

MSW

Paper-X

Labour Welfare

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UNIT I Concept and Philosophy

Concept of labour - characteristics of Indian labour- labour in unorganized sector - recommendations of national commission on labour on various issues, absenteeism and labour turnover - factors Influencing productivity. Development of labour welfare in India. Modern approach to labour welfare social work methodology application to labour.

UNIT II Labour welfare-I

Welfare work within the factory and community housekeeping in industry, Organisation and administration of crèches, canteens, credit and consumer cooperatives, industries housing, educational, recreational and transport services.

UNIT III Labour welfare-II

Health in Industry, Industrial hygiene, occupational diseases, their treatment and prevention, safety administration. Industrial accidents, cause and prevention, Agencies of labour welfare management, union and state labour welfare officer status ad functions, social security definition and scope need importance of social security measures in India.

UNIT IV Labour Legislation-I

Introduction to labour legislation, history and evolution of labour welfare legislation in India. Labour Welfare Legislation(i) Factory Act, 1948 (ii) Workmen's Compensation Act, 1923 (iii) The Maternity Benefit Act., 1930.

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Unit-1

1.1 Concept of Labour

Labour is understood as “any work, whether manual or mental, which is undertaken for a monetary consideration”.¹ Eg. a man working in a building construction activity is doing manual labour. Whereas a man doing accounting work in an office is an example of mental labour. Similarly we can segregate different activities done by people into manual and mental labour.

However, a housewife doing household chores is a manual as well as mental labour. The only difference is that she does not get paid for the same. The term “labour” is more appropriate for people who solely depend on their mental or physical labour for livelihood. Labour does not have any other adequate source of livelihood. The labour today includes both the skilled or trained people those who get salary as well as the manual workers, getting wages on daily, weekly or monthly basis. The term labour at times is used to denote those who work for a living. It separates those people who are not supposed to work for living eg. children, old people, housewives.

The notion of labour keeps on changing in accordance with the ideology dominating the particular time. Labour was conceived as a commodity, when it was affected by the law of supply and demand in regard to its price (wages). Employers considered workers as operating organisms as similar to a complex machine, thereby resulting in an impersonal attitude towards labour.

In later stage, the employers acknowledged the impact of working and living conditions on the commitment and efficiency of labour. For this reason there was a shift from impersonal to paternalistic approach towards labour. Every effort was made to provide better living and working conditions. However, this approach did not serve the purpose for long. Workers were suspicious about reasons for which employers were safeguarding their interests.

1. T.N. Bhagoliwal.

As the good will concept failed to make any mark in labour management relationship, the employers followed humanitarian concept of labour. This concept recognized labour as human beings and gave due importance to the inalienable rights of workers as human beings. It emphasized on respecting human dignity. In the recent times, workers are viewed as industrial citizens where there is the importance attached in consulting them in regard to the terms and conditions under which they are supposed to work. This approach has paved way for industrial democracy which implies self-government in relation to employer-employee relations.

The various concepts of labour originating in different time had reflection of the societal make up and mindset. Till now some fraction of all those concepts are visible in every sphere of work life. These concepts overlap with each other in different circumstances.

Importance of Labour

In a production or services sector, labour holds the upper position. It is only due to labour that other factors of production or services can be utilized at their best. Better the workforce, better is the organization. In any organization, there are men, machine, money and materials. The man or the work force is the only factor which can think and take steps as required to do a thing. The rest factors need to be operated, regulated and managed by man. Therefore to make an organisation function properly, man has the ultimate responsibility and capability to do it. That is why, it is important to take care of the requirements, aspirations and motivation of the work force. If people are managed, systematically they will manage the organization in a better way. It can be said that the role of labour in the ultimate development of nation is now being realized by one and all. Therefore, the action and the thoughts of employers is getting changed since last few decades.

1.2 Features of labour

The future of a nation depends on the current workforce, taking this into consideration it is important to have knowledge about the unique features of labour/workforce.

a) Labour (i.e mental and physical/manual) is inseparable part of a labourer. As quoted by Alfred Marshall a labourer or the person concerned only sells his labour (i.e the physical or mental activity) to the employer for wages or salaries. The expenses on education and rearing a labourer is much more than what he gets back on doing labour. The labour is his own property, he does not sell himself but only the work or action. Therefore, the actions are affected by the emotional and psychological, physical attributes of the labourer.

b) A labourer can sell his labour at a place where it is required. E.g. A mason has to work in a construction site, he cannot work as a clerical person or a coolie. In other words, a place or environment to perform is necessary to get labour. It can be said, opportunity of employment will create labour/ supply of labour depends on employment opportunity. There is a need of market where labour can be sold by the labourer.

c) Labour is perishable, it does not last forever. On a particular day, if a labourer (both mental and physical) is not utilised i.e. a labourer does not work, then the lost hours do not come back in future.

d) Labour has weak bargaining power. A labourer has no other means of survival, therefore the labourer does not possess a reserve price. The labour price keeps fluctuating as per the need of the buyers (employers).

e) Supply and demand of labour decide the increase and decrease in the labour price. This is so because, the adjustment of supply of labour according to its demand is not always possible at a rapid pace. When supply decreases against demand, labour price is bound to increase i.e. hike in the wage and vice-versa.

f) Labour is not mobile as like any other factor of production like machine money, material. It has its constraints like language, culture, geographical conditions etc. For these hindrances, people do not get engaged in the right place as per their capabilities.

g) Labour is a human factor for which moral, social and economic issues must be taken into account while dealing with the labour matters.

1.2 Characteristics of Indian Labour

Introduction :

Indian labour is majority in agriculture sector as industrialization due to technological development in India and growth of organized industries is very recent as compared to the developed nation. We can trace the roots of industrialization during the rule of British, when they started doing business and setting of industries and factories for their economic gain. The rural population of India was self-sufficient with restricted trade among the different artisans living in a village economy. Communication with the outside was almost non-existing, thereby, preventing external competition leading to enhancement of traditional ways of doing things.

Opening of railways in 1853 and its expansion over the time, exposed the rural economy to cheap products in mass quantity produced by machines in factories. There was a visible degeneration of rural confined economic system by virtue of modern factory based production system. The Indian economy, as mentioned earlier is mainly agrarian due to the fact that India is a nation of villages. With this backdrop, it is found that most of labour in industries and factories were basically villagers. The trend is continuing in Indian factories and industries till date. Therefore, the discussion on the characteristics of Indian labour is influenced by their village background.

1.2.1 Migratory Nature of Indian Labour

Due to growth in population and increased pressure on the agriculture land, many people were forced to leave villages and seek alternative employment in urban area. This pattern was inevitable as there was deterioration of the rural industries and

increasing demand for labour in urban areas. The migratory nature of the Indian industrial labour force is due to the fact that, the labour force come from the remote and adjacent countryside. They are in touch with their homeland and continue to go back to their villages during the time of social, familial and personal function, rituals and requirements. On the contrary, labour force in the developed nations dissociate themselves totally from their homeland, once they are engaged in industrial employment.

The trend of migrating for industrial employment is inter-state, as well as inter district in nature. The small and medium scale industries draws labour force from the nearby places within the concerned state.

Big organisations get migrated labours from far flung places/ states. Eg. Hyderabad and Bangalore city attracts labour from all over India in sectors like IT, Construction, tourism.

The migrated labour force consists of certain features, mainly the work/ labour force is not homogeneous, because the workers are working from different part and section of the society. As the result of the rapid inflow of migrated workforce to urban areas, it has increased the urban population manifold.

The pace of migration is very high in the places where there has been pressure of population on land, village and its resources. On the other hand there is decline of the village employment, like local handicrafts agriculture, cottage industries. One of the most important aspect of migration is the monetary aspect which adds to the family income. In a joint family system, which is prevalent in rural areas, some of the members come out for industrial employment to supplement family income from traditional sources.

Some of the villagers migrate to urban places to protect themselves from the various penalties levied on them for violating village, social and moral code of conduct. In many instances, people leave their village due to family quarrels and worries.

Lastly, migration among the depressed class of the society is highest. Landless labourers, belonging to the lower strata of the society go to urban areas and search employment in industries as the cities provide better opportunities irrespective of one's class. Other reason for migration can be attributed to increase in personal debt, eviction of tenants by the land lords.

All the above factors have made the Indian labour class more individualistic as one find himself in a totally alien setup. The affiliation towards the industry is lacking, they tend to return back to their village more often for different works. People are not faithful towards any association like trade unions. People remain absent from their place of work, hence an rise in absenteeism, workers efficiency decreases, industrial productivity is affected badly. Health of the workers deteriorate as the working condition is totally different in the industries. Absence of suitable dwelling places force the workers to leave their families in villages. This tend to increase the frustration among them. It leads to unhealthy practices like drinking, gambling and immorality. In other words, presence of non-family growing in industrial belts have given rise to many social problem as well as health and psychological problem.

This nature of labour in industries is giving benefit to the employers, who cite the migratory nature of labour as an excuse for not providing benefits to the labourers in full-fledged form.

1.2.2 Low level of literacy

The rural population is mostly illiterate due to various socio-economic condition like poverty, family responsibilities due to large members, ignorance, no visible income to the family during the process of education. This factor has added to the exploitation of the labour by the employers for many decade and continuous to do so. However, with gradual awareness due to government initiation and by voluntarily organizations as well as own efforts, today's labour is literate as well as aware of its rights and responsibilities. The level of literacy among the labour determines the kind of treatment given to them at the place of employment.

1.2.3 Low degree of Unionisation

From the points of discussion under the previous two headings, gives an clear indication that the degree of association or urbanization among the labour is low in India. However the matter of concern is, how much the labour support or stand by the vision, goal and objectives of their respective trade union. The labour is unable to give sufficient time towards the activities of the trade union. For many of the labour, the nominal fees charged for union membership is the bone of contention. Labour is more inclined to reap the benefits arising out of its membership in a union, rather than the process and activities arrived out by the union.

