given to an employee during the period specified in sub section (1) shall be valid or operative.

(1) Discuss and state whether the removal of Mr. Mani from service is proper and in accordance with law?

QUESTIONS

(1) Discuss in detail the various machinery available under the Industrial Disputes Act, 1947 to resolve industrial conflicts?

(2) Define 'Grievance'. Explain the procedure for the redressal of grievances?

(3) Explain the labour legislation in brief and the role of judiciary in settling disputes?

- (4) Write a note on the provisions of the Industrial Disputes Act, 1947 relating to Lay-Off and Retrenchment?
- (5) Explain the various steps in the registration of the Trade Union in India under the Indian Trade Unions Act, 1926 and state whether registration is compulsory?
- (6) How did trade unionism grow in India?
- (7) What are the objectives of the Trade Unions?
- (8) Identify the major weaknesses of the Trade Union movement in India?
- (9) Explain the term 'Standing Order'? What are the various elements which re to be considered in the drafting of the Standing Order in order to get it duly certified under The Industrial Employment (Standing Orders) Act, 1946 ?
- (10) Briefly discuss the Social Security legislation in India?
- (11) Write briefly about the Health and Welfare provisions in the Factories Act?
- (12) Explain about the necessity of safety? Enumerate the provisions regarding safety in the Factories Act?
- (13) Write about the annual leave with wages for adults and children in the factories?
- (14) Write about the provisions regarding children and women in the Factories Act?

Books referred to:

- (1) Industrial Relations in India Shifting Paradigms – Ratna Sen – Macmillan India – 2003.
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LESSON I

INTRODUCTION

Wage legislation is an important external factor influencing the determination of employee remuneration. Importance of an ideal remuneration system cannot be over emphasized. There are positive and negative sides of employee remuneration. An effective remuneration system can lead to better performance, increased motivation, reduced turnover, reduced absenteeism increased job satisfaction and good mental health of employees besides attracting talented and skilled people. On the other hand, a defective or a poor remuneration system may result in poor performance, increased grievances, job dissatisfaction, strikes, high turnover and absenteeism, psychological withdrawal and poor mental health.

In the context of open economy, if industries were to compete in the global market, an ideal remuneration system is a must.

In view of the above, the wage legislation plays an important part in regulating wages, in giving basic yardsticks for fixing wages, in ensuring that labour is not exploited in paying equal remuneration to men & women for same or similar work, in paying remuneration regularly and in ensuring that management is not paid undeservingly huge remuneration for its work.

It would be useful to have a look at each legislation and its significance.

THE PAYMENT OF WAGES ACT 1963

Objectives

The objective of this Act is to provide for regular payment of wages without exploitation by unscrupulous employers who may make unauthorised deductions from their remuneration. Thus, it protects the employees from non-payment, short payment, irregular payment or payment in kind instead of in cash.

Scope and Coverage

The Act is a central Act covering the whole country in respect of any factory, industrial or other establishment, like railways, transport service, dock, warf, mine, quarry, oil fields, plantations, workshops, or other establishment producing, adapting or manufacturing any article, establishments engaged in construction, development or maintenance of buildings, roads, bridges or canals, navigation, supply of water, power generation and transmission, and any establishment notified by the central or state government.

Employees entitled

The Act is applicable to the employees receiving wages upto Rs.6500/- per month.

Important provisions of the Act

- (1) The term wages (expressed in terms of money) includes not only the daily/weekly/monthly wages/salary but overtime, leave salary, additional remuneration (that includes bonus payable under Bonus Act) but does not include suspension or subsistence allowance, value of house accommodation, cost of supply of light, water or medical attendance, or cost of any other amenity, traveling allowance, gratuity or reimbursement of any special expenses. (Sec.2 of the Act).
- (2) Every employer or a manager or a person designated by the employer or a contractor for supervision and control is responsible for payment of wages (Section3)
- (3) The employer or a person designated for supervision & control should fix the wage period (day, week or month) but in no case, the period should exceed one month (section 4)

- (4) If the number of employees in the establishment is less than 1000, wages must be paid within 7 days of the expiry of the wage period. In other cases, wages should be paid within 10 days (Section 5)
- (5) On termination of employment, wages should be paid within 2 days of termination.
- (6) The employer should not make any unauthorised deductions from wages such as authorized absence from duty or fines imposed without show-cause notice.(Section 7)
- (6a) The amount of time imposed on an employee should not exceed 3% of the wages payable for that wage period and should be recovered in 90 days from imposition, in one lump.
- (7) Deductions can be made for absence on “no work no pay” basis, loss incurred on account of the employee amenities, provided, advances/loans taken, tax payable, PF, ESI and insurance.
- (8) The total deductions made from the wages of a wage period should not exceed:
 - (i) In case of payment to co-operative societies, 75% of the wages and
 - (ii) In other cases, 50% of the wages (section 7)

Reporting

- (9) The employer is required to submit an annual return of wages in Form No.IV for every year by the 15th of Feb of the succeeding year.
- (10) The employer should maintain the following registers in the prescribed form and preserve them for 3 years after the date of last entry made therein.
 - (a) Register of payment of wages (Section 13 A)
 - (b) Register of fines imposed & realized, (Section 8(8))
 - (c) Register of deductions for damages or loss and realization thereon; (Section 10 (2))

Rights of Employees and Employers

- (11) The employer has a right to appeal against an order directing him to refund a deduction or against penalty imposed under section 15(3) & 15(4) respectively if the appeal is made within 30 days of the passing of the order and if the payment of wages or compensation exceeds Rs.300/- or if the fine imposed exceeds Rs.1000/- (section 17)
- (12) The employees have the right to claim unpaid or delayed wages, unauthorised deductions from wages or fines imposed, if the application is made within 12 months of due date or dates of such deductions or fines imposed. For sufficient reasons, delayed applications can also be accepted. (section 15)
- (13) The employees have also a right to appeal against an order withholding wages if the amount exceeds Rs.20/- and against penalty imposed for making a malicious or vexatious claim against an employer (section 17)

Penalties

- (14) For delay in or non payment of wages within the prescribed period, fine from Rs.1500/- to Rs.7500/- can be imposed (Section 20 as amended in 2005)
- (15) For making an unauthorised deductions or imposing fines in contravention of the Act, fine from 1500/- to Rs.7000/- can be imposed (section 20 as amended in 2005)
- (16) For failure to fix wage period or make payment of wages on a working day fine upto 3750/- can be imposed.
- (17) For failure to maintain the register of fines and deductions or failure to display the prescribed notices, fine is upto 3750/- (section 20 as amended in 2005)
- (18) For failure to nominate or designate a person under section 3 of the Act fine upto Rs.3000/- (section 20 as amended in 2005)

- (19) failure to maintain the prescribed returns and records, failure to furnish the required information or furnishing of false information fine from Rs.1500/- to 7000/-
- (20) On repeating the offence mentioned in (19) above, imprisonment from 1 to 6 months and a fine from Rs.3750/- to Rs.22500/- (section 20 as amended in 2005)
- (21) Failure to pay the wages by the date fixed by the authority, additional fine of Rs.750/- per day of default.

Implementation

The Act is administered by the State Governments in their respective jurisdiction. The Central government administers in respect of Central Government departments and undertakings.

Since the Act ensures payment of wages in a particular form (cash or cheque) at regular intervals without unauthorised deductions, it contributes a great deal in preventing industrial unrest.

SUMMARY

The payment of wages Act 1963 was passed to regulate payment of wages in respect of those persons employed in the industry, who draw wages below 6500 p.m. It seeks to protect workers against irregularities in payment of wages and unauthorised deductions made by employers. It also ensures that wages are paid in cash or cheque and at regular intervals. It also limits the deductions to 50% or 75% of the wages in a wage period, ensuring that the worker is left with some amount to feed himself. It prescribes punishments for violating the provisions of the Act and also for not maintaining proper records and registers as per the Act.

KEY TERMS

- (1) Wage Period
- 2) Unauthorised Deductions/Authorised Deductions

- 3) Fines 4) Mode of payment 5) Time of payment
6) Returns 7) Contracting out 8) Offences & Penalties

QUESTIONS

1. Labour legislation plays a vital role in Wages & Salaries Administration – Explain w.r.t. Payment of Wages Act 1936.
2. What do you understand by the term “contracting out”?
3. Do you think that the penalties prescribed in the Act are adequate to ensure that there is no violation of the Act?
4. What is the limitation on deductions from wages provided in the Act? What is the objective behind it?
5. While working on an equipment, a worker happens to damage it accidentally. The employer deducts the value of the equipment from the wages of the worker. Is the deduction justified?
6. A fine is imposed on an employed persons who is 14 years old and is deducted from his wages after three months from the date on which it was imposed. What irregularity, if any, has been committed by the employer?

THE EQUAL REMUNERATION ACT 1976

INTRODUCTION

The Equal Remuneration Act provides for payment of equal remuneration to men and women workers for same work or work of similar nature and for the prevention of discrimination on grounds of sex, against women in the matter of employment.

SCOPE AND COVERAGE

The Act extends to the whole of India and applies to all the establishments and employments notified by the Central Government. (Section 1 (2) and (3)).

IMPORTANT PROVISIONS OF THE ACT

Limitations

(1) The Act does not apply,

- (a) Where special treatment is given to employment of women under any law or in connection with birth of a child, or in the terms and conditions regarding retirement marriage or death of women.
- (b) Where the difference in wages between men and women is based on a factor other than sex (Section 16).

Implementation

(2) The Act is a central legislation, administered by the Central / State Government in their respective jurisdiction (Section 2 (9) and Section 7).

(3) An Advisory committee (State or Central) is constituted and makes recommendations regarding the establishments where women can be employed, the extent to which they can be employed and their hours of work (Section 6).

Rights and Obligations

(4) The employer should pay equal wages to men and women employees of his establishment for performing same work or work of similar nature and for this purpose the employer should not reduce the wages of any worker (Section 4).

(5) The employer should not make any discrimination against women while undertaking recruitment of employees for same work or work of similar

nature, or in respect of their promotion, training or transfer etc.
(Section 5).

(6) Every employer should maintain an upto date register in relation to each employee in the prescribed form. The register will show the number of men and women employed, their rate of remuneration, category and other details (Section 8).

(7) The employees have a right to complain against the employer for contravention of any of the provisions of the Act. They have a right to file claim arising out of non payment of equal remuneration which is to be filed in the prescribed form. They also have a right to appeal against an order of the Authority in respect of a claim or a complaint within 30 days of passing of such an order (Section 7(6)).

(8) The employer also has a similar right of appeal against an order of the Authority within 30 days of passing of the order (Section 7 (6)).

Penalties

(9) Penalty for failure to maintain the prescribed register or other documents or to produce them on demand is imprisonment upto one month or fine upto Rs.10,000/- or both.

(10) The same penalty is prescribed for failure to give evidence or information required of him (Section 10).

(11) Penalty for discrimination against women in recruitment or payment of wages is fine upto Rs.20,000/- or imprisonment upto one year on both (Section 10).

(12) Same penalty is prescribed for failure to carry out any direction of the government u/s 6(5) i.e., direction in respect of functioning of the Advisory Committee (Section 10).

(13) Penalty for failure to produce before an Inspector, any register or document or information is fine upto Rs.500/- (Section 10).

SUMMARY

The equal remuneration Act 1976 is a Central Government legislation, passed by the Parliament to prevent discrimination against women in the matter of recruitment and remuneration. It is applicable to all the Central Government, State Government establishments through out the country. Inspectors are appointed to verify whether the provisions of the Act are followed or not. Employees have the obligation to make no discrimination in the matter of wages or recruitment under the Act. The employee has a right to complain against discrimination or against an order of the Authority. Penalties are prescribed for contravention of the provisions of the Act. The legislation has helped women get their rightful wages and place in establishments.

QUESTIONS

Q1: State the importance of the Equal Remuneration Act 1976, in a democracy: Is it relevant in the present day India where Indian business has to compete with the world?

Q2: Do you think that in the employments like Information Technology or Health Care, women should be paid more than men and the Act should grant exemptions to these industries.

Q3 : Enumerate the rights of the employees under the Act.

Q4 : Does this Act apply to the recruitment and remuneration of professionals?

Q5 : An employer, having been found to be paying more wages to male workers than the female workers doing the same job, in order to

comply with the provisions of the Act, reduces the wages of the male workers. Is his action justified under this Act?

KEY TERMS

1. Remuneration
2. Same work
3. Work of a Similar Nature.

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LESSON II

The Minimum Wages Act 1948

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LESSON II

THE MINIMUM WAGES ACT 1948

INTRODUCTION

This is an Act of The Central Government, which is also followed by the State Governments. The Act is a measure to regulate wages in the country in consonance with the cost of living. The legislation covers 46 scheduled employments and totally 260 employments in the country. It stipulates payments of wages for sustenance. The Act is now being amended to link the same to the cost of living in order to take care of inflation. The variable Dearness Allowance (VDA) is proposed so that the minimum wages are reviewed at least once in two years and amended according to the cost of living index variations. The Act also provides max-daily working hours, weekly rest day and overtime.

SCOPE AND COVERAGE

The Act extends to the whole of India and applies to all establishments employing one or more persons engaged in any of the scheduled employments. The act covers every employee including an outworker to whom materials are given out for manufacturing or processing at his own premises.

IMPORTANT PROVISIONS OF THE ACT

1. The State can fix minimum wage rate for the whole state or a part of the state or for any specified class or classes of employment in the whole state or part thereof [section 3 (a)].
2. The state has to review at intervals not exceeding five years the minimum wage rate [sec 3(b)].
3. The state need not fix minimum wage rule in respect of such employments which employ less than 1000 employees in the whole state
4. The state may fix :

- (i) A minimum wage rate for time work (ii) A minimum wage rate for piece work (iii) A minimum wage rate for piece rate workers to secure a minimum wage rate on a time work basis, called a guaranteed time rate (iv) a minimum rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done (called “overtime rate”). [see 2(a), (b), (c) and (d). (v) Different wage rates may be fixed for different scheduled employments, different classes of work in the same scheduled employment for adults, adolescents, children and apprentices and for different localities. (vi) Minimum wage rate may be fixed by one or more of the wage periods i.e. hour, day, month or other larger period provided, where wage periods have been fixed under payment of wages Act 1936, the minimum wages shall be fixed in accordance therewith.
5. The minimum wage rate fixed may consist of
- (i) A basic rate and a special allowance at a rate of be adjusted with the variation in the cost of living. (ii) A basic rate with or without the cost of living allowance (iii) An all inclusive rate allowing for the basic rate the cost of living allowance and the cash value of the concessions if any.
6. The minimum rate in respect of an employment is fixed or revised on the advice of committees or sub committees who hold necessary enquiries.
7. Or the state notifies its proposals in official Gazette and getting response within two months of such notification from those who will be affected revises the minimum wages by notification in the official Gazette [section 5].

IMPLEMENTATION

8. For the purpose of advising the Central and State Government in the matter of fixation and revision of minimum rates of wages and other matters under this Act and for coordinating the work of the Advisory Boards the Central Government shall appoint a Central Advisory Board consisting of persons nominated by the central government representing employers and employees in the scheduled employments, in equal number and independent members not exceeding one-third of its total number of members. The chairman is from among the independent members [sec 9].

MODE OF PAYMENT

9. Minimum wages are paid in cash. However, wherever it has been a custom to pay wages wholly or partly in kind and the government feels necessary to continue the practice the government can authorize the same. Similarly, if the government feels provision should be made to supply essential commodities at convenient rate the government can authorize the same. However cash value of wages in kind and of concessions in respect of essential supplies is estimated in the prescribed manner for calculation of minimum wages [sec 11].

RIGHTS AND OBLIGATIONS OF EMPLOYEES

10. Wherever in respect of any employment a notification under sec 5 is in force, the employer has to pay wages not less than the minimum wage fixed by such notification [sec 12].
11. The government may fix the number of hours of work, a day of rest in every period of seven days and provide for payment for work on the rest day at a rate not less than the overtime rate [sec 13].

12. Wherever the minimum wages are fixed the employer has to pay overtime for every hour of work or part thereof at the overtime rate fixed under this Act [sec. 14].

REPORTING

13. Employers have to maintain registers and records giving particulars of employees, work performed by them and wages paid to them in the prescribed form [sec 18].
14. The appropriate government may appoint inspectors to administer this Act [sec 19].

ADJUDICATION

15. The appropriate government may appoint an officer with experience as a judge to be the authority to hear and decide all claims arising out of payment of less than the minimum rates of wages [sec 20(1)].
16. All such claim applications have to be preferred within 6 months of the date on which the wage became payable [sec 20(3)].

PENALTIES

17. An employer who pays wages at the rate less than the minimum rate prescribed or violates the provisions regarding fixation of number of hours of work for normal working day can be punished with imprisonment up to 6 months or fine of Rs.500/- or both [sec.22].
18. In case of companies, every person who was in charge of the matter and the company itself shall be deemed to be guilty of the offence in case of violation of the provisions of this Act [sec.22c].
19. The appropriate government may by notification direct that the provisions of payment of wages Act 1936 will apply to any employment covered under this Act [sec. 22f].
20. The appropriate government may exempt any employment from the purview of this act for valid reasons [sec. 26(2A)].

21. The Act does not apply to the wages payable by an employer to a member of his family who is living with him and is dependent on him [sec 26(3)].

SUMMARY

The Minimum Wages Act 1948 was passed by the Central Government and all the state governments follow this Act. The Act empowers the central and state governments to fix minimum wages in respect of about 260 sweated and unorganized employments specified in Part I and Part II of its schedule. Employments which employ less than one thousand employees in the whole state are not covered by this Act. A Central Advisory Board coordinates the work of the State Advisory Boards and advises the state and central governments in the matters of fixation and revision of minimum rates of wages. The Act empowers the government to fix basic rate of wages and a special allowance which is adjusted periodically with the variation in the cost of living. Penalties are prescribed for violation of the provisions of the Act and employees are expected to furnish an annual return in the prescribed form by the 1st of Feb. of the succeeding year. They are also expected to maintain the prescribed registers and records. The act also provides for the review and revision of minimum wages at intervals not exceeding 5 years.

KEY TERMS

1. Adolescent
2. Adult
3. Appropriate Government
4. Child
5. Competent authority
6. Cost of living index number
7. Employer
8. Scheduled employment
9. Employee
10. Overtime
11. Normal working day
12. Class of work
13. Piece work
14. Wages

QUESTIONS

- 1.(a) Should wages be adjusted directly as cost of living changes? Why? or Why not?

- (b) What modification would you suggest to the Act in order to ensure that the minimum wages prescribed are in tune with the cost of living?
2. What is the object of minimum wages Act 1948?
 3. What remedy is available to a worker who has been paid less than the minimum rate of wages?
 4. Which of the following alternatives is correct? The components of minimum wages may be basic rate of wages-
 - (a) plus cost of living allowance
 - (b) plus cost of living allowance plus cash value of concessions regarding supplies of essential commodities at concessional rate.
 - (c) Minus cost of living allowance plus value of concessions regarding supplies of essential commodities at concessional rates.
 5. Under the Minimum Wages Act, 1948. State what constitutes the minimum rate of wages.
 6. If a worker whose minimum rate of wages has been fixed by the day happens to work for a period less than the requisite number of hours constituting a normal working day. In such a situation, what wages is he entitled to?
 7. If a worker is employed on piece work, what wage rate is he entitled to?

LESSON III

WORKMEN'S COMPENSATION ACT 1923

INTRODUCTION

The first step towards providing social security to workmen in the country was undertaken with the passing of the Workmen's Compensation Act 1923. The main object, according to the preamble of the Act is to provide for the payment of compensation by certain classes of employers to their workmen for injury by accident, arising out of and in the course of employment. The theory behind

workmen's compensation being "the cost of product should bear the blood of the workmen". The Act came into force on the 1st of July 1924.

Prior to the passing of the Workmen's Compensation Act 1923, the employers used to be liable to pay compensation for injury only if the employer was found guilty of negligence. Even in the event of his being found guilty of negligence, he would avoid his liability on the grounds :

- i) Of the doctrine of assumed risk (the doctrine stems from the belief that where there is consent there is no injury or liability)
- ii) Of the doctrine of common employment. (The doctrine provides that the employer is not liable for injury to a worker if the worker works with several other workers for a common purpose and the injury is caused by some act of omission of some of the persons of his group). The employers would plead that they were not responsible for the negligence on the part of employees or the negligence could not be attributed to them.
- iii) Of the doctrine of contributory negligence (according to this doctrine, the workman is not entitled to compensation if the injury is caused by his own negligence).
- iv) Of end of personal action with death. (according to this doctrine, the personal action dies with the death of the workman) With the above objections it was impossible for workmen to get any compensation.

Fatal Accidents Act 1855 was passed to overcome the doctrine of assumed risk and the doctrine of end of personal action with death. Workmen's Compensation Act 1923 was enacted, to take care of the doctrine of common employment. Later on the employer's Liability Act 1938 was passed to overcome the objections arising out of the doctrine of contributory negligence.

SCOPE AND COVERAGE

The Act extends to the whole of India and it applies to all the establishments mentioned in schedule II of the Act. Among those significant ones are Railways, Other Transport Services, Factories, Mines, Docks, Construction Establishment, Fire-Brigade, Plantations, Oilfields etc. The amendment of 2000 brought all the Workers within the ambit of the Act, irrespective of their nature of employment ie whether on casual basis or otherwise, for the purpose of employers trade or business. After this amendment casual labour also came under the purview of the Act However, employees covered under the Employees State Insurance Act are outside the purview of this Act.

IMPORTANT PROVISIONS OF THE ACT

Employer's Liability

1. If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer is liable to pay compensation in accordance with the provisions of Section 3 of this Act.
2. The employer will not be liable if :
 - (a) any injury is caused that does not result in total or partial disablement for a period exceeding three days
 - (b) in respect of any accident (resulting in injury not leading to death or permanent disablement) which is directly attributed to (i) the workman having been at the time thereof under the influence of drink or drinks or (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed for the purpose of securing the safety of workman or (iii) the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman (Section 3).

3.
 - a) If a workman employed for a continuous period of at least 6 months contracts any disease specified in Part A & B of Schedule III, it will be deemed to be an injury caused due to accident.
 - b) If a workman employed for a continuous period as specified by the Central Government Contracts a disease specified in Part C of the Schedule III, it will be deemed to be an injury caused due to accident, provided it is proved that the disease has been contracted as an occupational disease particular to that employment.
 - c) If it is proved that a workman having served for the specified period has contracted a disease specified in Part B or Part C of Schedule III, after cessation of such service as an occupational disease peculiar to that employment it will be deemed to be an injury caused due to accident.
 - d) If a workman contracts a disease while working or having worked for the specified period, under more than one employer, all the employers are liable to pay compensation in proportion to be decided by the commissioner [Section 3(2)].
4. A workman having filed a civil suit against the employer for damages in respect of the injury will not have the right to compensation. Similarly, a workman having instituted a claim to compensation in respect of an injury before a commissioner or having reached an agreement with his employer for compensation for an injury, cannot file a suit in a Civil Court in respect of damages due to the injury [Section 3(5)].

Amount of Compensation

5.
 - a) The amount of compensation for death resulting from the injury will be an amount equal to fifty percent of the monthly wages of

the deceased workman multiplied by the relevant factor or an amount of eighty thousand rupees whichever is more [Section 4(a)].

- b) The amount of compensation for permanent disablement resulting from the injury is an amount equal to sixty percent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of ninety thousand rupees whichever is more.
- c) The compensation in respect of partial disablement resulting from the injury specified in Part-II of Schedule I is such percentage of the compensation in case of total disablement as is specified therein as being the percentage of loss of earning capacity. However, in case of an injury not specified in Schedule I, it would be such percentage of compensation payable in case of permanent total disablement as is proportionate of the loss of earning capacity as assessed by a qualified medical practitioner.
- d) The compensation, in case of temporary disablement, whether total or partial, due to an injury, would be a half monthly payment of the sum equivalent to twenty five percent of monthly wages of the workman. Such payment will be made for a maximum of 5 years from the date of disablement [Section 4(1) & (2)].
- e) If the injury results in death, in addition to the compensation specified above, the employer will have to deposit a sum of rupees two thousand five hundred with the commissioner for payment of the same to the eldest of the surviving dependents of the workman; towards funeral expenses. In case there is no

dependent, the sum is to be paid to the person, who actually incurred the funeral expenditure [Section 4(4)].

Penalty for Default in Paying

5. a) The compensation has to be paid by the employer as soon as it is due.
- b) In case the employer does not accept the liability to the extent claimed, he is required to make provisional payment to the extent of liability he accepts and such amount is required to be deposited with the commissioner or be paid to the workman without prejudice to the right of the workman to make any further claim [Section 4A(2)].
- c) In case of failure to pay compensation within a month from the due date, the commissioner shall direct him to pay in addition, simple interest on the amount at twelve percent or more but not exceeding the lending rate of any scheduled bank specified by the central government. In case the commissioner is of the opinion that there was no justification for the delay, he can order payment of a further sum (in addition to interest) not exceeding fifty percent of the amount due by way of penalty, after giving a show cause notice [Section 4A].

Method of Calculating Wages

6. The monthly wages for the purpose of compensation are the monthly wages payable for a month's service or if the wages are paid not on the month basis, one twelfth of the total wages paid during the preceding twelve months. In case the worker has not worked for a continuous period of one month, during the last one year, the monthly wages are the daily wages multiplied by thirty.

7. The half monthly payment made can be reviewed by the commissioner on the basis of a medical report on the application made by the employer on the workman, if there is a change in the condition of the workman and the payment can be increased or decreased or ended as found justified. It can be converted into lump sum payment on permanent disablement if it is found that the injury has resulted into permanent disablement [Section 6].
8. Half monthly payments can be commuted into lump sum payments by the Commissioner on application by either party and by mutual agreement [Section 7].

Implementation in case of death

9. The compensation payable on death to a woman or a legally disabled person is to be deposited with the commissioner. In case of death however, the employer can pay advance of not more than three months' wages and the Commissioner will repay that to the employer from the amount deposited [Section 9 (1)].
10. The commissioner will distribute the compensation to the dependents on issuing notice to them to appear before him and after making suitable enquires. The appointment will be at the discretion of the Commissioner who can give the entire amount to any one dependent. When the compensation is payable to one person the money is paid to that person. However, if the person is a woman or a legally disabled person, such a sum may be invested, applied or otherwise dealt with, for the benefit of the woman or the disabled person, in such a manner as directed by the commissioner. In case of half monthly payment the Commissioner, may on his own or an application order that the payment be made to any dependent or to any other person whom the commissioner thinks best fitted to provide for the welfare of the workman [Section 8 (6) & (7)].

11. If the commissioner is satisfied that his order for the distribution is to be varied, he can do so provided an opportunity of show course is given to a person, if the revised order is likely to be prejudicial to the interest of the person [Section 8 (8)].
 12. When the commissioner varies his order because the payment of compensation was obtained by fraud, impersonation or other improper means, the amount so paid can be recovered from the persons in the manner laid down under Section 31 of this Act [Section 8 (9)].
- Note:** In Andhra Pradesh, the Commissioner is required to pay the balance of compensation (payable under Section 8) into the fund constituted under the Act, when a workman belonged to an establishment to which Andhra Pradesh Labour Welfare Fund Act 1987 applies.
13. No lump sum compensation or half monthly payment can be assigned, attached or charged to any other person [Section 9].

Rights and Obligations

14. A notice of the accident is to be given to the commissioner as soon as practicable after the happening and no claim for compensation can be entertained by the commissioner if it is preferred after two years of the accident or death. In case of total disablement caused by a disease, the period of notice should be counted from the first of the days from which the workman had been continuously absent. In case of partial disablement the period of notice is counted from the day the workman gives a notice of partial disablement to the employer. In case of a workman noticing symptoms of a disease after cessation of employment, the notice counts from the day the first symptoms were first detected [Section 10].
15. A defect or irregularity is not a bar to preferring a claim of compensation under the following circumstances

- i) In case of death resulting from an accident occurring on the premises of the employer, or at any premises where he was working under the control of the employer or under any person employed by the manager and death occurred on the premises or at the place where the accident occurred.
 - ii) If the employer or any person employed by or responsible to the employer for management of the workman's branch, had the knowledge of the accident from any source at or about the time it occurred.
 - ii) For sufficient cause the commissioner may entertain and decide any claim without notice or an application for claim [Section 10 (1)].
- 16. Employers of a prescribed class are expected to maintain a notice book in the prescribed form that can be made available to an employee injured on the premises or any person acting on his behalf [Section 10 (3)].
- 17. The Commissioner on receiving information from any other source has the power to obtain details of the accident in the prescribed form from the employer and ask him to deposit the compensation within twenty days of such notice. If the employer does not accept liability, the Commissioner after due enquires can ask the dependents to prefer a claim if they wish to for such compensation [Section 10A].
- 18. Where by any law in force, a notice is required to be given about an accident resulting in death or serious injuries, such notice is to be given to the commissioner within seven days of the accident. In cases where the state government rules apply, the notice is to be sent to the authority designated by the State Government [Section 10B].
- 19. When a workman gives a notice of an accident, he has to submit himself for medical examination if the employer offers to have him examined

free of charge, within three days of the accident. In cases of half monthly payment under this Act, also he has to submit himself for medical examination from time to time [Section 11 (1)].

20. Failure to submit himself to Medical examination as aforesaid or obstructing the same will make a workman liable for suspension of such compensation [Section 11 (2)].
21. When a workman whose right to compensation is suspended for failure to submit for medical examination dies, the commissioner may if he thinks fit, direct the payment of compensation to the dependents [Section 11 (4)].
22. In case the work is contracted out and the workman is employed by the contractor, the principal who contracts it out is liable to pay compensation as if the workman was employed by him. However the wages referred to in the Act will be those, paid to him by the contractor. However this will not apply to the cases where the accident occurs at the work place of the principal or which is under his control [Section 11 (2)].
23. Returns are required to be sent to the authority prescribed by the State Government by the employer in the prescribed form at the prescribed time giving details of the number of injuries in respect of which compensation has been paid by the employer during the previous year, the amounts paid and other particulars as demanded by the State Government [Section 16].

24. Offences and Penalties

	Offence	Penalty
1.	Unjustified delay in payment of compensation	Upto 50% of the amount of compensation in addition to the interest charged for the period of delay.
2.	Failure to maintain a notice book u/s 10(3)	Fine upto Rs.5,000/-
ii)	Failure to submit a statement of fatal	Fine upto Rs.5,000/-

	accidents u/s 10A	
iii)	Failure to submit an accident report u/s 10B	Fine upto Rs.5,000/-
iv)	Failure to file an annual return of compensation u/s 16	Fine upto Rs.5,000/-

Adjudication

25. i) All questions arising in any proceedings under this act in default of agreement be settled by a commissioner. ii) No Civil Court has any jurisdiction to settle, decide or deal with questions which are, by this Act, required to be settled by a Commissioner or to enforce any liability incurred under the Act.

Application before a Commissioner

- i) Application for the settlement of any matter by commissioner is to be made only if the dependents are unable to settle the issue by agreement.
- ii) Such application is to be submitted along with a fee as may be prescribed giving:
- a) A concise statement of the circumstances in which the application is made and the relief or order sought. b) In the case of a claim for compensation against an employer, the date of service of notice, of the accident and reason for delay in serving such a notice in case of delay. c) The name and address of the parties and d) A concise statement of the matters on which agreement has been reached and agreement has not been reached [Section 22].
27. The Commissioner will have all the powers of a Civil Court under the code of civil procedure and the code of criminal procedure to deal with cases under this Act.
28. The Commissioner should record agreements in respect of lump sum compensation or redemption of half monthly payments or any agreement entered into regarding payment under this Act on receipt of a

memorandum from the employer, in a register in the prescribed manner, after seven days after communications of notice to the parties. He may at any time, rectify the register. Where the commissioner is of the view that the agreement has been obtained by fraud or undue influence or by improper means, he may refuse to record it and pass an order to that effect and also order on the payment already made.

SUMMARY

Workmen's compensation Act 1923 is intended to provide workman and/or their dependents some relief in case of accidents arising out of and in the course of employment and resulting in death or permanent / temporary disablement, as well as contracting occupational diseases.

It covers almost all types of employments including casual labour employed by a contractor. However, employees covered by Employees State Insurance Act are outside the purview of this Act. The Act provides for payment of compensation of 50% of monthly wages x relevant factor or Rs. 80,000/- whichever is more in case, of death and 60% of monthly wages x relevant factor or Rs. 90,000/- whichever is more in case of permanent, disablement. In case of partial disablement a percentage of the compensation paid for total disablement is granted. In case of temporary disablement, provision is there for half monthly payments of 25% of the monthly salary till the worker is declared fit. The employer is required to deposit the compensation with the commissioner who has the powers of a Civil Court to deal with matters arising out of this Act. The Commissioner in turn distributes the compensation after due enquiry. The employer is required to give intimation to the Commissioner within 7 days of the accident which results in death or serious bodily injury. He is required to maintain a notice book for the purpose. Employees have to send a notice to the commissioner about the accident. Claim is admitted only on receipt of such a notice. No claim may be entertained if the notice is received after two years of

the accident. Employees have a right to apply to the commissioner for review of the half monthly payment in case of temporary disablement on the ground of change in condition of the employee. The employer can refer any dispute as to the liability to pay compensation amount, or duration of compensation, or even the nature or extent of durations to the Commissioner. The employer or the employee has a right to appeal against the order of the commissioner to the high court within 60 days. The legislation has provided a great relief to workers and by its very wide coverage has been instrumental in bringing about industrial peace.

KEY TERMS

Commissioner Compensation Dependent Employer Managing agent Medical reference Partial disablement Prescribed Qualified Medical Practitioner Seaman Total disablement Wages Workman

QUESTIONS

Q1 : Is the employer liable to pay compensation in the following cases ?

- a) An office boy goes to attend to his work riding on a bicycle and is involved in an accident.
- b) An office boy is returning home after his work on a bicycle and is involved in an accident's)
- A worker lost his mental balance as a result of an injury by accident while working in a factory and committed suicide.
- d) A worker working in a shade was injured by the fall of a wall which was not the property of or under the control of an employer.
- e) Workers return to their work place at night to play cards at the work place and while playing suffer an accident due to the collapse of the shed.
- f) A workman, who was a heart patient complained of chest pain during the duty hours on a ship. He was treated in the ship's dispensary, before leaving the ship but he died on way back home of coronary thrombosis.
- g) A workman was found murdered near his quarters 3 hours after his duty was over. His quarters were in the

premises of the rest house the property of which he was supposed to guard. h) A workman suffered an injury by an accident arising out of and in the course of employment and was permanently disabled. But the accident had been caused by his willful disobedience of an order issued by his employer to secure safety of workers.

2. A undertakes work which is part of his trade or business. He contracts out a part of it to B and B in turn contracts out a part of work undertaken by him to C. One of the workmen, working under C suffers a fatal accident and his widow prefers a claim before the commissioner against A under this Act. Discuss whether A is liable and if so by whom is he entitled to be indemnified ? If by B, then is B in turn entitled to be indemnified by C?
3. A workman under the influence of drink touched a live wire and died while working at a machine. His widow preferred a claim for compensation but the employer refused on the plea that the accident was caused by the drunkenness of the employee and not by the employer's fault. Decide whether compensation should be paid or not.
4. What are the three points that are required to be established in order to succeed in an application for getting compensation under Section 3 ?
5. What are the penalties that can be imposed on an employer for delayed payment or deposit of compensation?
6. Against what orders of the Commissioner can an appeal be preferred to the High Court?

THE EMPLOYEES' STATE INSURANCE ACT 1948

INTRODUCTION

The objective of this Act is to provide to the workers medical relief and sickness insurance. The Act provides for compulsory insurance providing for certain benefits. The employees and the employers both contribute financially. Like the

workmen's compensation Act 1923, this also provides for compensation to the injured workers or benefits to the dependents of the deceased workers. However in the case of workmen's compensation Act 1923, the compensation is provided by the employer whereas in the case of ESI Act the compensation is provided by the ESI Corporation.

SCOPE AND COVERAGE

The Act extends to the whole of India and covers all factories including Government factories but excluding seasonal factories, employing 10 or more persons and carrying on a manufacturing process with the aid of power or employing 20 or more persons and carrying on a manufacturing process without the aid of power and such other establishments as the government may specify. Generally establishment such as hotels, cinemas, newspapers etc employing more than 20 employees are covered by the provisions of this Act.

The Act cannot be applied voluntarily. Once a factory is covered by the Act, it continues to be covered by the Act even if the number of employees falls below the specified level. Two units of the same manufacturing establishment located at different places wherein the work pertains to one single process are liable to be clubbed together for the purpose of this Act. However, to be covered under this Act, the twenty or ten employees must fall within the definition given in Section 2(9) of this Act (Supreme Court in the case of ESIC Vs M.M. Suri & Associates (1998(5) SC 694)). It also does not cover seasonal factories, factories exempted from the provisions of the Act by the Government, the mines (governed by the Mines Act 1952), Railway running sheds, and factories and establishments under the control of Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act.

IMPORTANT PROVISIONS OF THE ACT

1. Registration of Factories and Establishments

Every factory or establishment to which this Act applies has to be registered within 15 days of the applicability of the Act with the ESI Corporation. The declaration of registration has to be made in Form 01 and details of the establishment have to be given in an additional sheet to be attached to the form. The concerned Regional office of the ESI Corporation will allot an identification number to the employer which must be quoted in all correspondence [Section 2A & Regulation 10B].

Corporation, Standing Committee and Medical Benefit Council

2. With effect from 1-10-1948, Employees State Insurance Corporation has been formed for the administration of the ESI Scheme [Section 3].

The ESI Corporation is a body corporate consisting of the following members

3. A Chairman, a Vice Chairman, not more than five members, one person representing each state, one person to represent the Union territories, ten persons representing employees, two persons representing the medical profession, three members of parliament two from Lok Sabha and one from Rajya Sabha, elected by the respective Houses, and an Ex-Officio Director General. All members except the members of Parliament are appointed by the Central Government [Section 4].
4. The term of office of the representatives of the employers, the employees the medical profession and the Parliament is for four years [Section 5].

Standing Committee

5. A standing committee of the ESI Corporation constituted includes: A Chairman, three members of the Corporation, three members of the corporation representing three states (decided by the Central Government from time to time), eight members elected by the corporation. i.e. three members of the Corporation representing employers, three members of the Corporation representing employees, one member of the corporation representing medical profession, and one member of the corporation,

who is a member of Parliament. The Director General of the ESI Corporation is the Ex Officio member of the Standing Committee [Section 8].

6. The term of office of members of standing committee except the Chairman, the Central and State representatives and the Director General is two years from the notification of his election. A member of the standing committee ceases to be its member if he ceases to be a member of the ESI Corporation [Section 9].

Medical Benefit Council

7. The Medical Benefit Council constituted by the Central Government consist of the Director General of Health Services (ex-offices – he is also the Chairman of the Medical Benefit Council), a Deputy Director General Health Services, the Medical Commissioner of the Corporation, (ex-officio), one member each representing each state (except the union territories), three members representing the employers, three members representing employees, three members out of whom not less than one is a woman representing the medical profession. The term of office of the members is four years [Section 10].

Cessation of Membership

8. (i) A members of the Corporation, or Standing Committee or Benefit Council ceases to be its member if he ceases to represent the employers, employees, or the medial profession. (ii) A member of the Corporation or Standing Committee or the Benefit Council ceases to be a member of the same if he fails to attend three consecutive meetings of the same. (iii) A member of parliament ceases to be a member of the Corporation, or the Standing Committee or the Benefit Council if he ceases to be a member of Parliament [Section 12].

9. The Director General and the Financial Commissioner are appointed by the Central Government. They are whole time officers of the Corporation. They hold office for not more than five years. However an outgoing DG or F.C. is eligible for reappointment. The Corporation can by a resolution passed, vote for the removal of the DG or FC by a two thirds majority in a special meeting called for the purpose [Section 16].

Powers of the standing committee

10. The standing committee administers the affairs of the corporation, may exercise any of the powers of the corporation and perform any of its functions. It submits to the corporation matters for decision specified in the regulations made in this behalf or any other matter at its discretion [Section 18].
11. The Corporation, the Standing Committee and the Benefit Council meet at regular intervals and follow rules and procedures specified by the Central Government in their regulations [Section 20].
12. The Corporation, the Standing Committee or the Medical Benefit Council can be superseded by the Central Government by a notification issued in this behalf and after giving a reasonable opportunity to them [Section 21].

Duties of Medical Benefit Council

13. a) The Medical Benefit Council advises the Corporation & the Standing Committee on matters related to the administration of Medical Benefit, the certification for purposes of the grant of benefits and other connected matters. It also investigates complaints against medical practitioners and performs other duties connected with medical treatment and attendance as may be specified [Section 22].

- b) The Corporation appoints Regional Boards, Local Committees, and Regional and Local Medical Benefit Councils and delegates them powers as provided in by the regulations [Section 25].

Finance and Audit

Employees' State Insurance Fund

- 11. a) All contributions paid under this Act and all moneys received on behalf of the Corporation is paid into a fund called ESI Fund, which is held and administered by the Corporation.
- b) The Corporation also accepts donations grants and gifts from governments, individuals local authority, any body whether incorporated or not.

Purpose for which the fund amount is spent

- 12. The fund amount is expended for the following purposes.
 - (a) Payment of benefits and medical expenses of insurants and their families (where provided)
 - (b) Payment of fees and allowance to members of the Corporation, the Standing Committee, the Medical Benefit Council, the Regional Boards, Local Committees, and Regional and Local Medical Benefit Council.
 - (c) Expenditures in respect of the staff of the Council including salaries and other payments as well as expenditure in respect of offices and other services set up to administer the Act.
 - (d) Establishment and maintenance of hospitals, dispensaries and other institutions and provision of medical and other ancillary services for the benefit of the insured persons and their families (where provided).
 - (e) Payment of cost of medical treatment and attendance provided to the insured and their families (where provided) including the cost of building and equipment (if there is an agreement to that effect)
 - (f) Defraying the cost of auditing the accounts of the Corporation, and of valuation of the assets and liabilities.
 - (g) Defraying the Cost & Expenses of the

Employees' Insurance Courts set up. (h) Payment of any sums under any contract, decree order or award. (i) Defraying the cost and other charges of instituting or defending any Civil or Criminal proceedings. (j) Defraying expenditure on measures for the importance of health and welfare of insured persons and for rehabilitation and re-employment of insured persons who have been disabled or injured and (k) Such other expenses as may be authorized by the Corporation with the precious approval of the Central Government.

13. Budget, audited accounts and the annual report of the Corporation should be placed before parliament every year [Section 36].
14. All employees in factories or establishments to which this Act applies are to be insured [Section 38].

Contributions

15. (a) The employers and the employees are required to contribute 4.75% and 1.75% of the wages payable in the wage period respectively. However if the average daily wage in a wage period is less than Rs.50/- the employees are exempted from payment.
(b) It is the duty of the employer to pay his as well as employees' contribution on due date. Failure makes him liable to pay simple interest at the rate of 12% p.a. or higher as specified in the regulations (but not more than 15%) till the actual date of payment [Section 39 & 42 read with Rule 52].
16. The employer is allowed to deduct the employees' contribution from the wages paid to them. He will bear all the expenses of remitting his contribution and the contributions of employees to the Corporation. He is prohibited from recovering his contribution from the wages of the employees [Section 40].

17. The immediate employer will have to maintain a register of employees employed by or through him and submit the same to the Principal employer before settlement of any amount payable. The Principle employer is entitled to receive the contributions paid by him in respect of an employee, employed by or through an immediate employer as well as the employers contribution, which is recovered in the first instant by the principal employer [Section 41].

Time and Method of Payment of Contribution

18. The contribution recovered would be paid into an ESI account (with a branch of SBI) on or before 21st of each month following the calendar month in which the wages fall due. The aggregate amount is rounded off to the next higher rupee [Section 43 & Regulations 29 & 31].
19. Wage includes all payments including payment for authorized leave, lockout (legal), lay off or any other additional remuneration paid at intervals of less than 2 months, but excludes employee's contribution to the Provident Fund, ESI Fund or Pension. It also excludes any travelling allowance paid including cycle allowance, reimbursement of any special expenses and gratuity payable on discharge [Section 2(22)].
20. The wage period may be daily, weekly, fortnightly or monthly. For calculating the daily average, the wages are divided by factors 6, 13, and 26 for weekly, fortnightly and monthly wages respectively. Rule 2 (1B) of ESI (Central) Rules 1950.

Reporting

21. (a) Every principal and immediate employer is required to submit returns in the prescribed form giving details of the persons employed by him and contributions recovered in form 6 and in case such returns are not submitted, such other details about the

factory or the establishment in order to enable the Corporation to decide whether it is a factory within the meaning of this Act.

- (b) The employers are expected to maintain a register of employees in form 7, giving details of wages paid, contributions recovered, number of days worked etc. in respect of each employee. This applies to the contractors also.
- (c) The register should be preserved and kept open for inspection by the inspectors of the Corporation.
- (d) Employers are also expected to maintain an Accident Book and an Inspection Book (Section 44 and ESI (Central) Rules, 1950).

Recovery of contribution

22. Any contribution payable under this Act may be recovered as an arrear of Land Revenue

Benefits

23. (1) The insured person (or his dependents as the case may be) is entitled to the following benefits under the Act.
- (a) Periodical payment in case of sickness if the sickness is certified by a duly appointed medical practitioner.
 - (b) Periodical Payment to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement premature birth of child, or miscarriage if certified by the authorized medical practitioner.
 - (c) Periodical Payment for disablement of such dependents of an insured person who dies as a result of an employment injury, duly certified by the authorized medical practitioner.
 - (d) Periodical payment to an insured person for disablement if certified by the authorized medical practitioner.
 - (e) medical treatment for and attendance on insured persons.
 - (f) Funeral expenses to be paid to the eldest-dependent of the insured person who dies as a result of an employment injury (maximum Rs. 2500/- are paid).

- (2) The benefits paid will not exceed the amount prescribed by the central government and the claim is to be made within 3 months of the death of the insured.
- (3) The Corporation may extend the benefits to the family of an insured person on the recommendation of the government [Section 46].

Disablement Benefit

24. (a) A person who sustains disablement for not less than 3 days, is entitled to periodic payment (at the rate of 40% more than the standard benefit rate which is Rs. 14 or more depending upon his wages).
- (b) A person who sustains permanent disablement whether total or partial is entitled to periodical payment at such percentage of benefit payable in the case of temporary disablement, as is proportionate to the percentage of loss of earning capacity (duly certified) [Section 51].
25. For the purpose of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary also to have arisen out of that employment [Section 51A].

Dependent's benefit

25. If an insured person dies as a result of an employment injury, dependent's benefit is payable to his dependent (at 40% more than the standard benefit rate) [Section 52].

Occupational disease

26. An employee (employed in employment specified in Part A of the Third Schedule) contracts any disease specified as an occupational disease under the Act or if an employee employed in employment specified in part B of the third schedule for a continuous period of not less than six

months contracts any occupational disease or if an employee employed in employment falling under Part C of the 3rd schedule, for a continuous period specified by the corporation contracts an occupational disease the contracting of such disease will be deemed to be an injury arising out of and in the course of employment [Section 52-A].

Medical benefit

27. (a) An insured person or a member of his family (in case the benefit is extended to the family) will be entitled to receive medical benefit if they need medical treatment and attention. The benefit may be given as an outpatient treatment or attendance in a hospital or dispensary, clinic, or other institution or by visits to the home or an in-patient in a hospital or other institution. (b) A permanently disabled person can receive medical benefit till the age of normal superannuation. (c) An insured person who has attained the age of superannuation and his spouse can receive medical benefit provided he has paid contribution and satisfied such other conditions as specified by the Corporation [Section 56].

