

BALAJI INSTITUTE OF I.T AND MANAGEMENT KADAPA

LABOUR LAWS & LEGISLATIONS

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Name of the Faculty: K.V.S. SRAVANA KUMAR

Units covered: **I, II, III, IV & V UNITS**

(17E00310) Labor Laws and Legislations**(Elective II)**

Objective : In this era of Industrialization it is very significant to understand basics of management. This programme enables the candidate to capture the significant elements of laws to run an industry. It is a course which should be done by candidates who want to understand management fundamentals and basic elements of an Industry

1. **Legal frame work: evolution of labour laws in India** – labour legislations – meaning, importance and relevance to HRM
2. **Legislations relating to employment and working conditions:** Industrial employment (standing orders) Act, 1946 – Factories Act 1948 - contract labour (Regulation and abolition) Act 1970
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UNIT-1

LEGAL FRAME WORK

1. EVOLUTION OF LABOR LAWS IN INDIA

The Indian labor legislations owe its existence to the British kings, most of the labor legislations were enacted prior to India's independence.

- ❖ The past independence enactment of important legislation in the areas of employees security and welfare derive their origin partly from the vision of independent India's leaders and from the provisions in the Indian constitution and international conventions like the international conventions, the international labor organization (ILO)
- ❖ The labor legislations were also enacted keeping in mind the international standards on human rights and United Nations protocols.
- ❖ Historical perspectives on Indian labor legislations. Initial periods of imperialism were based on exploitation of the worker class, with the emergence of ILO at an international level and with the in humans treatment method out to worker of dignity of labor the whole scenario of labor legislations began in pre independence India. After independence legislations related to worker welfare like,
 - ❖ Provident fund act
 - ❖ Employee state insurance ACT
 - ❖ Payment of bonus ACT
 - ❖ Payment of gratuity ACT

Were enacted with the international of providing security and retirement benefits to workmen. The factory ACT whereby women worker is allowed to work between 7pm to 6pm such amendments have been done other industry associations like NASSCOM and ASSOCHAM recommendations to the labor ministry.

Example – BPO and IT sector women workforce benefits tremendously from the factors ACT.

1.1 EVALUATION & DEVELOPMENTS EMPHASIS ON PEOPLE OUTCOMES OF HR THOUGHTS IN INDIA

1700 TO 1900 's

- Slavery due to imperialism
- Exploitation of labor
- Bonded labor
- Master – slave relationships

1900 to 1920's

- Worker men status defined by acts
- Employer – employee relationship established wages paid
- Legal recognition of workmen end of slavery

1920 TO 1947 's

- Trade unions were organizing workers.
- Trade unions being recognized by workers and factory managers
- Collective bargaining workers movements.

1947 TO 1960's

- Independent India believed in a socialist society.
- Worker welfare by labor officers laws like EPF
- EPF – employee provident fund
- EPF – Employee state insurance corporation
- Minimum wages
- Bonus act
- Beginning of labor welfare administrative and personal function.

1970 TO 1980's

- Trade unions
- Management conflicts
- COD- Chart of demand
- MOU – Memorandum of understanding
- Productivity bargaining
- Workers participation in management
- Empowerment of workers
- Up liftmen of workers status and role

1990 TO 2000's

- Globalization international markets.
- New economics
- Developing people as a key resource
- HRD replaces personnel management

2001 ONWARDS

- Advent of the knowledge era
- Growth of service sector
- HRD (human resource development)
- With human resource management
- Human resource management to strategic human resource management.

2. LABOUR LEGISLATIONS**2.1 Meaning:**

Labor mediates the relationship between workers employing entities trade unions and the government. Collective labor law related to the tripartite relationship between employee employer and union.

The rules, rights and obligations of companies, government, and citizens are set for this system of legal documents called a legal framework; documents in the legal framework include a country's constitution legislation policy regulations and contracts.

Framework laws are laws that are more specific than constitutional provisions. They lay down general obligations and principles but leave to governing authorities the task of enacting the future legislation and other specific measures as maybe required.

- ❖ India became an independent democratic republic in 1947 and its constitution which came into force on 26th –November-1949 is the supreme law.
- ❖ India has a common law legal system whose infrastructure bears the influence of British colonial rule.
- ❖ The constitution is based on the Government of India Act 1935 passed by British parliament.
- ❖ The Indian constitution lays out a federal union of 28 states 6 union territories and international capital territory.
- ❖ The union and states have separate executive and legislative branches whereas territories are ruled by the national government.

- ❖ Law generated by the union's superior to that of the states.
- ❖ The nominal head of the union executive is an elected president but the prime minister leader of the majority's party and head of the union council of ministers is more politically powerful.
- ❖ India has bicameral parliament whose upper house is the council of states (Rajya Sabha) and whose lower house is the house of people (Lok Sabha).
- ❖ The state executive is headed by a governor and while most a unicameral legislative body called the legislative assembly. Some of bicameral with a legislative council as well.
- ❖ Labor law in India is one of the most complex and restrictive in the world for employers and well in need of reform.
- ❖ It has around fifty five national laws and many more on the state level.
- ❖ It has both collective labor laws (such as the industrial disputes act of 1947) and the individual labor laws (such as the minimum wages act of 1948).

3. IMPORTANCE OF LABOR LEGISLATION

- A. Employer's obligations:** Without labor and employment laws many small business owners would be unaware of their obligations and responsibilities as employers. The pay act of 1963 title VII of the civil rights act of 1964 and the Americans with disabilities act of 1990 require fair employment practices.
- B. Work-place structure:** Labor and employment laws give structure to organizations and guidance to small business owners who otherwise might not be inclined to other to laws.
- C. Collective activities:** The national labor relations act is important because they give peace of mind to both union and non union workers to act collectively not to join collectively to voice their concerns about wages benefits and working conditions.
- D. Integrity:** Some labor laws preserve organizational integrity they are useful for developing business principles and workplace ethics
Example – whistle-blower laws contained in the occupational safety and health act of 1976.
- E. Child protection:** It prohibits employment of children under the age of the unless they work in a parents business. The laws also regulate the hours children between in and if can work and prohibits dangerous occupations for all children under.

- F. Fair wages :** The fair labor standards act provides labor to set exact wages for his/her work
- G. Employee protections:** Several labor laws offer protections that guard against unfair treatment and unsafe work conditions.
- H. Discrimination prevention:** According to this law or act no company or employer can discriminate based on sex, age, religion, disability, race or ethnicity etc.

3.1 OBJECTIVES OF LABOR LEGISLATIONS

1. Preservation of good relation between employer and employee.
2. Safe-guard the labor from profit seeking exploiter in the cut through competitive era.
3. Promote harmony between employees and employer.
4. Achievement of cordial industrial resources.
5. Strengthen industrial relations
6. Provide machinery to solving industrial disputes
7. Insuring the protection of interest of women and children in the factories.

4. LABOR LEGISLATION RELEVANCE TO HRM

- The human resources management is greatly influenced and shaped by the state and federal laws governing employment issues.
- Indeed regulations and laws govern an aspect of human resource management development and compensation
- One of the most important access to functional areas is title VII of the civil rights act of 1964 and subsequent amendments including the civil rights act of 1991. These acts made illegal the discrimination against employees or potential recruits for reason of race, color, religion, sex, and national origin.
- It forces employees to follow and often document – fairness practices related hiring, training pay, benefits, and vertically all other activities and responsibilities related to HRM.

1. Recruitment and selection

- In case of public employment article 16(1) of the India constitution guarantees equality of opportunity to all citizens in matters relating to employment under the state. According to article 16(2) no citizen can be discriminated against religion, race, caste, sex, descent, place of birth any of them.

- The word equality in article 16(1) means equality as between member of the same class of employees and not equality between members of separate independent classes.
- Child labor (prohibition and regulation) act 1986 and article (24) of the Indian constitution says that no child below the age of 14 years shall not be employed.

2. Performance appraisal of employee

Performance appraisal of employees aimed at knowing employee efficiency or a deficit in his work and conduct

On the basis of performance appraisal employee's suitability to the job assessed the purpose of his confirmation promotion and even further retention in the service.

3. Compensation and Rewarding:

- Payment of wages act 1936:** The object of this act is to provide payment of wages to employees is time a without any delay, without in reasonable deduction from the wages those should be reasonable and in accordance with this act and procedure for payment of wages.
- Warmer compensation act 1923:** The object of this act is to provide compensation to the workman who meet with an accident in the course of employment causing injury and making impartially of totally disabled or sometimes causing death. Conditions when employer is not to pay compensation to the employee who meet with an accident in the course of employment.
- Payment of bonus act 1965:** It is compulsory payment of bonus to employee whose sale of wages is not exceeding Rs.21000/- irrespective of profit or loss of the business.
- Payment of gratuity act 1972:** It is compiles payment of gratuities to any employee who has completed five years of continuous service at the time of his retirement or on his death or disablement due to accident or disease.

$\text{Gratuities} = \text{monthly sales} \times 15 \times \text{No. of. Years of service}$

- Equal remuneration act 1976
- Employee's provident fund scheme.

4. Healthy safety and welfare measures

- Factories act 1948:** It is the law that governs healthy, safety, and welfare measures of an employee in factory mentioned under this act
- Health's measures (section 11 to 20)

- Safest of employee (section 21 to 408)
- Welfare of employees (section 42 to 50)
- Working hours (section 51 to 66)
- Leave with wages (section 78 to 84)

5. Industry relationships and discipline of employees

A. Industrial disputes act 1947: these act 1947 governs strikes by the employee's lockout by employer layoff, retrenchment and other disputes between employer and employee. Employee and employer and employee and employer.

- Strikes
- lock acts
- Layoffs / laid off
- Retrenchment

UNIT-1-IMPORTANT QUESTION

1. What is legal from work? Elucidate the evolution of about laws in India?
2. Explain labor legislation relevance to HRM?

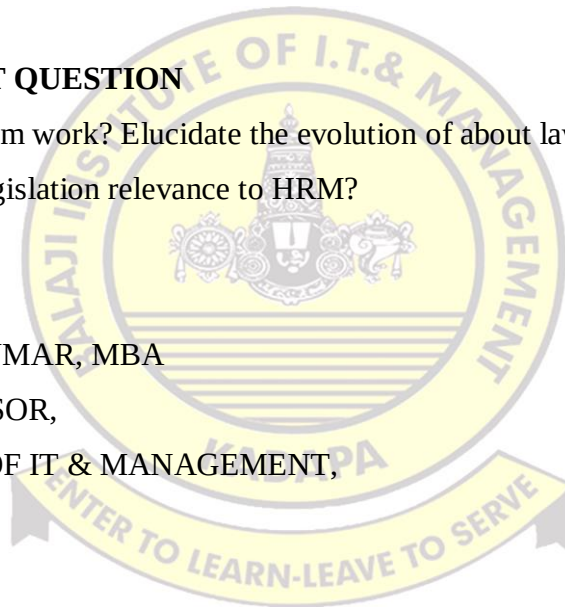
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UNIT-2

LEGISLATIONS RELATING TO EMPLOYMENT AND WORKING CONDITIONS

1. THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

This Act is to require employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. It applies to every industrial establishment wherein 100 (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed. And the Central Government is the appropriate Government in respect of establishments under the control of Central Government or a Railway Administration or in a major port, mine or oil field. Under the Industrial Employment (Standing Orders) Act, 1946,

An Act to require employers in industrial establishments formally to define conditions of employment under them. Where as it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them;

It is hereby enacted as follows: —

- 1. Short title, extent and application.**—(1) This Act may be called the Industrial Employment (Standing Orders) Act, 1946.
- 2. Interpretation.**—In this Act, unless there is anything repugnant in the subject or context,—
 - 1[(a) “appellate authority” means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act:
- 3. Submission of draft standing orders.**—(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment. (2) Provision shall be made in such

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

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

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and (b) the standing orders are otherwise in conformity with the provisions of this Act

5. Appeals.—(1) 3[Any employer, workmen, trade union or other prescribed representatives of the workmen] aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may, within 4[thirty days] from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

6. Certification of standing orders.—(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

7. Date of operation of standing orders.—Standing orders shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of section 6.

8. Register of standing orders.—A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefore on payment of the prescribed fee.

