SREENIVASA INSTITUTE OF TECHNOLOGY AND MANAGEMENT STUDIES::CHITTOOR

DEPARTMENT OF MANAGEMENT STUDIES

II MBA III Semester – Elective -IV

Labour Law and legislation

UNIT1

Syllabi: UNIT1 - Introduction to Labour Legislation

Labor Laws: Concept, Origin- International Labor Organization and Indian Labor Legislations, Indian Constitution and Labor Legislations, Labor Policy, Emerging Issues and Future Trends

1.1 Introduction to labour law

Labour legislation is the body of laws and regulations governing the relationship between employers, employees, and their organizations, establishing rights, obligations, and standards for working conditions, safety, wages, and industrial relations to ensure fairness, protect workers from exploitation, and promote a harmonious workplace. These laws aim to balance the interests of employers and employees while upholding principles of social justice and economic welfare.

Labour law, or employment law, consists of regulations, rulings, and precedents that define the rights and obligations of workers and employers, governing the workplace relationship. It covers areas such as working conditions, wages, workplace safety, and trade unions. Key objectives of labour legislation include ensuring social justice, protecting workers from exploitation, promoting fair wages, and maintaining harmonious employer-employee relations.

1.2 The concept of labour law

Labour legislation are laws created to regulate the employment relationship and protect workers' rights, arising from the harsh conditions of the Industrial Revolution. Key aspects include promoting social justice, ensuring social equality, providing social security, and supporting the national economy. These laws cover wages, working conditions, health, safety, industrial relations, and the right to organize, aiming to balance the power between employers and employees and foster productive workplaces.

1.2.1 General Introduction

Labour legislation refers to all government-enacted laws designed to provide social and economic security to workers. It aims to manage the complex relationship between employers and employees, covering aspects like wages, working hours, safety, and the right to form unions. The overall purpose is to ensure fairness, protect workers' rights, and maintain industrial peace.

1.2.2 Industrial Revolution and the Need for Labour Legislations

The Industrial Revolution brought about widespread social upheaval and exploitation of workers. In response to these difficult conditions—including long hours, poor pay, and unsafe working environments—governments began to implement laws to protect the rights of employees. Labour laws emerged as a way to address the power imbalance between employers and the newly formed working class and to prevent the dehumanizing effects of unchecked industrialization.

1.2.3 The Main Ingredients of Labour Legislations

The core elements or "ingredients" of labor legislation include:

- **Regulation of Wages**: Laws ensure that workers receive fair pay and timely payment.
- **Working Conditions**: Legislation addresses issues like hours of work, workplace safety, and health standards.
- **Industrial Relations**: Laws regulate the relationship between employers and employees, including the right to organize and engage in collective bargaining.
- **Social Security**: Provisions are made for workers' welfare through schemes like retirement funds and insurance.
- **Protection of Vulnerable Groups**: Specific laws often protect women and young workers from exploitation.

1.2.4 Principles of Social Justice, Social Equality, Social Security, National Economy and Labour Legislations

- **Social Justice**:
  Labour laws seek to create a level playing field by preventing exploitation and ensuring fair treatment for workers, embodying the principle of social justice.
- **Social Equality**:
  By guaranteeing equal opportunities and protecting against discrimination, these laws promote social equality in the workplace.

- **Social Security**:
  A fundamental goal is to provide a safety net for workers, ensuring they have financial support and protection through mechanisms like pensions and insurance during their working life and after retirement.
- **National Economy**:
  Fair employment practices and industrial peace, fostered by labour laws; contribute to overall economic stability and productivity, supporting the health of the national economy.

1.3 Origin of Labour Law

Emergence of labour legislation

The emergence of labour laws has its roots in the 18th and 19th centuries. The labour law emerged as a result of the industrial revolution that took place in those centuries. The Industrial Revolution changed the rural culture to industrial culture which led to various developments. It was due to the increasing capitalisation of the market. At that time, a lot of problems took place between the labour class and the employers. To safeguard the interests and the demands of the labour class, labour laws were enacted in various countries which gave certain rights to the workers working in an establishment. It protected the workers from being exploited by the rich people of industrial society.

The labour laws were first enacted by the Western Countries. England was the first country where workers were exploited by rich upper-class employers. This was due to uncontrolled and unregulated capitalisation. The laissez-faire system was also one of the reasons that took place due to industrialisation. The labour laws were enacted in 1802 to prevent child labour, to limit working hours, and to abolish night shifts in England when the UK Parliament passed bills relating to labour legislation. After England, many other countries also started enacting laws regarding labour classes. Various laws regarding health, safety, welfare, and working hours were passed by those countries. France was one of the countries where labour laws were enacted after the **French Revolution**, which took place in 1841. Germany, Japan, and the United States of America also introduced labour laws after World War I in 1935.

Evolution of labour legislation

The evolution of labour laws started with the establishment of the **International Labour Organization (ILO)** in 1919. It was due to the implementation of the **Treaty of Versailles** whose objective is to make various policies, and programmes relating to their works and its standards. 187 countries of the World are members of this organisation whose Constitution was drafted by the **Labour Commission**. It led to the formation of an executive body which was known as a tripartite organization that included representatives from three bodies, i.e., the employers, the workers, and the government. Certain issues relating to the labourers were looked into by ILO. Laws regarding working hours, night shifts, minimum age, unemployment, and maternity protection were being laid down by it to safeguard the rights of labourers. It became a specialized agency of the UN which was supervised by a committee of experts.

India, also, had labour laws before independence. Some of the laws regarding labour classes were **The Indian Slavery Act, 1843**, **The Indian Trade Unions Act 1926**, and **The Societies Registration Act, 1860**. These laws were repealed after India became independent. The **Industrial Disputes Act, 1947**, was enacted in 1947 which replaced all the previous Acts. Various rights of the workers were introduced to the **Indian Constitution** for protection from any kind of exploitation. Some rights relating to the labourers that were incorporated in the Constitution are equal work equal pay, abolition of child labour, abolition of bonded labour, decent living wages, maternity benefits, and right to work, just and human working conditions. These are the rights of the workers that are being safeguarded by the Indian Constitution working in an establishment. In the 20th century, these laws were codified and implemented by the Indian Parliament. With the changing times, labour laws started evolving over some time.

1.4 International Labour Organization (ILO)

History

The ILO was established as an agency for the League of Nations following World War I.

- It was established by the **Treaty of Versailles** in 1919.
- Its founders had made great strides in social thought and action before the establishment of the organization itself.
- It became the first specialised agency of the United Nations (UN) in the year 1946.
- The ILO has played a significant role in promoting labour and human rights. It had held a significant position during the Great Depression (1930s) for ensuring labour rights.
- It played a key role in the decolonization process and in the victory over apartheid in South Africa.
- The organization got the Nobel Peace Prize in 1969, for its efforts to improve peace amongst the classes, and for promoting justice and fair work for the workers.

Objective - International Labour Organization (ILO)

The ILO is the only tripartite U.N. agency. The ILO is a meeting point for governments, workers and employers of ILO's member States to set labour standards, improve upon policies and create programs that promote decent work for people. The four strategic objectives at the heart of the Decent Work agenda are:

- To develop and effectuate standards, fundamental principles, and fundamental rights at work.
- To ensure that men and women have equal access to decent work while enhancing opportunities for the same.
- To magnify the coverage and effectiveness of social protection for everyone.
- To strengthen Tripartism and social dialogue.

Structure -International Labour Organization (ILO)

The basis of the ILO is the tripartite principle. The ILO comprises the **International Labour Conference**, the **Governing Body**, and the **International Labour Office.**

- **International Labour Conference:**
    - The progressive policies of the ILO are set by the International Labour Conference.
    - The Conference is an annual event, which happens in Geneva, Switzerland. The conference brings together all the representatives of the ILO.
    - Function: It is a panel for the review of the important issues regarding labour.

Governing Body:

- The Governing Body is the executive body of the International Labour Organization.
- The governing body meets in Geneva. It meets three times annually.
- The Office is the secretariat of the Organization.
- It is composed of 56 titular members, and 66 deputy members.
- Functions:
    - Makes decisions regarding the agenda and the policies of the International Labour Conference.
    - It adopts the draft Programme and Budget of the Organization for submission to the Conference.
    - Election of the Director-General.

International Labour Office:

- It is the permanent secretariat of the International Labour Organization.
- **Functions:** It decides the activities for ILO and is supervised by the Governing Body and the Director-General.
- **The ILO member States hold periodically regional meetings to discuss the relevant issues of the concerned regions.**

- Each of the ILO's 183 Member States has the right to send four delegates to the Conference: two from government and one each representing workers and employers, each of whom may speak and vote independently.

International Labour Organization (ILO) Functions

The ILO plays an important role in the formulation of policies which are focussed on solving labour issues. The ILO also has other functions, such as:

- It adopts international labour standards. They are adopted in the form of conventions. It also controls the implementation of its conventions.
- It aids the member states in resolving their social and labour problems.
- It advocates and works for the protection of Human rights.
- It is responsible for the research and publication of information regarding social and labour issues.
- The **Trade Unions** play a pivotal role in developing policies at the ILO, thus the **Bureau for Workers' Activities** at the secretariat is dedicated to strengthening independent and democratic trade unions so they can better defend workers' rights and interests.
- **The ILO also assumes a supervisory role:** it monitors the implementation of ILO conventions ratified by member states.
    - The implementation is done through the Committee of Experts, the International Labour Conference's Tripartite Committee and the member-states.
    - Member states are obligated to send reports on the development of the implementation of the conventions they have approved.

Registration of complaints: The ILO registers complaints against entities that are violating international rules.

- The ILO, however, does not impose any sanctions on the governments.
- Complaints can also be filed against member states for not complying with ILO conventions that have been ratified.

International Labour Standards: The ILO is also responsible for setting International Labour Standards. The international labour conventions which are set by the ILO are ratified by the member states. These are mostly non-binding in nature.

- But once a member state accepts conventions, it becomes legally binding. The conventions are often used to bring national laws in alignment with international standards.

ILO Global Commission on the Future of Work: The formation of an ILO Global Commission on the Future of Work marks the second stage in the ILO Future of Work Initiative.

- The Commission outlines a vision for a human-centred agenda that is based on investing in people's capabilities, institutions of work and decent and sustainable work.
- It also describes the challenges caused by new technology, climate change and demography and appeals for a collective global response to the disturbances being caused in the world of work.

International Labour Organization and India

India is a founding member of the ILO. It became a permanent member of the ILO Governing Body in 1922. The first ILO Office in India was inaugurated in 1928.

- India has ratified six fundamental conventions.
- India has not ratified **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** and **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**.
- As the two conventions involve the granting of certain rights that are prohibited under the statutory rules for government employees.

International labour standards and their influence on Indian labour . Legislations

Details of Influences According to National Commission on Labour international obligations which devolve on India as a result of our long association with the ILO have to be discharged in the following directions

(i) Adopting the aims and objects of the ILO for national action

(ii) Cooperation in ILO's programmes; and

(iii) Progressive implementation of ILO's Standards.

The influence of International Labour Conventions and Recommendations on Legislations in India is direct in some cases while in others the relationship is not so obvious. After ratification takes place, a Convention is given effect through new enactments, a modification in the existing laws, or a change in the administrative practice and procedure. The ILO's Conventions and Recommendations have had influence on the following:

1. Factories and Mines Legislations with regards to aspects like hours of work, weekly rest, holiday with pay and wages

a) Employment of children and young persons

b) Employment of women at night

c) Industrial health, safety and welfare.

2. Wage-legislations - India ratified Convention 26 on minimum wages fixing machinery in 1955 and amended Minimum Wages Act to constitute an advisory Committee to advise on this matter.

3. Social Security - A number of Conventions and Recommendations dealing with workmen compensation, sickness insurance, invalidity, old age and survivors' insurance, unemployment provisions, maternity protection and general aspects of social security have been adopted by the ILO. India has directly or indirectly adopted some of them in its laws.

Industrial Relations

Right from the beginning, the ILO has given attention to freedom of association, collective bargaining and constructive industrial relations. Relevant conventions are:- the Right of Association (Agriculture (Noll) 1921, The Freedom of Association and Protection of Right to Organise (No87) 1948, and Right to organise and collective bargaining (No98), 1949. The Recommendations include- Collective Agreements (No91), 1951, The Voluntary Conciliation and Arbitration (No 92), 1951, and the Cooperation at the Level of Undertaking (No94), 1952. The existing Indian Legislation embodying the provisions of some of the above instruments is the Trade Union Act 1926. Other principles of these conventions and recommendations can also be seen in different industrial relations legislations.

1.5 Indian constitutions and labour legislations

The Indian Constitution protects labour rights through Fundamental Rights (e.g., right to equality and freedom of association) and Directive Principles of State Policy (e.g., right to a living wage, decent conditions, and prohibition of child labour). Labour is a Concurrent Subject, allowing both the central and state governments to legislate on it. While these constitutional mandates provide a strong framework for labour protection, they are often supported by specific legislation like the Maternity Benefit Act and the Child Labour (Prohibition and Regulation) Act, though effective implementation remains a challenge.

Constitutional provisions with regard to labour laws The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and 7 Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Labour is a concurrent subject in the Constitution of India implying that both the Union and the state governments are competent to legislate on labour matters and administer the same. The bulk of important legislative acts have been enacted by the Parliament.

The legislations can be categorized as follows:

1) Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement.

2) Labour laws enacted by Central Government and enforced both by Central and State Governments.

3) Labour laws enacted by Central Government and enforced by the State Governments.

4) Labour laws enacted and enforced by the various State Governments which apply to respective States.

The Constitution of India provides detailed provisions for the rights of the citizens and also lays down the Directive Principles of State Policy which set an aim to which the activities of the state are to be guided. These Directive Principles provide:

a. for securing the health and strength of employees, men and women;

b. that the tender age of children are not abused;

c. that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

d. just and humane conditions of work and maternity relief are provided; and

e. that the Government shall take steps, by suitable legislation or in any other way, to secure the participation of employee in the management of undertakings, establishments or other organisations engaged in any industry.

1.6 INDIAN LABOUR POLICY

Labour Policy means setting trends, evolving course of actions, following principles and practices to govern labour matters. The National Commission on. Labour (1969) observed "the concern of the state in labour matters emanates as much from its obligation to safeguard the interests of workers and employers as to ensure the community the availability of their joint products/service at a reasonable price. In India, the labour policies and practices are influenced by a variety of considerations, based on social economic and political patterns that emerged at the time of independence.

a. Concern for planned development and rapid economic growth as envisaged in the successive five year plans
b. Requirements of welfare state as envisaged in our constitution, specially the directive principles of state policies (Art.39,41,43 43A etc.)

c. The socio-economic imbalances in the society, the depressed conditions of the working class as observed by the Royal Commission on Labour and the Labour Investigation Committee.
d. The imbalance in and between unions and employers and weaknesses of both the partners, leading to preference for adjudication, despite obvious merit of free Collective Bargaining.
e. The role of state as a major employer, with public sector being projected "to achieve the commanding heights of the economy as per the Industrial Policy Resolutions". However, the New Economic Policy seems to alter this position.

Factors Responsible for Labour Policy

- The Labour Policy of our country is influenced by
- Constitution of India
- The instruments of ILO
- The policies announced in successive five years plans
- The report and recommendations of various major commissions like Royal Commission on Labour, the National Commission on Labour and Tripartite Committees like- Indian Labour Conference and Standing Labour Committee.

1.7 EMERGING ISSUES

Following distinct trends are clearly discernable 1. Input costs are rising and output prices declining. Productivity improvement is imperative to do more with limited resources on sustained basis. The resultant squeezing in employment, wages, benefits etc. create sense of helplessness and cause tension in IR

1. Organisations have gone for new approaches of management (i) setting up parallel production facilities (ii) sub-contracting (iii) net-working (iv) franchising etc. This has reduced the criticality of production/services. This has given employer alternatives and sense of independence forcing the unions to come to their terms. Several MNCs,(Bata, Hindustan Lever and a list of pharmaceutical Cos. for instance), which have conceded

whatever unions asked for in the past are now beginning to take advantages of the increased vulnerability of unions in this scheme of management

2. When companies become bankrupt due to mismanagement etc. employers have to yield to union pressure to give-up control and, often forcing employees buyouts through workers' cooperatives or otherwise. In quite a few cases (Kamani Tubes, Central Jute Mills, for instance) workers are able to revive sick units and maintain their profitability with support from professional management.
3. Because of economic, structural, technological and other changes, companies develop sickness, the trade unions are agreeing for several concessions to save jobs - (a) down sizing including retrenchment of a section of workforce (b) wage and benefits cuts and freezes (c) freezing cost of living and other allowances. (d) suspension of trade unions rights for collective-bargaining and industrial action for certain period, and (e) agreeing for higher charges in the work norms and work practices and greater managerial discretion in maintaining discipline production and productivity etc. In both the Private and Public Sectors, where the cases have been referred to BIFR, concession has become norms than exceptions.
4. When neither the trade unions nor the employers seem to show adequate concern and sensitivity to workers interests, workers are seen to ignore both employers and unions and take charge of the situation. They occupy the plant and run it to keep their jobs and earn their livelihood - Kanoria Jute Mills in Calcutta is the example..

1.8 FUTURE GUIDELINES (TRENDS) FOR LABOUR POLICY

There is complete change in economic environment; therefore, there is a need for paradigm shift in Labour Policy.