Scale of medical benefit

28. The insured person and his family shall be entitled to received medical benefit only of such kind and on such scale as may be provided by the State Government or by the Corporation and medical treatment as is provided by the dispensary, hospital, clinic or other institution to which he and his family is allotted. They are also not entitled to claim reimbursement of any expenses incurred in respect of any medical treatment except as may be provided by the regulations [Section 57].
29. The limit on medical benefit per family unit per annum in respect of all employees was made Rs. 345/- w.e.f. 01.01.1992.

Establishment and Maintenance of Hospitals by the Corporation

30. (a) The Corporation maintains hospitals, dispensaries and medical and surgical services for the benefit of the insured with the approval of the State Government. (b) The Corporation also enters into an agreement with the local authority, private body or individual in regard to the provision of medical treatment and attendance for insured persons and their families in any area and shares the cost thereof. (c) The Corporation may also undertake to provide medical benefit to the insured persons (and their families) of the State instead of the State Government on cost sharing basis [Section 59 & 59A].

General Provisions

31. Benefits under this act are not attachable. They cannot be commuted by the person receiving them. The person is also not entitled to receive any similar benefits admissible under any other law [Section 60, 61 & 62].
32. a) A recipient of sickness benefit has to be under medical treatment at the institution and will have to carry out the instructions given by the medical attendant in charge. b) He will not do anything that will retard his recovery. c) He will not leave the area in which the medical treatment is being given without the permission of the medical attendant in charge, and shall allow himself to be examined by any duly appointed medical officer [Section 64].
33. An insured person is not allowed to combine benefits for the same period.
- a) Sickness and maternity benefits, b) sickness and disablement benefit, c) maternity and disablement benefit.
- He/she is allowed to choose any one of the benefits for a particular period [Section 65].

Adjudication of disputes and claims

34.
 - a) State Government have constituted ESI courts for the disposal of cases arising out of the ESI Act.
 - b) The State Government may appoint the same court for two or more local areas or two or more courts for the same local area.
 - c) The State Government may distribute work between the courts where there are two or more courts for the same area [Section 74].
35. The ESI Courts will adjudicate upon the following disputes and claims.
 - a) Whether the employee is covered by the Act.
 - b) The rate of daily wage or average daily wage for the purpose of the Act.
 - c) Rate of contribution payable by a Principal employer in respect of an employee.
 - d) Whether a person is or was a principal employer in respect of an employee.
 - e) The right of any person to a benefit and to the amount and duration thereof.
 - f) Any direction issued by the Corporation on review of any payment of dependent benefit.
 - g) Any matter under dispute between the 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 [Section 75 (1)].
36. The ESI Courts shall deal with the following claims.
 - a) Claim for recovery of contributions from the principal employer
 - b) Claim by a principal employer to recover contributions from any immediate employer.
 - c) Claim against a principal employer
 - d) Claim for the recovery of value of amount of the benefits recovered by a person when he is not lawfully entitled thereto.
 - e) any claim for the recovery of any benefit admissible under this Act [Section 75 (2)].
37. No matter which is in dispute between an employer and the ESI Corporation in respect of any contribution or any other dues shall be

admitted unless the employer deposits 50% of the amount due, with the court [Section 72(2-B)].

38. An appeal against the ESI Court Order shall lie to the High Court if it involves a substantial question of law. It should be preferred within 60 days [Section 82].
39. Only a legal practitioner or an officer of a registered trade union authorized to make an appearance can appear before the ESI Court [Section 79].

Penalties

	Offences	Penalties
1.	For making a false statement for claiming or increasing any benefit or payment allowable to him or (b) for avoiding any payment by him	Imprisonment upto 6 months on fine upto Rs. 2000/- or both [Section 84] .
2.	a) Failure to pay employees' contribution deducted from the wages	Punishment upto 3 years (minimum 1 year) and fine of Rs. 10,000/-
	b) Failure to pay contributions	Imprisonments upto 3 years (minimum 6 months) and a fine of Rs. 5000/-
	c) Deduction of any sum from or reduction of wages of an employee on a/c of employer's contribution	Imprisonment upto one year or fine upto Rs. 4000/- or both.
	d) Reduction of the wages or any privilege or benefits admissible to an employee in violation of Section 72	Same as above
	e) Dismissal or discharge of an employee in violation of Section 73.	Same as above
	f) Failure to submit any return or submission of false return	Same as above
	g) Obstruction of any inspector in allowing him to discharge his duties	Same as above
	h) Contravention of any other provisions of the Act, Rules or Regulations	Same as above
3.	On every subsequent offence committed after conviction for the same offence being so mentioned at 2(a) or 2 (b)	Imprisonment upto 5 years (minimum 2 years) and a fine of Rs.25,000/-

4.	On every subsequent offence committed after conviction for the same offence being any offence other than 2(a) & 2(b)	Impressments upto 2 years and a fine of Rs.5,000/-
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SUMMARY

The Employees State Insurance Act 1948 is a landmark in the history of social security in India. The Act is an attempt to introduce an integrated system of health, maternity and accident insurance. The scheme also provides for unemployment insurance during illness and medical facilities to industrial workers.

The Act extends to the whole of India including the State of Jammu and Kashmir. The scheme applies to factories that employ a minimum of ten workers where manufacturing activity is carried out with the aid of power and the factories with a minimum of twenty workers which do not use power for manufacturing. The scheme does not cover seasonal factories and mines. It covers labour employed directly including the clinical staff whose salary in the aggregate does not exceed Rs.7500/- p.m. Apprentices are however, not covered by the scheme.

The scheme is administered by the ESI Corporation, an autonomous body consisting of representatives of the Central and State Governments, employers, employees, medical profession and members of parliament.

The scheme operates on contribution basis. The employers pay 4.75% of the wages with a maximum of Rs. 7.5 per week for the highest level. The employees pay 1.75% of the wages, around Rs. 4/- per week. State Governments contribute 7/8th of the expenses incurred on workers' family and 3/4th of that incurred on workers. In order to qualify for the benefit, workers should have contributed to the scheme for a minimum period of 12 weeks. Employees State Insurance fund has been set up in which all contribution have to be deposited.

The scheme covers the following benefits: (a) Medical cover, (b) Sickness, (c) Maternity, (d) Disability, (e) Dependent benefits (to widows and children of the deceased) (f) In case of death an outright grant of funeral expenses of Rs. 2,500/-

The scheme provides for medical care through dispensaries, hospitals, etc. Contracting an occupational disease is also termed as an accident and the workers are entitled to benefits as a consequence of that sickness. Benefit is provided for upto 91 days and maternity benefit for 12 weeks. Disablement benefit (partial or total) entitles the insured person to receive cash benefit. Dependents (widow & children) receive pension. Artificial limbs, dentures and spectacles are provided either free or at a nominal cost.

The ESI Corporation has established a chain of hospitals to provide for the medical facilities.

The Act provides stringent punishment for breach of provisions regarding contribution and wrong recovery of employer's contribution from workers wages. Similarly punishments have been prescribed for failure to submit returns or for submitting false returns and for obstructing an inspector in allowing him to discharge his duty.

ESI Courts have been set up by the State Governments to try ESI cases.

They have a very clear territorial division. The appeal against their order lies with the High Court.

KEY TERMS

Appropriate Government Confinement Contributions Corporation

Dependent Duly appointed Employment injury Employee

Exempted employee Family Factory Immediate employer Insurable employer

Insurable employment Insured person Managing agent Manufacturing process

Miscarriage Occupier Permanent partial disablement Permanent total

disablement Power Prescribed Principal employer Regulation
Schedule Seasonal factory Sickness Temporary disablement
Wages Wage period

QUESTIONS

- Q1 : What was the objective in setting up the ESI Corporation ? What is its composition ? What are its important committees?
- Q2 : What is the term of office of a standing committee member and the medical benefit committee member other than ex-officio members or members holding office during the pleasure of the government ?
- Q3 : What are the different types of benefits provided in the ESI Act, 1948? State the general provisions regarding these benefits.
- Q4 : A notice of dismissal is given by an employer to A, an employee, during the period A was in receipt of sickness benefit under the ESI Act 1948. Discuss the effect of the notice of dismissal given to A by the employer.
- Q5 : What is the meaning of “accident” in the ESI Act 1948? Has the term been defined in the Act ?
- Q6 : What records are expected to be maintained by the employer according to this Act ? Give their format.
- Q7 : Distinguish between “principal employer” and “immediate employer” . Who is expected to remit the ESI contribution and what is the time limit for remitting the contribution ?
- Q8 : What penalties are prescribed in the Act for delay in remitting the contribution and for repeated delay in remitting the contribution?

THE EMPLOYEES’ PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT 1952

INTRODUCTION

The object of this Act, which came into force from November 1952 is to provide for the institution of provident funds and family pension and deposit linked

insurance scheme for employees in factories and other establishments. Initially the Act applied to only industries manufacturing cement, cigarettes, electrical, mechanical and general engineering products, iron & steel, paper and textiles. Now it extends to every establishment which is a factory engaged in any industry in which twenty or more persons are employed. It extends to the whole of India except the State of Jammu and Kashmir.

SCOPE AND COVERAGE

The Act extends to the whole of India except the State of Jammu & Kashmir and covers factories which employ twenty or more persons. Schedule 1 gives the establishments which are covered under this Act. The Central Government has powers to notify establishment to which this Act is applicable for counting the number of employees. Contract labour is included but casual labour is excluded. Apprentices also do not count as employees under this Act. The Central Government can notify any establishment to be covered under this Act by giving two months' notice.

EXEMPTIONS

- a) Cooperative Societies, employing less than 50 persons and working without the aid of power.
- b) Newly set up establishments for a period of 3 years.
- c) Any State or Central Government establishment having its own scheme of provident fund or pension [Section 16].

The appropriate Government is empowered to exempt any establishment in which the Act applies if the rules of provident fund and other provident fund benefits are not less favourable compared to those under this Act. The Government grants exemption after consultation with the Central Board.

IMPORTANT PROVISIONS

Implementation

1. Establishments to include all departments and branches, whether situated in the same place or different places [Section 2A).
2. Under the Act the Central Government has framed a scheme called “The Employees’ Provident Fund Scheme” for the establishment of provident funds for employees and has notified the class of establishments to which the scheme shall apply. A fund has been established which vests in and is administered by the Central Board duly constituted, for financing the scheme as well as the family pension scheme and deposit linked insurance scheme [Section 5].

Central Board

3. To administer the scheme, the Central Government has constituted Central Board consisting of the following persons as members of the board.
 - i) A Chairman and a Vice Chairman (to be appointed by the Government)
 - ii) The Central Provident Fund Commissioner (an ex-officio member)
 - iii) Not more than 5 persons appointed by the Central Government from amongst its officials
 - iv) Not more than 15 persons representing Governments of such state as specified by the Central Government & appointed by the Central Government
 - v) Ten persons represent employers appointed by the Central Government after consultations with concerned organizations.
 - vi) Ten persons representing employees appointed by the Central Government after consultations with the concerned organizations [Section 5A).
4. The terms and conditions of appointment of members of the Central Board and the time, place and procedure of meeting is determined in the scheme [Section 5-A].

5. The Central Board administers the Fund in accordance with the Provident Fund Scheme, The Employees' Pension Scheme and The Deposit Linked Insurance Scheme [Section 5-A].
6. The Central Board performs its function as laid down in the three schemes [Section 5-A].

The Executive Committee

7. The Central Government has constituted an Executive Committee to assist the Central Board in its functions of administering the three schemes [Section 5-AA(1)].
8. The following persons are the members of the Executive Committee, appointed by the Central Government.
 - i) A Chairman from amongst the members of the Central Board.
 - ii) Two persons from amongst the five government officials on the Central Board.
 - iii) Three persons from amongst fifteen representatives of state on the Central Board.
 - iv) Three persons from amongst the ten members of the Central Board representing the employers.
 - v) Three persons from amongst the ten members of the Central Board representing employees in establishments covered under the Act.
 - vi) The Central Provident Fund Commissioner (ex-officio)
9. The terms and conditions of appointment and the time, place and procedure of the meeting of the executive committee will be as given in the scheme [Section 5-AA (2)].

State Board

10.
 - i) The Central Government constitutes the "State Board" for the state, after consultations with the state, as provided in the scheme.
 - ii) It performs such duties and exercises such powers as the Central Government assigns.
 - iii) The terms and conditions of appointment of

members of the State Boards, and the time & place of meeting as well as the procedure is as determined in the scheme [Section 5-B].

11. The Central Board and the State Board, being Boards of Trustees are a body corporate and are independent legal entities [Section 5-C].

THE SCHEMES

I. Employment Provident Fund Scheme

12. It provides for contribution from the employer to the Provident Fund amounting to 10% of the basic wages dearness allowance and retaining allowance if any. The employee should contribute more. The Central Government by notification has increased this to 12% in respect of certain establishments. The dearness allowance shall include the cash value of the food concession allowed to the employee.

The term retaining allowance means an allowance payable during the time the factory is not working for retaining the services of the employee [Section 6 and explanations thereon].

13. Encashment of leave must be included in the basic wages.

II. Employee's Pension Scheme 1995 (The employees family pension scheme was merged with this scheme w.e.f. 16.11.1995)

14. The Central Government has framed a scheme called "The Employees' Pension Scheme" 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. b) Widows' or widowers' pension, children's pension or orphan pension payable to the beneficiaries of such employees [Section 6-A(1)].
15. A Fund called "Pension Fund" has been established into which, in respect of every employee covered by the Pension Scheme, the following sums are paid :

i) Employer's contribution under Section 6, such sum not exceeding 8 1/3 % of the basic wages, dearness allowance and retaining allowance if any, of the concerned employee, as may be specified, (in case of establishments employing not more than 20 persons or a sick industrial establishment or establishments in the Jute, beedi brick, coir or gaurgum industry 10% of the basic wage, dearness allowance and retaining allowance. In all other cases it is 12%. ii) Such sums as are payable by the employers of exempted establishments. iii) The net assets of the employees' family pension fund as on date of the establishment of the Pension Fund. iv) The Central Government's contribution (The Central Government contributes 1.16% of the pay of the employee, according to the scheme) [Section 6-A(2)].

15. On establishment of the Pension Fund, the "Family Pension Scheme has ceased to operate and all assets of the ceased scheme stood transferred to the fund (similarly the liabilities). The beneficiaries under the family pension scheme will continue to draw the benefits not less than the benefits they were entitled to under the old scheme [Section 6-A(3)].
16. The Pension Fund vests in and is administered by the Central Board [Section 6-A(4)].
17. The pension scheme provides for all the matters mentioned in schedule III [Section 6-A(5)].

III. Employees' Deposit- Linked Insurance Scheme

18. The scheme was introduced in 1976 by the Amendment Act of 1976. The objective was to provide life insurance benefits to the employees of any establishment or class of establishments to which the Act applies. The Amendment Act 1976 was renamed as "The Employees Provident Funds and Miscellaneous Provisions Act 1952" [Section 6-C].

19. As a result of the Amendment of 1976, a separate fund Deposit Linked Insurance Fund called “Insurance Fund” has been created in which contributions towards Deposit Linked Insurance Scheme are deposited. The employer is to contribute not more than 1% of aggregate of wages dearness allowance and retaining allowance (if any) [Section 6-C(2)].
20. In addition the employer has to pay into the Insurance Fund such further sums of money, not exceeding one- fourth of the contribution to the fund as mentioned (in Section 6C(2)) above towards administrative expenses of the Insurance scheme, apart from the cost of any benefits provided under the scheme [Section 6-C(4)].
21. The Central Provident Fund Commissioner or the designated officers under him have the power to decide the applicability of this Act (The Employees Provident Fund & Miscellaneous Provision Act 1952) as amended from time to time and to determine the amount due from any employer. He may conduct necessary enquiry for the purpose and has the power of a court under the Code of Civil Procedure for trying a suit in respect of enforcing attendance, requiring the discovery and production of documents, receiving evidence on affidavit and issuing commissions for examining the witnesses [Section 7-A].
22. The order passed by the Central Provident Fund Commissioner or any of his authorized officers, can be reviewed suo-moto or on application by the officer who passed the order [Section 7-B].
23. The Central Government has constituted the Employees’ Provident Funds Appellate Tribunal with effect from 1.7.1997 to exercise the powers and discharge the functions of the tribunal conferred on it by the Act (Section 7D)
24. (a) No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it 75% of the amount due from him as determined

by the Central Provident Fund Commissioner or his Officers. (b) The Tribunal has the power to waive or reduce the amount [Section 7-0].

Rights and Obligations

25. The employer is liable to pay interest at the rate of 12% p.a. on the amount due from him, from the date it is due till the date of payment [Section 7-Q].
26. The Act provides for the modes of recovery of the amount due and the Recovery Officer has to recover the amount accordingly.
27. The amount standing at the credit of any member in the Fund cannot be attached, assigned or changed under any decree or order of any Court [Section 10-(1)].
28. Recovery of any debt incurred by a member before his death cannot be made from the amount paid to his nominee from the fund [Section 10-(2)].
29. In case an employer is declared as insolvent the amount due from him towards contribution to the fund shall be the first charge on his assets and will be paid in priority to all other debts [Section 11].

Penalties

30. Section 14 of the Act provides for the penalties in respect of various offences in regard to the schemes. They are as follows.

	Offence	Penalty
1.	Making any false statement or misrepresentation to avoid any payment under the schemes.	Imprisonment upto one year and fine of Rs. 5000/- or both
2.	Default in payment in respect of inspection charges or administrative charges towards provident fund	Imprisonment upto 3 years
3.	Default in payment of employees' contribution	Imprisonment upto 3 years and a fine of Rs. 10,000/- (Minimum imprisonment for one year).
4.	Default in payment of contribution or administrative charges towards Deposit	Imprisonment upto one year or a fine upto Rs. 5,000/- or both (Minimum

	Offence	Penalty
	Linked Insurance Fund	imprisonment of 6 months)
5.	Contravention of or default in complying with, any of the provisions of the schemes	Imprisonment upto one year and fine upto Rs. 4000/- or both.
6.	Contravention of or default in complying with any of the conditions subject to which exemption was grant u/s 17.	Imprisonment upto 6 months (minimum 1 month) and fine upto Rs. 5000/-
7.	Any subsequent offence committed after previous conviction	Imprisonment upto 5 years (minimum 2 years) and fine upto 25000/-

31. In case of offences by companies, firms, body corporate or association of individuals, its director, partner or principal officer who is responsible for the conduct of its business shall be deemed to be guilty of such offence and punished accordingly [Section 14A]

SUMMARY

The Employees' Provident Fund Act 1952 came into force from Nov. 1952, and it provided for institution of Provident Fund Family Pension Fund and Deposit Linked Insurance Fund. Its objective was to provide social security for employees in factories and other establishments Originally the Act covered factories and establishments employing fifty or more employees but with effect from Dec. 31st 1960, this number was reduced to 20. It extends to the whole of India except the State of Jammu & Kashmir.

The Central Government had three schemes under which the Act is implemented. They were the Employee's Provident Fund Scheme, 1957, for establishment of Provident Funds for the employees, the Employees' Family Pension Scheme 1971 for providing family pension and life assurance benefit and the Employees' Deposit Linked Insurance Scheme 1976, for providing Life Insurance Benefit to the employees. With effect from Nov. 1995, the Family Pension Scheme 1971 has been merged into the Employees Pension Scheme 1995. The other two schemes continue to operate.

The schemes are administered by the Central Board consisting of a Chairman and representatives of the Central Government, the State Government, the employers and the employees. Under the Central Board, the State Boards have been constituted for carrying out the duties assigned by the Central Government. Under the schemes, funds called Provident Fund, Pension Fund & Insurance Fund have been constituted into which the contributions from the employers, the employees and the Central Government are made. The rate of contribution has been fixed under each scheme for the contribution.

Punishments have been prescribed for non contribution, delay in contribution and other violations of the provision of the Act. The provident Fund Commissioner has the powers of a court under the Civil Procedure Code and appeal lies with the High Court. Enhanced Punishments are prescribed for repeated offences concerning contributions.

The amount at credit of an employee under these schemes are free from attachment.

KEY TERMS

Appropriate governments Authorized officer Basic wages Contributions Controlled industry Employer Employee Exempted employee Exempted establishment Factory Fund Industry Insurance Fund Insurance scheme Manufacture or manufacturing process Member Occupiers of a factory Pension Fund Pension Scheme Prescribed Recovery Officer Scheme Superannuation Tribunal

QUESTIONS

Q1 : If there are several factories situated in different places and having separate licenses but the same registered office, same activities, the same Managing Director, Finance Director and Secretary empowered to operate bank accounts of the factories and have the balance sheet,

income and expenditure account common can they be treated as parts of the same establishment under the provisions of this Act?

Q2 : Can the encashment of leave be included in the basic wages for the purpose of calculating the contribution towards provident fund ?

Q3 : Can the proceedings under Section 7A determine the applicability of the Act to any class of employees ?

Q4 : Can partners receiving remuneration be included in employees category to satisfy requirement of minimum number of employees ? Give reasons for your answer.

Q5 : What establishments may be exempted from the operations of this Act ?

Q6 : Write Short Notes on :

- 1) Central Board
- 2) State Board
- 3) Inspectors & their power
- 4) Mode of payment of contributions
- 5) Employer's obligations under the Act.

LESSON IV

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- (i) Introduction
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- (iv) Salient Features
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LESSON IV

MATERNITY BENEFIT ACT 1961

OBJECTIVES

The objective of this Act is to regulate the employment of women in certain establishments for certain period before and after child birth and to provide for maternity benefit and certain other benefits. It applies to whole of India and came into force w.e.f. 1st November 1963.

It applies to all the establishments being a factory, mine or plantation including those belonging to government as well as those wherein employees exhibit equestrian, acrobatic and other performances. Further save as provided in Section 5A & 5B of the Act, nothing contained in this Act applies to those establishments to which the provisions of ESI Act 1948 apply.

SALIENT PROVISIONS

Prohibition of Employment

Under Section 4 of this Act an employer is prohibited from employing a woman for six weeks after delivery or miscarriage or medical termination of pregnancy. Similarly a woman is prohibited from working in any establishment during the period.

Further no employer should require a pregnant woman to do an arduous work which is likely to adversely affect her pregnancy or foetus during the period of

one month immediately preceding six weeks before the expected date of delivery.

Discharge during absence due to Pregnancy

It is unlawful for her employer to discharge or dismiss her if she remains absent during the above periods. Such discharge or dismissal will not deprive her of maternity benefits unless the dismissal or discharge is an account of gross misconduct.

Maternity Benefit

A woman employee is entitled to maternity leave for a period of 12 weeks, six weeks prior to the delivery (including the day of delivery) and six weeks after the day of delivery. If she does not avail of leave prior to the day of delivery, she is entitled to maternity leave for 12 weeks following the day of delivery (including the day of delivery).

Amount of Benefit

The benefit is payable at the daily average wages consisting of basic wages, dearness and house rent allowance, incentive bonus and money value of concessional supply of food grains and other articles.

In case of death of a woman during the benefit period, the benefit is payable (a) upto the date of her death in case she dies without delivering the child, (b) upto the date of her child's death if the child also dies during the period and (c) for the entire period if the woman dies after delivering the child.

Notice to be given of Maternity

A woman who is pregnant is required to give notice to her employer in the prescribed form stating that maternity benefit may be paid to her before the expected date of delivery, that she will remain absent for 6 weeks before the expected date of delivery and she will not work in any establishment during the period of 6 weeks. On receipt of notice the employer will pay her the maternity benefit on receipt of proof of pregnancy for the period prior to the date of

delivery. The benefit for the subsequent period should be paid within 48 hours of receipt of proof of delivery.

Miscarriage or Medical Termination of Pregnancy

In case of miscarriage or MTP, a woman is entitled to the benefit on production of proof, for a period of 6 weeks from the date of such miscarriage or MTP.

Leave for Tubectomy

A woman is granted maternity benefit of two weeks from the date of tubectomy in production of prescribed proof (Section 9A).

Leave for Illness

A woman suffering from sickness arising out of pregnancy, delivery, premature birth of a child, miscarriage, medical termination of pregnancy or tubectomy operation on production of proof prescribed is entitled to additional leave with wages at the rate of maternity benefit for a period of one month.

Nursing Breaks

A woman who returns to duty after delivery is allowed two breaks of prescribed duration for nursing the child, in addition to the normal work breaks.

No Deduction of Wages

There should be no deductions of wages from a woman entitled to maternity benefits only on account of less arduous work during the period prior to delivery or nursing breaks after she returns to duty after delivery.

Forfeiture of Maternity Benefit

If a woman on maternity leave works in any other establishment for a period during the maternity leave then her claim to maternity benefit for that period is forfeited.

PENALTIES

The following penalties are proposed for the offences committed under this Act:

S.No.	Offences	Penalties
(1)	(a) Failure to pay maternity benefit as provided for under the Act	Imprisonment upto 1 year (Minimum 3 months) and fine upto

		Rs.5000/- (Min. Rs.2000/-)
	(b) Dismissal or discharge of a woman employee in contravention of the Act	Imprisonment upto 1 year (Minimum 3 months) and fine upto Rs.5000/- (Min. Rs.2000/-)
(2)	Failure to produce any register or document before the inspector or obstructing the inspector	Imprisonment upto one year or fine upto Rs.5000/- or both
(3)	Contravention of any other provisions of the Act	Imprisonment upto one year or fine upto Rs.5000/- or both

KEY TERMS

appropriate government medical termination of pregnancy child mine
 delivery miscarriage employer plantation establishment
 prescribed factory State government inspector Wages
 maternity benefit woman

QUESTIONS

- Q1 : What are the conditions for payment of maternity benefit under this Act?
 When is this benefit forfeited?
- Q2 : Is a woman, employed as a casual labour or on daily wage basis entitled to the maternity benefit under this Act?
- Q3 : Can an appropriate government having been satisfied with regard to grant of benefits have the power to exempt an establishment or a class of establishments, i.e. hospitals, nursing homes and dispensaries from the operation of all or any of the provisions of the Act? Give reasons.
- Q4 : What are the leaves to which a woman worker is entitled to in case of miscarriage or illness arising out of pregnancy?
- Q5 : What are the penalties given in the Act for the following offences?
 (i) Failure to pay any amount of maternity benefit to a woman entitled under this Act. (ii) For contravention of the provisions of the Act by an employer.

THE PAYMENT OF BONUS ACT 1965

INTRODUCTION

In a society like ours where there has been a tradition of celebrating festivals with much fan-fare, payment of bonus on the eve of such festivals makes a greater impact on the workers who get some extra money to defray the extra expenses on account of the festival. Hence the practice of payment of bonus on the eve of major festivals. Payment of bonus is justified on the ground of sharing the profits of the employer. Bonus is a payment made to maintain industrial harmony and to motivate the workers to do their best to keep the industry performing well. Bonus is also paid to make available to every employee a living wage which is more often higher than the actual wage.

Under the Act, every eligible employee is entitled to a minimum bonus of 8.33% of the salary or wages. The maximum bonus to be paid is 20%. Though intended to improve industrial relations in India, it has failed to achieve the purpose.

SCOPE AND COVERAGE

The Act is a Central legislation which extends to the whole of India and is applicable to every factory (as defined under the factories Act 1948) and to every other establishment wherein 20 or more workmen are employed on any day during an accounting year. The Central / State Government can, however, extend its provisions to establishments employing less than 20 persons but not less than 10. Part time employees are also included in the number of employees for bonus purpose (Section 10)

IMPORTANT PROVISIONS

Coverage

1. The Act extends to the whole of India, to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year (Section 1).

2. The appropriate government can extend the provisions of this Act to establishments (including a factory) which employs less than twenty but more than ten persons by notifying it in the official Gazette and by giving two months' notice (Section 1[3]).
3. An establishment to which this Act applies shall continue to be governed by this Act even if the number of persons employed falls below twenty (Section 1B).

Computations of Gross Profits and Available Surplus

- 3a. The available surplus in respect of any accounting year will be the gross profit less the sums deductible under section 6 (Section 5).
- 4) Gross profits of establishments which is used in calculation of bonus, is to be calculated in the manner prescribed in the first schedule in respect of a Banking company or that prescribed in the second schedule in respect of other establishments (Section 4).
- 5) The Act provides for calculation of direct tax payable by the employer at the rates applicable to the income of the employer.
 - (a) In calculating the direct tax payable,
 - (i) Any loss carried forward is not taken into account. (ii) No arrears of depreciation are taken into account. (iii) No exemption under section 84 of the IT Act and no deduction under subsection (1) of Section 101 of IT Act is to be taken into account.
 - (b) A charitable institution to which the provision of Section 32 of the IT act are not applicable and where whole or part of the income is exempt from tax, is to be treated as a company in which the public are substantially interested within the meaning of the IT Act.
 - (c) Where the employer is an individual or an HUF, the tax is to be calculated as if the income from the establishment is his only income.

- (d) Where the income of the employer includes profits or gains on account of export out of India and a rebate is allowed, that rebate will not be taken into account while calculating the tax.
 - (e) Similarly no account of any rebate (other than development rebate, investment allowance or development allowance) or credit or relief or deduction in the payment of direct tax allowed under any extant law or under any relevant Finance Act for the development of Industry will be taken into account while calculating the direct tax (Section 7).
6. The Act provides for calculation of available surplus as the gross profit for the year less the sums deductible under Section 6 of the Act provided from 1968 onwards the available surplus will be the aggregate of the gross profit less the sums deductible u/s 6 and the difference between the direct tax in respect of the gross profits in respect of the previous year and the direct tax in respect of the gross profit less the bonus paid (or liable to be paid) in a respect of the previous year (Section 5).
7. The following sums are deductible from the gross profits as prior charges:
- (a) Depreciation admissible under sub Section (1) of Section 32 of the IT Act
 - (b) Development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income
 - (c) Any direct tax the employer is liable to pay for the accounting year.
 - (d) Such further sums as are specified in respect of the employer in the Third Schedule (Section 6).

Eligibility for bonus

8. Every employee receiving salary or wages upto Rs.3500 p.m. and engaged in any kind of work skilled or unskilled is entitled to be paid bonus by the employer provided he has worked in the establishment for not less than thirty working days in that year.

(i) A probationer is eligible for bonus. (ii) A part-time screeper is eligible for bonus. (iii) A daily wagger is eligible for bonus. (iv) An apprentice is not eligible for bonus (Section 1B and Section 8).

9. An employe who is dismissed from service for fraud, riotous or violent behaviour, theft, misappropriation or subotage, is not qualified to receive bonus (Section 9).

Quantum of bonus

10. (a) Every employer is bound to pay to every employe from the year 1979 onwards, a minimum bonus of 8.33% of the salary or wages or Rs.100/- whichever is higher. (b) Where the employe is below the age of fifteen, he is to be paid 8.33% or Rs.60% whichever is higher (Section 10).
11. Where the allocable surplus 60% or 67% of the available surplus – (Section 2(4)) exceeds the amount of minimum bonus payable to the employees (from the year 1979 onwards), the employer is bound to pay to every employe higher bonus subject to a maximum of 20% of the salary or wages (Section 11).
12. (a) If for any year the allocable surplus exceeds the amount of maximum bonus payable, the excess amount (subject to the limit of 20% of the salary or wages), will be carried forward for being set on and added to the allocable surplus of the subsequent year, upto the 4th accounting year. (b) Similiarly if for any year the allocable surplus falls short of the amount of minimum bonus payable, the deficiency is carried forward in the same manner as the excess, for being set off, in the succeeding year and so on upto and inclusive of the 4th year in the manner illustrated in the 4th schedule (Section 15).
13. Employees whose salary or wages exceed Rs.2500/- will be paid bonus calculated under this Act, as if the salary were only Rs.2500/- (Section 12).

14. If a worker is laid off under an agreement or as permitted by standing order under the Industrial Employment (Standing Orders) Act 1946 or under the Industrial Disputes Act 1947, or under any other law applicable to the establishment, or is on leave with salary or wages, or is absent due to temporary disablement caused by accident arising out of and in the course of his/her employment or the employee has been on maternity leave with salary or wages, the period of absence will count towards bonus, as if he/she has worked on those days (Section 14).
15. In case of newly set up establishment, before or after the commencement of this Act, the employees of such establishments are entitled to be paid bonus under this Act in accordance with the following provisions:
 - (a) In the first five years, bonus will be paid in respect of only the year in which the employer derives profit, without applying the provisions regarding set off and set on.
 - (b) In the 6th and 7th year, the provision of set off and set on will be applied in the following manner.
 - (i) Set off or set on as the case may be, may be applied in respect of the fifth and sixth accounting year.
 - (ii) For the seventh accounting year, the set off or set on will be applied in respect of fifth, sixth and seventh year.
 - (c) From the eighth accounting year, the set off or set on will be applied as illustrated in the fourth schedule.
 - (d) The provision regarding, the newly set up departments or undertakings may also apply to new departments or undertakings set up by the existing establishments and if bonus was earlier paid on the basis of consolidated profits of all branches, then the same practice will be continued in respect of the newly set up branches or undertakings (Section 16).

Deductions from bonus and time limit for payment

- 16) An interim interition bonus or a part of the bonus paid on some customary occasion or before the date on which bonus is payable is adjusted against the total bonus payable for the year (Section 18).
- 17) Amount to be recovered from the employee on account of misconduct causing loss can be adjusted against bonus payable for that year only (Section 18).
- 18)
 - (i) Bonus is to be paid in cash within eight months from the close of the accounting year.
 - (ii) In case of dispute regarding payment of bonus, it is to be paid within a month from the date in which the award becomes enforceable or the settlement comes into operation, provided further that the government or the Authority specified by government can extend the period upto two years (Section 19).
19. The provisions regarding bonus are applicable to a public sector unit provided the public sector unit sells or renders any service in competition with a private sector establishment and the income from such a sale, or service or both is not less than 20% of the gross income of the establishment for the year (Section 20).

Recovery from the employer

20. If any bonus amount due to an employee is not paid to him by the employer, the employee (or his assignee or heir in case of death) can make an application within one year to the government which in turn can direct the collector to recover the amount as arrears of land revenue. (Section 21).

21. Any dispute regarding bonus payable, between the employee and the employer becomes an industrial dispute and is settled by application of the concerned Act or Law in force (Section 22).

Presumption about accuracy of accounts

22. (i) Under the proceedings relating to bonus, the balance sheet and profit and loss account duly audited by a qualified auditor (designated under the Companies Act) are presumed to be accurate and the company is not required to prove the accuracy.
- (ii) However, if the authority (an arbitrator or a tribunal) is satisfied that the particulars in the balance sheet or the profit and loss account are not accurate, it may take steps as deemed fit to verify the accuracy.
- (iii) If the complaining party in the dispute wants a clarification about any item in the balance sheet or the profit and loss account, the said authority may direct the company to furnish the same (Section 33).
23. In case of a bonus dispute relating to a banking company the authority will not permit questioning of the correctness of the duly audited accounts of the banking company. It may, however, permit obtaining any information necessary for verifying the amount of bonus due under the Act. However, nothing can compel a banking company to furnish any information which the banking company is not compelled to furnish under the provisions of Section 34A of the Banking Regulation Act 1949 (Section 24).
24. In the dispute between the employer (not being a company or a corporation) and the employee regarding bonus, if the accounts are found to have not been audited by qualified auditors the authority may direct

the employee to get the accounts audited by qualified auditors within a specified time. In case he fails to get it done, the authority may get it done without prejudice to the provisions of penalty (Section 28) under the Act (Section 25).

25. Every employer will prepare and maintain the following registers ie.,

(a) A register showing computation of the allocable surplus, in form A.

(b) A register showing the set on and the set off of the allocable surplus,

in form B. (c) A register showing the details of the amount of bonus due to each of the employees, the deductions of interim bonus made and that of financial loss made, from the bonus payment due in form C.

26. The appropriate government may appoint inspectors for administering the Act (Section 27). Every employer has to send a return in form D to the inspector so as to reach him within 30 days after the expiry of the time limit specified in Section 19 for payment of bonus.

Penalties

27. The penalty for contravening the provisions of this Act or the rules made there under is imprisonment upto six months or fine upto one thousand rupees or both. The same penalty is prescribed for non compliance with the directions or requisition issued under this Act (Section 28).

Offences by Companies

28. In case of companies contravening the provisions of the Act or not complying with the direction or requisitions, the company as well as the person in charge of the company shall be liable to be proceeded against unless such person in charge can prove that the offence was committed without his knowledge or he exercised due diligence to prevent the commission of the offence (Section 29).

General

29. Offences under the Act are non-cognizable offences (Section 30).
30. No suit, prosecution or legal action can be taken against the government or any officer of the government acting in good faith in pursuance of this Act.
31. Where an agreement or settlement has been reached for payment of an annual bonus linked with production or commencement of the Act, then the employees will be entitled to receive bonus under such agreement or settlement but such agreement or settlement will not deprive them of the right to receive the minimum bonus under this Act and such employees will not be entitled to receive bonus in excess of 20% of the salary or wages (Section 31A).
32. The Act does not apply to certain classes of employees including State / Central government employees, LIC, RBI, UTI, Local bodies, etc. What they receive is only ex-gratia payment.
33. (a) The appropriate government can exempt an establishment from the purview of this Act for valid reasons (Section 36). (b) The prescribed authority for granting permission for change of accounting year in respect of a central government establishment is the Chief Labour Commissioner (central) (c) In respect of other establishments it will be the labour commissioner of the state in which the establishment is situated.

SUMMARY

The objective of the payment of Bonus Act 1965 is to provide for the payment of bonus to the employees of certain establishments, to impose statutory liability upon the employers to pay bonus, so that the surplus is

shared by workers to some extent. It extends to the whole country and to every establishments where 20 or more workmen are employed on any day during an accounting year with powers to the Central / State governments to extend it to the establishment employing less number (but more than 10) on a day. Bonus is calculated on the basis of available surplus which is on the basis of gross profit. To calculate gross profit two formulae one for banking companies and the other for other companies are used as given in the first and second schedule. With the enactment of the Act, bonus acquired the character of a right on the part of workers because the Act makes payment of minimum bonus(8.33% of the wages) obligatory whether the establishment made profit or not. The Act has been amended in 1969,1972, 1975, 1977 and 1980.

The 1977 amendment emphasised linking bonus with increasing production / productivity and once again declared bonus as a deferred wage, refixing the minimum at 8.33% of salary / wages. It however, retained the maximum at 20%. Employees in establishment mentioned in Section 32 were also to be paid bonus as deferred wages between 8.33% to 20% , providing for bargaining and with the approval of the appropriate government. Though bonus was sought to be linked to production by this amendment, there are very few instances in the country with productivity linked bonus. (Eg. Indian Railways), Bihar Electricity Board. However, in this the difficulty is to identify measures of productivity which can be applicable to all industries. Another aspect, as pointed out in the National tripartite Seminar on Bonus, held in March 1980 is that productivity depends upon many factors other than workers' contribution.

Bonus started in India as an ex-gratia payment (during the Second World War) and it has reached a stage that it is recognised as a matter of right of the employees In mid 1983, the central government extended coverage of the

Bonus Act to a wide variety of its own white collared employees such as The Post and Telegraphs Department, Defence Ministry production units and other departments, particularly in the Education and Research Sectors, as a result of the interpretation of the term “Worker” by the Supreme Court.

QUESTIONS

Q1: Define the following terms as used in the payment of Bonus Act 1965.

- (a) Allocable Surplus b) Available Surplus c) Direct Tax
- d) Employer and Employee e) Salary or Wages.

Q2: Under what circumstances, an employee is disqualified from receiving bonus?

Q3: How is “available surplus” determined under the payment of Bonus Act 1965? How is the “Allocable Surplus” calculated from it?

Q4: Explain in detail the procedure for “Set Off” and “Set On” by giving an example

Q5: Mention the Special Provisions of the Payment of Bonus Act in respect of new establishments.

Q6: An employee caused damage to the property of the employer by willful negligence to the extent of Rs.10,000/- in a particular year wherein he was entitled to receive bonus of Rs.5000/-. Can the employer recover the loss from his subsequent years' bonus?

Q7: If an employee has not worked for all the working days in any accounting year is he entitled to any bonus?

Q8: The employees of an establishment have entered into an agreement for payment of an annual bonus linked with production or productivity in lieu of

bonus based on profits under the payment of Bonus Act 1965. In such a situation, do the limits of 8.33% and 20% apply to them?

KEY TERMS

Accounting year Agricultural Income Agricultural Income Tax Law
Allocable Surplus Appropriate Government Available Surplus
Award Banking Company Company Cooperative Society
Corporation Direct Tax Employee Employer
Establishment in Private Sector Establishment in Public Sector Factoring
Gross Profits Income Tax Act Prescribed Salary or Wages.

THE PAYMENT OF GRATUITY ACT 1972

INTRODUCTION

Gratuity is a payment intended to help the workmen after their retirement whether the retirement is a result of superannuation or of some physical disability. It is earned by an employee as a reward for long and meritorious service.

The Payment of Gratuity Act 1972 a long awaited and progressive social measure, was passed in Aug. 1972. It came into force on the 16th of Sept. 1972.

SCOPE AND COVERAGE

The Act extends to the whole of India. However in respect of plantations or ports, it does not extend to the State of Jammu & Kashmir. It was amended five times since enactment, the last being in 1998 (11 of 1998).

The Act applies to every factory, mine, oilfield, plantation port and railway company. It also applies to shops and establishments as defined by the States, in which 10 or more persons are employed or were employed on any one day of the preceding twelve months. It also may be applied to such other establishments where 10 or more persons are or were employed on any day

during the last twelve months by the Central Government, by a notifications in this behalf [Section 1 (1), (2)].

The Central Government has made the Act applicable to all the Educational Institutions, and to all Trusts and Societies registered under the Societies Registration Act 1860, employing 10 or more employees. The Central Government has made the Act applicable to motor transport undertakings, clubs, Chamber of Commerce and Industry associations, Federation of Chambers of Commerce and Industry, local bodies and Solicitors' offices, and Municipal Boards which employ more than 10 persons.

EMPLOYEES ENTITLED

Employees with five years' continuous service on his superannuation, retirement or resignation or on his death or disablement due to accident or disease.

In case of death or disablement continuous service can be less than five years prior to his death or disablement [Section 4 (1)].

SALIENTS FEATURES

Rate of Gratuity

1. For every completed, year of continuous service or part thereof in excess of six months, gratuity at the rate of fifteen days wages last drawn is to be paid. In case of piece rate workers, the average daily wage drawn is calculated on the basis of remuneration received during the last three months preceding the termination divided by the number of working days during those three months.
In case of seasonal employment, gratuity rate is seven days' wages for each season. In case of monthly rated employee, the rate of gratuity is equal to the monthly rate x 15/26 [Section 4(2)].
2. The amount of gratuity paid should not exceed Rs.3,50,000/-
3. In case of reduction of wages due to disablement the rate of gratuity will be different for the two periods i.e. before disablement (normal wage rate

for 15 days) and after disablement (reduced wage rate for 15 days) [Section 4(4)].

4. Any employee however can receive better terms of gratuity under an award or an agreement [Section 4(5)].
5. An employee whose services have been terminated for any act, willful omission or negligence causing any loss or damage to the employer, forfeits his gratuity to the extent of the loss or damage [Section 4(6)].
6. The gratuity of an employee is wholly or partially forfeited if the services of such employee have been terminated due to riotous or violent behavior or disorderly conduct or moral turpitude provided such offence is committed in the course of his employment.

Compulsory Insurance

7. Every employer (except the Central & State Government) should obtain an insurance cover for the liability for payment towards the gratuity from the LIC or any other prescribed insurer [Section 4A].
8. The employer who has already established an approved gratuity fund in respect of his employees is exempted from taking insurance provided he continues with the fund [Section 4A(21)].
9. Every employer has to get his establishment registered with the controlling authority for the purpose of this Act. No registration will be granted unless insurance cover has been obtained for each employee [Section 4A(3)].
10. The appropriate government frames rules for effective implementation of this Act. The rules provide for the composition of a Board of Trustees of the approved and gratuity fund and for the recovery by the controlling authority of the amount of gratuity payable to an employee from the insurer or the Board of Trustees of the approved gratuity fund [Section 4A(4)].

Interest for Delayed Payment

11. In case of non payment or delayed payment of amount due on account of insurance to the insurer or the approved fund, the employer is liable to pay the same to the controlling authority with interest for delayed payment [Section 4A(5)].

Exemption

12. If the employees of an establishment are in receipt of better pensionary benefits the appropriate government may exempt such establishment from the operation of this Act [Section 5 (1) & (2)].

Nomination

13. Each employee on completion of one year service should make nomination in respect of his gratuity claim. He can distribute the benefit amongst more than one nominee. However, if an employee has a family at the time of making a nomination, then the nomination of anyone who is not a member of his family is void. However, if he subsequently acquires a family, such nominations of a non-member of his family becomes invalid and a fresh nomination is required to be made. The nomination can be modified after giving a written notice to the employer. Nominations are required to be kept in safe custody by the employer [Section 6].

Determination of the amount of gratuity

14. The employer determines the gratuity payable on receipt of application by the claimant or as soon as it becomes due and given a notice to the person to whom it is payable and also to the controlling authority specifying the amount of gratuity so determined. He should arrange to pay the same within 30 days from the date in which it becomes payable. For delay he should pay simple interest for the period of delay [Section 7].

15. In case of dispute regarding the amount of gratuity payment, the employer should deposit the amount with the controlling authority. The claimant can raise the issue with the controlling authority. The controlling authority after due inquiry and after giving reasonable opportunity to all the parties, decides the issue and order enhanced amount to be paid by the employer or pay the amount already deposited with him as the case may be. For conduct of such inquiry the controlling authority has the power of a court under code of Civil Procedure. Appeal against the orders of the controlling authority lies with the government or any authority nominated by the government in this behalf. The appeal is to be preferred within 60 days [Section 7].

Penalties

16. Following penalties have been laid down in the Act for Offences mentioned.

	Offence	Penalties
1.	Failure to make payment by way of premium for compulsory insurance u/s 4A(1) or by way of contribution to the approved fund	Fine upto Rs.10,000/- and Rs.1000/- for each day during which the offence continues
2.	Making a false statement or false representation to avoid any payment under the Act or both	Imprisonment upto 6 months or fine upto Rs.10,000/-
3.	Contravention or non-compliance of any provision of the Act or the rules	Imprisonment upto one year (minimum 3 months) or fine upto Rs.20,000/- (minimum Rs.10,000/-) or both
4.	Non-payment of any gratuity payable under the act	Imprisonment upto two years (minimum 6 months) or fine upto Rs.20,000/- (minimum Rs.10,000/- or both).

17. No gratuity payable under this Act can be attached by any court order [Section 13].

SUMMARY

The payment of gratuity Act 1972 is yet another landmark in the history of progressive social security measure in India. Gratuity is a reward for long and

mentorious service and under this Act all persons employed in establishments in which 10 persons or more are employed (or were employed on anyone day during the last three months are covered.

Gratuity is paid at the time of retirement or in case of death before superannuation or in case of permanent disablement. The amount of gratuity is calculated on the basis of number of years of service. For every year or part thereof in excess of six months, 15 days' wages are paid as gratuity. Employees who have rendered five years of continuous service are eligible for the benefit of gratuity. The maximum gratuity payable is Rs.3,50,000/-

Employers (except the State or Central Government) are expected to buy an insurance policy with the LIC for payment of gratuity to every worker. The establishments falling under the purview of this Act are required to be registered themselves with the controlling authority. One of the conditions of registration is that for each person employed for one year the establishment should have a policy from the LIC for payment of gratuity.