- 9. Posting of standing orders.**—The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.
- 10. Duration and modification of standing orders.**—(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen 1[or a trade union or other representative body of the workmen], be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.
- 11. Certifying Officers and appellate authorities to have powers of civil court.**—
1[(1)] Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a civil court within the meaning of 2[sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).]
3[(2) Clerical or arithmetical mistakes in any order passed by a Certifying Officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such Officer or authority, as the case may be.]
- 12. Oral evidence in contradiction of standing orders not admissible.**—No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under this Act shall be admitted in any Court.
- 13. Penalties and procedure.**—(1) An employer who fails to submit draft standing orders as required by section 3, or who modifies his standing orders otherwise than in accordance with section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.
- 14. Power to exempt.**—the appropriate Government may by notification in the Official Gazette exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

14A. Delegation of powers.—the appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or any rules made there under shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also—

15. Power to make rules.—(1) the appropriate Government may, after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

2. FACTORIES ACT 1948,

The Factories Act, 1948 (Act No. 63 of 1948), as amended by the Factories (Amendment) Act, 1987 (Act 20 of 1987)), serves to assist in formulating national policies in India with respect to occupational safety and health in factories and docks in India. It deals with various problems concerning safety, health, efficiency and well-being of the persons at work places.

The Act is administered by the Ministry of Labour and Employment in India through its Directorate General Factory Advice Service & Labour Institutes (DGFASLI) and by the State Governments through their factory inspectorates. DGFASLI advises the Central and State Governments on administration of the Factories Act and coordinating the factory inspection services in the States.

The Act is applicable to any factory whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on; but this does not include a mine, or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place.

There has been rise of large scale factory/ industry in India in the later half of nineteenth century. Major Moore, Inspector-in- Chief of the Bombay Cotton Department, in his Report in 1872-73 first of all raised the question for the provision of legislation to regulate the working condition in factories; the first Factories act was enacted in 1881. Since then the act has been amended on many occasions. The Factories Act 1934 was passed replacing all the previous legislation in regard to factories. This act was drafted in the light of the

recommendations of the Royal Commission on Labour. This Act has also been amended suitably from time to time.

The experience of working of the Factories Act, 1934 had revealed a number of defects and weakness which have hampered effective administration of the Act, and the need for wholesale revision of the act to extend its protective provisions to the large number of smaller industrial establishments was felt. Therefore, the Factories Act, 1948 consolidating and amending the law relating to labour in factories, was passed by the Constituent Assembly on August 28, 1948. The Act received the assent of Governor General of India on 23 September 1948 and came into force on April 1, 1949.

2.1 OBJECTIVE OF FACTORIES ACT, 1948

The main objectives of the Indian Factories Act, 1948 are to regulate the working conditions in factories, to regulate health, safety welfare, and annual leave and enact special provision in respect of young persons, women and children who work in the factories.

1. Working Hours:

According to the provision of working hours of adults, no adult worker shall be required or allowed to work in a factory for more than 48 hours in a week. There should be a weekly holiday.

2. Health:

For protecting the health of workers, the Act lays down that every factory shall be kept clean and all necessary precautions shall be taken in this regard. The factories should have proper drainage system, adequate lighting, ventilation, temperature etc.

Adequate arrangements for drinking water should be made. Sufficient latrine and urinals should be provided at convenient places. These should be easily accessible to workers and must be kept cleaned.

3. Safety:

In order to provide safety to the workers, the Act provides that the machinery should be fenced, no young person shall work at any dangerous machine, in confined spaces, there should be provision for man-holes of adequate size so that in case of emergency the workers can escape.

4. Welfare:

For the welfare of the workers, the Act provides that in every factory adequate and suitable facilities for washing should be provided and maintained for the use of workers. Facilities for storing and drying clothing, facilities for sitting, first-aid appliances, shelters, rest rooms' and lunch rooms, crèches, should be there.

5. Penalties:-

The provisions of The Factories Act, 1948, or any rules made under the Act, or any order given in writing under the Act is violated, it is treated as an offence. The following penalties can be imposed:-

- (a) Imprisonment for a term which may extend to one year;
- (b) Fine which may extend to one lakh rupees; or
- (c) Both fine and imprisonment.

If a worker misuses an appliance related to welfare, safety and health of workers, or in relation to discharge of his duties, he can be imposed a penalty of Rs. 500/-.

3. CONTRACT LABOUR (REGULATION AND ABOLITION) ACT 1970

The Object of the Contract Labour Regulation and Abolition) Act, 1970 is to prevent exploitation of contract labour and also to introduce better conditions of work. A workman is deemed to be employed as Contract Labour when he is hired in connection with the work of an establishment by or through a Contractor. Contract workmen are indirect employees. Contract Labour differs from Direct Labour in terms of employment relationship with the establishment and method of wage payment. Contract Labour, by and large is not borne on pay roll nor is paid directly. The Contract Workmen are hired, supervised and remunerated by the Contractor, who in turn, is remunerated by the Establishment hiring the services of the Contractor.

1. Registration and Licensing:

The Act applies to the Principal Employer of an Establishment and the Contractor where in 20 or more workmen are employed or were employed even for one day during preceding 12 months as Contract Labour. For the purpose of calculating the number, contract labour employed for different purposes through different contractor has to be taken into

consideration. This Act does not apply to the Establishments where work performed is of intermittent or seasonal nature. If a Principal Employer or the Contractor falls within the vicinity of this Act then, such Principal Employer and the Contractor have to apply for Registration of the Establishment and License respectively. The contractor The Act also provides for Temporary Registration in case the Contract Labour is hired for a period not more than 15 days. Any change occurring in the particulars specified in the Registration or Licensing Certificate needs to be informed to the concerned Registering Officer within 30 days of such change. From combined reading of Section 7 and Rules 17 & 18 of the Contract Labour (Regulation and Abolition) Central Rules, 1971, it appears that the Principal Employer has to apply for registration in respect of each establishment. Other important point to note is that a License issued for One Contract cannot be used for entirely different Contract work even though there is no change in the Establishment.

2. Penal Provisions:

Section 9 of the Act provides that the Principal Employer, to whom this Act is applicable, fails to get registered under the Act, then such Principal Employer cannot employ contract labour. It also appears that if the Establishment is not registered or if the Contractor is not licensed then the contract labour shall be deemed to be the direct workmen and the Principal Employer or the Establishment shall be liable for the wages, services and facilities of the contract labour etc. For contravention of the provisions of the Act or any rules made there under, the punishment is imprisonment for a maximum term up to 3 months and a fine up to a maximum of Rs.1000/-.

3. Responsibilities:

The Act enjoins Joint and Several responsibilities on the Principal Employer and the Contractor. The Principal Employer should ensure that the Contractor does the following:

- a) Pays the wages as determined by the Government, if any, or;
- b) Pays the wages as may be fixed by the Commissioner of Labour.
- c) In their absence pays fair wages to contract labour.
- d) Provides the following facilities:
 - i. Canteen (if employing 100 or more workmen in one place) and if the work is likely to last for 6 months or more.

- ii. Rest rooms where the workmen are required to halt at night and the work is likely to last for 3 months or more.
 - iii. Requisite number of latrines and urinals - separate for men and women.
 - iv. Drinking water.
 - v. Washing.
 - vi. First Aid.
 - vii. lunch hall
- e) Maintains various registers and records, displays notices, abstracts of the Acts, Rules etc.
- f) Issues employment card to his workmen, etc.

4. Checklist for Contractor

1. Licensing.
2. Renewal of the License.
3. Maintenance and Preservation of Register of Persons employed, Muster Roll, Register of wages, Register of Fines, Register of Deductions for damages or loss, Register of advances, Register of overtime.
4. Display of Notice rate of wages, hours of work, wage period, date of payment of wages, date of payment of unpaid wages and name and address of the inspector having jurisdiction.
5. Provide facilities of Canteen, Drinking Water, Washing, Rest Room, Latrines and Urinals, First Aid, Crche.
6. Employment card.
7. Service Certificates.
8. Half yearly return.

UNIT-2-IMPORTANT QUESTION

- 1) Briefly write Legislations relating to employment and working conditions
- 2) Explain Factories Act 1948 in detail.
- 3) Elucidate Indian contract labour (Regulation and abolition) Act 1970.

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UNIT-3

LAWS RELATING TO REMUNERATION

1. THE PAYMENT OF WAGES ACT, 1936-ACT No.4 OF 1936

1.1 Short title, extent, commencement and application

(1) This Act may be called the Payment of Wages Act, 1936. {Subs. by the A.O.1950 for sub-section (2).}

(2) It extends to the whole of India {Subs.by Act 3 of 1951, s.3 and Sch., for "except Part B States".} [except the State of Jammu and Kashmir].

(3) It shall come into force on such {28th March, 1937: see Gazette of India, 1937, Pt.I, p.626.} date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration.

(5) The State Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any industrial establishment or in any class or group of industrial establishments.

(6) Nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more.

1.2. Definitions

.- In this Act, unless there is anything repugnant in the subject or context,—

(i) "factory" means a factory as defined in clause (j) of section 2 of {*See now the Factories Act, 1948 (63 of 1948).*} the Factories Act, 1934 (25 of 1934);

(ii) "Industrial establishment" means any—

(a) Tramway or motor omnibus service;

(b) Dock, wharf or jetty;

(c) Inland steam-vessel;

(d) Mine, quarry or oil-field;

(e) Plantation;

(f) Workshop or other establishment, in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(iii) "Plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea and on which twenty-five or more persons are employed for that purpose;

(iv) "prescribed" means prescribed by rules made under this Act;

(v) "railway administration" has the meaning assigned to it in clause (6) of section 3 of the Indian Railways Act, 1890 (9 of 1890); and

(vi) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—

1. Display by notice of abstracts of the Act.-

The person responsible for the payment of wages to persons employed in a factory shall cause to be displayed in such factory a notice containing such abstracts of this Act and of the rules made there under in English and in the language of the majority of the persons employed in the factory, as may be prescribed.

2. Rule making power.-

(1) The {Subs. by the A.O. 1937 for "G.G. in C"} [State Government] may make rules {For the Payment of Wages (Procedure) Rules, 1937, made by the G.G. in C. under this provision, see Gazette of India 1937, Pt. I, pp. 303—312.} to regulate the procedure to be followed by the authorities.

3. Responsibility for payment of wages.-

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

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

(a) in factories, if a person has been named as the manager of the factory under clause (e) of sub-section (1) of section 9 of the {See now the Factories Act, 1948 (63 of 1948).} Factories Act, 1934 (25 of 1934),

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

(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

4. Fixation of wage-periods.-

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

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

5. Time of payment of wages.-

(1) The wages of every person employed upon or in—

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

(b) any other railway, factory or industrial establishment, shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable.

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

(3) The {*Subs. by the A.O.1937 for "G.G.in C."*} [State Government] may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such persons or class of such persons.

(4) All payments of wages shall be made on a working-day.

6. Wages to be paid in current coin or currency notes.-

All wages shall be paid in current coin or currency notes or in both.

7. Deductions which may be made from wages.-

(1) Notwithstanding the provisions of sub-section

(2) section 47 of the Indian Railways Act, 1890, the wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under this Act.

8. Fines.-

(1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the State Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

9. Deductions for absence from duty.-

(1) Deductions may be made under clause (b) of sub-section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work:

10. Deductions for damage or loss.-

(1) A deduction under clause (c) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

11. Deductions for services rendered.-

A deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house-accommodation, amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions as {The words "the G.G.in C.or" rep.by the A.O.1937} the State Government may impose.

12. Deductions for recovery of advances.-

Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely:--

- (a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling-expenses;

13. Deductions for payments to co-operative societies and insurance schemes.-

Deductions under clause (j) {*Ins.by the Ordinance 3 of 1940, s.3.*} [and clause (k)] of sub-section (2) of section 7 shall be subject to such conditions as the State Government may impose.

14. Inspectors.-

(1) An Inspector of Factories appointed under sub-section (1) of section 10 of the {*See now the Factories Act, 1948 (63 of 1948)*} Factories Act, 1934 (25 of 1934), shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.-

(1) The State Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area.

16. Single application in respect of claims from unpaid group.-

(1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and of their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.

17. Appeals.-

(1) An appeal against a direction made under {*Subs.by act 20 of 1937, s.2 and Sch.I, for "sub-section (3)".*} [sub-section (3) or sub-section (4)] of section 15 may be preferred, within thirty days of the date on which the direction was made, in a Presidency town {*The words "or in Rangoon" rep.by the A.O.1937*} before the Court of Small Causes and elsewhere before the District Court—

18. Powers of authorities appointed under section 15.-

Every authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

19. Power to recover from employer in certain cases.-

When the authority referred to in section 15 or the Court in referred to in section 17 is unable to recover from any person (other than an employer) responsible under section 3 for the payment of wages any amount directed by such authority under section 15 or section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned.

20. Penalty for offences under the Act.-

(1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, section 5 and sections 7 to 13, both inclusive, shall be punishable with fine which may extend to five hundred rupees.