- Paradigm shift in fundamentals
- Align Labour Policy with Economic policy
- Go for immediate labour law reform,
- Competitive Labour Policies in State also

- **Paradigm Shift in Fundamentals**

The requirements of competitive market warrant the following change in role/attitude of Government

1. Shift away from the role of Controller to facilitator/enabler. The content of Labour Policy should move away from regulation to facilitation, reaction to proaction and, dispute resolution, to creation of harmonious relation, conducive to social and economic development.
2. Competitiveness is leading to a shift towards decentralised I.R. There is a need to create and strengthen institutional mechanisms for building workplace culture by providing information - sharing consultations, communications and consensus development at workplace level.
3. Our labour market is characterised by dualist. A vast pool of illiterate, unskilled, unorganised, unprotected and mute majority of workforce and a small pool of literate, skilled, organised, protected and vocal minority of workforce, co-exist. (our labour policy concern for a small section of less than 8% of labour force in organised sector of the political unions acting in unison with the state to pursue labour policy based on political rather than considerations of labour and market). The state has to broad base the labour policy to cover the workers of unorganised sectors also in more meaningful manner than done today.
4. Labour Policy should shift away from negative role of dispute resolution to proactive and positive role of promotion of sound labour management relations; strikes and lockouts do not tell the whole story.
5. Sustaining growth and fostering competitive labour markets are critical to ensure job and income security. Job security at any cost, regardless of the viability the enterprise may lead to counterproductive work culture.
6. Ensure wider social dialogue for broad based social consensus and social cohesion. Academic experts should be associated with tripartite bodies.
7. Affirm diversity commitment to rural labour, women labour, child labour, bonded labour and labour in unorganised sectors have been largely rhetoric.

- **Align Labour Policy with Economic Policy**

In to-days' world, the policies of protection, self-reliance and input-substitution is giving away. To catch up with the other industrialised countries, we need to attract capital, cut costs, and enharice competitiveness. In the sphere of labour, this means a new alignment between industrialisation policies and labour policies. Towards this end, the labour policy should stress support for

(i) The observance of a minimum number of core/basic labour standards
(ii) Free trade unions and collective bargaining
(iii) Encouraging workplace institutions to affect changes at micro level smoothly
(iv) Investment in education and training
(v) Bringing entire labour force under the purview of a rational labour policy
(vi) Proactive labour market policy, removing the mismatch between the acquired and required skill facilitating information and counselling facilities for employment
(vii) A culture of non-interference by one party in the affairs of the other party. At the minimum, what the foreign investors expect is –

a) A clear enunciation of the right, and responsibilities of the employers and workers unions,
b) An unambiguous and easily understandable legal and institutional frame work.
c) Predictable arrangement concerning union recognition, collective-bargaining, skill-development, flexibility at workforce adjustment.
d) Well defined, clear cut, time bound and proactive grievance redressal.
e) An administrative and judicial system that can be trusted for its transparency, integrity, expedience, efficiency and accountability.

- Competitive Labour Policy at State Level

Labour is a concurrent subject and states frame their labour policies keeping the local factors in view. They do have different labour policies than centre with regard to trade unions recognitions etc. Keeping the competitiveness and investment opportunities in respective areas, the states may enunciate progressive labour policies, without waiting for centre.

UNIT-2

Syllabi: Unit2-Laws on Working Conditions

The Factories Act, 1948, The Mines Act, 1952, Shops and Establishment Law, Contract Labor (Regulation and Abolition Act, 1986), Child Labor (Prohibition and Regulation Act, 1986)

2.1 Laws on working conditions

Introduction

Laws on working conditions aim to ensure worker welfare by regulating aspects like safety, health, wages, and working hours, with specific legislation varying by country and region. In India, key laws include the Factories Act, 1948, for factories, the Mines Act, 1952, for mines, and state-specific Shops and Establishments Acts for other establishments, covering things like maximum work hours, minimum pay, and provisions for clean water, ventilation, and toilets.

Purpose of Working Condition Laws

- **Worker Safety and Health:**
  To prevent accidents, injuries, and occupational illnesses by ensuring safe environments, equipment, and proper handling of hazardous materials.
- **Fair Wages and Benefits:**
  To guarantee minimum pay, overtime compensation and access to social security benefits like provident fund and maternity leave.
- **Regulated Working Hours:**
  To set limits on daily and weekly working hours and ensure sufficient rest and leave.
- **Welfare Facilities:**
  To provide essential amenities like clean drinking water, toilets, and proper lighting.

Examples of Key Laws in India

- **Factories Act, 1948:**
  Regulates working conditions in factories, focusing on health, safety, welfare, and the management of working hours.
- **Mines Act, 1952:**
  Specifically designed to protect the health, safety, and welfare of mine workers.

- **<u>Shops and Establishments Act</u> (State-specific):**
  Governs working conditions in shops, commercial establishments, and other similar places, with each state having its own version of the act.
- **<u>Occupational Safety, Health and Working Conditions Code, 2020</u>:**
  A more recent initiative consolidating various laws to provide a comprehensive framework for worker safety and health.

2.2 The Factories Act, 1948

The Factories Act, 1948, sets the safety standards for workers employed in factories. It is applied to factories manufacturing goods, including weaving cloth, knitting of hosiery and other knitwear, clothing, and footwear production, dyeing and finishing textiles, manufacturing footwear, etc.

Objective of the Act

1. To ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.
2. To prevent haphazard growth of factories through the provisions related to the approval of plans before the creation of a factory.

Applicability of the Act

- ✓ Applicable to the whole of India including Jammu & Kashmir.
- ✓ Covers all manufacturing processes and establishments falling within the definition of 'factory'.
- ✓ Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

Scheme of the Act

The Act consists of 120 Sections and 3 Schedules.

Schedule 1 contains list of industries involving hazardous processes

Schedule 2 is about permissible level of certain chemical substances in work environment.

Schedule 3 consists of list of notifiable diseases.

Important Definitions under the Factories Act, 1948

1. **Adult and Child**: An adult is a person aged 18 or older (Section 2(a)), while a child is defined as someone under 15 (Section 2(c)).
2. **Adolescent**: Defined in Section 2(b), an adolescent is between 15 and 18.
3. **Calendar Year**: Defined as 12 months starting January 1st (Section 2(bb)).
4. **Competent Person**: Someone authorized by the Chief Inspector to conduct inspections or tests in a factory (Section 2(ca)).
5. **Hazardous Process**: A process involving materials that threaten health or the environment (Section 2(cb)).
6. **Machinery**: Includes prime movers, transmission machinery, and any other equipment related to manufacturing (Section 2(j)).
7. **Power**: Mechanically transmitted energy not generated by humans or animals (Section 2(g)).
8. **Week**: Seven days starting at midnight on Saturday (Section 2(f)).
9. **Day**: 24 hours starting at midnight (Section 2(e)).
10. **Young Person**: A term including children and adolescents (Section 2(d)).
11. **Factory**: A premises where a manufacturing process is conducted, with 10 or more workers when power is used, or 20 or more workers without power, as defined in Section 2(m).
12. **Manufacturing Process**: Defined in Section 2(k), this includes processes like generating, altering, repairing, cleaning, packing, or storing goods for sale, transport, or disposal.
13. **Worker**: A person employed directly or indirectly in a factory, either with or without the knowledge of the principal employer (Section 2(l)).

Provisions of the Factories Act, 1948

1. **Approval, Licensing, and Registration of Factories (Section 6):**

The Factories Act mandates that state governments establish rules requiring factory plans and site details to be submitted to the Chief Inspector or the state government for approval before any construction or extension. This section also requires factories to be registered and licensed, with fees paid for registration, licensing, and periodic renewals.

No license is issued or renewed unless the occupier notifies the Chief Inspector. If the state government denies permission for a site or factory construction, the applicant can appeal to the central government within 30 days of the refusal.

2. Labour Welfare:

Labour welfare encompasses services offered to workers both within and outside the factory, including canteens, restrooms, recreational facilities, and housing. These services contribute to worker well-being and productivity. During the early stages of industrialization, welfare measures for factory workers were not prioritized, but with industrial growth in the 20th century, efforts were made to improve working conditions through recommendations like those of the Royal Commission.

The 1948 Act expanded the definition of “factory” to include any industrial facility with ten or more workers using power or 20 or more workers without power. Other significant changes included raising the minimum working age for children from 12 to 14, reducing their working hours, and prohibiting them from working between 7 p.m. and 6 a.m. Special emphasis was placed on employees' health, safety, and welfare.

3. Welfare Measures:

The Act focuses on three main welfare aspects: occupational health care, appropriate working hours, and fair remuneration. Welfare measures aim to integrate the workforce's socio-psychological needs with technological and organizational requirements. These measures help foster a culture of work commitment, ensuring higher employee satisfaction and productivity.

4. Key Provisions for Workers' Welfare and Safety:

- Washing Facilities (Section 42): Factories must provide sufficient and well-maintained washing facilities for male and female employees. These must be easily accessible and kept clean, with standards determined by the state government.

- Clothing Storage and Drying Facilities (Section 43): The state government can direct factories to provide proper storage and drying facilities for workers' clothing when not dressed for work.
- Seating Arrangements (Section 44): Factories must provide seating arrangements for workers who perform standing jobs, allowing them to rest when possible.
- First Aid (Section 45): Factories are required to have first aid boxes or cupboards with essential supplies accessible to workers. A trained person should supervise each box and should be available during working hours.
- Canteen (Section 46): Factories with more than 250 workers must provide and maintain a canteen. The state government sets the rules for food and pricing.
- Shelters, Restrooms, and Lunchrooms (Section 47): Factories employing more than 150 workers must provide shelters, restrooms, and lunchrooms where workers can eat food brought from home. These areas must be clean, well-ventilated, and well-lit.
- Creches (Section 48): Factories with more than 30 female employees must provide a clean, well-lit room for children under six years old, supervised by trained personnel. Facilities for washing and changing may also be provided, along with free milk and refreshments for children.

2.3 The Mines Act 1952

Mines are places where minerals get extracted from the earth, and mines need to be protected and administered to save the environment and the employees working in the mines. The Mines act is umbrella legislation covering significant aspects related to the mines.

The Ministry of Labour and Employment administers the Mines Act, 1952, providing the provisions related to workers' health, safety, and welfare in the mining industry. The Directorate General of Mines Safety is the regulatory agency appointed by the Indian government for safety in mines. The Mines Act 1952 amalgamates and modifies Labour Laws in India.

The objective of the Mines Act, 1952

The objective with which the Mines Act, 1952 got enacted was to adjust the conditions of workers in the Mines. The Act aims to regulate the working condition of workers' annual leave with wages of the worker and provides the hours and limitations of employment.

However, the main objective of the Act is to ensure adequate safety measures and promote the health and safety of workers employed in the mines.

Applicability of the Mines Act, 1952

The Mines Act 1952 applied to the whole of India and came into force on 1st July 1952. For the remaining States, the Act was to come into force on or before 31st December 1953.

Non- Applicability of the Mines Act, 1952

Section 4 of the Mines Act, 1952 provides conditions where the act does not apply. The provision of the Act other than sections 7,8,9,40,45 & 46 does not apply in certain conditions.

The act does not apply when the mining is done for searching purposes and not for sale—provided that the number of employees employed is not more than 20 people. And the mine, when measured, does not exceed the length of six metres; in the case of coal mining, the length is fifteen metres. Also, no part of the mine should extend fifteen metres.

The Mines Act, 1952 does not apply, where mine is engaged in extracting kankar, murrum, laterite, boulder, gravel, etc. Provided that the working does not extend below the superjacent ground and in case of open cast working; the length of the mine does not exceed six metres; the number of employees should not exceed fifty, and explosives are not used in excavation.

Scope of the Mines Act, 1952

Following is the scope of the Act:

- The Act seeks to achieve a fair and healthy environment through inspecting staff. For better administration of the Mines, the Mines Act empowers the Central Government to appoint Chief inspectors and inspectors. They are assigned various powers and functions related to the Mines Act, 1952. The Provisions relating to the same gets provided under Section 5 to 11 of the Mines Act, 1952.

- For the appointment of authority, inquire into the accident committee constituted by the Central Government. The Committees are vested with the powers of the civil court. The provision related to the committee, its functions and powers gets provided under Section 12-15 of the Mines Act, 1952.
- The Act also provides the provision related to the Mining Operations and Management of mines under Section 16 to 18 of the Mines Act, 1952.
- To make the provision related to the Health and Safety of workers employed in Mines. Section 19- 27 of the Mines Act, 1952 provides provisions related to the health and safety of the workers.
- To make the provision related to the hours and limitation of employment. Provisions related to the Hours and limitation of employment gets provided under Section 28-48 of the Mines Act, 1952.
- To lay down the provision related to the leave, wages and mode of recovery of unpaid wages. The provisions related to this gets provided under Section 49-56 of the Mines Act, 1952.

Meaning of Mine

Mine, in general, means the system of excavation made to extract minerals, coal, ore or precious stones.

Section 2(1)(j) of the Mines Act, 1952 define Mine. According to this Act, Mines means any excavation where any operation to search or obtain minerals. Mine includes:

- Borings, boreholes, oil wells and crude conditioning plants that include pipe conveying mineral oil within the oil feed
- All shafts that belong to mine.
- All opencast working
- All conveyors or ropeways provided for bringing or removal from mines or minerals.
- All adits, levels, planes, machinery, works etc. that belongs to a mine,
- All the protective work get carried out in or adjacent to mine.

- All workshops and stores situated within the surrounding area of mine under management.
- Power stations, transformer substations, etc., are utilised to perform the work of the mine or several mines under the same management.
- Any premises used for the depositing of sand or other material used in a mine owned by the owner of the mine

Sections under Mines Act, 1952

Definitions

- **Adult**: Section 2(1)(b) of the Mines Act, 1952 defines an adult as a person who has completed eighteen years of age.
- **Agent**: Section 2(1)(c) of the Mines Act, 1952 defines an agent as used about mine. An agent is a person who acts on behalf of the owners and takes part in the management, control, supervision or direction of the mine.
- **Chief Inspector**: Section 2(1)(d) of the Mines Act, 1952 defines Chief Inspector. Chief Inspector means the Chief Inspector of Mines appointed under the Act.
- **Day**: Section 2(1)(e) of the Mines Act, 1952 defines the day. Day means twenty-four hours that begin at midnight.
- **Employed**: Section 2(1)(h) of the Mines Act, 1952 defines employed. A person gets considered employed in a mine who works as the mine manager or under the appointment by the owner, agent or manager of the mine or with the managers' knowledge, whether he works for wages or not. He works:
  - In any mining operation
  - In operation or service related to the mine, it includes operations associated with the development of the mines.
  - In operating service, maintaining or repairing any part of the machinery used in mines.
  - In any operation within the premises of the mine related to loading and dispatch of mines
  - In the office of the mines

- For any welfare, health sanitary or conservancy services required for the welfare of the mine
- In any kind of work that is preparatory or is in connection with the mining operation.

- Minerals: Section 2(1)(jj) of the Mines Act defines Minerals. According to this Act, mineral means all substances obtained from the earth.
- Reportable Injury: Section 2(1)(pp) of the Mines Act defines reportable injury. According to this Act, it means an injury different from the serious bodily injury that involves the enforced absence of the injured person from work for seventy-two hours or more.
- Serious Bodily Injury: Section 2(1)(q) of the Mines Act defines Serious Bodily Injury. Serious Bodily Injury means any injury involving the permanent loss of any part of the body or permanent loss or injury to sight, hearing or physical incapacity or fracture of any bone or joints.

Inspectors and Certifying Surgeons

Chief Inspector and Inspector

Sector 5 of the Mines Act, 1952 provides provision for appointment of Chief Inspectors and Inspectors. The *Central Government can appoint anyone with the required qualifications as the Chief Inspector of Mines*. The Chief Inspector of Mines gets appointed for the territory the Act extends. The person interested in the mines can not be appointed the Chief Inspector or an Inspector.

Section 5(3) of the Mines Act, 1952 vests the District Magistrate with the power to perform the duties of an Inspector as to general or special orders of the Central Government. But the district magistrate cannot exercise power conferred under section 22 or section 22 A or section 61 of the Act.

Both the Chief Inspector and Inspector are considered public servants within the meaning of the Indian Penal Code.

Functions of Inspector

Section 6 of the Mines Act, 1952 provides the functions of the inspector. With the approval of the Central Government, the Chief Inspector can make an order to authorise any inspector or any class of inspector to exercise the power of the Chief Inspector subject to certain restrictions.

The Chief Inspector can restrict any inspector from exercising power conferred on him under this Act by passing an order in writing.

The Chief Inspector declares the local area or areas within the group or class of mines to which the inspector can exercise their power.

Power of Inspector of Mines

Section 7 of the Mines Act, 1952 provides the Power of Inspector of Mines. The Chief Inspector and Inspector can:

- Make examination and inquiry to ascertain whether the rules, regulations, bye-laws and provisions of this Act are appropriately followed in the case. He can enter, inspect and examine any mine or its part at any time of the day. But the power conferred under this section should not get exercised to obstruct the working of mines.
- The Inspector can examine and inquire about the Mine's condition and ventilation and the sufficiency of the bye-laws related to the mine. They ensure that all matters pertaining to the health, safety and welfare of the process employed in the mine.
- Inspectors can exercise all the powers prescribed by the Central Government, provided that no person can make any statement or answer any question that can incriminate him.
- The Chief Inspector and Inspector is vested with the power to search any place or take possession of any material, plan, register or record related to the mine if he has the reason to believe after inspection, examination or inquiry that any offence under this act gets committed.

The provisions of the Criminal Procedure Code,1973, applies for search or seizure.

Facility for the Inspector

Section 9 of the Mines Act, 1952 provides all the facilities for entering, inspecting, surveying, measuring, examining or, inquiry to facilitate every owner, agent and manager of the mine to Chief Inspector or any Inspector.

Certifying Surgeons

Section 11 of the Mines Act, 1952 provides the provision for appointment of the Certifying Surgeons. The Central Government has the power to appoint qualified medical practitioners to be certifying surgeons.