1.2.4 “Absenteeism and Labour turnover”

Absenteeism

Total rate of absenteeism is calculated as follows :-

$$\text{Absenteeism} = \frac{\text{Man shifts lost in hours}}{\text{Total man shifts scheduled to work in hours}} \times 100$$

Absenteeism is defined as absence of an employee from work that in unauthorised, unexplained, avoidable and willful. When a labour remain absent regularly the income gets reduced and on the other hand it also declines the output of the organization. Absenteeism among the workers forces the employers to arrange for the contract labour in order to continue with the normal functioning of the organization. The factors responsible for absenteeism are –

- maintaining regular visits to villages for social occasions,
- relaxation from the grueling life style of industrial work and city life,
- indecisiveness of the labour about his job in the city.
- Sickness due to unhygienic and insanitary living condition in industrial cities.

- Monotony of job, bad working conditions, hostile relationship at work place forces labour to remain absent from the work.
- The other important factor is the moral standard of the labour. Some of them resort to drinking and gambling which forces to them to stay back from their work.

Labour Bureau, Ministry of Labour has classified absenteeism under three heads like (i) Sickness, accident and maternity.(ii) Social and Religious and (iii) Others.

Labour Turnover

It has been defined as “the rate of change in the working staff of a concern during a definite period”. It measures the extent to which old employees leave and new employee enter into services of an organization in a given time period. Labour turn over measures the morale of the workers and their efficiency. The higher the turnover, lower is the moral and efficiency of the labour. Labour turnover is a latent term of labour unrest prevailing among labours. Heavy labour turnover create hindrances for the workers/labour as well as the industry. The efficiency and skill of the labour is affected as a neglect of frequent change of organization. The output of the organization decreases considerably when people come and go at a frequent pace.

Causes of turnover may be inevitable like retirement and requirement of new people to the organisation. This kind of turnover is very low in number. The evitable turnover occurs due to dismissals and migrations. The negative outcome of labour turnover includes, more accidents at the workplace, increase in hiring and training cost, solidarity of workers/ labourers is put to question by the new employer.

The labour turnover is highly undesirable and it needs to be addressed appropriately through scientific system of recruitment, selection (procurement) and placement by organisations. Good research work must be done in order to understand the various factors responsible for labour turnover and suggest solutions for the problems identified.

Labour turnover is an indicator which shows that labour have various grievances against the organization. Those grievances can be minimized to a large extent by better communication between labour and management, mutual understanding and general co-operation, better working condition and welfare measures, reduction in the exploitation by trade unions and management on any ground. It can be concluded that conducive welfare measures and economic advancement of the workers/ labour can effectively address the issue of labour turnover in Indian organizations. The matter is being undertaken by the Government of India by formulating legislation and enforcing the same through various agencies.

1.2.4 (a) Recommendations of National Commission on Labour (1967) on various issues relating to labour

Indian Worker-Adaptation to Change

4.18. The process of urbanization has led to difficulties in four areas : (a) housing, (b) transport, (c) civic amenities and (d) distribution controls, all these having affected workers attitudes.

Training, Induction and Workers Education

Training

8.21 & 8.24. The main burden of training of workers should necessarily fall upon industry. The States should supplement rather than supplant the activities of employers in this matter. It should step in only in such fields and areas where employers can not undertake training programmes. The State apprenticeship Adviser should be appointed as the Authority for registering the training schemes organized by employers.

Induction

8.33. It will add to the satisfaction of a new worker if relevant facts about his place of work, management and its policies are communicated to him through the management itself.

Promotion

8.36 & 8.37(a) Where promotions are not based on known standards, the management should evolve a promotion policy in consultation with the recognized union where it exists, (b) As a general rule, particularly among the operative and clerical categories in the lower rungs, seniority should be the basis for promotion. In respect of middle-management, technical, supervisory and administrative personnel, seniority-cum-merit should be the criterion. For higher managerial, technical and administrative positions, merit alone should be the guiding factor.

Workers' Education

8.48 & 8.52. (a) The present scheme of workers education, like any other scheme, is not altogether perfect and there is need for improving and strengthening it. (b) The programme for production of literature by the Central board of Workers' Education should be not only intensified but improved. (c) As an aid to the workers' education programme the Government should undertake an extensive adult literacy programme for eradicating illiteracy among workers.

Working Conditions

Safety

9.21(i) & (x); 9.26(i) & 9.48.(a) Statutory provisions about safety and safety equipment are adequate. Effective enforcement is what is needed, (b) A safety officer should be appointed in all factories employing 1,000 or more workers or where the manufacturing process involves special industrial hazards. (c) A standing committee consisting of users of machines, machine manufacturers and safety experts should be set up to introduce built-in safety features at the stage of manufacture of equipment and machinery, (d) States which have not yet formed safety councils or introduced safety awards should do so. Safety councils should be set up for all major industries and for those involving hazardous occupations.

9.27. The workers should be compensated for loss of wages suffered by them during closures of mines on account of violation of safety standards.

Hours of Work

9.36&9.40. (a) The current requirements of the economy do not permit immediate reduction in working hours. As conditions improve, working hours should be brought down to 40 a week but in two stages; in the first they “should be brought down to 45. (b) Working hours during the night shift should be reduced. A credit of ten minutes should be given for each hour of work in the night shift. Six hours’ work should thus entitle a worker to extra payment for one hour (c) It is not necessary to relax restrictions on the duration or nature of overtime work

Holidays

9.43. Uniformity in the number of paid national and festival holidays is desirable. Every employee should be allowed in a calendar year 3 national and 5 festival holidays.

Labour Welfare

10.4. The concept of labour welfare is dynamic; its content will be different from region to region even within a country.

10.31. Contract labour should be entitled to use the welfare facilities which are meant for direct workers under the existing legislation. The standard of facilities for direct workers should not suffer on this account.

10.31. Inspection of welfare aspects of the law does not require any technical knowledge or engineering qualifications. This can be best handled with the assistance of the recognized union or with the help of a works committee where it operates.

Welfare Officers

10.23 & 10.40. The welfare officer has to be a maintenance engineer on the human side; he does not have job satisfaction at present, since welfare is not accorded

adequate importance in an industrial unit. His presence is treated more as a statutory requirement to be tolerated. The officer should not be made to handle, on behalf of management, disputes between management and workers.

Crèches

10.32 & 10.33. (a) The standard of crèches in a majority of factories and mines needs to be improved. (b) The limit of 50 women workers, which makes the provision of crèche obligatory in factories and plantations, should be brought down. The limit should be prescribed taking into account local considerations or on the basis of 20 eligible children of working mothers who are to avail of this facility. Children of women workers employed by contractors should also be covered by this facility.

Canteens

10.25 & 10.35.(a) Even after years of development, canteen and rest shelters have not received adequate attention from management, (b) The present employment limit for making the employer set up a canteen compulsorily should be brought down to 200 in units where there is an established demand for a canteen from a majority of workers. (c) It should be automatically obligatory on the employer to provide a canteen whenever the employment exceeds the prescribed limit. The need for notifying the establishment should be done away with. (d) Establishments which operate over a wide area should consider the running of a mobile canteen (e) Canteens should provide at least one balanced meal a day.

Factories

11.19(a) Effective steps should be taken for periodical medical examination of factory workers so that timely diagnosis and treatment of occupational diseases will be possible. This should be a charge on the employer, in respect of non-occupational diseases, medical examination and treatment should be the responsibility of the Employer's State Insurance Corporation.

Road Transport

10.39. Government should persuade employers to provide jointly basic amenities to transport workers, such as canteens, and rest shelters, at places where their headquarters are located.

Transport to and from the place of work

11.29 & 12.62 (a) The State and the local bodies should improve the local transport services to enable the worker to reach his place of work in time. (b) Special transport services should be arranged for the convenience of night shift workers, (c) Working hours in different units situated in major industrial centres like Bombay and Calcutta should be suitably staged to enable the State or the local body to provide transport services.

Housing

12.1, 12.47 & 12.48. Housing for industrial workers requires on the one hand the resources of the employer who wants to use them for more production and, on the other, the resources of the State where considerations of equity make it difficult for industrial housing to secure adequate priority. It is necessary, for progress in this matter, that Government should take the responsibility with assistance from employers. Also, higher priority should be given to housing in the country's plans.

Housing Boards

12.52 to 12.55 & 12.60. (a) Housing Boards should be set up in States where they do not exist. The Central Government should continue to finance these Boards as at present, but on a much larger scale. (b) A Central Housing Board should also be set up to coordinate the activities of the State Boards, (c) All these Boards should be broad-based in their composition. They should represent a cross-section of the community, including labour, (d) Housing Boards should continue charging the rent at the present scale i.e., about 7½ per cent of the cost but minus the subsidy. (e) The tenants in the tenements

constructed by the Boards should be encouraged to buy over houses on hire-purchase system so that capital is recouped and becomes available for new construction.

Housing Cooperatives

12.58 & 12.59. The state should encourage the development of Cooperative Housing Societies among industrial workers. Both Government and the employers should advance loans to the cooperative societies or their members at concessional rate of interest.

Urban Housing

12.50 & 12.60. (a) The existing Subsidised Industrial Housing Schemes should continue, though its progress in the last fifteen years has not been satisfactory (b) Adequate fiscal and monetary incentives should be provided to employers to encourage them to build houses for their employees. (c) Incentives for workers housing by employers should be so designed as to keep rents within a range of 10 per cent of the workers earnings.

Housing in Mines

12.63 & 12.64. Housing activities of the Coal Mines Labour Welfare Fund Organisation may have to be supplemented by those of State Housing Boards or local bodies. The proposed General Miners' Welfare Fund should offer assistance to employers in the shape of subsidy for housing.

Housing in Plantations

12.65. The Plantations Labour Act, 1951 should be amended suitably so as to provide houses for such plantation workers who do not reside within 5 kilometers from the periphery of the estate but who wish to be accommodated on the estate.

Rural Housing

12.66. The existing housing schemes for backward and depressed classes, whether in rural or urban areas, should continue and should be implemented expeditiously.

Social Security

Workmen's Compensation

13.22. All workmen, including supervisors employed in the occupations covered under the Workmen's Compensation Act, 1923, should be eligible for compensation for work injury. Wage limit for eligibility should be removed.