(2) Whoever contravenes the provisions of section 4, section 6 or section 25 shall be punishable with fine which may extend to two hundred rupees.

21. Procedure in trial of offences.-

(1) No Court shall take cognizance of a complaint against any person for an offence under sub-section (1) of section 20, unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of section 20, the authority empowered under section 15 or the Appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to—a *bona fide* error or *bona fide* dispute as to the amount payable to the employed person, or

22. Bar of suits.-

No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed—

- (a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or
- (b) Has formed the subject of a direction under section 15 in favour of the plaintiff; or
- (c) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or

(d) could have been recovered by an application under section 15.

23. Contracting out.-

Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

24. Application of Act to railways, mines and oilfields.-

The powers by this Act conferred upon the State Government shall, in relation to {Subs.by the A.O.1950 for "Federal railways (within the meaning of the Government of India Act, 1935 (26 Geo.5, c.2))."} [railways], mines and oilfields, be powers of the Central Government.]

2. MINIMUM WAGES ACT 1948

The Minimum Wages Act 1948 is an Act of Parliament concerning Indian labour law that sets the minimum wages that must be paid to skilled and unskilled labours.

The Indian Constitution has defined a 'living wage' that is the level of income for a worker which will ensure a basic standard of living including good health, dignity, comfort, education and provide for any contingency. However, to keep in mind an industry's capacity to pay the constitution has defined a 'fair wage'. Fair wage is that level of wage that not just maintains a level of employment, but seeks to increase it keeping in perspective the industry's capacity to pay.

To achieve this in its first session during November 1948, the Central Advisory Council appointed a Tripartite Committee of Fair Wage. This committee came up with the concept of a minimum wage, which not only guarantees bare subsistence and preserves efficiency but also provides for education, medical requirements and some level of comfort.

India introduced the Minimum Wages Act in 1948, giving both the Central government and State government jurisdiction in fixing wages. The act is legally non-binding, but statutory. Payment of wages below the minimum wage rate amounts to forced labour. Wage boards are set up to review the industry's capacity to pay and fix minimum wages such that they at least cover a family of four's requirements of calories, shelter, clothing, education, medical assistance, and entertainment. Under the law, wage rates in scheduled employments differ across states, sectors, skills, regions and occupations owing to difference in costs of living, regional industries' capacity to pay, consumption patterns, etc. Hence, there is no single uniform minimum wage rate across the country and the structure has become overly complex. The highest minimum wage rate as updated in 2012 is Rs. 322/day in Andaman and Nicobar[3] and the lowest is Rs. 38/day in Tripura.

1920: K.G.R. Choudhary recommended setting up boards for determining minimum wages for each industry.

1928: International Labour Conference implemented system to fix wages for different trades. However, the practice was not put into legislation in India.

1943: Standing Labour Committee, a Labour Investigation Committee was appointed on the recommendation of Indian Labour Conference (ILC), 1943 to look into conditions of labour in terms of their wages, housing, social conditions, and employment.

1945: The first bill on minimum wages was drafted in ILC.

1946: A bill on minimum wages was introduced in Central Legislative assembly on the recommendations of 8th Standing Labour Committee. The 8th meeting of the Standing Labour Committee, 1946[7] also recommended that a separate legislation that specified working hours, minimum wages and paid holidays of unorganized sector be enacted.

1947: Post-independence representatives of labour, employers, and government attended a government-organized conference. They defined minimum wages to be such that they should not only provide for subsistence but should also be enough for education, medical requirements and other amenities and should sustain efficiency.

1948: The Minimum Wages Act was eventually passed and was effective from 15 March. Under the act a tripartite committee "The Tripartite Committee of Fair Wage"[9] was appointed that set definitions and guidelines for formulating a wage structure in India. The Committee of fair wage definition of minimum wage as: "The minimum wages must be provided not merely for the bare subsistence of life but also for the preservation of efficiency of the workers by providing for some measures of education, medical requirement and amenities". Recommendations of this committee have now set the foundations of wage fixation.

1957: The 15th Labour conference added some norms in the fixation of minimum wages such that revision and fixation of wage rates are need-based. The recommendations were:

The cost of three consumption units- husband, wife and two children for one earner. Income from women and children should be ignored

Satisfy the minimum food requirement of 2700 calories per person

Clothing requirement of 72 yards for a family annually

Rent of the minimum area as specified by Government's Industrial Housing Scheme

20% of minimum wage should be the cost of fuel and miscellaneous items of expenditure.

1987: Parliamentary sub-committee on unorganized labour concluded that minimum wages fail to ensure a livelihood above the government defined poverty line for the unorganized sector. It also revealed some flaws in implementation of the act. The committee noted that wages are not fixed or revised regularly in some states. The committee recommended that factors such as nutrition requirements, poverty line, shelter, clothing, fuel, light, medical and educational expenses should be taken into account while fixing and revising minimum wages.

1988: Labour Minister's Conference recommended the necessity of an allowance that safeguards wages against inflation, called [Variable Dearness Allowance](#) (VDA)

1991: Honorable Supreme court's judgment in the case of Reptakas & Co. specified that 25% of the minimum wages should also account for Children's education, required medical expenses, recreation in festivals/ceremonies and provision for old age and marriage. National Commission on Rural Labour (NCRL) recommended the government to introduce a national minimum wage floor level for uniformity.

VDA became effective. It is revised twice in a year, on 1 April and 1 October.

1992: Thirtieth session of ILC observed the ineffectiveness of states' implementation machinery and labour administration. It urged the civil society especially NGOs and workers' organisations to inspect and ensure payment of minimum wages. The thirtieth session also discussed that officials should be wary of fixing minimum wage rates to impracticable high levels.

1994: The 9th Centre of Indian Trade Unions conference along with insisting a minimum wage floor of Rs. 78.50, raised the following demands

- The family should be taken as five units instead of three.
- The Minimum Wages Act should cover all employments.
- There should be full neutralization of cost of living with automatic linkage with the consumer prices index and revision after every six months or 50-point rise in the CPI, whichever is earlier.

1996: Government fixed the national minimum wage floor at INR 35/day as per the recommendations of NCRL. Since 2009 it stands at INR 100/day.

2007: The Tamil Nadu state government announced that it has fixed minimum wages for 90% of all occupations.

The Indian National Trade Union Congress appeals for a "national decent minimum wage" for all industries that would be based on workers' needs.

2008: Working Women in Houses Union marched in Salem demanding statutory fixation of minimum wages for house maids and servants.

2009: The Central government de-linked [MGNREGA's](#) wage rates from minimum wages through notification under Section 6(1). Wage rates that were initially aligned with respective states' minimum wages were now fixed at a uniform wage rate of Rs. 100/- under the scheme.

On 12 August, the Andhra Pradesh wrote to the Ministry of Rural Development that workers under the MGNREGA scheme are being paid less than the Minimum wage rate and this could attract "contempt of court". There was no response to this.

On 10 July, the Labour Department responded to the notification of wage rate in MGNREGA scheme as against the minimum wage rate: "Minimum Wages Act, 1948 guarantees minimum wages to workers and there cannot be a wage rate less than the minimum wage rate in any circumstances."

2010: Andhra Pradesh government says that any payment including that under the MGNREGA scheme, below minimum wage rate is unconstitutional.

2011: As per Karnataka High Court's interim order MGNREGA's wage rates are to be aligned with the Minimum Wage rates of the state.

National Human Right Commission convened a zonal workshop on fixation, revision and enforcement of minimum wage in Brick kiln industry.

2012: MazdoorKisan Shakti Sangathan urges the Supreme Court to withdraw the SLP to the PM to rediscuss Karnataka High Court and Andhra Pradesh high Court's judgments

Supreme Court asks the Central Government to consider respective states' minimum wages to bring parity between them.

The Labour Department decides to make revisions in minimum wage rates mandatory within three years.

2015: From 1 July 2015 the National Floor Level of Minimum Wage was raised to Rs 160 per day.

2015: On 1 September 2015 labours in unorganized sector extended their support to one-day nationwide general strike called by central trade unions (CTUs). Later than ShriBandaruDattatreya, the Minister of State(IC) for Labour and Employment, elaborated on the initiatives and continuing efforts of the Government to address the issues and concerns of the Trade Unions for the welfare of workers. If the norms are implemented then the minimum wage would be not less than Rs 273 per day which is currently Rs 160 per day.

2.1 FIXATION AND REVISION OF MINIMUM WAGES

The Minimum Wages Act 1948 generally specifies minimum wage rates on a per day basis, and extends to the entire country and is revised within a period of not less than five years. However there is a provision to increase dearness allowance every two years. The norms in fixing and revision of minimum wages were first recommended by ILC, 1957.

Revision of minimum wage rates is based on a 'cost of living index' and wages can be fixed for an entire state, part of the state, class or classes and employments pertaining to these categories. The fixation of wages is based on the norms mentioned and a wage board (different for different industry).

Under the Minimum Wages Act, State and Central Governments have the power to fix and revise minimum wages. The act specifies that the "appropriate" government should fix the wages i.e. if the wages to be fixed are in relation to any authority of Central government or Railway administration then the Central government fixes it.

However, if the wage rate is to be fixed or revised for a scheduled employment, the respective state governments fix it. The Centre fixes the National floor level Minimum Wage that is lower than most states' respective minimum wages. The ambiguity and overlap in the jurisdiction of both these tiers of government have caused debates and controversies.

One of such debates revolves around fixing wage rates of MGNREGA scheme, an employment guarantee initiative by the Central Government

As per Section 5 of the Minimum Wages Act, 1948, there are two ways of fixing and/or revising minimum wages •

Committee Method:

Committees and Sub-committees are set up to make recommendations or create inquiries. • Notification Method: The government publishes proposals and an official date in the Official Gazette.

All advice and recommendations from various committees and sub-committees as well as representations are collected before the specified official date and the government then proceeds to fix/revise minimum wages.

2.2 OBJECTIVE OF MINIMUM WAGES ACT 1948

The Minimum Wages Act came into existence to safeguard the interests of the workers engaged in the unorganized sector. This Act provides for fixation and revision of minimum wages of the workers engaged in employment. Under this Act, both central, as well as State Government, are responsible, in respect of scheduled employments within their jurisdictions to fix and revise the minimum wages and enforce payment of minimum wages.

- To provide minimum wages to the workers Working in organized sector.
- To empower the government to take steps for fixing minimum wages and to revising it
- in a timely manner
- To stop exploitation of the workers
- To apply this law on most of the sections in organized sector (scheduled employment)
- The Minimum Wages Act was passed in 1948 and it came into force on 15th March 1948. The National Commission on Labour has described the passing of the Act as a landmark in the history of labour legislation in the country.

- The philosophy of the Minimum Wages Act and its significance in the context of conditions in India has been explained by the Supreme Court in *Unichoyi v. State of Kerala* (1), as follows:
- “What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries.
 - In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages.
 - The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not be considered.
 - What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour”.
- According to its preamble the Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments.
- The employment is those which are included in the schedule and are referred to as ‘Scheduled Employments’. The Act extends to whole of India.

3. PAYMENT OF BONUS ACT, 1965

The payment of Bonus Act provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

It extends to the whole of India and is applicable to every factory and to every other establishment where 20 or more workmen are employed on any day during an accounting year.

The minimum bonus of 8.33% is payable by every industry and establishment under section 10 of the Act. The maximum bonus including productivity linked bonus that can be paid in any accounting year shall not exceed 20% of the salary/wage of an employee under the section 31 A of the Act.

a. Eligibility for Bonus:

Every employee receiving salary or wages upto RS. 3,500 p.m. and engaged in any kind of work whether skilled, unskilled, managerial, supervisory etc. is entitled to bonus for every accounting year if he has worked for at least 30 working days in that year.