Any person who is owner, agent or manager of the mine who is directly or indirectly cannot be appointed to exercise the power of certifying surgeons. Certifying Surgeon shall carry out his duties related to the examination and certification of adolescents, persons engaged in the mine in dangerous occupation exercising the medical supervision for any mine where cases of illness have occurred or are likely to cause injury to health.

Committees

Constitution of the Committee (Section 12)

The Central Government should constitute a committee, consisting of:

- A government official appointed by the Central Government to act as a committee chairman. Such a person should not be Chief Inspector or Inspector. (Section 12(1)(a))
- The Chief Inspector of Mines (Section 12(1)(b))
- Two-person appointed by the central government to represent the interest of miners. (Section 12(1)(c))

  Two-person appointed by the central government to represent the interest of the owners of the mine
- One person among these two-person should represent the workers in the coal mine. (Section 12(1)(d))
- Two qualified mining engineers as appointed by the Central Government. Such a person should not be directly employed in the mining industry. One person among these two-person should represent the owners of a coal mine. (Section 12(1)(e))

Functions of the Committee

Section 13 of the Mines Act, 1952 provides functions that the committee needs to perform. Functions that the committee shall perform are as follows:

The committee should consider proposals to make rules and regulations. And should also make appropriate recommendations to the Central Government. (Section 13(1)(a))

The committee should inquire about accidents or other matters and prepare reports as the Central Government refers. (Section 13(1)(b))

To hear and decide appeals or objections against notices issued under Mines Act

Power of the Committee

Section 14 of the Mines Act, 1952 provides powers of the committee. The powers are as follows:

- A committee constituted under Section 12 can exercise powers of Inspector provided under Mines Act.
- The inspector's power can be used in the manner necessary to discharge the committee's function.
- A committee to perform its functions has the same power vested on the courts under the Code of Civil Procedure, 1908. The powers can get utilised to perform the following functions:
  - Discovery and Inspection
  - To compel the production of documents
  - For any other matter as prescribed.

<u>Health and Safety</u>

Drinking-Water

Section 19 of the Mines Act, 1952 provides that in every mine, there should be an effective arrangement made to maintain points for a sufficient supply of cool and wholesome drinking water for the mine employees.

If a person gets employed below the ground, the chief inspector should make necessary arrangements to provide and maintain suitable points for effective arrangements for the supply of water.

The points should get marked as DRINKING WATER, and in a language that employees can understand. No water points should get situated within six metres of the washing place, urinal, or washroom.

Conservancy

Section 20 of the Mines Act, 1952 provides that it is essential to have a separate urinal for males and females. The urinals and washrooms should get situated for convenience and be accessible to employees of the mine. The washrooms and urinals should get ventilated, lighted and clean.

Medical Appliances

Section 21 of the Mines Act, 1952 provides that every mine should have a first-aid box or cupboards equipped with medical appliances. The first-aid box and a wardrobe should be easily accessible during working hours. No other content other than prescribed content should be present in the first-aid box or wardrobe.

Each cupboard and the first-aid box should be in-charge of a responsible person who should always be available during working hours.

Notice for accidents

Section 23 of the Mines Act, 1952 provides the notice of an accident is to be sent to the prescribed authority. As per this section, whenever there is an accident in the mine that causes anyone of the following injuries:

- Death or Serious bodily injury
- Fire outbreak, explosion, the inrush of water
- The inflow of inflammable gases
- Breakage of rope or chain that lead to lowering of person or material raised in the shaft
- Overwinding of cages when the person or material or lowered or raised
- The premature collapse of any working tool
- Any other accident

The owner, agent or manager of the mine should give notice of the accident to the authority. The person should simultaneously post one copy of the notice on the special notice board. The notice is placed where the trade union officials can inspect it, and the notice is kept for at least fourteen days from the posting date.

Power of the Government to appoint inquiry in case of an accident

Section 24 of the Mines Act, 1952 provides that when an accident occurs in a mine, the Central Government can appoint a person to inquire about the accident. The appointed person should have the powers of civil court provided under the Code of Civil Procedure, 1908.

The power gets vested on the appointed person to enforce a witness's attendance and compel the production of documents and material objects in the Court. The appointed can also exercise the powers of the Inspector.

The person thus holds an inquiry and makes a report to the Central Government. The report states the causes of accidents and any other observation that he thinks fit.

Notice of certain diseases

Section 25 of the Mines Act, 1952 provides the provision for notice of certain diseases. An employee suffers from any disease notified by the Central Government in the Official Gazette as a disease connected with mining. The owner, agent or manager of the mine should send notice to the Chief Inspector or other authorities in the form and within the prescribed time.

When a medical practitioner attends to a person suffering from the aforementioned diseases, the medical practitioner should send a report in writing to the Chief Inspector without any delay. The report should state the name and address, the diseases the patient is suffering from, and the name and address of the mine. If the Chief Inspector believes that the person is suffering from the disease, he shall pay the fees of the medical practitioner. The fee paid is recoverable as an arrear of land revenue.

Power to direct investigation for causes of disease

Section 25 of the Mines Act, 1952 provides that the Central Government can appoint a competent person to inquire and prepare a report about the cause of disease.

Hours and Limitation of Employment

A weekly day of rest

Section 28 of the Mines Act, 1952 provides that a person should not be allowed to work in a mine for more than six days a week.

Compensatory days of rest

Section 29 of the Mines Act,1952 provides that a person who gets deprived of a weekly rest days should get a weekly day-off as is due to him within a month or two. The compensatory days of rest should equal the number of deprived days of rest.

Hours of work above ground

Section 2(2)(b) of the Mines Act, 1952 defines above ground as a person working in an open cast.

According to Section 30, no worker should be allowed to work for more than forty-eight hours a week and nine hours a day.

After the approval of the Chief Inspector, the maximum hours gets increased to facilitate the change of shifts.

The work should get arranged so that the employee gets sufficient time to take a rest. The working hours should not be more than 12 hours, including intervals, and the person should not work for more than five hours continuously. Also, the person who works in two or more shifts shall not be allowed to do the same kind of work above ground.

Hours of work below ground

Section 31 of the Mines Act, 1952 provides that no adult employed below the ground should be allowed to work for more than forty-eight hours in any week or for more than eight hours in a day. The number of working hours can get increased with prior approval of the Chief Inspector to facilitate the change of shifts. No person working below the ground should be allowed to stay below for more than the time of his shift.

Night Shift

Section 32 of the Mines Act, 1952 provides if a person employed in a mine works on night shifts that extend beyond midnight should be provided a week-off day should be provided and his consecutive twenty-four hours should begin after his shift comes to an end.

Extra wages for overtime

Section 33 of the Mines Act, 1952 provides situations when an employee can get extra wages for overtime. The situations are as follows:

- An employee works for more than nine hours above ground.
- An employee works more than eight hours below ground.
- An employee works any week for more than 48 hours.

In all the above situations, an employee gets entitled to extra wages. The extra wage provided should be more than twice the amount of the normal wage. The overtime is calculated on daily or weekly wages depending upon what is more favourable for the employee.

Prohibition of employment

Section 34 of the Mines Act, 1952 states that any person who worked for the preceding twelve hours in a mine should not be allowed to work in any other mine.

Limitation of Work Hours

Section 35 of the Mines Act, 1952 provides that a person should not work in any mine for more than ten hours, including overtime.

Employment of person below eighteen years of age

Section 40 of the Mines Act, 1952 provides that no person below the age of 18 years gets employed in the mine. A trainee not below sixteen years of age can work in a mine under proper supervision.

Employment of Women

Section 46 provides that no women shall be employed in a mine below or above the ground except between 6:00 A.M. and 7:00 P.M.

Women employed in the mine above ground should have at least eleven hours between termination and commencement of employment. Also, the employment of any woman in a mine between 10:00 P.M. and 5:00 A.M. is not permitted.

Leave with Wages

Chapter VII of the Mines Act, 1952 provides provisions for the leave and wages of the employees.

Definition of leave

Section 50 of the Mines Act provides that leave for this chapter should not include the weekly day of rest or festive holidays that occur during or end for the period of leave.

Calendar Year

Section 51 of the Mines Act provides that the calendar year means twelve months that begin from the first day of January of any year.

Annual leave with wages

Section 52 provides that every employee who has completed a calendar year should get leave with wages in the consecutive year.

The leave with wage is calculated:

- If a person is employed below the ground for working for every fifteen days, one leave with wage gets awarded.
- In any other case, the rate of one leaves with the wage for every twenty days of work.

A calendar year service gets completed when:

- When an employee, employed below the ground, has at least one hundred and ninety attendance in the mine.
- In the case of any other employee, he has at least two hundred and forty attendances in a mine in a calendar year.

When service of the employee started after first January

A person whose service began after the first January of any year is entitled to the leave with wage if:

- An employee gets employed below the ground he, has at least one-half of the total number of remaining days of the calendar year.
- In any other case, he has put attendance for at least two-thirds of the remaining days of the calendar year.

If a person is entitled to leave in a calendar year and has not taken it, the leave should get added to the number of allowed leaves during the succeeding year, provided that the number of leave cannot exceed thirty days. A person who applied for the leave with wage, but was not granted such leave, is entitled to carry forward not availed leave without any limit.

A person can apply in writing for leave with a wage fifteen days before the day he wishes to get the leave, and the manager should make the application. If the employee wants to avail the leave with wage to cover the period of illness, he can avail such leave even without fifteen days prior notice. This leave cannot be refused until the authority believes that owing to exigencies of the situation, the leave should get refused.

When the person employed in the mine gets terminated, or an employee quits from the employment by the authority before he takes his entire leave, he is entitled. The manager, owner, or agent is responsible for paying him the amount payable.

Power of Central Government to make regulations

Section 57 of the Mines Act, 1952 emperors the Central Government to make regulations. The purposes for which the laws can get made are as follows:

- To prescribe the qualification for appointment as Chief Inspector or Inspector.
- To prescribe the duties and powers of the Chief Inspector and Inspector regarding the inspection of mines.
- To prescribe the duties and qualifications of owners, agents and managers.
- To regulate the manner to ascertain the examinations, qualification of the manager of mines and to grant renewal of certificates of competency.
- To fix the fees for examinations.
- To provide conditions in which it will be lawful for a single manager to be the manager of mines.
- To regulate the occurrence of accidents, explosions and ignition in mines.
- To prohibit, restrict or regulate the employment of women in mines.
- To make provision for the safety of the person employed in the mine.
- To prohibit the employment in a mine of a person as a manager in mine.

- To provide provision for the safety of the road and working-place in mine.
- To regulate the machinery in mines.
- To provide proper lighting in mine.

Power of Central Government to make rules

Section 58 of the Mines Act, 1952 empowers to make rules for the following purpose:

- Filing of vacancy of the members of the committee and for proceeding in terms of office
- For appointment, procedures and power of the Courts for inquiry and payment of travelling allowance.
- To maintain a standard of sanitation, washrooms and urinals.
- To maintain supply and maintenance of the medical appliance.
- To prohibit intoxicating drinks or drugs in the mine.
- To forbid the employment of a person not certified by a medical practitioner.

Conclusion

The Mines Act of 1952 got enacted to provide safety to the employees working in the mines. It states the working condition provided to the employees of the mines. It includes provision for the appointment of Inspectors and Chief Inspectors to regulate the working of mines.

The Mines Act empowers the Central government to make rules and regulations related to the mines. It protects the employees from being exploited by the owners of the mine. The act covers every aspect related to the mines and their proper administration.

2.4 The Shops and Establishment Acts

The Shops and Establishment Acts in India are state and union territory-specific laws that govern employment and labor service conditions in shops and commercial establishments, excluding factories, and require compliance within their respective jurisdictions.

The Shops and Establishment Acts are state-specific legislation in India that regulate the functioning of shops and commercial establishments within their respective jurisdictions. The respective Acts set out the rules and regulations governing the working hours, wages, and other working conditions of employees working in these establishments.

While each state enacts its own version of the Shops and Establishment Act, core provisions remain largely consistent across the country. The **Shops and Establishment** Acts are implemented and enforced by the Labour Department of each state.

All commercial businesses in India, including shops, hotels, cafes and restaurants, theaters, and other venues, are subject to this act. With various exceptions based on the number of employees, the nature of the activity, and the kind of establishment, the act applies to both registered and unregistered establishments.

Salient features of the Model Shops and Establishment Bill, 2016:

- **Applicability:** Applies to shops and establishments employing 10 or more workers, excluding manufacturing units.
- **Operational flexibility:** Freedom to operate 365 days a year with flexible opening and closing times.
- **Women workers:** Permitted to work night shifts if provisions for shelter, rest rooms, toilets, adequate protection, and transportation are available.
- **No discrimination** in recruitment, training, transfer, or promotions.
- **Simplified registration:** Online, common registration through a simplified procedure.
- **Safety and health regulations:** Government empowered to set rules for worker safety, including clean drinking water, first aid, lavatories, crèches, and canteens.
- **Holidays:** Five paid festival holidays in addition to national holidays.
- **Weekly rest:** Mandatory weekly holiday of at least 24 consecutive hours.
- **Compensatory leave or double wages** if required to work on a rest day.
- **Working hours:** Maximum 48 hours per week and 9 hours per day for all workers.
- **Mandatory break** of at least half an hour after five hours of continuous work.
- **Penalties:** Sufficient penalties for non-compliance with the provisions.

Key definitions and scope of the Shops and Establishment Act

Shops: Under the Act, a shop is broadly defined as any premises where goods are sold, either retail or wholesale, or where services are provided to customers. This definition includes offices, godowns, storerooms, and warehouses connected with the business.

Commercial establishments: These are defined as establishments engaged in commercial, banking, trading, or insurance activities where office work is performed. This category also includes hotels, boarding houses, restaurants, cafes, theaters, and places of public amusement or entertainment. Notably, factories and industries are not covered by the Shops and Establishment Acts and are instead regulated by the Factories Act, 1948, and the Industries (Development and Regulation) Act, 1951.

Mandatory registration

All shops and commercial establishments covered under the Shops and Establishment Act must register with the relevant **state authority** and obtain a Shop and Establishment Registration Certificate, commonly referred to as a Shop License. This requirement extends to businesses operating from home, e-commerce entities, and online businesses. Registration is mandatory within 30 days of commencing business operations.

Importance of the Registration Certificate

The Shop and Establishment Registration Certificate serves multiple purposes:

- **Legal recognition:** It acts as proof of the business's incorporation and is a basic requirement for legalizing the business.
- **Facilitating other registration:** This certificate is often necessary for obtaining other business licenses and types of registration.
- **Banking:** Banks require this certificate for opening a current bank account for the business.
- **Loans:** It is also needed when applying for business loans.

Regulatory provisions

The Act covers various aspects of employment and operational standards, including:

- **Hours of work:** Regulation of daily and weekly working hours.
- **Leave and holidays:** Provisions for annual leave and weekly holidays.
- **Wages and compensation:** Guidelines for payment of wages and compensation.
- **Prohibition of child labor:** Ban on the employment of children.

- **Employment conditions for women and young persons:** Restrictions on night shifts for women and young workers.
- **Enforcement and inspection:** Mechanisms for ensuring compliance.
- **Rest intervals:** Mandated breaks during work hours.
- **Opening and closing hours:** Specified times for business operations.
- **Record keeping:** Requirements for maintaining employee and operational records.
- **Dismissal provisions:** Rules regarding the termination of employment.

Registration procedure

The procedure for obtaining the Shop and Establishment Registration Certificate can be conducted either **online** or offline or both, varying from state to state.

Online registration

- Log in to the State Labour Department website.
- Create login Id and Password
- Complete the application form.
- Upload necessary documents.
- Pay the prescribed fee.
- Upon approval, the certificate is issued online.

Offline registration

- Preparation of documents related to registration
- Fill out the application form and attach the prepared documents.
- Submit it to the Concerned Authority of the relevant area along with the prescribed fee.
- The Concerned Authority issues the certificate after verifying the application and documents.

Required documents

- Proof of address of the shop or business establishment.
- Identification proof of the proprietor/company.
- MOA and AOA of the Company (if the applicant is company).
- PAN Card of the proprietor/company.

- Details of employees.
- Payment challan.
- Additional necessary business licenses, if any.
- Other documents as may be asked by the department or authority

Validity and renewal

The validity and fees for the Shop and Establishment Certificate vary across states. Some states issue certificates valid for a **lifetime**, while others may have validity periods ranging from one to five years. Renewal must be done before the expiration of the current certificate.

Impact on organizations

The Shops and Establishment Acts ensure that organizations operate within a legal framework that promotes fair labor practices and standardized operational procedures. Compliance with these regulations helps in fostering a structured and transparent business environment, which can enhance the trust and reliability of the organization among employees, customers, and financial institutions.

- **Compliance requirements**: Organizations must comply with the provisions of the Act, including registration, maintaining records, and adhering to prescribed work conditions. Non-compliance can lead to penalties and legal issues.
- **Operational hours**: Businesses have to plan their operational hours and employee shifts in accordance with the Act, which may affect their operational flexibility.
- **Cost implications**: Adhering to wage laws, providing holidays, and maintaining safety standards can have financial implications for businesses.
- **Employee welfare**: The Acts contribute positively to employee welfare by ensuring fair working conditions, which can lead to higher employee satisfaction and productivity.
- **Legal liability**: Ensuring compliance helps organizations avoid legal disputes and penalties, promoting a smooth business operation.

2.5 THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

This legislation regulates the employment of contract labourers in establishments and by contractors. The Rules for implementing the provisions of the Act vary from state to state.

Applicability of the Act

An establishment which engages 20 or more persons or engaged on any day of the preceding 12 months as contract labourers come under the purview of the legislation. The legislation is also applicable to contractors who employ workmen as contract labourers, or who employed on any day of the preceding 12 months.