13.24. A scheme of Central Fund for Workmen's Compensation should be evolved. All employers who are subject to the workmen's Compensation Act should pay to this fund a percentage of total wage as monthly contributions to cover the cost of the benefit and of administration. The fund should be controlled by the Employees' State Insurance Corporation. Periodic cash payments may be made to injured workers and their dependents by the Corporation through its local offices in the same way as payments are made at present for various benefits under the ESI payments are made at present for various benefits under the ESI payments are made at present for various benefits under the ESI scheme. Medical care to injured workers should be provided by the Corporation. A similar arrangement in respect of mines may be made by the Welfare Commissioners who control various welfare funds for coal, mica and iron ore mines.

Maternity Benefit

13.26(iii). A scheme of Central Fund may be evolved for maternity benefit on the lines suggested for workmen's compensation. Pending the creation of this fund, the Maternity Benefit Act, 1961 should be adopted in all States as early as possible.

Employees' State Insurance Scheme

13.43. The recommendations made by the ESIC Review Committee should be implemented expeditiously.

13.52. The ESI Corporation should make a suitable contribution to the National Safety Council as part of its programme of integrated preventive and curative services.

Provident Funds

13.60.(a) The Act at present does not apply to establishments employing between 10-20 persons. It should be extended to these establishments and the minimum rate of contribution therein fixed at 6.1/4 per cent.

Labour in Public Sector

25.10. Suitability of the candidate and his availability for at least 5 years should be the criteria for selection for a senior position in a public undertaking. The chairman of the Union Public Service Commission and persons with known industrial experience should be associated with the selection committee which currently consists of senior Secretaries to the Government of India. Persons on the verge of retirement should not be placed in charge of the public undertaking.

25.13. At the supervisory level, recruitment has to be on an all India basis since the quality of personnel is a crucial factor. Where there is a choice between two persons who are equally qualified, the person who is a 'local' will, it is expected, get preference automatically.

25.18. Disparities in regard to items like working conditions, working hours and holidays as between workers/staff recruited at different times have become a cause of complaint in certain units. It should be possible for new units to avoid such difficulties in future by adopting procedures which have worked well in similar public sector establishments.

25.20. In order that the assessment of the profit ability of a public undertaking is not distorted, investment on townships should not be a charge on the public undertaking and should come out of a separate fund.

25.17 & 25.30. Strict enforcement of labour laws should be ensured by the person in charge of the undertaking. Since the public sector is considered a model employer, breach of statutory provisions should not be countenanced in that sector.

25.32 & 25.33. Each fair-sized public undertaking should develop a good personnel department to enable proper understanding of the view point of the unions on different

matters. The levels of management at which decisions can be taken on different issues should be clearly laid down and made known to workers.

25.37. State Electricity Boards should come together periodically and exchange experiences with a view to drawing up a phased programme for decasualizing labour engaged by them.

25.37. All casual workers employed by the State Electricity Boards who have put in a specific period of service, to be determined by the Boards in consultation with the State Labour Departments, should be allowed the benefits available to regular employees on an appropriate scale.

National Commission on Rural Labour 1991, Recommendations

VI. Agricultural Labour

18. The Welfare Fund must necessarily make provisions for the following :

- (i) Women agricultural labour should be provided maternity leave with wages for a period of 3 months (6 weeks before delivery and 6 weeks after delivery) for two surviving children.
- (ii) Old age pension at a minimum of Rs.100 p.m. should be provided to every agricultural labour of and above the age of 60.
- (iii) Death and injuries due to accidents should be compensated particularly because of increased use of mechanical devices like tractors, threshers, combine harvesters etc. Compensation as would be admissible under the Workmen's Compensation Act may be expanded to the extent necessary for this purpose. This should be in addition to what is currently admissible under the Personal Accident Insurance Scheme.

VII. Non-agricultural Labour

(f) Fishermen

2. The Co-operative Societies should undertake marketing of the products in the inland sector. State Governments should devise a system of preferential loans for replacement of boats, engines, nets, etc.

X. Women and Child Labour

(a) Women Labour

9. In the services sector, the fields of education, medical, health and personal services offer scope for employment. The employment opportunities can be enhanced by training women as female health worker and teachers to work in rural areas. Preference should be given to women in appointment of primary school teachers.

(b) Child Labour

1. Free and compulsory elementary education for all children up to the age of 14 should be ensured immediately through the formal school system. Compulsory Primary Education Act should be enacted in States which do not have such a legislation and the Act should be implemented strictly. Informal education centres should also be set up near the bastis. This will be the most effective method of preventing child labour of all kinds.

XVII. Social Security

1. Within the existing legal frame work, the Workmen's Compensation Act, 1923 will have to be amended particularly in the matter of the definition of the 'Workmen' to cover all the rural workers. The proposals recently mooted by the Ministry of labour for further amendments to the law including compulsory insurance and obligatory medical care by the employer are also endorsed.
2. The Commission recommends that the following minimum social security benefits should be provided as a matter of high priority :
 - (a) Old age pension;
 - (b) Life insurance;
 - (c) Maternity benefit;

- (d) Disability benefit (accident compensation); and
- (e) Minimum health care and sickness benefit

1.2.5 Labour in Unorganised Sector

Before discussing the status of labour in unorganized sector, it is important to define unorganized sector and its difference from organized sector. Organised sector is that where workers are directly engaged in the industries in a bulk. E.g. Factories are highly organized sector of our economy. Indian Railways is another such example of organized sector. Banking, insurance, postal mining, ports are some of the other sectors which are organized. Organized sector employs a fraction of the total population of India i.e. roughly 10% of it, but it contributes more towards the economy of the country. That is the reason, the Government is more inclined towards these organizations' well being. On the other hand agriculture is one of the highly unorganized sector of our economy, but the population engaged in it is the highest, near about 70% of the total Indian population. In organized sector the name of the workers is in organisation's muster roll, which is not the case in unorganized sector.

Unorganised labour are those who have been unable to organize themselves for the pursuit of a common goal or objective due to the following constraints :-

- a) Casual nature of employment
- b) Scattered nature of the establishments of place of work and small establishments with low instruments per employee.
- c) Superior strength of the employer or a group of employee.
- d) Ignorance of the labour and their illiteracy.

The broad spectrum of unorganized labour includes those working in

- i) Constructions
- ii) Small scale industries

- iii) Beedi and Cigar making, kendu leaf collection
- iv) Shops and commercial establishments
- v) Tanneries
- vi) Handloom powerloom workers
- vii) Agriculture

The defining difference between the organized and unorganized sector labour is that the previous get all the monetary and non-monetary benefits from the employers for the services rendered to the organization. Where- ase, the labour in un-organized sector is left at the mercy of the employee or the contractor to get the basics like wages. These people do not get benefits enjoyed by their counterparts. The term of employment is fixed with certain rules and regulations in organized sector. The nature of employment is for a short term period of time and there are lesser obligation on the part of the employer, in case of unorganized sector.

Labour in Unorganised Sector work in the following ways :-

a) Contract Labour

Contract labour are not enrolled in the muster roll of the establishment and the are not paid directly by the establishment. A contractor engages contract labour is an organization. The benefits of engaging contract labour by an organization are manifold –

- i) Cost of production is low.
- ii) The organization does not have to pay benefits like leave wages.
- iii) Reduction in the administrative burden on the organization.

There are contract labour working in many of the organization in different degrees. Their presence in more visible in construction works and mining activities. They are also engaged in mills, press, quarries, agricultural implements, brick making, tanneries etc. The labour are mostly unskilled, but very small number of them are skilled to highly skilled like masons, blacksmiths carpenter, filter and driller.

Contract labour is broadly divided into two categories namely.

- Those employed in job contracts and
- Those employed on labour contracts

Certain work or particular job of an organization is given out to a contractor or a jobber. Eg. loading and unloading of goods. On the other hand in labour contract, a contractor engages his workers for array of activities in an organization. There is contract between employer and the contractor. The term and condition of engagement of workers must define the length of time required to complete each work, description of duties, type of payment and risks involved in the jobs.

For the upliftment and maintenance of contract labour, Government of India has enacted “The Contract Labour (Regulation and Abolition) Act, 1970”, which came into force with effect from Feb.10, 1971.

b) Casual Labour

Casual labour are mostly found in engineering industry and railways in order to fill the vacant position due to absenteeism and temporary pressure of work on the organization. Here, there is no role of a contractor in engaging the labour. Casual labour are kept as stand by incase the regular employee does not turn up for the work. However, it is resented if the casual labour is engaged for a longer duration without any reason, thereby deliberately restricts the regular employment of people.

c) Labour in SSIs

Handlooms/powerlooms industry is one of the prominent example of small scale industry. The units are scattered according to the availability of the raw materials and people resources. Dairy products manufacturing food processing etc. are the areas in which many are engaged as contract labour. These industries generally employ entire family members doing different kinds of work in one organization. Eg. in handloom industry the work is divided into male and female members of the family as per the physical and technical knowhow of each of them.

d) Other types of labour

Apart from the previous three categories of labour, we have labour working in beedi and cigar manufacturing, tobacco processing, restaurants and cinemas, shops and commercial establishments, many of the labour are engaged in Municipal Corporator as Sweeper and Scavengers.

1.3 Development of Labour Welfare in India

1.3.1.Introduction

Labour welfare is one of the concerns which has captured the alternation of all the stake holders of the nation. Welfare means good for all. A welfare state aspires to give full and free development of human personality apart from the materialistic terms of human freedom and progress. India has adopted the philosophy of being welfare state. Therefore, going by the norms of a welfare state, India tries to grant justice, equality and establishes a social order where there is more equal distribution of income for every citizen, a basic minimum real income, irrespective of the market value of one's work and property. According to T.W. Kent, a welfare state provides a wide range of 'Social Services' to its citizen which includes education, health, so on. The concept of welfare keeps on changing according to requirements of the nation and its people. The objection fulfilled by a welfare state includes :-

1. Full Employment

Full employment of men and materials is the first and foremost objectives of a welfare state. Men want happiness and employment is a pre-requisite for it. Therefore, in the pursuit of human happiness, it is necessary that all those who want employment and are fit for it must get it. In absence of full employment, those who have employment can not maximize their happiness as they have more dependants. Employment can be generated only by the Government initiatives by examining of its own economic activities. As the population keeps on growing and the private employers

restrict themselves for their economic gains, it is the duty of the state to provide employment to its people.