The units which have their own gratuity policy and fund and the benefits from which are no less than those from this Act are exempted from the purview of this Act. However such gratuity funds must be administered by a Board of Trustees.

Controlling authorities of the appropriate government administer the Act. They have powers of civil courts in settling the disputes arising out of this Act. Stringent punishments have been laid down in the Act for violation and repeated violation of the Act.

KEY TERMS

Appropriate Government Completed year of service Continuous service

Controlling authority Employee Employer Factory Family

Major port Mine Notification Oilfield Plantation Port

Prescribed Railway Company Retirement Superannuation Wages

QUESTIONS

- Q1 : In what situation can be Central Government exempt an establishment from the purview of this Act ?
- Q2 : What are the provisions relating to nomination by an employee in the Act ?
- Q3 : Who is controlling authority under this Act? What are his powers? Who can apply to the controlling authority for direction? When can this application be made?
- Q4 : Are employees of the State and Central Government covered by this Act? Give reasons.
- Q5 : Can a beedi worker who rolls beedis for his employer but at his own house be considered an employee within the provisions of this Act?
- Q6 : An offence involving moral turpitude results in forfeiture of the benefit of gratuity under this Act. If a person, who has committed an offence involving moral turpitude is given the benefit of probation under Section 3 of probation of offender's Act 1958 dies can such a person be disqualified to receive the amount of his gratuity?

LESSON V

Experience from Implementation of the Wage and Welfare Acts

1. Landmark Cases

- (a) Workmen's Compensation Act
 - (i) Connection between accident and employment
 - (ii) Death during the course of employment
 - (iii) Principle of waive or acquiescence
 - (iv) Refusal of Commissioner to record memorandum of agreement
- (b) Payment of Wages Act 1936
 - (i) Jurisdiction of the wage count
 - (ii) Denial of Wages though on duty
 - (iii) Deduction of wages
 - (iv) Go slow
- (c) The Payment of Bonus Act 1965
 - (i) Part time employees
 - (ii) Direct taxes
 - (iii) Disqualification for bonus
 - (iv) Minimum bonus
 - (v) Adjustment of customary or interim bonus against bonus payable under the Act
- (d) The Minimum Wages Act 1948
 - (i) Eligibility for maximum wages
 - (ii) Minimum rate of wages
- (e) The Payment of Gratuity Act 1972
 - (i) Employee

- (f) Employees Provident Fund and Miscellaneous Provisions Act 1952
 - (i) Nomination
 - (ii) Establishment
- (g) The Employees' State Insurance Act 1948
 - (i) Employee
 - (ii) Contribution
 - (iii) Dismissal
- (h) The Equal Remuneration Act 1976
 - (i) Overriding effect of the Act

2. Need for Reform

- (i) Pre-Independence scenario
- (ii) Post-Independence scenario
- (iii) Recent developments
- (iv) Role of labour legislation
- (v) Labour reforms

3. Annexure

- (i) The Fourth Schedule (Section 15 & 16)
Payment of Bonus Act 1965

LESSON V
LANDMARK CASES

Experiences from Implementation of these Wage & Welfare Acts

Workmen's Compensation Act: 1923

1. Connection between accident and employment

A deceased employee while travelling by public transport to his place of work met with a fatal accident. Nothing has been brought on record that the employee was obliged to travel in any particular manner under the terms of the employment nor he was travelling in the official transport. The court held that no causal connection between accident and employment could be established. Hence the claimant is not entitled to any compensation.

State Bank of India Vs Vijay Laxmi, 1998, L.L.R. 319.

2. Death during the course of employment

If the deceased employee met with his death while he was going to his place of work and the death has arisen during the course of employment, then the employer is liable for compensation.

TNCS Corporation Ltd. Vs S.Poomalai, 1995 LLR 63 (Mad): 1995, 1LLJ HC MDS (378)

3. Principle of waive or acquiescence

Even if the claimant has made a claim of lesser amount than due, his right to claim or the power of the commissioner to enhance the compensation is neither waved nor curtailed, since the principle of waive or acquiescence has no application to such type of cases.

Balavandra Patra Vs Chief Engineer Orissa, 1987 (I) LL, N 634:

Mohd Koya Vs Balan, 1987 (I) LLN 353.

4. Refusal by Commissioner to record memorandum of agreement

Where it appears to the commissioner that an agreement as to the payment of lumpsum whether by way of redemption of a half-monthly payment or

otherwise, or an agreement as to the amount of compensation to a workman or to a person under a legal disability ought not to be registered because of inadequacy of the sum of amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means, the commissioner may refuse to record the memorandum of the agreement. He may pass such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances;

Amarshi Jeram Vs M/s.Hazarat and Co.

AIR 1962 Guj. 262; 1962 II LLJ 187.

THE PAYMENT OF WAGES ACT 1936

1. Jurisdiction of the Wage Court

The wage court is not at all competent to determine whether variable D.A. under the agreement is payable to any workmen this being a subject matter for the court constituted under Industrial Disputes Act, 1947. The jurisdiction of the Wages Court is to entertain application only in two items of cases, namely, of deductions and fine not authorised under sections 7 and 3 and of delay in payment of wages beyond the wage period fixed under section 4 and the time of payment laid down in the section. The question whether the employees are entitled to get variable D.A. or not cannot be treated as deductions, and as such, the wage court has no jurisdiction to entertain the claim.

French Motor Car Co. Ltd. Workers Union Vs French Motor Car Co Ltd., 1990 LLR 366.

2. Denial of wages though on duty

The workman cannot be denied the wages when he reports himself on duty but the work is not taken from him by the employer.

J.D.A. Vs. Labour Court (1990) 60 FLR 81 (Raj)

3. Where the company was closed without any proper notice to the workmen and the workmen claimed wages for the period they were kept out of

employment, section 25 FFF of the Industrial Disputes Act was not applicable and the claim amounted to wages and not compensation and the authority under the payment of Wages Act had jurisdiction to determine the same.

Banjaravala Tea Estate Vs District Judge, 1981 Lab IC 370; (42) FLR 165; (1981) I Lab In 371.

Deduction of Wages

4. If the absence from duty is due to coercion and the workman is not a consenting party, then the management has no power to deduct wages.

Kothari (Madras) Ltd Vs Second Addl District Judge-cum Appellate- Authority (1990) 76 FJR 209 (AP).

5. An employer can deduct the wages under section 7 (2) (b) of the Act for absence from duty. Absence from duty by an employee must be on his own volition and it cannot cover his absence when he is forced by circumstances created by the employer from carrying out his duty. In the case in hand as the absence of the employee's was not voluntary in as much as they were not allowed to resume their work without signing the guarantee bond no deduction can be made under the Act. (French Motor car company Ltd workers Union Vs. French Motor car co Ltd; (1990) LLR 366).

GO SLOW

6. It is well-settled that "go-slow" is a serious misconduct being a connect and a more damaging breach of the contract of employment; Bank of India Vs. T.S. Kelawala, (1990) LLR 313 (SC).

The Payment of Bonus Act 1965

Part time employees

1. A part time employee is also an employee for the purpose of calculating the number of employees - 20 or more - under section 1(3) (b);

Tribunal, (1976) 38 FLR 268 (All)

Direct Taxes

2. All direct taxes for the time being in force have to be deducted from the gross profits as prior charges in order to ascertain the "available surplus" for purpose of bonus;

1975 LLR Bom 1339

3. Bonus paid to trainees (not apprentices) is admissible deduction under the Income Tax Act;

Texttool Co. Ltd. Vs Income Tax Officer, (1984) 9 ITD 820 (Mad).

Disqualification for bonus

4. Bar of disqualification for bonus imposed under section 9 is a clear and unequivocal bar and if the wording of the provisions also is carefully gone through, a distinction cannot be drawn between the bonus payable subsequent to the order of termination or prior to the order of termination and the bar is applicable to the bonus as such payable under the Act. Hence, awarding of bonus to workman, on facts is sustainable in law.

KLJ Plastics Ltd. Vs. Labour Court III, Hyderabad, 2002(3) LLJ 619 Bom

5. Bonus can be forfeited under section 9 only with reference to accounting year in which the employee committed fraud, theft etc.

Himalaya Drug Co. Vs P.O. 2nd Addl. Labour Court, (1986) 52 FLR 704.'

Maximum Bonus

6. Ex-gratia bonus is not a bonus within the meaning of section 10 of the Act; RPC officers' Association Vs RPC , 1990, LLR 222 (Raj).

Adjustment of Customary or interim bonus against bonus payable under the Act

Claim of annual bonus was rooted in custom but qualified by negotiations / settlement held to be customary in nature and not statutory based only on settlement linked with productivity or profits.

Mukund Ltd. Vs Mukund Kamgar Union, 2003 (II) LLJ 410 (Bom)

7. Payment of any customary bonus such as attendance bonus, festival bonus or the like does not absolve the management from their liability to pay statutory bonus;

Baidyanath Bhavan Mazdoor Union Vs Baidyanath Ayuvedic Bhavan Ltd. 1984 Lab IC 148.

The Minimum Wages Act 1948

Eligibility for minimum wages

1. A piece-rated worker is also entitled to receive minimum wages irrespective of his output:

Bandhua Mukti Morcha Vs Union of India (1984) SCC (L&S) 389.

2. A detective agency is not covered under the provisions of this Act. There is no logic that when the employees engaged through the detective agency worked in an engineering industry, the employer is liable to pay the minimum wages but when the same employees engaged by the detective agency are on private duty, they are not entitled to such minimum wages. Hence, no relief could be granted either against the contractor or the principal employer.

Linge Gawda Detective and Security Chamber (P) Ltd., VS Authority under minimum Wages Act, 1998 LLR 77

Minimum Rate of Wages

3. Section 4 is a definite indication that basic wage is an integral part of the minimum wage. It is not correct to say that a minimum wage under section 4(1) necessarily should consist of basic wage and dearness allowance. The language of section 4 does not lend itself to such an interpretation. On the plain terms of section 4(1) it is clear that the payment of dearness allowance would arise only if the basic wage fixed for a category of workmen fell short of the minimum wage which the state government has to fix taking into consideration the needs of the workers' family consisting of three consumption units;

Karnataka Film Chamber of Commerce, Bangalore Vs State of Karnataka, 1986, Lab IC 1890; LLR 1986, Kant 2183.

Claim to Minimum Wages

4. A compromise or a settlement between the employer and employee resulting in the employee relinquishing or reducing claim with regard to wages under the Minimum Wages Act shall be null and void, as his right under the Act is a definite Claim.

Yadav stores, Nagpur Vs Presiding Officer, Labour Court III 1984, Lab IC 756.

5. While making the enquiry into the claim petition under section 20 of the Act, the authority acts in quasi judicial capacity and ipso facto should ensure that no prejudice is caused to the employer by failure to follow the rules of natural justice;

6. B.Ramadas Vs The Authority under Minimum Wages Act, Guntur Region, Guntur, 1987 Lab IC 1493; 1987-2 APLJ (HC) 137.

The Payment of Gratuity Act 1972

Employee

1. The teacher cannot be said to be an employee within the meaning of the Act and conferring the benefits of the Act to a teacher is illegal; Seth Soorajmal Jalan Balika Vidyalaya (Secondary School) Vs The Controlling Authority, 2001 LLR 567 (Cal). But in case of General Education Academy, Chamber, Mumbai Vs Sudha Vasudeo Desai, 2001 LLR 627, the Bombay High Court held and declared that the definition of employee in section 2(e) includes and covers in its campus class of teacher employed in a school.

2. Any workman engaged for work on temporary basis according to the availability of work is not an "employee" within the meaning of section 2(e):

K. Velukutty Achary Vs Harissons , Malayalam Ltd., (1993) 66, FLR, 423 (Ker) (DB)

3. Home worker is very much a person working in the establishment within the meaning of section 2(e). Since the place where he rolled the beedis, though situated away from the Beedi factory was nevertheless a part of the establishment within the meaning of section 2(b) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. Hence, Home maker is an employee of the establishment;

M/s. Bagi Beedi Factory Vs Appellate Authority 1998, LLR 23.

Quantum of Gratuity

4. The Fifth Pay Commission Recommendations are applicable to Central Government Employees only and not applicable to the respondent Bank. Hence the claim of these employees for total amount of Rs. 3.50 lakh dismissed; Shitla Sharan Srivastava Vs Government of India 2001 LLR 898 (SC).

5. An employee who is given the benefit of probation under section 3 of the Probation of Offenders Act 1958, cannot be disqualified to receive the amount of his gratuity.

S.N. Sunderson (Minerals) Ltd. Vs Appellate Authority-cum-Deputy Labour Commissioner (1990), 60 FLRG (Summary) (MP)

6. If gratuity is not paid, it must be paid with compound interest at the rate prescribed under section 8 of the Act, calculating till the date of payment, Nagar Palika Vs Controlling Authority, (1988) 57 FLR 425 (All).

7. Interest is admissible only if a certificate for recovery of dues as a public demand has been issued' Charan Singh Vs Birla Textiles, (1988) 57 FLR 536 (SC).

THE EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT 1952

Nomination

1. A nominee has no title whatsoever in respect of the provident fund amount lying to the credit of deceased merely by virtue of his nomination and

the provident fund amount belongs to the petitioner minor and forms part of estate of the deceased.

Nozer Gustad Commissariat Vs Central Bank of India, 1993 LLR 757.

Exemption

1. Till any decision is taken on the application, the employer is bound to comply with the provisions of the Act and cannot take shelter behind the fact that he had made an application seeking exemption from the operation of the Act;

H.P. Agro Industries Corporation Ltd., Vs Regional Provident Fund Commissioner, 1993 LLR 987.

2. When exemption was granted under section 17, of the Act, there was no reason why it should not have been granted with retrospective effect. It has to be held, therefore, that the levy of damages was not just exercise of the powers;

Indian Seamless Metal Tubes Ltd., Pune Vs Union of INdia, 1995 LLR 773 (Bom).

Establishment

3. To determine whether different units of an employer institute one establishment on separate establishments various tests with have to be applied. But it is not possible to lay down one test of all cases:

Wipro Ltd., Tunkur Vs Regional Provident Fund Commissioner, Karnataka, 1996, LLJ 120 (Karn HC)

THE EMPLOYEES STATE INSURANCE ACT 1948

Employees

1. Members of a cooperative society are "employees"

Kunnathud Chalakudy Sankethika society Ltd. Vs Employees State Insurance Corporation (1989), 2LLJ 27 (Kar)

2. "Casual Employee" employed by intermediate employer is an "employee", Employees State Insurance Corporation Vs Suresh Trading Company (1989) 59 FLR 157 (Ker)

3. The payment was made quarterly and was not 'wages' under the Act as it did not fall under the first part of section 2(22) or under third part thereof; Whirlpool of India Ltd. Vs 'Employees' State Insurance Corporation AIR 2000 SC 1190

Contribution

4. Section 39(5) (a) applies where the employer fails to make contributions. If such failure is on account of circumstances beyond his control or if the circumstances make it impossible for the employer to make contributions even if he wanted to do so, unless he risks being hauled up for contempt of court, such failure on the part of the employer in making payments in time cannot be called a failure within the meaning of clause (a) of subsection (5) so as to call for levying of interest;

HMT Ltd. Vs Employees State Insurance Corporation (1998) 92 FJR 454 (Kar)

5. Similar judgment (as in 4 above) given in Fenner (India) Ltd. Vs Joint Regional Director Employees State Insurance Corporation, (2003) 2 LLJ 447 (Mod).

Dismissal

6. The employees cannot dismiss, discharge or reduce or otherwise punish the employee during the period an employee is in receipt of sickness benefits or maternity benefits.

Management of Guest Keen Williams Ltd., Vs Presiding Officers, 2nd Addl. Labour Court, (1992) 1 CLR 433 (Kar)

7. Regional Director and not the ESI Inspector is empowered to determine the contributions by giving opportunity to the employer;

Employees State Insurance Corporation Vs Bharat Motors, Sri Ganganagar, 2001 LLR 49 (Raj HC)

EQUAL REMUNERATION ACT 1976

Over riding effect of the Act

1. A settlement arrived at between the management and the employees cannot be a valid ground for effecting discrimination in payment of remuneration between male and female employees performing the same work or work of a similar nature.

Mackinnon Mackenzie and Co Vs Audrey D'Costa (1987) 2 SCC 469

2. The principle of equal pay for equal work is not applicable in professional services.

C. Girijambal Vs Government of Andhra Pradesh, (1981) 2 SCC 155.

3. The benefit conferred on females under the Act is not absolute and unconditional. Section 16 clearly authorizes restrictions regarding remuneration to be paid by the employer if a declaration under it is made by the appropriate government

Air India Vs Nagesh Meerza (1981) 4 SCC 335.

LABOUR LAWS IN INDIA AND THEIR RELEVANCE IN POST WTO SCENARIO

Pre-Independence Scenario

India is a vast and populous country and for over thousand years it was under foreign rule. Therefore, the most of the population was poor and nearly 50% of the people were bring below the poverty line.

The labour and Welfare laws enacted during the British period were primarily aimed at ensuring industrial peace. The Social justice content was not much. The objective was to ensure that factories keep running and earning profits for the owners. The freedom movement, the socialist movement and the Russian revolution enabled the workers realize that they have certain rights and the

owners have certain obligations towards them. Increasing pressure from the workers who had joined the Trade Union Movement was responsible for the enactment of such laws as:

The workmen's Compensation Act 1923.

The Trade Union Act 1926

The Payment of Wages Act 1936.

The Employers' liability Act 1938 and the Industrial Employment (Standing Orders) Act 1946.

Post Independence Scenario

After India became free, the democratic India adopted the socialistic patterns of society and in that context, more emphasis came to be laid on Welfare and Distribution. The workers wanted an increasing share of the profits made by the owner. Hence, immediately after India became free the following Acts were passed by Parliament.

1) The Industrial Disputes Act 1947, (2) Minimum Wages Act 1948 (3) The Employees State Insurance Act 1948, (4) The Dock Workers (Regulation of Employment) Act 1948, (5) The Mines Act 1952, (6) The Industries (Development and Regulation) Act 1951, (7) the Employees' Provident Fund and Miscellaneous Provisions Act 1952.

The fifties, sixties, seventies and eighties saw India going through the economic development process, through its Five Year Plans. There was agricultural revolution after the late Prime Minister, Shri Lal Bhadur Shastri gave a call of self reliance as far as food production was concerned. The green revolution made India self sufficient in food. However, the country still had the problem of foreign exchange since exports were not able to come upto the level of imports (the situation is still not very much better).

In the year 1996, India for the first time opened up its economy to the world and the regime of tariff barriers was decided to be given up and one by one all

businesses were being opened to the world. The WTO regime to which India has opted has enabled foreign companies to tap the vast consumer market and the Indian companies to go out and compete in the world.

RECENT DEVELOPMENTS

Three developments between 1988 and the present day helped India survive and succeed partially in this period.

- 1) The first was the advent of computers.
- 2) The second was the advent of new entrepreneurs, the NRIs, who were looking for an opportunity to do something for their mother country.
- 3) And the third was a large number of human resources that India had developed in the meanwhile and were able to go out and remit part of their earnings to their mother country.

However, since the open economy works on capitalism, businesses can survive if they are able to compete in the world. Immediately, after 1996, several small scale units and medium scale units which were not efficient and competitive vanished. The business in India had to think about ways and means to be competitive in the present world.

Role of Labour Legislation

The labour laws affect businesses in the following ways.

- 1) The more the number of legislations, the more the time spent on litigation by the entrepreneurs.
- 2) They increase the costs in business.
- 3) They affect the productivity of workers since the workers are always concerned with their rights.
- 4) If the laws are very much in favour of workers, they act as a demotivating force on the entrepreneur who does not want any labour trouble during the initial stages of business.

5) The laws act as a disincentive to expansion of business and the entrepreneurs are not able to take advantage of economies of scale.

6) The more complicated the legislation, the more is the exploitation of workers by their leaders and exploitation of the entrepreneurs by the administering machinery.

Labour and Welfare Laws in India are framed keeping in mind the poor worker who needs to be given protection against exploitation by the owners.

They are also oriented towards increasing the distribution of profits among the workers.

However, the need in the Post W.T.O. scenario is of amending the laws so that they become an instrument of increasing productivity and profitability of the enterprise. If there is no profit, there is no distribution of profit.

LABOUR REFORMS

In the context of what has been said in the preceding paras and also in the context of the judgments cited in the previous section in respect of the major legislation discussed in the previous lessons in Chapter I and II, it is felt that the labour laws and the Welfare laws need to be simplified in the following way:

1) The laws need to be made short and concise

2) There need not be clarification in the legislation on each and every possibility.

3) Too much clerical work in maintaining records and registers should not be involved in implementation.

4) Too much of calculations need not be involved in calculating the quantum of benefits.

5) It is always better to specify the amounts or scales instead of specifying percentage of some other variable.

6) As far as possible, every establishment be asked to maintain one basic record of the employees and implementation of all the laws should be on the basis of information in that basic record.

- 7) Varied interpretation of the terms used or the sections in the law should be stopped by clarifying the same by amendment of the concerned rules, as far as possible.
- 8) New legislation is required to motivate the workers to make their enterprise more competitive.
- 9) The legislation should not be too liberal towards workers. That breeds indiscipline. It should be rather severe on those who are shirkers, indisciplined and contribute negatively to the productivity of the enterprise.
- 10) The adjudication of cases be speedy.

ANNEXURE

THE FOURTH SCHEDULE PAYMENT OF BONUS ACT 1965

[Section 15 and 16]

In this Schedule, the total amount of bonus equal to 8.33 per cent of the annual salary or wages payable to all the employees is assumed to be Rs. 1,04,167. Accordingly, the maximum bonus to which all the employees are entitled to be paid (twenty per cent of the annual salary or wages of all the employees) would be Rs. 2,50,000.

<i>Year</i>	<i>Amount equal to sixty percent or sixty-seven percent, as the case may be, of available surplus allocable as bonus</i>	<i>Amount payable as bonus</i>	<i>Set on or set off of the year carried forward</i>	<i>Total set on or set off carried forward</i>	
	Rs.	Rs.	Rs.	Rs.	of (year)
1.	1,04,167	1,04,167 [#]	Nil	Nil	
2.	6,35,000	2,50,000*	Set on 2,50,000*	Set on 2,50,000*	(2)
3.	2,20,000	2,50,000* (inclusive of	Nil	Set on	(2)

		30,000 from year -2)		2,20,000	
4.	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 1,25,000	(2) (4)
5.	1,40,000	2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000 1,25,000	(2) (4)
6.	3,10,000	2,50,000*	Set on 60,000	Set on Nil** 1,25,000 60,000	(2) (4) (6)
7.	1,00,000	2,50,000* (inclusive of 1,25,000 from year -4 and 25,000 from year- 6)	Nil	Set on 35,000	(6)
8.	Nil (due to loss)	1,04,167# (inclusive of 35,000 from year-6)	Set on 69,167	Set off 69,167	(8)
9.	10,000	1,04,167#	Set off 94,167	Set off 69,167 94,167	(8) (9)
10.	2,15,000	1,04,167# (after setting off 69,167 from year-8 and 41,666 from year- 9)	Nil	Set off 52,501	(9)

* Maximum amount admissible.

Minimum amount admissible.

The Balance of Rs.1,10,000 set on from year -2 lapses;

Unit - IV

EMPLOYEE LEGISLATION IN THE EMERGING ECONOMY

INTRODUCTION

During the recent past, economies across the world have experienced structural changes of different dimensions. While some of these changes may have been proactive in nature, many others have been reactive. It has been widely argued that India's role in the world market has never quite taken off due to her inability to meet standards of quality, cost and productivity. These limitations are attributed to obsolete technology and increasing labor costs, aggravated by a slow pace of economic and industrial reforms. India ceased to enjoy the advantage of cheap labor, although the absolute wages in India are still among the lowest. Despite the fact that wages in Japan and other economically prosperous Asian countries are no longer cheap, these countries play a dominant role in the global market, largely through their improved export performance. In fact, labor cost has declined in the developed nations. New elements like product design, quality, delivery schedules, market positioning, customer orientation, sales promotion and distribution are recognized as contributing factors to the competitive advantage. Although competitiveness was always based on productivity, today quality and flexibility along with labor and technology play an important role in measuring productivity.

HUMAN CAPITAL

INTRODUCTION

The term Human Capital Formation refers to the "process of acquiring and increasing the number of persons who have the skills, education and experience which are critical for the economic and the political development of a nation" It is associated with the investment in man and his development as a creative and

productive resources Schultz, has given the following suggestions for developing human resources

- Health facilities and services which include all expenditures that affect the life expectancy and the vigor and vitality of the people.
- On the job training including all type of apprenticeship given by the firms.
- Formally organized education at the elementary secondary and higher level.
- Study Programmes for adults that are not organized by firms.

Definition: As an economic concept, human capital defines people as a capital asset which yields a stream of economic benefits over their working life. An improvement in the mental capability, skill, and physical capacity of the people constitutes an increase in human capital because this enables the human factor to produce more.

HUMAN CAPITAL FORMATION IN INDIA

The process of human capital formation implies the development of abilities and skills of people of an underdeveloped country. During the course of economic development a nation has to absorb new technology and develop the productive apparatus may be imported in the early phase of development, but to make use of the machines and equipment in an efficient manner, it is necessary that an underdeveloped country should train its labor force in technology, engineering, medicine, management and a host of other fields. The process of human capital formation is, therefore, as important as that of physical capital formation.

An underdeveloped country like India has to do two things to accelerate the rate of development. Firstly, it should step up the rate of investment in physical capital and secondly, it should also increase the rate of investment in human capital. Thus, human resource development becomes competitive to physical

resource development in so far as it imposes a demand on the scarce resources available for growth. Professor B.Dutta has given a clear expression to this competitive nature of demand by stating that “the use of a large amount of equipment, materials, consumer goods and trained labor for the purpose of developing skill may substantially reduce the internal supplies of inputs for the formation of real capital”.

The problem of human capital formation in India can be studied from two points of view. Firstly, human capital can be considered as a stock and as an estimate of the stock at two points of time can be made; from this the growth rate of human capital formation between these two points of time can be calculated. Secondly, investment in education can be studied as a percentage of national income and from a time series data, it may be reasonable to conclude whether resources going into human resource development are increasing during the process of economic development.

Stock of Human Capital in India

An idea of the stock human capital can be had from a study of the educational profile of the population. Table 1 indicates that taking the population(excluding the age group 0.6), 52% were literates. Out of this, 13.1 per cent were literates without educational level. In other words, very little amount of investment had gone into 90 million such persons. Of the rest, 15% had, only primary school education, 10.7% had middle school education. The educated manpower (i.e. those with education of matriculation level and above) accounted for only 13.1 per cent of the population. It is this sector and distribution within this sector that is crucial for development.

The growth of the stock of scientific and technical personnel during the last three decades is given in table 14. There is no doubt that starting from a very low base, India has been able to train a very large pool of scientific and technical manpower in the world. The growth rate of scientific manpower during the

decade 1950-60 was of the order of 10.5 per cent during 1960-70 i.e. the period in which India emphasized the development of heavy and basic industries as a part of its strategy of industrialization. Thereafter, during 1991-2000 period, the growth rate decelerated to 5.6 per cent per annum.

Though the Government claims that India enjoys third position in the stock of scientific and technical manpower in the world, but as per the data compiled by UNESCO, India ranks fifth in absolute numbers with its pool of 1.8 million after USSR (25.2 million), Japan (20.5 million), China(4.7 million) and USA (3.4 million). But a more appropriate index of comparison is the number of scientific personnel per 1,000 of population. In terms of this index, India stands third from the bottom with only 2.63 per thousand of population.

Returns on Human Capital

Various studies have been made in recent years about the rate of return of education in India. Mark Blaug, P.R.G. Layard and M.Woodhall in their study 'Causes of Educated Unemployment in India' calculated social and private rates of return were adjusted for wastage, unemployment and ability factor.(Refer Table No.1)

TABLE 1. Rates of Return to Educational Costs(1960)

<i>Educational Category</i>	<i>Crude</i>		<i>(Per cent of cost)</i>	
	<i>Social</i>	<i>Private</i>	<i>Social</i>	<i>Private</i>
Primary over Illiterate	20.2	24.7	13.7	16.5
Middle over Primary	17.4	20.0	12.4	14.0
Matric over Middle	16.1	18.4	9.1	10.4
First Degree over Matric	12.7	14.3	7.3	8.7
Engineering over Matric	16.6	21.2	10.8	13.5

Key Role in Development

The formation of human capital plays a very important part in furthering the growth of an economy. This it does in various ways.

Increase output : The production goes up as the knowledge and skilled worker makes a better use of the other resources at his disposal. Economist Strumilin

estimated, for the erstwhile Soviet Union, that education at this level had resulted in as much as 79 per cent increase in the output and wages of a laborer.

Adds to productive capacity. Human capital contributes a lot in raising the capacity of a country to produce in a number of ways. An important way it does so is by upgrading the technological scenario of a country. In the first place, it improves upon the existing indigenous technologies through, for example, learning by doing. Through the use of his/her knowledge and skill, these technologies can also be much modernized with little extra cost of physical inputs. Since foreign direct equity capital brings with it advanced technologies, it is important to ensure that the domestic human capital is capable enough to receive it, absorb it, and maintain it so as to make the best of it. If the domestic human capital is up to the mark, much can be added to the capacity and quality of production.

Apart from the up gradation of technologies, human capital can help growth by adding to the physical stock of capital of country. It is now a well-established fact, as culled from the experiences of the newly industrialized countries since the 1960s, that the rate of physical capital accumulation is an increasing function of the level of human capital.

Tool for economic change: The knowledgeable, skilled and physically fit people are a powerful instrument of change in the society. Attitudes of the people no longer remain traditional and custom-bound. Old and tradition-bound attitudes and behavior, which, according to Hla Myint, stand in the way of quick development of under, developed countries, are swept away. People start making rational choices in respect of places and jobs. This promotes mobility of the workers, geographically and professionally.

Improves Quality of Life : Apart from making people productive and creative, accumulation of human capital transforms the very lives of the people. They start living and enjoying higher incomes and more satisfying life. This can

best be explained in terms of the improvements in the three components of the UN. Human Development Index (HDI), in use since 1990. These three components, of which the HDI is a composite attainment, and life expectancy.

Rise in per capita income: The per capita income, which is taken as a measure of welfare, rises with the formation of human capital. This happens because of several reasons. The fall in the birth-rate immediately raises the per capita income of the family. Increase in the women's participation in work adds to the family's income. The productivity of labor improves because the labor is able to understand his/her work and continuously makes improvements in his/her work.

Higher educational attainments: The educational attainments of the people, a social indicator, also go up with the accumulation of human capital. In terms of the HDI, the adult literacy combined with the mean years of schooling (which together bear upon knowledge and skill-formation) goes up. While being a literate and having attended school for a certain number of years are important for human beings, this is only the minimum needed for acquiring knowledge for communicating and participating in the life of the community. The accumulation of human capital, however, encompasses education in several fields and at higher levels, so that educational attainments give to an individual a satisfying and a productive life.

Increase life expectancy: Formation of human capital raises life expectancy or longevity of the people. This encompasses both a long life as also a healthy life. This in turn adds to the quality of life. The improvement in the life expectancy takes place principally in three counts. One, the mortality rate improves. There is a reduction in the rate of infant mortality (i.e. children below one year) and child mortality (i.e. children below 5 years). Two, the health facilities reduce/eliminate epidemics or such like mass killing diseases. At the same time these facilities enable people to live a healthy and long life. Three, the availability of nutritive food also contributes to the reduction in death-rate and

rise in the healthful living. Together these three factors contribute to an improvement in life expectancy.

HRM – THE GLOBAL AND INDIAN SCENARIO

INTRODUCTION

Akio Morita, the founder of Sony Corporation, once said, “there is no ‘magic’ in the success of Japanese companies in general and Sony in particular. The *secret of their success* is simply *the way they treat their employees.*” Under Morita, the whole process of recruitment, selection, training and development. Performance appraisal, and rewards at Sony was built on the premise that employees were the most valuable part of the company. Indeed, it is they who are its permanent associates and it is they who serve the organization with their work, talent, creativity, and drive. World’s leading food company Nestle’s CEO, Peter Brabeck also pointed out that every single person in the organization should ask himself or herself – is there anything I can do to add a little more value to our company? This clearly shows how importantly people are treated in this organization.

EVOLUTION OF HRM

The concept of HRM emerged in the mid 1980s against the background of the works of famous writers on management, like Pascale and Athos(1981) and Peters and Waterman (1982), who produced lists of the attributes that they claimed characterized successful companies.

The American Society for Training & Development (ASTD) has developed a Human Resource Wheel in 1983 (Fig.1) highlighting different functions of HRM leading to quality of work life, productivity and readiness for change.

- *T&D focus*: Identifying, assessing and through planned learning-helping develop the key competencies which enable individuals to perform current or future jobs.
- *OD focus*: Assuring healthy inter- and intra-personal relationships and helping groups initiate and manage change.
- *Organization/Job design focus*: Defining how tasks, authority and systems will be organized and integrated across organization units and in individual jobs.
- *HRP focus*: Determining the organization's major HR needs, strategies and philosophies.
- *Selection and staffing*: Matching people and their career needs and capabilities with jobs and career paths.

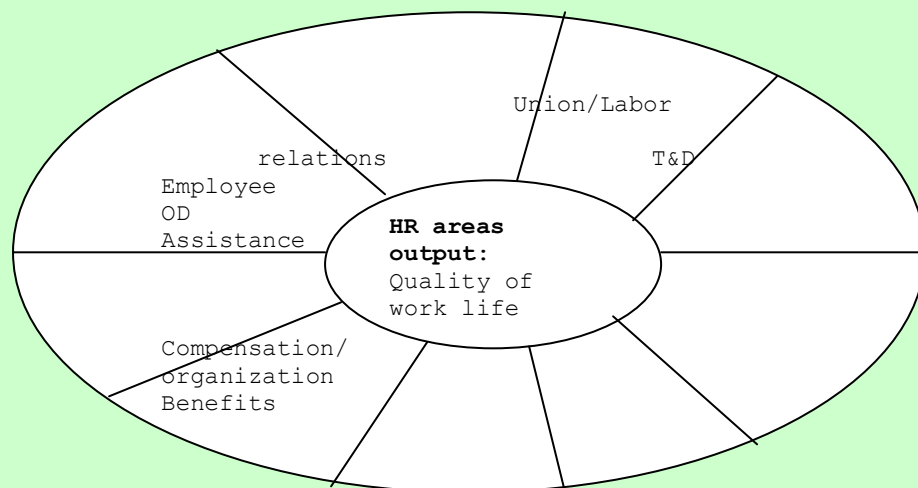


FIG.1 Human Resource Wheels

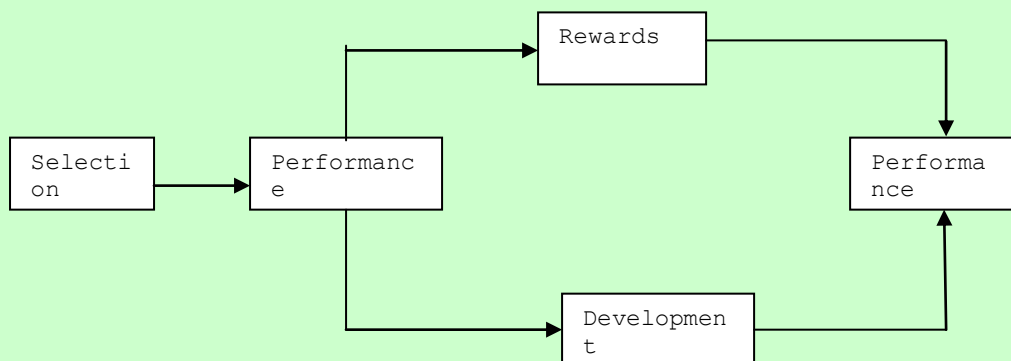
- *Personnel research and information systems*: Assuring a personnel information base.

- *Compensation /Benefits focus:* Assuring compensation and benefits fairness and consistency.
- *Employee assistance focus:* Providing counseling to individual employees, for personal problem-solving.
- *Union/Labor relations focus:* Assuring healthy union/organization relationships.

One of the first overt statements of the HRM concept was made by the Michigan School (Fomburn et al., 1984). They explained the human resource cycle that consists of four generic processes or functions. These are:

1. Selection-Matching available human resources to jobs
2. Appraisal – Performance management
3. Rewards-It must rewards short as well as long-term achievements.
4. Development-Developing high quality employees.

They suggest that the HR function should be linked to the line organization by providing the business with good databases, by ensuring that senior managers give HR issues as much importance as they give to other functions.



Source: The Human Resource Cycle. Fomburn et al. (1984)

The Harvard Framework

The Harvard Framework of HRM was developed by Beer et al (1984). This framework is based on the belief that the problems of historical personnel management can only be solved when general managers develop a view point of how they wish to see employees involved in and developed by the enterprise and of what HRM policies and practices may achieve those goals. Without either a central philosophy or a strategic vision-which can be provided by the general managers-HRM is likely to remain a set of independent activities, each guided by its own practices and traditions. The Harvard School suggested that HRM has two characteristic features: (a) line managers accept more responsibility for ensuring the alignment of competitive strategy and personnel policies; (b) the personnel function has the mission of setting policies that govern how personnel activities are developed and implemented in ways that make them more mutually re-enforcing.

The Harvard model has integrated the history and practice of HRM, particularly emphasizing HRM as a general management function rather than personnel function only. Figure 2 explains that the HRM policy should evolve taking into consideration stakeholder interest and situational factors, which will lead to HRM outcomes like commitment, congruence and cost effectiveness. This ultimately will lead to long-term

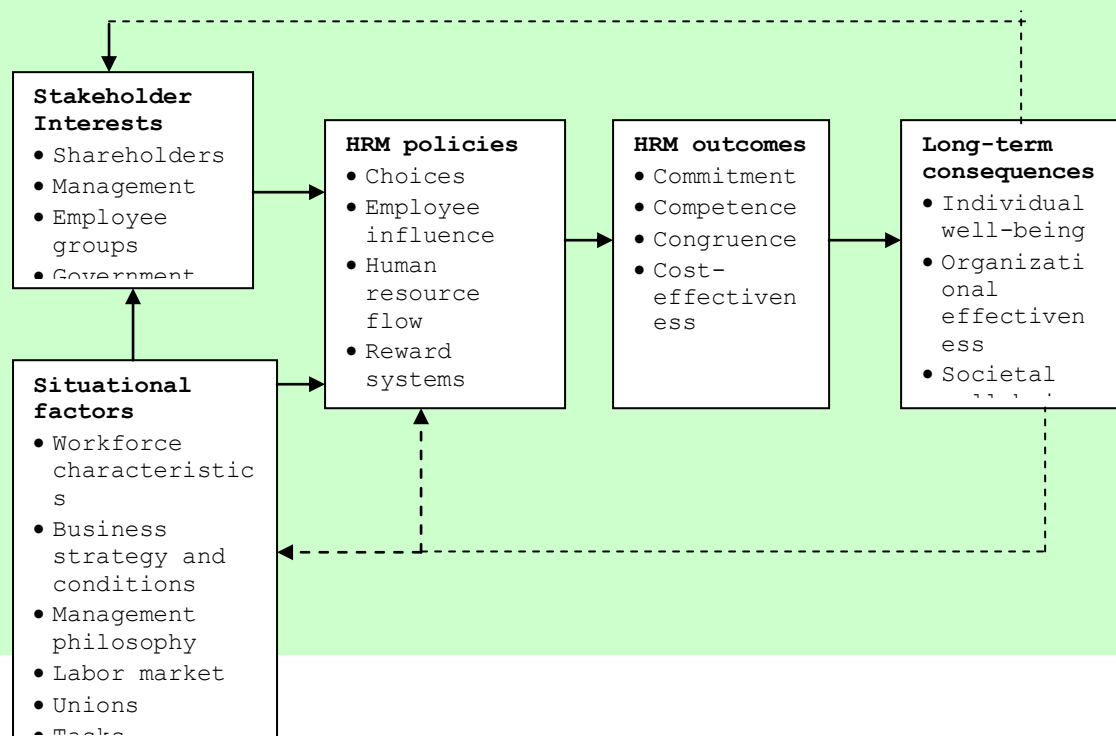


FIG. 2 Harvard Analytical Framework for HRM

Source: The Harvard Framework for HRM, Beer et al. (1984).

Consequences like individual well-being, organizational effectiveness and societal well-being which in turn will impact the stakeholder interest and situational factors and also the HRM policy choices.

Walton (1985) has further expanded the concept of HRM stating that the new HRM model is composed of policies that promote mutuality- mutual goals, mutual influence, mutual respects, mutual rewards and mutual responsibility. The theory propounds that policies of mutuality will elicit commitment which in turn will yield both economic performance and greater human development.

David Guest(1987, 1989a, 1989b, 1991) has taken the Harvard model and developed it further by defining four policy goals which he believes can be used as testable propositions:

- Strategic integration-the ability of the organization to integrate HRM issues into its strategic plans.
- High commitment – behavioral commitment to pursue the agreed goals and attitudinal commitment reflected in a strong identification with the enterprise.
- High quality-refers to all aspects of managerial behavior that bear directly on the quality of goods and services.
- Flexibility-functional flexibility and the existence of an adaptable organization structure with the capacity to manage innovation.

Story (1989) has distinguished between hard and soft version of human resource management. The hard approach to HRM emphasizes the quantitative, calculative and business strategic aspects of managing the head count resource in as 'rational' a way as is done for any other economic

factor, whereas the soft model of HRM traces its roots to the human relations school, emphasizing communication, motivation and leadership. It involves treating employees as valued assets, a source of competitive advantage through their commitment, adaptability and high quality (of skills, performance and so on).

Karen Legge (1989) has defined the HRM theme that human resource policies should be integrated with strategic business planning and used to reinforce an appropriate (or change an inappropriate) organizational culture, that human resources are valuable and a source of competitive advantage that they may be tabbed most effectively by mutually consistent policies that promote commitment and which, as a consequence, foster a willingness in employees to act flexibly in the interest of the organization in its pursuit for excellence.

Keith Sisson (1990) suggests that there are four main features increasingly associated with HRM:

- Stress on the integration of personnel policies both with one another and with business planning more generally.
- The focus of responsibility for personnel management no longer resides with HR specialists.
- Focus shifts from manager, trade union relations to management, employee relations and from collectivism to individualism.
- Stress on commitment and exercise of initiative, with managers now donning the role of enabler, empower and facilitator.

The overall purpose of HRM is to ensure that the organization is able to achieve success through people. HRM has been defined as a strategic and coherent approach to the management of an organization's most valued assets – the people working there who individually and collectively contribute to the achievement of its goals (Armstrong, 1999).

Though the development of personnel management in UK and USA was largely voluntary, in India it emerged because of the governmental interventions and compulsions. In the beginning of the 20th century, various malpractices in the recruitment of workers and payment of wages were prevalent which caused a colossal loss in production due to industrial disputes. The Royal Commission of Labor in India (1931) under the chairmanship of J.H. whitely recommended the abolition of the 'Jobbler System' and the appointment of labor officers in industrial enterprises to perform the recruitment function as well as to look after the welfare of the employees. After independence, a labor welfare officer was identified as personnel manger created by legislation under Section 49 of the Factories Act, 1948. The role of a personnel manager was more of a custodian of personnel policy implementation and compliance to different acts of the Factories Law. Two professional bodies were formed namely, Indian Institute of Personnel Management (IIPM) at Kolkata and the National Institute of Labor Management(NILM) at Mumbai. In 1980s, these two professional bodies merged together and formed the National Institute of Personnel Management (NIPM), headquartered at Kolkata. In the year 1990, another milestone was achieved by renaming of American Society for Personnel Administration (ASPA) as Society for Human Resource Management (SHRM). Over the years, a new approach- the Human Resource Management-has emerged which focuses more on development aspects of human resource with a pragmatic and flexible approach.

Thus, among the most critical tasks of a manager are the selection, training and development of human resource, which will best help the organization meet its goals. Without competent people at the managerial level-and indeed at all levels – organizations will either pursue inappropriate goals or find it difficult to achieve the desired goals. Human dynamics play a pivotal role in surmounting obstacles, defusing complex situations and achieving organizational goals. It is

because of this reason that some organizations succeed in spite of major obstacles, environmental changes and challenges, while others crumble rather quickly under external pressures. The former type of organizations are generally dynamic bodies with tremendous learning abilities which enable them to adapt and cope with environmental challenges, while the latter are often caught in their own whirlpool of past glories, heritage and old-habits, styles and practices, thereby finding it extremely difficult to shift their focus, learn new ways from others or introspect. Just like a man is known by the company he keeps, *an organization is known by the people it is comprised of.*

Human resource management encompasses those activities designed to provide, motivate and coordinate the human resources of an organization. The human resources of an organization represent its largest investment. In fact, government report shows that approximately 73 per cent of national income is used to compensate its employees. In addition to wages and salaries, an organization often make sizeable investments in their human resources by way of recruiting, hiring, and training people to fulfill its need for well-trained and experienced staff.

RELEVANCE OF HRM

HRM is more relevant in today's context due to the following compulsions:

Change management: Today, terms such as 'Learning Organizations', 'Managing Organizational Change', 'Change Agents' and the like are being increasingly encountered. It is now an accepted fact that any organization can survive in today's socio-economic environment only if it is proactive to environmental changes. Advances in information technology too are forcing organizations to change their very way of thinking.

Competence. It is often said, "Give a man job that he excels at and he would not have to work". In the organizational context, it may not be always feasible to allocate tasks to individuals at which each one excels, but surely we can

enhance competence of individuals for specific tasks through well-designed training programmes. It is equally important to take note of the interests of the individual. It is much easier to train him in tasks closer to his inherent liking.

Commitment. The extent to which the employees are committed to their work and organization has a significant bearing on an organization's performance. Commitment levels can be assessed in a number of ways. One can make use of informal interviews and questionnaires, statistics on absenteeism, grievances, and voluntary separations. Transparency in organizational functioning, employees' perception of various HRM policies, channels of communication, and role models played by superiors strongly influence employee commitment.

Motivation. Another aspect of human behavior is the employee's willingness to work and the desire to constantly improve his performance. People want to contribute to meaningful goals, particularly, those they have helped in setting. It is, however, necessary to create an environment in which all members can contribute to the limits of their ability. Subordinates must be encouraged to participate in the process of decision making, continually broadening their self-direction and self-control as this would not only lead to direct improvement in operating efficiently but would also ensure their grooming for higher responsibilities.

HUMAN RESOURCE FUNCTIONS

Human resource functions refer to tasks performed in an organization to provide for and coordinate human resources. Human resource functions are concerned with a variety of activities that significantly influence almost all areas of an organization and aim at:

- Ensuring that the organization fulfils all of its equal employment opportunities and other government obligations.
- Carrying out job analysis to establish the specific requirements for individual jobs within an organization.

- Forecasting the human resource requirements necessary for the organization to achieve its objectives- both in terms of number of employees and skills.
- Developing and implementing a plan to meet these requirements.
- Recruiting and selecting personnel to fill specific jobs within an organization.
- Orienting and training employees.
- Designing and implementing management and organizational development programmes.
- Designing and implementing management and organizational development programmes
- Designing systems for appraising the performance of individuals.
- Assisting employees in developing career plans.
- Designing and implementing compensation system for all employees.