However employees of L.I.C., Universities and Educational institutions, Hospitals, Chamber of Commerce, R.B.I., IFCI, U.T.I. Social Welfare institutions are not entitled to bonus under this Act.

b. Disqualification for bonus:

Notwithstanding anything contained in the act, an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behaviour while in the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

c. Minimum/Maximum Bonus Payable**1. Minimum bonus**

1. The minimum bonus which an employer is required to pay even if he suffers losses during the accounting year or there is no allocable surplus is 8.33 % of the salary or wages during the accounting year, or
2. Rs. 100 in case of employees above 15 years and Rs 60 in case of employees below 15 years, at the beginning of the accounting year, Whichever is higher

2. Maximum bonus

If in an accounting year, the allocable surplus, calculated after taking into account the amount 'set on' or the amount 'set of' exceeds the minimum bonus, the employer should pay bonus in proportion to the salary or wages earned by the employee in that accounting year subject to a maximum of 20% of such salary or wages.

e. Time limit for payment

The bonus should be paid in cash within 8 months from the close of the accounting year or within one month from the date of enforcement of the award or coming into operation of a settlement following an industrial dispute regarding payment of bonus. However if there is sufficient cause extension may be applied for.

f. Calculation of Bonus

The method for calculation of annual bonus is as follow:

1. Calculate the gross profit in the manner specified in-
 - i. First Schedule, in case of a banking company, or
 - ii. Second Schedule, in any other case.
2. Calculate the Available Surplus.
 $\text{Available Surplus} = A+B$, where $A = \text{Gross Profit} - \text{Depreciation admissible u/s 32 of the Income tax Act} - \text{Development allowance} - \text{Direct taxes payable for the accounting year (calculated as per Sec.7)} - \text{Sums specified in the Third Schedule}$.
 $B = \text{Direct Taxes (calculated as per Sec. 7) in respect of gross profits for the immediately preceding accounting year} - \text{Direct Taxes in respect of such gross profits as reduced by the amount of bonus, for the immediately preceding accounting year}$.
3. Calculate Allocable Surplus
 $\text{Allocable Surplus} = 60\% \text{ of Available Surplus, } 67\% \text{ in case of foreign companies}$.
4. Make adjustment for 'Set-on' and 'Set-off'. For calculating the amount of bonus in respect of an accounting year, allocable surplus is computed after considering the amount of set on and set off from the previous years, as illustrated in Fourth Schedule.
5. The allocable surplus so computed is distributed amongst the employees in proportion to salary or wages received by them during the relevant accounting year.

In case of an employee receiving salary or wages above Rs. 2,500 the bonus payable is to be calculated as if the salary or wages were Rs. 2,500 p.m. only.

G. DUTIES/RIGHTS OF EMPLOYER**1. DUTIES**

1. To calculate and pay the annual bonus as required under the Act
2. To submit an annual return of bonus paid to employees during the year, in Form D, to the Inspector, within 30 days of the expiry of the time limit specified for payment of bonus.
3. To co-operate with the Inspector, produce before him the registers/records maintained, and such other information as may be required by them.
4. To get his account audited as per the directions of a Labour Court/Tribunal or of any such other authority.

2. RIGHTS

An employer has the following rights:

1. Right to forfeit bonus of an employee, who has been dismissed from service for fraud, riotous or violent behaviour, or theft, misappropriation or sabotage of any property of the establishment.
2. Right to make permissible deductions from the bonus payable to an employee, such as, festival/interim bonus paid and financial loss caused by misconduct of the employee.
3. Right to refer any disputes relating to application or interpretation of any provision of the Act, to the Labour Court or Labour Tribunal.

h. Rights of Employees

1. Right to claim bonus payable under the Act and to make an application to the Government, for the recovery of bonus due and unpaid, within one year of its becoming due.
2. Right to refer any dispute to the Labour Court/Tribunal Employees, to whom the Payment of Bonus Act does not apply, cannot raise a dispute regarding bonus under the Industrial Disputes Act.
3. Right to seek clarification and obtain information, on any item in the accounts of the establishment.
- 4.

i. Recovery of Bonus Due

1. Where any bonus is due to an employee by way of bonus, employee or any other person authorized by him can make an application to the appropriate government for recovery of the money due.
2. If the government is satisfied that money is due to an employee by way of bonus, it shall issue a certificate for that amount to the collector who then recovers the money.
3. Such application shall be made within one year from the date on which the money became due to the employee.
4. However the application may be entertained after a year if the applicant shows that there was sufficient cause for not making the application within time.

UNIT-3 IMPORTANT QUESTIONS

1. Briefly about Payment of wages Act, 1936
2. Explain history and objectives of Minimum wages Act, 1948
3. Detailed note on Payment of Bonus Act, 1965

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**(17E00310) Labor Laws and Legislations
(Elective II)**

Objective : In this era of Industrialization it is very significant to understand basics of management. This programme enables the candidate to capture the significant elements of laws to run an industry. It is a course which should be done by candidates who want to understand management fundamentals and basic elements of an Industry

1. **Legal frame work: evolution of labour laws in India** – labour legislations – meaning, importance and relevance to HRM
2. **Legislations relating to employment and working conditions:** Industrial employment (standing orders) Act, 1946 – Factories Act 1948 - contract labour (Regulation and abolition) Act 1970
3. **Laws relating to remuneration:** Payment of wages Act, 1936, Minimum wages Act, 1948 – Payment of Bonus Act, 1965
4. **Laws relating to industrial Relations :** Industrial Disputes Act, 1947 - preventive and settlement machinery – trade unions Act, 1926 – workers participation in management
5. **Laws relating to social security :** Work men's compensation Act, 1923 – ESI Act, 1948- Employees provident fund and miscellaneous provisions Act, 1952 - Maternity benefits Act, 1961 Payment of gratuity Act, 1972

Text Books:

- Industrial Relations and labour laws - Tripathi. P.C- Sultan chand and sons
- Mercantile law – N.D. Kapoor - Sultan chand and sons

Reference books:

- Industrial Relations and labour laws - Sri Vastva – vikas publishers
- Industrial Relations and laws in India – Agarwal LL
- Industrial Relations and labour laws - Sinha & Sinha, Oxford IBH
- Legal aspects of business – Pillai. RSN & Bhagavathi (2011), Sultan chand and sons
- Industrial Law- P.L. Malik, eastern book company

UNIT-4

LAWS RELATING TO INDUSTRIAL RELATIONS

1. INDUSTRIAL DISPUTE ACT, 1947

- The Industrial Disputes Act 1947 extends to the whole of India and regulates Indian labour law so far as that concerns trade unions as well as Individual workman employed in any Industry within the territory of Indian mainland. It came into force April 1, 1947.
- It was enacted to make provisions for investigation and settlement of industrial disputes and for providing certain safeguards to the workers.
- "INDUSTRIAL DISPUTE" means any dispute between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.
- Indian trade disputes act, 1929 was the first legislation in India for the settlement of industrial disputes. Initially, the act was made to remain in force for 5 years. In 1932 certain amendments were carried out in the act in 1934, in consultation with the provincial governments, the central governments made the act to remain in permanent force. This act, inter alia, provided for the settlement of disputes by appointment of 'court of inquiry' and 'board of conciliation' upon an application to the government by any party in disputes. The illegal strikes were banned under the act.
- In 1938, Bombay industrial development act was enacted. Under this act, an inquiry was made compulsory before declaration of strikes or lock-outs. This was made, in fact, to ensure uninterrupted working of industries. Subsequently, after the outbreak of world war-2, defiance India rule (DIR) was enforced in 1939. Under section 81a of DIR, strikes and lock-outs were banned in the public utility services. In other establishments, prior notice was compulsory for strikes or lock-out.

1.1 DEFINITIONS OF INDUSTRIAL DISPUTES ACT

As per section 2(K) 'industrial disputes' means any disputes or difference between employers and employees, or between employers or workman, or between workman and workman, which is connected with the employment or non employment or with the conditions of labour, or of any person.

The above definition of industrial disputes brings out the following essential ingredients:

- 1) There should be a disputes or difference;
- 2) The disputes or difference may be between:
 - a) Employer and employer, or
 - b) Employer and workman, or
 - c) Workman and workman.
- 3) The disputes or difference may be connected with:
 - a) Employment, or
 - b) Non employment, or
 - c) The terms of employment, or
 - d) Conditions of labour of any person, and
- 4) The disputes should relate to a industry.

A) DEFINITIONS OF INDUSTRY (SECTION 2)

Industry is defined I the oxford dictionary as ‘diligent or systematic activity’. Section 2(J) of he act defines industry as follows:

“Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or vocation of workmen.

From the above definition, industry appears to mean:

- 1) A business, such as merchandising,
- 2) A trade, such as cutler,
- 3) A manufacture, such as flour milling
- 4) An undertaking, such as electricity company,
- 5) A calling, such as architect,
- 6) A services, such as transporter, or
- 7) An employment, which is a general term covering. Perhaps, the rest of the vocations.

b) Definition of workman section 2(s)

‘Workman’ is defined in section 2(s) of the act as follows:

“ workman means ay person (including a apprentice) employed I any industry to do any manual, unskilled, skilled technical operational, clerical or supervisory work for hire reward, whether the terms of employment be express or implied ad for the purposes of an proceeding under this act in relation to an industrial disputes, include any such person, who has been dismissed, discharged or retrenched I connection with or as a consequence of that disputes or whose dismiss discharge or retrenchments has led to that disputes, but does not include ay such person-

- 1) Who is subject to the air force act, 1950 the navy act, 1957; or
- 2) Who is employed in police services or as an officer or other employee of a prison ; or
- 3) Who is employed mainly in a managerial or administration capacity; or
- 4) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per month, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature.

The definition of workman has three essential parts:

- i. statutory meaning of workman;
- ii. Legal fiction, and
- iii. Categories of persons excluded.

c) Definition of strikes

As per section 2(Q) “ strikes” means cessation of work by a body of persons employed in an industry acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

The essential ingredients of the definitions are:

- 1) There must be cessation of work;
- 2) The cessation of work must be by a body of persons employed in any industry, as defined in Section 2(j) of the act;
- 3) The strikes must have been acting in combination, or
- 4) There must be concerted refusal; or
- 5) Refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

In strikes, the workmen have intention to resume to the work. Mere absence from work does not amount to taking part in strike within the meaning of the industrial act, 1947. there should be some evidence to show that absence from the duty was the result of some concert between him and other persons that they would not continue to work it is also necessary that should be long hours of strikes. Stoppage and refusal to work, even for a few hours only, would amount to a strike, when there was a concert and combination of the workers in stopping and refusing to work.

d) Definition of lock-outs

As per section 2(I) Lock-out means the temporary closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him.

The definition of lock-out has three ingredients:

- 1) There should be temporary closing of place of employment, or
- 2) There should be suspension of work, or
- 3) There should be refusal to continue to employ any number of persons employed by the employer.
- 4) lock-out is an antithesis to strike.

e)Definition of lay-off

As per section 2 (kkk) lay-off with its grammatical variations and cognate expressions means 'the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishments and who has not been retrenched'.

For this purpose, every workman whose name is borne on the muster rolls of the industrial establishments and who presents himself or work the establishments at the time appointed for the purpose, during the normal working hours on any day and is not given employment by the employer within two hours on any day and is not deemed to have been laid-off for that day within the meaning of this clause.

It is provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then he shall have been laid-off only for one half of that day:

f)Definition of retrenchment

As per section 2(oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

1. Voluntary retirement of the workman; or
2. Retirement of the workman on reaching the age of superannuation, if the contract of employment between the employer and workman concerned contains a stipulation in that behalf; or
3. Termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under stipulation on that behalf contained therein ; or
4. Termination of the service of a workman on the ground of continued ill-health.

5. Retrenchment means the termination by employer of the service of a workman for 'any reason whatsoever'⁴, except those expressly excluded by the definition.
6. This wide literal meaning is more preferable to the natural contextual and narrow meaning, viz. discharge of surplus labour.

1.2 OBJECTIVE OF INDUSTRIAL DISPUTES ACT

An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. whereas it is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes here in after appearing.

The preamble to the act reads thus, 'an act to make provision for the investigation and settlement of industrial disputes and for certain other purposes.' on the basis of various judgments given from time to time by the supreme court, the principal objective of the act may be stated as below:

- a) To ensure social justice to both employers and employees and advance progress of industry by bringing about harmony and cordial relationship between the parties.
- b) To settle disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation, arbitration and if necessary, by approaching the tribunals constituted under the act.
If disputes are not settled, it would result in strikes or lock-outs and entail dislocation of work, essential to the life of the community.
- c) To promote measures for securing and preserving amity and good relations between the employer and workmen.
- d) To prevent illegal strikes and lockouts.
- e) To provide compensation to workmen in cases of layoff, retrenchment and closure.
- f) To protect workmen against victimizations by the employer and to ensure termination of industrial dispute in a peaceful manner.
- g) To promote collective bargaining.

1.3 AUTHORITIES UNDER THE INDUSTRIAL DISPUTES ACT, 1947

- The Act provides elaborate and effective machinery for bringing about Industrial Peace by setting up the following Authorities for the Investigation and Settlement of industrial Disputes.
- Courts of enquiry
- Work committee
- Conciliation proceedings
- Labour courts
- Arbitration
- Industrial and national tribunal (procedures, powers and duties)

2.PREVENTIVE AND SETTLEMENT MACHINERY -INDUSTRIAL DISPUTE ACT, 1947.

1. Works Committee Sec.3

Where?: In the case where industrial Establishments with 100 or more workers

Members: Equal number of representatives of the Employer and Employees but total No. shall not exceed 20.