2. Maximisation of National Health

A welfare state needs to secure the per capita income in the country as well as ensure that it keeps on increasing, so that living standards of the people can improve. This objective can be achieved by expanding a technologically progressive economy and increasing production of national wealth. All the endeavour of welfare must be achieved through a balanced economy.

3. Equitable Distribution of Wealth

The above objectives of a welfare state need to be achieved by means of directing its policy towards –

- a) Providing equal opportunity to all citizen.
- b) Equitable distribution of income and wealth
- c) Prevention of concentration of economic power in fewer hands.

In simple words, a nation must provide work to all, a living wage to meet the basic necessities and opportunities with a view to ensure a decent life standard.

4. Implementation of Social Security Schemes

A welfare state must provide assistance to individuals during contingences like unemployment, sickness, disablement, old age, depth of the bread winner etc. This helps the people of a nation to live with a sense of dignity in case of any unforeseen or known risk.

5. Provision of Welfare Facilities

A welfare state aims to achieve a nation of social equality and justice to all. This objective is achieved through providing welfare facilities to its people like proper accommodation, compulsory and free education for children, improvement in public health, nutrition, standard of living etc. Thus it is observed that development and

growth of welfare in India and to be specific labour welfare is at the core of the nation. The workers/ labours working in organized as well as unorganized sector of the Indian economy are the part and partial of its population in total. Therefore, it can be said that labour welfare comes automatically into play when discussion regarding a welfare state is being done.

1.3.2 Definitions

Labour welfare is defined as “efforts to make life worth living for workmen”. It is also defined as “the voluntary efforts of the employers to establish, within the existing industrial system, working and sometimes living and cultural conditions of employees beyond what is required by law, the customs of the industry and the condition of market. ILO² says, labour welfare means “such services, facilities and amenities which may be established outside or in the vicinity of undertakings, to enable employees to perform their work in healthy and congenial surroundings and to provide them with the amenities conducive to good health and high morale.

To summarise, labour welfare is a means to minimize the frustration among employees relive them from family worries and personal concerns, improve their health, afford them means of self-expression, to offer them environment to achieve excellence in whatever they do and help them have a wider/broader perspective of life.

1.3.3 Historical Background of Labour Welfare

Humanitarian principles and legislation have influenced the labour welfare activity in India. The labour welfare activity in India was initiated much before its independence.

Labour welfare before independence :

Indian Factories Act, 1881 – to improve working conditions of the labour.

- The act was applicable to those factories which were employing more than 100 workers and was run by power.

2. International Labour Organisation.

- The act prohibited employment of children below 7 years of age. Daily rest of one hour and 4 holidays in a month was granted for children. Maximum 9 hours of work for children between 7 to 12 years of age was prescribed.
- Provision for weekly holiday was incorporated due to the efforts of Mr. H.M. Lokhande and The Mulock Commission.
- In 1891, the Factories (Amendment) Act was passed with changes incorporated due to Mulock Commission.
- The new act was applicable to factories employing 50 employees or more.
- Upper and lower age limit was changed to 14 and 9 years respectively for the children engaged in factories. Hours of work became 7 hours from 9 hours in the original act. Working hour got restricted between 5.00 a.m to 8.00 p.m.
- Employment of women was restricted within 5.00 am to 7.00 p.m. Eleven hours of work was allowed to women workers.
- Provisions for better verification, cleanliness and prevention of over crowding were incorporated in the act.

The Indian Factories Act, 1917

- The above act was formed on the basis of recommendation given by a commission appointed by Govt. of India in the year 1907.
- The act became applicable to seasonal factories working for less than 4 months in a year.
- Hours of work for children were reduced to 6 hours per day.
- Working hours of an adult male workers was for the first time specified to be 12 hours per day.
- Provision for health and safety were made in the said act.
- Voluntary action were taken by The Amalgamated Society of Railway Servants of India and Burma (1897), Printers Union Calcutta (1905), Bombay Postal Union (1907).

They initiated friendly benefit schemes night schools, educational stipends, funeral allowances etc. to help workers.

- Russian Revolution added to the change in attitude of government and society toward the labour issues.
- Establishment of industrial labour organization in 1919 was another landmark development towards labour welfare.
- Formation of AITUC (1920), the first central trade union organisation helped in furthering the cause of labour welfare in India.

The Indian Factories (Amendment) Act, 1922.

- Become applicable to all factories implying 20 or more persons.
- Children aged below 12 were prohibited from working in factories. 12 to 14 years children were restricted to work for 6 hours per day.
- Employment of women and children between 5.30 am to 7.00 pm was not allowed.
- Workers hours for adults were limited to eleven hours a day and 60 hrs a week.
- Full time factory inspectors, having technical qualifications, were appointed.
- Royal commission on labour was appointed in 1929 under the chairmanship of J.H.Whitley to study the conditions of labour.
- It recommended enactment of a number of legislation relating to payment of wages, minimum wages, health insurance, working conditions.
- The recommendation lead to formulation of the Factories Act, 1934. The act had provision for crèches, rest shed. Working hour of children between 12 to 15 years of age was reduced to 5 hours in a day. Improvement in working conditions were included in the Act.
- Provincial Governments set up various committees to study the working environment of labour. Few of the committees are Bihar Labour Enquiry Committee (1938), Central Provinces Textile Labour Enquiry Committee (1939).

These committees pointed out the necessity of proper housing facilities for industrial workers.

- Rege Committee / Labour Investigation Committee – Worked to identify problem related to wages, employment, social and housing conditions.
- This committee highlighted the importance of welfare measures for improving the social and economic life of workers.
- Focused on enforcement machinery for effective implementation of various laws.
- Charters of labour/ declaration of Philadelphia – 1944, adopted by the member nations of ILO.
- Second world war gave rise to more number of factories and factory employees for which government had to take many initiatives and promote welfare condition in order to keep the employees productive at the time of need.

Labour welfare after independence:

- There was widespread understanding that labour welfare has positive impact on labour productivity and reducing industrial unrest. At the same time, rise in the number of central trade union like INTUC (1947), HMS (1948), UTUC (1949) gave further encouragement to growth of labour welfare movement.
- Rege Committee recommendation and the experience of Wilfrid Garrette led to formulation of the Factories Act, 1948 which come into effect from 1st April, 1949.
- The Constitution of India in its Directive Principles have stated that “the state shall strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which, justice, social, economic and political, shall inform all the institution of national life”.
- The five year plans of the nation have also incorporated labour welfare activities.

- # First Five Year Plan (1951-56) :- The EPF Act, 1952; The Mines Act, 1952; The Plantations Labour Act, 1951; were enacted. Housing was given utmost priority during this 5 year plan.
- # Second Five Year Plan (1956-61) :- Better working condition was given importance. Focus on maintaining industrial democracy. New enactments were made at State level. ESIS (Employees' State Insurance Scheme) coverage was extended for the benefit of more workers.
- # Third Five Year Plan (1961-66) :- Stressed on the effective implementation of various statutory welfare provision. Better working condition and efficiency of the workers and its enhancement to increase their productivity were the main recommendations. Strengthening of factory inspectorate, was ensured in this plan. Plan pushed for formation for cooperate credit societies and consumers stores for industrial workers. Enactments like Maternity Benefit Act, 1961; Apprentices Act, 1961; Payment of Bonus Act, 1965; were some of the landmark legislations of this five year plan.
- # Fourth Five Year Plan (1969-74) :- Expansion of medical benefits to the family member of insured employees under Employees' State Insurance Scheme, it also covered shops and commercial establishments at few places. Legislation formulated during this the period included, The Contract Labour (Regulation and Abolition) Act, 1970; the Payment of Gratuity Act, 1972 and the Employees' Family Pension Scheme 1971. Stress was given on strengthening labour administrative machinery for effective implementation of labour laws.
- # Fifth Five Year Plan (1974-79) :- Promotion of industrial safety, setting up of industrial safety and training and employment service for various craftsmen was incorporated.

- # Sixth Five Year Plan (1980-85) :- Special programme for the benefit of agricultural labour, artisans, headman weavers, fishermen, other unorganised workers in rural and urban area.
- # Seventh Five Year Plan (1985-90) :- Emphasised on labour welfare, improvement in working and living conditions of unorganized labour. Eradication of child labour was not possible, therefore working conditions of the child labour must be made better and socially acceptable. More focus on women labour.
- # Eighth Five Year Plan (1992-97) :- Improved in the quality of labour, productivity, skills and working condition and provision of welfare and social security measures. Promotion of self employment, workers education and workers participation in management was encouraged.
- # Ninth Five Year Plan (1997-2002) :- This five year plan attempted towards creating condition for improvement in labour productivity. Focused on social security to minimize the impact of labour market fluctuation. There was priority towards agriculture and rural development with a view to generate adequate employment and poverty eradication.

1.3.4. Labour Welfare in India

It has taken two distinct routes. One is that of legislation formulated by the Government for the larger benefit of the society and the other is the voluntary movement by the employers and trade unions.

The labour legislations mainly The Factories Act, 1948; the Plantations Labour Act, 1951; the Mines Act, 1952; the Motor Transport Workers Act, 1961 and Contract Labour (Regulation and Abolition) Act, 1970 are some of the important enactments which ensure various welfare amenities to the workers. These acts provide for facilities like washing, storing, drying of clothes, sitting, canteen, crèches, rest rooms, first aid appliances etc. To ensure the provisions under the acts, there is also a mechanism called welfare officer appointed under the enactments. The welfare measures mentioned in

the different labour legislations are binding on the part of the employers. These are called as statutory welfare measures. On the other hand, the employers and the trade unions or the association of employers as well as employees give out welfare to the employees/workers/ labours on voluntary basis. In the following paragraphs, the voluntary welfare facilities provided on behalf of the employers and their counterparts have been highlighted.