THE INDIAN SCENARIO AND HRM

In the 50s, there was a strong belief that employees were recruited not to question 'why' but only 'to do-and-die'. In the 60s, terms like manpower, staff and personnel came to be used and instead of controlling the employees, it became more and more acceptable to manage personnel as studies revealed that productivity of the workers could be improved if they were organized for the work. And in late 70s, people realized that beyond a point, productivity depended on people. Also, workers started demanding whatever they expected from the employers over and above their salaries. 'Personnel' came to be called 'human resources'. Sharing the global thinking, Indian managers and behavioral scientists accepted and introduced such theories, models and concepts as theory X/Y/Z, two-factor theory of motivation, contingency model, social-comparison processes, Porter-Lawler model, socio-technical system, job enrichment,

managerial grid, participative management, empowerment, quality of work life, total quality management and Kaizen.

At the same time, experts observed that there were some strategic challenges of current times such as accelerating rates of change in all aspects of business-increasing competition, globalization of business, technological change, changing work culture, resource constraints, transition from industrial to information society, unstable market owing to economic conditions, increasing demands by corporate stakeholders, and a complex psychological environment. We are now visualizing the possibility of a global village. But, are we prepared for the ensuing challenge?

Hierarchy, status, authority, responsibility, and accountability are structural concepts. But in the Indian context, emotions, feelings, empathetic perceptions, impressions and the affective components have influenced people more than anything else. In a work environment, people do not like being treated as puppets-blamed, belittled or bossed. On the other hand, managers feel they only should 'think' and let workers 'do'. The idea that boss is always right still persists. The boss-subordinate relationship creates stressful situations, hampering the environment conducive to human resource management. The subordinates expect that the boss should have integrity, higher performance skill, commitment, guidance and leadership qualities, support and patronizing tendencies, accessibility, wider vision, sense of empowerment, and credibility. On the other hand, the boss expects that his subordinates should have a commitment to job, integrity, competence, reliability, initiative, loyalty to the organization, self-discipline and a good sense of accountability and job involvement. HRM basically refers to a balanced interaction between these two sets of expectations. A good HRM environment ensures harmony between the boss and the subordinates. However, a healthy corporate philosophy ensuring uniform policies at all levels of an organization is necessary for good HRM.

The Indian organizations are experiencing some transitions and changes. The workforce of the 50s and 60s have retired. The middle-level is now at the top with the hangover of all possible middle-class values. The new generation of MBAs are pouring into industrial organizations. Moreover, due to the unprecedented advancement in information technology, there is a growing need to understand and manage this transition, and give a direction to this change process. In order to achieve an effective HRM strategy, we have to integrate HRM with HRD, IR, and organization development(OD). The HRM strategies in India in the 21st century has to focus on better individual-organization interface and greater emphasis on organizational effectiveness than on personal success.

REVIEW QUESTIONS:

1. How will you say the Human Capital are the key role for the development of economic?
2. What are the functions of HRM ?
3. Write the functions of HRM?
4. How can you evaluate Human Resource Management?

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ORGANIZED AND UNORGANIZED LABOR LEGISLATION

Organized labor:

Organized labors are the workers in a company, Transport, Building maker, Railway and Electricity they can joint as a members in a union and can voice out their Fundamental right, if it is not given to them by the management.

Unorganized labor:

They are the workers in any small concern they wished to be in. They do not have the rights as a organized labor. (e.g) Agricultural labor, Artisans, load man.

Differences between Organized Labor and Unorganized Labor

Nature of difference	Organized labor	Unorganized labor
Place of work	Constant & Regular Place	Inconstant & irregular place
Consideration / Compensation	Salary	Wages or daily wages
Membership	Can joint in a Union	Cannot join in any union
Rights	Have fundamental rights to question their management	Have no rights to question their employees
Recognition	They are recognized as a labor	No negotiation to them as a labor
Age	Organized labor should complete the age (i.e.) 18 years	No age limit
Retirement	There is a age limit for retirement	No retirement for the Unorganized labor
Bonus & Pension	Can get bonus	No bonus to them
Proof	Employment Proof is available	No proof or employment
Allowances	Can enjoy all allowances as per government norms	No allowances to them
Benefit as per Act	They can get all benefit	No benefit for them
Security of job	Fully secured	No security
Numbers	Only limited numbers	No limit

CONTRACT LABOR

Contract Labor: Contract labor is generally employed for casual, seasonal or irregular work. The Contract Labor (Regulations and Abolition) Act, 1970 seeks to abolish the contract labor system in perennial operations and regulates it where the system cannot be abolished. The Act is implemented both by the Centre and States. In the Central sphere, contract labor has been prohibited for certain specified operations in coal, iron ore, limestone, dolomite and manganese mines, and in buildings owned or occupied by establishments under the Central Government.

The Act applies to every establishment which employs 20 or more workmen, and to every contractor who employs not less than 20 workers.

In his Budget (2001-2002) speech, the Union Finance Minister observed that rigidities inherent in the existing legislation regarding Contract labor inhibit growth in employment in many service activities. Section 10 of the existing Act envisages prohibition of contract labor in work/process/operation if the conditions set therein like perennial nature of job etc. are fulfilled. Section 10 enables the contract labor engaged in prohibited hobs to become direct employees of the principal employer. To overcome this difficulty and at the same time to ensure the protection labor, it is proposed to bring an amendment to facilitate outsourcing activities in terms of their health, safety, welfare, social security, etc. It would also provide for larger compensation based on last drawn wages as retrenchment compensation for every year of service. This proposal raised a lot of opposition.

The Labor Contract

A labor contract is a formal agreement between a union and management that specifies the conditions of employment and the union-management relationship over a mutually agreed upon period of time (typically two or three years but, more recently, five years). The labor contract specifies what the two parties have agreed upon regarding issues such as wages, benefits, and working

conditions. The process involved in reaching this agreement is a complex and difficult job requiring a willingness from both sides to reconcile their differences and compromise their interests. This process is also bound to certain “good-faith” guidelines that must be upheld by both parties.

The Taft-Hartley Act of 1947 (section 8d) states: “to bargain collectively is [to recognize] ... the mutual obligation of the employer and representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, ... or the negotiation of an agreement, or any question arising there under, and the execution of a written contract incorporating any agreement reached if requested by either party,... such obligation does not compel either party to agree to a proposal or required the making of a concession”³². Thus, the law requires that the employer negotiate with the union once the union has been recognized as the employee’s representative. Good-faith bargaining is characterized by the following events:

- Meetings for purposes of negotiating the contract are scheduled and conducted with the union at reasonable times and places.
- Realistic proposals are submitted.
- Reasonable counterproposals are offered.
- Each party signs the agreement once it has been completed.

Good-faith bargaining does not mean that either party is required to agree to a final proposal or to make concessions.

The National Labor Relations Board further defines the “duty to bargain” as covering bargaining on all matters concerning rates of pay, wages, hours of employment, and other conditions of employment.³³ “Mandatory” issues for bargaining include wages, benefits, hours of work, incentive pay, overtime., seniority, safety, layoff and recall procedures, grievances procedures, and job

security. “Permissive” or “nonmandatory” issues have no direct relationship to wages, hours, or working conditions. These might include changes in benefits for retired employees, performance bonds for unions or management, and union input into prices of the firm’s products. Permissive issues can be introduced into the discussion by either party; however, neither party is obligated to discuss them or include them in the labor contract.

Issues in Collective Bargaining

The major issues discussed in collective bargaining fall under the following four categories:³⁴

1. **Wage-related issues.** These include such topics as how basic wage rates are determined, cost-of-living adjustments (COLAs), wage differentials, overtime rates, wage adjustments, and two-tier wage systems.
2. **Supplementary economic benefits.** These include such issues as pension plans, paid vacations, paid holidays, health insurance plans, dismissal pay, reporting pay, and supplementary unemployment benefits(SUB).
3. **Institutional issues.** These consist of the rights and duties of employers, employees, and unions, including union security (i.e., union membership as a condition of employment), check-off procedures (i.e., when the employer collects dues by deduction from employee’s paychecks), employee stock ownership plans (ESOPs), and quality-of-work life (QWL) programs.
4. **Administrative issues.** These include such issues as seniority, employee discipline and discharge procedures, employee health and safety, technological changes. Work rules, job security, and training.

While the last two categories contain important issues, the wage and benefit issues are the ones that receive the greatest amount of attention at the bargaining table. In recent years, however, issues of job security have become increasingly

important as bargaining items.³⁵ In addition, the unions have adapted to a variety of work place changes and have played an important role in defining public policies. For example, they have been active in negotiating family-friendly contract provisions such as child care, elder care, domestic partnership benefits, and paternity leaves. They also have been involved in promoting health and safety protections for their members.³⁶

Conducting Labor Contract Negotiations

Preparing for Negotiations

Because of the complexity of the issues and the broad range of topics discussed during negotiating sessions, a substantial amount of preparation time is required. To prepare for negotiations, one must have a planning strategy. Negotiating teams typically begin data gathering for the next negotiation session immediately after a contract is signed. Preparation includes reviewing and diagnosing the mistakes and weaknesses for previous negotiations and gathering information on recent contract settlements in the local area and industry wide (e.g., comparative industry and occupational wage rates and fringe benefits). Preparation also includes gathering data on economic conditions, studying consumer price indices, determining cost-of-living trends, and looking at projections regarding the short-term and long-term financial outlook. Internal to the firm, data such as minimum and maximum pay by job classification, shift work data, cost and duration of breaks, as analysis of grievances, and overtime data are almost always of interest to both sides. Often unions and large corporations have research departments that collect necessary data for negotiations. Management is likely to come armed with data regarding grievances and arbitration, disciplinary actions, transfers, promotions, layoffs, overtime worked, individual performance measures, and wage payments.

During the preparation phase of contract negotiations, employers develop a written plan covering its bargaining strategy. The plan takes into account what the employer considers the union's goals to be and the degree to which it is willing to concede on various issues. Such a plan is useful to the negotiators because it helps them to identify the relative importance of each issue in the proposal.

Both the union and management send their negotiating teams to the bargaining table. The union's negotiating team generally consists of local union officials, union stewards, and one or more specialists from the national union staff. Management's negotiating team usually consists of one or more production or operations managers, a labor lawyer, a compensation specialist, a benefit specialist, and a chief labor relations specialist, who heads the team.

Applicability

The Act is applicable to:

- (a) Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labor; and
- (b) Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.

The Act empowers the Central and State Governments to apply its provisions to any establishment or contractor employing less than twenty workmen [section 1(4)]. It is not applicable to establishments performing work only of an intermittent or casual nature [section1(5)]. The work is deemed to be of an intermittent nature:

- (i) If it is of a seasonal character and is performed for not more than 60 days in a year; or

- (ii) In other cases, if it was performed for not more than 120 days in the preceding twelve months [Section1(5)].

Definitions

The term appropriate government means:

- (i) In relation to an establishment in respect of which the appropriate government under the Industrial Disputes Act, 1947, is the Central Government.
- (ii) In relation to any other establishment the government of the State in which that other establishment is situate [Section1 (a)].

A workman shall be deemed to be employed as “Contract labor” in, or in connection with the work of, an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer [section 1(b)].

A “contractor”, in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labor or who supplies contract labor for any work of the establishment and includes a sub-contractor[Section 2(c)].

Advisory Boards

The Central Government and the State Governments are required to set up central and state tripartite advisory boards representing various interests for advising the Central and State Governments on matters arising out of the administration of the Act, and to carry out such other functions, especially the function of advising the government on the question of prohibition of contract labor in any establishment, as may be entrusted to them under the Act (Section 3-5). The Central Board or the State Board, as the case may be, may constitute such committees and for such purposes as it may think fit (Section 6).

Prohibition of Contract Labor

The Central Government or a State Government may prohibit any establishment from employing contract labor for performing any work after considering:

- (a) Whether the conditions of work and benefits provided for contract labor in the establishment are satisfactory;
- (b) Whether the work is incidental to or necessary for the business of the establishment;
- (c) Whether it is of a perennial nature, that is to say, whether it is of sufficient duration;
- (d) Whether it is done ordinarily through regular workmen;
- (e) Whether it is sufficient to employ a considerable number of whole-time workmen (Section 10).

Registration

Every principal employer of an establishment to which the Act applies must get his establishment registered under the Act for the purpose of employing contract labor. If the Act is applicable, the principal employer of the establishment has to make an application in the prescribed form, accompanied by prescribed fees, to the Registering Officer for the registration of the establishment under the Act. If the application is complete in all respects, the Registering Officer will register the establishment and issue a certificate or registration in the prescribed form to the principal employer (Section 7).

The Registering Officer may revoke the registration of any establishment if he is satisfied:

- (i) That the registration has been obtained by misrepresentation or suppression of any material fact; or
- (ii) That the registration has become useless or ineffective for any other reason (Section 8).

The principal employer of an establishment who has not obtained the required registration under section 7, or whose registration has been revoked under Section 8, is prohibited from employing any contract labor in his establishment (Section 9).

Licensing

Every contractor to whom the Act applies must obtain a license under the Act for the purpose of undertaking or executing any work through contract labor.

The Act provides for the appointment of licensing officers for granting of licenses (Section 11).

If a contractor to whom the Act is applicable does not have a license under the Act, he is prohibited from undertaking or executing any work through contract labor (Section 12).

A contractor to whom the Act is applicable has to make an application in the prescribed form accompanied by the necessary fees and security deposit to the Licensing Officer, for the grant of a license under the Act. The Licensing Officer, after making necessary investigation, may issue a license in the prescribed form containing the conditions subject to which it is granted. The license will be valid for the period specified therein and will have to be renewed from time to time (Section 13).

The Licensing Officer may revoke or suspend a license or forfeit the security deposit if he is satisfied:

- (i) That the license has been obtained by misrepresentation or suppression of any material fact, or
- (ii) That the holder of the license has failed to comply with the conditions specified therein, or
- (iii) That the holder of the license has contravened any provision of the Act or rules made there under (Section 14).

Any person aggrieved by the order of the Registering Officer or the Licensing Officer may prefer an appeal to the Appellate Officer. Such appeal must be filed within 30 days from the date of communication of the order(Section 15).

Welfare of Contract Labor

A contractor is required to provide:

- (i) A canteen in every establishment employing 100 or more workers (Section 16).
- (ii) Rest rooms or other suitable alternative accommodation where contract labor is required to halt at night in connection with the work of an establishment (Section 17).
- (iii) A sufficient supply of wholesome drinking water, a sufficient number of latrines and urinals of prescribed types and washing facilities (Section 18).
- (iv) First-aid box equipped with the prescribed contents readily accessible during all working hours (Section 19).

The Act imposes a liability on the principal employer to provide the above amenities to the contract labor employed in his establishment if the contractor fails to do so (Section 20).

If the contract labor is allowed to utilize the canteen, rest rooms, latrines and urinals provided by the principal employer to his direct workmen, there is no need for the contractor to provide separately the above facilities.

Payment of Wages

The payment of wages and deductions if any, shall be made by the contractor in accordance with the provisions of the Payment of Wages Act. The employer is required to nominate an authorized representative to be present at the time of the disbursement of wages and also to certify the amounts paid as wages by the contractor. Under the Act, it is the responsibility of the principal employer to

pay the unpaid wages of contract labor in case the contractor fails to pay the same or makes short payment (Section 21).

Records, Registers and Notices

It is the duty of every principal employer and every contractor to maintain records giving particulars of contract labor employed, the nature of work performed by contract labor, and the rates of wages paid to contract labor, in accordance with the rules framed under the Act.

In short, the forms registers and notices prescribed for the purpose are:

- (a) Principal employer to maintain register of contractor in form XII.
- (B) Every contractor to maintain in respect of each registered establishment where he employs contract labor a register in form XIII.
- (C) Every contractor is required to maintain in respect of the employees employed by him, registers such as : (i) Muster Roll, (ii) Register of Wages, (iii) Register of Deductions, (iv) Register of Overtime, (v) Register of Fines, (iv) Register of Advances, and (vii) Wage Slips.

The contractor is required to send half-yearly returns to the licensing authority not later than 31st July and 31st January every year.

The principal employer of a registered establishment is required to send to the Registering Officer concerned an annual return in the prescribed form. The returns should reach the licensing officer not later than the 15th February following the end of the year to which it related.

It is also the duty of the contractor to exhibit in the premises of the establishment notices containing particulars about the hours of work, nature of duty, etc., in accordance with the rules framed under the Act (Section 29).

Obligations of Principal Employer

- (1) Register the establishment as principal employer.
- (2) Get the certificate of registration amended by intimating to the registering authority within 15 days of engaging any new contractor/s, over and above whatever has been mentioned in the Form I.
- (3) Ensure that the contractor is licensed under:
 - (a) Contract Labor (Regulation and Abolition) Act, 1970 and
 - (b) Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
- (4) Intimate to the registering authority of commencement/completion of work by the contractor within 15 days from the commencement/completion of work by the contractor.
- (5) Maintain a register of contractors with respect to each establishment.
- (6) Ensure due compliance of payment of statutory wages and certify the payments of contract labor engaged by the contractors.
- (7) Ensure due compliance of all labor laws applicable to contract labor. For any violation of statutory requirements by the contractor, the principal employer will be held answerable.
- (8) Submit yearly return to the registering authority by 15th February of the subsequent year.
- (9) Comply with the statutory requirements in case the contractor fails to do so.

- (10) Frame recruitment rules and regulations for the contract labor regarding their minimum, maximum age, height, weight and medical fitness.
- (11) Ensure that the agreement with the contractor is not a sham contract.
- (12) Look after the genuine grievances of contract labor. Be humane.

Obligations of Contractor

- (1) Obtain a license if employing 20 or more contract labor on any day during the preceding 12 months.
- (2) Inform the licensing officer regarding any change in the number of workmen or nature of work of contract labor.
- (3) Inform the licensing officer regarding commencement/completion of work within 15 days.
- (4) Renew the license every 12 months and an application for renewal for license should be made 30 days prior to the expiry of license.
- (5) Issued employment card to each worker on the first day of the employment of worker.
- (6) Ensure that the worker carries his employment card with him during the working hours.
- (7) Issue a service certificate to the workman whose services have been terminated.
- (8) Fix wage period and pay wages to workers in the presence of the representative of the principal employer.
- (9) Comply with the provisions of the Inter-State Migrant Workmen Act.
- (10) Comply with the Payment of Wages Act and the Minimum Wages Act.

- (11) Comply with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act.
- (12) Provide services and amenities to workmen as laid down under the Contract Labor (Regulation and Abolition) Act/Factories Act.
- (13) Follow the rules and regulations regarding hours of work, working conditions, safety and welfare under different statutes.
- (14) Obtain identity cards for the workers indicating (a) name of establishment (b) name of employee (c) age (d) sex (e) date of entry in service (f) designation/nature of work and (g) department.
- (15) Maintain attendance-cum-wage register and mark the attendance of the workers at the gate regularly.
- (16) Maintain all records and registers.
- (17) Display abstract of the Acts and Rules in English, Hindi, and in the language spoken by the majority of workers.
- (18) Submit returns to the Government.

Offences and Penalties

The Act stipulates various offences and punishments:

- (a) If any person obstructs an inspector or willfully refuses to produce any document demanded by him, he would be punished with imprisonment upto 3 months, or fine upto Rs.500 or both.
- (b) If any person contravenes any provision of the Act or of any rules made there under prohibiting, restricting or regulating the employment of contract labor, or contravenes any condition of a licensee granted under the Act, he would be punished with imprisonment upto 3 months, or fine upto Rs. 1,000, or with both. If such contravention is continued after conviction, the fine would be upto Rs.100 per day.

- (c) If any person contravenes any other provision of the Act or of the rules made there under, he would be punished with imprisonment upto 3 months, or with fine upto Rs.1,000, or with both (Sections 22,23 and 24).

Powers of Inspectors

An inspector appointed under the Act has power to:

- (a) Enter any premises or place where contract labor is employed for the purpose of examining any register, record or notices;
- (b) Examine any workman employed in such premises or place;
- (c) Require any person or workman to give information on work or payment for work;
- (d) Seize or take copies of any register, record or wages or notices (Section 28).

Miscellaneous

If the provisions of any law, agreement, contract or service or standing orders are less favorable than those of the Contract Labor Act, they will be superseded by the provisions of the Contract Labor Act. But if such provisions are more favorable than those of the Contract Labor Act, the former will prevail over the latter (Section 30).

The Act permits the government in the case of an emergency to exempt any class of establishments or any class of contractors from the application of all or some of the provisions of the Act or the rules there under for a specified period and subject to specified conditions and restrictions (Section 31).

No suit, prosecution or other legal proceedings shall lie against any Registering Officer, Licensing Officer or any other government servant, or against any member of the Central Board or the State Board, for anything which is done in

good faith or intended to be done in pursuance of this Act or any rule or order made there under (Section 32).

The appropriate government may make rules for carrying out the purposes of this Act (Section 35). Accordingly, the Central Government has framed rules, known as the Contract Labor (Regulations and Abolition) Central Rules, 1971.

Canteen

What emerges from the statute law and the judicial decisions is as follows:

1. Where under the provisions of the Factories Act, It is statutorily obligatory on the employer to provide and maintain a canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.
2. The Obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run in pursuant to the latter obligation does not become a part of the establishment.
3. Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a

REVIEW QUESTIONS:

1. Define Organized and Unorganized Labor. What are the differences between them?
2. What are the powers and duties of Inspector regarding contract labor?
3. Explain the Welfare of Contract Labor?

EXPERIENCES IN ORGANISING THE UNORGANISED LABOR

The majority of the work force in South Asia is working in the unorganized sectors. The unorganized sector includes the majority of agricultural and rural workers (estimated at about 185 million), construction workers (about 8.5 million), urban informal sector workers, home-based workers, fisheries and

forest workers, contract/casual workers, workers in export promotion zones and export-oriented units, workers in small and medium manufacturing units, services, sector, etc.

Some of the policies that will directly make life harder for workers (especially in the unorganized sectors) are:

1. Reduction in public expenditure on health services, child care, education, transport and other social services. In order to cut fiscal deficits, governments have actually been spending less than the budgeted amount on all heads under social infrastructure. Real plan outlay for women and child development has also been coming down over the years.
2. Privatization of the economy and growth of “Labor-Law Free” unorganized manufacturing activities in a bid to promote flexibility and competitiveness.
3. Proposed Exit Policy for industries which will mean greater in retrenchment of workers and closures of industrial units, without regard to the worker’s employment and income interests.
4. Export Promotion Zones/Free Trade Zones (EPZ/FTZs) and encouragement to foreign capital, with a promise of lenient labor laws, if not an outright “shut eye” on labor standards in the country. Foreign investors from some industrialized countries are reported to have demanded such freedom from existing labor laws.
5. Price decontrol and hike in administered prices are already fuelling inflation, leading to declining purchasing powers of wage and salary earners.

Combined with reduction in food subsidies and dilution of public distribution systems the impact on food consumption levels is going to be adverse. Clearly, the belts of the population below the poverty line will be tightened even further

and within the families, it will be the women and girl children whose nutrition levels, education and medicare that will suffer.

Impact on Forest Workers, Tribals, Horticulture and Plantation Workers

New economic policies seek to encourage privatization in mining, forestry, power generation and tourism, among others. This may spell disaster – both for the local people as well as the environment. As it is, the mining for mineral ores, deforestation for timber, paper and other forest produce, large irrigation and a power projects, farming for exports, etc. are causing enough problems for indigenous population groups.

Economic development, paradoxically, seems to have a way of marginalizing indigenous people, unless supportive public policies are evolved. In a number of places in India the local people are opposing development projects as they do not perceive any benefit coming to them from projects as they do not perceive any benefit coming to them from these projects which are appropriating local resources and causing displacement.

Impact of Technological Change in the Coastal and Inland Fisheries Sector

Impact of technological change in modernization of processes such as trawler fishing and joint ventures for exporting marine resources are not only causing environmental damage, but also threatening the livelihood of the traditional fisher folk, especially displacing the work done by women under traditional fishing systems. Areas that are particularly vulnerable include net making, fish storage, distribution, and marketing. Women from coastal Kerala and Tamil Nadu in India, driven by grinding poverty and the near total absence of jobs in their native places, are driven to seek employment in processing units such as the prawn peeling units of Gujarat and Karnataka. Many women have narrated harrowing tales of working conditions in these factories.

With the globalization of the economy and arrival of MNCs in areas like chemicals and allied industry, new pesticides, insecticides and chemical

fertilizers are expected to be introduced. Women form a sizeable proportion of workers in plantations, agricultural and horticultural work handling and working with pesticides. Given the illiteracy, lack of information about hazards and the desperation for jobs, new chemicals and pesticides will pose serious hazards to the health of these workers.

Unless special attention is paid to women's' employment issues, the new technologies and liberalization process will also hasten the shift of Women's work to factory premises and increased mechanization as is happening in agricultural operations and fisheries sector. Changes are already evident in women-dominated, rural-based activities like rice husking and pounding, oil pressing, tobacco processing, weaving, net making, fish processing, distribution and marketing activities, forest produce gathering, etc. In plantations women's employment is being threatened by the introduction of machines for the plucking work. Women workers have dominated, historically the leaf plucking operations in plantations.

An increasing amount of piece-rate, home-based work(mostly petty production for the low income groups consumption) is being contracted out to women in urban informal sectors where wages are low and working hours very long and often include child labor.

Efforts and Interventions of the CTUOs in the Unorganized Sectors

The efforts to organize the workers in the unorganized sector are being made both by the CTUOs, independent organizations and joint forum organizations.

The issues taken up by these workers organizations and CTUOs have been mainly:

1. Regulation of employment conditions;
2. Revision and Implementation of minimum wages above poverty line;
3. Abolition of contract labor system and regularization of contract labor;

4. Provision of social security such as provident fund, medical care, setting up of welfare funds, etc.;
5. Access to Government's welfare, employment and anti-poverty schemes; and
6. Right to organize and collective bargaining.

It may, however, be noted that the efforts to organize the unorganized have been few and have not proved enough, given the size of the unorganized sector, limited resources of trade unions and absence of the rights of association and collective bargaining in practice. The reluctance of the governments to extend legislative protection to workers in the unorganized sector (such as in agriculture, fisheries, forests, etc., has also made trade unions task difficult.

In the organized sector, too, in the name of privatization, sub-contracting of work and employment of unorganized contract, casual labor is on the rise. In the interest of a strong trade union movement, organized sector trade unions must reach out (both in person and through financial aid) to organize the unorganized. This will help in raising the level of minimum labor standards.

Women workers are the future of the trade unions. At the moment, they are more or less completely unorganized and unrepresented in the trade unions as are most gender-specific issues. The trade union movement must put into operation a strategy and a work plan to integrate women into the fold of the union and involve them in the decision making process.

The Central Trade Unions will have to play a leading and innovative role in assisting upcoming organizations from the unorganized sector and in getting the state to recognize and provide an effective legislative protection of the rights of these workers. In particular, the CTUOs need to press for Implementation of ILO Conventions on freedom of association and protection of right to organize (No. 87), right to collective bargaining (No.98), rural workers organization

(No.141), home work(No.177) and social security (Nos.102 & 157). The Employers must be encouraged to observe some of the core ILO conventions and labor standards, irrespective of the nature of employment and the number of employees.

Need for Exercising Control Over Deployment of Workers Funds

Workers' funds such as Employees Provident Fund (EPF) and Pension Funds are probably the single largest funds in the country. While it is true that workers' representatives sit on the PF Trust Board, this Board does not have any power to determine the Investment pattern of the funds.

Workers must have a say in the investment of workers' funds including provident and pension funds. The history of management of provident funds shows that workers' money is usually a source of cheap finance for the government/ banks without it necessarily being used to give more benefits to workers.

Worker's Participation and the Right to Information

To prevent mismanagement of industry/resources, in both public and private sector, it is essential that right to company information (and right to information in general) be given to workers and their trade unions. Markets work best when information is freely and easily available. The present system of functioning is shrouded in far too much unnecessary and undesirable secrecy which breeds undesirable tendencies.

While collective bargaining will have to be the main plank of democratic industrial relations, trade union should see consultative mechanisms/cooperation schemes/ participative management as a means for increasing workers' influence over the decision-making processes and enrichment of job content so as to lead to higher production; productivity and rewards for workers. The concept of labor-management cooperation should be seen as a means of improving employees' morale and involvement in the workplace, rather than as

a means for the management to exercise their prerogatives and sense of authority over the workers.

If the economic reforms are to succeed and benefit society at large, then there is a need for transformation in labor-management relations. The future does not really lie in continuing hostile, antagonistic relations rather, labor should be treated as an equal partner in the economy and industry and both labor and management should seek rapprochement through cooperation.

REVIEW OF JUDGEMENTS IN SELECT CASES

Let us now review and discuss the judgments pronounced in seven select cases.

I. Employment in Hazardous and polluted industries.

Case: M.C .Mehta vs. union of India 1987 and subsequent cases, including the Supreme Court decisions on the Delhi's hazardous/heavy industries' relocation case.

The Supreme Court ordered the closure or shifting/ relocation of 168 industries from Delhi by 30 November 1996. (This order was subsequently modified on 31 December 1996) The government was asked to facilitate the allotment of alternative sites, etc. the judgment lists the rights and benefits of workers employed in these units. It envisages alternative employment with no adverse change in terms and conditions. The retrenched workers, if any, should be paid compensation in terms of Section 25 F(b) and additional compensation over and above this. In several other states too courts have ordered the closure/ relocation of thousands of hazardous and polluting industries. In many such cases, the workers affected are to be treated as being under active employment between the dates of the closure and restarting. In another decision on aqua-culture farming, the Supreme Court ordered, on 11 December 1996, the winding – up/ destruction of aqua-culture farms operating within 500 meters of the high tide

line of coastal states and awarded six years wages as compensation to the affected workmen, payable by the concerned employers.

The judgement defined employers' liabilities/obligations and workers' rights concerning the regulation of hazardous processes under the Factories Act, 1948. In several other cases, the Supreme Court has Factories Act, 1948 Bhopal tragedy concerning the gas leak at the Union Carbide factory. The relief provided has not reached the affected persons till date (December 2000). An ILO Convention has given workers the right to leave the workplace if they consider it potentially unsafe.

II. Contract Labor

Case: Air India vs United Labor Union and Others(Supreme court of India, 6 December 1996)

If work is considered perennial as per the provisions of the contract labor (Regulation and Abolition) Act, 1970, contract labor should be- prohibited and abolished. The judgement in question held the view that the principal employer is under statutory obligation to absorb contract labor, who are affected by such abolition, as regular employees from the day on which the contract labor system in the establishment, for the work which they were doing, get abolished. The date of engagement of such labor will be the criteria to determine their seniority. Excess workforce, if any, can be retrenched, as per the legal provisions under the Industrial Disputes Act on the principle of last come, first go' subject to reappointment as and when vacancies arise. In this case, the Supreme Court upheld the judgement of the Bombay High Court.

The supreme Court of India observed that there is no express provision in the Act for the absorption of employees whose contract labor system had been abolished. Yet, it was not the intention of the legislation to be oblivious to the interests of the affected workers. Air India was, therefore, asked to abolish the contract labor system for sweeping, cleaning, dusting and watching the building

and absorb the workers affected on its abolition as regular employees. During 1996-98, there were several such judgements involving several thousand workers in canteen, cleaning, security, loading and unloading operations etc., mostly in public enterprises owned and managed by the state.

Employers consider it essential to have a contract labor system to be able to maintain flexibility and enhance competitiveness in the context of globalization. They do not pay attention to the neglect of human resources and the social dimensions of contract labor. They do not explain the rationale for the duality in recruitment standards in terms of education/ skill background, training, experience, safety record, etc. of regular, full-time workers and contract laborers. Typically the contract laborer is less educated and skilled, under trained, overworked, underpaid and more prone to accidents than the regular/ full – time employee. How is the exploitation of contract labor to be minimized or mitigated? What difference, if any does the distinction between ‘contract of’ and ‘contract for labor ‘ make in considering the issue of continuance or abolition/ prohibition of contract labor? Does the contract labor system manifest a failed human resource/ industrial relations system in that the contract labor, relative to regular labor, is often less educated, less trained. Overworked and underpaid, more prone to accidents and highly vulnerable to exploitation? Are there alternatives to the prohibition/ abolition of contract labor? These and other issues require further consideration.

III. Child Labor

Case; M.C .Mehta vs. State of Tamil Nadu and Others(Supreme Court of India, 10 December 1996)

This public interest litigation highlights the magnitude of the problem of child labor in India.

In a landmark judgement the Supreme Court ordered the elimination of child labor and listed the obligations of the state and employer thus : (state to provide)

compulsory education of children affected by the judgement and (employer to provide and state to ensure) alternative employment for adult members of the family whose child is in employment in a factory or a mine or in other hazardous work, in lieu of child. State to create a child labor rehabilitation cum-welfare fund and employer and state to deposit a sum of Rs.20,000 and Rs.5,000 respectively for each child employed in contravention of the provisions of the child Labor (Prohibition & Regulation) Act, 1986. The parent/guardian of the concerned child would be paid monthly interest of the deposit of Rs.25.00. Employment to adult member and payment of deposit in the name of the child would cease if the child were not sent for education.

This judgement lists the obligations of the state and the employer, but not those of the parents, trade unions and other interest groups in society in dealing with child labor.

IV. Sexual Harassment at Workplace

Case: Visakha & Others vs. State of Rajasthan (Supreme Court of India, 13 August 1997)

The Supreme Court upheld the writ petition as a class action by certain social activists and NGOs, concerning the fundamental rights of working women with particular reference to the evil of sexual harassment of women at workplaces. In the absence of a law and based on the contents of international conventions and norms, the Supreme Court issue directions, in the course of its judgments, formulating guidelines and norms which would be binding and enforceable in law until suitable legislation is enacted.

The supreme Court directives cover the following aspects; (1) Duty of the employer or other responsible persons in workplaces and other institutions; (2) Definition of sexual harassment; (3) Preventive steps to be taken by employers or persons in charge of the workplace, whether in the public or private sector;

(4) Action under criminal proceedings; (5) Provision for disciplinary action; (6) Establishing a compliant mechanism, complaints committee, etc. The directions also deal with third-party harassment, workers' initiative and the need for raising awareness.

The judgement is welcome. Given the problems in proving harassment, should the Court have also held that the accused be treated as guilty until he/ she is proven innocent? Would it then have opened the floodgate for frivolous complaints. Is the definition of harassment too wide as to have implication for office romance? How are the harassers and harassed to be tackled during/ after the investigations? What are the obligation of the employers in the case of third-party harassment (of employees by customers, outside the company premises, for instance)? Whether and how is the proportionality of the offence and the punishment to be decided?

V. Consumer Dispute Over Sudden, Illegal Strikes

Case 1: Common cause vs. union of India and Others (National Consumer Disputes Redressal Commission, New Delhi, 9 May 1996)

Common cause, an NGO, filled a case under the consumer Protection Act, 1986 seeking action against both Air India and the erring group of members of its staff for disrupting a large number of flights due to a sudden strike resorted to by members of the Indian Flight Engineers' Association. Even though there is no contract between the consumers and the Indian Flight Engineers' Association, the consumer Protection Act holds the service providers (including staff and trade union) responsible for the hardship and loss to passengers. Section 18 of the Trade Union Act is not a bar to the filling of complaints against trade union under the consumer Protection Act.

This verdict of the commission stressed that persons employed on salary in an organization which is rendering a service for a consideration are equally accountable under the provisions of the Consumer Protection Act, 1986 along with the management of the said organization even though there was no privity of contract between the person hiring / availing the service (consumer) and the concerned employee. In several other consumer cases, the trade union has been held liable and asked to pay damages.

While the commission did not inflict any punishment on the airline or the association and no compensation was awarded to the petitioner in this case, the following observations were in the judgement:

....we also think it necessary to administer a strong word of caution that in case similar instances of disruption of services by illegal strikes or agitations come to the notice of this Commission, in future on the part of the employees of any organization rendering service to the public for consideration or any association or union of such employees, we will be dealing with the matter in a very strict manner and will have no hesitation to award proper compensation to the consumer who are thereby affected and aggrieved. If however , the disruption in service is the consequence of a strike or agitation legally launched in conformity with the provisions of the law governing industrial and labor relations the employees or their unions, no proceedings under the Consumer Protection Act can be instituted against the employees or their Associations/ Unions.

....Henceforth whenever a strike notice is served by any section of employees or their Trade Union ... and the strike appears to be imminent, the Airlines shall insert a publication in all the leading newspapers of the country informing the public about the possibility of there being a strike so that the consumers may not be taken by surprise

by the strike so that the consumers may not be taken by surprise by the strike but may be enabled to make such alternative arrangements as are possible so as to mitigate the hardship that is otherwise bound to be caused to them

Consumer courts have jurisdiction over breach of commercial contracts. In exercising their jurisdiction, consumer courts seem to hold employment contracts subordinate to commercial contracts if the former are created to fulfill the commercial contracts in question. Do the provisions/ judgements under the consumer Protection Act abridge/ impinge on section 18 of the Trade Unions Act/ Can the fund, etc. in order to pay the compensation under awards by the consumer redressal form? What, if any, are the implications for employment relations if the consumer courts entertain complaints under the consumer Protection Act, 1986 made by an employee-consumer? Can the standing offers prevent the employer from making employees file complaints as consumers?

Case2: Bharat Kumar K. Palicha and Another vs. State of Kerala and Other (Kerala High court, 1997)

The petition seeks the relief of a declaration that the calling for and the holding of what has come to be known as 'bundh' is unconstitutional and is hence illegal. The petitioners consider that the bundhentails an exhortation to violence and physically restraining or preventing others who are citizens of the country from doing/ attending to their work. Any citizen who does not participate in the bundh is (often) physically prevented, attacked, harassed or even threatened with dire consequences. It caused disruption to civic life (through stoppage of transportation, forced closure of shops/ establishments, etc.), can lead to violence and violates Article 21 of the Constitution of India in that there is deprivation of personal liberty and even a threat to life.

The question is framed thus: It may be true that political parties and organizers have a right to call for non-cooperation or a general strike as a form of protest what they believe to be either an erroneous policy or exploitation. But when exercise of such a right infracts the fundamental right of another citizen who is equality entitled to exercise his right, the question is whether the right of the political party extends the right of violating the right of another citizen.

In an earlier case (*Railway Board vs Niranjana Singh*, 1996), the Supreme Court held that .

The fact that the citizens of this country have freedom of speech, freedom to assemble peacefully and freedom to form associations or unions does not mean that they can exercise of those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the right of someone else to hold his property intervenes. Such a limitation is inherent in the exercise of those rights.

The Kerala High Court held that

This court has sufficient jurisdiction to declare that the calling of a 'bundh' and the holding of it is unconstitutional especially since, it is undoubted, that the holding of 'bundhs' are not in the interests of the Nation by leading to national loss of production... the State can't shirk its responsibility of taking steps to recoup and of recouping the loss from the sponsors and organizers of such bundhs. We think that these aspects justify our intervention under Article 226 of the Constitution.

The Court finally held that 'the calling for a bundh by any association, organization or political party and the enforcing of that call by it is illegal and unconstitutional. We direct the state and its officials, including the law enforcement agencies, to do all that is necessary to give effect to this'.

The exercise of one's right should not clash with others' rights. In several court cases, the right to protest by agitating workers is questioned if the striking/agitating workers' rights clash with the rights of willing workers and customers who want their work to be carried on without interruption or intimidation. In some instances, the courts have ordered police protection for willing workers/customers. There seem to be inherent restrictions to the rights of workers' and employers' in employment/industrial relations.

VI. Notice of change required for introducing voluntary Retirement Scheme²

Case: KEC International Ltd. Vs Kamani Employees Union & Other (Bombay High Court, 17 April 1998)

Justice F.I. Rebello of the Bombay High Court Held that the income tax approved voluntary retirement scheme (VRS) results in the reduction of posts and hence attracts Section 9-A read with Item 11 of the IVth Schedule of the Industrial Disputes Act. This judgement, when appealed, was admitted by a division bench of the Bombay High Court on 22 June 1998 which stayed the operative part of the judgement.

Justice Rebello held that : (a) the preamble of the notice for the VRS by the petitioner mentions that there was a need for the company to continuously upgrade the quality of products. Hence item 10 of Schedule IV of the industrial Disputes Act can be attracted, subject to the material that comes on record finally, (b) once the approval is taken under the Income Tax Act the scheme of VRS may necessarily result in a decrease in the existing strength of workers. Therefore, prima facie it must result in the reduction of posts. Hence VRS would be covered by item 11 of the IV Schedule of the Industrial Disputes Act, (c) those workmen who have accepted VRS but have encashed the compensation

cheque have been distinguished from workmen who have accepted VRS but have not en cashed the compensation cheque. In the latter category, the complaint of violation of section 9-A of the Industrial Disputes Act is maintainable.

Any VRS scheme should be based on the principle that it is for organizational restructuring and only those whose jobs have become redundant should be given the opportunity to apply. If this principle is accepted , then when employees leave under the VRS scheme, there would be a need for work reorganization based, usually, on the principle of work simplification. Thus it will affect the work content/ norms of the remaining workers and attract the provision of notice of change under the Industrial Disputes Act. 1947. While this part of the judgement is founded on logic, the other aspects dealing with the case require examination. The merits of the case should not depend on whether the VRS scheme is with or without income tax exemption. Similarly, the employees' right should cease once they receive the compensation cheque for voluntary separation in response to their own request. It should not have made any difference depending on whether or not they have en cashed it.

VII. Service Contracts and Stranding Orders

Case: Uptron India Ltd vs Shammi Bhan & Other (Supreme Court, 1998)

Primarily service rules and regulations, standing orders or contracts of employment govern the law of employer- employee relationship. In the above case, the supreme Court considered that clause 17(g) of the certified standing orders of the company providing that 'the services of a workman are liable to automatic termination if he overstays on leave without permission for more than seven days' was bad and violative of the principles of natural justice as 'it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically'.

In several earlier judgements, the Supreme Court held that the termination of a service of a workman, under a specific clause in the standing orders, for the overstay of leave period without prior explanation amounted to 'retrenchment' under Section 2(00) of the Industrial Disputes Act. One-sided contracts, taking advantage of the unfavorable labor market conditions, have rightly been decided in favor of the affected employees in many cases.

QUOVADIS?

Judicial processes are subject to axiomatic and vexatious delays. As Upendra Baxi once remarked, 'If justice delayed is justice denied, justice is justice buried.'

It is difficult to get judgements. It is even more difficult to get them implemented or complied with. Courts can deliver judgements and take the concerned party to task for contempt of court if it comes to their notice that its judgements have not been respected. The judicial system does not have the apparatus to enforce its verdicts and take action when they are not complied with. After the decisions of the Kerala High Court and the Supreme Court, several political parties have continued to give calls for hartals and bundhs in complete disregard of the said judgements.

The courts can do little if the affected party does not complain because of the change in circumstances as was seen in the Raptokas Bret case. Even in the kamani case on VRS, the judgement of the single judge bench was stayed by a two judge bench and later, both the union and the employer reached an out of court settlement. As a result, the company was able to implement VRS without issuing a notice of change. We are thus witnessing not only judicial activism and judicial indiscipline, but also judicial ineptness. Are we heading for judicial anarchy? Quo vads?

TRAINING AND DEVELOPMENT

Two trends have contributed, in recent years, to more attention being given to training. First, fewer and fewer skills are now regarded 'inborn' that cannot be taught. It is hoped that one can learn almost all aspects of a job by reading. That is why we find nowadays almost all technical details of a job by reading written out in the instruction manuals. Second, the accelerated rate of technological change-in the plants, office and market place – is making many skill obsolete. Workers have to be new tasks.

Objectives of Training

The major objectives of training are as follow:

1. To train the employee in the company culture pattern.
2. To train the employee to increase his quality and quality of output.
This may involve improvement in work method or skills.
3. To train the employee for promotion to higher jobs.
4. To train the bright but dronish employee in the formation of his goals. This may involve instructions in initiative and drive.
5. To train the employee toward better job adjustment and high morale.
6. To reduce supervision, wastage and accidents. Development of effective work habits and method of work should contribute toward a reduction in the accident rate, less supervision and wastage of material.

Distance between Training and Development

The term 'training' and 'development' are closely related but their meanings have important distinctions. Training is the act of increasing the knowledge and skill of an employee for doing a particular job. It is concerned with imparting specific job-related skill to the employee. On the other hand, the term 'development' has a broader connotation, its aim being to improve the overall

personality of an individual. The term is mostly used in the context of executives only. Following are some important distance between training and development:

(i) Training is meant for operatives. Development is meant for executives. The aim of training to develop some specific skill in an individual. The aim of development is to develop the total personality of the individual.

(ii) Training is a one-shot affair. Development is a continuous process.

(iii) The initiative for training comes from management. The initiative for development comes from the individual himself. To put it differently training is mostly the result of some outside motivation. Development is the result of internal motivation.

(iv) Training is mostly a preparation to an individual's present needs. It can thus be seen as a reactive process. Development is a preparation to meet his future needs. It is thus largely a proactive process.

Responsibility for Training and Development

In HRD, training is an *organizational* function, not just something that is done HRD department alone. For training to be highly effective, it must be embraced by all managers as part of their responsibility. For training to be highly effective, it must be embraced by all managers as part of their responsibility. HRD department cannot do the whole job or even the main job. It can no doubt,

- *sell the idea* of training as a vital force in the develop an atmosphere conducive to sound manpower development,
- *recommend* sound policed for training and development,
- provide HRD instruments and mechanisms,
- *manage* the training facilities, and
- *carry out* continuous study, analysis and evaluation of the organization's training needs and current development programme. But

the decision train and the condition required for development must come from the line manager because it is he who continually shapes the behavior of his people all day and every day- whether consciously or unconsciously, by his action and his action and beliefs.

These conditions are as follows:

- (a) The employee should *perceive* that his acquiring new competencies will *help* him in fulfilling his psychological needs
- (b) The employee should *perceive opportunities* for acquiring such capabilities.
- (c) The employee should be *aware* of his shortcomings.
- (d) The employee should have feedback *mechanism* for assessing his own growth in relation to his shortcomings.
- (e) The employee should *enjoy* the developmental process.

Place of Training in Company Management.

All HRD-oriented organizations regard training as a continuous activity. These organizations believe that training is a permanent relationship which exists between the superiors and the subordinates so that every superior in the organization (and not only their manager) is responsible for training which always goes on – day in and day out – as some learning inevitably takes place when workers watch their superiors doing a job or behaving in a particular manner. Jack Welch, who is General Electric's Chief since 1981, underlines the importance of continuous training in these words. "You may not promise your worker life-time employment, but by constant training and education you ability.

Link between Training Outcomes and Organizational Needs. The relationship of intended training goal outcomes to organizational goal is critical to the success of training. To the extent that training goals are

compatible with and responsible to strategic needs, training value increases. When training aims at goals that are not directly related to strategic objectives, the value of training is diminished.

It is also essential that the link between training outside and business goals is perceived by key participants in the training process. If they do not perceive the linkage, They will not support training activities. They must be shown how, where and why new learning will be used on the job to influence the critical aspects of business.

Determine of Training Needs. In order to determine the training needs of an organization the HRD manager should seek information on the following points:

- (a) whether training is needed ?
- (b) where training is needed ?
- (c) which training is needed ?

whether training is needed ? Early hints that training is necessary

probably result from problem such as:

- standards of work performance not being met;
- accidents;
- frequent need for equipment reports;
- high rate of transfer and turnover;
- too many low rating on employee evaluation reports;
- many people using different method to do the same job;
- excessive fatigue, fumbling, struggling with the job;
- bottlenecks and deadlines not being met.