Authorities under the Act

i. Registering officer of the area – The Registering Officer of the area is the person to whom application shall be made for the grant of certificate of registration, for the purpose of engaging contract labourers. Any change in the establishment shall be intimated to the Registering officer within 30 days of change, and an amendment to the certificate shall be made by applying to him.

ii. Licensing officer of the area – The Licensing officer is the person from whom a contractor shall obtain licence for the purpose of engaging contractors. He is entitled to make such investigation as required in respect of the application received from a contractor. (Section 12)

iii. Inspectors - Under Section 28 Inspectors shall be appointed for a particular area the local limits for which shall be defined. He has the power to enter at all reasonable hours any place where contract labour takes place, for the purpose of verifying registers, records or notices, to examine persons, to collect information, to seize or take copies of registers, records of wages, or notices, and to exercise such other powers as is prescribed.

Important definitions

"Contractor" : with relation to an establishment a contractor is a person who undertakes to do some work for the establishment through contract labour, not being a mere supply of goods or articles of manufacture to the establishment or one who supplies contract labour for any work of the establishment and includes a sub-contractor.

"**Principal employer**": in a factory is the owner or occupier of the factory and where a person has been named as the manager of the factories under the Factories Act, 1948, such person is the principal employer.In any other establishment any person responsible for the supervision and control of the establishment.

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

(1) who is employed mainly in a managerial or administrative capacity,

(2) who, being employed in a supervisory capacity draws wages exceeding Rs.500/- per month or exercises either by virtue of powers vested on him or by the nature of the duties attached to the office functions which are of managerial nature or

(3) who is an outworker to whom any article or materials are given out by or on behalf of the principal employer for being processed.

Important provisions of the Contract Labour Act, 1971

Registration of principal employer

The Principal employer has to file an application for registration, to the Registering Officer. The application must be made in triplicate, accompanied by treasury receipt showing the payment of fees. The Registering Officer will register the Company and issue a Certificate of Registration. If the Company fails to obtain Certificate of Registration, the position would be that the workmen employed by the Contractors would be deemed to be employed by the Company, which is the Principal Employer.

Licensing of contractors

The Principal employer should engage workmen only through licensed contractors. The Principal employer should therefore ensure that the Contractors engaged by it for various services, hold a licence issued under the Act. Responsibility for payment of wages The Principal employer must nominate a representative to be present at the time of disbursement of wages by the contractor and such representative must certify the amounts paid as wages to the contract labourers.

Facilities to be provided to contract labourers

The following facilities should be provided to the contract labourers if the contractors do not provide it:

1) Rest rooms
2) Canteen
3) Latrines and urinals
4) Drinking water
5) First aid facilities

Submission of returns

The Principal employer should file a return within 15 days of the commencement or completion of each contract work under each contractor. The Principal employer has to file Annual Return in duplicate to the Registering Officer before the 15th of February every year containing details of the contractors engaged in the previous year.

The contractor should file half yearly returns in duplicate within 30 days from the close of the half year, which in this case is a period of 6 months commencing from the 1st of January and the 1st of July every year, to the Licensing Officer.

Maintenance of records

The Principal employer should maintain a register of contractors. The contractors should maintain the following registers:

1) Register of persons employed.
2) Muster roll
3) Register of wages
4) Register of deductions for damage or loss
5) Register of fines
6) Register of advances

7) Register of overtime

Displays

Notice showing the place and time of disbursement of wages, rate of wages, hours of work, wage period, dates of payment of wages, name and addresses of the Inspector having jurisdiction and date of payment of unpaid wages should be displayed in the premises in the local language understood by majority of the contract labourers

2.6 The Child Labour (Prohibition and Regulation) Act, 1986

Introduction

Child labour remains a significant social issue that impacts millions of children globally, particularly in developing countries such as India. Despite advancements in technology and economic growth, child labour persists in various forms, depriving children of their childhood and fundamental rights. In recognition of this pressing issue, the Indian government enacted the **Child Labour (Prohibition and Regulation) Act, 1986**. This legislation aims to protect children from exploitation while ensuring their right to education and a healthy upbringing. This article provides a comprehensive overview of the Act, highlighting its key features, amendments, constitutional provisions related to child rights, and the current landscape of child labour in India.

Definition of Child

According to the Act, a "child" is defined as any person who has not completed their **fourteenth year of age**. This age threshold is crucial for delineating the segment of the population that the law is designed to protect against child labour, acknowledging their vulnerability and need for special safeguards.

Applicability

The Act extends to the **whole of India**, thereby ensuring uniform protection against child labour across all states and union territories. This broad applicability is essential for enforcing child rights consistently throughout the nation.

Objectives

The Act aims to achieve several critical objectives:

1. **Prohibition of Child Labour**: The primary goal is to eliminate child labour in specified hazardous occupations and processes, thereby ensuring that children are not exploited in environments that threaten their health and development.
2. **Regulation of Working Conditions**: For children permitted to work in non-hazardous environments, the Act regulates their working hours and conditions, thereby promoting their welfare and safeguarding their rights.

Prohibited Occupations and Processes

The Act explicitly lists **13 occupations** and **51 processes** where children are not allowed to work. The sectors deemed hazardous include:

Occupations:

- **Domestic Work**: Children working as domestic help are often vulnerable to exploitation and abuse.
- **Dhabas and Hotels**: Engaging children in these sectors exposes them to long hours and unhealthy environments.
- **Construction Work**: Involvement in hazardous construction activities can lead to serious injuries.
- **Automotive Garages and Plastics Manufacturing**: These sectors involve exposure to harmful chemicals and machinery.

Processes:

- **Beedi Making**: A hazardous process known for its adverse health effects.
- **Tanning and Soap Manufacturing**: Exposure to toxic materials in these processes poses severe health risks.
- **Brick Kilns**: Children working in these environments face long hours and exposure to dust and heat.

Detailed Prohibitions

The Act categorizes hazardous occupations into two parts:

Hazardous Occupations (Part A of the Schedule):

1. **Transport Services**: Employment of children in transporting passengers, goods, or mails by railways is prohibited.
2. **Catering Services**: Work involving moving vendors or employees at railway stations is banned.
3. **Construction Work**: Engagement in construction-related activities near railway tracks is not allowed.
4. **Automobile Workshops**: Employment in automobile repairs and maintenance is forbidden.
5. **Foundries and Mines**: Children are prohibited from working in foundries or mines, both underground and underwater.
6. **Handling Explosives**: Any work related to handling or manufacturing explosives, fireworks, or inflammable substances is explicitly prohibited.

Hazardous Processes (Part B of the Schedule):

The Act lists various hazardous processes, including:

- **Beedi Making**: Production of beedis (a type of Indian cigarette) is banned.
- **Soap and Match Manufacturing**: Employment in these industries is not allowed.
- **Mica Cutting**: Engaging in mica cutting and splitting is prohibited.
- **Tanning**: Employment in tanning industries, which expose workers to harmful chemicals, is banned.
- **Cotton Ginning**: Children are prohibited from working in cotton ginning and processing.

The Act emphasizes the importance of a safe working environment by prohibiting child labour in sectors involving toxic materials such as lead, mercury, and pesticides.

Working Conditions for Children

For children permitted to work in non-hazardous occupations, the Act imposes strict regulations to ensure their well-being:

1. **Maximum Working Hours**: Children cannot work for more than **3 consecutive hours** without a break of at least **1 hour**.
2. **Night Work**: Employment between **7 p.m. and 8 a.m.** is strictly prohibited, safeguarding children from hazardous night-time work.
3. **Weekly Holidays**: Every employed child is entitled to a **one-day break** each week, promoting rest and recreation.

Enforcement and Penalties

The Act prescribes stringent penalties for violations to reinforce compliance. Employers who engage children in prohibited occupations may face:

- **Imprisonment**: Offenders can be sentenced to imprisonment for up to **one year**.
- **Fines**: Financial penalties range from **₹10,000 to ₹20,000** for violations.

In cases of repeated offences, penalties may escalate, underscoring the commitment to eradicating child labour.

Rehabilitation and Action Plans

The Act also places the onus on the government to create a **rehabilitation fund** for rescued children. This fund aims to support the education and welfare of children removed from child labour situations. Furthermore, states are mandated to prepare and implement a **State Action Plan** to ensure effective enforcement of the Act.

Amendments: The Child Labour (Prohibition and Regulation) Amendment Act, 2016

Significant amendments to the Act were made in **2016** to strengthen child protection:

1. **Amendment of Act 11 of 1948**: Updated provisions were introduced to enhance child protection mechanisms.
2. **Amendment of Act 69 of 1951**: Adjustments aligned the Act with contemporary international standards for children's rights.
3. **Amendment of Act 44 of 1958**: The regulatory framework governing child employment was improved.
4. **Amendment of Act 27 of 1961**: Additional changes were made to further protect children's rights in the workforce.

Current Landscape of Child Labour in India

Despite a robust legal framework, child labour remains a pressing issue in India. Various socio-economic factors contribute to its persistence:

1. **Poverty**: Many families continue to rely on the income generated by their children, perpetuating the cycle of poverty and child labour.
2. **Illiteracy**: Limited access to education leads to a lack of awareness regarding child rights and the importance of education.
3. **Cultural Norms**: In some communities, child labour is accepted as a norm, making it challenging to shift mindsets.

Government Initiatives

The government has undertaken various initiatives to combat child labour, including:

- **Educational Programs**: Schemes like the Mid-Day Meal Scheme and **Sarva Shiksha Abhiyan** aim to promote school attendance and provide meals to encourage education.
- **Awareness Campaigns**: Initiatives raise awareness about the detrimental effects of child labour and the importance of education.
- **Rescue Operations**: Law enforcement agencies conduct raids to rescue child labourers from hazardous environments and initiate rehabilitation processes.
- **Collaboration with NGOs**: The government collaborates with NGOs to implement programs aimed at eradicating child labour and supporting rescued children.

Challenges in Implementation

Despite legislative measures and government initiatives, several challenges hinder the effective implementation of child labour laws:

1. **Lack of Awareness**: Many parents and children remain unaware of their rights and the provisions of the Child Labour Act.
2. **Insufficient Enforcement**: Limited resources for monitoring compliance with child labour laws impede enforcement efforts.
3. **Corruption and Bribery**: Instances of corruption may allow employers to evade legal consequences for employing child labour.

4. **Cultural Acceptance**: Traditional beliefs and practices in some communities perpetuate child labour, complicating efforts for reform.
5. **Economic Factors**: Families in poverty may prioritize immediate income over long-term education, leading to a continued reliance on child labour.

UNIT-3

Syllabi: UNIT3- Industrial Relations Laws Trade Union Act, 1926, Industrial Disputes Act, 1947, Industrial Employment (Standing Orders) Act, 1946, Industrial Discipline and Misconduct, Domestic Enquiry

Industrial relations laws govern the relationship between employers, employees, and their organizations, focusing on collective bargaining, dispute resolution, and working conditions. Key legislation includes the Industrial Disputes Act, 1947 for dispute resolution and the Trade Unions Act, 1926 for worker representation. In India, these laws have been consolidated into the Industrial Relations Code, 2020, which replaces previous acts and sets rules for strikes, lockouts, retrenchment, and negotiating with trade unions.

3.1 Trade Unions Act, 1926

Introduction

- The Trade Unions Act, 1926 was enacted to provide for the registration and protection of trade unions in India.
- Before this Act, trade unions had no legal status, and their activities were often treated as criminal conspiracies under existing laws.
- The Act aimed to:
    - Legitimize trade union activities.
    - Provide a legal framework for registration and functioning.
    - Protect unions and members from civil or criminal liability in certain cases.
- It laid the foundation for the organized labor movement in India.

Objectives of the Trade Unions Act, 1926:

1. **To provide legal status** to trade unions by giving them recognition as a corporate body.
2. **To regulate the registration** of trade unions and ensure uniform rules for their functioning.
3. **To confer rights and privileges** on registered trade unions (e.g., immunity from certain civil and criminal actions).

4. **To protect the interests of workers** by allowing collective bargaining and representation in disputes with employers.
5. **To promote healthy industrial relations** between workers and employers.
6. **To ensure accountability** of trade unions through obligations like maintaining accounts, registers, and submitting returns.
7. **To safeguard members' funds** by restricting their use to lawful and welfare-oriented purposes.
8. **To encourage the growth of the labor movement** by recognizing unions as a vital part of industrial democracy.

Scope and Coverage

- The Act extends to **the whole of India** (including union territories).
- It applies to **all types of workers** (industrial, agricultural, service sector, etc.).
- Covers both:
  - **Workmen's unions** (employees).
  - **Employers' unions/associations** (though less common).
- Scope:
  - Defines trade union as *any combination of workers or employers formed primarily for regulating relations between workers and employers, or between workers themselves, or for imposing restrictive conditions on the conduct of trade/business*.
- The Act provides legal recognition but does not make union formation compulsory.

Administration

- The Act is administered by the **Registrar of Trade Unions** appointed by the appropriate government (State or Central).
- Powers of Registrar:
  - Registering and cancelling trade unions.
  - Ensuring compliance with the Act.
  - Supervising accounts and records of trade unions.

- Investigating complaints or disputes regarding registration.

- The **Labour Department** in each state/UT generally oversees the administration.

Registration of Trade Unions

- **Minimum requirement**: At least **7 or more members** of a trade (or industry) can apply for registration.
- **Application** must include:
  - Name of the union.
  - Names, occupations, and addresses of its members.
  - Rules/constitution of the union.
- **Conditions**:
  - At least **10% of the total workers** or **100 workers**, whichever is less, should be members (subject to amendments in some states).
  - The name must not be identical to an existing union to avoid confusion.
- On satisfaction, the **Registrar issues a Certificate of Registration**, which acts as conclusive proof of legal recognition.

Cancellation of Registration

- Registration may be cancelled by the Registrar if:
  1. The union obtained registration by **fraud, mistake, or misrepresentation**.
  2. The union has **contravened provisions** of the Act.
  3. The union has **ceased to exist**.
  4. The union's membership has fallen below the statutory requirement.
- The Registrar must give **at least 2 months' notice** before cancellation.
- Unions can appeal against cancellation in a court of law.

Dissolution of Trade Unions

- A trade union may be dissolved:
  - Voluntarily, by a resolution passed as per its rules.
  - By cancellation of registration.

- Upon dissolution:
    - Notice must be sent to the Registrar within **14 days**.
    - Assets/liabilities are disposed of as per union rules.
    - If rules are silent, the Registrar decides the mode of disposal.

Penalties

- The Act prescribes penalties for violations:
    - **Fine up to ₹5** for default in submitting returns (later amended to higher fines in states).
    - **Fine up to ₹200** for supplying false information.
    - Continuing default may lead to additional fines.
- These penalties are relatively mild but ensure basic compliance.

Obligations of Registered Trade Unions

- Maintain a **register of members**.
- Maintain **books of accounts** (income, expenditure, assets, liabilities).
- Submit **annual returns** to the Registrar regarding membership, accounts, and activities.
- Use union funds only for approved purposes (administration, legal proceedings, welfare, education, etc.).
- Follow their own **constitution and rules** as submitted at registration.

Rights of Registered Trade Unions

- Legal status as a **body corporate** with:
    - Perpetual succession.
    - Common seal.
    - Power to hold property and enter into contracts.
    - Ability to sue and be sued in its own name.
- **Immunity** from:
    - Criminal conspiracy charges (in case of collective bargaining or trade disputes).
    - Certain civil suits (for inducing breach of contract, strikes, etc., if done in furtherance of trade disputes).

- Right to represent workers in disputes, negotiations, and settlements.
- Right to frame rules regarding membership, elections, benefits, and governance.

Conclusion

- The **Trade Unions Act, 1926** legitimized and encouraged collective bargaining in India.
- It provided legal recognition, rights, and protections to trade unions.
- While it has shortcomings and requires modernization, the Act laid the groundwork for industrial democracy and labor welfare.
- Overall, it is a **landmark legislation** in India's labor law framework.

3.2 Industrial dispute Act 1947

The Industrial Disputes Act has come into force in the year, 1947. The Act was enacted to make provisions for the prevention and settlement of industrial disputes and for providing certain safeguards to the workers. The act aims to minimise the conflicts between labour and management by ensuring possible economic and social justice. The regulations made under this act apply to the entire constitution of India. In this article, we look at the Industrial Disputes Act in detail. Learn more about the Industrial Employment Act!

Objectives of the Industrial Disputes Act

The objectives of the Industrial Disputes Act are as follows:

To support measures for securing and preserving good relations between employers and employees.

- To provide suitable machinery for the equitable and peaceful settlement of industrial disputes.
- To prevent illegal strikes and lockouts.
- To afford relief to workers against layoffs, retrenchment, wrongful dismissal and victimisation.
- To promote collective bargaining.

- To improve the conditions of workers.
- To avoid unfair labour practices.

Features of the Act

- The features of the Industrial Disputes Act are listed out.
- The act applies to entire India also includes the state of Jammu and Kashmir.
- It favours arbitration over the disputes between employers and workers.
- It affords for setting up of works committees as machinery for mutual discussion between employers and workers to promote friendly relation.
- The act paved the way for creating permanent conciliation machinery at various stages having definite time limits for conciliation and arbitration.
- This act emphasis on compulsory adjudication apart from the conciliation and voluntary arbitration of Industrial Disputes.
- The Act empowers the Government to refer the dispute to an appropriate authority, i.e., Labour Court, Industrial tribunal and National tribunal depending upon the nature of the dispute either on its own or on the request of the parties.

Authorities under the Act

The following are the authorities specified under the Industrial Dispute Act.

- Works Committee.
- Conciliation Officers.
- Board of Conciliation.
- Court of Inquiry.
- Labour Court.
- Industrial Tribunal.
- National Tribunal.