1.3.4(a) Welfare by employers –

Educational facilities, medical facilities transport facilities, recreational facilities, housing facilities, consumer co-operative societies are the welfare facilities commonly provided by the employers for their employees benefit. Apart from these, if the employers financial health permits, they can give out measures like free of cost supply of newspapers, internet connection, landline phone, water and electricity at subsidized rates.

1.3.4(b) Welfare by Workers Organisations –

The trade union have their funds collected form subscription fees of the members, donation from the public and political allies as well as some philanthropic organizations. These funds are utilized for the benefit of the member of the trade union. The facilities provided usually consists of adult literacy programme and leadership training, hospitals, schools, housing recreational clubs, students, scholarships, vocational training for women and girls, setting up of libraries, allocation of funds to help the members and their family during sickness, disability, retirement and death, formation of cooperative societies etc.

Now-a-days the trade union are more into activities like conducting general awareness programmes on the benefits of gaining knowledge about technological advancements, work life balance, safety at workplaces, different legislations available at their disposal for the larger benefit of its members.

UNIT-II

LABOUR WELFARE-I

- 2.1 Welfare Work within the Factory**
 - 2.1(a) Washing facilities (Sec.42)**
 - 2.1.(b) Storing and Drying facilities (Sec.43)**
 - 2.1.(c) Sitting Facilities (Sec.44)**
 - 2.1 (d) First aid boxes (Sec.45)**
 - 2.1(e) Shelter, rest rooms and lunch rooms (Sec.47)**
 - 2.1(f) Welfare Officer (Sec.49)**
- 2.2 Organisation and Administration of Crèches**
- 2.3 Canteens**
- 2.4 Industrial Housing**
 - 2.4 (a) Housing Finance**
 - 2.4 (b) Housing Schemes provided by GoI**
- 2.5 Educational Services**
- 2.6 Recreational Services / Recreational Services**
- 2.7 Transport Services**
- 2.8 Consumer Co-operatives and Credit**

UNIT-II

LABOUR WELFARE-I

2.1 Welfare Work within the Factory

The Factories Act, 1948 has provision for welfare activities within the factory. These provisions are mainly washing facilities (Sec.42). Storing and drying clothes (Sec.43), Sitting facilities (Sec.44), First-aid boxes (Sec.45), Canteens (Sec.46), Shelter and Rest rooms and lunch rooms (Sec.47), Crèche (Sec.48), Welfare Officer (Sec.49).

2.1(a) Washing facilities (Sec.42)

As per the recommendation of Royal Commission on Labour, washing facilities were made mandatory for the workers working in factories. Since the environment inside factories are polluted, the workers need to clean themselves after their work is over as well as while going for a lunch break. Proper and adequate washing facilities ensure a healthy workforce and lesser of it will only de-motivate the workers. Washing facilities are also provided due to the fact that some workers do not have appropriate sanitation facilities at their residential areas and those working in the night shifts need to fresh up in the morning after their shifts are over. The washing facilities must be provided for both male and female workers.

2.1.(b) Storing and Drying facilities (Sec.43)

In continuation with washing facilities, one needs to have space to store the unused clothes and dry the wet clothes after washing. This facility is only available according to the Factories Act. The space may be in form of lockers, separate rooms, pegs or any other arrangements which will fulfill the objective of the clause.

2.1.(c) Sitting Facilities (Sec.44)

Longer hours of work in standing position is not advisable for health reasons. Therefore, in factories there must be sufficient arrangements made to allow taking a little break from constant standing or motion. It ensures a healthy practice of working in factories.

2.1 (d) First aid boxes (Sec.45)

One first-aid box must be provided per 150 workers in a factory. The box shall contain minimum equipments and medicines as per the requirement of workers in need. The provision of keeping first-aid-box was an outcome of Royal Commission on labour. At work place there are chances of small accident happening without the knowledge of workers. To get an immediate and temporary treatment, a first-aid-box is indispensable. The first aid boxes must be kept in strategic locations under the supervision of an experienced and technically knowledge person, who can at the time of need, cater to the requirement of the injured, wounded employee/ workers. In factories, where there are more than 500 workers, provision for maintaining an ambulance room is mandatory. The ambulance room must be equipped with trained nurses, medical staffs and equipments.

2.1(e) Shelter, rest rooms and lunch rooms (Sec.47)

Factories employing more than 150 workers should provide shelter rooms, restroom and lunch room with provision for drinking water. These are the facilities or places where the workers can eat their meals brought from their residences. These rooms need to be properly ventilated, lighted and must be clean and cool. Even if the factory has canteen provision (Sec.46), these rooms are regarded as part of the requirement.

2.1(f) Welfare Officer (Sec.49)

The Factories Act, 1948 has provision for appointment of welfare officers where 500 or more workers including contract workers are employed. The State government has the discretion to prescribe duties, qualification and condition of service of the welfare officers. The duties of the welfare officers are as follows –

- Supervision of health, safety and welfare programmes in factories.
- Counseling workers on personal and professional issues.
- Advice management regarding workers welfare and training programmes.

- Liaison between workers, management and agencies like Factory Inspectorate, Central labour institute and welfare agencies.
- Suggesting measures to maintain harmonious Industrial Relations.

2.2 Organisation and Administration of Crèches

Royal Commission on labour in 1931 gave stress to form crèches at work place. At that time, the limit of women workers was 250.

It suggested to provide the same even if the number of women workers is less than 250.

In the year 1934, Factories Act incorporated and made it mandatory to maintain crèches in factories that employed more than 50 women workers. The provincial government were authorized by Government of India to make rules under the act.

The Factories Act, 1948, Section 48 provides for setting up of crèches in every factory where more than 30 women workers are employed. The crèches keep children up to 6 years of age and it is run by a trained women who can look after infants and children.

The crèche must be sufficiently far from the factory to prevent any health hazard for the children. The crèche must be built with proper furnishing and equipments. There must be sufficient number of attendants (female) appointed for smooth functioning of the crèche. The mother is allowed to visit her child for two times, fifteen minutes (min) each during the working hour in order to nurse her child. There must be adequate arrangement for food items for the children. The crèche should be equipped with toys, first aid, cradles, drinking water, soap, towels, feeding bottles, utensils etc. for the children. Hygiene and sanitation must be maintained. The attendants also need to be given adequate facilities to help them execute their responsibilities in smooth way.

Committee on labour welfare made certain important guidelines to maintain and improve crèches in factories –

- a) The crèches must be well furnished and properly supervised by a trained personnel. The standard maintained for large group of children must be continued in case the children number drops for whatever reason.
- b) Small organizations employing 10 or more women must maintain a common crèche facility on joint basis.
- c) Crèches must have nurseries / kindergarten in it for the proper upbringing and growth of children.
- d) Community crèches must be set up near residential areas, labour colonies, central location of cities and towns by municipal bodies, local bodies, State Government, to help working mothers.

Thus from the above discussion it can be derived that the crèche facilities are a must for women workers to help them execute their professional and personal obligations without much of difficulty. The crèche facilities can be provided by the focal bodies, public authorities or by virtue of provisions in legislations. The crèches must be appropriately located and consist of required equipments and trained nurses who are supposed to work under the supervision of a women in charge having prescribed qualification to look after the children. Proper food, hygiene and sanitation for both children and the attendants must be provided.

In the factories where less than 20 women workers are working, the state government may exempt that factory by notification in the Official Gazette. In order to run the crèches where women employees/ workers are less than 20, rules are made whereby, the women and widows working in the factory must report to the Chief Inspector every six months.

The crèche facilities are also extended to the contract women workers according to the Contract Labour (Regulation and Abolition) Central Rules, 1971. It spells out that in every establishment where 20 or more women are ordinarily employed as contract labour, there must be two rooms of reasonable dimension, provided for use of their children, under the age of 6 years. One room be used as bedroom and the other as play

room. The bed room must consists of adequate number of cots and beddings and the play room must be provided with sufficient number of toys and games. The creche facilities are who provided under the Mines Creche Rules, 1959. The Coal Mines Welfare Commissioner and the Chief Inspector of Mines respectively are the competent authorities to administer and enforce the Rules in respect of Coal Mines and Mines other than coal.

The National Commission on Labour has recommended that the standard of crèches need to be upgraded with the changing times, the labour welfare activity must have crèches an its part and State government must ensure it in all of the factory units however small they may be and finally, the children of the women workers employed through the contractors should also be covered by this facility.

2.3 Canteens

Canteen and considered as the essential part of an industrial establishment. As per the findings of the Royal Commission on labour and the labour Investigation committee, emphasis was put on the provision of canteen at work places. Canteens are beneficial in maintaining workers health, efficiency and well being. In developing country like India the legislation are the only mean by which competent authorities consume the setting up of canteen in all undertaking exploring more than a stipulated number of workers.

The various statutory measure available for the maintenance of canteens at workplace are as follows – The Factories Act, 1948 – section (46), a State government may make rules for provision of canteen by the occupier, where more than 250 workers or more are employed in a factory. If any individual unit wants relaxation in this regard, it has to write to the Inspetorate.

As per the rules of Factories Act, canteen building is to be constructed according to the plan which has been approved by Chief Inspector of Factories. The canteens must have a dining hall, a kitchen, a store room, planting and washing place separate for male and female.

The dining hall should be able to cater to 35 per cent of the total workers at one time. The canteen must be sufficient amount of utensils, cutlery, crockery, chairs, tables, stools and other necessary equipment for smooth running of the canteen.

The service counter and dining hall must have a portion reserved for the women workers.

The Contract Labour (Regulation and Abolition) Act 1970 – Section 16 provides for constitution of one or more canteens in every establishment covered under the Act. The minimum number of workers required to constitute canteen is 100. The responsibility of setting up of canteens lies with the contractor. However, if the contractor fails to do so within a stipulated time given to him, the same is to be provided by the principal employer within 60 days of expiry of time given to the contractor. This provision is common in both the central and state rules.