Various source from which evidence of training needs may be gathered are as follows:

1. Informal observations
2. Merit rating

3. Suggestion system
4. Group discussions
5. Questionnaire to trainers or to supervisions(See Appendices 1 and 2 given at the end)
6. Morale surveys
7. Tests
8. Interviews with union officials.
9. selection or exit interviews
10. Analysis of reports relations to costs, turnover, grievances, etc.
11. Employee counseling.

In many organization the determine of training needs is predominantly done through observations. One common method for recording observation is the check-list of training needs. It provide for indication by a “Yes” or “No” check whether or not each check-list statement has been observed by the employee whose training needs are being determined. The following is a sample check-list for determining supervisor’s training needs.

SAMPLE CHECK-LIST FOR SUPREVISORS

Items record by training specialist need	Checked for adequate Performance		Possible training
	Yes	No	
Keeps inventory of tools	x		
Prepares training outlines for apprentices		x	x
Takes unsafe machinery out service	x		
Checks all repairs	x		
Maintains “hours of work” record	x		
Inspects regularly for quality of product		x	x
Plans workplace layout		x	x
Instructs on-cost materials		x	x
Explains company policy to workers		x	x

(b) *Where training is needed?* After determine the needs for training the manager should determine where within organization training emphasis can and should be placed. This involves a detailed analysis of the factors:

- (i) Structure of the organization,
- (ii) Objectives.
- (iii) Human resource and future plants, and
- (iv) Cultural milieu.

(c) *which training is needed ?* The last question to be the personnel manage is about the type of training needed. This involves determining what knowledge, skills or attitudes each individual employee should develop to be able to perform his task in an effective way.

The three major skills which the employees of any organization need to successfully discharge their duties are: the conceptual skill, This the human relations skill and the technical skill. Conceptual skill deals with ideas, technical skill with things and human skill with people.

The conceptual skill refers to the an employee to take a broad and farsighted view of the organization and its future, his ability to do abstract thinking, his ability to analyze the force working in situation, his creative and innovative ability, and his ability to assess the environment and takes place in it. The technical skill is the employee's understanding of the nature of the job he has to perform. It refer to his knowledge and proficiency in any people, and to built team work at all levels.

The relative need of an employee for conceptual skill increases and for technical skill decreases as he moves to higher levels in the organizational hierarchy. His need for human skills, however, remains consistently the same at all levels.

To know how much each type of skill needs to be developed the manager do a detailed analysis of the following factors:

- (i) Components of a job;
- (ii) Skill and training required to perform a job at the required standard; and
- (iii) Attitudinal predispositions-for instance, the attitude towards safety, authority, etc.

Selection of trainees. Although it is true that in selecting persons for training a company generally gives primary consideration to its own benefits and secondary consideration to the benefits accruing to the individual, yet the standard used for selecting training programme participants should be carefully devised and communicated widely throughout the organization. Training opportunities should not be passed out as a reward for a good behavior or for long service or to get relief for some time from a trouble-making employee. Fairness in applying standards is become high status prestige programmes which challenges the best person in the organization to make the grade. Training a person who has no ability and willingness to learn to learn is like sending an ass to college. Among the common phrases through which these feeling of resistance of are expressed are following:

- (i) “you cannot change human nature.”
- (ii) “I know myself better than anyone else ever will.”
- (iii) “If there is one thing I know, it how to deal with people.”
- (iv) “we run a business, not a nursery.”

Manpower Development at ITC Ltd.

Since 1978 the Manpower Development Group of ITC Ltd. Is functioning as an independent cost-profit center. This means that all the work which the MDG does for the divisions and companies of the ITC Group is charged at market rates and they have the choice of using MDG's service or going to external agencies (like the IIMs or the Administrative Staff College). MDG now not only does training and development work for its own people but also undertaken outside consultancy. This exposure gives it first-hand experience of other organization system which may prove beneficial to ITC.

One of the benefits of this cost-profit center approach has been that it has made ITC's divisions more careful and responsible in determining their training needs and in selecting division people for various development programmes because now to pay for the manpower development programmes offered by MDC with MDC having a cancellation

Whenever an individual is sponsored for training he should be told categorically the reasons for sponsoring him and the expectations of the organization from him after returns from the programme. Most companies do not inform the employee why they been sponsored; such a being learning, as the employee sponsored are more concerned about the reason for being sponsored than actually getting involved and benefiting from training.

What is good Training?

The three typical beneficiaries of a training programme are the managers are the, managers typical themselves and external customers (i.e., the end user of the company's product or service). Each beneficiary has his own requirements and perception of what is good training. Thus, the senior manager and supervision want training to be low in cost, to increase employees' job performance, to improve or compensation. Trainees want the training to be of high quality which can be easily transferred to the job. They want the training venue to be more pleasant than the job venue and expect training workplace to benefit them personally.

Training Methods for Operatives.

- (1) **On-the job Training.** The most important type of training is On-the-job training. The worker in this method learns to master the operations involved on the actual job situation under the situation under the supervision of his immediate boss. Some important advantage of this type of training is as follows:
 - (i) It can be learned in a relative short period of time, say, a week or two.
 - (ii) No elaborate programme is necessary as far as subject content is concerned
 - (iii) There is no line-staff conflict because the worker's own supervision is the

instructor.

(iv) It is highly economical.

(v) It is not located in an artificial situation, either physically or psychologically and ,therefore, eliminates the possible problem of transfer of leaning

A training method of carrying on-the-job training which has been found to be great value is known as a the *Training Within Industry* (TWI) or the “capsule method”. The method was devised in the United States during the Second World War when a large number of people had to be trained in a short period. It involves the following steps:

(a) *Preparation of the instructor.* This includes four steps as under: (i) Have a time-table. How much skill does the instructor expect the worker to have and by what to have by what date”. (ii) Break down the job. List importance steps, (iii) Have everything ready-the right equipment, materials and supplies, and (iv)Have the workplace properly arranged as the worker will be expected to keep it.

(b) *How to instruct.* This include the following fore steps:

step 1. prepare the worker

- put him at ease.
- State the job and find out what he know about.
- Get him interested in learning the job.
- Place in correct position.

Step 2. present the operation

- Tell, show, and illustrate one important step at a time.
- Stress each Key Point.
- Instruct clearly, completely, and patiently, but no more than he can master.

Step 3. Try out performance

- Have him do the job-correct error.
- Have him explain key point to you as he does the job again.
- Continue unit you know He knows.

Step 4. Follow – up

- Put him on his own. Designate to whom he goes for help.
- Check frequently. Encourage questions.
- Taper off extra coaching and close follow-up.

(2) **General education programmes.** Many companies go beyond training employees for specific job skill by offering programmes of general education content, such as courses as courses in economics, art, science, and so on. These course are usually voluntary and participants usually take them on their own time. The company’s rationale for such programmes is that such programmes will benefit the company in intangible ways through a change in employee’s attitudes.

(3) **Simulators and training aids.** Simulators are used to provide trainees with physical equipment that resembles to some degree are used when it is impracticable for some reason to use the actual equipment (such as possible injury to the trainees or others) or when the cost of the actual equipment excessive. The advent of electronic data processing system has opened the door to learn through system simulation which frequently incorporates probability concepts. As Malcolm says, “System simulation has the most useful property of permitting the researcher and management to experiment with and test policy, procedure, and organization changes in much the same way as the aeronautical engineer tests his design ideas in the laboratory or in the ‘wind tunnel’. Thus we might of System simulation as a sort of ‘management wind tunnel’ which is used to pretest many suggested changes and eliminate much needless ‘experimentation’ with the ‘real’ people, machines, and facilities”.²

Training aids may include films and television, charts, black-boards, etc. Films and television are particularly appropriate in those situations where individuals cannot be made to assemble, for example, in demonstrating surgical techniques. Such techniques are more economic than several other techniques since they can be used over and over again.

MANAGEMENT DEVELOPMENT PROGRAMME

Executive development is an attempt to improve an individual's managerial effectiveness through a planned and deliberate process of learning. For an individual this means a change through a process of planned learning. The change in the individual must take place in those crucial areas which can be considered as output variables – 1) Knowledge change, 2) Attitude change, 3) Behavior change, 4) Performance change and 5) End operational results.

The success of development effort depends upon the following inputs:

- 1) Trainee's personal characteristics, such as his intelligence and motivation to learn and
- 2) His actual learning effort.

The essential components of a management development programme may be discussed under the following heads.

Ascertaining development needs: It calls for organizational planning and forecast of the needs for present and future growth. Most companies train their own executives, except when they experience a critical shortage of specialized high-level talent. In the latter case, executives are hired from outside.

Appraisal of present management talents: This is done with a view to determine qualitatively the type of personnel that is available within an organization itself. The performance of a management individual is compared with the standard expected of him. His personal traits are also analyzed so that a value judgment may be made of his potential for advancement.

Management manpower inventory: It is prepared for the purpose of getting complete information about each management individual's bio-data and educational qualifications, the results of tests and performance appraisal. This information is generally maintained on cards, one for each individual. This enables the organization to have a list of executives available for training for higher positions.

Planning of individual development programmes: It is undertaken to meet the needs of different individuals, keeping in view the difference in their attitudes and behaviors and in their physical, intellectual and emotional qualities. The weak and strong points of an individual are known from his performance appraisal reports and on the basis of these, tailor-made programmes are framed and launched.

Establishment of training and development programmes: This job is done by the personnel department. A comprehensive programme is prepared containing concentrated brief courses. Such courses may be in the field of human relations, time and motion study, decision making and courses in professional institutions depending on the organizational needs.

Programme evaluation: The evaluation of training has been defined as an attempt to obtain information (feed-back) on the effects of a training programme and to assess the value of training in the light of that information.

Need for Management Development in India

At present in India there is a population of 1,00,000 to 1,40,000 managers in the manufacturing sector. If the managerial personnel's of other sectors are added to this figure, the total will exceed 5,00,000. About 3,000 managers are added to the managerial pool of the country every year. Of these, 1,000 get their master's degree in management and about 2,000 untrained managers are added every year to the managerial population. Of the existing number, about 30,000 executives attend training programme. Thus, there is a wide gap in many

sectors of the Indian company. Besides, there is a certain imbalance in the spread of management education.

Therefore India requires-

- i) Techno-managers in such sectors as engineering and steel, coal, fertilizer, oil and cement industries. Personnel in these industries need training not only in the functional areas of management but also need to acquire a thorough knowledge of the sector.
- ii) Management resources mobilization towards professionalizing such public utilities as water supply, power distribution, transport and communications, for agriculture and industry are dependent on the efficient functioning of these utilities.
- iii) Govt. and civic offices organized to render public services including municipal services, housing, insurance, police, mass media, medical services and education have been left untouched by the management movement. The “managerialisation” of these services needs immediate attention.
- iv) Managerial principles and techniques need to be introduced in other areas of national economy – managerial services for agriculture and rural development, irrigation, co-operation, fisheries, forestry and marketing. Managerial know-how also needs to be brought to bear on production processes at the farm level with a view to increase efficiency in the tertiary sector in rural areas.
- v) Public administration is a vast section which needs management attention because this segment has a direct relevance to economic and social activity. The process of development must be generated among those who are affected by it. This is seldom possible when the superior has a negatively critical point of view.

Finally, at all levels, a genuine faith in development is necessary, a belief that people can and will do better. All concerned must, with an open heart and mind, be willing to welcome and accept changes.

Basic Requisites for the success of management Development Programmes

The basic requisites for the success of management development programmes are as follows:

- i) The top management should accept responsibility for getting the policy of development executed. For this purpose a senior officer should be placed in charge to initiate and implement the management development programme.
- ii) Management development is essentially a 'line job'. It takes place on the job and involves both the employee and his boss.
- iii) Every manager must accept direct responsibility for developing managers under his control on the job and a high priority should be given to his task
- iv) Management development must be geared to the needs of the company and the individual.
- v) A policy of promotion from within is a necessary incentive for managers to develop in an organization.
- vi) Management development starts with the selection of the right persons for managerial ranks. It is essential to ensure that good material is really fed into the programme at the entry levels.
- vii) There should be a realistic time table in accordance with the needs of a company. This time-table should take into account the needs for the managerial personnel over a sufficiently long period and the resources which are available at present and required in future.

The management development programme should be based on a definite strategy which should spell out the type, coverage and objective of the

programme. The multi-tier supervisory and management development programme should start from the lower level supervisor and go the way up to the top management.

Selection of Training and Development method. Selection of an appropriate method depends upon the following six factors:

- (i) Training objective. The choice of a particular training method should depend upon the objective of training. It should be noted, however, that this is not easy. It is far more difficult to define the objectives at the managerial level than at the blue-collar level. Experts will agree on the form and content of training to be given to a machinist or electrician but they will differ widely in case of a junior executive. This is because they do not know why some senior executives are more effective than others or what does a successful manager know better than his less successful colleagues.

In 1972 three researchers—Carroll, Paine and Ivancevich – asked 200 training directors of large American companies to rate the relative effectiveness of different training methods in meeting the following objectives. The best and the worst method as revealed by this research are given against each objective.

1. Acquisition of knowledge: programmed instruction is the best, lectures are the worst.
2. Changing trainees' attitudes: Sensitivity training is the best, television lectures are the worst.
3. Increasing trainees' problem-solving skill; Case method is the best, lectures are the worst.
4. Increasing trainees' interpersonal skills: Sensitivity training is the best, television lectures are the worst.

5. Increasing trainees' acceptance of the training method; Conference (discussion) is the best, television lectures are the worst
6. Trainees' retention of knowledge; Programmed instruction is the best, television lectures are then worst.
1. *Level of trainees in the organization's hierarchy:* whether the participants are shop floor workers, supervisors or managers? We have seen above how the training needs of employees at different levels in the organizational hierarchy differ in the degree to which emphasis is placed on various training inputs. This difference makes certain techniques better for one class of employees than for the other.
2. *Method's ability to hold and arouse the interest of trainees during the training period.*

A trainer has to consider alternative methods of presenting training material to participants also from the point of view of their ability to stimulate interest and facilitate retention of the matter. For instance, if traditionally the matter has been presented through lectures, perhaps audio-visual methods can be used. People remember things that they "see and hear" much longer than they do information received through talks or reading alone.

2. *Availability of competent trainers.*
3. *Availability of finance.*
4. *Availability of time.*

EVALUATION OF TRAINING AND DEVELOPMENT

Training as a service intended to achieve quality results requires continuous evaluation to achieve continuous improvement. Evaluation should pervade the training process. The four main dimensions of evaluation are:

- (i) Evaluation of contextual factors.
- (ii) Evaluation of training inputs.
- (iii) Evaluation of the training process, and
- (iv) Evaluation of training outcomes.

- (i) *Evaluation of contextual factors:* Training effectiveness depends not only on what happens during training, but also on what happens before the actual training and what happens after the training has formally ended. Evaluation should, therefore, be done of both the pre training and post-training work. Pre – training work includes proper identification of training needs, developing criteria of who should be sent for training, how many at a time and in what sequence, helping people to volunteer for training, building expectations of prospective participants from training, etc. Post training work includes helping the concerned managers to plan to utilize the participants’ training, and provide the needed support to them, building linkages between the training section and the line departments and so on.
- (ii) *Evaluation of training input.* This involves the evaluation of training curriculum and its sequencing.
- (iii) *Evaluation of training process.* The climate of the training organization, the relationship between participants and trainers, the general attitudes and approaches of the trainers, training methods, etc., are some of the important elements of the training process which also need to be evaluated.
- (iv) *Evaluation of training outcomes.* Measuring the carry- home value of a training programme in terms of what has been achieved and how much is the main task of evaluation. This,

however, is a complex technical and professional task. Benefits of a training programme are not always obvious and they are not readily measurable. payoffs from training are intangible and rather slow to become apparent. A central problem is the absence of objective criteria and specific definitions of relevant variables by which to measure the effectiveness either of specific programme or of results in terms of general employee development or changes in employee behavior. Nevertheless, good personnel managers do make an effort to systematically appraise the benefits and result of their programmes.

How Evaluation is done?

Most training evaluation methods seem to fall into one of the following two categories: (a) reaction evaluation, and (b) outcome evaluation.

Reaction Evaluation

Opinion surveys of participants or of people who have seen the participants in action are reaction evaluations. There are several variations of this method:

- (i) Generally, a questionnaire is given to the participant at the end of the programme which asks him to rate of his personal perceptions what he liked best. What he liked least and any other comments he might have about the programme.
- (ii) Sometimes scalar ratings are also given against every question and the trainee is required to check off the degree of satisfaction which he found in each answer. (See appendix 4 given at the end)
- (iii) Participants are required to give daily ratings for each segment of the programme. One advantage of this method is that it provides the manager of the training programme. One advantage of this

method is that it provides the manager of the training programme an immediate feedback which he can use for the adjustment and improvement of the following day's programme.

- (iv) Sometimes a management representative may drop around during a coffee break and by putting questions to one or two participants, informally collect information about the success of the training programme. Since such samplings are not scientifically designed, the results may not be always accurate.
- (v) sometimes the participants may be asked to send their opinions by mail on reaching their organizations. The theory here is that opinions given immediately at the conclusion of the course cannot possibly have the objectivity which is desired in the appraisal of the programme.

Outcome Evaluation

Reaction evaluations do not take one very far. The main object of evaluation is in fact served by outcome evaluation. Outcome evaluation may be done at three levels; immediate, intermediate and ultimate.

Immediate. This form of evaluation measures improvement in the learning (knowledge, skills and attitudes) of trainees soon after they have finished training. Skill learning can be measured by performance testes (such as operating a machine). Similarly, information-0recall tests or problem-solving exercises can be used to gauge knowledge. Devices such as attitude scale, role-playing, simulation, critical incident cases etc. may throw light on the trainees' progress in attitudinal learning.

Intermediate, this form of evaluation measures changes in the behavior of trainees when they have returned to their jobs.

The assumption here is that if positive transfer of learning has taken place from the training to the job situation it should be reflected in the trainee's improved behavior.

Of these, the first technique (controlled experimentation) is considered as the most scientific one that really provides a solid basis for evaluation in the training. The second technique does not provide the basis for knowing how much improvement would have occurred *without training*. The third technique does not provide any basis for knowing how much improvement actually occurred during training.

Ultimate, This form of evaluation measures changes in the ultimate results achieved by training. For this purpose, indexes of productivity, labor turnover, absenteeism, accidents, grievances, quality control etc., studies of organizational climate and human resources accounting are taken as the ultimate results achieved by trainees.

There are 3 basic techniques followed under this method. These are: (i) controlled experimentation, (ii) "before-and -after" comparison, and (iii) after the training study. Controlled experimentation requires the use of two groups of employees, namely, "training" group and a "control" group. Performance is measured of both the groups *before* training is Shortened. The training group is then given the training, while the control group is not (the group continues to perform the job without training). After the first group is trained, performance of both the groups is again measured. A subsequent comparison is then made of the improvement in both groups to determine if the training group improves significantly more than the control group. The second method involves the use of single training group with performance being measured before and after the training. The third method also involves a single training group but with performance being measured after the training (but not before). *If evaluation in*

any form is to be effective, it must be done in accordance with the following proven principles:

1. Evaluation must be planned. What is to be evaluated, when, by what means. And by whom must be determined in advance.
2. Evaluation must be objective. It should not be a mere eyewash—an attempt by the trainer to vindicate the programme instead of to verify it.
3. Evaluation must be verifiable,. Results can be confirmed by the same or different means.
4. Evaluation must be co—operative. It must involve all who are a part of or affected by the training and development programme. It is not a contest between the evaluator and the subject of evaluation.
5. Evaluation must be continuous.
6. Evaluation must be specific, i.e., it should tell about specific strengths and weaknesses and should not make vague generalizations.
7. Evaluation must be quantitative.
8. Evaluation must be feasible. It must be administratively manageable.
9. Evaluation must be cost effective, i.e., the results must be commensurate with the cost incurred.

REVIEW QUESTIONS:

1. Define the term Training. What are the objectives of training?
2. Distinguish between Training and Development?
3. What are the methods of Training?
4. How can you evaluate Training and Development?
5. How will you give Training to your employee's?

EMPLOYEE PERFORMANCE APPRAISAL

Performance appraisals a systematic evaluation of present and potential capabilities of personnel and employees by their superiors, superior's superior or a professional from outside. It is a process of estimating or judging the value, excellent qualities or status of a person or thing. It is a process of collecting, analyzing, and evaluating data relative to job behavior and results of individuals. The appraisal system is organized on the principle of goals and management by objectives. Management decisions on performance utilize several integrated inputs: goals and plans, job evaluation, performance evaluation, and individual history. It connotes a two-dimensional concept – at one end of the continuum lies the goals set by the authority, and at the other end, the performance achieved by the individual or any given group.

Objectives of Performance Appraisal

The broad objectives of performance appraisal are:

1. To help the employee to overcome his weaknesses and improve his strengths so as to enable him to achieve the desired performance.
2. To generate adequate feedback and guidance from the immediate superior to an employee working under him
3. To contribute to the growth and development of an employee through helping him in realistic goal setting.
4. To provide inputs to system of rewards (comprising salary increments, transfers, promotions, demotions or terminations) and salary administration
5. To help in creating a desirable culture and tradition in the organization

6. To help the organization to identify employees for the purpose of motivating, training and developing them
7. To generate significant, relevant, free, and valid information about employees.

In brief, the main purposes of performance appraisal are:

- To review past performance;
- To assess training needs;
- To help develop individuals;
- To audit the skills within an organization;
- To set targets for future performance;
- To identify potential for promotion.

In short, the performance appraisal of an organization provides systematic judgments to backup wage and salary administration; suggests needed changes in one's behavior, attitudes, skills, or job knowledge; and uses it as a base for coaching and counseling the individual by his superior. Appraising employee performance is, thus, useful for compensation, placement, and training and development purposes.

Uses of Performance Appraisal

Some of the common uses of appraisals include:

- Determining appropriate salary increases and bonuses for workers based on performances measure.
- Determining promotions or transfers depending on the demonstration of employee strengths and weaknesses.
- Determining training needs and evaluation techniques by identifying areas of weaknesses.

- Promoting effective communication within organizations through the interchange of dialogue between supervisors and subordinates.
- Motivating employees by showing them where they stand, and establishing a data bank on appraisal for rendering assistance in personnel decisions.

It is generally accepted that performance appraisals serve one or more of the following purposes:

1. To bring about better operational or business results
2. To meet an individual's development needs
3. To provide information useful for manpower planning by identifying men with a potential for advancement and men with abilities not currently being used
4. To provide a basis for compensation action. The appraisal systems do not operate in isolation; they generate data that can contribute to other HRM systems – for example to succession planning and manpower planning.

In brief, the various uses of performance appraisal can be classified into two broad categories. One category concerns the obtaining of evaluation data on employees for decision-making for various personnel actions such as pay increases, promotions, transfers, discharges, and for selection test validation. The other main use is for employee development including performance improvement training, coaching and counseling.

Planning the Appraisal

A meaningful performance appraisal is a two-way process that benefits both the employee and the manager. For employees. Appraisal is the time to find out how their manager thinks they are performing in the job. For a manager, a

formal appraisal interview is a good time to find out how employees think they are performing on the job. The planning appraisal strategy has to be done:

Before the appraisal:

1. Establish key task areas and performance goals.
2. Set performance goals for each key task area.
3. Get the facts.
4. Schedule each appraisal interview well in advance.

During the appraisal:

1. Encourage two-way communication.
2. Discuss and agree on performance goals for the future.
3. Think about how you can help the employee to achieve more at work.
4. Record notes of the interview.
5. End the interview on an upbeat note.

After the appraisal:

1. Prepare a formal record of the interview.
2. Monitor performance.

Approaches to Performance Appraisal

George Odiorne has identified four basic approaches to performance appraisal.¹

Personality- based systems: In such systems the appraisal form consists of a list of personality traits that presumably are significant in the jobs of the individuals being appraised. Such traits as initiative, drive, intelligence, ingenuity, creativity, loyalty and trustworthiness appear on most such lists.

Generalized descriptive systems: Similar to personality- based systems, they differ in the type of descriptive term used. Often they include qualities or actions of presumably good managers: “organizes, plans, controls, motivates, delegates, communicates, makes things happen,” and so on. Such a system, like

the personality-based system, might be useful if meticulous care were taken to define the meaning of each term in respect to actual results.

Behavioral descriptive systems: Such systems feature detailed job analysis and job descriptions, including specific statements of the actual behaviors required from successful employees.

Result-centered systems: These appraisal systems (sometimes called work-centered or job – centered systems) are directly job related. They require that manager and subordinates sit down at the start of each work evaluation period and determine the work to be done in all areas of responsibility and functions, and the specific standards of performance to be used in each area.

When introducing performance appraisal a job description in the form of a questionnaire has to be preferred. A typical questionnaire addressed to an individual would cover the following points:

- What is your job title?
- To whom are you responsible?
- Who is responsible to you?
- What is the main purpose of your job?
- To achieve that purpose what are your main areas of responsibility?
- What is the size of your job in such terms of output or sales targets, numbers of items processed, numbers of people managed, number of customers?
- What targets of standards of performance have been assigned for your job? Are there any other ways in which it would be possible to measure the effectiveness with which you carry out your job?
- Is there any other information you can provide about your job?

Components of Performance Appraisal

The components that should be used in a performance appraisal system flow directly from the specific objectives of appraisal. The following components are being used in a number of Indian organizations:

1. Key performance Areas (KPA)s/Key Result Areas (KRAs)
2. Task/targets/objectives; attributes/qualities/traits
3. Self appraisal
4. Performance analysis
5. performance ratings
6. Performance review, discussion or counseling
7. Identification of training/development needs
8. Ratings/assessment by appraiser
9. Assessment/review by reviewing authority
10. Potential appraisal.

Types of Performance Appraisal

There are two types of performance appraisal systems which are commonly used in organizations:

- (i) Close ended appraisal system, and
- (ii) open ended appraisal system.

In the close ended appraisal system, commonly used in government organizations and public enterprises, a confidential report is submitted on the performance of the employee. Only where an adverse assessment is made against an individual, the concerned individual is informed about his/her inherent strengths and weaknesses and, therefore, is not given an opportunity to respond to the assessment made on him/her. The employees are, therefore, in a constant dilemma as to how their performance is viewed by the management

In the open ended appraisal system, unlike in the close ended system, the performance of the individual is discussed with him, and he is ranked in a five or ten point rating scale. The company uses the tool primarily for rewarding a good performer or for other considerations like promotions. The main weakness of this system is that all the employees are ranked in a particular scale, and whereas the good performers are rewarded, there is no concerted effort to motivate the average performers in performing better. Another weakness of the

grading system is that the appraisal may turn out to be more subjective in nature due to insufficient data maintained on the individual. This system also leads to unnecessary and invidious comparisons made on different individuals performing similar jobs.

Performance appraisal can be a closed affair, where the appraisees do not get any chance to know or see how they have been evaluated; or it can be completely open, where the appraisees have the opportunity of discussing with their superiors during the evaluation exercise.

Rating Scale with Points

Trait: Quality of Work				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unsatisfactory	Below Outstanding		Average	Above

In this case, each item appraised will carry with it a certain number of points. The range of points used may be the same or different for every trait or factor appraised.

Concerns and Issues in Appraisal

1. Identifying job responsibilities and duties and performance dimensions, standards and goals.
2. Prioritizing and weighing performance dimensions and performance goals.
3. Determining appropriate methods for appraising performance.
4. Developing suitable appraisal instruments and scoring devices.
5. Establishing procedures that enhance fair and just appraisals of all employees.
6. Providing performance feedback to all employees.

7. Relating observed and identified performance to the rewards provided by organization.
8. Designing, monitoring and auditing processes to ensure proper operation of the system and to identify areas of weakness.
9. Granting employees opportunities for appeal whenever and wherever such action is appropriate.
10. Training of employees in all phases of the appraisal system

The basic issues addressed by performance appraisal are;

- What to appraise?
- How to appraise fairly and objectively?
- How to communicate the appraisal and turn the total process into a motivator?
- How the performance appraisal results can be put to good use?
- How to implement the performance appraisal system smoothly?

Steps in the Appraisal Programme

Pigors and Myers suggest several steps to develop and administer the programme effectively:

1. The personnel department may attempt to obtain as much as possible the agreement of line management in respect of the needs and objective of the programme. A choice has to be made among different kinds of appraisal methods judiciously.
2. The personnel department has to examine the plans of other organizations as well as the relevant literature in the field to formulate the most suitable plan for the appraisal programme.
3. Attempts should be made to obtain the co-operation of supervisors in devising the appraisal form and discuss with them the different

factors to be incorporated, weights and points to be given to each factor, and description or instructions to be indicated on the form.

4. The personnel or industrial relations manager tends to explain the purpose and nature of the programme to all the superiors and subordinates to be involved and affected by it. Care should be taken to take into confidence the representatives of the union, if it exists in the company.
5. Attempt is to be made to provide intensive training to all the supervisors with a view to obtaining unbiased and uniform appraisal of their subordinates.
6. Care may be taken to acquire line and staff co-ordination and mutual checking of appraisals with a view to achieving intra and inter-departmental consistency and uniformity.
7. There should be an arrangement for periodic discussion of the appraisal by the superior with each of the subordinates where attempts may be made to stress good points, indicate difficulties, and encourage improved performance. Explicitly, in this context, the discussion should be in the form of a progress review and every opportunity should be given to the subordinate to express himself, if he feels that the appraisal has been biased and that it should be otherwise.
8. As soon as the appraisal has been duly discussed, attempts may be made to recommend for salary increases or promotion, if these decisions seem plausible in the light of appraisals.
9. There should be provision for challenge and review of appraisals, if the employees or their union representatives are dissatisfied with the personnel decisions which the management has taken on the basis of

these appraisals. These steps, if followed carefully, are likely to help the superiors to evaluate their subordinates effectively.

Methods of Performance Appraisal

Strauss and Sayles have classified performance appraisal into three groups: traditional performance rating, newer – rating method, and result-oriented appraisal. A brief description of each is as follows:

(a) **Traditional Performance Rating:** Traditional rating involves a completion of a form by the immediate supervisor of the individual who is being evaluated. In some cases, attempts are made to accomplish the rating by a committee consisting of the immediate supervisor, the supervisor's superior and one or two more officers of the company who are familiar with the rate. Although ratings by the committee bring several viewpoints together and overcome the superior's bias, if any, they are highly time-consuming. The conventional rating scale form incorporates several factors, such as , job knowledge, judgment, organizing ability, dependability, creativity, dealing with people, delegation, and leadership. The rating is assigned by putting a tick mark horizontally. Frequently, descriptive phrases are given in the form to guide the rater while evaluating the rate. This method is very simple to understand and easy to apply. On the basis of ratings on specific factors, it is possible to identify areas in which the individual requires further development. The ratings on specific factors can be summated to obtain a composite performance score.

The merit-rating scales are frequently criticized from the standpoints of clarity in standards, differing perceptions, excessive leniency or strictness, the central tendency, the halo effect, and the impact of an individual's job. First, there is a divergence of opinion among raters as to what is meant by such standards as "unsatisfactory", "good" and so on. Second, there may be divergent perceptions and accordingly, different standards or judgments among the raters. Third, the

raters may be susceptible to excessive leniency or strictness error. Fourth, there is a chance of the occurrence of a halo effect. The halo effect refers to a tendency of the rater to rate several factors in terms of a general impression which he has on the individuals. Accordingly, the halo effect may occur where the rating of a general impression which he has on the individuals. Accordingly, the halo effect may occur where the rating on one factor is influenced by the rating on another factor. If an individual is rated above the average on one factor, he is likely to receive nearly similar ratings on the other factors as well. For example, a fitter, who is rate “very good” on his knowledge of the job, may obtain equally high ratings on other factors such as initiative and helpfulness while factually he deserves lower ratings on these factors. Sixth, there is a tendency on the part of the raters to assign high ratings to individuals holding high-paid jobs.

The basic criticism of the traditional performance rating relates to its emphasis on personality traits instead of job performance. Such rating is highly subjective in the absence of objective standards.

(b) **Newer Rating Methods:** Because of several inadequacies in the traditional rating scale, attempts have been made to devise new procedures which are less susceptible to the above weaknesses. Among these are included rank order, paired comparison, forced distribution, forced choice, critical incident and field review. These methods are discussed below:

- (i) *The Rank-order Procedure:* It is effective where ten or a lesser number of individuals are to be evaluated. According to this procedure, each individual is assigned such ranks as first, second, third and so on. If the evaluation process involves several traits, the ranking is made separately for each trait. Although this method is simple to understand and easy to apply, this technique becomes

cumbersome and difficult when a large number of employees are to be evaluated in the organization.

- (ii) *Paired-comparison system*: Under this, each individual is compared with every other individual. The appraiser is required to put a tick-mark against the name of the individual whom he considers better on the trait in question. The final ranking is determined by the number of individuals for evaluation is large.
- (iii) *The forced Distribution Procedure*: It is a form of comparative evaluation in which as evaluator rates subordinates according to a specified distribution. Here judgments are made on a relative basis, i.e., a person is assessed relative to his performance in the group he works. This procedure can be used for numerous traits if required by evaluating the individuals separately on each trait. The forced distribution method is primarily used to eliminate rating errors such as leniency and central tendency.
- (iv) *The Forced Choice Technique*: It forces the rater to select from series of several statements or traits, the one which best fits the individual and one which least fits, and each of these statements is assigned a score. Since the appraiser does not know the score value of statements, this method prevents the rater from deliberately checking only the most favorable trait. Moreover, the appraiser is unable to introduce personal bias into the evaluation process because he does not know which of the statement is indicative of effective performance. This enhances the overall objectivity of this procedure. However, it is a costly technique and also difficult for many raters to understand.
- (v) *The Critical Incident Method*: This technique of performance appraisal was developed by Flanagan and Burns. Under this

procedure, attempts are made to devise for each job a list of critical job requirements. Superiors are trained to be on the lookout for critical incidents on the part of the subordinates in accomplishing the job requirements. The superior enlist the incident as they happen and in the process, tend to build up a record of each subordinate with debit on the minus side and credit on the plus side. The merit of this procedure is that all evaluations are based on objective evidence instead of subjective rating.

(vi) *The Field Review*: It is an appraisal by someone outside the employee's own department, usually someone from the corporate office or from the employee's own personnel department. The field review process involves review of employee records, and interviews with the employee, and sometimes with the employee's superior. Field review as an appraisal method is used primarily in making promotion decisions at the managerial level. Field reviews are also useful when comparable information is needed from employees in the different units or locations.

(c) Result-Oriented Appraisal: The result-oriented appraisals are based on the concrete performance targets which are usually established by superior and subordinates jointly. This procedure has been known as Management by Objectives (MBO).

MBO: The definition of MBO, as expressed by its foremost proponent, Dr. George S.O The definition of MBO, as expressed by its foremost proponent, Dr. George S.Odiorne, is: "Management by objectives is a process whereby the superior and subordinate managers of an organization jointly identify its common goals, define each individual's major areas of responsibility in terms of the results expected of him, and use these measures as guides for operating the unit and assessing the contribution of each of its members."

Much of the initial impetus for MBO was provided by Peter Drucker (1954) and by Douglas McGregor (1960). Drucker first described MBO in 1954 in the Practice of Management. Drucker pointed to the importance of managers having clear objective that support the purposes of those in higher positions in the organization. McGregor argues that by establishing performance goals for employees after reaching agreement with superiors, the problems of appraisal of performance are minimized. MBO in essence involves the setting out clearly defined goals of an employee in agreement with his superior. Carroll and Tosi (1973), in an extensive account of MBO, note its following characteristics:

1. The establishment of organizational goals
2. The setting of individual objectives in relation to organizational goals
3. A periodic review of performance as it relates to organizational goals
4. Effective goal-setting and planning by top management
5. Organizational commitment
6. Mutual goal-setting
7. Frequent individual performance reviews
8. Some freedom in developing means of achieving objectives.

The key features of management by objectives are as under:

1. Superior and subordinate get together and jointly agree upon the list of the principal duties and areas of responsibility of the individual's job.
2. The subordinate sets his own short-term performance goals or targets in co-operation with his superior.
3. They agree upon criteria for measuring and evaluating performance.
4. From time-to-time, as decided upon, the superior and subordinate net together to evaluate progress towards the agreed-upon goals . At those meetings, new or modified goals are set for the ensuring period.

5. The superior plays a supportive tool. He tries, on a day-to-day basis, to help the subordinate achieve the agreed upon goals. He counsels and coaches.
6. In the appraisal process, the superior plays less of the role of a judge and more of the role of one who helps the subordinate attain the organization goals or targets.
7. The process focuses upon results accomplished and not upon personal traits.

There are four main steps in MBO:

1. Define the job. Review, with the subordinates, his or her key responsibilities and duties.
2. Define expected results (set objectives). Here specify in measurable terms what the person is expected to achieve.
3. Measure the results. Compare actual goals achieved with expected results.
4. Provide feedback, appraise. Hold periodic performance review meetings with subordinates to discuss and evaluate the latter's progress in achieving expected results.

MBO has many benefits, since it :

1. Provides a way for measuring objectively the performance of subordinates.
2. Co-ordinates individual performance with company goals.
3. Clarifies the job to be done and defines expectations of job accomplishment.
4. Improves superior-subordinates relationships through a dialogue that takes place regularly.
5. Fosters increased competence, personal growth, and opportunity for career development.

6. Aids in an effective overall planning system.
7. Supplies a basis for more equitable salary determination, especially incentive bonuses.
8. Develops factual data for promotion criteria.
9. Stimulates self-motivation, self-discipline and self-control.
10. Serves as a device for integration of many management functions.

MBO has certain potential problems, such as:

1. It often lacks the support and commitment of top management.
2. Its objective are often difficult to establish.
3. Its implementation can create excessive paperwork if it is not closely monitored.
4. it concentrates too much on the short-run at the expense of long-range planning.
5. It may lead to excessive time consuming.

Traditionally, in most performance evaluations a supervisor evaluates the performance of subordinate. However, the performance appraisal has assumed several added dimensions. Organizations are increasingly taking recourse to newer initiatives for tracking performance and measuring it against predetermined objectives, key result areas.

360 Degree : The 360 degree feedback process and the balance score card are the new initiatives being increasingly utilized by organizations to gauge performance.

Over the years, a new approach has been enunciated by the western management gurus which is known as 360 degree appraisal – a performance management in which employees receive performance feedback on a variety of dimensions by an assortment of individuals with whom the person interacts, namely, their boss, their colleagues and peers, their own subordinates, and internal and external

customers. The list can grow to include vendors and consultants, human resource professionals, suppliers and business associates, even friends and spouses. The 360 degree feedback refers to the practice of using multiple raters often including self-ratings in the assessment of individuals. Thus, the feedback comes from all around them, 360 degrees. It helps foster interdependent partnership and develops team-based organizations. It is also a move towards participation and openness. Many American companies are now using this 360 degree feedback. Companies that practice 360 degree appraisals include Motorola, Semco Brazil, British Petroleum, British Airways, Central Televisions, and so on..

One important factor for the success of a 360 degree performance assessment is to ensure that the right people are selected to provide the feedback. Both critics and supporters of the individual should be selected. Another key factor for its success is avoiding punishment for bad results. Rather, assessment participants must be positively encouraged to improve.

This form of performance evaluation can be very beneficial to managers because it typically gives them a much wider range of performance-related feedback than a traditional evaluation. That is, rather than focusing narrowly on objective performance, such as sales increase or productivity gains, 360 degree often focuses on such things as interpersonal relations and style. Of course, to benefit from 360 degree feedback system must be carefully managed so that its focus remains on constructive rather than destructive criticism.

Balance Score Card : The Balance Score Card (BSC) creates a template for measurement of organizational performance as well as individual performance. It is a measurement based management system, which enables organizations to clarify vision and strategy before initiating action. It is also a monitoring system that integrates all employees at all levels in all departments towards a common goal. BSC translates strategy into performance measures and targets, thus

making it operational and highly *effective*. It helps cascade corporate level measures to lower level so that the employees can see what they must do well to improve organizational *effectiveness* and helps focus the entire organizations on what must be done to create breakthrough performance. BSC was introduced in 1992 by Dr. Rober Kaplan and David Nortan and has been successfully adopted by numerous companies worldwide.

The result-oriented appraisal relates to a future which can be improved rather than the past over which one has no control. It stresses forward planning which helps in overcoming problems beforehand. The superior is no longer a critic but a guide to improve subordinate's performance. The subordinates have definite targets and receive feedback as to where they stand. Thus, knowledge of results leads to improved performance. This procedure provides a framework within which individuals are highly motivated to improve themselves. However, it is not a panacea for all the ills of an organization. This method should not be introduced as a crash programme in organizational settings. Rather, sufficient groundwork should be accomplished before launching the result-oriented appraisal programme.

Performance Appraisal Assessment

The quality of an appraiser is much more crucial than the appraisal methods. It is desirable to make the immediate superior a party to the appraisal programme. The assessment can be accomplished by an individual or by a combination of the immediate superior, other managers acquainted with the assessee's work, a higher level manager, a personnel officer, the assessee himself, and the assessee;s subordinates. Training of appraisers has been largely stressed as a measure to improve performance appraisals. Appraisers can be trained with a view to improving their ability to evaluate subordinates and discuss evaluations with them effectively.

The following questions can provide an assessment of performance appraisal system:

- What purposes does the organization want its performance appraisal system to serve?
- Do the appraisal forms really get the information to serve the purposes?
- Are the appraisal forms designed to minimize errors and ensure consistency?
- Are the processes of the appraisal effective?
- Are supervisors rewarded for correctly evaluating and developing their employees?
- Are the evaluation and development components separated?
- Are the evaluation and developmental components separated?
- Are superiors relatively free from task interference in doing performance appraisal?
- Are the appraisals being implemented correctly?

The following questions serve as guidelines for assessing the end-product of performance appraisal:

1. Did the appraisal session motivate the subordinate?
2. Did the appraisal build a better relationship between the superior and the subordinate?
3. Did the subordinate come out with a clear idea of where he or she stands?
4. Did the superior arrive at a fairer assessment of the subordinate?
5. Did the superior learn something new about the subordinates?
6. Did the subordinate learn something new about the superior and pressures he or she faces?

7. Does the subordinate have a clear idea of what corrective actions to take to improve his/her own performance?

Performance Appraisal Guidelines

- Keep the system simple, and keep the paperwork burden down.
- It is a managerial tool to be used for improving results under the manager's province. But it should not be used punitively and unjustly.
- Establish and maintain two entirely different performance appraisal systems : one geared to making pay decisions and the other designed to yield information about employee development.
- Once a system has been decided upon, apply it for several years; in other words don't tinker with the system annually.
- Do not rely on formal performance appraisals to do the entire job in communicating on performance; day-to-day informal contacts must do the bulk of the job.
- Review performance formally at least once in a year and also whenever there has been a repetition of negative employee behavior.

Strategies to Improve Performance

Companies can do many things to improve employee performance. More specific and frequently used strategies include the –

- Positive reinforcement system;
- Positive discipline programmes;
- Employee assistance programmes; and
- Employee counseling.

The positive reinforcement system lets employees know well they are meeting specific goals and rewards improvements with praise and recognition. In the sense that no money is involved, it is a unique incentive system. Like all incentive systems, a basic premise of positive reinforcement is that behavior can be understood and modified by its consequences. Some organizations improve performance through the use of positive discipline or non-punitive discipline. Employee assistance programmes are designed specifically to assist employees with chronic personal problems that hinder their job performance and attendance. Such programmes are often used with employees who are alcoholics or who have severe domestic problems.

Counseling is an inescapable and necessary part of appraisal. It has to do with a personal relationship, and interaction between two people one of whom is wiser or more experienced than the other. The main steps in appraising and counseling subordinates are as follows:

1. Schedule periodic appraisals standards jointly with subordinates.
2. Establish performance appraisal standards jointly with subordinates.
3. Prepare for each appraisal and counseling session, select an appropriate place, provide enough time, and review records.
4. Make appraisal sessions co-operative. The subordinate must be encouraged to appraise his own performance and share his ideas and feelings with the appraiser.
5. Establish and maintain rapport with the subordinate by words, actions, and attitude.
6. Jointly explore alternative solutions and the consequences of selecting each one.
7. Help the subordinate to come to a self-determined solution to the problem or deficiency.
8. Terminate the session gracefully.

9. Complete records of the session and decisions for future reference.
10. Carry out the decisions and actions.
11. Follow up and evaluate results.

Many situations that arise at work demand effective counseling skills. Counseling is an important communication based activity. Counseling skills include listening, understanding, initiating effective communication, and evaluating solutions. Effective counseling skills are aimed at:

1. Bringing about some constructive change in the subordinate's behavior.
2. Locating the root cause of subordinate's problem.
3. Reducing frustration by allowing subordinates to express their attitudes and feeling about their jobs.
4. Stimulating problem-solving for the purpose of finding solutions to the subordinate's problems and achieve excellence in his performance.

Effective counseling demands effective communication, active listening, and transactional analysis. In addition, some specific counseling guidelines include:

1. Avoid making your subordinates defensive; recognize that defensive behavior is normal.
2. Never attack a person's defense; try to concentrate on the act itself (inadequate sales, decreasing profits and so on) rather than on the subordinate.
3. Postpone action; sometimes, the best thing to do is nothing at all.
4. Be an active listener; be sure you understand not only the words, but, more importantly, the feelings and attitudes underlying them.
5. Try not to criticize; criticism often just evokes defensive behavior.

6. Try to counsel often, on a daily basis, rather than once or twice a year; give feedback.
7. Use critical incidents. No one likes being told with vague generalities that his performance is not up to the mark. Try to be especially specific about the behavior you consider unsatisfactory.
8. Agree on standards of improvement. Best results are always achieved when the superior and subordinates set specific goals to be achieved.
9. Get your subordinates to talk.

Performance Appraisal at Pepsi-Cola International

Pepsi-Cola International (PCI), with operations in over 150 countries, has devised a common performance appraisal system that focuses on motivating managers to achieve and maintain high standards of performance. Administrative consistency is achieved through the use of a performance appraisals, development feedback, and a human resource plan.

The common system provides guidelines for performance appraisal, yet allows for modification to suit cultural differences. For example, the first step of instant feedback is based on the principle that any idea about any aspect of the business or about an individual's performance is raised appropriately and discussed in a sensitive manner. The instant feedback message can be delivered in any culture: the important thing

Periodic Performance Appraisal

EMPLOYEE NAME	POSITION	DIVISION	
REVIEW MANAGER	HIRE DATE	APPRAISAL DATE	
Indicate the period for this Performance Appraisal. (These are only suggested review timeframes. More or less frequent reviews may be appropriate).			
QUARTERLY <input type="checkbox"/>	HALF-YE <input type="checkbox"/>	Y <input type="checkbox"/>	
PERFORMANCE CRITERIA CHECK(√)	EXCEEDS PERFORMANCE	MEETS PERFORMANCE	BELOW PERFORMANCE

ONE	STANDARDS	STANDARDS	STANDARDS
Job Knowledge			
Quality of Work			
Productivity			
Planning and Organization			
Customer Service			
Business Judgment			
Creativity/Initiative			
Interpersonal Relationship			
Communication Skills			
OVERALL			
	<input type="text"/>	<input type="text"/>	<input type="text"/>
Comments/Recommendations			
Assessor's Name (Please Print)	Signature		Date
I have read this Periodic Performance Appraisal and discussed the contents with my manager. My signature signifies that I have been advised of my job performance and does not necessarily imply that I agree with it or its contents.			
Employee's Name (Please Print)	Signature		Date

REVIEW QUESTIONS:

1. Define Performance Appraisal of an Employee. What are the objectives of Performance Appraisal?

2. Explain various types of Performance Appraisal?
3. What are the steps and methods for Appraisal of an employee performance?
4. Discuss the guidelines to perform an Employee?