Works Committee

The works committee is considered to be a powerful social institution only to secure cooperation between workers and employers, but to make the will of the employees effective on the management. According to section 3 of the Industrial Disputes Act, in case of an industrial establishment which contains 100 or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government by ordinary or particular order, acquire the employer to build a works committee containing of representatives of employers and workmen engaged in the establishment. The number of representatives of workers on Works Committee should not be less than the number of representatives of the employers.

Responsibilities of Work Committee

- To promote measures for securing and preserving good relations between the employer and the workmen.
- To communicate upon subjects of their common interest or concern.

Conciliation Officers

The appropriate government will appoint conciliation officers charged with the duty of mediating in and promoting the settlement of the industrial disputes. Those conciliation officers are appointed for a specified area or a specified industry in a specified area, and his appointment may be permanent or temporary.

Responsibilities of Conciliation Officers

- In case of any industrial disputes exist, the conciliation officer should maintain conciliation proceedings in a prescribed manner without delay to have the right settlement.
- Whether the settlement is reached or not, the conciliation officer has to submit the report within 14 days of the commencement of the conciliation proceedings or within the date fixed by the appropriate government.
- If the report proposed in satisfied to the respective Government, it may refer or not refer the dispute to any concerned authority under the Act. If the Government is not

performing any endorsement, it should record and communicate the reason to the relevant parties.

- The duty of a conciliation officer is administrative and not judicial.

Board of Conciliation

Similarly, a board of conciliation also be constituted to promote the settlement of industrial disputes. A board should consist of a chairperson and two or four other members, as the appropriate government thinks fit. The chairman should be an independent person, and the other member should be a person appointed in equal numbers to represent the parties to the dispute on the recommendation of the parties concerned. If any party refuses to make a recommendation within the prescribed time, then the appropriate government can appoint such persons eligible to represent the party.

Responsibilities of Board of Conciliation

- When a dispute has been proposed to a Board, the board will investigate the matter affecting the merits and right settlement of the dispute without delay.
- Whether settlement reached or not, the Board must submit the report within two months of the date on which the dispute was proposed to it.
- If no settlement has arrived, the Government may refer the dispute to the labour court, Industrial Tribunal or National Tribunal.
- The time for submission of the report will be extended by the period as agreed by all the parties to the disputes
- The report of the Board should be in the written notice and has to be signed by all the members of the Board.
- The appropriate Government should publish the report submitted within 30days from the receipt
- A Board of Conciliation only has the power to bring about a settlement. It has no authority to impose a settlement on the parties to the dispute.

Courts of Inquiry

The appropriate government will constitute a court of inquiry consisting thirteen of one or more independent persons to inquire into any subject connected with or relevant to an industrial dispute where a court consists of two or more members any one of them will be appointed as chairman.

Responsibilities of Courts of Inquiry

- A Court will inquire into the request raised to it and report to the appropriate government within six months from the commencement of the inquiry.
- The report of the court will be in the form of a written statement and signed by all the members of the court.
- Members are free to record their dissent. The report submitted will be published within 30 days of its receipt by the Government.

Labour Courts

The appropriate government will constitute one or more labour courts to adjudicate industrial disputes relating to any of the following entities.

- The propriety or legality of an order passed by an employer under the standing orders.
- The application and interpretation of standing orders.
- Discharge or dismissal of workers, including the retirement, grant of relief to workers wrongfully dismissed.
- Withdrawal of any customary concession or privilege.
- The appropriate government will appoint a labour court which consists of one person with the necessary judicial qualifications and will be appointed by the appropriate government.
- Responsibilities of Labour Courts
- Adjudicate upon the industrial disputes regarding any subject specified in the Second Schedule.
- When an industrial dispute has been proposed to a Labour Court for adjudication, within the specified period, it should submit award to the appropriate Government.

- The appropriate Government will publish it within 30 days from the date of its receipt.

Industrial Tribunals

The appropriate Government by notification in the legal Gazette will constitute one or more industrial tribunals for the adjudication of industrial disputes relating to any matters specified above as in the case of Labour Court, or the following matters, namely

- Wages include the period and mode of payment
- Compensatory and other allowances;
- Hours of work and rest intervals.
- Leave with wages and holidays.
- Bonus, profit sharing, provident fund and gratuity.
- Shift working otherwise than by standing orders.
- Rules of discipline
- Rationalisation
- Retrenchment of workers and closure of establishment and
- Any other subject which is prescribed.

Responsibilities of Industrial Tribunals

- It should submit its request to the appropriate Government within a specified period if an industrial dispute is proposed to an Industrial Tribunal.
- The request should be in written format and also be signed by its presiding officer.
- The request made should be published by the appropriate government within 30 days in a prescribed manner.
- Then the judicial body needs to serve notice upon the parties to the reference by name before making any request.

National Tribunal

The Central Government by notification in the legal Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes in the opinion of the Central Government involve questions of the national importance of industrial establishments situated in more than one State are likely to be interested or affected by such disputes. A National Tribunal will consist of one person to be appointed by the Central Government. To be qualified as a Presiding Officer of a National Tribunal, a person must be or must have been a Judge of a High Court, or must have held the office of the Chairman or any other member of the Labour Appellate Tribunal for at least two years. The Central Government may appoint two assessors to advise the National Tribunal, in proceedings before it.

Responsibilities of National Tribunals

- When an industrial dispute is requested to the National Tribunal for adjudication, it should submit its request to the appropriate government.
- The request should be in written format and also be signed by the presiding officer of the National Tribunal.
- It should publish the request made within a period of 30days from the date of its receipt by Central Government.

Provision of Illegal Strike and Lockout under the Act

As per the Section 24 of the Act provides that a strike or a lockout shall be illegal in the following cases:

- Declared in contravention of Section 22 or Section 23.
- Continued in contravention of the prohibitory order performed by appropriate Government after the dispute has been stated under Section 10(3).

Prohibition of financial support to illegal strikes and lockouts under Section 25

This section of the Act prohibits financial support to illegal strikes and lockouts. This section has the following conditions:

- Spending or applying for money.
- Money spent or applied in direct progress or support of an illegal strike.

Penalties for Illegal Strikes and Lock-outs

In case of any workman who continues with the illegal strikes specified under this act will be punishable with imprisonment for one month or more and also with the fine of Rs.1000 or with both. In case of any employer who continues with the illegal strikes specified under this act will be punishable with imprisonment for one month or more and also with the fine of Rs.1000 or with both.

3.3 Industrial employment (standing orders) Act 1946

The Industrial Employment (Standing orders) Act, was introduced for the employers in industrial establishments to ensure the employment conditions under the establishments. Standing Orders states the laws which govern the relationship between the employer and a workman in an industrial establishment with includes the elements such as classification of workers, working hours, attendance, suspension, termination etc.

Objective of the Act

The objective of the Industrial Employment (Standing Orders) Act, are as follows:

1. To provide regular standing orders for workers, factories, and working relationship.
2. To ensure that the employee recognises the terms and conditions of the employees and thus to minimise exploitation of the workers.
3. To promote industrial peace and harmony by supporting fair industrial practices.

Applicability of the Act

The Act applies to all industrial establishments involving 100 or more workers under Section 1(3). Under section 2(i) Industrial Establishment are the following entities are listed below:

1. An industrial establishment as specified in section 2(i) of Payment of Wages Act.
2. Factory as explained in section 2(m) of Factories Act.
3. Railway Industry
4. Establishment of contractor who employs workers for fulfilling the contract with the owner of an industrial establishment under section 2(e).
5. Workman as specified under section 2(s) of Industrial Disputes Act. Under Section 2(i) workman covers skilled, unskilled, manual or clerical work. However, workman does not include employees engaged in a managerial or administrative capacity or supervisory

capacity and also it does not include workers subject to Army Act, Navy Act or Air Force Act or police or prison services.

Certification of Standing Orders

It is mandatory for every employer covered under the Industrial Employment (Standing Orders) Act has to get standing orders certified by submitting five draft copies of the standing orders to the certifying officer such as labour commissioner or a regional labour commissioner and also includes any other officer appointed to perform the functions of certifying officer.

Details Enclosed in Standing Orders

The particular information which is generally provided in the standing orders includes:

1. Workmen classification into categories such as permanent, temporary, on probation, etc.
2. Method of informing the workmen about working hours, holidays, etc.
3. Shift working.
4. Temporary stoppages of work.
5. Provisions concerning the termination of employment and the notice period.
6. Actions/inactions which are treated as misconduct and the consequences for the fault.
7. Grievance redressal mechanism in case of unjust or unfair treatment by the employer.
8. Attendance marking system for workers.
9. Employment termination and the notice thereof to be provided by both employer and the workers.
10. Procedure for availing leave and encashment, accumulation of leaves.
11. Workmen records and information, etc.

Modification of Standing Order

Standing orders finally certified by the certifying officer is not liable to change, except by an agreement between the employer and workers to the contrary, until the expiry of six months from the date on which the standing orders or the last modification came into operation. An employer or workers or a trade union or other representative body of the workman may apply to the certifying officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications to be performed.

Temporary Application of Model Standing Orders

Model standing orders apply to an industrial establishment from the time the IESO Act becomes applicable to such establishment till the time the standing orders of the establishment are finally certified.

Procedure for Certification of Standing Orders

The process for certification of standing orders is specified below:

Step 1: On receipt of the draft standing orders, the certifying officer will forward a copy to the trade union together with a notice in Form-11 where there is a trade union functioning in the industry. In case of no such trade union, the Certifying Officer will hold election of three representatives by the workmen from among themselves or authorise any officer in working to hold such election, and then a copy of the notice in Form-II can be forwarded.

Step2: Certifying Officer after hearing make necessary modification in the draft standing order if required and certify the same and within seven days the copies of the standing order authenticated by him will reach to the employer and the trade union or the prescribed representatives of the workmen.

Step 3: Any employer, workmen, trade union or other specified representatives of any workman aggrieved by the order of the Certifying Officer within thirty days from the date on which copies of the certified standing orders are sent can be submitted as a memorandum of appeal setting out the grounds of appeal in Form-IV in quadruplicate appeal to the Appellate Authority.

Step 4: The Appellate Authority can proceed after giving the appellant an opportunity of being heard will pass final order on the appeal petition, and his decisions will be made final.

Payment of Subsistence Allowance

Where any workman is known to be suspended at the investigation or inquiry into complaints or charges of misconduct against him, it is mandatory for the employer to pay to such workman subsistence allowance at the following rates: For the first 90 (ninety) days: at the rate of 50% (percentage fifty) of the wages which the workman was entitled to immediately preceding the date of such suspension. For 91 (ninety-one) to 180 (one hundred eighty) days: at the rate of 75% (percentage seventy-five) of such wages of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman. Virtually the order of suspension does not put an end to a workman's service though he is not permitted to work and is paid only substance allowance which is less than is salary. This reduced rate of wages constitutes subsistence allowance.

Processing Time

Standing orders certified and their authenticated reports are forwarded to employers and workers within thirty days from the date of application submitted to the certifying officer.

Penalty

If an employer defaults to submit draft standing orders or modifies his standing orders, then the concerned officer may impose a penalty which will be above Rs 5,000 (five thousand), and in the case of a continuation of offence may impose a fine which will be above Rs 200 (two hundred) for every day till the offence continues. If the establishment does any act in violation of the standing orders after getting certified under this Act, then the employer will be punishable with the penalty of which will be more than Rs 100 (One hundred), and in the case of a continuation of offence may impose a fine of Rs 25 (twenty five) for every day till the offence continues.

3.4 Industrial Discipline and Misconduct

INDUSTRIAL DISCIPLINE

i) Meaning

Industrial discipline means working by employees according to rules, regulation and code of conduct in the industry. Industrial discipline signifies orderliness. It is the opposite to disorder in employees behaviors and action. It is said to be good when the members of organisation willingly follow the rules and regulation within the standards of acceptable behaviors and willingly follow the rules and regulations of the enterprise. It is said to be bad when subordinates either do this reluctantly and unwillingly or actually disobey regulations and standards of acceptable behaviour as promulgated by the need of enterprises,

ii) Objectives of Industrial Discipline

The main objective of Industrial discipline is:

i. To get co-operation of subordinates within the framework of management's policy for fulfilling the target and not merely to enforce authority;
ii. To reform the offender causing displeasure, deter others from making the same mistake.

Right of the Employer to Enforce Discipline

The employer has the right to enforce discipline, but effective discipline should arise from workers' self-discipline, education, and fair management practices rather than coercion. A fair, open, and just management faces fewer disciplinary issues. According to McGregor's "Hot Stove Rule," discipline should follow principles of advance warning, universality, consistency, impersonality, and immediacy, though managers often fail to adhere to these.

The Second Five Year Plan emphasized voluntary discipline through mutual arrangements rather than legislation, leading to the adoption of the **Code of Discipline (1958)**, applicable to both public and private sectors. The Code stressed mutual agreements, grievance procedures, and avoidance of strikes, lockouts, and litigation, but lacked legal sanction and achieved limited success.

In absence of strong collective bargaining, employers often misuse disciplinary powers, sometimes dismissing workers for minor misconduct, causing dissatisfaction in a job-scarce economy. Thus, there is a pressing need for fundamental principles and statutory provisions to guide fair disciplinary action and ensure harmonious labour-management relations.

MISCONDUCT

Misconduct is a general concept not confined to labour relations alone; it refers to violation of rules or discipline in any organization, making a person liable for punishment. In employment, misconduct hampers organizational functioning and necessitates disciplinary action.

The term is not defined in the Industrial Disputes Act, 1947 or Industrial Employment (Standing Orders) Act, 1946, but legal and dictionary interpretations describe it as wrongful, improper, or reckless conduct—distinct from mere inefficiency or negligence. Courts have clarified that misconduct involves intentional or reckless wrongdoing, not simple errors of judgment.

Misconduct is a generic term, while specific acts like insubordination or neglect of work are its species. Its scope varies depending on the seriousness of negligence and the employment relationship.

Types of misconduct are generally listed in the Standing Orders of establishments. In their absence, Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 apply, which specify acts or omissions constituting misconduct.

Under the model standing orders the following acts and omissions are misconducts: (O.P. Malhotra, `The Law of Industrial Disputes', N.M. Tripathi Private Ltd., Bombay, 1981, P. 750-751)

a) Willful insubordination or disobedience, whether alone or in combination with others ,to any lawful and reasonable order of a superior.
b) Theft, fraud or dishonesty in connection with the employer's business or property.
c) Willful damage to or loss of employer' s goods or property.
d) Taking or giving bribe or any illegal gratification.
e) Habitual absence without leave or absence without leave for more than ten days.
f) Habitual late attendance.
g) Riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline.
h) Habitual negligence or neglect of work.
i) frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2% of the wages in a month; and
j) Striking work or inciting others or strike work in contravention of the provisions of any law or rule having the force of law.

The Bombay High Court in Sharda Prasad, Tewari v. Central Railway, (1960, 1 L.L.J. 167 Bombay) enumerated broadly the following specific illustrative cases of acts of misconduct, the commission of which would justify dismissal of the delinquent employee are:

1. Where the act or conduct prejudicial or likely to be prejudicial to the interests, or reputation of the master.
2. Where the act or conduct inconsistent or incompatibly with the due or peaceful discharge of his duty to his master.
3. An act or conduct making it unsafe for the employer to retain him in service.
4. An act or conduct making it unsafe for the employer to retain him in service.
5. An act or conduct of the employees which may make it difficult for the master to rely on faithfulness of the employee.
6. An act or conduct of the employee opening .before him temptation for not discharging his duties properly.
7. An abusive act or an disturbing the peace at the place of employment.
8. Insulting or insubordination to such. a degree as to be incompatible with the continuance of the relation of master and servant.
9. Habitual negligence in respect of the duties for which the employee is engaged; and
10. An act of neglect, even though isolated, which tends to cause serious consequences.

3.5Domestic Enquiry

Concept of Domestic Enquiry

Domestic enquiry is an internal investigation conducted by the employer against an employee accused of misconduct. It ensures that charges are examined fairly before punishment is imposed. It follows the principles of **natural justice**—"nobody shall be condemned unheard" and "no one can be a judge in his own cause." The purpose is not only to prove misconduct but also to protect the rights of workers and maintain industrial harmony.

The Processes of Domestic Enquiry

1 Preliminary Enquiry

A preliminary enquiry is conducted when there is doubt about whether misconduct has actually occurred. It is informal, aimed at verifying facts before issuing a formal charge-sheet. If sufficient evidence is found, the management proceeds with a formal enquiry.

2 Framing of Charges

Clear, specific, and unambiguous charges are drafted, mentioning the act of misconduct, date, place, and nature. Vague or generalized charges are invalid. The charge must be based on certified Standing Orders or service rules.

3 Service of Charge-sheet

The charge-sheet is a formal written document served on the delinquent employee. It contains:

- Description of alleged misconduct.
- Reference to violated rules/standing orders.
- A call to reply within a specified time. It should be delivered personally or through registered post to ensure receipt.

4 Reply to the Charge-sheet

The employee is given reasonable time to submit a written explanation. He may admit, deny, or justify the act. If the reply is satisfactory, no enquiry may be necessary; if unsatisfactory, a formal enquiry is initiated.

Choice of the Enquiry Officer

The Enquiry Officer must be impartial, independent, and not directly connected with the incident. A senior officer not involved in framing charges is usually appointed. Bias or personal interest of the officer invalidates the enquiry.

Notice of Enquiry and its Service

The delinquent worker must be given sufficient advance notice of the enquiry, specifying date, time, and place. Proper service of notice is essential; without it, proceedings are void.

Choice of Prosecution and Presenting Officer

The management may appoint a presenting officer to present evidence and arguments against the delinquent employee. He acts as the "prosecution" on behalf of the employer.

Assistance to the Delinquent Workers

The employee has the right to defend himself, either personally or through:

- A co-worker.
- A union representative.
- In some cases, a legal practitioner (if permitted by standing orders or if management appoints a lawyer).