The canteens are divided into 3 categories –

Category one – Canteens organized and administered directly by the employers. The staffs are appointed by the employer and payment is done from the factory fund, the canteen staff enjoy all the benefits which are given to the other factory employees.

Category two – Canteens run by contractors who are in charge of appointment and supervision of the canteen staff. Payment to the staffs is made by the contractor.

Category three – Canteens run by cooperative basis. The employees take the initiatives to set up canteens. It may be with or without the assistance of the employer. The union cooperation is essential in case of successful functioning of canteen on cooperative lines.

The committee of labor welfare had recommended the measures for improvement in the canteen services as follows :-

- Canteen must be run preferably by the workers on co-operative basis and employers and State government should encourage.

- In the factories where these are less than the prescribed workers, there should be canteen facility, provided the workers make a request on their behalf and the workers agree to run the canteen on cooperative basis.
- Tripartite bodies must be constituted to ensure that the canteens are run properly and are popular among the workers. Active participation on the part of employers and the management is sorted for this purpose.
- The employers must stock to the spirit behind setting of canteens at work place and therefore should take due interest in providing nutritive and standard food to the workers.
- To facilitate use of canteen services, credit facility must be provided to the workers and necessary changes be made in Payment of Wages Act, 1936 to deduct the credit amount on canteen purchases.
- The present act provision be amended to help in setting up of joint canteens which will help the workers of small factories operating in industrial estates.
- The Canteen should be well placed in terms of cleanliness and hygiene. The kitchen, counter, dining place should be maintained as a dust, dirt and fly free area. The National Commission on labour has hinted on having mobile canteens where the establishment operates over a wide area, canteens should provide a balanced meal at least once in a day, workers should run the canteens on cooperative basis; wherever, the canteen are run by employees, the employers must provide subsidies like free accommodation, fuel, electricity, furniture etc.

2.4 Industrial Housing

Housing or shelter is one of the basic necessities of human being. In the industries and factories, the workers basically stay away from their native places viz villages. In order to keep them productive, motivated, towards their work, this facility must be provided to their near their place of work/job.

The importance of housing was first recognized in 45th session of the International Labour Conference (ILC). It adopted the Workers Housing

Recommendation 1961 (no.115). The recommendation deals with national housing policies, responsibility of public authorities and employers, the financing of housing programmes and more of national building constructed and planning, suggests the following factors to be taken into account by the competent housing authorities.

- Protection against natural calamities diseases.
- Minimum space per person and family in terms of floor area, cubic volume or size and number of rooms.
- Supply of safe water for personal and household usage.
- Adequate sewage and drainage system.
- Adequate sanitary, ventilation, cooking, storage, natural and artificial lighting.
- Minimum degree of privacy for family members and individuals.
- Surtable separation between room occupied for living purposes and accommodation assigned to animals. The workers housing recommendation is concerned with housing of manual and non-manual workers, including those who are self employed, aged, retired or physically handicapped.
- The importance of housing for industrial workers was thought of as early as in 1919 when Indian Industrial Commission was set up. It observed that health and efficiency of industrial workers can be ensured by providing them cheap, healthy and adequate accommodation. The workers at the lower levels in an organization are much more needy than other workers as due to low wages they tend to live in slum and congested colonies nearby their place of work. The similar views were given by Royal Commission on labour.

In 1944, the Labour Investigation Committee reviewed the housing facilities available in core industrial cities like Mumbai, Ahmedabad and Calcutta. The housing condition were found to be non-satisfactory. The committee suggested the employers to go for long term policy on housing to meet the needs of their employees. Another suggestion was to state government to set up tripartite statutory boards to deal with housing issues.

The 37th session of U.N. General Assembly had declared the 1987 as the “Year of Shelter for the Homeless”. A goal was set to provide shelter to all the homeless by the year 2000.

2.4 (a) Housing Finance

Finance is the most crucial element in construction of household buildings. Apart from public sector, private sector is also investing in housing finances. Life Insurance Corporation of India (LIC) the General Insurance Corporation of India. The Housing and Urban Development Corporation Employees Provident Fund Organisation and Housing Development Finance Corporation comprise the major source of funding for housing. In private sector, now almost every bank and insurance provider is involved with housing finance example Reliance Home Loans.

Housing funds also come from state apex co-operative housing societies, state housing boards and nationalised commercial banks.

2.4 (b) Housing Schemes provided by GoI

The schemes are generally targeted towards the low income group. It started from 1952 by providing financial assistance to builders who intended to construct subsidised rental houses. The housing schemes include the following :-

(i) “The integrated subsidized housing scheme for industrial workers and economically weaker sections of the community”.

The benefits under this scheme are provided to :

- a) Industrial workers covered by section 2 (i) of the Factories Act, 1948.
- b) Mine workers within the meaning of section 2(h) of the Mines Act, 1952 (other than those engaged in coal, mica and iron ore mines).
- c) Other weaker sections of the society/community.

This scheme started as subsidised industrial housing scheme in 1952. It come under the state sector therefore implemented by State Government and union territory administration.

(ii) Low Income Group Housing Scheme

This scheme provides loans to the person whose income was limited to Rs.7,200 per annum (1967). Previously the ceiling was Rs.6,000 per annum when the scheme was introduced in the year 1954 in the month of November. The scheme provides loan to individuals, cooperative societies, state government, local bodies, charitable institution and hospitals for building houses for the low income group employees.

(iii) Subsidised Housing Scheme for Plantation Workers

The scheme got introduced as loan scheme in 1956. The scheme was under the control of State Governments, later it got transformed to the Central Government. The Central Government provides financial assistance as follows – 50 per cent as loan and 37.5 per cent as subsidy of the prescribed ceiling cost under the scheme. The remaining 12.5 per cent is managed by the planters themselves. The scheme benefits the workers belonging to worker sections of the society by providing them with rent free housing accommodation.

(iv) Slum Clearance / Improvement Scheme

The scheme came into existence in 1956. It provides financial assistance to the State government and union territories from the Central Government. The finance is then distributed to local bodies for the purpose of clearing and improving the slum areas as well as for re-housing of slum families in the lower income bracket.

However, for the easy accessibility the scheme was transferred to the State Government from April 1, 1969. The Central Government responsibility is restricted to provide finance to the State Government in the form of block loans and block grants. Under this scheme, construction of night-shelters for pavement dwellers is also done in town and cities. As the slum clearing activity is not always possible, that's why another scheme called as central scheme for Environmental improvement in slum areas was introduced in April 1972. The scheme was transferred to state government in the year 1974 April 1. The objective of this scheme is to provide basic awareness like water supply, sewerage, sanitation, drainage, toilets, street lights in select urban areas.

(v) Village Housing Projects Scheme

The purpose of this scheme is to remodel village in the time span of 8 to 10 years. The scheme was introduced in 1957. Assistance is given to construct houses, improvement of the existing houses, laying of streets and drains (for hygienic conditions. Assistance is given out by the Central Government to the State government.

(vi) Land Acquisition and Development Scheme

Come in existence in 1959 Oct. The scheme assists State Government and union territories to acquire and develop large scale land in urban areas to provide house site at reasonable rates to builders.

The funds comes from LIC of India for State Government and in case of union territories. The fund are provided by the Central Government.

(vii) Middle Income Group Housing Scheme

As the name suggests, this scheme is applicable to individuals whose income ranges between Rs.7,201 to rs.18,000 per annum and to cooperative societies of such person. It was introduced in 1959, to provide loans for construction of houses by State Government and their designated agencies. Loans are also provided to eligible persons who want to purchase reality built houses from reliable house building agencies. The loans are provided by LIC of India to different states and by Central Government for Union territories.

(viii) Rental Housing Scheme for State Govt. Employees

The scheme is for the State Government to provide adequate housing accommodation for their employees. It was introduced in February 1959. The funds for the scheme are provided by Life Insurance Corporation of India.

(ix) Rural House site-cum-construction Assistance Scheme

The scheme is introduced to provide house sites in hygienic surroundings, free of cost to the landless workers in the rural areas of the country who do not have any houses of their own. The scheme is funded in Central Government and implemented by respective State Governments.

(x) House Building Advances to Central Government Employees

The programme was initiated in 1956. The benefits of the scheme are available to all permanent central government employees and such of the temporary government servants who have rendered at least 10 years of continuous service. The benefits of the scheme has also been extended to central government servants governed by the payments of Wages Act, 1936.

2.5 Educational Services

Educational services to the employees are basically provided by the employers and workers' organization voluntarily. The need to impart necessary education to workers' in India was emphasized by Indian Industrial Commission (1918) and Royal Commission on Labour (1931), The Royal Commission on Labour stated that "in India nearly the whole mass of Industrial labour is illiterate, a state of affairs which is unknown in any other country of industrial importance".

Efforts have been made to educate the workers and hence, necessary financial and non-financial incentives are required for effective implementation of various adult education programmes. The example of such initiative by workers' organization is the Ambedkar Institute for Labour Studies, Mumbai sponsored by INTUC and RMMS (Rashtriya Mill Mazdoor Sangh), Mumbai in 1976. The institute is registered under Societies Registration Act, 1860. The institute states to the requirements of Indian Workers and textile workers in particular. The form of the institute is to make the workers understand the labour problem in the broader context of their aspiration in relation to the national plans.

Mill Mazdoor Sabha Mumbai (affiliated to Hind Mazdoor Sabha) conducts workers education programme for its members in collaboration with the Central Board for Workers Education.

Apart from the workers education, children of the workers are also provided with educational facilities. Children educate is statutorily binding on the plantation employees under the Plantation Labour Act (1951). It is the joint responsibility of the State Government and employees to set up primary schools, secondary schools, high schools and college in industrial areas. Many public and private sector establishments have provided educational amenities to the workers children. Iron and steel and heavy industries are front runner in providing educational facilities to the children of workers in form of setting up schools, reading room, library and financial assistance. Eg. TISCO, Indian Railways, Bharat Heavy Electricals.