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Unit – V

LESSON – 5.1

QUALITY OF WORK LIFE AND CORPORATE GOVERNANCE

LEARNING OBJECTIVES:

1. Define the concept of QWL.
2. Identify the elements of QWL.
3. Describe the various legislations governing stockholders.
4. Contrast of measures available in different legislations.

LEARNING OF QUALITY OF WORKLIFE AND CORPORATE GOVERNANCE

QWL means different things to different people. J. Richard and J. Loy define QWL as “the degree to which members of a work organization are able to satisfy important personnel needs through their experience in the organization.

Quality of work life improvements are defined as any activity which takes place at every level of an organization, which seeks greater organizational effectiveness through the enhancement of human dignity and growth ... a process through which the stockholders in the organization management, unions and employees --- learn how to work together better to determine for themselves what actions, changes and improvements desirable and workable in order to achieve the twin and simultaneous goals of an improved quality of life at work for all members of the organization and greater effectiveness for both the company and the unions.

Richard E, Walton explains quality of worklife in terms of eight broad conditions of employment that constitute desirable quality of worklife (QWL) . He proposed the same criteria for measuring QWL. Those conditions criteria include :

- i) Adequate and Fair Compensation: There are different opinions about the adequate compensation. The committee on Fair Wages defined fair wage as: The wage which is above the minimum wage but below the living wage”.
- ii) Safe and Healthy Working Conditions: Most of the organizations provide safe and healthy working conditions due to humanitarian requirements and/or legal requirements. In fact these conditions are a matter of enlightened self interest.
- iii) Opportunity to use and Develop Human Capacities: Contrary to the traditional assumptions, QWL is improved “to the extent that the worker can exercise more control his or her work, and the degree to which the job embraces an entire meaningful task” But not a part of it. Further QWL provides for opportunities like autonomy in work and participation in planning in order to use human capabilities.
- iv) Opportunity for Career Growth: Opportunities for promotions are limited in case of all categories of employees either due to educational barriers or due to limited openings at the higher level. QWL provides future opportunity for continued growth and security by expanding one’s capabilities, knowledge and qualifications.
- v) Social Integration in the Work Force: Social integration in the work force can be established by creating freedom from prejudice, supporting primary work groups, a sense of community and inter-personnel openness, legalitarianism and upward mobility.

- vi) Constitutionalism in the Work Organisation: QWL provides constitutional protection to the employees only to the level of desirability as it hampers workers. It happens because the management's action is challenged in every action and bureaucratic procedures need to be followed at that level. Constitutional protection is provided to employees on such matters as privacy, free speech, equity and due process.
- vii) Work and Quality of Life : QWL provides for the balanced relationship among work, non-work and family aspects of life. In other words family life and social life should not be strained by working hours including overtime, work during inconvenient hours, business travel, transfers, vacations etc.,
- viii) Social Relevance of Work: QWL is concerned about the establishment of social relevance to work in a socially beneficial manner. The workers self-esteem would be high if his work is useful to the society and the vice versa is also true.

SPECIFIC ISSUES IN QWL

Klott Mundick and Schuster suggested 11 major QWL issues. They are:

- i. Pay and Stability of Employment: Good pay still dominates most of the other factors in employee satisfaction. Various alternative means for providing wages should be developed in view of increase in cost of living index, increase in levels and rates of income tax and profession tax. Stability to a greater extent can be provided by enhancing the facilities for human resource development.
- ii. Occupational Stress: Stress is a condition of strain on one's emotions, thought process and physical condition, Stress is determined by the nature of work, working conditions, working

hours, pause in the work schedule, worker's abilities and nature and match with the job requirements. Stress is caused due to irritability, hyperexcitation or depression, unstable behaviour, fatigue, stuttering, trembling psychomatic pains, heavy smoking and drug abuse. Stress adversely affects employee's productivity. The P/HR manager, in order to minimize the stress, has to identify, prevent and tackle the problem. He may arrange the treatment of the problem with the health unit of the company.

- iii. **Organisational health Programmes:** Organisational health programmes aim at educating employees about health problems, means of maintaining and improving of health etc., These programmes cover drinking and smoking cessation, hypertension control, other forms of cardiovascular risk reduction, family planning etc. Effective implementation of these programmes result in reduction in absenteeism, hospitalization, disability, excessive job turnover and premature death. This programme should also cover relaxation, physical exercise, diet control etc.
- iv. **Alternative Work Schedules:** Alternative work schedules including work at home, flexible working hours, staggered hours, reduced work week, part-time employment which may be introduced for the convenience and comfort of the workers as the work schedule which offers the individual the leisure time, flexible hours of work is preferred.
- v. **Participative Management and Control of Work:** Trade unions and workers believe that workers' participation in management and decision-making improves QWL. Workers also feel that they have control over their work, use their skills and make a real contribution

to the job if they are allowed to participate in creative and decision making process.

- vi. **Recognition:** Recognising the employee as a human being rather than as a labourer increases the QWL. Participative management, awarding the rewarding systems, congratulating the employees for their achievement, job enrichment, offering prestigious designations to the jobs, providing well furnished and decent work places, offering membership in clubs or association, providing vehicles, offering vacation trips are some means to recognize the employees.
- vii. **Congenial Worker – Supervisor Relations:** Harmonious supervisor-worker relations gives the worker a sense of social association, belongingness, achievement of work results etc., This in turn leads to better QWL.
- viii. **Grievance Procedure:** Workers have a sense of fair treatment when the company gives them the opportunity to ventilate their grievances and represent their case succinctly rather than settling the problems arbitrarily.
- ix. **Adequacy of Resources:** Resources should match with stated objectives, otherwise, employees will not be able to attain the objectives. This results in employee dissatisfaction and lower QWL.
- x. **Seniority and Merit in Promotions:** Seniority is generally taken as the basis for promotion in case of operating employees. Merit is considered as the basis for advancement for managerial people whereas seniority cum-merit is preferred for promotion of ministerial employees. The promotional policies and activities should be fair and just in order to ensure higher QWL.
- xi. **Employment on Permanent basis:** Employment of workers on casual, temporary, probationary basis gives them a sense of

insecurity. On the other hand, employment on permanent basis gives them security and leads to higher order QWL.

Quality of worklife aims at the promotion of diversified interests in the organization. A corporate entity is answerable and accountable to different stakeholders. Before and after independence, a number of legislations have been enacted to safe guard the interest of those parties, these legislations have been imported or amended several times to find proper solutions to the problems faced by the stackholders.

The emerging dimensions of business laws, corporate laws, economic laws and trade related regulations have responded to the rapid changes in the business environment and have acted as a catalyst for facilitation of stakeholders interests. The following are the highlights of the emerging dimensions in the legal environment of business:

1. Corporate Governance – The new mantra of corporate management
2. Gearing the Companies Act, 1956 to meet the new challenges.
3. Competition Act 2002 in place of MRTP Act.
4. SEBI – the ombudsman of the capital market.
5. Changes in Securities laws
6. The advent of the Depository system – The Depositories Act, 1996.
7. New Dimensions of intellectual property laws.
8. Changes in the Law relating to Foreign Exchange.
9. Prevention of Money Laundering.
10. Cyber Laws – The IT Revolution and E-Governance.
11. Changes in the Tax Laws – Introduction of VAT
12. Emerging Laws relating to infrastructure development.
13. Environmental Protection – the legal issues.

1. CORPORATE GOVERNANCE – THE NEW MATRA OF CORPORATE MANAGEMENT

The meteoric fall in the fortunes of several giant corporates in US and UK like Enron, Worldcom, Maxwell, Polypeck and also a series of scams in financial sector of other developed and underdeveloped countries including India brought in its wake need for a renewed thrust on good corporate governance. Corporate governance can be considered as the system by which companies are directed and controlled. It is a set of standards, which aims to improve the company's image, efficiency, effectiveness, and social responsibility. The concept of corporate governance primarily hinges on complete transparency, integrity and accountability of the management with an increasingly greater focus on investor protection and public interest.

In India, till recently relatively little attention was paid to the processes by which companies were governed. The various aspects of this issue crept into India relatively recently after the report of the Cadbury Committee in the UK in 1992, which evoked considerable interest from Indian companies. In 1998, the Confederation of Indian Industries (CII) thereafter published a Desirable Code of Corporate Governance, which some companies voluntarily adopted. The issue has come into prominence more recently with the report of the Shri Kumar Mangalam Birla Committee (2000) set up by SEBI to suggest changes in the listing agreement to promote corporate governance.

The Companies Act, 1956 was amended extensively by the Companies (Amendment) Act 2000. The Institute of Chartered Accountants of India issued certain mandatory accounting standards. SEBI, based on Kumar Mangalam Birla Report asked the Stock Exchanges to amend the listing agreements between them and "the entities whose securities are listed with them. In August 2002, the Department of Company affairs under the Ministry of Finance and Company Affairs appointed the High level Naresh Chandra Committee to

examine various corporate governance issues: The Naresh Chandra Committee report was submitted in December 2002.

Again in 2002, SEBI has appointed a committee headed by N R Narayana Murthy, the Chairman of Infosys, do not only take stock of the implementation of the earlier report on Corporate Governance but to revisit the entire proposition. The Narayan Murthy Committee on Corporate Governance submitted its final report on 8th February 2003.

Clause 49 of the listing agreement which implements the corporate governance rules requires the listed companies to focus their attention on the following :

- Boards of Directors providing for appointment of optimum number of executive, non-executive / independent directors.
- Appointing audit committees.
- Remuneration of Directors and its disclosure.
- Board procedures and meetings.
- Management discussion and analysis
- Report on Corporate Governance etc.

In the context of implementation of corporate governance requirements, standards and best practices, self regulation coupled with accountability and transparency, has by far got the most support internationally. Corporates are being subjected to the stress of changes, in fact metamorphosis, in the wake of liberalization, globalising markets and emerging international competition. Thus, proper implementation of the codes of corporate governance will need a judicious mix of all the above approaches, by institutional activism, by using the market as a disciplining factor and self regulation. Lastly, we must not stop at mere compliance with statutory code of corporate governance; this is no guarantee of quality of corporate governance inside the boardrooms. Compliance can only be the first step in the right direction.

2. GEARING THE COMPANIES ACT, 1956 TO MEET THE NEW CHALLENGES

Changes in Company Law – in 1996, 1999, 2000, 2001, 2002 The company law in India has undergone a phase of transition over the last two decades. More than a dozen major legislative initiatives have been introduced in Indian Company Law. The prime mover for this high level of company law reforms process has been the changing corporate landscape and internationalization of business.

With the initiation of market-oriented policies in July 1991, the Government has expedited the process to modify the company law in the line with policy objectives and to harmonise it with the international developments.

A. The Companies (Amendment) Act, 1996.

- It liberalised the procedure of amending the objects clause. Companies can now amend the object clause of their Memorandum of Association by passing a special resolution. No need to get confirmation of Company Law Board.
- Another important amendment was regarding the public deposits. Companies cannot accept deposits from public if they are in default in repayment of any deposit and interest thereon (Section 58A). Companies, which have defaulted in repayment of deposits, cannot make inter corporate loans/ investments and or provide guarantees (Sections 370 and 372).

B. The Companies (Amendment) Act, 1999.

It made the following changes:

- Buy-back of securities introduced

- Issue of sweat equity shares allowed
- Establishment of Investor Education and Protection Fund
- Constitution of National Advisor Committee on Accounting Standards
- Provisions relating to investments & loans rationalized and liberalized

(372A)

- Nomination facility allowed in shares, debentures and deposits

C. The Companies (Amendment) Act, 2000

Companies (Amendment) Act, 2000 was passed on 13.12.2000 which aims at introducing essential elements of corporate governance in the functioning of corporates through introduction of measures like Director's Responsibility Statement. The highlights of the Amendment Act are:

- Minimum paid-up capital requirement for Private and Public Company.
- Certain measures were incorporated for protecting small share holders / deposit holders
- Provision for voting through postal ballot for important items specified by the Central Government.
- The period for disbursing dividend reduced to 30 days from the date of declaration of dividend.
- Board's report to include a director's responsibility statement.
- No person can hold office of director in more than 15 companies at a time.
- Constitution of Audit Committee by companies having paid-up capital of not less than Rs.5 crores. Obtaining of Compliance Certificate from a Company Secretary in whole-time practice by Companies having paid-up share capital of Rs.10 lakhs or more and which are not required to employ a whole-time secretary.
- Concepts of shelf prospectus, information memorandum and Redherring prospectus introduced
- Issue of Non voting shares allowed

- Issue of Indian Depository Receipts allowed

D. Companies (Amendment) Act. 2002 and Companies (Second Amendment) Act. 2002.

Two important amendment Acts were passed in the year 2002. The salient features of these amendments are as follows:

- **Producer Companies:** The Companies (Amendment) Act. 2002 introduced a new class of companies called "Producer Companies". Part IXA as introduced enable incorporation of cooperatives as companies and conversion of existing cooperative into companies, on optional basis. Unique elements of cooperative business are accommodated within a regulatory framework similar to that of companies. The objects of a producer company have been defined to include, among other things, production, processing, manufacture and sale of primary produce as well as allied matters.
- **National Company Law Tribunal:** The Companies (Second Amendment) Act. 2002 provides for the transfer of powers of Company Law Board, BIFR and winding up powers of High Court to a single authority viz. National Company Law Tribunal. However the Tribunals are yet to be set up. In the mean while the Madras High Court [R. Gandhi v. Union of India (2004) 120 Comp Cas 510 (Mad)] has struck down the constitutional validity of the NCLT and Appellate Tribunal. This has created a state of uncertainty. The setting up of NCT is a right move due to the following reasons:
 1. A quasi-judicial body composed of experts in corporate law.
 2. Avoiding confusion of jurisdiction and distribution of powers.

3. Relieving courts of mounting litigation.
4. A voiding multiplicity of litigation.
5. Faster disposal of cases.
6. Simpler and faster procedures and less formality than courts.
7. Professionals having expert working knowledge of Company Law. Finance, Accounting, Taxation, etc. eligible to appear; this will benefit clients and expose all to competition.

E. Companies Bill, 2003 & Concept paper on Company Law, 2004.

The previous two attempts at making a comprehensive review of the existing law by introducing Companies Amendment Bill 1993 and 1997 failed as the assent of the Parliament could not be received. The Ministry introduced the Companies (Amendment) Bill, 2003, containing important provisions in the arena of independence of auditors, relationship of auditors with the management of the company, independent directors with a view to improve the corporate governance practices in the corporate sector. Department examined the concerns expressed and the suggestions made by the industry associations, organizations and professionals and sought to introduce an amendment to the Amendment Bill. In the meanwhile, a decision was taken by the Government for preparation of a concept paper containing a model codified company law, which would consolidate the existing provisions of the law. The following broad approach has been adopted while drafting the concept paper:

- i. To bring the Corporate Law in consonance with the changes that has occurred in the economic development.
- ii. To delete the redundant provisions and to regroup the scattered provisions relating to specific subjects.
- iii. To condense, simplify and rationalize the provisions of company law.

- iv. To delink the procedural aspects from the substantive law.
- v. To give an overview of the form of the re-codified Companies Bill containing only 289 sections and a few schedules. in place of existing 781 sections and 15 schedules.

The concept paper as presented in the website contains XXV chapters. The chapters deal with the following:

- i. Chapter I - VII deals with formation of company and other organizational matters.
- ii. Chapter VIII-IX deal with Accounts and Audit
- iii. Chapter X-XII deal with management of the company
- iv. Chapter XIII contains powers of Central Government to carry out inspections and investigation of companies
- v. Chapter XIV~XV relates to reorganization of companies by merger, amalgamation, etc.
- vi. Chapter XVI-XVIII deal with winding up the company
- vii. Chapter XIX deals with other registerable entities
- viii. Chapter XX deals with Producer Companies, a separate clause of companies
- ix. Chapter XXI to XXV deal with foreign companies. constitution of the Offices of the Registry of Companies and other miscellaneous provisions.

3. Competition Act, 2002 in place of MRTP Act

This Act passed by Parliament has received the President's Assent on January 13.2003. This Act provides inter alia, for the establishment of a commission to prevent practices having adverse effect on competition, to promote the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto. The Act has been passed keeping in view the economic

development in India.

It is being increasingly felt that the MRTP Act has become obsolete in certain respects in the light of international economic development, more particularly, the competition laws. India has, in pursuit of globalization, responded by opening up its economy, removing controls and resorted to liberalization of economic and corporate laws. One of the distinguishing features is that the Competition Act is based on post reforms scenario. There is no compulsory registration of Agreements, which are anti-competitive. Under the Competition Law, dominance per se is not bad, but the abuse of dominance is considered bad. Combinations are regulated and they are not prohibited. The concept of 'group' has been given up as being un-workable. There is thus a marked shift in the Companies Act in favour of prohibition of anticompetitive agreements, abuse of dominant position and regulation of combinations. There has also been a marked shift from curbing monopolies to promoting competition.

4. SEBI - The Ombudsman of the capital market

SEBI has specific responsibility under the SEBI Act, 1992 to:

- (a) register and regulate the working of the stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustee of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisors and such other intermediaries associated with the securities market,
- (b) register and regulate the working of the depositories, depository participants, custodian of securities, foreign institutional investors. credit rating agencies, or any other intermediary associated with the securities market as SEBI may specify by notification, and
- (c) register and regulate the working of the venture capital funds, collective investment schemes, including mutual funds.

SEBI is using four sets of tools to regulate the above mentioned securities

market intermediaries:

- (a) Registration
- (b) Monitoring the Compliance
- (c) Enforcement, and
- (d) Self-regulation

SEBI has issued a compendium containing consolidated Guidelines, Circulars, instructions relating to issue of capital effective from January 27, 2000. The compendium titled SEBI (Disclosure and Investor Protection) Guidelines, 2000 has replaced the original Guidelines issued in June 1992 and subsequent clarification thereon. It also consolidates the Issue related RMB General Instructions (Gr) Series Circulars and other guidelines relating to preferential issues, Advertisement, book-building etc. Certain changes have been made in the guidelines relating to entry norms, lock-in-period and promoter's contribution as part of the consolidation exercise.

The SEBI Act has been amended comprehensively by the SEBI (Amendment) Act, 2002, conferring additional powers and authorities on SEBI, including power of investigation into transactions in securities and any intermediary or any person associated with the securities market in relation to the violation of the provisions of SEBI Act and the rules/regulations made there - under. A New Chapter VI A dealing with prohibition of manipulative and deceptive devices, insider trading and substantial acquisition or control has been added to the SEBI Act.

During the last two years, SEBI has announced inter alia, the following Regulations:

- a. SEBI. (issued of sweat equity) Regulations. 2002.
- b. SEBI (Ombudsman) Regulations. 2003.
- c. SEBI (Central Database of Market Participants) Regulations, 2003.
- d. SEBI (Substantial Acquisition of shares and take over) Regulations,

1997 - Modified Formats of Letter of offer.

e. SEBI SEBI (Self Regulatory organizations). 2004.

The Regulations framed by the SEBI are intended to fine tune the legal framework for issue of securities, regulate the conduct of the market participants and ensure investors protection.

5. Changes in Securities Laws

Presently, the legislative framework dealing with securities markets comprises of Securities Contracts (Regulation) Act. 1956, Depositories Act. 1996 and various regulations and guidelines issued by Securities and Exchange Board of India (SEBI) under the SEBI Act, 1992 including listing agreement of the Stock Exchanges.

- **Securities Contracts (Regulation) Act. 1956** SCRA was enacted in 1956 with a view to regulate the transactions in securities and to check speculative transaction in the securities. These transactions were sought to be regulated through a system of control over the establishment of stock exchanges and their management including the members. Establishment of stock exchanges without prior approval of .the Government was prohibited. By providing for the prior approval, the Government sought to have effective control on transactions in securities and also inculcate certain degree of discipline and regulation on such transactions. **This Act was amended in 1999 expanding the scope of the definition of 'Securities' to include derivatives of securities and instruments of collective investments schemes and also to empower the Central Government to delegate its power to RBI.**

The Securities Laws (Amendment) Bill. 2003 aims at corporatisation on and demutualisation of stock exchanges. To achieve this purpose, the Bill has

proposed structural transformation of the stock exchanges from mutual organizational form to demutualisation form. This requires, inter alia, the representation of the brokers on the Board of Stock Exchanges is either not permitted at all or kept to the minimum. Demutualisation also involves separation of ownership from management in the case of brokers.

The Bill also provides for transfer of duties and functions of the clearing house to a clearing corporation.

Heavy penalties have been envisioned in the Bill ranging from one lakh of rupees for each day during which the default continues or one crore of rupees whichever is less.

As Lok Sabha has been dissolved, the Bill will have to be reintroduced in the 14th Lok Sabha.

- **The Securities Appellate Tribunal (SAT):** This came into being by virtue of the Securities Laws (Amendment) Act 1995 which inserted Chapter VI B in the SEBI Act 1992. This chapter has since then undergone important Amendments in 1999 and 2002.

The objective of SAT is expeditious disposal of matters concerning securities markets.

Previously appeals against Orders passed by SEBI were being filed to the Ministry of Finance. However, experience proved that the said appellate authority suffered *from* inherent defects like considerable delays in the process of hearing appeals due to pre-occupation of its members, lack of judicial expertise, typical bureaucratic approach to judicial matters needing quick resolution and finally lack of clarity in respect of further appeals against the orders passed by the Ministry.

SAT has been an eye opener *for* reform of the SEBI Act *for* equipping SEBI with the power to tackle crafty and intelligent market players who have the potential to cause scams and fiascos. Some of the most

important decisions of SAT have been Sterlite Industries (India) Ltd v. SEBI. BPL v. SEBI and Videocon v. SEBI.

6. The advent of the Depository System - The Depositories Act, 1996

The system of depositories have revolutionized stock markets. The most single important development in the Indian Capital Market in the last decade is the emergence of the Depositories System.

A depository is a company where securities of investors are held in electronic accounts. Just as the banks holds money, in the same way a depository holds securities. A depository in India, must have a net worth of 100 crores and must obtain a certificate of commencement of business from SEBI!

A depository participant (DP) acts as an agent of a depository. A DP could be a public financial institution, bank, Custodian, broker, NBFC etc. having a net worth of Rs. 1 crore. It is required to be registered with SEBI. An investor who wants to avail the services of a depository must open an account with a depository participant. The investor has to enter into an agreement with the DP after which he is issued a client I D number. The Stock Holding Corporation of India Ltd. was the first depository participant registered with SEBI. The number of DPs operational till June 2002 was around 212 with 1649 service centers across the country.

The Depositories Act, 1996, provides *for* a legal framework *for* the establishment. functioning and dealing in securities. However. the Act allows only securities of companies to be dealt in depository mode.

SEBI (Depositories and Participants) Regulations, 1996, provides *for* the regulation *for* depositories. Some of the important features of depositories regulations are:

- (a) The depository is a registered owner of the share while the shareholder is the beneficial owner retaining all the economic and voting rights arising

out of share ownership.

- (b) Shares in the depository will be fungible.
- (c) Transfers pertaining to sale and purchase will be effected automatically.
- (d) Any loss or damage caused to the participant will be indemnified by the depository.
- (e) If trade are routed through depository, there is no need to pay stamp duty.

The other Acts which were amended to implement the depositories system are:

- The Indian Stamp Act, 1899;
- Securities and Exchange Board of India act, Securities Contracts (Regulation) Act, 1956;
- Benami Transaction (Prohibition) Act, 1988;
- Income-tax Act, 1961;
- Banker's Book Evidence Act, 1891.

7. New dimensions of Intellectual Property Laws

The law relating to intellectual property in India is contained in Patents Act, 1970, Trade and Merchandise Marks Act, 1958, Copyright Act 1957 and Designs Act 1911. However, in view of advances in technology and to meet the obligations under TRIPs agreement, Government of India has enacted/introduced following new legislations in the field of intellectual Property:

- Trademarks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Copyright (Amendment) Act, 1999
- The Semiconductor Integrated Circuits Lay-out Design Act, 2000
- The Designs Act, 2000

8. Changes in the Law relating to Foreign Exchange

Foreign Exchange Management Act (FEMA) 1999 has been enacted as part of liberalization process initiated by Government of India. The Act is implemented w.e.f. 1st June, 2000.

The approach of FEMA is radically different from-FERA - from conservation to facilitation and from control to regulation. Many drastic penal provisions, in FERA have been removed in FEMA. The object of FEMA is (i) to consolidate and amend the law relating to foreign exchange; (ii) facilitate external trade and payments; and (iii) to promote the orderly development and maintenance of foreign exchange markets in India.

Overall scheme of FEMA - Basically, FEMA makes provisions in respect of dealings in foreign exchange. Broadly, all current account transactions are free. However, Central Government can impose reasonable instructions by issuing rules. (section 3 of FEMA). Capital Account Transactions are permitted to the extent specified by RBI by issuing regulations (section 6).

FEMA envisages that RBI will have a controlling role in management of foreign exchange. Since RBI cannot directly handled foreign exchange transactions, it authorizes 'Authorised Persons' to deal in foreign exchange as per directions issued by RBI, (section 10 of FEMA). RBI is empowered to issue directions to such 'Authorized Persons' u/s II. These directions are issued through AP (DIR) circulars.

FEMA also makes provisions for enforcement, penalties, adjudication and appeals. FEMA contains only basic legal framework. Section 46 of FEMA authorizes Central Government to make rules and section 47 authorizes RBI to make regulations to carry out the provisions of the Act. The practical aspects are covered in rules made by Central Government and regulations made by RBI. Central Government has issued 6 Rules and RBI has issued 21 Regulations for various purposes. Besides these, 12 notifications have been issued by Central

Government / RBI. These are issued under delegated authority given under provisions of FEMA and hence are legally binding.

FEMA does not treat violation of FEMA provisions as criminal offence. Unlike FERA FEMA is a Civil Law, Unlike the FERA, the burden of proof under FEMA will be on the enforcement agency and not on the implicated. Offences under FEMA are compoundable by paying penalty.

9. Prevention of Money Laundering

Money Laundering poses a serious threat not only to the financial systems of countries but also to their integrity and sovereignty. The process of Money Laundering involves cleansing of money earned through illegal activities like extortion, drug trafficking and gun running etc. The tainted money is projected as clean money through intricate processes of placement. Layering and laundering, There was thus an urgent need for enactment or a comprehensive legislation, inter alia for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money laundering. The object of this Bill is to prevent laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offences.

The urge to launder the gains of crime is inherent in the crime since not only enjoyment of tainted money is a risky business: its very existence also facilitates the detection of crime. It, therefore, becomes pertinent to make, as quickly as possible. the conversion of illegotten money into lawfully earned money or in more popular terms to convert, the 'black' money into 'white'. The Prevention of Money Laundering Bill, 1999 (the Bill) proposes to tackle laundering of proceeds of crime and not the crime itself, which is expected to be taken care, by the parent law under which the crime falls. Some of the provisions of this Bill need to be examined. However. heinous a crime one

may consider money laundering to be, such arbitrary and draconian powers.

10. Cyber Laws - The IT Revolution and E-Governance

Enactment of the Information Technology Act, 2000 is a major breakthrough towards placing India firmly in the cyber space, India being one of the very few countries in the world to legislate on this amorphous law.

The enactment of the Information Technology Act is an important step in the march towards e-commerce. This Act, amongst other things provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication. It provides for legal recognition of electronic records and digital signatures, to enable the conclusion of contracts and the creation of rights and obligations through the electronic medium. The Act also provides for a regulatory regime to supervise the Certifying Authorities Issuing Digital Signature Certificates and to create civil and criminal liabilities for contravention of the provisions of the Act with a view to prevent possible misuse arising out of transactions and other dealings concluded over the electronic medium.

With a view to facilitate Electronic Governance, the Act provides for the use and acceptance of electronic records and digital signatures in the Government offices and its agencies. Consequential amendments have also been proposed in the Indian Penal Code and the Indian Evidence Act to provide for necessary changes in the various provisions which deal with offences relating to documents and papers based transactions.

11. Changes in the Tax Laws -Introduction of VAT

Allover the world, the thrust is to establish a tax structure, which is simple, moderate, rational and easy to administer and comply with. A lot of changes have been made in the recent years to simplify and rationalise the tax laws with a view to making them readily comprehensible to taxpayers, reducing litigation and thus subserving the interest of the national economy. There is a

focus on improving the administration of tax laws and expediting the assessment, appellate and other proceedings under these laws.

VAT - The proposed introduction of Value Added Tax (VAT) from 1.4.2005 is a historic reform of the domestic trade tax system. VAT is prevalent in over 120 countries. It is expected to facilitate the States and Union Territories to transit successfully from the erstwhile sales tax system to a modern domestic tax system.

The Government of India has, after committing to the World Trade Organization (WTO) regime, decided to modernize and streamline its indirect taxation, in the light of the experience of other WTO member countries.

VAT is essentially a form of sales tax. It is a multi-point and multi-stage tax, levied only on the value addition to a product, at each stage of production and distribution chain. There will be deductions for taxes paid earlier in the chain. At present, sales tax is levied at a single point, either at the hands of producer, distributor or wholesaler. The introduction of VAT is both an opportunity and challenge to streamline and rationalize the indirect taxes. It will facilitate single market in India. However, for achieving the proclaimed objectives, much will depend on how efficiently and effectively the VAT regime, is implemented by the Sales Tax Department. It has taken India eight long years to create the momentum in favour of change from an origin-based sales tax to destination-based VAT. The wisdom lies in implementing VAT without loss of time when tax revenue is under pressure. Once installed, VAT will result in greater tax compliance and preventing cascading effect of taxes when output as well as inputs are taxed. Above all, a uniform tax structure will present India a single market to the manufacturer within as well as outside the country.

Excise and Customs: The history of reforms in central excise and customs duties is a chequered history. It has been a journey of changes, not all smooth

and permanent. Indeed, several were ad hoc and temporary. Nevertheless, excise structure has almost stabilized now. The concept of fewer rates and minimum number of exemptions has acquired much greater acceptability than never before. The customs laws have been harmonized as per the WTO's requirements.

Service Tax: The service sector has come to occupy a very important position in the nation's economy and over the years its potential to contribute to the revenue of the Union are being exploited fully. Though the levy of service tax is of recent origin, since Its Inception in 1994, the Government has taken several measures to make it broad based and currently it covers around 70 services.

Income tax: The Income Tax Laws have also undergone a lot of changes. The focus is on simplification and curbing tax evasion. The tax rates have been rationalized and lowered as a result there is a spurt in revenue collection. In 2003-04 the direct tax collections exceeded Rs. 1 lac crore which is a record in itself.

12. **Emerging Laws relating to infrastructure Development**

Infrastructure is the backbone of any nation and .the infrastructure sector covers a wide spectrum of services like roads, railways, ports, power, telecom, etc. In the recent years there has been a paradigm shift towards private participation in infrastructure services. Consequently, the Government has put In place legal and policy framework, conducive to private participation in the infrastructure sector.

Telecom - The telecom sector was witnessed several developments over the years. The draft of the Convergence Bill, which had been announced last year, was made available to the public. The bill proposed setting up of the Communications Commission responsible for regulating both telecom and broadcasting sectors. The telecom department was converted into a company Bharat Sanchar Nigam Limited w.e.f. 1.10.2000.

Ports - Major Ports Trusts Act amended to enable major ports to enter into joint ventures with minor ports. Guidelines for Chartering of Foreign Flag Vessels issued. Major Ports launch massive programme of modernization.

Roads - Model Concession Agreement for Build, Operate and Transfer (BOT) road project finalized. Super national highways, bypasses and spot improvements to be taken up through the private sector or in collaboration with private sector.

Power - Mega Power Project Policy and concessions announced. Restructuring of SEBs encouraged and fiscal benefits announced for new transmission and distribution systems. National Policy on Hydro Development announced, Guidelines for private sector participation in transmission sector announced. The Electricity Act 2003 passed and Electricity Regulatory Commissions constituted.

The Electricity Act, 2003 - In Pursuit of Power - Uptil 2003 - the Government endeavored to develop the sector through piecemeal legislations but failed to achieve aspirations of the lawmakers. Since the requirement of funds in power sector is enormous, a comprehensive legislation became indispensable to catalyze the growth in this sector. A comprehensive legislation would encourage the investment provided all aspects are properly taken care of. This resulted in a move towards the enactment of the Electricity Act, 2003 (the "Act"). The legislations, which were governing the electricity industry prior to new enactment, were - the Indian Electricity, 1910 (IE Act), the Electricity (Supply) Act, 1948 ("Supply Act") and the Electricity Regulatory Commission Act, 1998 (ERC Act).

The new Electricity Act, 2003, which has come into force since mid June 2003 is a comprehensive, forward looking legislation, which seeks, amongst other things, to adopt measures conducive to the development of the power

sector, promote competition, rationalize tariff and constitute Regulatory Commission.

The Act aims to bring forth significant changes in the industry structure by moving from a single buyer market to a multi buyer multi seller system. The basic objective of the Act is to promote competition between the players and provide choice to all consumers. It introduces the concept of nondiscriminatory open access to transmission and distribution networks. In order to achieve the objectives of the electricity industry into generation, transmission, distribution and trading. The Act is seen as being a catalyst for bringing about much needed reforms in the power trading, enabling the optimal utilization of the energy resources of the country. This further mandates the unbundling of the SEBs.

13. Environmental Protection - the legal issues

In India, as in other developing countries, the environmental problems are not confined to side effects of industrialization but reflect the inadequacy of resources to provide infrastructural facilities to prevent industrial pollution. Other peculiar problems like population, illiteracy and unemployed obviously also pose questions regarding provisions of food, water, shelter and sanitation. The Water (Prevention and Control of Pollution) Act was enacted in 1974 and the Air (Prevention and Control of Pollution) Act was passed by the Union of India in 1981, essentially to give effect to the decisions taken at the International Conference on Human Environment at Stockholm in 1972 declaring Man's fundamental right to live in a pollution free atmosphere

Exercise :

1. What is Quality of Life?
2. Narrate various components of QWL.
3. Describe the various legislations safeguarding the interests of different stakeholders?

LESSON 5.2 – LABOUR LEGISLATION IN THE CHANGING SCENARIO

Learning Objectives:

1. Define concept of Labour legislation.
2. Understood the principles of Labour legislation.
3. Classify the labour legislation.
4. Examine the changing employment legislation.

The protection of the interests of labour was long held as one of the important responsibilities of the state. However, some recent developments indicate that the Government should intervene to prevent the legitimate rights of consumers, the general public, and employers from being denied by the militant might of organized labour. But many a time there is a tendency to ignore the latter aspect.

The Constitution of India directs the state to provide work to every citizen who is willing and able to work. Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief. Article 43, which is described as the Magna Carta of the Indian worker, imposes upon the state the obligation, inter alia, to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life, full enjoyment of leisure, and social and cultural opportunities.

Labour legislation is regarded as “a most dynamic institution. From a simple restraint on child labour in 1881, labour legislation in India has become an important agency of the state for the regulation of working and living conditions of workers, as indicated by the rising number and variety of labour acts. This rapid development of labour legislation is an integral part of the modern social organization. Like slave labour in ancient times, serf labour in medieval times and indentured labour in transitional periods, the relics of all of which are still to be found in many backward countries, free labour is the direct result of growing

industrialism and democracy, and labour legislation is the institution through which the State protects the interest, ameliorates the moral and material conditions, of the working classes.

LABOUR LEGISLATION IN INDIA

Labour legislation embodies all those measures that extend statutory recognition to the interests of labour. There are about 150 Central and State laws in-force today.

Need for Labour Legislation

Need for labour legislation in a country like India arises out of different circumstances, the more important of which are as follows:

- Bargaining power of labour is very weak because of their poor economic status. Unless protected by the State, labour has always been a subject of exploitation at the hands of capitalist-employers.
- Labour is exposed to different degrees of risk in factories, mines and other establishments. Legislation is necessary to protect labour against these risks.
- Legislation is necessary to encourage the formation of trade unions so as to increase the bargaining power of labour.
- Legislation is necessary to avoid industrial disputes which lead to strikes and lock-outs.
- Legislation is also necessary to protect children and women from taking to work under hazardous conditions and at odd hours.
- Legislation is necessary for providing compensation to labour for accidents and diseases contracted by them during employment.

Critical Assessment of Labour Laws

The Volume of labour legislation in a country depends upon various factors, such as its Constitution, the broad economic and social policies

pursued by the Government for developing resources, the state of public consciousness on labour matters, the strength of trade union movement, etc. A large number of labour laws have been enacted in India during the last five decades showing that there is an increasing awareness and consciousness about interests of labour in the country. However, still much remains to be done in this area.

- An important weakness of the labour legislation in India is in respect of workers in the unorganized sector of the economy. Working conditions are extremely unsatisfactory and they are called sweated trades. The places where these industries are run are generally ill-ventilated, ill-lighted, congested and dirty. There is no rule regarding hours of attendance; work is monotonous and irksome. There is no security of job, etc. It is necessary that labour in the unorganised sector is protected through suitable legislation.
- *Agricultural* labour which constitutes the lowest strata of society has not been brought within the purview of the labour laws. Like the labour in " the unorganised sector, agricultural labour also suffers from a series of maladjustments and a number of problems, most of which we have already discussed in an earlier chapter
- Most of the labour laws have been brought up in an uncoordinated manner. Labour is a subject that has been put on three lists in the Constitution, viz., Federal, State and Concurrent, giving room for disparity in legislation. As a result. there has been no uniformity in labour laws.
- Moreover, an uncoordinated development has led to *duplication of effort* in certain areas whereas in other areas wide gaps have been observed. For example, nothing has been done all these years to provide security to labour against employment and underemployment. Similarly, housing

which is an important need in all industrial areas has still not been brought on the statute book. Likewise, there is no provision, as yet, for a comprehensive social insurance plan.

- These laws basically reflect the imperialist or colonial approach *to* industrial relations, and hence suffer from following three inherent weaknesses:
 - outdated, non-democratic, imperialist framework *of* industrial relations law;
 - the determination *of* disputes by the third parties;
 - wide powers conferred on the executive branch of the State *to* intervene in Industrial relations and other subjects.

Obviously, the outdated labour legislation need a drastic change in the new economic environment. Unless the inflexible labour laws are repealed, as has been done in China the success of the privatisation programmes cannot be ensured.

A recent study on the subject suggests the following as 'an agenda for reforms'

- Any programme of action for enhancing labour power needs to evolve a better enforcement mechanism
- There is a need for constant monitoring of the implementation mechanism by rights groups at national and international levels.
- There is a need for simplification of labour laws and internationalization of such simplicity as a social value.
- It is absolutely necessary to ensure autonomy of tribunals and conciliators from the state apparatus.
- There is a need for greater degree of public interest litigation for enforcing minimum labour standards and developing some basic postulates of sound labour relations.

Second National Commission on Labour

The second national commission on Labour was set up on October 15, 1999. Its principal terms of reference included the following:

- To suggest rationalization of existing laws relating to labour in the organized sector.
- To suggest an umbrella legislation for ensuring a minimum level of protection to the workers in the unorganized sector.
- In developing the framework for its recommendations, the Commission was to take into consideration the minimum level of labour protection and welfare measures and the basic institutional framework for ensuring the same.

In the terms of reference there was a clear shift to market from labour. The Commission submitted its report on June 29, 2002.

Major Recommendations

- No prior permission necessary for lay-off retrenchment.
- No need for any wage board;
- Five holidays and 10 restricted ones a year.
- No contract labour for core production / services;
- A trade union with at least 66 per cent membership to be single negotiating agent.
- Setting up a grievance redressal committee for organizations employing 20 or more persons;
- Creation of a high-power National Social Security Authority, preferably under the Prime Minister's chairmanship.
- Evolving a policy framework and enactment of law for unorganized sector workers to ensure generations and protection of jobs.

Maternity Benefit

The maternity benefit legislation has been framed and administered by State

Governments.

The maternity benefit act has been of great value to factory women workers in securing adequate rest and financial assistance. But the legislation suffers from certain defects also.

- Legislation has led to a large-scale evasion. It has also led to a tendency among some employers not to employ married women and even discharge them on first signs of pregnancy.

Forces influencing social and labour legislation in India

The foregoing gives a broad outline of the general forces shaping the course of labour and social legislation worldwide. The factors which are specific to India, in addition to those mentioned above, may be discussed under three heads:

1. Influence of colonial rule
2. Struggle for national emancipation and the adoption of Indian Constitution in 1950; and
3. Old and archaic basis of the Indian Social system.

Colonial Rule

The conditions of life and labour in the early periods of industrialization in India were extremely rigorous – hours of work were excessive, and the industrial labour drawn from the rural areas was severely exploited. The British colonial rule in this country was primarily interested in protecting the interests of the British capital invested in the Indian industries and not so much in protecting the workers.

It is well known that the early factory and labour legislation in India, resulted from the need for protecting the interests of the foreign industrialists and investors. In the tea plantations of Assam and Bengal, where life and work became extremely intolerable, workers started deserting their place of work for their village homes.

Struggle for National Emancipation

The struggle for national independence picked up socialist and communist influence generated by the Russian Revolution, and came to be closely identified with the interests of the workers and peasants. Industrial workers were organized into trade unions and the peasants were encouraged to form their own organizations. The organized industrial workers demanded improvement in their working conditions and consequently, laws had to be passed to protect them from excessive exploitation. The records of the debates in the Indian legislative assembly show how the nationalist members made tireless efforts to get protective labour legislations enacted. The Indian Trade Unions Act, 1926 was enacted in response to the demands of the Indian trade union movement supported by its nationalist leaders.

Old and Archaic Basis of the Indian Social System

The old and archaic Indian social structure and practices have deeply influenced social legislation in India. It is well-known that the beliefs, customs and social practices, originating in the social needs of a particular time, become outdated and ineffective if allowed to continue even after they have outrun their use. The older the society, the more widespread are such practices, breeding injustice and social evils. A modern welfare state which aims at creating a just social order has to act against such practices. National integration demands that such beliefs and practices that cause social conflict, shatter social harmony and lead to moral degradation be banished as quickly as possible.

Indian Constitution and Social and Labour Legislation

The Indian Constitution contains important provisions which have a direct bearing on the course of social and labour legislation in the country. These are mainly incorporated in the fundamental rights and directive principles of state policy. Fundamental rights are justiceable. The directive principles though not

justiceable, are fundamental in governance of the country and it is the duty of the state to apply these principles in making laws. These principles lay down that the state should strive to promote welfare of people by securing and protecting as effectively as it may, a social order in which social, economic and political, shall inform all institutions of national life.

Fundamental rights

- (a) Right to equality: the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. No citizen shall, on these grounds, be subject to any disability, liability, restriction or condition with regard to access.
- (b) Right to Freedom: All citizens shall have the right to freedom of speech and expression and to form association or unions and to practice any profession or to carry on any occupation, trade or business.
- (c) Right against exploitation Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Directive Principles of State Policy

The Directive Principles of State Policy are not enforceable by any court, but they are fundamental in the governance of the country and it is the duty of the state to apply them in making laws. The principles having a bearing on social and labour legislation are as follows:

- (i) The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice—social, economic and political, shall inform all institutions of the national life.
- (ii) The state shall, in particular direct its policy towards securing: (a) that the citizens men and women, equally have the right to an adequate means of livelihood; (b) that there is equal pay for equal

work for both men and women. (C) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and (d) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

- (iii) The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
- (iv) The state shall make provision for securing just and humane conditions of work and for maternity relief. [ArtA2].
- (v) The state shall endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers- agricultural, industrial or otherwise. work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities
- (vi) The state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. [Art.43AJ].

The above principles have a bearing on both labour and social legislation, but there are some others which are related more to social issues, These are as follows:

- (i) The state shall endeavour to provide, within a period of ten years from the

commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. [ArtA5].

(ii) The state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

(iii) The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Distribution of Legislative Powers

Article 246 and Seventh Schedule of the Constitution deal with distribution of legislative powers between central and state legislatures. The Seventh Schedule contains three lists for the purpose, namely, 'Union List', 'Concurrent List', and 'State List'. Parliament has the exclusive power to make laws with respect to any of the matters enumerated in the Union List. Both parliament and legislature of a state have the power to make laws with respect to any of the matters enumerated in the 'Concurrent list'. The legislature of a state has the power to make laws with respect to any of the matters enumerated in the State list. In certain cases, Parliament can also make laws on a subject enumerated in the state list.

The Union List: The subjects enumerated in the union list having a direct relevance to labour and social legislation include (i) Participation in international conferences, associations and other bodies and implementing of decisions; (ii) Railway; (iii) Shipping and Navigation; (iv) Ports; (v) Airways; (vi) Posts and Telegraphs (vii) Banking (viii) Insurance (ix) Industries controlled by the union government; (x) Oilfields; (xi) Regulation of labour and safety in a mines and oilfields. (xii) Industrial disputes concerning union employees (xiii)

Inter-state migration and (xiv) Union pension. The labour and social problems in the industries enumerated in this list naturally become subjects of enactment of laws by Parliament

(b) The Concurrent List : the relevant subjects in this include (i) Trade unions; industrial and labour disputes, (ii) social security and social insurance; employment and unemployment (iii) welfare of labour including conditions of work, provident funds, employers liability, workmen's compensation, invalidity and old age pensions and maternity benefits (iv) factories, boilers and electricity (v) vocational and technical training of labor (vi) marriage and divorce; infants and minors; adoption; joint family and partition; (vii) vagrancy; nomadic and migratory tribes (viii) population control and family planning (ix) relief and rehabilitations and (x) charities and charitable institutions.

© The State List: The more subjects include (i) prisons, reformatories, Borstal institutions, (ii) relief of the disabled and unemployable and (iii) Betting and gambling (iv) state pensions.

The laws made by parliament may relate to the whole or any part of the territory of India and those made by the legislature of a state to the whole or any part of the state. No law made by the parliament is deemed invalid on the ground that it would have extra-territorial operation.

Principle of Protection

The principles of protection suggests enactment of labour legislation to protect those workers who are not able to protect their interests on their own and also workers, in particular industries against the hazards of industrial process. The workers lacking organized strength, were not in a position to raise an effective voice against their hardships and sufferings. However, a few philanthropes, social reformers and even few enlightened employers raised voice against the pitiable conditions of workers, particularly children and women, and demanded

enactment of laws to mitigate their hardships.

Principle of Social Justice

The principle of social justice implies establishment of equality in social relationships. It aims at removing discrimination suffered by particular groups of labour. History is replete with examples where certain groups of society or labour have been subjected to various sorts of disabilities as compared to other groups or workers in general. The disabilities and discrimination suffered by slaves, serfs, indentured and migrant labor, bonded labour and others, is well known. Discrimination against women workers when compared to their men counterpart, in matters relating to wages and other terms and conditions of employment have continued till date.

Principle of Regulation

The principle of regulation generally seeks to regulate the relationships between the employers and their associations on the one hand, and workers and their organizations, on the other. As the relationships between the two groups have repercussions on the society, the laws enacted on this principle also aim at safeguarding the interests of the society against the adverse consequences of collusion or combination between them.

Principle of Welfare:

Although the protective and social security laws have the effect of promoting labour welfare, special labour welfare or labour welfare fund laws have also been enacted, with a view to providing certain welfare amenities to the workers, and often to their family members also. Some of the protective labor laws such as the factories acts, mines acts and plantation labour acts, also contain separate welfare provisions. The main purpose behind the enactment of labour laws on this principle is to ensure the provision of certain basic amenities to workers at their place of work and also, to improve the living conditions of workers and their family members. Although an element of humanitarianism is involved in

this principle, it has wider implications for promoting labour efficiency, establishment of industrial peace and ensuring stable and satisfied work-force.