Other Facilities

For fairness, the worker must be given:

- Access to relevant documents and records.
- Permission to cross-examine witnesses.
- Opportunity to produce his own witnesses.
- Denial of these facilities violates natural justice.

Enquiry Proper

The enquiry proceedings are similar to a trial, but less formal. Steps include:

1. Reading of charges.
2. Presentation of management witnesses and evidence.
3. Cross-examination by the employee.
4. Presentation of defence evidence.
5. Cross-examination of defence witnesses.
6. Recording of proceedings in writing.

The enquiry officer must act impartially and record all evidence faithfully.

Findings

After considering evidence, the Enquiry Officer prepares a report with:

- Findings on each charge (proved, partly proved, or not proved).
- Reasoning and analysis of evidence.
- This report is submitted to the disciplinary authority (not to the delinquent directly).

Imposition of Punishment

Based on the enquiry report, the disciplinary authority decides punishment. It must be proportionate to the misconduct (principle of proportionality). Punishments may include warning, fine, suspension, demotion, discharge, or dismissal.

Communication of the Order of Punishment

The punishment order must be communicated in writing to the employee, clearly mentioning reasons. Non-communication makes the order invalid.

Intervention by Courts

Courts/Industrial Tribunals can interfere if:

- The enquiry violated natural justice.
- Charges were vague or not proved.
- Punishment was disproportionate or mala fide.

  While courts do not normally reappreciate evidence, they ensure fairness and legality.

UNIT 4

Minimum Wages Act 1948

The Minimum Wages Act 1948 is an Act that fixes a minimum wage for both skilled and unskilled workers and provides comprehensive coverage. Under the Act, men and women are treated equally. Under the Minimum Wages Act 1948, both Central and State Governments are responsible for fixing minimum wages. However, wages vary from region to region, considering the worker's cost of living and other factors. This law is beneficial for protecting workers from exploitation and gives them a basic standard of living.

The Central or State Government sets up an advisory board to review and revise the minimum wages to cover a family's basic requirements. Thus, there is no uniform minimum wage rate across the country. However, an employee may face imprisonment or pay a fine if he/she pays wages below the minimum wage rate prescribed under the Act.

Objectives of the Minimum Wages Act

The main objectives of the Minimum Wages Act 1948 are:

1. To stabilise an adequate minimum wage applicable for all employees and secure their financial position.
2. Fix and change the minimum wages paid to employees by the employer in the establishments covered under the Act.
3. To fix the daily working hours of an employee according to the type of employment.
4. To avoid exploitation of the workers.
5. To give powers and duties to Labour Commissioners and other Labour Officers to decide on complaints relating to less wage payment.
6. To establish and provide duties of respective inspectors.
7. To provide powers to the appropriate government to set rules.
8. To maintain a decent standard of living for the workers.

Salient Features of Minimum Wages Act 1948

The salient features of the Minimum Wages Act 1948 are as follows:

- The Minimum Wages Act determines the hourly rates of wages or guaranteed time rate and overtime pay for each category of workers depending on their work type.
- The Act looks into the fact that the wages are paid in cash.
- The Act makes it mandatory to fix and revise wages from time to time.
- Inspectors and authorities are appointed under the Act to investigate the registers maintained by employers containing information regarding wages paid to employees.
- The government appoints the competent authorities who are responsible for computing the cost of living allowance.

Scope of Minimum Wages Act 1948

The Minimum Wages Act 1948 applies to the whole of India and aims to prevent the exploitation of employees with inadequate wages and delayed salary payments. Minimum wages are fixed for workers employed in certain scheduled employment. However, unscheduled industries are excluded under this Act.

Central and State Governments determine the minimum wages for scheduled employment. They fix and revise the wage rates according to different worker categories, including skilled, unskilled, semi-skilled, and highly skilled.

Minimum Wages Act Applicability

Under the Minimum Wages Act 1948, minimum wages are fixed and applicable for the workers employed in the following scheduled employment:

- Employment in any shawl weaving or woolen carpet-making establishment.
- Employment in any flour mill, rice mill, oil mill or dal mill.
- Employment in a tobacco, including bidi making manufactory.

- Employment in a plantation, i.e., any estate maintained for growing rubber, cinchona, coffee or tea.
- Employment under any local authority
- Employment on the maintenance or construction of roads or building operations.
- Employment in stone crushing or stone breaking.
- Employment in the construction and maintenance of runways or buildings.
- Employment in Lac manufactory.
- Employment in mica works.
- Employment in public motor transport.
- Employment in leather manufactory and tanneries.
- Employment in steatite, including the mines producing Tale and Soapstone.
- Employment in the following mines:
- Gypsum mines
- Barytes mines
- Bauxite mines
- Manganese mines
- China clay mines
- Kyanite mines
- Copper mines
- Clay mines
- Stone mines
- Ochre mines
- Asbestos mines
- Fire clay mines
- Chromite mines
- Quartzite mines and Quartz mines

- Silica mines
- Graphic mines
- Feldspar mines
- Laterite mines
- Dolomite mines
- Redoxide mines
- Wolfram mines
- Iron ore mines
- Granite mines

The appropriate government, comprising both State and Central Government, may fix minimum wage for scheduled employment if the total number of employees employed in a given industry sector exceeds one thousand in the entire State. However, the appropriate government can also fix and revise minimum wage rates for scheduled employment where there is employment of less than one thousand employees if it considers appropriate to do so.

Main Provisions of Minimum Wages Act 1948

The main provisions stated in the Minimum Wages Act 1948 are as follows:

- The State and Central Government should fix a minimum wage, taking into consideration the cost of living of workers.
- Wages paid to employees include remuneration or other form of compensation expressed in monetary terms.
- Discrimination is prohibited based on gender for employee recruitment and wages.
- The minimum wages are revised from time to time in the Rules of the various states made under the Act.
- The State and Central Government should fix the number of hours of work per day for which minimum wages are to be paid.

- When an employee works more than the fixed hours of work per day, the employer must pay him/her the fixed overtime rate for every hour or part of an hour worked in excess.
- The Act also charges a penalty and punishment for paying wages less than the minimum wage payment.

Types of Wages Under Minimum Wages Act 1948

Under the Minimum Wages Act 1948, wages are classified as follows:

Minimum Wages

Minimum wages are the minimum amount that the employer of scheduled employment must pay their employees. The government fixes the minimum wages for all scheduled employment covered under the Act.

Overtime Wages

Overtime wages are the wages paid to an employee for each hour that he/she works overtime. Overtime means when an employee works more than the fixed number of working hours in a day.

Cost of Living Allowance

This is the basic wage rate and a special allowance rate paid to employees. The government may revise the special allowance rate at such intervals to match the practicable variation in the cost of living index number of the workers.

Wages in Kind

Wages in Kind are the minimum wages paid to an employee wholly or partly in kind. Though the Act provides that the minimum wage must be paid in cash, wages in kind can be given in circumstances where there is a custom to pay wages in kind and the government also approves it by notification in the Official Gazette. The government will estimate the wages in kind in a prescribed manner.

Minimum Wage under Minimum Wages Act

Section 2 of the Minimum Wages Act 1948 defines wages as all remuneration payable in cash to an employee for fulfilling the work mentioned in the employment contract, including house rent allowance.

However, wages paid to an employee do not include the following:

- The value of any house accommodation, supply of water, light, medical attendance, or any other service or amenity excluded by a general or special order of the appropriate government.
- Any contribution paid by the employer to a pension or provident fund or any social insurance scheme.
- Any travelling allowance or travelling concession.
- Any amount paid to the employee to defray special expenses borne by him/her due to the nature of the employment.
- Any gratuity payable on discharge.

The appropriate government will fix the minimum wages paid to employees or workers in the scheduled employment covered under the Act. Appropriate government means:

1. The Central Government in the case of any scheduled employment under the authority of the Central Government, railway administration, mine, oilfield, major port, or any corporation established by a Central Act.
2. The State Government in the case of all other scheduled employment.

Fixation and Revision of Minimum Wages

Section 3 of the Minimum Wages Act 1948 gives power to the appropriate government to fix the minimum wage rates for workers in scheduled employment. The appropriate government also revises the minimum wage at intervals not exceeding five years.

However, the appropriate government can refrain from fixation on minimum wages for any scheduled employment where the total number of employees in the state is less than one thousand.

The appropriate government can fix the below wage rates under the Act:

- Minimum Time Rate: This is the minimum wage rate fixed for the work duration of a worker.
- Minimum Piece Rate: This is the minimum wage fixed for a piece of work done by the worker.
- Guaranteed Time Rate: This is a minimum remuneration rate fixed for employees employed on piece work to secure a minimum wage rate on a time work basis to such employees.
- Overtime Rate: This is the minimum time rate or piece rate fixed for the overtime work performed by a worker.

The appropriate government can fix rates of minimum wages for the following sections:

- Different categories of work in the same scheduled employment
- Different scheduled employment
- Different regions
- Adolescents, adults, children, and apprentices

The minimum wage rate is determined according to days, hours, months or any other wage period. However, the rates to be fixed might not be uniform. Different zones may have diverse rates.

Section 4 of the Act provides that the minimum rates of wages fixed can comprise of:

1. Cost of living allowance. The cost of living allowance is the basic wage rate plus the special allowance at an adjustable rate as the appropriate government directs as per the variation in the cost of living index numbers.
2. A basic wage rate with or without considering the cost of living allowance and the cash value of concessions provided to the supplies of essential commodities at fixed concessional rates.

3. An all-inclusive rate providing for the basic wage payment, the cost of living allowance, and the cash value of concessions, if any.

The appropriate government has the right to fix and revise the minimum wages either by appointing committees and sub-committees or by publishing proposals through a notification in the Official Gazette.

Claims Under Minimum Wages Act 1948

The appropriate government, through a notification in the Official Gazette, may appoint the following persons as Authority to hear and decide all claims of payment of wages less than the minimum wage rate, payment of remuneration for rest days/ work done on working days or payment of overtime rate wage for any specified area:

- Commissioner for workmen's compensation
- Any officer of the Central Government serving the role of Labor Commissioner for any particular area
- Any officer of the State Government not below any rank of Labor Commissioner
- Any officer who has the experience of a Judge of a Civil Court or stipendiary Magistrate

The Authority shall hear the employee and the employer, conduct any further inquiry if required and direct the following:

- In the case of a claim of payment of wages less than the minimum wage rate, the Authority may direct the employer to pay the employee the deficit amount of the actual wages paid and the minimum wages and compensation not exceeding ten times the amount of the deficit amount to be paid
- In any other case, the Authority may direct the payment of the amount due to the employee and compensation not exceeding Rs.10.

Payment of Wages Act 1936

What is the Payment of Wages Act 1936?

The Payment of Wages Act 1936 regulates the manner in which wages are paid to employees or workers, either directly or indirectly. It was enacted specifically to safeguard employees from unlawful wage deductions and prevent delays in wage payment. With the ultimate concern regarding safeguarding workers' rights, this Act provides on-time wage payments to workers, thus enhancing the overall productivity of the workforce.

Objectives and Scope of Payment of Wages Act 1936

The Payment of Wages Act 1936 is an Act responsible for regulating the payment of wages to a specified category of employed individuals. The objectives of the Payment of Wages Act 1936 are as follows:

- To ensure timely and proper payment of wages to employed individuals and protect them from unauthorised deductions.
- To ensure employers abide by the rules and comply with the Act's requirements by providing for penalties in case of non-compliance.
- To foster industrial harmony and peace by providing a fair and transparent wage payment process.
- To create a balanced and sustained approach, prioritising workers' financial well-being while promoting an effective industrial environment.

Features of Payment of Wages Act 1936

The Payment of Wages Act 1936 mainly provides for the timely payment of wages to employees without further deductions by establishing rules related to the distribution of wages.

Here are the notable features of the Payment of Wages Act 1936:

Applicability

The Payment of Wages Act 1936 ensures the fair distribution of wages to employees earning wages below Rs.24,000 per month and protects their rights.

Period of Payment of Wages

It is mandatory to pay out wages for a month on the seventh or tenth day of the following month. However, considering the type of work, employees can receive wages weekly and daily. Thus, employees receive accurate wages every month without delay or unauthrised deductions.

Mode of Payment

Payment should be made in currency notes, coins, or cheques. With further permission from employees, wages can be transferred directly to their bank account, thus ensuring safety and security.

Authorised Deductions

The Payment of Wages Act defines the authorised deductions that can be made by an employer while paying the wages to an employee. This ensures employers do not make unauthorised deductions from workers' wages.

Applicability of Payment of Wages Act 1936

The Payment of Wages Act of 1936 applies to the entire India. The Act applies to the wages paid to individuals employed only in the following establishments:

- In a factory
- In railways or railway administration employed directly or through a sub-contractor by signing a contract with the railway administration
- In any industry
- In tramway service, motor transport service carrying goods or passenger or both by road for reward or hire
- In air transport service except service belonging to or exclusively employed in the naval, military or air forces of the Union or the Civil Aviation Department
- In the dock, wharf or jetty
- In an inland vessel, mechanically propelled
- In a mine, oilfield or quarry
- In plantations
- In workshops or other establishments in which articles are manufactured, produced, or adapted for sale, use or transport
- In establishments where the work is related to the construction, development or maintenance of buildings, bridges, roads or canals or relating to the operations connected with irrigation, navigation, electricity distribution, or any other form of power is being carried on
- Any other establishments or class of establishments which an appropriate Government may specify by notification in the Official Gazette

This Act applies to a worker receiving wages below Rs.24,000 each month or any such higher amount, which the Central Government may notify every five years based on the figures of the Consumer Expenditure Survey published by the National Sample Survey Organization.

Time of Payment of Wages

The Payment of Wages Act 1936 has made it mandatory to pay wages to employees within a specified period. Employers must fix the wage period for which the wages are paid, which cannot exceed one month. Timely payment provides financial stability and security to employees without unnecessary adjustments in payment procedures.

The time of wage payment as prescribed under the Payment of Wages Act is as follows:

- If there are less than 1000 employees in the establishments applicable under the Act, the employer must pay the wages before the seventh day after the last day of the wage period fixed by the employer.
- If there are 1000 employees or more working in any establishment covered under the Act, the employer must pay wages before the tenth day after the last day of the wage period fixed by the employer.
- For employees working on a wharf, jetty, dorks, or mine, the balance of wages on completion of the final tonnage account of the ships or wagons unloaded or loaded will be paid within seven days from the completion day.
- If an employer terminates an employee, the wages must be paid within two days of the termination date.

The employer should pay out wages for all employees only on a working day.

Maximum Amount of Deduction Under Payment of Wages Act 1936

Section 7(3) of the Payment of Wages Act 1936 provides that the total amount of deduction cannot be more than:

- 75% of wages when deductions are made partially or wholly for payments relating to cooperative societies
- 50% of wages in other cases

Deduction Under the Payment of Wages Act

The employers decide the deduction amount at the time of wage payment to employees. However, the Payment of Wages Act 1936 provides that an employer can only make the following deductions from the wages of the employee:

Imposition of fines as per the provisions of the Act

Deductions for damage or loss of goods caused due to negligence of the employees

- Deductions for absence from duty
- Deductions for contributing to any insurance scheme as structured by the Central Government to benefit its employees
- Deductions for amenities and services provided by the employer as per the authorisation of the appropriate government or any officer
- Deductions for house accommodation provided by the employer or any housing authority
- Deductions made upon payment of premium on life insurance policy to the insurance corporation
- Deductions for recovery of advances, including advances for travelling or conveyance allowance and the interest due or for the adjustment of wage overpayments
- Deductions associated with loan recovery made from welfare labour fund
- Deductions applicable for recovery of loans granted for the construction of houses or meeting other purposes
- Deductions of income tax payable by the employees
- Deductions for payments made to a provident fund
- Deductions for any payments made to an insurance scheme premium maintained by the Life Insurance Corporation or for any amount deposited with the Post Office Savings Bank upon approval from the employee
- Deductions for payment of contribution to a fund constituted by the employer or a trade union for the welfare of the employees upon approval from the employee
- Deductions for loss recovery sustained by any railway administration if any employee fails to collect fares and charges
- Deductions for contributions made to the Prime Minister's Relief Fund upon approval from the employee

The following are not considered as deductions under the Payment of Wages Act:

- Demotion of the worker

- Suspension of the worker
- Pause of increment of worker
- Promotion stoppage of the worker

Fines under Payment of Wages Act 1936

An employer can impose fines on workers only with an order from the State Government. Here are points every employer must note before imposing fines on the employees:

- The employer should exhibit a notice on the premises of the employment or at the prescribed place specifying the acts and omissions of the employee for which the fine is imposed.
- The employee must be given an opportunity to provide clarification and underlying reasons for the acts and omissions for which the fine is imposed.
- The total amount of fine should not exceed 3% of the employee’s wage for a wage period.
- The fine cannot be imposed on any employed person aged below 15 years.
- Fines should not be recovered in installments or after the expiry of 90 days from the day of imposing fines.
- All fines collected from workers should be utilised for purposes beneficial to the employees of the establishment.

Claim and Adjudication Under the Payment of Wages Act 1936

An employee can raise a claim arising out of deductions from wages or due to delayed payment of wages and penalties against the employer either in person himself/herself or through a legal practitioner or an official of a registered trade union authorised in writing to act on the employee’s behalf or any Inspector under this Act.