Objective: promotion of good relationship between employer and employee(s).

Conclusion: it may be noted that committee cannot decide and pass final judgment .The recommendation of committee are not binding.

2.Conciliation Officer Sec.4

Appointed by the appropriate Government.

Duty: Settlement of industrial disputes.

Nature : Appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

3.Board of Conciliation Sec.5

Appointed by the appropriate Government as occasion arises for settlement of disputes.

Members: Chairman and 2 or 4 other members. independent Person.

Objective: To induce the parties to come to a fair and amicable settlement of the dispute.

4. Courts of Enquiry Sec.6

Constituted by the appropriate Government as occasion arises for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

Members: A Court may consist of one or more independent persons.

Objective : to enquire the matter referred to it by appropriate Govt.& to make a report on matter.

5. Labour Courts Sec.7

Labour Courts are constituted by the appropriate Govt. for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

Members: Court shall consist of one person only

Submit its Award to the appropriate Govt. soon after the conclusion of proceedings.

6. Industrial Tribunals Sec.7a

Tribunals are constituted by the appropriate Govt. for the adjudication of industrial disputes relating to any matter specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

Members : it shall consist of one person only .

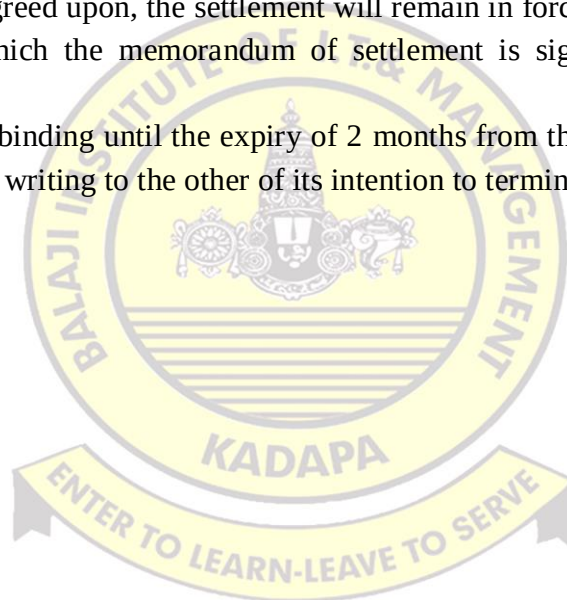
7. National tribunals Sec.7b

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

Members: consists of only one person.

8. Period of Binding- Settlements:

- A settlement arrived at in the course of conciliation proceedings is binding for a period agreed upon by the parties.
- If no such period is agreed upon, the settlement will remain in force for a period of 6 months. From the date on which the memorandum of settlement is signed by the parties to the dispute.
- It will continue to be binding until the expiry of 2 months from the date on which one of the parties gives notice in writing to the other of its intention to terminate the settlement.



Object of the Act

Provisions for investigation and settlement of industrial disputes and for certain other purposes.

Important Clarifications

Industry – has attained wider meaning than defined except for domestic employment, covers from barber shops to big steel companies. **Sec.2(I)**

Works Committee–Joint Committee with equal number of employers and employees' representatives for discussion of certain common problems. **Sec.3**

Conciliation–is an attempt by a third party in helping to settle the disputes **Sec.4**

Adjudication – Labour Court, Industrial Tribunal or National Tribunal to hear and decide the dispute. **Secs.7,7A & 7B**

Power of Labour Court to give Appropriate Relief

Labour Court/Industrial Tribunal can Modify the punishment of dismissal or discharge of workmen and give appropriate relief including reinstatement. **Sec.11A**

Right of a Workman during Pendency of Proceedings in High Court

Employer to pay last drawn wages to reinstated workman when proceedings challenging the award of his reinstatement are pending in the higher Courts. **Sec.17B**

Persons Bound by Settlement

- When in the course of conciliation proceedings etc., all persons working or joining subsequently.
- Otherwise than in course of settlement upon the parties to the settlement. **Sec.18**

Period of Operation of Settlements and Awards

- A settlement for a period as agreed by the parties, or
- Period of six months on signing of settlement.
- An award for one year after its enforcement. **Sec.19**

Lay off & Payment of Compensation – Conditions for Laying off

Failure, refusal or inability of an employer to provide work due to

- Shortage of coal, power or raw material.
- Accumulation of stocks.
- Breakdown of machinery.
- Natural calamity. **Sec.25-C**

Notice of Change

21 days by an employer to workmen about changing the conditions of service as provided in IV th Schedule. **Sec.9A**

Prior Permission for Lay off

When there are more than 100 workmen during proceeding 12 months. **Sec.25-M**

Lay off Compensation

Payment of wages except for intervening weekly holiday compensation 50% of total or basic wages and DA for a period of lay off upto maximum 45 days in a year. **Sec.25-C**

Prohibition of Strikes & Lock Outs

- Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking.
- Within fourteen days of giving such notice.
- Before the expiry of the date of strike specified in any such notice as aforesaid.
- During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings.
- During the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months, after the conclusion of such proceedings.
- During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under Sub-Section(3A) of section 10A
- During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. **Secs.22&23**

Prior Permission by the Government for Retrenchment

- When there are more than 100 (in UP 300 or more) workmen during preceding 12 months.
- Three months' notice or wages thereto.
- Form QA
- Compensation @ 15 days' wages. **Sec. 25-N**

Conditions of service etc. to remain unchanged under certain circumstances during pendency of proceedings

- Not to alter to the prejudice of workmen concerned the condition of service.
- To seek Express permission of the concerned authority by paying one month's wages on dismissal, discharge or punish a protected workman connected with the dispute.
- To seek approval of the authority by paying one month's wages before altering condition of service, dismissing or discharging or punishing a workman. **Sec.33**

Prohibition of unfair labour practice either by employer or workman or a trade union as stipulated in fifth schedule

Both the employer and the Union can be punished. **Sec.25-T**

Retrenchment of Workmen Compensation & Conditions

- Workman must have worked for 240 days.
- Retrenchment compensation @ 15 days' wages for every completed year to be calculated at last drawn wages
- One month's notice or wages in lieu thereof.
- Reasons for retrenchment
- Complying with principle of 'last come first go'.
- Sending Form P to Labour Authorities.

Closure of an Undertaking

60 days' notice to the labour authorities for intended closure in Form QA. **Sec.25FFA**
Prior permission atleast 90 days before in Form O by the Government when there are 100 ore more workmen during preceding 12 months (in UP 300 or more workmen) **Sec.25-O**

Conditions of service etc. to remain unchanged under certain circumstances during pendency of proceedings

- Not to alter to the prejudice of workmen concerned the condition of service.
- To seek Express permission of the concerned authority by paying one month's wages on dismissal, discharge or punish a protected workman connected with the dispute.
- To seek approval of the authority by paying one month's wages before altering condition of service, dismissing or discharging or punishing a workman. **Sec.33**

3. THE TRADE UNION ACT, 1926

Trade Union [Sec. 2(h)]: Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade Unions.

Provided that this Act shall not affect -

- (i) Any agreement between partners as to their own business;
- (ii) Any agreement between an employer and those employed by him as to such employment; or
- (iii) Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession trade or handicraft.

The law relating to the registration and protection of the Trade Unions is contained in the Trade Unions Act, 1926 which came into force with effect from 1st June 1927. The Act extends to the whole of India except the State of Jammu and Kashmir.

In common parlance, Trade Union means an association of workers in one or more occupations. Its object is the protection and promotion of the interests of the working class. Trade Unions have a home grown philosophy based on workers' experience and psychology. It grows out of the workers' day-to-day experience.

3.1 OBJECTIVES OF THE TRADE UNION ACT, 1926:

Trade union is a voluntary organization of workers relating to a specific trade, industry or a company and formed to help and protect their interests and welfare by collective action. Trade union is the most suitable organisations for balancing and improving the relations between the employees and the employer. They are formed not only to cater to the workers' demand, but also for imparting discipline and inculcating in them the sense of responsibility.

- Secure fair wages for workers and improve their opportunities for promotion and training.
- Safeguard security of tenure and improve their conditions of service.
- Improve working and living conditions of workers.
- Provide them educational, cultural and recreational facilities.
- Facilitate technological advancement by broadening the understanding of the workers.
- Help them in improving levels of production, productivity, discipline and high standard of living.
- Promote individual and collective welfare and thus correlate the workers' interests with that of their industry.
- To take participation in management for decision-making in connection to workers and to take disciplinary action against the worker who commits in-disciplinary action.

CHECKLIST**Object of the Act**

To provide for the registration of Trade Union and in certain respects to define the law relating to registered Trade Unions

Registration of trade Union

- Any **7** or more members of a trade union may, by subscribing their names to the rules of the trade union and its compliance.
- There should be at least **10%**, or **100** of the work-men, whichever is less, engaged or employed in the establishment or industry with which it is connected.
- It has on the date of making application not less than **7** persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Registration of trade Union

Prescribed form with following details.

- Names, occupations and address of the members' place of work.
- Address of its head office; and
- Names, ages, addresses and occupations of its office bearers.

Sec. 5

Minimum requirements for membership of trade union

Not less than **10%**, or **100** of the workmen, whichever is less, subject to a minimum of **7**, engaged or employed in an establishments etc.

Sec. 9A

Cancellation of registration

- If the certificate has been obtained by fraud or mistake or it has ceased to exist or has wilfully contravened any provision of this Act.
- If it ceases to have the requisite number of members.

Sec. 10

Criminal conspiracy in trade disputes

No office bearer or member of a registered trade union shall be liable to punishment under sub section (2) of conspiracy u/s 120B of IPC in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union.

Sec. 17

Disqualification of office bearers of Trade Union

If one has not attained the age of **18** years.
Conviction for an offence involving moral turpitude.
Not applicable when **5** years have elapsed.

Sec. 21-A

Returns

Annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the **31st December**.

Sec. 28

Penalties	Offence	Punishment
U/s 31	- For making false entry in or any omission in general statement required for sending returns. - For making false entry in the form.	- Fine upto Rs.500. On continuing default, additional fault, Rs.5 for each week (not exceeding Rs.50). - Fine upto Rs.500.
U/s 32	Supplying false information regarding Trade Union	Fine upto Rs.200.

3.2 WELL KNOWN CENTRAL TRADE UNION ORGANIZATIONS IN INDIA:

- All India Trade Union Congress (AITUC)
- BharatiyaMazdoorSangh (BMS)
- Centre of Indian Trade Unions (CITU)
- Hind MazdoorKisanPanchayat (HMKP)
- Hind MazdoorSabha (HMS)
- Indian Federation of Free Trade Unions (IFFTU)
- Indian National Trade Union Congress (INTUC)
- National Front of Indian Trade Unions (NFITU)
- National Labor Organization (NLO)
- Trade Unions Co-ordination Centre (TUCC)
- National Mazdoor Union (NMU)

June 2012: The National Mazdoor Union (NMU) gave a strike notice to APSRTC (Andhra Pradesh State Road Transportation Corporation) Managing Director with nearly 36 demands. In case management fails to react, union members have decided to strike from following month.

National Mazdoor Union (NMU) said the 36 demands, four were most important. "Abolition of contract system in APSRTC, regularization of nearly 22,000 contract drivers and bus conductors, constitution pay commission were among these.

June 2012: one of the unions of Visakhapatnam steel plant, Indian National Trade Union Congress (INTUC), has demanded rupees 1 crore ex-gratia (compensation) for the families of the victims of the explosion had occurred at the 'oxygen control unit' near the Steel Melting Shop-II at Visakhapatnam steel plant which claimed the lives of 20 persons on 12-june-2012. Visakhapatnam steel plant had already paid 20 lakh rupees to each of the families of the deceased workers and officers. The union also demanded a permanent job for the Kin of the victims. The deceased include Deputy General Manager (Construction) L Srihari and Deputy General Manager (instrumentation) P V Karunakar.

3.3REGISTRATION OF TRADE UNIONS

[Sec 3] Appointment of Registrars.

- The government will appoint a person to be a Registrar.
- The government will appoint required number of person as the Addition and deputy Registrar of the
- Trade Unions. These office will be under the Registrar of the Trade Union.

[Sec 4] Mode of registration

Minimum Requirement of Registration of Trade Union (2001 amendment)

(1) Any seven or more members of a trade union may, by subscribing their names to the rules of the trade union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the trade union under this Act.

Provided that no Trade Union of workmen shall be registered unless at least ten per cent. or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration:

Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected .".

(2) Where an application has been made under sub-section (1) for the registration of a trade union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the trade union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the trade union or have given notice in writing to the Registrar dissociating themselves from the application.