Principle of Social Security

Generally speaking, the principle of social security may be considered to be a part of the principle of welfare, but in view of its special connotation, it is desirable to keep it under a separate category. In industrial societies, income insecurity resulting from various contingencies of life such as disablement, old age and death and others, has become a serious problem. **Lord William Beveridge**, the pioneer in initiating a comprehensive social security plan mentioned five giants in the path of social progress namely, 'want', 'sickness', 'ignorance', 'squalor' and 'idleness'. The problem has become more acute in view of phenomenal growth of the permanent class of wage-earners. During such contingencies the income of the earners either stops altogether or is reduced substantially or becomes intermittent causing hardships not only to the earners, but also to their family members.

Principle of Economic Development

Labour laws have also been enacted keeping in view the need for economic and industrial development of particular countries. Improvement of physical working conditions, establishment of industrial peace, provision of machineries for settlement of industrial disputes, formation of forums of workers' participation in management, prohibition of unfair labour practices, restrictions on strikes and lock-outs, provision of social security benefits and welfare facilities, certification of collective agreements and regulation of hours of work have direct or indirect bearing on the pace and extent of economic development. These areas are covered under different pieces of labour laws.

Principle of International Obligation

This principle postulates enactment of labour laws with a view to giving effect to the provision of resolutions, adopted by international organizations like ILO,

UN and similar other bodies. In general, the countries ratifying the resolutions or agreements are under the obligation to enforce them.

Types of Labour Legislation

The principles of labour legislation also give an idea of the various types of labour legislation. However, for the sake of convenience, labour legislation can be classified under the following main categories.

Protective Labour Legislation

Under this category, are those legislations whose primary purpose is to protect minimum labour standards and improve working conditions. Laws laying down the minimum labour standards in the areas of hours of work, safety, employment of children and women, and so on, in factories, mines, plantations, transport, shops and other establishments are included in this category: Legislations laying down the method and manner of wage payment as well as minimum wages, also come under this category; The examples of Indian labour laws falling under this category are: the Factories Act, 1948, the Mines Act, 1952, the Plantation Labour Act, 1951, the Motor Transport Workers Act, 1961, Shops and Establishments Acts passed by various states, the Payment of Wages Act, 1936, the Minimum wages Act, 1948, the Child Labour (prohibition and Regulation) Act, 1986; and Contract Labour regulation and Abolition) Act, 1970.

Regulative Legislation

Under this category fall those laws whose main objective is to regulate the relations between employers and employees and to provide for methods and manner of settling industrial disputes. Such laws also regulate the relationship between the workers and their trade unions, the rights and obligations of the organizations of employers and workers, as well as their mutual relationships. Indian examples of such laws are: The Trade Unions Act, 1926, the Industrial Disputes Act, 1947 and the Industrial Employment (Standing Orders) Act ,

1946.

Social Security Legislation

The third category of labour legislation covers those labour laws which intend to provide to the workmen social security benefits during certain contingencies of life. Though such legislations may cover other classes of citizens also, their primary and original goal has been to protect the workers. In India, the important laws falling under this category are: the Workmen's Compensation Act, 1923, the Employees' State Insurance Act, 1948, the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, the Employees' Provident Funds and Miscellaneous Act, 1952, the Central Maternity benefit Act, 1961, the Payment of Gratuity Act, 1972.

Welfare Legislation

Legislations falling 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 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 improvements in living conditions of workers. In India, they also carry the term "welfare" in their titles. The examples are : Mica Mines Labour Welfare Fund Act, 1946, Iron Ore Mines Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976. Beedi Workers Welfare Fund Act, 1976 and the welfare fund laws enacted by some of the states. A study of these laws shows how all of them provide for the creation of a fund which is spent on improving the general welfare of workers including housing, medical, educational and recreational facilities for the workers and also, to their family members covered under these laws and therefore, it is apt that all these laws be categorized under the head "welfare legislation".

Classification of Labour Legislation

V.V. Giri Classified the labour legislation in India under the following broad heads:

I. Laws Relating to Weaker Sections

- (i) Children
- (ii) Women

II. Laws Relating to Specific Industries

- (i) Factories and workshops
- (ii) Mines and Minerals
- (iii) Plantations
- (iv) Transport, namely (a) Railway (b) Seaman (c) Ports and docks; (d) Inland water transport (e) Motor Transport (f) Air transport.
- (v) Shops and Commercial establishments.
- (vi) Contract labour
- (vii) Construction works
- (viii) Working journalists

III. Laws Relating to Specific Matters

- (i) Wages
- (ii) Indebtedness
- (iii) Social Security-(a) Workmen's compensation;(b) Maternity benefits; (c) Retrenchment benefits; (d) Provident Fund and Bonus schemes
- (iv) Bonus
- (v) Forced labour

IV. Laws Relating to

- (i) Trade Unions; and
- (ii) Industrial relations

Laws Relating to Weaker Sections

The important legislative provisions with a bearing on the employment of children relate to minimum age of employment, working hours, health certification, employment on dangerous machines and the like. The Factories Act, 1948; the Mines Act, 1952; the Plantation Labour Act, 1951; the Employment of Children Act 1938; the Shops and Establishments Act of various States, etc., regulate the minimum age of employment. To ensure the physical fitness of children, the Factories Act provides that children up to the age of 18 will be employed on the production of a health certificate which will be valid for one year only. The Factories Act, the Mines Act, the Plantation Labour Act, the Shops and Establishments Acts, etc., prescribe the maximum hours of work allowed to be assigned to children.

The legislative provisions for the protection and welfare of women workers are largely inspired by the ILO Conventions on:

- (i) Maternity Protection, 1919;
- (ii) Night Work, 1919;
- (iii) Underground Work, 1935;
- (iv) Equal Remuneration, 1951; and
- (v) Discrimination (Employment and Occupation), 1958.

However, the actual wording of the enactments in India in which the protection is written draws heavily on the Indian experience. Maternity benefits are provided under the Employees' State Insurance Act and the Maternity Benefit Act, 1961. The other legislative measure for women relate to certain restriction on the lifting of weight, employment in hazardous occupations, provision for separate toilet facilities, rest rooms, creches, etc.

Laws Relating to Specific Industries

Factories and Workshops: The Factories Act, 1948, which provides for the

licensing, registration and inspection of factories, is meant to protect the interests of workmen, to ensure for them better conditions of work, and to prevent the employers from taking advantage of their weak bargaining power. It regulates the conditions of the employment of young persons and females, and provides for safe and healthy working conditions inside the factories.

The Industrial Employment (Standing) Orders Act, 1946, defines the rights and obligations of the employer and the workers in respect of recruitment, discharge, disciplinary action, holiday and leave, etc., with a view to reducing the friction between management and workers in industrial undertakings. The Act provides for the framing of *standing orders* in all industrial establishments (including factories, mines, railways, docks and plantations) employing 100 or more workers.

Mines and Minerals: According to the definition of the term "mine" under the Indian Mines (Amendment) Act n cast workings, railways, aerial ropeways, conveyors, tramways, slidings, workshops, power stations, etc., or any premises; connected with mining operations and near or in the mining area. The Mines Act prohibits the employment of persons in a mine when its owner fails to comply with the notice of the Mines Inspectorate for remedying any matter connected with a mine which is dangerous to human life, limb or safety.

The Coal Mines (Conservation and Safety) Act, 1952, authorises the Central Government to take such measures as it deems proper or necessary for the maintenance of safety in coal mines or for the conservation of coal. Other important laws in the field of mines and minerals are the Iron Ore Mines Labour Welfare Cess Act, 1961; Coal Mines Labour Fund Act, 1947; and Coal Mines Provident Fund and Bonus Schemes Act, 1948.

Plantations: The Plantation Labour Act, 1951, regulates the conditions of work of plantation workers and provides for their welfare. The Act, which applies to tea, coffee, rubber and cinchona plantations, may be applied by State

Governments to other plantations also. The Act, amended in 1981, provides for compulsory registration of plantations.

Transport: The working and service conditions of the employees of different transports are regulated by various laws, such as the Indian Railways Act, 1930; the Indian Merchant Shipping Act, 1973; the Indian Dock Labourers Act, 1934; the Dock Workers (Regulation of Employment) Act, 1984; Marking of Heavy Packages Act, 1951; Motor Vehicles Act, 1939; and Motor Transport Workers Act, 1961.

Shops and Commercial Establishments: State Acts on shops and establishments broadly cover wage earners employed in shops, commercial establishments (including insurance and banking firms), restaurants, the theatres, cinemas, and other places of public amusement. The Acts contain provisions related to opening and closing hours, hours of work, rest intervals, spread over, overtime rates and weekly holidays.

Contract Labour: Contract labour is generally employed for casual, seasonal or irregular work. The Contract Labour (Regulations and Abolition) Act, 1970, seeks to abolish the contract labour system in perennial operations and regulates it where the system cannot be abolished. The Act is implemented both by the Centre and States. In the Central sphere contract labour has been prohibited for certain specified operations in coal, iron ore, limestone, dolomite and manganese mines, and in buildings owned or occupied by establishments under the Central Government

The Act applies to every establishment which employs 20 or more workmen, and to every contractor who employs not less than 20 workers.

Construction Labour: To a limited extent, the Workmen's Compensation Act, 1923; the Minimum Wages Act, 1948 ; the Employees State Insurance Act, 1948; the Contract Labour (Abolition and Regulation) Act, 1970; and Standing Instructions relating to casual labour applicable to the employing

agencies apply to construction labour as well. It has however, been noticed that these legislative enactments and standing orders do not cover safety at work and social security.

Working Journalists: The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provision~ Act, 1955, regulates the conditions of service of working journalists and other persons employed in newspaper establishments. By a specific provision of this Act, the provisions of the Industrial Disputes Act with certain modifications have been applied to working journalists.

Laws Relating to specific Matters

Wages: The two important enactments for wages are the Payment of Wages Act, 19-36, and the Minimum Wages Act, 1948.

The Payment of Wages Act ensures that industrial workers receive payment of their wages at regular intervals and that no unauthorised deductions are made from their wages.

The Minimum Wages Act empowers the appropriate Government to fix the minimum rate of wages payable to workers employed in an scheduled employments, which include employment in any women, carpet-making or shawl-weaving establishment, rice min, flour mill, dal mill, oil mill as well as employment under any local authority.

Bonus: In the past, bonus was regarded as an *ex-gratia* payment made by the employer to his workers to provide a stimulus for extra effort by them in the production process. Sometimes it represented the desire of the employer to share with his workers the surplus generated by common endeavour and enterprise. However, later, bonus began to be looked upon as a "deferred wage" and the Payment of Bonus Act, 1965, by imposing a statutory liability upon the employer to pay bonus LO the employees, has in effect accorded recognition to this view.

The Payment of Bonus Act applies to every factory as defined in the Factories Act, and to every other establishment in which 20 or more persons are employed *on* any day during an accounting year. Bonus is payable to employees drawing upto Rs. 2,500 per month.

Bonded Labour: The bonded labour system has been abolished all over the country by the Bonded Labour System Abolition Act, 1976. Under the Act, every bonded labourer stands freed and discharged from any obligation to render any bonded labour.

Laws Relating to Trade Unions and Industrial Relations

The law relating to the registration of trade unions and certain other matters is contained in the Trade Unions Act, 1926. The Act lays down the procedure for the registration of trade unions and defines very clearly their rights and liabilities. It specifies the objects *on* which a trade union may spend its general funds and provides for the constitution of a separate fund' for political purposes. Members of bonafide registered trade unions have been granted protection against various civil and criminal liabilities which they are likely to incur in promoting and safeguarding their legitimate interests. More information is provided in the chapter on Trade Unions.

The various matters connected with industrial disputes are dealt with by the Industrial Disputes Act, 1947. The main objects are: To secure industrial peace by preventing and settling disputes and to ameliorate the conditions of workmen in industry.

The Act specifies all those cases when a strike or a lock-out shall be illegal and lays down the conditions necessary for the validity of lay-off and retrenchment of workers. It provides for the appointment of various conciliations authorities. The rights and powers of those authorities, the procedure of conciliation for the validity of settlements and awards have also been laid down by the Act. For details, see the chapter on Industrial Relations.

Exercise:

1. Define the concept of Labour legislation.
2. What is the need for labour legislation?
3. Enumerate the principles of labour legislation.
4. Point out the different kinds of labour legislation.
5. Describe the changing employment rel. rights.

LESSION 5.3**LABOUR LEGISLATION IN KNOWLEDGE BASED ORGANISATIONS****LEARNING OBJECTIVES**

1. Define Employment relationship in knowledge based organizations.
2. Describe various labour laws in the field.
3. Identify Laws of Factory Management.
4. Point out the legislations on salary wages and bonus.
5. Discuss the laws on trade unions
6. Narrate the legislation on industrial relations

NEED FOR LABOUR LEGISLATION:

The information and communication Technology has brought lakhs of people in the bond of employment relationship. These personnel consist of engineers, administrators, software developers, programmers, executives, team leaders, consultants and out sourcers.

The recruitment, selection, training, development, compensation, integration, maintenance of relations and provision of employment and social security attract the need for labour legislation. A glance on actual labour legislation

in India proves that the following labour legislation are applicable to these personnel:

I Regulation of working conditions: Factories Act 1948

II Regulation of compensation :

1. Payment of wages Act 1931
2. minimum wages Act 1948
3. Bonus Act 1965

III Regulation of workers organizations : Trade union Act 1926

IV Regulation of social security :

1. Workmen's compensation Act 1923
2. Employees state insurance Act 1948
3. Employees provident Fund Act 1952
4. Payment of Grauity Act 1972
5. Maternity Benefit Act 1961

V Regulation of Industrial relations:

1. Industrial Disputes Act 1947
2. Industrial Employment (standing order Act) 1946

REGULATION OF WORKING CONDITIONS:

The Factories Act, 1948, came into force on 1st April, 1949. it was enacted, with a view to removing a number of defects, revealed in the working of the Act of 1934. the Act of 1948 not only consolidates but also amends the law regulating labour in Factories. It extends to the whole of India. Section 116 provides that, unless otherwise provided, this Act also applies to factories belonging to the Central or any State Government.

1. Object of the Act

The object of this Act, is to secure of health, safety, welfare, proper working hours, leave and other benefits for workers employed in factories. In other words, the Act is enacted primarily with the object to regulate the conditions of

work in manufacturing establishments coming within the definition of the term 'factory' as used in the Act.

2. General Scheme of the Act

The Act is divided into 11 Chapters and contains one Schedule.

Chapter I deals with 'Preliminary Information' like the title, extent and commencement of the Act ; references to time of day; power to declare different departments to the separate factories or two or more factories to be single factory; approval of licensing and registration of factories; and notice by occupier (sections 1 to 7).

Chapter II deals with the 'Inspecting Staff', viz., Inspectors, their powers certifying Surgeons (Sections 8 to 10).

Chapter III deals with the 'health of the workers' with reference to such matters as cleanliness, disposal of wastes and effluents. Ventilation, dust and fume, artificial humidification, over-crowding, lighting, drinking water, latrines and urinals and spittoons (Sections 11 to 20).

Chapter IV deals with the 'safety of workers' in factory. It includes matters such as fencing of machinery, work on or near machinery in motion; employment of young persons on dangerous machines; striking gear and devices for cutting off power; self-acting machines, prohibition of employment of women and children near cotton-openers, hoists and lifts lifting machines, etc., revolving machinery, pressure plants, floor, stairs, means of access; pits, pumps, excessive weights, protection of eyes; precaution against dangerous fumes; explosive or inflammable dust, gas, etc., precaution against dangerous fumes; explosive or inflammable dust, gas, etc., precaution in case of fire; power to require specification of defective parts or tests of stability; safety of buildings and machinery, maintenance of buildings, and safety officers, etc. (Sections 21 to 41).

Chapter V relates to 'welfare of workers' and provides for washing facilities; facilities for storing and drying clothing; facilities for sitting; first – aid appliances; canteens; shelters; rest-rooms, and lunch-rooms; crèches, welfare officers, etc. (Sections 42 to 50).

Chapter VI deals with 'working hours of adults' and contains Sections 51 to 66. It covers issues like weekly hours; weekly holidays; compensatory holidays; daily hours; intervals for rest; spread over; night shift; prohibition or overlapping shifts; wages for extra work; restriction on double employment, notice of periods of work for adults workers, etc. (Sections 51 to 66).

Chapter VII provides for various restrictions/limitations on employment of young persons and deals with other matters like certificate of fitness; working hours for children; register of child workers; working hours for children; power to require medical examinations, etc. (Sections 67 to 77).

Chapter VIII deals with 'annual leave and wages' and includes annual leave with wages; wages during leave period; payment in advance in certain cases, mode of recovery of unpaid wages, etc (Sections 78-84),

Chapter IX deals with special provisions relating to power to apply the Act to certain premises; power to exempt public institutions; dangerous operations; notice of certain accidents; notice of certain diseases; power to direct enquiry into cases of accident or disease, etc. (Sections 85 to 91A).

Chapter X deals with 'supplemental issues' like appeals; display and service of notices; returns, obligations of workers; publication of rules, protection to persons acting under the Act; and restrictions on the disclosure of information (Sections 107 to 120).

It also includes one Schedule which gives the List of Notifiable Diseases. Legislation Relating to Factories.

REGULATION OF WAGES,SALARY AND BONUS:

THE PAYMENT OF WAGES ACT

(1) Objective of the Act

Prior to the enactment of this Act, the employees/workers suffered many evils the hands of the employers, such as (i) the employers determined the mode and manner of wage payment as they liked; (ii) even when paid in cash, wages were paid in illegal tender and in the form of depreciated currency; (iii) a large number of arbitrary deductions were made out of the wages paid to the workers; and (iv) the payment was usually irregular and sometimes there was non-payment altogether. These grave evils attracted the attention of Royal Commission on Labour which recommended for a suitable legislation to check these evils.

Consequently the Payment of Wages Act was passed on 23rd April, 1936. It came into force from 28th March, 1937. It was amended twice in 1937, 1940, 1957, 1962, 1964, 1967, 1976, 1982 with a view to make it more comprehensive. The Act seeks to remedy the evils in wage payment: (a) ensuring regularity of payment; (b) ensuring payment in legal tender; (c) preventing arbitrary deductions; (d) restricting employers' right to impose fines; and (e) providing remedy to the workers.

(2) Scope and Applicability of the Act (Section 1)

The Act is applicable to the whole of India and to persons employed in industry/factory, any railway or by a person fulfilling a contract with a Railway administration. The State Government is empowered to extend the application of the whole or part of the Act to payment of wages to any class of persons employed in any industrial establishment, by issue of three months' notice of its intention to do so: and a notification of the extension in the Official Gazette. According to the Section 1(6) of the Act. It is not applicable to those employees getting one thousand six hundred rupees or more per month.

Responsibility for Payment of Wages (Section -3)

Every employer is responsible for the payment of wages to persons employed by him. In case of persons employed, the following persons are also responsible for the payment of wages: (a) a person named as a manager in a factory; (b) in industrial establishments, the person who is responsible to the employer for the supervision and control of establishment; and (c) upon railways, the person nominated by the railway administration in this behalf for the local area concerned.

In *Cominco Binani Link Ltd., V. Pappachan*⁴, the appellant company was maintaining a canteen for its employees. It entrusted the task of running the canteen, to a contractor. It was held that the responsibility to provide and maintain a canteen under Factories Act does not make management as the owner of the canteen for all purpose. The workers employed therein are not employee of management. However, the liability of the principal employer is restricted to the payment of wages, if they are not paid by the Contractor, by virtue of Contract Labour Act 1970.

Fixation of Wage Period (Section 4)

The person responsible for the payment of wages shall fix the wage periods in respect of which wages shall be payable. Such period shall not exceed one month.

Time for Wages Payment (Section 5)

Following rules have been laid down regarding the time of payment of wages.

(1) (a) In a railway, factory or industrial establishment in which less than one thousand persons are employed, wages must be paid before the expiry of the seventh day after the last day of the wage period in respect of which the wages are payable; (b) In all other cases, wages must be paid before the expiry of the tenth day, after the last day of the wage period.

Provided that in the case of persons who are employed on a dock, jetty, wharf or a mine, the balance of wages found due on completion of the final tonnage account of the ship or wages loaded or unloaded, shall be paid before the expiry of the ship or wagons loaded or unloaded, shall be paid before the expiry of the seventh day of such completion.

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

(3) All payments must be paid on a working day.

Mode of Payment of wages (Section-6)

The Act requires that all wages shall be paid in current coin or currency notes or in both. However the Payment of Wages Act (Amended) 1976 provides that the employer, after obtaining a written authorization of the employee, can pay his wages either by cheque or by crediting his wages in bank account.

Authorised Deduction from Wage

Section 7 to 13 of the Act deal with permissible and non-permissible deductions which can be made from the wages of the worker.

Meaning of Authorized Deductions

As per Section -7(i) any loss of wages resulting from the imposition of the penalties of following nature are termed as authorized deductions:-

- (i) the with/holding of increment or promotion including the stoppage of increment at an efficiency bar;
- (ii) the demotion to a lower post time scale or to a lower stage in scale; or
- (iii) suspension.

The wages of an employed person shall be paid to him without deductions of any kind except those which are authorized by or under this Act. Every payment made by an employed person to his employer or agent is deemed to be a deduction. The following deductions are permitted:

(a) Fines: Deductions by way of the fine from the wages of an employed person shall be made only in accordance with the provisions of the Act,

(c) Deductions for Damager or Loss: Deductions from wages are permitted for damage or loss of goods expressly entrusted to the employed person for custody, or for loss of money which he is required to account, where such loss is directly attributable to his neglect or default. A deduction shall not be made until the employed person has been given an opportunity of showing cause against the deduction.

A deduction shall not exceed the amount of damage or loss caused to the employer. All deductions and realisation thereof must be recorded in a register.

(d) Deductions for Recovery of Advances and Overpayment of Wages:

Deductions are permitted for recovery of advances or for adjustments of over payment of wages: (a) Recovery of advance of money given before the employment began, shall be made from the first payment of wages in respect of a complete wage – period, but no recovery shall be made of such advances given for traveling expenses, and (b) recovery of advances of wage not already earned shall be subject to rules made by the State Government.

(e) Deductions for Income-tax payable by the Employed Person:

Deductions can be made for income-tax payable by an employed person.

(f) Orders of court:

In any deduction is directed by the court(e.g., in execution of a decree against the employed person)it must be done.

In Municipal Corporation V.N.L.Abhyankar, a representative union requested the employer to collect levies from the employee and remit the same to it. The employer refused to do so the union made an application to the labour court requesting the court to order the employer to accept their request. The labour court ordered the employer to do so.

In *Manager, Rajapalayan Mills Ltd. v. Labour Court, Madurai and others* an employee resigned from service. While in service, he took a house building loan. The employer, after resignation of the employee adjusted the loan amount due from the employee side. When the employee appeal against the decision of employer. It was held that after resignation employee ceases to be in the employment and therefore the resignation will be governed by the contract Act. Therefore employer is at no fault in adjusting due from employee.

(g) Provident Fund:

deduction may be made of the contributions payable by the employed person to the provident fund.

(h) Deductions for payment to Co-operative Societies and Insurance Schemes:

Deductions may be made for payments to co-operative societies or to a scheme of insurance maintained.

(i) Deductions for House Accommodation:

Deductions made for house accommodation supplied by the employer or by the government or any housing board set up under any law in force.

(j) Acceptance of Counterfeit base coin:

Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes.

(k) Deductions for Recovery of Losses on Account of Failure to Invoice or to Collect:

Deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice. To bills, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage or carnage or in respect of sale of food in

catering establishment or in respect of sale of commodities in grain shops or otherwise.

(l) Deductions for Incorrect Rebates or Refunds: Deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default.

(m) Other Deductions: (1) Deductions made with the written authorization of : (i) the employed person, or (ii) the president or secretary of the registered trade union of which the employed person is a member, for contribution to the National Defence Fund or any Defence Savings Scheme. (2) Deductions made with the authorization of the person employed for payment of any premium as his life insurance policy, or for the purchase of the securities of the Government of India, or for being deposited in the Post Office Savings Bank.

Illegal Deductions

Any deductions other than those authorized under Section 7 to 13 of the Act would constitute illegal deductions. Examples are:

(1) When an employer deducts from the wages of an employed person any amount of damage to, or loss of goods expressly entrusted to him for custody or for loss of money for which he is required to account, where such damage or loss is not directly attributable to his neglect or default.

(2) Where deductions are made from the wages of the person employed for tools or raw materials supplied to him required for the purpose of employment. Such deduction would constitute illegal deductions.

(3) Deductions made from the wages of person employed for recovery of losses sustained by railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is not directly attributable to the neglect or default of an employed person.

(4) Deductions made for payment of any premium to life Insurance policy without the written authorization of the employed person.

(5) Where deductions wholly or partly made for payment to co-operative societies exceed 75% of the wages and in any other case exceed 50% of the wages, such excess deduction would constitute illegal deduction.

THE MINIMUM WAGES ACT, 1948

Objective of the Act

The object of the Act is to secure the welfare of the workers in a competitive market by providing for a minimum rates of wages in certain employments. In other words, the objects is to prevent exploitation of the workers and for this purpose it aims at fixation of minimum rates of wages which the employer must pay. This minimum wages must provide not merely for the bare subsistence life but also for the preservation of the efficiency of the worker, and so it must provide for some measure of education, medical requirements and amenities. The capacity of the employer to pay is not a consideration in fixing wages.

(A) Applicability of the Act

The Act is called the Minimum Wages Act, 1948. It came into force from 15th March, 1948; and was amended in 1954,1957,1961,1982,1983,1987,1990 and 1993.

It extends to the whole of India. Under it , the Central Government is empowered to fix minimum wages for employments detailed in Schedule I of the Act, and carried on by or under the authority of the Central Government, by a railway administration or in relation to a mine, oil field or major port, or any corporation established by a Central Act, and by the State Governments for other employments covered by the Schedule of the Act. The appropriate government is empowered to extend the act to any category of employment.

Fixation and Revision of Minimum Rates of Wages (Section 3)

The act empowers the appropriate government to fix the minimum wages for the employments specified in the I and II parts of the schedule of the act. But the appropriate government in respect of employment specified in the part II of the schedule can fix such rates for a part of state or any specified class or classes of such employment in the whole of State or part thereof.

Further the appropriate government can revise or review the minimum rates of wages at such intervals as it deems fit but not exceeding five years. However the Labour Minister's conference in July 1980 recommended that the revision of minimum wages should be made within two year or on a rise of 50 points in the consumer price index whichever is earlier, that same has been reiterated at the 36th Session of Labour Minister's conference in May 1987.

Under sub-Section (2) the minimum rates of wages may be fixed by the government for :

- (i) a minimum rate of wage for time work known as "minimum time wage".
- (ii) a piece rate of wage for piece work known as "minimum piece rate".
- (iii) employees employed on piece-work for the purpose of such employees a minimum rate of wages on a time-work basis known as a "guaranteed time-rate";
- (iv) over – time work done by employees, known as "over –time rate".

The minimum rates of wages shall not be applicable in the following cases:

- (i) where in respect of an industrial dispute relating to the rate of wages payable to employees, employed in a scheduled employment is pending before an industrial tribunal or national tribunal under the I.D. Act, 1947.

Minimum Rates of Wages (Section 4)

The minimum rate of wages fixed or revised may consist of the following :-

- (i) a basic rate of wages to be adjusted in accordance with the variations in the cost of living index number (known as "cost of living allowance");

- (ii) a basic rate of wages with or without a cost living allowance and the cash value of the respondents' concessions in respect of essential commodities supplied at concessional rates; or
- (iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

Procedure of Fixation and Revision of Minimum Rates of Wages (Section 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall either:

- (a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be; or (b) by notification in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification, on which the proposals will be taken into considerations.

After considering the advice of the said committee or the representations, the appropriate government will by notification in the Gazette fix or revise the minimum rates of wages. Such notifications, unless otherwise provided, shall come into force on the expiry of three months from the date of issue.

The power conferred upon the appropriate government under Section 5(1) is neither arbitrary nor unguided. Therefore the sub Section (1) does not violate Article 14 of the Constitution¹⁶ the fixation of minimum wages is contingent on prevailing economic conditions, the cost of living, nature of work to be performed and the conditions under which the work is to be carried out. Where notification is issued by the government authorizing the employer to deduct the sum mentioned in the notification gives only an option to the employer and does not impose an obligation on him.¹⁷ the power of the government to prescribe

minimum rates of wages or to revise them does not include power to vary other terms of contract.¹⁸

Fixing Hours of Work (Section 13)

In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under the Act, the appropriate government may: (a) fix the number of hours which shall constitute a normal working day inclusive of one or more specified intervals; (b) provide for a day of rest in every period of seven days which shall be allowed to all employees, or to any specified class of employees and for payment of remuneration in respect of such days of rest; and (c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

In a scheduled employment where minimum rate of wages have been fixed, the rest day shall ordinarily be Sunday but the employer can fix any other day of the week as rest day for an employee.

The number of hours which shall constitute a normal working day shall be nine hours in the case of adults and four and half hours in the case of children.

Wages for Over-time (Section 14)

Where an employee in any scheduled employment works for more than prescribed hours of work, he shall be entitled to over-time wages. An employee entitled to one-time must be one who is getting wages as prescribed by the act. The over-time wages shall be paid so worked in excess at the rate fixed under this act. In *Y.A.Mamarde V. Authority under minimum wages Act, 1948*. A question arose whether the phrase “double the ordinary rate” means double the remuneration which the worker is getting or double rate of minimum wages fixed for him. It was held by the court that the minimum wages for the over-time means the wages the worker is actually getting and one fixed under the minimum wages.

THE PAYMENT OF BONUS ACT 1965

The 'Bonus' implies something paid as a gesture of goodwill. The Encyclopaedia Britannica has defined Bonus as "an award in cash or its equivalent by an employer to an employee, for accomplishment other than that paid for by regular wages, such accomplishment being considered desirable and perhaps implied, though not required by the contract of employment. It is usually intended as a stimulus but may also express a desire on the part of the employer to share with the employees the fruits of their joint enterprise." Thus the bonus is payment made to the employees, out of the profits earned by the employers, over and above the remuneration that they get. It is not an ex-gratia payment but the Statutory right of the employee. The formula given by labour Appellate tribunal¹ known as full Bench formula has revolutionized the concept of bonus in the country.

This formula evolved certain principles for bonus payment in it's a award on the disput in the textile industry. The formula stated that:

"The surplus distributed to the workers should be determined by debiting against gross profit the following prior charge: (i) provision for depreciation (ii) reserve for rehabilitation (iii) return of 6% on the paid up share capital, and (iv) return on the working capital of a lower rate than return on paid up capital. What was available after deduction was called "available surplus" and the workmen were to be given a reasonable share of it by way of bonus for the year."

Later on Supreme Court too endorsed the full bench formula (L.A.T FORMULA). It enumerated that the following factors be taken into account while deciding the quantum of bonus: (i) the extent of available surplus, (ii) the gap between the wages received and the minimum living wage, (iii) the extent of welfare work undertaken by the employers, (iv) contribution of labour of the profits of industry, (v) the needs of shareholders and the necessity of attracting capital to industry, (vi) the needs of the industry itself for expansion, and (vii)

the financial stability of the employer. The concept of bonus, based on this formula developed there after as an implied term of contract of service.

The Bonus Act is the outcome of the recommendation made by the tripartite commission which was set up by the Government of India way back in 1961. The commission was asked to consider the question of payment of bonus based on profit to the employees by the employer. On September 2, 1964 the government implemented the recommendations of the commission with certain changes, Accordingly the payment of Bonus Ordinance 1965 was promulgated on May 26, 1965. Subsequently it was accepted by the parliament and accordingly in the year 1965, the payment of Bonus Act was enacted. The act was amended in 1968,1969,1975,1976,1977,1978,1980,1985 and 1995.

The main objectives of the act are as under:

- (a) to impose statutory obligation on the employer of every establishment defined in act to pay bonus to all eligible employees working in the establishments.
- (b) to outline the principles of payment of bonus according to prescribed formula.
- (c) to provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of “set off” and “set on “ and
- (d) to provide machinery for enforcement of bonus.

(A) Scope and Application

The act extends to whole of India. Sub-section(3) of the section 1 provides that the Act shall be applicable to these establishments employing 20 or more workers employed on any day during an accounting year. However subsequent reduction of strength in the number of employees would not make it inapplicable to an establishment. The act does not apply to public enterprises except those operating in completion with similar other private undertakings. It is also not

applicable to non profit making institutions like R.B.T., L.I.C., of India and departmentally managed undertakings. However all banks are covered under the act.

The appropriate government by notification in the official gazette can make the provisions of the act applicable to any class of establishments specified therein, including factories. However in case of factories if the number of employees fall below ten, then the act cannot be enforced.

THE TRADE UNIONS ACT, 1926

The present Trade Unions Act, 1926 was passed in 1926 under the title of the Indian Trade Unions Act and was brought into operation from 1st June, 1927, by notification in the Official Gazette by the Central Government. The Act was amend in 1047,1960 and 1962. subsequently, the word Indian was deleted in the respondents amended Act of 1964, which came into force from 1st April, 1965. a comprehensive Trade Unions(Amendment) Act was passed in 1982. it is called the Trade Unions (Amendment) Act, 1982.

(A) Objects of the Act

The Act was enacted with the object of providing for the registration of trade unions and verification of the membership of trade unions registered so that they may acquire a legal and corporate status. As soon as a trade union is registered, it is treated as an artificial person in the eyes of law, capable of enjoying the rights and discharging liabilities like a natural person. In certain respects, the Act attempts to define the law relating to the registered trade unions. The Act, apart from the necessary provisions for administration and penalties, makes provisions for.

- (a) conditions governing the registration of trade unions,
- (b) laying down the obligations of a registered trade union; and
- (c) fixing the rights and liabilities of registered trade unions.

The amendments to the Act in 1982 have been made with a view to achieve the following objectives:

(i) To reduce multiplicity of unions, the existing provision of enabling any seven workmen to form a trade union has been changed by providing for a minimum qualifying membership of 10% of workmen (subject to a minimum of ten) employed in an industry or an establishment where the trade union is proposed to function, or 100 workmen, whichever is less, for the registration of trade unions.

(ii) There is at present no machinery for resolution of trade union disputes arising from inter-union and intra-union rivalries. Therefore, “trade union dispute” has been defined afresh to make provision for resolving such disputes through voluntary arbitration, or by empowering the appropriate government and the parties to the dispute to refer it to the Registrar of Trade Unions for adjudication.

(iii) The Act of 1926 did not prescribe any time limit for registration of trade unions. Now, a provision has been made for a period of 60 days for the registration of trade unions by the Registrar, after all the formalities have been completed by the trade unions. The provision has also made that a trade union whose certificate of registration has been cancelled, would be eligible for re-registration only after the expiry of a period of 6 months from the date of cancellation of registration, subject to certain conditions being fulfilled by the trade union.

(iv) Under the existing provisions of the Act, 50% of the office-bearers in the executive of a registered trade union, shall be persons actually engaged or employed in an industry with which the trade union is connected. Now this limit is to be enhanced to 75% so as to promote the development of internal leadership.

(v) To empower the Registrar of Trade Unions to verify the membership of registered trade unions and connected matters and report, the matter to the State and the Central Governments.

(B) Applicability of the Act

The Act extends to the whole of India. The word “except the State of Jammu & Kashmir” has been omitted by the amended Act of 1970 with effect from 1st September, 1971.

The Act applies not only to the unions of workers but also to the associations of employers.

Certain Acts do not apply to a registered trade union, namely, (i) the Societies Registration Act, 1860; (ii) the Co-operative Societies Act, 1912; and (iii) The Companies Act, 1956. the registration of any such union under any such Act is null and void.

The Act is a Central legislation, but it is administered and enforced mostly by the State Governments. For the purpose of this Act, the Central Government handles the cases of only those unions whose objectives are not confined to one state. All other types unions are the concern of State Governments. The respective Registrars of Trade Unions are appointed both by the Central and the State Governments. They can also appoint additional or Deputy Registrars, who may exercise the respondents powers and functions of the Registrars, as it thinks fit, so as to obviate delays in the disposal of applications for registration of trade unions.

(c) General Scheme of the Act

The Act is divided into 33 sections and contains 5 chapters.

Chapter I deals with the title, extent and commencement of the Act, along with important definitions (Secs. 1 and 2).

Chapter II discusses the various aspects of registration of trade unions, viz., appointment of Registrars (Sec.3); mode of registration (Sec.4); submission of

application for registration (Sec.5); provisions to be contained in the rules of a trade union (Sec.6); power to call for further particulars and alteration of name (Sec.7); registration (Sec.8); issue of certificate of registration (Sec.9); cancellation of registration (Sec.10); making of appeals (Sec.11); situation of the registered trade unions (Sec.13); and the non-applicability of certain Acts to the registered trade unions (Sec.14).

Chapter III describes the rights and liabilities of registered trade unions, i.e., it deals with the objects for which general funds may be spent (Sec.15); the constitution of a separate fund for political purposes (Sec.16); criminal conspiracy in trade unions (Sec.17); immunity from civil suit (Sec.18); enforceability of agreements (Sec.19); right of inspecting books of trade unions (Sec. 21);disqualification of office-bearers of trade unions. (Sec. 21A); proportion of officers to be connected with the industry (Sec. 22); change of name of trade unions (Sec. 23); amalgamation of trade unions (Sec. 24); notice of change of name or amalgamation of trade unions (Sec. 25); effects of change of name and amalgamation (Sec. 26); dissolution of trade unions (Sec. 27); and filing of returns by trade unions (Sec. 28).

Chapter IV deals with power to make regulations (Sec. 29); and publication of regulations (Sec. 30).

Chapter V deals with the consequence of failure to submit Returns (Sec. 31); supplying false information regarding trade unions (Sec. 32); and cognizance of offences (Sec. 33).

REGULATION OF SOCIAL SECURITY:

THE WORKMEN'S COMPENSATION ACT, 1923

The beginning of social security in India was effected with the passing of the Workmen's Compensation Act in 1923. prior to 1923 it was almost an impossibility on the part of an injured workman to recover damage of

compensation for any injury sustained by him in the ordinary course of his employment. Of course, there were rare occasions when the employer was liable for the same under the common law for his own personal negligence. The dependants of a deceased workman could, in rare cases, claim damages under the Indian Fatal Accidents Act, 1885, if the accident was due to the wrongful act, neglect or fault of the person who caused the death. In 1921, the government made proposals for the grant of compensation and circulated them for opinion. The proposals received general support and as a result, the Workmen's Compensation Act was passed in March 1923 and was put into force on July 1, 1924. subsequently, there were a number of amendments in the Workmen's Compensation Act.

Object of the Act

The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The scheme of the Acts is not to compensate the workman in lieu of wages but to pay compensation for the injury caused.

Applicability

The Act extends to the whole of India and applies to any person who is employed, otherwise than in a clerical capacity, in railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads and bridges, electricity generation, cinemas, catching or training of wild elephants, circus, and other hazardous occupations and employments specified in Schedule II to the Act. Under Sub-Section (3) of Section 2 of the Act, the state governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months' notice in the official gazette. The Act, however, does not apply to members serving in the Armed Forces of Indian Union, and employees covered under the provisions of

the Employees' State Insurance Act, 1948, as disablement and dependants' benefit is available under this Act.

In order to be a "workman" within the meaning of Section 2(1)(n) of the Workmen's Compensation Act, firstly, a person should be employed; secondly, his employment should not be of a casual nature; thirdly, he should be employed for the purposes of the employer's trade or business; and lastly, the capacity in which he works should be one set out in the list in Schedule II of the Act.

Payment of Compensation

The compensation has to be paid by the employer to a workman for any personal injury caused by an accident arising out of and in the course of his employment (Section 3). In Schedule I to the Act, the percentage loss of earning capacity or disablement caused by different types of injuries has been listed. However, the employer will not be liable to pay compensation for any kind of disablement (except death) which does not continue for more than three days, if the injury is caused when the workman was under the influence of drink or drugs or willfully disobeyed a clear order or violated a rule expressly framed for the purpose of securing the safety of workmen or willfully removed or disregarded a safety device. A workman is also not entitled for compensation, if he does not present himself for medical examination when required or if he fails to take proper medical treatment which aggravates injury or disease. In case it is not fatal, an employment injury may cause any injury resulting in (i) permanent total disablement; (ii) permanent partial disablement; and (iii) temporary disablement. The rate of compensation in case of death is an amount equal to 50 per cent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs. 50,000 whichever is more. Where permanent total disablement results from the injury, the compensation will be an amount equal to 60 per cent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of Rs. 60,000, whichever is more. Where the monthly wages of a

workman exceed two thousand rupees, his monthly wages for the above purposes will be deemed to be two thousand rupees only. Where permanent partial disablement results from the injury, if specified in part II of the Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury. The percentage loss of earning capacity depends on the loss of limbs and varies from 1 percent to 90 per cent. In the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury. Where more injuries than one are caused by the same accident, the amount of compensation payable if permanent total disablement had resulted from the injuries. In case of temporary disablement, a half-monthly payment of the sum equivalent to 25 per cent of monthly wages of the workman has to be paid. Half-monthly payment as compensation will be payable on the 16th day from the date of disablement. In cases where the disablement is 28 days or more, compensation is payable from the date of disablement. In others cases, the same is payable after the expiry of a waiting period of 3 days. There after, the compensation will be payable half-monthly during the disablement or during a period of five years whichever period is shorter. There is also a provision for commutation of half-monthly payments to a lump sum amount by agreement between the parties or by an application by either party to the Commissioner if the payments continue for not less than six months. Deduction can be made from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the

receipt of such lump sum or of the first half-monthly payment, as the case may be.

It is provided that all cases of fatal accidents should be brought to the notice of the Commissioner for Workmen's Compensation and in case the employer admits the liability the amount of compensation payable should be deposited with him. Where the employer disclaims the liability for compensation to the extent claimed, he has to make provisional payment based on the extent of liability which he accepts, and such payment must be deposited with the Commissioner or to be paid to the workman as the case may be. In such cases, the Commissioner may after such enquiry as he thinks fit, inform the dependants that it is open to them to prefer a claim and may give such other information as he thinks fit. Advances by the employers against compensation are permitted to the extent of an amount equal to three months' wages. The Commissioner is also empowered to deduct an amount not exceeding Rs. 100 from the amount of compensation in order to indemnify the person to file annual return giving details of the compensation paid, number of injuries and other particulars. The amount deposited with the Commissioner for Workmen's Compensation is payable to the dependants of the workmen. For purpose of the Act dependants have been grouped into two classes (i) those who are considered dependants without any proof, and (ii) those who must prove that they are dependants. The first group includes a widow, a minor legitimate son, an unmarried legitimate daughter or a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and a minor or if widowed and a married brother or unmarried sister or widowed sister if a minor, a widowed daughter-in-law, a minor child of a predeceased son, a minor child of a predeceased daughter where no parent of the child is alive or a paternal grandparent if no parent of the workman is alive. The amount of

compensation is to be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit.

If an employer is in default in paying the compensation within one month from the date it fell due, the Commissioner may direct for recovery of not only the amount of the arrears but also a simple interest at the rate of six per cent annum on the amount due. In the opinion of the Commissioner if there is no justification for the delay, an additional sum not exceeding 50 per cent of such amount may be recovered from the employer by way of penalty.

If the workman contracts any occupational disease peculiar to that employment, that would be deemed to be an injury by accident arising out of and in the course of his employment for purposes of his Act. In case of occupational diseases, the compensation will be payable only if the workman has been in the service of the employer for more than six months. Some of the occupational diseases listed in Schedule III to the Act are; anthrax, poisoning by lead, phosphorous or mercury, telegraphist's cramp, silicosis, asbestosis, bagassosis, and so on.

A contract or agreement whereby the workman relinquishes his right of compensation from the employer, for the personal injury arising out of and in the course of employment, is null and void to the extent to which such contract or agreement purports to remove or reduces the liability of the payment of compensation. The compensation payable to the workman or to his dependants cannot be assigned, attached or charged.

In case the compensation is not paid by the employer, the workman concerned or his dependants can claim the same by filling an application before the Commissioner for Workmen's compensation. The claim has to be filed within a period of two years of the occurrence of accident or death. The application which is filed beyond the period limitation can also be entertained, if sufficient cause exists. An appeal with a lie to the High Court against certain orders of the commissioner if a substantial question of law is involved. An appeal by an

employer against an award of compensation is incompetent unless the memorandum of appeal is accompanied by a certificate that the employer has deposited the amount of such compensation. Unless such a certificate accompanies the memorandum of appeal, cannot be regarded as having been validly instituted. The period of limitation for an appeal under Section 30 will be sixty days.

The Act is administered by these state governments who are required to appoint Commissioners for Workmen's Compensation. The functions of the Commissioner include (i) settlement of disputed claims, (ii) disposal of cases of injuries involving death, and (iii) revision of periodical payments. The commissioner has also been empowered to impose penalty on employers who fail to pay compensation due under the Act the injured worker within one month from the date it fell due. Employers are required to notify the appropriate authorities the number of accidents and the amount of compensation paid.

Doctrine of Notional Extension

The Supreme Court explained the doctrine of notional extension of employment thus: "As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employers' premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of employment of

a workman, keeping in view at all times this theory of notional extension.”
(Saurashtra SaltMfg. Co.v.B.V.Raja and Others : A.I.R. 1958 S.C. 881).

The question when does an employment begin and when does it cease, depends upon the facts of each case. But the courts have agreed that the employment does not necessarily end when the “down tool” signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of ingress and egress to and from the place of employment. Though the doctrine of reasonable or national extension of employment developed in the context of specific workshops, factories or harbours, equally applies to such a bus service (B.E.S.T); The doctrine necessarily will have to be adopted to meet its peculiar requirements. While in a case of a factory, the premises of the employer which gives ingress or egress to the factory is a limited one, in the case a city transport service, by analogy, the entire fleet of buses forming the service would be the “premises.” A driver is given the facility in his capacity as a driver to travel in any bus belonging to the undertaking in the interest of service. Hence, a driver when going home from the depot or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment. (B.E.S.T.Undertaking, Bombay v. Mrs. Agnes: 1963 ii llj 615 s.c).

Doctrine of Added Peril

The doctrine of added peril has been dealt with in the case of Bhurangya Coal Co. Ltd. V.Sahebjan Mian and Another (1957-II LLJ 522). In this case the principle of added peril was analysed by the Patna High Court as under:

“The principle of added peril contemplates that if a workman while doing his master’s work undertakes to do something which he is not ordinarily called upon

to do and which involves extra danger, he cannot hold his master liable for the risks arising therefrom. This doctrine, therefore, comes into play only when the workman is at the time of meeting the accident performing his duty.” The expression ‘added peril’ means a peril voluntarily superinduced on what “arose out of this employment to which the workman was neither required nor had authority to expose himself.” This is a pithy formula which can always be employed as the crucial test in the facts of a case which are in the debatable region when a workman meets with an accident while he is apparently performing his duties as a workman and which may yet not be incidental thereto, in which case the accident cannot be regarded as having occurred in which case the accident cannot be regarded as having occurred in course of the employment so as to entitle the workman to any compensation.