When any employee makes a claim arising out of deductions from wages or due to delayed payment of wages and penalties, the government can appoint the following persons as the Authority to hear and decide the claims:

- Any Commissioner for workmen’s compensation
- Any officer of the State Government not below any rank of Assistant Labor Commissioner with experience of at least two years
- Any officer of the Central Government serving roles as Assistant Labor Commissioner with at least two years of experience or Regional Labor Commissioner

- A presiding officer of any Industrial Tribunal or Labor Court or under any law relating to the settlement and investigation of industrial disputes in force in the State
- Any officer who has the experience of a Judge of a Civil Court or a Judicial Magistrate

After hearing the claim, the Authority may direct a refund to the employees or the payment of the delayed wages, along with the payment of compensation. However, the compensation cannot exceed ten times the amount deducted in case of wage deduction. In the case of delayed payment of wages, the payment of compensation must be a minimum of Rs.1,500 but cannot exceed Rs.3,000.

Benefits of Payment of Wages Act 1936

The Payment of Wages Act 1936 provides several benefits to workers and employees. The most important benefit is that the workers receive their wages without delay. The Act specifies the date within which the wages must be paid to the workers so that they get their wages without any delay. This, therefore, creates financial soundness, security, and well-being among workers.

It guards against unauthorised wage deductions imposed by an employer by specifying deductions that can be made from wages, like fines and compensation for damage or loss incurred by employees. It ensures workers are not unfairly saddled with unlawful penalties and receive complete wages.

Another benefit of the Payment of Wages Act is that it provides a legal process for settling all issues relating to wage payment. When wages are paid late or unauthorised wage deductions occur, an employee can lodge a complaint against his employer. This also helps employers and employees establish a healthy relationship.

The Payment of Wages Act covers various industries and factories. It covers workers receiving more than Rs.24,000 wages per month, safeguarding a significant segment of workers.

Payment of Bonus Act 1956

Definition of Bonus under Payment of Bonus Act 1956

As Per Payment of Bonus Act 1965, The Bonus is a financial reward given by the employer to its employees, shareholders, and sometimes to its customers as well. It is a gesture of gratitude for doing one’s job well. It is an extra amount or reward in the form of cash or gift and is not a part of your existing salary. It is a global practice and is usually given at the time of holiday or financial year-end to employees with merit and outstanding performance.

A bonus is a gesture, which helps in boosting employees' morale to achieve higher goals for the company and self-growth. It helps to focus better on your skill sets and drives you to better your skills.

The distribution of the bonus is different for different companies. Some employees work on a commission basis and get a certain percentage for bringing business while others may have it pre-defined in their contract. With time bonuses have become flexible and purely on performance irrespective of your position in the organization.

Payment of Bonus Act

The payment of Bonus Act, 1965 aims to regulate the amount of bonus to be paid to the persons employed in establishments based on its profit and productivity. The act is applicable to the whole of India for all establishments which had twenty or more persons employed on any day during the year.

History of Payment of Bonus Act

•**1917:** During the First World War, certain textile mills granted 10% of 'war bonus' to the wages of the workers under their employment.

•**1950:** A full bench of *Labour* Appellate came up with a formula for payment of Bonus to employees.

•**1961:** A tripartite commission was set up by the Central Government to recommend on the payment of bonus in a comprehensive manner.

•**1965:** The Payment of Bonus Act came into existence and was implemented on 29th May 1965.

Objectives of the Act

The objectives of the Bonus Act (Payment of bonus Act) are as follows:

1. To impose a legal responsibility upon the employer of every establishment covered by the Act to pay the bonus to employees.
2. To designate the minimum and maximum percentage of bonus.
3. To prescribe the formula for calculating bonus.

4. To provide redressal mechanism.

Provision under the Payment of Bonus Act

Applicability of the Act

The Payment of Bonus Act implements to the establishments which fall under any of the below listed:

1. It applies to any factory or establishment which had twenty or more workers employed on any day during the year.
2. The act does not apply to the non-profit making organisations.
3. It is not applicable to establishments such as LIC, hospitals which are excluded under Section 32.
4. It is not applicable to establishments where employees have signed an agreement with the employer.
5. It is not applicable to establishments exempted by the appropriate government like sick units.

Eligibility for Bonus

1. The employee receiving salary or wages up to Rs.21,000 per month
2. The employee engaged in any work whether skilled, unskilled, managerial, supervisory etc.
3. The employee who have worked not less than 30 working days in the same year.

Disqualification of Bonus

The employees cannot avail the bonus if any action taken by the management in case of dishonesty, theft, sabotage of any property of establishment, violent behaviour while on the duty within premises of the establishment.

Payment of Minimum and Maximum Bonus

1. The minimum bonus will be 8.33% of the salary during the year, or • 100 rupees will be given in case of employees above 15 years and sixty rupees in the case of employees below 15 years, whichever is higher.
2. The maximum bonus is 20% of the salary during the accounting year.

Timeline for Payment of Bonus

The payment of bonus should be paid in cash within eight months from the end of the accounting year or within a month from the date of enforcement of the act.

Computation of Bonus

As per the Section 4 and Section 7 together with the Schedule 1 and two deal with the calculation of gross profit and available surplus out of which 67% in case of companies and 60% in other cases would be allocable surplus.

To compute the available surplus the sums, so deductible from the gross profits are:

1. All direct taxes under Section 7
2. The sums which are particularised in the schedule
3. The allowance for investment or development in which the employer is allowed to deduct from his income under the Income Tax Act.

Available Surplus = Gross Profit – (deduct) the following:

4. Depreciation is allowable in Section 32 of the Income-tax Act.

5. Development Allowance.

Duties of the Employer

The following duties to be carried out by the employer:

• To estimate and pay the annual bonus as required under the Act.

To maintain the following registers:

1. The register should show the computation of allocating surplus in respective Form.
2. The register should be maintained with the payment of the bonus to the employees.
3. The records should be maintained before inspection and such other information should be stored.

Rights of Employees

The following rights to be claimed out by the employees:

1. Right to claim bonus due under the Act and to request an application to the Government for the redemption of bonus amount which is unpaid, within one year of its being due.

2. Right to notice any dispute to the Labour Court/Tribunal.

   • Employees who are not eligible for the Payment of Bonus Act, cannot raise a dispute about the bonus under the Industrial Disputes Act.
3. Right to seek clarification and obtain information, on any item in the accounts of the establishment.

Offences and Penalties

In case of violation of the provisions under the Act or rules, then the penalty is imprisonment for six months or may impose fine of Rs.1000 or both.

In case of failure to comply with the directions or requisitions made, then the penalty is imprisonment for six months or may impose fine of Rs.1000 or both.

In case of offences by companies, firms, body corporate or association of individuals, its director, partner or a principal or officer responsible for the conduct of its business, should be deemed to be guilty of that offence, unless the person concerned proves that the crime was committed out of his knowledge or that he exercised all due diligence.

Equal Remuneration Act, 1976

In 1976, the Indian Government passed the Equal Remuneration Act 1976 to bridge the wage gap between men and women workers. The objectives of this Act was to provide equal wages for men and women based on the nature of employment; to provide equality of opportunity in employment; to protect persons against discrimination concerning employment or occupation, and to ensure that no person shall be unfairly dismissed from work on grounds only of sex. No woman shall be dismissed on grounds only of her sex. This Act facilitates and ensures equality among all the sexes, whether it is male or female.

Equal Remuneration Act, 1976

Age discrimination and gender discrimination are covered by this Act. For purposes of this Act, the following expressions shall have the meanings assigned to them hereunder:-

- Age means a person’s age as of the relevant date
- Child means a person under Eighteen years of age, either wholly or partially dependent on others for support and maintenance

- Women means a female human being of any age
- Remuneration means the salary, wages, bonus, commission, and other types of monetary consideration payable to a person in return for their services, whether payable in cash or otherwise, including provident fund, pension

Objectives of Equal Remuneration act, 1976

- To provide equal wages to men and women based on the nature of employment
- To provide equality of treatment in employment
- To protect persons against discrimination concerning employment or occupation
- To ensure that no person shall be unfairly dismissed from work on grounds only of sex

The "Equal Remuneration Act, 1976" extends to India except for the State Of Jammu And Kashmir. It was enacted to make it illegal for employers to discriminate between men and women employees on their pay scale.

The Salient Features of Equal Remuneration Act, 1976

1. **Remuneration to be paid in cash or in-kind at the same rate:** Under section 2(e) of the remuneration act, a woman shall not be paid a rate less than what is being paid to male workers of a corresponding grade employed in the same establishment if the nature of employment is not essentially different. If employment is essentially different, then pay should be made differently but based on skills, capacity, and performance.
2. **No discrimination in favour of men:** Under section 3(1) of the remuneration act, no employer shall discriminate between men and women in favour of men by paying them fewer wages for the same work or employment. The definition provided under section 2(h) says that any differential pay shall be justified and has to be on any one or more of the following grounds:-
3. **Any other factor which is not prohibited under the provisions of this Act:** Under section 3(2) of the remuneration act, The employer shall not discriminate between men and women in favour of men by paying women fewer wages for the same work or employment. The definition provided under section 2(h) says that any differential pay shall be justified and has to be on any one or more of the following grounds. This is an addition to the Act made in 1998 by introducing section 3(2).

4. **No discrimination on the ground of sex:** Section 4 of the remuneration act, 1976 prohibits discrimination and offers a guarantee against the exploitation of women workers. It states that no woman shall be dismissed on grounds only of her sex.
5. **No discrimination in employment:** Section 5 of the remuneration act, 1976 prohibits discrimination and offers a guarantee against the exploitation of women workers. It states that no employer shall discriminate between men and women regarding employment or any term or condition of employment based on their sex by paying them fewer wages for the same work or employment.

List of Equal Remuneration Act 1976 across India

By State

- Andhra Pradesh
  Act No. 20 of 1963
  Act No. 24 of 1965
  Act No. 17 of 1966
- Arunachal Pradesh (Arunachal Pradesh Equal Remuneration Act, 2002)
  Act No. 2 of 1961
- Assam. (The Assam Equal Remuneration Act, 1993)
  Act No. 25 of 1962
- Bihar (The Bihar Equal Remuneration Act, 1962)
- Chhattisgarh (The Chhattisgarh Equal Remuneration Act, 2003)
  Act No. 4 of 1963
- Delhi (Delhi Equal Remuneration Act, 1956)
- Goa (The Goa Equal Remuneration Act, 1999)
- Gujarat (The Gujarat Equal Remuneration Act, 1991)
  Act No. 15 of 1967
- Haryana (The Haryana Equal Remuneration Act, 1975)
- Himachal Pradesh (The Himachal Pradesh Equal Remuneration Act, 1994)
  Act No. 10 of 1961

- Jammu & Kashmir (The Jammu & Kashmir Equal Remuneration Act, 2001)
- Jharkhand (The Jharkhand Equal Remuneration Act, 2003)

Act No. 10 of 1961

Unit 5

Laws on Labour welfare and social Security

5.1 Overview

The country of India is such that a major section of labour acts is labour-intensive industries. Social security and labour welfare play a colossal role in such a country. Therefore, labour laws ensure proper rights and a healthy well-being system for workers, implying that they aim at curbing issues such as low wages, hazardous working conditions, and insecurity at work.

The thought of social security in India is based on the Constitution, which talks about the need for social justice and equal opportunities for one and all citizens. The Directive Principles of State Policy, as laid down in Article 41, directly guide the state to deal with public assistance involving unemployment, old age, sickness, or disablement. Labour welfare goes further and provides education, housing, and recreational facilities for workers along with their families.

What is Social Security?

Social security denotes the measures or schemes of action taken to finance workers' benefits through providing financial aid, health support, and help during periods when a worker's need for aid arises due to unemployment, ill health, handicap, or other forms of frailty and old age. It essentially acts as an economic safety net for workers.

Aims and Objectives of Social Security

- To offer security during unemployment or lack of ability.
- Provide health and well-being through medical care and insurance.
- Ensure a decent standard of living after retirement.
- Protect the workers' families in case of unexpected events such as accidents or death.

Labour Welfare in Indian Labour Law

Labour welfare refers to the overall good condition of workers and is not just monetary recompense but the general betterment of their lives. This includes the initiatives taken to upgrade working conditions, safety, and personal and professional development.

Key Aspects of Labour Welfare

- *Physical Welfare-* Safe working environment, clean drinking water, sanitation, and proper lighting.
- *Economic Welfare-* Fair wages, bonuses, and financial incentives.
- *Social Welfare-* Promotion of education, dwelling facilities, and recreation among workers and their families.
- *Moral Welfare-* This promotes a sense of dignity and respect among workers.

Legal Framework for Social Security and Labour Welfare in India

India has an effective framework of laws and schemes that address the issues of social security and labour welfare. These include-

1. The Employees Provident Fund & Miscellaneous Provisions Act, 1952

The EPF Act provides for a provident fund to be created for employees. Contributions by employers and employees accrue interest, which is then paid to them after some specified conditions.

2. The Employees State Insurance Act, 1948

The ESI Act is the health insurance scheme and medical care to employees with salaries up to a particular amount. The benefit is medical cost, maternity benefits, and cash compensation for any injury at work.

3. The Gratuity Act, 1972

This Act ensures that workers receive gratuity payout as an appreciation of the long-term service that they provide to the company on retirement or resignation or death.

4. The Maternity Benefit Act, 1961

The Act offers maternity leave and benefits to women workers so that women employees can take care of their prenatal condition and post-delivery conditions without facing financial disaster in their lives.

5. The Factories Act, 1948

The Factories Act lays down the basic necessities such as pure drinking water, toilets, and safety devices in factories. It also prohibits working hours so that they are not exploited.

6. The Building and Other Construction Workers Act, 1996

The BOCW Act aims to provide social security to the workers engaged in construction work, health insurance, old age benefits, and assistance for children's education.

7. The Unorganized Workers' Social Security Act, 2008

The Unorganized Workers' Social Security Act of 2008 was enacted to provide social security benefits to the workers in the unorganized sector, which comprises a large number of India's workforce. The Act was passed since informal sector workers do not receive employer-provided benefits like provident funds, pensions, and health insurance, and it has been passed to bridge the gap and ensure their welfare.

Issues in Implementing Social Security and Labour Welfare

1. *Formal Sector Coverage*- A large chunk of India's labour force remains in the informal sector, which is denied social security benefits.
2. *Awareness and Accessibility*- Many workers are not aware of their rights and the welfare schemes available to them, hence underutilized.
3. *Administrative Bottlenecks*- Delayed processing of claims and the absence of streamlined systems somehow affect the provision of the benefits.
4. *Financial Constraints*- It is challenging to implement full-scale social security measures for all workers because of limited resources and funding.

Impact of Social Security and Labour Welfare

Social security and labour welfare programs have revolutionized the lives of Indians.

- *Improved Living Standards*- Living Standards and Quality of Life are improved in different ways, such as health insurance coverage, old-age pensions, or maternity leaves offered to employees at workplaces.
- *Increased Productivity*- Safe and supportive work environments boost employee morale and productivity.
- *Economic Stability*- Social security is a kind of safety net during economic stress. It minimizes vulnerability.

- *Social Equity-* Many welfare measures promote equality and fairness, providing the most deprived of workers with all forms of protection.

5.2 workmen's compensation Act, 1923

Definition

The Workmen's Compensation Act, 1923 is one of the important social security legislations. It aims at providing financial protection to workmen and their dependants in case of accidental injury by means of payment of compensation by the employers.

There is no doubt that employees are an organisation's pillars of success. Thus, it falls upon employers to ensure that their workforce receives proper financial compensation in case they meet with an unfortunate accident at the workplace.

Now, to ensure proper enforcement of this facility, several laws like the 1884 Compensation Act and the Fatal Act of 1885 were implemented. However, they were not enough to financially compensate workers in case they met with harm while performing their duties. Thus, the Indian Parliament passed the Workmen's Compensation Act in 1923.

Objective of the Workmen's Compensation Act, 1923

The main objective of the Workmen's Compensation Act, 1923 (now the Employees' Compensation Act) is to provide financial relief to workers and their dependents in case of death or injury caused by work-related accidents or occupational diseases.

Scope

The Workmen Compensation Act 1923 aims to provide financial compensation to employees in case they meet with an unfortunate accident while performing their duties.

All employees working full-time, part-time, temporarily or casually are liable to receive financial protection under this law. It comes into effect in case they secure injuries, incapacity, and disfigurement or die while performing their duties.

Front-line workers in the following industries are liable to protection under this law:

- Non-permanent employees of the Railways who do not fall under the sub-divisional, district or administrative offices.
- Captains and crew members on an aircraft.
- Labours employed abroad as per Schedule II of the Workmen Compensation Act 1923.
- Individuals working in construction sites, mines, docks, factories and specific places as per Schedule II of the above mentioned Act.
- Drivers, mechanics, helpers and any other person associated with working with vehicles.

According to this Act, any company or establishment operating in the sector highlighted above and having more than 10 employees are liable to abide by its rules.

Coverage receivable under the Workmen Compensation Act 1923

The type and extent of financial coverage as well as its applicable terms and conditions fully depend on the insurance company that is affiliated with the employer. Here are some basic things which all insurers cover:

- Bodily or other injuries during an accident while on duty
- Temporary disablement
- Permanent disablement (complete or partial)
- Death due to an accident at work
- Injury, disease or death resulting from working conditions
- All legal or any other expenses incurred by an employee in the above circumstances

Workmen's Compensation Act 1923 - Amount of compensation

According to Section 4 of the Workmen's Compensation Act 1923, the amount of compensation workers are liable to receive is as follows:

- **Temporary disabilities**

For temporary disabilities, the Workmen's Compensation Act 1923 provides financial compensation of up to 25% of the concerned employee’s monthly wages.

- **Permanent total disabilities**

In an unfortunate event when an employee suffers from permanent disablement, that individual has the right to receive 60% of his/her monthly wage or Rs.1,20,000, whichever is higher.

- **Permanent partial disabilities**

Injuries that fall under permanent partial disabilities are stated in Part II Schedule I of the Act. The payable corpus is a certain percentage of earnings loss by the employee due to his/her injury.