4. WORKERS PARTICIPATION IN MANAGEMENT

Workers participation in management is an essential ingredient of Industrial democracy. The concept of workers participation in management is based on Human Relations approach to Management which brought about a new set of values to labor and management. Traditionally the concept of Workers Participation in Management refers to participation of non-managerial employees in the decision-making process of the organization. Workers' participation is also known as 'labour participation' or 'employee participation' in management. In Germany it is known as co-determination while in Yugoslavia it is known as self-management. The International Labour Organization has been encouraging member nations to promote the scheme of Workers' Participation in Management.

Workers' participation in management implies mental and emotional involvement of workers in the management of Enterprise. It is considered as a mechanism where workers have a say in the decision-making.

4.1 DEFINITIONS OF WORKERS PARTICIPATION IN MANAGEMENT

- According to Keith Davis, Participation refers to the mental and emotional involvement of a person in a group situation which encourages him to contribute to group goals and share the responsibility of achievement.
- According to Walpole, Participation in Management gives the worker a sense of importance, pride and accomplishment; it gives him the freedom of opportunity for self-expression; a feeling of belongingness with the place of work and a sense of workmanship and creativity.

4.2 THE CONCEPT OF WORKERS' PARTICIPATION IN MANAGEMENT ENCOMPASSES THE FOLLOWING:

- It provides scope for employees in decision-making of the organization.
- The participation may be at the shop level, departmental level or at the top level.
- The participation includes the willingness to share the responsibility of the organization by the workers.

4.3 FEATURES OF WORKERS PARTICIPATION IN MANAGEMENT

- Participation means mental and emotional involvement rather than mere physical presence.
- Workers participate in management not as individuals but collectively as a group through their representatives.
- Workers' participation in management may be formal or informal. In both the cases it is a system of communication and consultation whereby employees express their opinions and contribute to managerial decisions.

4.4 LEVELS OF WORKERS PARTICIPATION IN MANAGEMENT

1. **Information participation:** It ensures that employees are able to receive information and express their views pertaining to the matter of general economic importance.
2. **Consultative importance:** Here workers are consulted on the matters of employee welfare such as work, safety and health. However, final decision always rests with the top-level management, as employees' views are only advisory in nature.
3. **Associative participation:** It is an extension of consultative participation as management here is under the moral obligation to accept and implement the unanimous decisions of the employees. Under this method the managers and workers jointly take decisions.
4. **Administrative participation:** It ensures greater share of workers' participation in discharge of managerial functions. Here, decisions already taken by the management

come to employees, preferably with alternatives for administration and employees have to select the best from those for implementation.

5. **Decisive participation:** Highest level of participation where decisions are jointly taken on the matters relating to production, welfare etc.

4.5 CHARACTERISTICS OF WORKERS PARTICIPATION IN MANAGEMENT

- Participation implies practices which increase the scope for employees' share of influence in decision-making process with the assumption of responsibility.
- Participation presupposes willing acceptance of responsibility by workers.
- Workers participate in management not as individuals but as a group through their representatives.
- Worker's participation in management differs from collective bargaining in the sense that while the former is based on mutual trust, information sharing and mutual problem solving; the latter is essentially based on power play, pressure tactics, and negotiations.
- The basic rationale for worker's participation in management is that workers invest their labour and their fates to their place of work. Thus, they contribute to the outcomes of organization. Hence, they have a legitimate right to share in decision-making activities of organisation.

4.6 OBJECTIVES OF WORKERS PARTICIPATION IN MANAGEMENT

- To establish Industrial Democracy.
- To build the most dynamic Human Resources.
- To satisfy the workers' social and esteem needs.
- To strengthen labour-management co-operation and thus maintain Industrial peace and harmony.
- To promote increased productivity for the advantage of the organization, workers and the society at large.
- Its psychological objective is to secure full recognition of the workers.

4.7 IMPORTANCE OF WORKERS PARTICIPATION IN MANAGEMENT

- Unique motivational power and a great psychological value.
- Peace and harmony between workers and management.
- Workers get to see how their actions would contribute to the overall growth of the company.
- They tend to view the decisions as 'their own' and are more enthusiastic in their implementation.

- Participation makes them more responsible.
- They become more willing to take initiative and come out with cost-saving suggestions and growth-oriented ideas.

4.8 ESSENTIAL CONDITIONS FOR OF WORKERS PARTICIPATION IN MANAGEMENT

- 1) The attitude and outlook of the parties should be enlightened and impartial so that a free and frank exchange of thoughts and opinions could be possible. Where a right kind of attitude exists and proper atmosphere prevails the process of participation is greatly stimulated.
- 2) Participation must work as complementary body to help collective bargaining, which creates conditions of work and also creates legal relations.
- 3) There should be a strong trade union, which has learnt the virtues of unit and self-reliance so that they may effectively take part in collective bargaining or participation.
- 4) A peaceful atmosphere should be there wherein there are no strikes and lock-outs, for their presence ruins the employees, harms the interest of the society, and puts the employees to financial losses.
- 5) Authority should be centralized through democratic management process. The participation should be at the two or at the most three levels.

UNIT-4 IMPORTANT QUESTIONS

- 1) Define Industrial Disputes Act? Explain Industrial Disputes Act, 1947
- 2) Explain trade unions Act, 1926?
- 3) Elucidate importance of Workers participation in management in the MNCs.

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**(17E00310) Labor Laws and Legislations
(Elective II)**

Objective : In this era of Industrialization it is very significant to understand basics of management. This programme enables the candidate to capture the significant elements of laws to run an industry. It is a course which should be done by candidates who want to understand management fundamentals and basic elements of an Industry

1. **Legal frame work: evolution of labour laws in India** – labour legislations – meaning, importance and relevance to HRM
2. **Legislations relating to employment and working conditions:** Industrial employment (standing orders) Act, 1946 – Factories Act 1948 - contract labour (Regulation and abolition) Act 1970
3. **Laws relating to remuneration:** Payment of wages Act, 1936, Minimum wages Act, 1948 – Payment of Bonus Act, 1965
4. **Laws relating to industrial Relations :** Industrial Disputes Act ,1947 - preventive and settlement machinery – trade unions Act, 1926 – workers participation in management
5. **Laws relating to social security :** Work men’s compensation Act, 1923 – ESI Act, 1948- Employees provident fund and miscellaneous provisions Act, 1952 - Maternity benefits Act, - 1961 Payment of gratuity Act, 1972

Text Books:

- Industrial Relations and labour laws - Tripati. P.C- Sultan chand and sons
- Mercantile law – N.D. Kapoor - Sultan chand and sons

Reference books:

- Industrial Relations and labour laws - Sri Vastva – vikas publishers
- Industrial Relations and laws in India – Agarwal LL
- Industrial Relations and labour laws - Sinha & Sinha, Oxford IBH
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UNIT-5

LAWS RELATING TO SOCIAL SECURITY

1. WORKMEN'S COMPENSATION ACT, 1923

The Workmen's Compensation Act, 1923 provides for payment of compensation to workmen and their dependants in case of injury and accident (including certain occupational disease) arising out of and in the course of employment and resulting in disablement or death. The Act applies to railway servants and persons employed in any such capacity as is specified in Schedule II of the Act. The schedule II includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations.

The amount of compensation to be paid depends on the nature of the injury and the average monthly wages and age of workmen. The minimum and maximum rates of compensation payable for death (in such cases it is paid to the dependents of workmen) and for disability have been fixed and is subject to revision from time to time.

A Social Security Division has been set up under the Ministry of Labour and Employment, which deals with framing of social security policy for the workers and implementation of the various social security schemes. It is also responsible for enforcing this Act. The Act is administered by the State Governments through Commissioners for Workmen's Compensation.

1.1 THE MAIN PROVISIONS OF THE ACT ARE:-

An employer is liable to pay compensation:- (i) if personal injury is caused to a workman by accident arising out of and in the course of his employment; (ii) if a workman employed in any employment contracts any disease, specified in the Act as an occupational disease peculiar to that employment.

However, the employer is not liable to pay compensation in the following cases:-

If the injury does not result in the total or partial disablement of the workman for a period exceeding three days.

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

The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification. Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

Compensation shall be paid as soon as it falls due. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be.

If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner. No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

The State Government may, by notification in the Official Gazette, direct that every person employing workmen, or that any specified class of such persons, shall

send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the State Government may direct.

Whoever, fails to maintain a notice-book which he is required to maintain; or fails to send to the Commissioner a statement which he is required to send; or fails to send a report which he is required to send; or fails to make a return which he is required to make, shall be punishable with fine.

1.2 EMPLOYER'S LIABILITY FOR COMPENSATION

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable -

- (a) In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;
- (b) In respect of any injury not resulting in death or permanent total disablement caused by an accident which is directly attributable to –

the workman having been at the time thereof under the influence of drink or drugs or the willful disobedience of the workman to an order expressly given or to a rule expressly framed for the purpose of securing the safety of workmen or the willful removal or disregard by the workman of any safety guard or other device he knew to have been provided for the purpose of securing the safety of workman.

(2) If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment or if a workman whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which

period shall not include a period of service under any other employer in the same kind of employment)

in any employment specified in Part B of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment or if a workman whilst in the service of one or more employers

in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment contracts any disease specified therein as an occupational disease peculiar to that employment the contracting of the disease shall be deemed to be as injury by accident within the meaning of this section and unless the contrary is proved the accident shall be deemed to have arisen out of and in the course of the employment:

that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and that the disease has arisen out of and in the course of the employment the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section : Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C as the case may be as an occupational disease peculiar to the employment and that such disease arose out of the employment the contracting of the disease shall be deemed to be injury by accident within the meaning of this section. (2A) If a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment the contracting whereof is deemed to be an injury by accident within the meaning of this section and such employment was under more than one employer all such employers shall be liable

for the payment of the compensation in such proportion as the Commissioner may in the circumstances deem just.

(3) The Central Government or the State Government after giving by notification in the Official Gazette not less than three months' notice of its intention so to do may by a like notification add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively and thereupon the provisions of sub-section (2) shall apply in the case of a notification by the Central Government within the territories to which this Act extends or in case of a notification by the State Government within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

Save as provided by sub-sections (2), (2A) and (3) no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment. Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any court of law in respect of any injury –

- (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or
- (b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

1.3 METHOD OF CALCULATING WAGES—

In this Act and for the purposes thereof the expression “monthly wages” means the amount of wages deemed to be payable for a month’s service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated] as follows, namely:—

- where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
- where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality;]
- in other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)], the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

Explanation.— A period of service shall, for the purposes of 8 [this section] be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

1.4 AMOUNT OF COMPENSATION

(1) Subject to the provisions of this Act the amount of compensation shall be as follows namely :-where death results from the injury an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees whichever is more; where permanent total disablement results from the injury an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of sixty thousand rupees whichever is more.

Explanation I :For the purpose of clause (a) and clause (b) relevant factor in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his birthday immediately preceding the date on which the compensation fell due;

Explanation II :Where the monthly wages of a workman exceed two thousand rupees his monthly wages for the purposes of clause

(a) and clause

(b) shall be deemed to be two thousand rupees only;

(c) where permanent partial disablement results from the injury in the case of an injury specified in Part II of Schedule I such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and in the case of an injury specified in Schedule I such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I : Where more injuries than one are caused by the same accident the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II : In assessing the loss of earning capacity for the purpose of sub-clause

(ii) the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) where temporary disablement whether total or partial results from the injury a half monthly payment of the sum equivalent to twenty five per cent of monthly wages of the workman to be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1) while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India the Commissioner shall take into account the amount of compensation if any awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by the amount of compensation awarded to the workman in accordance with the law of that country.

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day -
from the date of disablement where such disablement lasts for a period of twenty-eight days or more or after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years whichever period is shorter :

Provided that -

there shall be deducted from any lump sum or half monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half monthly payment as the case may be; and no half monthly payment shall in any case exceed the amount if any by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation: Any payment or allowance which the workmen has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

On the ceasing of the disablement before the date on which any half monthly payment falls due there shall be payable in respect of that half monthly a sum proportionate to the duration of the disablement in that half month. If the injury of the workman results in his death the employer shall in addition to the compensation under sub-section

(1) deposit with the Commissioner a sum of one thousand rupees for payment of the same of the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure. 4A. Compensation to be paid when due and penalty for default Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed he shall be bound to make provisional payment based on the extent of liability which he accepts and such payment shall be deposited with the Commissioner or made to the workman as the case may be without prejudice to the right of the workman to make any further claim.

direct that the employer shall in addition to the amount of the arrears pay simple interest thereon at the rate of twelve per cent annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette on the amount due; and if in his opinion there is no jurisdiction for the delay direct that the employer shall in addition to the amount of the arrears and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty :

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

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

(3A) The interest payable under sub-section (3) shall be paid to the workman or his dependant as the case may be and the penalty shall be credited to the State Government.