Textile Labour Association (1916) established by Mahatma Gandhi has worked immensely on labour welfare. TLA set up girls hostel known as J.B. Kanyasgraha in 1927, to promote secondary and higher secondary education among the girls. Boys hostels were also set up and provision of scholarships in engineering and medical institutions are also provided to the workers of TLA members.

Mill Mazdoor Union – Indore also provides “Balmandir” where educational and games facilities are given to the employees children. They have Kavyamandir for girls’ elementary education, tailoring, knitting, training in child care and hygiene. Mahila Mandir has arrangements for providing educational amenities and craft training to women employees, night classes, library, reading room, facilities for indoor and outdoor games are also given out for the benefit of workers.

2.6 Recreational Services / Recreational Services

Recreational facilities help workers to develop their sense of physical and mental discipline. The Labour Investigation Committee (Rege Committee) had stated that industrial working environment are full of dust, noise, heat, unhygienic condition and over crowding, which takes its toll on the health well being of the workers.

ILO (International Labour Organisation) in 1956, recommended to encourage recreational facilities as a part of welfare measures. ILO recommended that such measures be taken up by works committees or other bodies established by national laws or regulations, or by voluntary action of the employers or workers concerned after consultation with each other. These measures should be taken up by different social welfare agencies as well as trade union for the betterment of the workers.

The recreational facilities can be provided at work place or near the work place and facilities at community level. Indoor games and outdoor games, cultural clubs, cinema halls, health, auditorium, etc. are set up by employees and the trade union as well wherever possible to facilitate balanced life style by the workers and their dependents also.

Eg. SAIL, Hindustan Lever, TISCO, TELCO, LIC, Indian Railways are some of the organization which provide sufficient recreational avenues for employees and their family.

Recreational Facilities by the Workers' Organisation –

- i) Textile Labour Association (Majdoor Mahajan) set up by Mahatma Gandhi, provides the following recreational facilities to the workers and their family.
 - Games centres for school going children.
 - Gymnastics for workers and their children under the guidance of trained physical culturists.
 - Encouragement of cultural and religious activities such as Bhajans, Kirtan, Musical training, Satyanarayan Katha, Mushairas.
- ii) Mill Mazdoor Sabha – has its holiday home at Khandala for the members of the organization.
- iii) Transport and Dock Workers union – It was established by P.D. Mello in the year 1932. Apart from other welfare facilities, for recreation purpose, it has set up a holiday home at Khandala.

2.7. Transport Services

The committee on labour welfare recommended the provision of adequate transport facilities to workers to enable them reach their work place without loss of time and much fatigue. In most of the manufacturing and other industries, transport facilities are provided to the employees to minimize travelling time. The transport is provided from the residential areas to the work place, for going to the nearby city, town or market place, from residential area to the schools and colleges for the children of the employees.

Though the transportation women under the purview of transport corporation, local bodies and state government, it is always helpful on the part of the employees to provide for separate facility exclusive for their employees. It given a sense of pride and satisfaction to the employees. The workers unions also extend this facilities to their members. However, the instance of union providing transport is not that prominent in India.

Private companies like – Godrej, Philips, Larsen and Tourbo voltas etc. also provide transport facility to their employees.

The Industrial labour conference has urged its member nation to took after the transport facility by saying by mean of a well concerned transport system and by affording special facilities in regard to fares and time tables, workers should be enabled to reduce to the minimum the time spent in travelling between their home and their work”. The recommendation urged the public Transport (facilities) authorities to consult workers and employees. Organisations in the matter of planning for workers transport facilities. The same was reflected in welfare facilities recommendation (No.102) in 1956 by International Labour Conference.

2.8 Consumer Co-operatives and Credit

The importance of consumer co-operatives societies are fair price shops was realised during the Second World War. Durign that period, Government had organized large number of cooperative societies for distribution controlled commodities. When

India thought of planned economic development, again the concept of cooperatives was put forth. A committee was set up under Dr. P. Natesan, (General Secretary), Tamil Nadu cooperative Union Ltd. Madras, in 1961. The committee suggested setting up of consumers cooperation stores in facilities and colonies in a planned way. The matter was taken up by Indian Labour Conference in August 1962. It made obligatory on the part of the employers, to give financial assistance, provide rent free accommodation, water and electricity to run a cooperative in the industrial establishment, including plantation and mines.

In spite of all the odds, it was thought that production in factories/ industries can only increase if people working there are supplied with articles of daily needs in a reasonable price.

Apart from the employers, the workers' union also provide the credit and cooperative services to their members. Ex-Textile Labour Association, Mill Mazdoor Union, Rashtriya Mill Mazdoor Sangh.

UNIT-III

LABOUR WELFARE-II

3.1 Health in Industry

3.1.1 History of Industrial Health

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UNIT-III

LABOUR WELFARE-II

3.1 Health in Industry

Health has been defined as “a state of complete physical, mental and social well being and not merely the absence of disease and infirmity (WHO). Industrial organizational health is related to prevention of disease and maintenance of positive health among the employees of the organization. As per the ILO/WHO committee on Organizational Health (1950) defined organizational health as the

- 1) Promotion and maintenance of physical, mental and social well being of workers in all occupation.
- 2) Prevention among workers of “ill-health caused by the working conditions”.
- 3) Protection of workers in their employment from risk resulting from factors adverse to health.
- 4) Placing and maintenance of the workers in an occupational environment adopted to his/her physical, psychological equipment.

3.1.1 History of Industrial Health

The facility of special medical arrangement was prevalent among roman who were engaging slaves in mercury mines in Spain. In 1898, medical inspector of factories was appointed in England.

In 1927, International Labour Organisation adopted convention No.25 regarding sickness insurance (industry). The convention has norms laid down, based on which an insured person is entitled to get certain facilities in the shape of medical treatment and cash benefits.

ILO adopted a recommendation No.29 relating to general principles concerning sickness insurance.

In 1944, ILO adopted recommendation No.69, which laid down norms for medical care.

In 1952, ILO adopted convention on maternity protection.

In the year 1953, ILO adopted a Recommendation No.97 which speaks about Protection of Health of Workers in places of Employment Recommendation (No.112) was adopted in the year 1959 regarding Occupational Health Service.

In 1960, another Recommendation was adopted (No.114) and Correction (No.115) concerned with the protection of workers against ionising radiation. The Royal Commission on Labour and Labour Investigation Committee, gave due importance to the medical and health are among the industries workers.

As per the observation of the Royal Commission it said that, majority of the industrial workers come to work in industries from villages. They leave behind the family, live in crowded slums or cities, eat adulterated food slums or cities, undergo malnutrition, face the industrial hazards. All these factors goes against the physical and mental health of the individual workers. Therefore, it is important to address such issues in time to maintain the efficiency of the workers.

The Labour Investigation Committee studied the details of medical and health are provided to workers outside the work place. It pointed out that, although the work is carried out by municipal and local bodies. The employees are also partly responsible to provide such facilities to their workers.

In the year 1943, the Government of India appointed a committee under the Chairmanship of Sir Joseph Bhore to lay down broad objective of medical and health care in the country. The committee recommended on working towards prevention of health hazards. It said about creating and maintaining of healthy environment at homes and work places. It recommended the appointment of trained hospital social workers to increase the efficiency of the larger hospitals.

3.2 Statutory Health Provision

The Factories Act, 1948 has provision for the health measures which needs to be followed in factories to maintain health of the employees/ workers. The responsibility lies with the occupier of the factory.

- a) Cleanliness (Section 11) :- Every factory is supposed to be kept clean from any drain, or any other nuisance.
- b) Disposal of waste and effluent (section 12) :- The State Government may prescribe rules for the disposal of waste and effluents coming out of the manufacturing process of the factory.
- c) Ventilation and Temperature (Section 13) :- The factories must be properly ventilated and the temperature be maintained so as to ensure that the workers working there are not affected by it.
- d) Dust and Fumes (section 14) :- Dust and fumes at the work place must be properly exhausted to prevent inhalation and their accumulation in any work room.
- e) Artificial Humidification (section 15) :- The State Government may make rules for level humidity to be maintained or ratification increased. It is basically done in the cotton textile mills and cigarette making factories.
- f) Overcrowding (Section 16) :- The room in the factories must ensure sufficient space for each workers to carry out his work. At least 500 cubic feet of space must be ensured to every individual.
- g) Lighting (Section 17) :- Proper and sufficient light, whether natural or artificial is to be maintained in factories. It may be done by means of windows, sky lights, at appropriate places and keeping them clean for allowing passage of natural lights. Artificial light must be appropriately installed in each and every part of the factory.
- h) Drinking Water (Section 18) :- Sufficient drinking water facility to be provided with indication in local language be made so that people are relieved of their

need. The more than 250 workers are working, cool drinking water facility may be installed during hot weather.

- i) Latrines and Urinals (Section 19) – Sufficient number of male and female latrines and urinals need to be provided at the factory premises and inside the work place.
- j) Spittoon (Section 20) :- In factories spittoons must be provided in sufficient numbers and kept clean for hygiene.

The Factories (Amendment) Act, 1987 says that the occupier of every factory involving hazardous process shall disclose to the Chief Inspector of Factories and the local authority, regarding the dangers, health hazards and the measures to overcome such hazards. The occupier of the factory is required to maintain accurate and upto date health records of the workers, who are exposed to any chemical, toxic or any other harmful substances. The act also confers right to the workers employed in any hazardous process to warn about imminent danger to their lives or health due to any accident.

3.2.1 Industrial Medical Officer

Many of the industries appoint full time or part time medical officers who work in close association of personnel department. As per the Factories Act, 1948, there is requirement of a medical officer for the professional advice to the management. In broader perspective, the duties of medical officer includes :-

- a) Examine the fresh recruits and advice on their selection and placement.
- b) Provide immediate medical or surgical treatment to the workers as and when necessity arise, at the place of work.
- c) Periodical examination of persons working in hazardous conditions.
- d) To examine workers who have resumed work after illness or disability.