- **Death**

When an employee dies due to an accident at his/her workplace, their family is liable to receive 50% of the deceased's monthly wages or Rs.1,20,000, whichever is higher.

Note – Individuals who are liable to receive compensation under the Employees' State Insurance Scheme of India (ESIC) cannot get financial benefits from the above mentioned Act.

Updates in the Workmen Compensation Act 1923

Since its inception in 1923, there have been two major changes in the Workmen Compensation Act. They are as follows:

- In 2010, this law's name was changed to Employee's Compensation Act.
- On January 3, 2020, the Ministry of Labour and Employment raised the amount on which compensation was calculated as per the Act from Rs. 8,000 to Rs. 15,000.

Features of the Workmen Compensation Act 1923

Employers are under the obligation to provide financial compensation as per the Workmen Compensation Act 1923 in the following circumstances:

- An accident or injury occurs at the workplace while carrying out a task.
- If the applicant provides proof that the injury or accident that has occurred at the workplace is aggravating his/her medical condition.
- In case a worker becomes disabled or dies while on duty.

When is the employer not liable to pay compensation?

As per the Act, employers are not liable to financially compensate their employees under the following circumstances:

- Employee suffers from an injury or accident by disregarding the safety norms.
- Injury resulting in partial or total disablement for less than three days.
- For accidents or injuries under the influence of alcohol or drugs.

5.3 The Employees State Insurance Act of 1948

The Employees State Insurance Act of 1948 was instituted with the target of getting monetary help in instances of infection, maternity, and disablement and for giving health advantages to workers of processing plants and foundations and their wards. Employees state insurance act 1948 is also abbreviated as an ESIC. After implementing the employee’s state insurance act 1948, all the employee’s funds are regulated according to the provisions written under the act. All its functioning is regulated by the ministry of labour and employment, a statutory body launched on 24th February 1952.

Objectives of the Workmen's Compensation Act, 1923

The main objective of the Workmen's Compensation Act, 1923 (now the Employee's Compensation Act) is to provide financial compensation to employees or their dependents for injuries, illnesses, or death caused by work-related accidents.

Provision of Employee State Insurance Act 1948

Employees’ state insurance act is designed based on the ESI act, An Act to accommodate specific advantages to representatives in the event of an ailment, maternity and work injury and to make arrangements for specific issues in connection to them. The Social Legislation act aims to provide an amount in the form of compensation to the employees in case of any medical injury or emergency. The responsibility of this act is to pay compensation amount and compliances to the employee in case of any severe medical conditions.

The main motive behind the implementation of this act is to introduce the provisions and rules of the ESI act and to carry out all its functions smoothly in the entire nation.

Functions of Employees State Insurance Act 1948

Employees, a state insurance act 1948, plays a major role in the welfare of many employees. The functions of this act are as follows:

- Under section 17 of the constitution, the employee's state insurance act 1948 can recruit staff members. Along with this, it can also provide gratuity and some other fund related benefits to the eligible staff members.
- According to the powers of this act, it can invest or take money from the central government sanction for providing better facilities to employees.
- The Employees state insurance act 1948, can recruit or hire the social security officers to implement practices of the act among the other bodies of India. These officers have the power to enforce the implementation of practices of this act.
- The Employee's state insurance act 1948 also collects some amount of money from the compensation of employees to regulate all its functioning and to facilitate other employees.
- The Director-General of employees states insurance act has the authority to make decisions for facilitating the act's implementation. He can also modify the implementation strategies according to the need.
- It is the responsibility of the employee's state insurance act 1948 to maintain the budget of all expenditures, which are done to provide compensation and other facilities to the employees.

Benefits of Employees State Insurance Act 1948

Employees state insurance act 1948 comes into consideration for providing the compensation benefits to the employees. Along with this, it also has several benefits, which are catalogued below:

- **Medical Benefit**

  Along with this, the salary of those employees does not get deducted during the period of their treatment. They also get a certain percentage of compensation if any of their family members get any severe medical illness.

- **Maternity Benefit**

  It is the best benefit provided to the women by the employee's state insurance act 1948. Women who are pregnant get extra leave before and after their delivery. It means pregnant women are not required to join the office for some months before and after their delivery. They will receive their full salary during their maternity leave.

- **Disablement Benefit**

  Employees state insurance act 1948 also provides extra benefits to those who are differently abled. It provides extra reservations to disabled individuals of various categories.

- **Unemployment Benefits**

  Employees state insurance act 1948 also provides some monthly compensation to those unemployed and eligible to perform jobs. Along with this, it also provides loans to the persons who want to launch their startups. They can take the loans at lower interest under this act.

- **Insurance Benefits**

  Employees state insurance act 1948 provides insurance benefits to both government and private employees.

5.4 Maternity Benefit Act 1961

Maternity benefits at the workplace are necessary to ensure job security, protect women's economic rights and support their maternal duties. In India, the Maternity Benefit Act 1961 provides maternity benefits in the form of maternity leave for all women employees.

Maternity leave is a paid leave provided to expecting or pregnant women who can utilise it before and after the delivery of the child. All employers or organisations in India must give maternity leave to pregnant women. It is vital to ensure the overall well-being of the newborn child and mother.

Maternity Benefit Act 1961

In India, maternity leave and benefits are regulated under the Maternity Benefit Act 1961 ('Act'). The Act provides comprehensive maternity benefits, including medical bonuses, paid leave and nursing breaks. The Act supports women during the birth of their child. It protects and safeguards the livelihood and interests of female employees and gives them time to nurture their newborns while taking care of themselves.

As per the Act, women working at recognised organisations and factories can take maternity leave for up to 6 months. Women employees can take maternity leave before and after they deliver the child for up to 6 months. During this leave period, the employer must pay the women employee her entire salary.

Maternity Benefit Act 2017

The Maternity Benefit Act 1961 has been updated various times to protect and safeguard the interests of women employees. In 2017, the Maternity Benefit Act 1961 was amended to include various aspects, such as an increase in the maternity leave period, the option to work from home and maternity leave for mothers adopting a child.

The provisions of the Maternity Benefit (Amendment) Act 2017 are as follows:

Increase in the maternity leave duration

The Act provided for a maternity leave of 12 weeks. This duration was increased in the amendment to the Act in 2017, and all women are eligible to take a 26-week maternity leave. They can take maternity leave from 8 weeks before the delivery date and take the rest 18 weeks after delivery. When a woman already has two children, the maternity leave is only 12 weeks for the third and subsequent children.

Maternity leave for commissioning and adoptive mothers

The amendment to the Act also grants 12 weeks of maternity leave to women who lawfully adopt a child below three months of age and a commissioning mother. A commissioning mother is a biological mother who uses her egg to make an embryo placed in another woman. The 12-week maternity leave will start from the day the child is given to the commissioning or adoptive mother.

Option to work from home

The 2017 amendment provides that an employer can allow a woman to work from home during pregnancy if the nature of work is such that it can be done from home. After the maternity leave period, the woman can also use the option of working from home for a mutually agreed-upon period between the company and the employee.

Creche facilities

The 2017 amendment provided that childcare services should be available close by for all businesses with 50 or more employees. The employer must allow the mother to visit the childcare facility four times in a day. This should cover her downtime.

What is maternity leave?

Maternity leave is the paid leave provided to pregnant women working in any organisation. The Act provides the period of leave that an employer or organisation must give to pregnant women before and after the delivery of their child, which is as follows:

- All pregnant women are eligible for 26 weeks of maternity leave for the first and second child, out of which they can take a maximum of 8 weeks' leave before their expected delivery date.
- For the third and subsequent child, mothers are eligible for 12 weeks of maternity leave.
- A woman can take 6 weeks maternity leave in the case of miscarriage or medical termination of pregnancy. However, she may have to produce proof of miscarriage, and the leave period starts immediately following the miscarriage date.
- Adopting or commissioning mothers can take up to 12 weeks of maternity leave starting from the day the newborn child is handed over to the mother.

Additional leaves can be granted for new mothers requiring more recovery time. Employers can be punished with imprisonment if they contravene the provisions of the Act and do not provide maternity benefits for the mother.

Maternity leave applicability

The Maternity Benefit Act applies to women working in public and private sector organisations. Thus, it applies to all women employed in private companies, government jobs, mines, plantations, factories and organisations with 10 or more employees. However, the Maternity Benefit Act does not apply to women working in organisations with less than 10 employees and self-employed women.

Maternity leave eligibility

A woman is eligible to take maternity leave under the Act only when she has worked with the employer for at least 80 days in the 12 months preceding her expected delivery date.

Maternity leave rules

The maternity leave policy and rules in India provide for the following:

- Employers must pay full salary to the woman employee during her maternity leave period. This salary rate is calculated according to her actual salary or daily wages in the 3 months prior to her maternity leave request.
- Employers should not employ a woman during the 6 weeks immediately following her delivery or miscarriage.
- Employers must provide childcare provisions and restore the woman to her previous position in the organisation upon her return from the maternity leave period.
- Pregnant employees are entitled to the following workplace amenities:
- Hygienic restrooms
- Comfortable working and seating arrangements
- Safe drinking water
- Employers must not give pregnant women difficult tasks or long working hours 10 weeks before the expected delivery date to ensure the safety and health of the mother and child.

- Employers can grant additional leaves to mothers if they cannot return to work after the maternity leave period through a mutual agreement.
- Employers can also grant work-from-home options to mothers through a mutual agreement between the employer and the mother.

Maternity leave application

As per the Act, a pregnant woman can give notice in writing to her employer for availing maternity leave and salary payment during such leave period. She must also state the date from which she will be absent from work.

Pregnant employees can also apply for maternity leave by informing company HR or applying for maternity leave on their company portal. They may also send an email to their employer of availing the maternity leave.

Maternity leave for government employees

The Maternity Benefit Act 1961 applies to state and central government employees. Thus, all the leave provisions and benefits provided under the Maternity Benefit Act 1961 apply to all women working in the government sector. Women government employees can take maternity leave for 26 weeks during pregnancy and delivery of the child. They can take leave 8 weeks prior to the delivery date and extend it up to 26 weeks after delivery. Women government employees adopting a child below three months or commissioning mothers can take 12 weeks of maternity leave after the child is handed over to the mother.

Maternity leave benefits

- Maternity leave ensures the well-being of mothers and their children by providing time to recover and nurture their children.
- Any woman on maternity leave is entitled to receive the entire salary for the period of leave and medical benefits, thus providing her financial security.
- Employers cannot dismiss or fire women employees only due to pregnancy or when they are on maternity leave, thus providing job security during pregnancy.

- Maternity leave allows women to take time off for the delivery of their children while continuing their employment, which helps them to maintain their career progression.
- Maternity leave provides time for new mothers to recover from childbirth and care for their health physically.
- Maternity leave gives new mothers time to spend with their newborns, essential for bonding and attachment.

5.5 Employee Provident Fund (EPF)

The Employees' Provident Fund Organisation (EPFO) oversees the EPF scheme established by the EPF Act of 1952, facilitating retirement savings through joint contributions from both employer and employee. Upon retirement, employees receive a lump sum including contributions and interest, with the current EPF interest rate is 8.25% per annum

What is EPF?

EPF (Employees' Provident Fund) is a government-backed retirement savings scheme where both the employer and employee contribute a fixed percentage of the employee's basic salary to the EPF account. The contributions earn interest over time, helping employees build a retirement corpus. The accumulated amount, including both contributions and interest can be withdrawn upon retirement or under certain conditions.

Provident Fund

Employees' Provident Fund is a statutory benefit payable to employees working in India. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("Act") is applicable pan-India. The administration and management of Employees' Provident Fund (EPF) is carried out by the Central Board of Trustees (CBT) established by the Central Government consisting of representatives of the Government, employers and employees respectively. The Employees' Provident Fund Organization (EPFO) assists this Board in its activities.

Concept of Employees' Provident Fund

EPF is a welfare scheme brought into force to secure a better future for employees. It is a statutory benefit available to the employees post retirement or when they leave the services. In case of deceased employees, their dependents will be entitled for the benefits. Under the Employees' Provident Fund Scheme (EPF Scheme) both employers and employees have to make their contributions towards the Fund. Interest earned on the amount is credited to the member's Provident Fund Account (PF account) and is available to the employee at the time of retirement or exit from employment as the case may be, provided certain conditions are fulfilled.

Types of schemes under the Act

1. Employees' Provident Fund Scheme, 1952: Employees' Provident Fund Scheme was set up under the Act for the purpose of providing a post retirement benefit for the employees or a class of employees or their legal heirs in case of death, employed under an establishment to which this Act applies.
2. Employees' Pension Scheme, 1995: Employees' Pension Scheme was framed under the Act for the purpose of providing the superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to whom this Act applies; and widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.
3. Employees' Deposit-linked Insurance Scheme, 1976: Employees' Deposit-linked Insurance Scheme (EDLI Scheme) was framed under the Act for the purpose of providing insurance benefits to the employees of an establishment or a class of establishments to whom this Act applies in case of death while in service.

Applicability

Employees' Provident Fund has been set up under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("Act") applicable pan-India. The Act is applicable to every factory or industry mentioned in Schedule 1 of the Act, wherein 20 or more persons are employed or to any other establishment which the Central Government specifies by notification in the official Gazette, even when the number of employees is less than 20.

Eligibility to be the member of EPF

Enrollment for PF membership is mandatory for:

1. Any person employed for wages for any work of an establishment either manual or otherwise.
2. Any person employed through a contractor or engaged as an apprentice but not being an apprentice under Apprentices Act, 1961.
3. Any person under the standing orders of an establishment, earning less than or equal to Rs. 15,000 per month other than the excluded and exempted employees under Section 17 of the Act.

Withdrawals from EPF account

1. The funds from an EPF account can be withdrawn completely in full settlements on attaining 58 years of age or at the time of retirement the employee can claim for a complete settlement or if an employee remains unemployed for a period of 2 months or more or in the case of death while in service before attaining the age of retirement, in which case the nominees or legal heirs are entitled to withdraw the accumulated fund.
2. The partial withdrawal of funds from the EPF is available for educational opportunity, medical treatment, repayment of home loan, marriage, purchase of land/house/flat, in case the establishment/factory is closed, natural calamity, an year before retirement and unemployment for a period of more than one month.

Benefits

The employees covered under the various schemes of the Act are entitled for the following benefits

1. Employees can take advances or make withdrawals*.
2. PF amount of a deceased member is payable to the nominees or legal heirs.
3. The employer not only contributes towards the PF but also makes the necessary contributions towards the employee’s pension which can be used by the employee post-retirement
4. Under the EDLI Scheme employees are properly insured in order to avail the lump sum benefit at the time of death while in service.

5. EEE (Exempt, Exempt, Exempt) tax benefit under the Income Tax Act enables tax-free returns for the employees.
6. Employees receive special benefits in the form of added income to their savings in the form of interest.
7. PF account can be transferrable if any member changes employment from one establishment to another where such Provident Fund scheme is applicable.

5.6 Payment of Gratuity Act, 1972

Gratuity is a lump-sum benefit paid by an employer to an employee as a gesture of appreciation for long-term service. It is governed under the Payment of Gratuity Act, 1972, and is applicable to employees in the private and public sectors who meet specific eligibility criteria.
Whether you are looking to understand the meaning of gratuity, its eligibility rules, Form F requirements, or the difference between gratuity and pension.

What is Gratuity?

Gratuity is a financial reward paid to employees who have rendered continuous service for at least five years with the same employer. It is a lump sum amount usually given at the time of retirement, resignation, or upon death or disablement.
Gratuity is governed by the Payment of Gratuity Act, 1972 and applies to both government and private sector employees who meet the eligibility criteria. It is calculated based on the last drawn salary and the number of years served.
In salary terms, gratuity is not deducted monthly like PF. Instead, it is paid by the employer at the time of exit based on a specific formula, making it a significant component of long-term employee benefits.

Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 mandates that an employee who has rendered continuous service for at least five years is eligible to receive gratuity upon termination of employment. The Act applies to factories, mines, oilfields, plantations, ports, railways, shops, and establishments with 10 or more employees. The Act also outlines the formula for gratuity calculation and rules for payment, nomination, and dispute resolution.

The Payment of Gratuity Act, 1972 governs gratuity rules in India. It applies to:

- All establishments with 10 or more employees
- All employees working on salary or wages (excluding apprentices)
- Both private and public sector workers

Employers are legally required to pay gratuity once an employee is eligible, even if no formal request is made.

Eligibility Criteria for Gratuity

Employees are eligible for gratuity if:

- Employee have completed at least 5 years of continuous service with the employer.
- Work at an organisation covered under the Act (10+ employees).
- Employee leave due to retirement, resignation, termination (not for misconduct), death, or disability.

Exceptions: In cases of death or disablement, the 5-year service condition is waived.

How Gratuity Works in India

In India, gratuity is:

- Paid by the employer at the time of exit (retirement, resignation, etc.)
- Tax-free up to ₹20 lakh under the Income Tax Act
- Not deducted monthly like provident fund or insurance
- Calculated using a legally defined formula for salaried employees

Employers may also offer a higher amount than the statutory requirement at their discretion.

Formula

Gratuity is calculated using the formula:

Gratuity = (Last drawn basic salary + DA) × 15 × number of completed years of service ÷ 26

Where,

- 15 is the number of days' salary paid for each year of service.
- 26 is the number of working days in a month (excluding Sundays).

Example: If your last drawn salary is ₹40,000 and you've worked for 8 years,

Gratuity = ₹40,000 × 15 × 8 ÷ 26 = ₹1,84,615

Gratuity Rules in India

Key gratuity rules include:

- 5 years of continuous service is mandatory, unless in the event of death or disability.
- 15 days' wages are paid for every completed year of service.
- The wage considered includes basic salary + dearness allowance only.
- The gratuity amount must be paid within 30 days from the date it becomes payable.
- Non-payment within time attracts interest and penalties.