Method of calculating wages In this Act and for the purpose thereof the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates) and calculated as follows namely :-

where the workman has during a continuous period of not less than twelve months immediately preceding the accident been in the service of the employer who is liable to pay compensation the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period; where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month the monthly wages of the workman shall be the average monthly amount which during the twelve months immediately preceding the accident was being earned by a workman employed on the same work by the same employer or if there was no workman so employed by a workman employed on similar work in the same locality; in other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b) the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period.

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

2. ESI ACT, 1948

Employee's State Insurance (abbreviated as ESI) is a self-financing social security and health insurance scheme for Indian workers. This fund is managed by the Employees' State Insurance Corporation (ESIC) according to rules and regulations stipulated there in the ESI Act 1948. ESIC is an autonomous corporation by a statutory creation under Ministry of Labour and Employment, Government of India.

In March 1943, B. P. Adarkar was appointed by Government of India to create a report on health insurance scheme for industrial workers. The report became the basis for the Employment State Insurance (ESI) Act of 1948. The promulgation of Employees' State Insurance Act, 1948 envisaged an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement, death due to employment injury resulting in loss of wages or earning capacity. The Act also guarantees reasonably good medical care to workers and their immediate dependents. Following the promulgation of the ESI Act the Central Govt. set up the ESI Corporation to administer the Scheme. The Scheme, thereafter was first implemented at Kanpur and Delhi on 24 February 1952. The Act further absolved the employers of their obligations under the Maternity Benefit Act, 1961 and Workmen's Compensation Act 1923. The benefit provided to the employees under the Act are also in conformity with ILO conventions.

The act was initially intended for factory workers but later became applicable to all establishments having 10 or more workers. As on 31 March 2016, the total beneficiaries are 82.8 million.

Employees' State Insurance Corporation (ESIC), established by ESI Act, is an autonomous corporation under Ministry of Labour and Employment, Government of India. As it is a legal entity, the corporation can raise loans and

take measures for discharging such loans with prior sanction of the central government and it can acquire both movable and immovable property and all incomes from the property shall vest with the corporation. The corporation can set up hospitals either independently or in collaboration with state government or other private entities, but most of the dispensaries and hospitals are run by concerned state governments.

2.1 BENEFITS

For all employees earning Rs 21,000 or less per month as wages, the employer contributes 4.75 percent and employee contributes 1.75 percent, total share 6.5 percent. S This fund is managed by the ESI Corporation (ESIC) according to rules and regulations stipulated there in the ESI Act 1948, which oversees the provision of medical and cash benefits to the employees and their family. ESI scheme is a type of social security scheme for employees in the organized sector.

The employees registered under the scheme are entitled to medical treatment for themselves and their dependents, unemployment cash benefit in certain contingencies and maternity benefit in case of women employees. In case of employment-related disablement or death, there is provision for a disablement benefit and a family pension respectively. Outpatient medical facilities are available in 1418 ESI dispensaries and through 1,678 private medical practitioners. Inpatient care is available in 145 ESI hospitals and 42 hospital annexes with a total of 19,387 beds. In addition, several state government hospitals also have beds for exclusive use of ESI Beneficiaries. Cash benefits can be availed in any of 830 ESI centers throughout India.

Recent years have seen an increasing role of information technology in ESI, with the introduction of Pehchan smart cards as a part of Project Panchdeep. In addition to insured workers, poor families eligible under the RashtriyaSwasthyaBimaYojana can also avail facilities in ESI hospitals and dispensaries. ESI Corporation also runs medical, nursing and paramedical schools in some ESI hospitals across India.

The Employees State Insurance Act of 1948 has been enacted with the objective of securing financial relief in cases of sickness, maternity, disablement and for providing medical benefits to employees of factories and establishments, and their dependents. The act is also applicable to non-seasonal factories using power and employing 10 or more employees, and non- power using factories and certain other establishments employing 20 or more employees. Employees and employers contribute to the scheme, and various benefits are given to eligible employees like, sickness benefit, maternity benefit, disablement benefit, etc. All benefits are delivered through ESI hospitals, clinics and approved independent medical practitioners.

Wage ceiling for coverage under the Employees' State Insurance Act, 1948 has been enhanced from Rs.7500 to Rs.10000 per month.

2.2 MATERNITY BENEFITS

The Act provides for periodical payments to an insured woman in case of confinement or miscarriage or related sickness. Workers covered by the Act can claim maternity benefit up to 70 percent of their salary. (Section 46).

2.3 Discharges from Employment

Employers are prohibited from dismissing, discharging, or otherwise punishing an employee, during the period when the employee is in receipt of maternity benefit. (Section 70).

The promulgation of Employees State Insurance Act, 1948 envisaged an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement, death due to employment injury resulting in loss of wages or earning capacity. The Act also guarantees reasonably good medical care to workers and their immediate dependents.

Following the promulgation of the ESI Act the Central Govt. set up the ESI Corporation to administer the Scheme. The Scheme, thereafter was first implemented at Kanpur and Delhi on 24th February 1952. The Act further

absolved the employers of their obligations under the Maternity Benefit Act, 1961 and Workmen's Compensation Act 1923. The benefit provided to the employees under the Act are also in conformity with ILO conventions.

3. EMPLOYEE PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF ACT and PF Forms)-September 15, 2015 Employee Provident Fund Act 1952.

3.1 INTRODUCTION

The objective of this act is to provide substantial security and timely monetary assistance to the employer and their family members. This act covers all the state of India except Jammu and Kashmir. It applies to any factory or any other establishment employing 20 or more persons with the permission of central, according to central government's official gazette. But the central government is empowered to apply this provision to any employing less than 20 persons with prior notification at least 2 months before.

This category of posts includes complete text of Employees Provident Fund Act (PF Act), Employees Provident Fund (EPF) Rules, and other really important PF (Provident Fund) Forms such PF withdrawal forms, PF Pension Form

3.2 OBJECTIVE AND APPLICABILITY OF THE EMPLOYEES' PROVIDENT FUND & MISC. PROVISIONS ACT, 1952 –

The EPF & MP Act, 1952 is created for the purpose of social welfare of an employee. Any factory or establishment engaging 20 or more employees, whether directly or through contractors is liable to be covered under this Act.

Basic Wages – The contribution is calculated on the basic wages and dearness allowance but does not include food allowance, house rent allowance (HRA), overtime allowance, bonus, commission etc.

A.Wage Limit – The wage limit to be covered under this Act is Rs.15,000/- per month.

B.Quantum of Contribution – The contribution of the employer shall be calculated at 10% of the wages in general and 12% in certain classes of establishment as prescribed by the Central Government. An employee shall pay the equal share of contribution as paid by his employer.

Penalty for Default of Payment by the Employer – An employer is liable to pay damages on being a defaulter. However, this can extend up to imprisonment of 3 years and a fine of Rs.10,000/-

C. Voluntary Contribution – An establishment having less than 20 employees can also cover itself voluntarily under the EPF & MP Act, 1952 unlike the ESI Act, 1948 which does not allow voluntary coverage.

3.3 MAJOR SCHEMES

This act covers three major scheme, they are

- Employees provident fund scheme
- Employees' pension scheme
- Employees deposit linked insurance scheme

Central government constitutes a Central Board to diagnose where all the act applies and all appointments by the central government. The Central Board shall constitute of

- Chairman, Vice Chairman
- Central provident fund (CPF) commissioner who shall be an ex-office member of the board
- Not more than 15 persons appointed by central government
- Not more than 15 persons representing the government of state
- 10 person representing employees of the establishments to which the scheme applies.

The board's duties are administering the funds vested in it by means of contributions and maintain proper accounts of its income and expenditure in central government's prescribed way. It also performs other functions under any provisions of Employees Provident Fund scheme and Insurance scheme.

Central government constitute Executive Committee to assist the central board in the performance of its function

- Chairman, he is appointed from amongst members of central board
- 2 persons from central amongst central board
- 3 persons representing employers and 3 persons representing employees

Government CPF commissioner is to serve as CEO of Central Board, a Financial advisor and Chief Accounts Officer to assist central provident fund commissioner in the discharge of his duties.

The Central government also constitutes Employee Provident Fund Appellate tribunal and it consists of only one person who is Presiding officer. Eligibility for the presiding officer is that a person must be the judge of high court or district court.

Contributions: The provident fund contributions consist of contribution both by Employee and by Employer.

a. EMPLOYEE'S CONTRIBUTION:

An employee is eligible for membership of Employee Provident Fund from the very 1st date of joining in any establishment getting salary up to Rs6500 Provident fund contribution is recovered at 12% of wages from employee salary. The pension is that which represents a person has retired. To avail pension a person should have 10years of continues service and with age of 50years or more will receive pension amount on monthly basis after the age of 58. A member is eligible to apply for withdrawing his provident and pension fund only after 2 months from the date of registration, provident that he/she is not employed during those 2months. Employer's Contribution: Employer is also required to contribute towards

provident fund, the deduction rate is same as employee's contribution i.e. 12% of the wages. Of this 12%, 3.67% goes to Provident Fund and the balance of 8.33% goes to Pension Fund.

b. ADVANCE PF

A person is eligible to withdraw money in advance from their PF Account for purposes like marriage, education, medical treatment etc, subject to the prescribed conditions. Note that the said advance is totally tax-free and interest-free.

c. EMPLOYEES DEPOSIT-LINKED INSURANCE SCHEME (EDLI)

Apart from contributing to provident fund and pension fund, an employer is also required to contribute towards Employee Deposit Linked Insurance Scheme. The rate of contribution is 0.5% of the wages.

The employees need not contribute anything towards this scheme. In the case of death of a member, his / her nominee will get a maximum of Rs.60,000 from this scheme. The employer is also required to pay administrative charges at 1.10% of emoluments towards provident fund charges and 0.01% towards EDLI Scheme. Employees need not contribute anything towards these charges.

4. MATERNITY BENEFITS ACT, - 1961

To protect the dignity of Motherhood by providing complete & healthy care to women and her child when she is unable to perform her duty due to health condition.

1. Short title, extend and commencement. -- (1) This Act may be called the Maternity

- Benefit Act, 1961.
- (2) It extends to the whole of India 2[* * *]
- (3) It shall come into force on such date as may be notified in this behalf in the Official.

2. Application of Act. -- (1) It applies in the first instance, to every establishment being a

- factory, mine or plantation 4[including any such establishment belonging to Government
- and to every establishment wherein persons are employed for the exhibition of
- equestrian, acrobatic and other performances.

3. Definitions. -- In this Act, unless the context otherwise requires, --

- (a) “appropriate Government” means in relation to an establishment being a mine 7[or
- an establishment where persons are employed for the exhibition of equestrian,
- acrobatic and other performances], the Central Government and in relation to any
- other establishment, the State Government;
- (b) “child” includes a still-born child;
- (c) “delivery” means the birth of a child;
- (d) “employer” means –
- (i) in relation to an establishment which is under the control of the Government, a
- person or authority appointed by the Government for the supervision and
- control of employees or where no person or authority is so appointed, the
- head of the department;

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

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

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

6. Notice of claim for maternity benefit and payment thereof. -- (1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

6. Notice of claim for maternity benefit and payment thereof. -- (1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.

7. Payment of maternity benefit in case of death of a woman. -- If a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (3) of section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representative.

8. Payment of medical bonus. -- Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of twenty-five rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

9. Leave for miscarriage. -- In case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage.

10. Leave for illness arising out of pregnancy, delivery, premature birth of child, or

Miscarriage. -- A woman suffering illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall, on production of such proof as may be prescribed, be entitled in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.

11. Nursing breaks. -- Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

12. Dismissal during absence or pregnancy. -- (1) Where a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

13. No deduction of wages in certain cases. -- No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act shall be made by reason only of –

14. Appointment of Inspectors. – The appropriate Government may, by notification in the Official Gazette, appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their function under this Act.

15. Powers and duties of Inspectors. -- An Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely: -

(a) enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where women are employed or work is given to them in an establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspection;

16. Inspectors to be public servants. -- Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

17. Power of Inspector to direct payments to be made. -- (1) Any woman claiming that maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld, may make a complaint to the inspector.

18. Forfeiture of maternity benefit. -- If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period.

19. Abstracts of Act and rules thereunder to be exhibited. -- An abstract of the provisions of this Act and the rules made thereunder in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

20. Registers, etc. – Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

21. Penalty for contravention of Act by employers. -- If any employer contravenes the provisions of this Act or the rules made thereunder he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall in addition recover such maternity benefit or amount as if it were a fine, and pay the same to the person entitled thereto.