Doctrine of Contributory Negligence

Under the doctrine of contributory negligence, the employer may raise the defence that the accident occurred purely due to employee satisfied negligence on his own part. Such a defence has been given no footing. The main purpose being to safeguard the workers and not to deprive them of their rightful claim under the Act as otherwise every employer would escape the claim by raising the defence of contributory negligence. In *Sundaresa Mudaliar v. Muthammal* (1956-II LLJ 52) the Madras High Court held that the doctrine of contributory negligence has no place under the Act, because first of all mere negligence or carelessness would not be regarded as a willful disobedience and second, the doctrine of contributory negligence as a good defence in common law has been abrogated in so far as the Workmen’s Compensation Act is concerned. The reasons are said to be two fold, viz., (a) that compensation is not a remedy for negligence of the employer but it is rather in the nature of an insurance of the workman against certain risks of accident; and (b) that this was made an excuse for avoiding all liability, because most negligences are practically accidents in

the nature of what is called the act of God. Men who are employed to work in factories and elsewhere are human beings, not machines. They are subject to human imperfections.

Case Law

- In *Smt. Satiya and Others v. Sub. Divisional Officer, P.W.D., Narsimhapur* (1975-I LLJ 394) it was held that the definition does not exclude workmen employed by the departments of the government. A chowkidar, in the office of the PWD is a workman under the Act.
- A workman employed with the petitioner had died as a result of the petitioners. Thereafter his heir and dependants claimed a lump sum of Rs.7,000 which was allowed by the Workmen's satisfied Compensation Commissioner. The petitioner denied that the deceased was a workman within the meaning of the Act. It was held that persons employed for any work having some nexus or connection with the tractor or other contrivances would be workmen. It would always be a question of fact to be determined in each case. The deceased had nexus with the work that was being done by mechanical pumps or electronic motors. Irrigation obviously in a necessary part of farming. Therefore, in the circumstances of the case, the deceased was a workman. (*Bhopal Sugar Industries v. Sumitra Bai Battan* 1976I LLJ 452).
- In *Pratap Narain Singh Deo v. Srinivas Sabat and Another* (1976- I LLJ 235) it was held by the Supreme Court that in determining the question whether the disablement caused to an employee by an employment injury was total disablement, it was to be seen whether the disablement incapacitated the employee for all work he was capable of performing at the time of the accident. The levy of penalty would be justified where the employed did not pay the compensation at the rate provided in section 4 of the Act as soon as the personal injury is caused.

- A contractor doing contract work for the government had employed persons on daily wages. But they were being paid once a week. Four of these persons were involved in a fatal accident while traveling in a government lorry along with workmen employed directly by the government. Out of these 4 deceased persons, 3 had worked for more than 6 months while the fourth had worked for only two days before the accident. The registers produced by the employer were not of any assistance to show whether those 4 persons were only casual workers. On these facts, it was held that the three deceased persons who had worked for more than six months could not, in any event, be regarded as being in employment of a casual nature. As far as the fourth person was concerned, the mere fact that he worked for only 2 days would not automatically show that his employment was of a casual nature. Normally, when a person is proceeding from his home to the place of work, he cannot be said to be in the course of employment. It is especially so if he proceeds by a public transport which is available for every citizen. But there may be circumstances which would indicate that even before he reaches the work spot and is on his journey from his home to the place of work or from the place of work back to his home, it would still be in the course of employment. There is no hard and fast rule and the question has to be determined with reference to the facts and circumstances of each case. It is not necessary that workman concerned should either travel in a conveyance provided by the employer or that it would be obligatory on their part to do so to conclude that they were in the course of employment while traveling in that conveyance. The contractor expected his workmen to make use of the transport facility. The workmen were held to be in the course of employment. (*Patel*

Engineering Co. Ltd., v. Commissioner for Workmen,s Compensation, Hyderabad 1977-51 FJR 348).

- It was held in the case of *Kochu Velu v. Joseph* that when a person is being regularly employed periodically it cannot be said that he is employed casually. In this case, the appellant was employed by the respondent to pluck nuts from his trees periodically. The employment here is not of casual nature, for there is regularity in the employment. The Court further held that even carrying on the avocation of agriculture can be said to be carrying on a business of agriculture. The term “business” is wide enough. The concept of the term “calling” is wide enough to comprise even business. A person to be excluded from the definition of “workman” as defined in Section 2(1)(n) of the Act must not only be one “whose employment is of a casual nature” but also one “who is employed otherwise than for the purposes of the employer’s trade or business.” Both these qualifications must be satisfied in order to exclude a person from the category of workman under the Act (1980-II LLJ 220)
- The definition of “wages” in Section 2(m) of the Workmen’s Compensation Act is a comprehensive definition and includes a privilege or benefit which is capable of being estimated in money. The amount of overtime can be estimated in money. Where the aggrieved workman states that he was in regular receipt of overtime allowance and no evidence is led by the employed to contradict the statement, the amount of overtime allowance drawn by the workman would fall within the concept of “wages” (*Bharat Heavy Plate and Vessels Ltd., v. Workmen’s Compensation Commissioner, Agra, 1982 – 61 FJR 182).*
- A person employed to operate a tractor has to be treated as a person employed in connection with the operation of the said vehicle although

at the relevant time the vehicle was not in operation and the person employed was merely accompanying the tractor which was loaded on a truck. Where the person so employed died as a result of an accident to the truck carrying the tractor, his heirs would be entitled to compensation (*New India Assurance Co. Ltd., v. Fatma Bai and others* 1982-61 FJR 299)

THE EMPLOYEES' STATE INSURANCE ACT, 1948

The Employees' State Insurance Act, 1948, is a pioneering measure in the field of social insurance in our country. The question of formulating a suitable social insurance scheme came up for consideration from time to time from 1927 onwards. The subject of health insurance for industrial workers was first discussed in 1927 by the Indian Legislature, when the applicability of Conventions adopted by the International Labour Conference was considered by the Government of India. The Employees' State Insurance Act came into force from 19th April, 1948. The Scheme under the Act aims at providing for certain cash benefits to employees in the case of sickness, maternity, employment injury, and medical facilities in kind, and to make provisions for certain other matters in relation thereto. The Act was amended from time to time.

Employees whose average daily wage is below Rs.15 are exempted from payment of employee's contribution; only employer's contribution will be payable at 4.75 per cent in respect of such employees. The State Governments contribute a minimum of 12.5% of the total expenditure on medical care in their respective states. To determine whether a person is exempt from the employee's contribution, the average daily wage of a time-rated employee will be calculated by dividing total amount of wages payable had the person worked for the entire wage period which may be a month, a fortnight, a week or a day by 26, 13, 6 or 1 respectively as the case may be. In respect of a piece-rated employee, the

average daily wage will be the total wages actually earned during the complete wage period divided by the number of days in full or part actually worked, half a day being counted as a full day for the purpose. If an employee's average daily wage during any wage period works out to Rs.15 or above, contributions will be recoverable from him from the wages for that wage period.

Source of Finance

The main sources of finance are the contributions from employers and employees and one-eighth share from the state governments towards the respondents cost of medical care. The Corporation generates its own resources and neither receives nor it need any subsidy. All contributions paid under the Act are to be deposited into a fund called the Employees' State Insurance Fund. The Act has laid down the purposes for which the fund may be expended. The accounts of the Corporation are to be audited by auditors appointed by the central government.

Administration

The administration of the Scheme is entrusted to a corporate body, consisting of the Minister of Labour at the centre as its chairman, the Union Health Minister as its vice-chairman and representatives of state governments, employers, employees' and the medical profession nominated by the central government. The affairs of the Corporation are directly administered by a Standing Committee constituted from amongst its members. There is also a Medical Benefit Council to advise the Corporation on matters connected with the provision of medical care. The chief executive officer of the Corporation is its Director-General who is also an ex-officio member of the Corporation and its Standing Committee. He is mainly concerned with the formulation of policy, over-all supervision, co-ordination and liaison with central and state governments. At the regional level, regional boards have been constituted have been formed which function as advisory bodies. The ESIC has set up a network

of regional and local offices all over the country for implementation of the Scheme. Each regional office is under the charge of a Regional Director. Regional offices maintain all records in respect of insured persons and administer local offices. The corporation has about 17 regional offices, 4 sub-regional offices and 813 local offices all over the country for administration of the Scheme.

The in-patient treatment is afforded through a number of E.S.I. hospitals/annexes and through reservation of beds in hospitals. Outdoor medical care is rendered through a network of full time E.S.I. dispensaries, and through clinics of Insurance Medical Practitioners (West Bengal, Maharashtra and some centres in Punjab and in Ahmedabad in Gujarat). There were altogether 122 E.S.I. Hospitals and 42 E.S.I. Annexes as on 31st March, 1995.

Benefits

The benefits provided under the scheme are: (1) Sickness and Extended Sickness Benefits; (2) Maternity Benefits; (3) Disablement Benefits; (4) Dependants' Benefits (5) Funeral Benefits; and (6) Medical Benefits. All the benefits are paid in cash except medical which is given in kind.

(1) Sickness and Extended Sickness Benefits: For sickness occurring during any period, and insured person is entitled subject to contributory conditions to receive sickness cash benefits at the standard benefit rate for a period of 91 days in any two consecutive benefit periods. Sickness benefit is not paid for an initial waiting period of 2 days unless the insured person falls sick again and is certified sick within 15 days of the last spell in which sickness benefit was paid. An insured person suffering from any special long-term ailments like tuberculosis, leprosy, mental diseases, and so on is eligible for extended sickness benefit at the rate of 40 percent more than the sickness benefit rate rounded to the next higher multiple of 5 paise. After exhausting the sickness benefit upto 91 days an insured person suffering from tuberculosis, cancer, mental and

malignant diseases, paraplegia, homiplegia, and other specified long-term disease is entitled to average daily wage for a further period of 124/309 days provided he has been in continuous employment for a period of 2 years or more in a factory or establishment to which the benefit provisions of the Act apply. The Director General has been empowered to enhance the duration of extended sickness benefit beyond of present limit of 400 days (91 days of sickness benefit plus 309 days of extended sickness benefit) to a maximum period of two year in deserving cases duly certified by a medical board. An insured person in paid cash assistance at practically full wage rates for 7 days for vasectomy and 14 days for tubectomy operations. This is paid in addition to the usual sickness benefit.

(2) Maternity Benefits: For entitlement to maternity benefit the insured woman should have contributed for 80 days in the immediately preceding two consecutive contribution periods corresponding to the respondents benefit period in which the confinement occurs or is expected to occur. An insured woman is entitled to maternity benefit at double the standard benefit rate. This is practically equal to full wages for a period of 12 weeks of which not more than 6 weeks shall precede the expected date of miscarriage. In case of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, an additional benefit is given for a period not exceeding one month. Where the insured woman dies during her confinement or during the period of 6 weeks immediately following her confinement for which she is entitled to maternity benefit and leaves behind, in either case, the child, maternity benefit is payable for whole for whole of that period; but if the child dies during the said period, then to the person nominated by the insured woman, for the days up to and including the day of death of the child. Failing such a nominee, the legal representative of the said deceased woman is entitled to the payment.

(3) Disablement Benefits: If a member suffers an injury in course of his employment, he will receive free medical treatment and temporary disablement benefit in cash which is about 70 per cent of the wages as long as the temporary disablement lasts, provided that the temporary disablement has lasted for not less than 3 days, excluding the day of accident. In case of permanent total disablement, the insured person will be given life pension at full rate, i.e., about 70 per cent of his wages, while in cases of partial permanent disablement a portion of it will be granted as life pension. The benefit is paid for Sundays as well. At the option of the beneficiary the permanent disablement pension can be commuted to a lump sum payment.

Beginning from 1.1.1980, rehabilitation allowance at standard benefit rate is paid to disabled insured persons for the period they remain admitted disabled insured persons for the period they remain admitted in the artificial limb centre for fixation, repair or replacement of the artificial limbs.

(4) Dependants' Benefit: The dependants' benefit consists of timely help to the eligible dependants of an insured person who dies as a result of an accident or an occupational disease arising out of and in the course of employment. Pension at the rate of 40 percent more than the standard benefit rate will be paid periodically to widow (satisfied) and children. The widow/widows share is $\frac{3}{5}$ th of the benefit and the legitimate of adopted son and daughter's share is $\frac{2}{5}$ each of the benefits. If their absence, a pension may be paid to other dependants. It will be available to the widow for life time or until she marries, to sons and unmarried daughters up to the age of 18 without and proof of education and to infirm or wholly dependant offspring as long as the infirmity lasts. Where neither a widow nor a child is left, the dependants' benefit is payable to dependant parent or grandparent for life equivalent to $\frac{3}{10}$ ths of the full rate and if there are two or more parents or grand parents the amount payable to them shall be equally divided between them.

(5) Funeral Benefit: This benefit was introduced in the year 1968. Accordingly, an amount not exceeding Rs. 1,400 is payable as funeral benefit to the eldest surviving member of the family of the deceased insured person. When, however, the insured person did not have a family or was not living with his family at the time of his death, it is payable to the deceased insured person. The time limit for claiming the benefit is three months from the death of insured person.

(6) Medical Benefit: The kingpin of the scheme is medical benefit which consists of medical attendance and treatment of insured persons and their families. Outpatient medical care, under the scheme, is provided either through service system, i.e., dispensaries administered by full-time staff of the state governments or through panel system, i.e., part-time private medical practitioners, called insurance medical practitioners. This benefit has been divided into three parts:

(a) Restricted Medical Care : It consists of outpatient medical care at dispensaries or panel clinics. In these institutions, facilities of consultation with medical officers, supply of drugs, pre-natal and post-natal care, family planning and immunization services are available. The beneficiaries are also entitled to call a doctor to their house to see a serious case.

(b) Expanded Medical Care: This consists of consultation with specialists and supply of medicines and drugs as may be prescribed by them. This also includes facilities for special laboratory tests and X-ray examinations.

(c) Full Medical Care: It consists of hospitalization facilities, services of specialists and drugs and diet as are required for inpatients. An insured person and members of his family are entitled to medical care of all the above three varieties immediately on becoming insured under the scheme. Medical care continues to be available for a period of about 9 months, if contributions have been paid for half the number of days in a contribution period. Insured persons suffering from chronic ailments of long duration like tuberculosis, leprosy are

eligible for medical treatment for a further period of one year. An insured woman and an insured persons in respect of his wife shall be paid a sum of rupees tow hundred and fifty per case as medical bonus of confinement occurs at a place where necessary medical facilities under the ESI Scheme are not available. Insured persons are also provided artificial limbs. All services forming part of medical benefit are provided free of any extra charges. It is administered by the respective state governments except in Delhi where the Corporation has its own network of hospitals and dispensaries. 7/8th of the expenditure on medical benefit is borne by the Corporation and 1/8th by the state governments. Over the years medical car is claming an increasingly large share of the total funds of the ESIC. The insurance Medical Practitioners constitute the heart of the panel system who are paid capitation fee for their services.

Case Law

- Where cabaret artists and orchestra players were engaged by the restaurant, whose performances were not an integral part of the business of the restaurant, were not persons employed but only self-employed persons who would not count in the number of persons “employed for wages” by the restaurant for determining the applicability of the Act to the restaurant (*ESIC v. Maharaja Bar and Restaurant 1950 56 FJR 279*)
- The employees in all the branches of an establishment or factory within a state can be aggregated for the purpose of coverage under the E.S.I. Act, 1948, notwithstanding the fact that the head office of the establishment or factory is situated outside the state. The situs or coverage of the head office of the establishment or factory is not relevant for the purpose of the coverage of the employees in the branch offices. The crucial consideration is whether the employees in the branches are within the fold of the definition of “employee” in section 2(9) of the Act. If this foremost test is satisfied, the issue of the coverage of the head office

recedes to the background. The provisions of the Act can be extended by the state government by notification to any establishment. Therefore, the coverage of the head office as a condition precedent for the coverage of the employees in the branch office is not visualized by the provisions of the Act (*ESIC v. South Eastern Roadways 1983 63 FJR 113*)

- According to Sub-section (3), the provisions of the Act come into force in any specified area with effect from the date appointed by the central government by a notification. According to sub-section (4), the moment the Act comes into force in any area, every factory located within that area comes within the purview of the Act. Thus so far as factories are concerned, no separate notification by the central government under sub-section (5) is necessary. Whether such a factory has been registered under the Factories Act is not relevant for the purpose of the ESI Act. A hotel in which power is used in its kitchen for manufacturing articles of food falls within the definition of the word “factory”; if it employs more than 20 persons. The Act applies to all employees of hotel as the term includes not only persons employed in the factory but also persons connected with the work of the factory (*All India ITDC Employees’ Union v. Hotel Ashok 1984 64 FJR 184*)
- In the case of *ESIC, Trichur v. Parameswaran Pillai*, the Kerala High Court held that in a welfare state the management is not only interested in boosting up production and maintaining economy, but also in creating proper atmosphere for which may in its turn add to the efficiency of the working of the business and trade of the employer. When an employee was deputed to participate in a football match by the management and while on his way to the playground he met with an accident which ultimately resulted in his death, the accident is one which arose out of and in the course of employment of the employee (1976 49 FJR 440)

- Francis De Costa, the respondent met with an accident on June 26, 1971 while he was on his way to his place of employment. The accident occurred at a place which was about one kilometer away to the north of the factory. The time of occurrence was 4.15 p.m. The respondent was going to his place of work on bicycle. He was hit by a lorry belonging to his employer, M/s. J. P. Coats (P) Ltd. He sustained fracture injuries and was in hospital for 12 days. His claim for disablement benefit was allowed by ESI Court and appeal against the same was also dismissed. Allowing the appeal by special leave, the Supreme Court held that the injury suffered by the workman one kilometer away from the factory while he was on his way to the factory was not out of employment. There was no casual connection between the accident and the employment. In order to succeed, it has to be proved that (1) there was an accident, (2) the accident had a casual connection with the employment, and (3) the accident must have been suffered in course of employment. (R.D. ESIC & Anr. V. Francis De Costa & Anr. 1996-II CLR 812 SC).
- After the amendment to section 2 (8) i.e. 'employment injury' in 1966, it is not material where the accident occurred, whether it was inside the factory or outside. It is now sufficient if it is proved that the injury to the employees was caused by an accident arising out of and in the course of employment, no matter when it occurred and where it occurred. There is not even a geographical limitation. The accident may occur within or outside the territorial limits of India. However, the place or time of accident should not be totally unrelated to the employment. There should be a nexus or casual connection between the accident and employment (R.D. ESIC v. Ranga Rao 1982 I LLJ 29).

- It was held in the case of Tata Oil Mills Co. Ltd., Ernakulam v. ESIC (1978 II LLJ 182), that if certain persons are employed principally for the work of a particular factory they would come under the definition of “employee” in relation to that factory, although they may sell goods of the other factories also.

THE EMPLOYEES’ PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

The Act was passed with a view to making some provision for the future of the industrial worker after his retirement or for his dependants in case of his early death and inculcating the habit of saving among the workers. The object of the Act is to provide substantial security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread-winner and in some other contingencies.

Main Features of the Act

The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 is applicable to factories and other establishments engaged in specified industries, classes of establishments employing 20 or more persons. The Act, however, does not apply to co-operative societies employing less than 50 persons and working without the aid of power. The Central Government is empowered to apply the provisions of this Act to any establishment employing less than 20 persons after giving not less than two months’ notice of its intention to do so by a notification in the Official Gazette. Once the Act is applied, it does not cease to be applicable even if the number of employees falls below 20. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with the mutual consent of the employer and the majority of the employees under Section 1(4) of the Act. Employees drawing a pay not exceeding Rs.5,000 per month are eligible for membership of the fund. Every

employee employed in or in connection with the work of a factory or establishment shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

The normal rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10 per cent of the pay of the employees. The term “wages” includes basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any. The Act, however, provides that the Central Government may, after making such enquiries as to deems fit, enhance the statutory rate of contribution to 12 per cent of wages in any industry or class of establishments.

The contributions received by the Provident Fund Organisation from unexempted establishments as well as by the Board of Trustees from exempted establishments shall be invested, after making payments on account of advances and final withdrawals, according to the pattern laid down the Government of India from time to time. The exempted establishments are required to follow the same pattern of investments as is prescribed for the unexempted establishments. The provident fund accumulations are invested in government securities, negotiable securities or bonds, 7-year national saving certificates or post office time deposits, and special deposit schemes, if any.

Case Law

- It was held in the case of *Indian Institute of Technology v. RPFC* (1979-II LLJ 146) that mess attached to a hostel is an integral part of the Institute and not an independent establishment within the meaning of the Act and hence it cannot be brought under the Act.
- Contract labour is included to determine the strength of the workmen for deciding the question of coverage of the factory or the establishment (*Nazeena Traders v. RPFC* 1966-I LLJ 334).

- The Act does not automatically cease to apply to an establishment the moment the number of employees is reduced below 15. The employer is bound to give notice within one month of the date of such cessation, by registered post, and only then he can cease to give effect to the provisions of the Act (*Daullat Ram Dharam Bir v. RPFC v. Amarnath and Others* (1984-1 LLJ 146) that what was required to be done by the establishment was to inform the Regional provident Fund Commissioner that the number has fallen below the requisite number. This information had to be given within one month of the expiry of one year from the date when the number fell below the requisite number. No permission was required from the RPFC to opt out. A mere intimation had to be given.
- On the coverage of a factory or an establishment under section 1(3)(a) of the Act, the provisions of the Act become applicable to employees at its head office also, though situated in a different place. In this case, the factory was closed down permanently and the employer ceased to make deductions from the wages of employees working in the head office on the ground that they ceased to be covered by the provisions of the Act. One of the employees in the head office claimed that the Act continued to apply to him notwithstanding that it ceased to apply to the factory. The Bombay High Court held that once the main establishment is closed or ceases to function, then the branches or department of the establishment, which were not otherwise covered by the provisions of Section 1(3)(a) of the Act, cannot claim advantage of the benefits of the Act. Section 1(5) of the Act which provides that an establishment to which the Act applied shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time falls below 20, would apply only to cases where the establishment itself continues but will have no application to allied departments or branches

which are not independently covered by Section 1(3)(a) of the Act (V. Venkatesh v. Union of India : 1981-59 FJR 183).

- It was held in the case of A.Gangadharan v. Government of India that both printing press and office located in different premises belong to one unit and the Act which was applicable to the press extends to the office also because there was an integration of financial and managerial functions (1978 II LLJ 317).
- Persons engaged for putting up factory building and staff quarters of an establishment manufacturing teleprinters are not within the definition of “employee” under the P.F. Act. They are not employed in or in connection with the work of the establishment (Workmen of Hindustan Teleprinters Ltd., v. RPFC, Madras 1978-52 FJR 164).
- An apprentice engaged mainly for learning work is not an “employee” under the Act. He may contribute his labour during the training towards the work of the person who engaged him for training. This is incidental; the main or predominant objective being that he should learn his work during the period of training (Regional Provident Fund Commissioner v. Lord Krishna Bank Ltd. 1983 63 FJR 107). It was also held by the Madras High Court in the case of the Poly Clinic v. RPFC and Others that apprentices are not “employees” as defined in section 2(f) of the Act (1983 I LLJ 449).
- The question came up before the Supreme Court in the case of bridge and Roof Co. v. Union of India (1962 II LLJ 490) whether production bonus is part of “wages” as defined in Section 2(b) of the EPF Act? The company had two production bonus schemes, one for the benefit of the hourly-rated workers and the other for the rest.

Production bonus at certain rates was paid to the concerned workmen when the production reached a particular tonnage per quarter or per year respectively. The company was asked by the central government under Section 19-A of the Act to include such payments in the provident fund contributions. The Supreme Court held that production bonus paid under the terms of the scheme in question could not be considered part of the basic wages. The schemes provide extra payments for superior performance beyond a particular base or standard. In such cases the workers are not bound to produce anything beyond the base or standard that is set out. Whenever the workers produce beyond the base or standard, what they earn would not be basic wages but production bonus or incentive wage. Such production bonuses must be held to be outside the definition of 'basic wages' in Section 2(b) of the Act because of exception of all kinds of bonus from the main definition.

- Clause (b) of Section 2 of the Act which defines "basic wages" shows all emoluments paid to an employee are not basic wages. The basic wage must be earned while on duty and must be provided for by the terms of employment or contract of service. Ad hoc payment made to employees by the employer in pursuance of a settlement cannot be treated as basic wages and is not an allowance of any kind. Hence no contribution is payable in respect thereof (*Burmah Shell Oil Storage v. RPFC* 1980-81 57 FJR 41).
- The definition of wages under Section 2(b) excludes a number of allowances grouped in sub-clause (ii) of the section.

THE MATERNITY BENEFIT ACT, 1961

The Maternity Benefit Act is a piece of social legislation enacted to promote the welfare of working women. The Act prohibits the working of pregnant women for a specified period before and after delivery. It also provides for maternity

leave and payment of certain monetary benefits for women workers during the period when they are out of employment on account of their pregnancy. Further, the services of a woman worker cannot be terminated during the period of her absence on account of pregnancy, except for gross misconduct.

The salient feature of the Act are as follows:

This maximum period for which a woman can get maternity benefit is twelve weeks. Of this, six weeks must be taken prior to the date of delivery of the child and six weeks immediately following that date.

To be entitled to maternity leave however, a woman must have actually worked for not less than 80 days in the twelve months immediately preceding the day of her expected delivery. Only working days are to be taken into account when calculating these 80 days. Weekly holidays and all leave-paid or unpaid be deemed as working days.

To avail of the six weeks' leave before expected delivery, a notice must be given in writing stating the date of absence from work and also a certificate of pregnancy. (There is a form for both which must be filled in). the employer has to pay the maternity benefit in advance for this period to the concerned employee or any person nominated for this purpose.

For the six weeks' leave from the date of delivery, another notice must be sent together with a certificate of delivery after the child is born. The employer has to pay to the employee or her nominees, maternity benefit within 48 hours of receiving this notice. The failure to give notice for the subsequent six weeks does not, however, disentitle a woman from maternity benefit.

In the case of *B. Shah v. Labour Court, Coimbatore and Others* (1978-I LLJ 29) the Supreme Court held that computation of maternity benefit in case of a female worker engaged on a daily wage basis has to be made for all the days including sundays and rest days which may be wage-less holidays upto six weeks preceding and excluding the day of delivery as also for all the days falling

within six weeks immediately following the day of delivery thereby ensuring that the woman worker gets for the said period not only the amount equaling 100% of the wages which she was previously earning but also the benefit of the wages for all the Sundays and rest days falling within the aforesaid two periods. This being a beneficial piece of legislation interpretation of law will have to be in tune with the social justice. It is also in conformity with the Maternity Benefit Protection (Revised) Convention adopted by the ILO in 1952. the Court struck down the decision of the Full Bench of the Kerala High Court in Malayalam Plantation Ltd. V. Inspector of Plantations (A.I.R. 1975 Ker. 86).

Every woman entitled to maternity benefit is also entitled to a medical bonus of rupees 250 if no pre-natal confinement and postnatal care has been provided for by the employer free of charge.

In case of miscarriage a woman is entitled to six weeks leave with pay from the day of miscarriage. In this case, too, she must give notice together with a certificate of miscarriage.

For illness arising out pregnancy, delivery, premature birth or miscarriage, a woman employee can take extra leave up to a maximum period of one month. She has, of course, to get a certificate from a doctor in the prescribed form. This leave can be taken at and time during pregnancy, or can be attached to the six weeks prior to or after delivery or miscarriage.

With a view to encourage planned parenthood, the Act provides for (a) six weeks leave with wages in cases of medical termination of pregnancy (MTP); (b) grant of leave with wages for a maximum period of one month in cases of illness arising out of MTP or tubectomy; and (c) two weeks' leave with wages to women workers who undergo tubectomy operation.

A female worker can ask for light work for one month preceding the six weeks prior to her delivery or during these six weeks, if for any reason, she does not avail of her leave.

An employer is prohibited from knowingly employing any woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. Likewise, a woman is prohibited from working in any establishment during this period of six weeks. Further, no pregnant woman shall on a request being made by her, be given (a) any work which is of arduous nature, (b) any work which involves long hours of standing, (c) any work which in any way is likely to interfere with her pregnancy or the normal development of foetus or is likely to cause her miscarriage or otherwise adversely affect her health.

A female employee resuming duties after delivery is to be given two nursing breaks of prescribed duration, in addition to her regular rest intervals for nursing the child until her child attains the age of fifteen months. Each state has its own rules as to the length of this break. (In Maharashtra, it is fifteen minutes).

An employer cannot reduce the salary on account of light work assigned to her or breaks taken to nurse her child. Further, she cannot be discharged or dismissed on grounds of absence arising out of pregnancy, miscarriage, delivery or premature birth. Nor her service conditions be altered to her disadvantage during this period.

If a woman entitled to maternity benefit dies before receiving her dues, the employer has to pay the person nominated by her in the notice, or to her legal representative, in case there is no nominee. If she dies during the six weeks before delivery, maternity benefit is payable only for the days up to and including the day of her death. If she dies during delivery or during the following six weeks, leaving behind a child, the employer has to pay maternity benefit for the entire six weeks, but if the child also dies during the period, then for the days up to and including the death of the child.

However, a female employee can be deprived of maternity benefit if : (a) after going on maternity leave, she works in any other establishment during the

period she is supposed to be on leave; and (b) during the period for her pregnancy, she is dismissed for any prescribed gross misconduct. The acts which constitute misconduct are : (a) willful destruction of employer goods or property ; (b) assaulting any superior or co-employee at the place of work ; (c) criminal offence involving moral turpitude resulting in conviction in a court of law ; (d) theft, fraud or dishonesty in connection with the employer's business or property ; and (e) willful non-observance of safety measures or rules or willful interference with safety devices or with or with fire fighting equipment.

The aggrieved woman may, within sixty days from the date on which the order of such deprivation is communicated to her, appeal to the prescribed authority and the decision on such appeal shall be final.

An abstract of the provisions of the Act and the decision on such appeal shall be final.

An abstract of the provisions of the Act and the rules made there under have to be exhibited in the language or languages of the locality in a conspicuous place in every part of the establishment in which women are employed.

The Act provides for penalties for contravening the provisions of the Act.

The Central Government has power to exempt an establishment from the operation of all or any of the provisions of the Act if it is satisfied that the benefits granted by the establishment are not less favourable than those provided in the Act.

A part from the benefits provided under the central act, some state enactments provide additional benefits such as free medical aid, maternity bonus, provision of crèches, and additional rest intervals. In case benefits are improperly withheld, a complaint can be made to the inspectors appointed by the government. The Central Government is responsible for administration of the provisions of the Act in mines and in the circus industry, while the State Governments are responsible for administration of the Act in factories,

plantations and other establishments. So far as the coal mines are concerned the Coal Mines Welfare Commissioner is responsible for administration of the Act. The Director General of Mines Safety administers the Act in mines other than coal mines. Rules framed under the central and state enactments require employers to furnish to the administering authorities annual returns showing the number of women workers covered, number of claims made, amount paid, during the year. The information contained in these returns is analysed and published by the state governments in their annual reports on the working of the Act.

THE PAYMENT OF GRATUITY ACT

Main Features of the Act

The Act is applicable to:

- (a) Every factory, mine, oilfield, plantation, port and railway company;
- (b) Every shop or establishment within the respondents meaning of any law for the time every motor transport undertaking in which 10 more persons are employed or were employed on any day of the preceding 12 months;
- (d) Such other establishments or class of establishments in which 10 or more employees are employed or were employed on any day of the preceding 12 months, as the Central Government may, by notification, specify in this behalf.

The Act is made applicable only to a “Railway Company” but not to the “Railway Gratuity as an additional retirement benefit has been secured by labour in numerous instances, either by agreement or by awards. It was conceded as a provision for old age and a reward for good, efficient and faithful service for a considerable period. But in the early stages, gratuity was treated as a payment gratuitously made by an employer at his will and pleasure. In the course of time, gratuity came to be paid as a result of bilateral agreements or industrial adjudication. Even though the respondents payment of gratuity was voluntary in

character, it had led to several industrial disputes. The Supreme Court had laid down certain broad principles to serve as guidelines for the framing of the gratuity scheme. They were:

- (i) The general financial stability of the concern;
- (ii) Its profit earned in the past;
- (iii) Reserves and the possibility of replenishing the respondents reserves; and
- (iv) Reserves and the possibility or replenishing the reserve; and
- (v) Return on capital, regard being had to the risk involved

The first central legislation to regulate the payment of gratuity was the working journalists (conditions of service) and Miscellaneous Provisions Act, 1955 . The Government of Kerala enacted factories, plantations, shops and establishments. In 1971, the West Bengal Government promulgated an ordinance which was subsequently replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971. After the enactment of these two Acts, some other state governments also voiced their intention of enacting similar measures in their respective states. It became necessary, therefore, to have a Central law on the subject so as-

- (i) To ensure a uniform pattern of payment of gratuity to the employees throughout the country, and
- (ii) To avoid different treatment to the employees of establishment having branches in more than one state, when, under the conditions of their service, the employee were liable to transfer from one state to another.

The proposal for a uniform legislation on gratuity was discussed at the Labour Ministers' Conference at New Delhi August 1971 and also at the Indian Labour Conference at its session held in October 1971. there was general agreement at

ht LMC and ILC that a central legislation on payment of gratuity might be undertaken being in force in relation to shops and establishments in a state, in which 10 or more persons are employed or were employed on any day of the preceding 12 months;

(c) To Administration". Therefore, the provisions of the Act are not applicable to the Southern Railway administered by the Central Government. Moreover, Southern Railway is not an establishment, commercial establishment of shop within Section 1(3) (b) of the Payment of Gratuity Act (Executive Engineer (construction) Southern Railway, Erode v. K.J.Varghese 1979 54 FJR 80).

The Haryana State Electricity Board claimed that the provisions of the payment of Gratuity Act, 1972, would not be applicable to it as the Electricity Board was exempted from the provisions of the Punjab Shops and Commercial Establishments Act, 1958, by section 3(b) thereof. But it was held by the Court that the provisions of the Act clearly applied to the Electricity Board and Gratuity Act would apply to such establishment (Haryana State Electricity Board v. Controlling Authority 1983 62 FJR 287).

If a piece rated employee did not actually work was not given to him, that period has to be reckoned as continuous service (Vallabhadas Kanji (p) Ltd . v. Esmail Koya & Others 1978 52 FJR 470)

The teller's satisfied allowance drawn by an employee, not being dearness allowance, is at once attracted by the words" other allowance" in section 2(S) and as such teller's allowance cannot be included in the basic pay for purpose of calculating the gratuity (Central Bank Of India , Hyderabad, v. T.K.Ramamoorthy and Others 1978 52 FJR 490).

A company having its main place of business of textile mill in one state and a branch mill in another state would fall within section 2(a)(i)(b) of the Act and appropriate government, in relation thereto, will be the Central Government and applications under section 7 of the Act should be made to the Controlling

Authority appointed by the Central Government (Binny Ltd. V. Commissioner of Labour and Others 1980 57 FJR 139).

In Consolidated Coffee Ltd. V. Uthaman (1980 ILLJ 83) the question came up by a writ petition before the Kerala High Court is: How to calculate gratuity for a full-time employee engaged in a seasonal establishment: It was held that “seasonal establishment” is not defined in the Payment of Gratuity Act nor in the E.S.I. Act nor in the Employees’ Provident Fund Act. The meaning of the expression has, therefore, to be understood in the popular sense. Any factory which only works during certain seasons of the year, and not throughout the year, is a seasonal establishment. The rate of gratuity has to be determined with reference to the period of employment of an employee in a particular establishment. In the instant case, it is found 36 employees work throughout the year while 160 work only during seasons. The factory is a seasonal establishment in respect of those persons who work seasonally and it is non-seasonal establishment in respect of others who are engaged throughout the year. The Gujarat High Court has held that even in seasonal establishments employees working throughout the year in jobs like maintenance, would be entitled for gratuity at the rate of 15 days’ wages. But the employees who work only during seasons would be entitled for gratuity at the rate of 7 days’ wages (Akbar Hussain v. Appellate Authority 1979 38 FLR 196).

REGULATION OF INDUSTRIALRELATIONS

Objects of the Act

according to the Notification in the Official Gazette of India, 1946, Pt. V., act was enacted to achieve the following object:

“Experience of working of the Trade Disputes Act of 1929, has revealed that its main defect is

Case Law

The Act is made applicable only to a "Railway Company" but not to the "Railway Administration". Therefore, the provisions of the Act are not applicable to the Southern Railway administered by the Central Government. Moreover, Southern Railway is not an establishment, commercial establishment of shop within Section 1(3) (b) of the Payment of Gratuity Act (Executive Engineer (construction) Southern Railway, Erode v. K.J.Varghese 1979 54 FJR 80).

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A company having its main place of business of textile mill in one state and a branch mill in another state would fall within section 2(a)(i)(b) of the Act and appropriate government, in relation thereto, will be the Central Government and applications under section 7 of the Act should be made to the Controlling Authority appointed by the Central Government (Binny Ltd. V. Commissioner of Labour and Others 1980 57 FJR 139).

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REGULATION OF INDUSTRIAL RELATIONS

(1) Objects of the Act

According to the Notification in the Official Gazette of India, 1946, Pt. V., act was enacted to achieve the following object:

“Experience of working of the Trade Disputes Act of 1929, has revealed that its main defect is that while restraints have been imposed on the rights of strike and lockout in public utility services, no provision has been made to render the proceedings institutable under the act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a Court of Inquiry conclusive

and binding on either parties to the dispute.” The defect was overcome, during the war, by empowering under Rule 18-A of the Defence of Indian Rules, the Central Government to refer industrial disputes to adjudicators and to enforce the awards. Rule 81-A is being kept in force by the Emergency. Power (Continuancy) ordinance, 1946, for further period of six months, as industrial unrest in checking, which this rule has proved useful, is gaining momentum due to stress of post-war industrial readjustments, the need of permanent legislation in replacement of this rule is self-evident. This bill embodies the essential principles of Rule 81-A which has proved generally acceptable to both employers and workmen retaining impact for the most part, the provision of the Trade Disputes Act. 1929.

The Preamble of the Act reads. “An Act to make provision for the investigation and settlement of industrial disputes and for certain other purposes.”

This is a special legislation, which applies to workmen drawing wages not exceeding a specified amount per month and which governs the service conditions of such persons. It may be regarded as a supplement to the Indian Contract Act, 1972, whose aim is to regulate the contractual relationship of master and servant in ordinary sense. This Act deals with the prevention and settlement of conflict between the two parties and there by try to improve relationship between them. Thus, the purpose of this Act is to harmonize the relations between the employer and the workmen; and to afford a machinery to settle disputes that arise between the management and the workmen which, if not settled, would undermine the industrial peace and cause dislocation and even collapse of industrial establishments, essential to the life of the community. This industrial peace is secured through voluntary negotiation and compulsory adjudication.

On the basis of the judgements given from time to time , by the Supreme Court, the principal objectives of the Act may be stated as below:

- (a) To promote measures for securing and preserving amity and good relations between the employers and the employees, to minimize the differences and to get the dispute settled through adjudicatory authorities;
- (b) To provide a suitable machinery for investigation and settlement of industrial disputes between employers and employees, between employers and workmen; or between workmen with a right of representation by a registered trade union or by an association of employees;
- (c) To prevent illegal strikes and lockouts;
- (d) To provide relief to workmen in matters of lay-offs, retrenchment, wrongful dismissals and victimization;
- (e) To give the workmen the right of collective bargaining and promote conciliation.

The purpose of the Act, according to Patna High Court , is “ amelioration of the conditions of workmen in an industry.”

(2) New Principles Under The Act

The Industrial Disputes Act can be described as the mile-stone in the historical development of industrial law in India. With the passage of this Act, a number of new principles relating to industrial relations had been introduced in the country, such as;

First, a permanent machinery (conciliation) has been set up for the speedy and amicable settlement of industrial disputes. To expedite conciliation proceedings, maximum time limit has been prescribed within which the machinery must be set in motion. The deadline is fixed from the date of notice of strike.

Secondly, compulsory arbitration in public utility services, including the enforcement of arbitration awards. Has been recognized.

Thirdly, strikes and lockouts during the pendency of conciliation and arbitration proceedings and the arbitration awards, enforced by the government order, are prohibited.

Fourthly, specific time limits for various stages of conciliation and arbitration, to eliminate delays, are prescribed.

Fifthly, an obligation on employers to recognize and deal with representative trade unions, has been imposed.

Sixthly, Works Committee to provide machinery for mutual consultation between employers and employees have been set up.

Seventhly, the industrial disputes may be referred to an Industrial Tribunal where both parties to any industrial dispute, apply for such reference or where the appropriate government considers it expedient to do so. In case a dispute actually exists or is apprehended, it can be referred to a Tribunal by the appropriate government.

Some of the important highlights of the Industrial Disputes (Amendment) Act, 1982 are :

- (i) It has empowered the Central Government to refer an industrial dispute to a Labour Court or an Industrial Tribunal where, the dispute in relation to which the Central Government is the appropriate Government.
- (ii) The term "Industry" has been defined widely in the light of the Supreme Court decision in the case of Bangalore Water Supply Company.
- (iii) It shall cover under the term "workmen" even the supervisory staff whose wages do not exceed Rs. 1,600 per month.
- (iv) It has made provision for setting up of a time-bound grievance redressal procedure in establishments employing 100 or more workers, by inserting a new Chapter II-B.
- (v) It stipulates a time limit for deciding industrial disputes, both individuals and collective and also for disposal of claims, applications and other

references by the Labour Court, the Industrial Tribunal or the National Tribunal with a view to secure speedier justice to workmen.

- (vi) It provides for the continuation of industrial disputes proceedings, in the case of death of a workman, by the heirs etc.
- (vii) It has inserted a new section 17. B providing for payment of full wages, etc., to the workman, if the employer prefers an appeal to the High Court or to the Supreme Court, over the decision of the Labour Court, Tribunal or National Tribunal regarding reinstatement of any workman.
- (viii) A new provision for lay-off in mines on various grounds has been incorporated.
- (ix) Chapter V-B has been made applicable to industrial establishments employing 100 workmen.
- (x) A new chapter V-C has been added dealing with Unfair Labour Practices by both employers as well as workmen, and also by trade unions and also periods for the imposition of penalties, etc.

The new amendments seek to achieve the above objectives and to provide for certain other consequential and clarificatory changes in the Act.

(3) General Scheme of The Act

The Act contains 40 Sections which have been grouped in 7 Chapters.

Chapter I deals with the preliminary matters like the respondents title. Extent, commencement, definitions, particularly those relating to appropriate government, average pay, employer, workmen, industry, industrial dispute, strike, lay-off, lockout, public utility services, retrenchment, bonus, award and settlement, etc.

Chapter II details out the various Authorities under the Act and how they are constituted. These comprise works Committee, Conciliation Officers, Boards of Conciliation, Courts of Enquiry, Labour Courts, Industrial Tribunal and National Tribunals. It also deals with disqualifications for the presiding officers of Labour

Court, Tribunal and National Tribunals; filling of vacancies; and finality of orders constituting Boards. Chapter IIA deals with notice of change and the power of the government to exempt. Chapter –II B deals with reference of certain individual disputes t grievance settlement authorities.

Chapter III relates to reference of disputes to the various authorities, their cancellation, amendment of modification and voluntary reference by parties of disputes to arbitration.

Chapter IV deals with the procedures, powers and duties of authorities; procedure to be adopted in dealing with the industrial disputes; publication of the reports and awards; settlement and commencement of the award; period of operation of settlements and awards.

Chapter V and VA deals with strikes, lockouts, their prohibition, illegal strikes as well as lay-off. Retrenchment, compensation, re-employment of retrenched workers. Chapter V-B deals with closing down establishments and V-C deals with unfair labour practices.

Chapter VI deals with penalties for illegal strikes and lockouts, instigation, breach of settlement and other offences.

Chapter VII deals with miscellaneous provisions.

The Act contains 5 schedules. Schedule First specifies the industries which may be declared to be the public utility services; Schedule second deals with matters within the jurisdiction of Labour Courts; Schedule Third deals with matters within the jurisdiction of Industrial Tribunals; and Schedule Fourth mentions the conditions of service for change to which notice is to be given Schedule Fifth deals with unfair labour practices.

INDUSTRIAL EMPLOYMENT(STANDING ORDERS)ACT

The Object of the Act

The preamble of the Act clearly says that the “Standing Orders shall deal with the conditions of employment of workers in an industrial establishment. It is

obligatory upon all employers/covered by this Act to define precisely the conditions of employment under them which will govern relations between the employer and the employees and to make the said conditions known to the workmen employed by them. “The Act provides uniformity of terms of employment in respect of all employees belonging to the same category and discharging the same or similar work in an industrial establishment.

The standing orders bring home to the employers and the employee as to on what terms and conditions the workmen are offering to work and the employer is offering to engage them . This Act requires the employers to define the conditions of service in their establishments and to reduce them to writing and to get them compulsorily certified with a view to avoid unnecessary industrial disputes . In other words, Standing Orders are intended to be the nature of “ shop rules “ promulgated by employers under statutory obligations . They may be described as the written “Code of Conduct “ for employees , for any act subversive of discipline is described as an act misconduct. In actual practice, they also represent a form of compulsory collective bargaining agreement with a built –in device for compulsory arbitration, if any dispute relating to the fairness and reasonableness of the rules , as also their and interpretation arises.

This aims of the Act have been :

- (1) To define , with sufficient precision , the principal conditions of employment in industrial establishments under them and to make the said conditions known to workmen employed by them.
- (2) To regulate standards of conduct of the employers and employees so that labour –management relations could be improved.

- (3) To maintain proper discipline, harmonious working conditions and achieve higher productivity by providing satisfactory employment and working conditions.
- (4) To provide for redressal of grievances arising out of employment or relating to unfair treatment or wrongful exaction on the part of the employers against the employees.
- (5) To specify the duties and responsibilities of the both employers and the employees.
- (6) To provide statutory sanctity and importance to the standing orders.

In sum , the purpose of Standing Orders is to create an attitude of mind among both the parties so that industrial harmony is achieved in an industrial establishment. The Orders form part of the contract between management and everyone of its employee. These are reduced in writing and they are to be compulsorily certified with a view to avoid unwanted industrial disputes. Once the Standing Orders come into force, they bind all those presently in employment of the concerned establishments as well as those who are appointed thereafter; and also those who were employed previously.

The Act makes provision for certification of Standing Order, which after certification from competent authority under the Act, constitute the statutory terms and conditions of employment in industrial undertakings. They specify duties and responsibilities on the part of both employers and employees. they make both of them conscious of their limitations. They require. On the one hand, the employers to follow certain specified rules and regulations as laid down regarding working hours, pay days, holidays, granting of leave to the employees, temporary stoppages of work, termination of employment, supervision or dismissal in certain conditions. On the other hand, they require that the

employees should adhere to rules and regulations mentioned in the Standing Orders. Standing Orders try to create an attitude among both the parties which is beneficial for achieving industrial harmony.

Main Features of the Act

The substance of the Act may be stated thus:

- (a) Standing Orders cover all matters specified in the Schedule of the Act.

- (b) These are approved by the proper authority and published in such a way that all the workers can be familiar with them.

- (c) All the principal terms and conditions of employment, except matters pertaining to wages and other forms of remuneration, are settled clearly under the Standing Orders.

- (d) Most of the mutual rights and duties of workers and management are clearly defined.

- (e) The procedure to be followed whenever there is any dispute or disagreement over these mutual rights and duties are also specified. The procedure which the management is to follow in disciplining the worker, and the procedure which the worker has to follow when he has a grievance are both given in clear language.

EXERCISE:

1. Indicate the major features of Factories Act.
2. Summarise the features and provisions of wage and bonus legislation
3. What are the objectives and features of Trade Union Act 1926?
4. What are the objectives of workmen's Compensation Act?
5. State the main features of ESI Act 1948?
6. Discuss the major features of Provident Fund Act 1952 ?
7. How does maternity benefit Act 1961 help woman?
8. Explain the benefit the payment of Gratuity Act 1972?
9. Discus the legislation on industrial employment standing orders