22. Penalty for obstructing Inspector. -- Whoever fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made thereunder or conceals or prevents any person from appearing before or being examined by an Inspector, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees or with both.

23. Cognizance of offences. -- (1) No prosecution for an offence punishable under this Act or any rule made thereunder shall be instituted after the expiry of one year from the date on which the offence is alleged to have been committed and no such prosecution shall be instituted except by, or with the previous sanction of, the Inspector; Provided that in computing the period of one year aforesaid, the time, if any, taken for the purpose of obtaining such previous sanction shall be excluded.

24. Protection of action taken in good faith. -- No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made thereunder.

25. Power of Central Government to give directions. -- The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution the provisions of this Act and the State Government shall comply with such directions.

26. Power to exempt establishments. -- If the appropriate Government is satisfied that having regard to an establishment or a class of establishments providing for the grant of benefit which are not less favorable than those provided in this Act, it is necessary so to do, it may, by notification in the Official Gazette, exempt subject to such conditions and restrictions, if any, as may be specified in the notifications, the establishment or class of establishments from the operation of all or any of the provisions of this Act or of any rule made thereunder.

27. Effect of laws and agreements inconsistent with this Act. -- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act: Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favorable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favorable benefits in respect of that matter, notwithstanding that she is entitled to receive benefit in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter, which are more favorable to her than those to which she would be entitled under this Act.

28. Power to make rules. -- (1) The appropriate Government may, subject to the condition of previous publication and by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

4.1 OBJECTIVES OF MATERNITY BENEFITS ACT,- 1961

- Maternity Leave and benefit
- To protect the dignity of Motherhood by providing complete & healthy care to women and her child when she is unable to perform her duty due to health condition.

- Maternity Act 1961 : Gives her the assurance that her rights will be looked after while she is at home to care for her child.

4.2 APPLICABILITY OF MATERNITY BENEFITS ACT,- 1961

- The Act extends to whole to India.
- Every factory, mine or plantation (including those belonging to Government) and to every shop or establishment wherein 10 or more persons are employed on any day preceding 12 months.

4.3 ELIGIBLE FOR MATERNITY BENEFIT?

- Must work in the establishment for 80 days in 12 months before her date of Delivery.
- Women earning less than 15,000 may be offered ESI scheme by her employer and will not be eligible for maternity benefit and but will receive the maternity benefit under ESI scheme.

4.4 DUTIES OF EMPLOYEE FOR MATERNITY BENEFIT

- Ten weeks before the expected delivery date she may ask employer to give her light work.[Produce certificate of pregnancy]
- Should intimate the employer Seven Weeks before her delivery date about the leave period.
- Name the person to whom the payment will be made in case she cannot take herself.

5. PAYMENT OF GRATUITY ACT, 1972

In India gratuity is a type of retirement benefit. It is a payment made with the intention of helping an employee monetarily after his retirement. It was held by the Supreme Court of India in Indian Hume Pipe Co Ltd v Its Workmen, that the general principal underlying gratuity scheme is that by service over a long period the employee is entitled to claim a certain amount as retirement benefit. The

Payment of Gratuity Act was passed by Indian Parliament in 21 August 1972. The act came in force on 16 September 1972.

a. Application and extent

The act applies to the whole of India. But according to section 1(2), in so far it relates to plantation or ports, it shall not be extended to State of Jammu and Kashmir. The act applies to all factories, mines, oilfield, plantation, port and railway company. But in case of shops or establishments other than those stated before, it applies to those organisations with 10 or more persons are employed on any day of the preceding 12 months. Under Section 1(3-A), if in case of any shop and establishment to which the act applies the number of employee reduces below 10, it shall continue to be governed by the act irrespective of the number of employee's. Thus no employer can escape liability under this act by reducing the number of employee's. Under Section 2(e), Nothing in this act applies to Apprentices and Persons who hold civil posts under the Central Government or State Government and are subjected to any other act or rule other than this act.

b. Payment of gratuity: eligibility and calculation

Under Section 4, payment of gratuity is mandatory. Gratuity shall be payable to an employee on termination of employment after he has rendered continuous service for not less than 5 years in a single organisation. The termination can be due to :

- Superannuation.
- Retirement or Resignation.
- On Death or Disablement due to accident or disease.

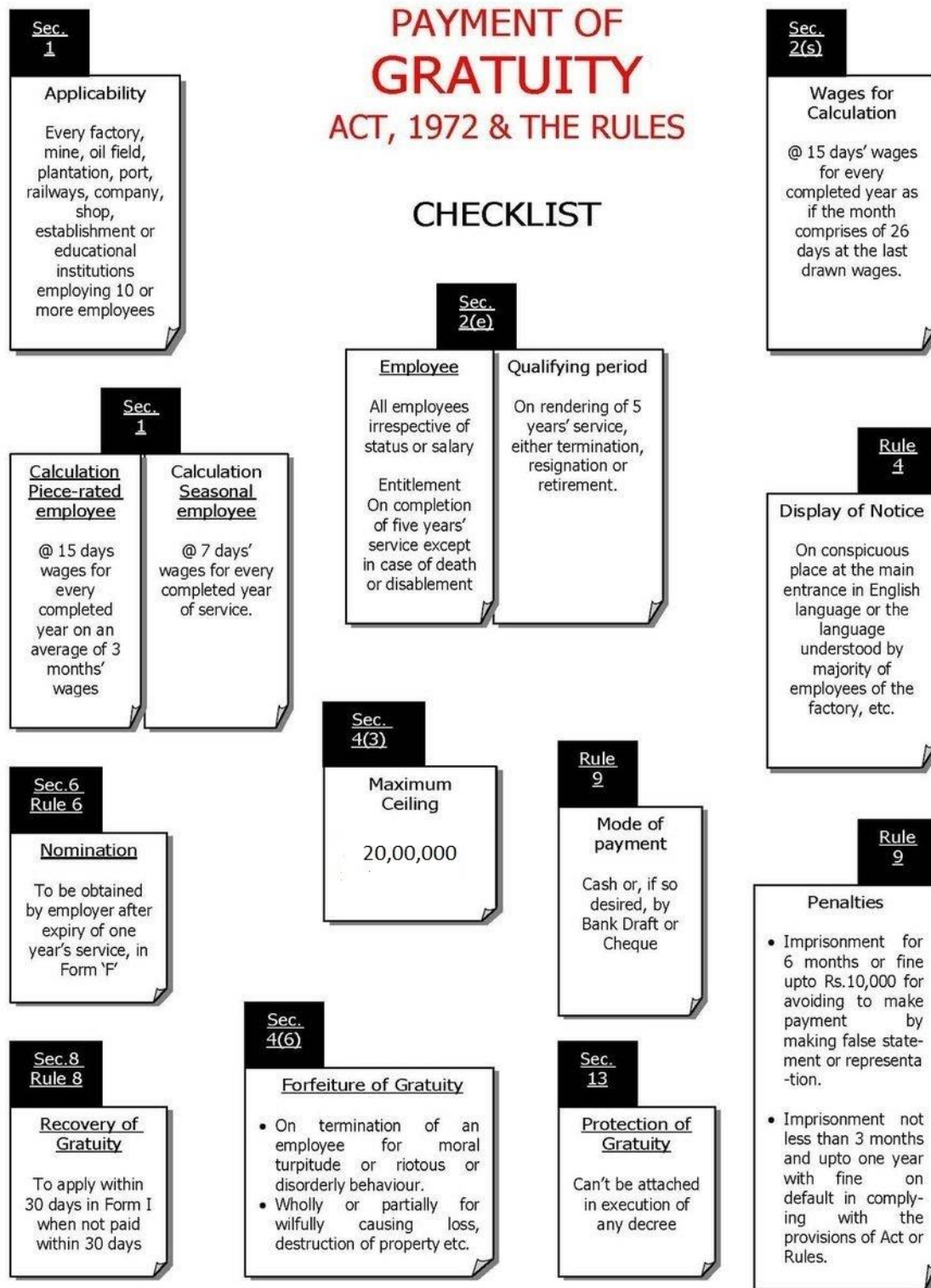
As per Section 4(1), the completion of continuous service of 5 years is not required where termination of employment is due to death or disablement. In such case mandatory gratuity is payable.

Gratuity is paid at a rate of 15 days wages for every completed year of service or part thereof in excess of Six months. The wages here means wages last drawn by the employee. The "15 Days Wages" will be calculated by dividing the last drawn

wages by 26 and multiplying the result with 15. But under section 4(3), the maximum gratuity that is payable is fixed at Rupees 20,00,000.

Formula for Gratuity Calculation = $\frac{[(\text{Basic Pay} + \text{D.A}) \times 15 \text{ days}]}{26} \times \text{No. of years of service}$ (example of Gratuity Calculation)





5.1 THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2018

Gratuity is defined as a benefit given by the employer to the employee for rendering services continuously for five years or more. It is a monetary benefit usually given at the time of retirement. But there are certain rules which make an employee eligible to receive gratuity before the age of retirement or superannuation.

The main purpose and concept of gratuity is to help the workman after the retirement, whether the retirement is a result of the rules of superannuation or physical disability or impairment of the vital part of the body. Gratuity is the amount which is not connected with any consideration and has to be considered as something given freely for the service the employee has rendered to the organization for more than 5 years.

DEFINITIONS [Sec 2]

(a) "appropriate Government" means, -

(i) in relation to an establishment -

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of, the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government,

(ii) in any other case, the State Government;

(b) "Completed year of service" means continuous service for one year;

(c) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment, to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

(c) "Continuous service" means continuous service as defined in section 2A;

(K)"notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;'

(q) "Retirement" means termination of the service of an employee otherwise than on superannuation;

(r) "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service at the age on the attainment of which the employee shall vacate the employment;

(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

5.2 APPLICABILITY

- Every factory (as defined in Factories Act), mine, oilfield, plantation, port and railway.
- Every shop or establishment to which Shops & Establishment Act of a State applies in which 10 or more persons are employed at any time during the year end.
- Any establishment employing 10 or more persons as may be notified by the Central Government.
- Once Act applies, it continues to apply even if employment strength falls below 10.

A. Continuous service. - an employee shall be said to be in continuous service even his/her service in interrupted by way

- sickness,
- accident,
- leave,
- absence from duty without leave,
- leave with full wage,
- temporary disablement,
- laid-off period,
- maternity leave : 26 weeks

5.3 (THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2018)

whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

A.In case of period of one year

- Employee will be treated as he in continuous service, if he is employed by employer for the period of
- 190 days employment under the ground in mines, or in establishment which works less than 6 days in a week.
- 240 days in case of other any establishments (factories, companies, etc.)

B.In case of period of 6 months

- Employee will be treated as he in continuous service, if he is employed by employer for the period of
- 95 days employment under the ground in mines, or in establishment which works less than 6 days in a week.
- 120 days in case of other any establishments (factories, companies, etc.)

C. In case of seasonal establishments

- An employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than 75% of the numbers of days on which the establishment was in operation during the 1 year or 6 months.
- Seasonal Establishments in which, although work is carried on throughout the year, the number of employees is regularly subject to seasonal fluctuations for reasons associated with the weather, their sales or their location. For example, hotels and restaurants in health spas and holiday resorts, gravel and sand pits and stone quarries are deemed to be seasonal establishments.

D. Controlling authority. –

The appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

E. Section- 4. Payment of gratuity.-

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years, -

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease :

Provided that the completion of continuous service of 5 years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

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

such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

f. Calculation of gratuity [Sec 4 (2)]

Gratuity = $\frac{\text{Monthly salary} \times 15 \times \text{Number of years of service}}{26}$

- Monthly salary= last month drawn salary by the employee.
- 26 = total number of working days in a month.
- 15 = number of days in half of the month.

[Sec 4(3)] The maximum amount of gratuity payable to an employee shall not exceed 3, 50,000/- rupees.

(According to the latest 2010 amendment the maximum gratuity payable amount was increased to rupees 10,00,000/-)

According to the (THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2018) The maximum amount of gratuity payable to an employee shall not exceed 20,00,000/- rupees.

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

Sec 4 (5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

UNIT-5- IMPORTANT QUESTIONS

- 1) Explain how Work men's compensation Act, 1923 helps employees.
- 2) Briefly explain ESI Act, 1948- Employees provident fund and miscellaneous provisions Act, 1952.
- 3) Elucidate Maternity benefits Act, - 1961.
- 4) What is Payment of gratuity Act, 1972 and explain the eligibilities and applicability.

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