- e) Advices management regarding factory hygiene, workers health, the occurrence and risk of hazards, prevention of accidents factory legislation concerning health, safety and occupational diseases.
- f) Supervise the canteen to maintain cleanliness, quality of food and physiological adequacy of the food.
- g) To impart health education to the workers as well as management by conducting lectures, seminars, symposia etc.
- h) The medical offers must maintain rapport with the personal department, health insurance practitioners, panel of doctors and public health authorities to execute their duties effectively and efficiently. They should also be accessible to workers and their union.

3.2.2 Mental Health in Industry :

Mental health of an individual is influenced by both biological and social factors as stated by WHO in 1950. Mental Health keeps on fluctuating in various degrees. A mentally healthy person is someone who –

- a) Feels comfortable about him/herself i.e reasonably secure and adequate about self.
- b) Feels right to wards others, without any inhibition.
- c) Able to meet the demands of life.
- d) Is able to think and take decision about self.

Mental illness is divided into three categories which are –

- a) Schizophrenia (split personality) – person lives in a dream world of his own.
- b) Manic depressive psychosis –
Heights of excitement to depths of depression.
- c) Paranoia – Undue and extreme suspicion and live in a world of delusions.

Minor level of mental illness includes -

- a) Neurosis or Psychoneurosis – the person is unable to react to normal life situations.
- b) Personality and character disorders – this growing of disorders are the legacy of unfortunate childhood experiences and perceptions.

The causes of mental illness are many including organic condition, heredity and social and environmental factors.

The mental illness among the employees given rise to many problem industry like :

- a) Workers can not contribute their best for the organization. Performance is not upto make of their potential.
- b) The mental illness leads to social, personal problem and tension of work place as well as outside work place.
- c) Mental problems give rise to accidents at work place, absenteeism and loss of employment.
- d) Conflict between the person, his co-workers and the superior and the subordinates.
- e) Aggressive behavior leads to dismissed, suspension of the worker.

Few measures can be followed in the organization to overcome the above mentioned problems few preventive measures can be taken like –

- 1) Improvement in work environment and humanization of working conditions, in order to provide opportunities for satisfaction, self-esteem and sense of dignity.
- 2) Counseling of the workers.
- 3) Active co-operation among the supervisors, managers and union-representatives.

3.2.3 For the treatment and early diagnosis of mental illness, role of psychiatrists and medical social worker in indispensible.

The medical and psychiatric social worker have immense responsibility in dealing with the mental illness of the workers. The psychiatric role consists of research, treatment, education, selection and induction. They can participate in various schemes for improving the morale of workmen.

The social worker as a member of the medical team can help in early detection, diagnosis, prompt treatment and rehabilitation of the chronic patients. They can prevent and control the chronic illness of worker/ employees by medical and psychiatric care.

The psychiatric and the medical social workers need to keep close liaisoning with professional institutes like Indian Institute of Mental Health and Human Relations; Indian Council of Mental Hygiene, to incorporate the best practices in the industries.

3.3 INDUSTRIAL HYGIENE

The word hygiene includes personal and environmental cleanliness. Good hygiene is necessary for the maintenance of good health among the workers. As hygiene is directly related to the health of individuals, it becomes necessary that the factories must maintain a healthy working environment. In the Factories Act, 1948, there are provision related to health like, ventilation, temperature, space, lighting etc.

When a person is employed in any industry or factory they are exposed to certain occupational hazards, which can be categories as follows –

Physical Hazards

1) Heat

- i) Working near furnaces, ovens, in steel industries, glass industries, mining, jute and cotton textile industry.
- ii) Workers are subjected to burns, heat strokes, heat cramps, fatigue, accidents.

2) Light – Poor illumination or excessive bright light causes eyestrains, headaches, discomfort and fatigue.

3) Noise and Vibration –

Too much of noise at the work place can make person temporally or permanently lose hearing capacity. Apart from this, a person may feel tired, nervous and loss of efficiency of work. Exposure to vibration can result in injuries of the joints of the hands, elbows and shoulders. Continuous vibration in hand and arms makes fingers sensitive to spasm (white fingers).

4) Ultraviolet Radiation and Ionizing Radiation – Workers working near welding axis, X-Ray or radio active isotopes suffer from redness of eyes and pain, cancer, genetic disorders, leukemia, sterility etc.

Chemical Hazards

Almost all industries use chemicals in their operation, chemicals are most common in rubber, machine oils, acids, alkalies and lives. Inhalation of these causes lung diseases and poisoning.

Biological Hazards

Workers working among animals for manufacturing animal product are exposed to anthrax, tetanus and fungal infections.

Mechanical Hazards

Due to protruding machinery and moving parts of machinery, fire, explosion and electricity, accidents occur at the work places.

Psychological Hazards

Such hazards arise from lack of job satisfaction, emotional tension, frustration, insecurity, poor human relation. It arises when a person is unable to cope up with the requirements at the workplace and home front.

3.3.1 Occupational Diseases

Some of the occupational diseases are more prevalent than the rest, they are as follows :-

a) **Lead Poisoning** – Workers engaged in cable making, lead pipe making, painters and plumbers face the danger of lead poisoning. The symptoms are like vomiting, nausea

in early stages which can result in anemia, muscular and joint pains, intestinal disorders in the latter stage, lead is one of the highly toxic metal to which workers are exposed in industries.

b) Phosphorous Poisoning – Phosphorus is used to manufacture certain explosion and it enters into human body in form of fumes. The early symptom is pain in the jaw and toothache. Later on it destroys the jaw bones.

c) Mercury Poisoning – Barometers thermometer makers, laboratory workers, electric meter repairers, refiners of gold and silver, come under frequent contact of this substance. Inhalation of mercury affects brain and absorption through skin causes eczema.

d) Manganese poisoning :- Inhalation of manganese results in inflammation of lungs. Manganese miners, ferro-manganese workers and dry cell battery makers inhale and absorb manganese dust and fumes while working in their work places.

e) Silicosis - Workers in potteries, ceramics, metal grinding, refractories, slate pencil mines etc. inhale dust containing silica. The workers face respiratory problems as the silica eats away the lungs. In latter stage the workers spit blood and face painful death. This disease is incurable.

f) Asbestosis :- Leads to respiratory problem. The workers engaged in handling and crushing of crude asbestos, making of asbestos mattresses are affected by it.

g) Bagassosis :- This disease is caused due to inhalation of sugar cane dust over a long period of time. The symptoms consist of breathlessness, cough, haemoptysis and slight fever. The preventive measures are dust control, personal protective equipment and periodical medical examination.

h) Caisson Disease :- The workers working in caisson on harbor construction or in building of tunnels suffer from this disease. The disease occurs when certain harmful gases get dissolved in blood cells.

- i) Byssionosis :- This occurs when inhalation of cotton fibre dust occurs over a period of time among the textile workers.

3.3.2 Prevention of occupational diseases.

The statutory provision under The Factories Act, 1948 for the prevention of occupational diseases are as follows :-

Section – 10 – speaks of the appointment of certifying surgeon by the State Government. The certified surgeon are qualified practitioners who are required to carry out duties such as :-

- a) Examination and certificate of young person.
- b) Examination of person engaged in factories which have dangerous as occupation or process.
- c) Exercising medical supervision.

Section 87 – refers to the dangerous operation in factories which may expose any person employed to serious risk of bodily injury, poisoning or disease. The Act authorizes the State Government to make rules to identify dangerous operation in a factory and to provide for the prevention of all such person employed in those operation or in the vicinity of the place where such operation are carried on.

Section 89 – Whenever any worker in a factory contract any disease specified in the schedule the manager of the factory is under obligation to send a notice to the concerned authorities and in such time as may be prescribed.

Section 69 – It talks about safeguarding the health of the young person engaged in factories.

The Mines (Amendment) Act, 1983

Section 9-A provides for safety and occupational health survey in a mine by the Chief Inspector or an Inspector or other officer authorized by him after giving notice in writing to the manager of the mine. The owner, agent or manager is required to give all necessary facilities for medical examination of persons and in conducting the surveys.

The Factories Act, 1948 prohibits employment of women at certain hour and places like cotton opener.

These are few instances of how the occurrence of occupational diseases can be minimized by preventing its onset.

3.4 Safety Administration

Industrial Accident :

Accident are unexpected, unplanned occurrence which may involve injury or interruption in the completion of an activity. There is a chance of accident in everyone's life in all sphere. The causes of accident can be attributed to human and technical factors. In the era of massive industrialisation, accident at work place have taken up an importance in field of study.

There are three theories relating to accidents and risk taking behavior which are namely psychological, structural and psychosocio-logical. Psychological theory says that industrial and group factors effect risk taking behavior at the work place.

Structural theory put significant stress on the socio-economical, political and technological aspects of work place as the reason/ cause behind accidents.

Psycho-sociological theory attempts to link psychological, and structural theories in order to explain the occurrence of accidents at workplace.

3.4.1 Causes of Accidents

Going by the above mentioned theories, the causes of accident can be identified as follows :-

- Technical causes – Defective and worn out machinery, poor maintenance, lack of safety equipment, fencing of dangerous machines, faulty layout of the

workplaces crowded man with machines, raw materials and waste products, poor working conditions.

- Personal causes – Faulty recruitment and selection and placement of the workers, individual traits like carelessness, ignorance, risky behavior bad relationship at workplace with other workers and supervisors.
- Psychological causes – Fatigue, tiredness over work, monotony, boredom, and lack of confidence can lead to accident at the work place. Accidents happen to some people more often as a logical result of combination of circumstance. Accident proneness is one of the aspect of studies on accidents which says that some people experience large number of accident due to their “inherent unequal liabilities”.
- Non-observance of Safety Rules – The majority of organization in India do not fulfill the elementary safety requirements. This is more visible to case of small scale and unorganized sector.

3.4.2 Prevention of Accidents

The prevention of industrial accident can be equipped by following certain measures as discussed below :-

- a) Plant Safety Inspection – It helps in determining the measures necessary to prevent occurrence of accidents. Detecting unsafe conditions and correcting them immediately is the best way to prevent accident.
- b) Job safety Analysis – Job is analysed to findout any hazard included in any step of the job and then developing safety precautions to avoid the chances of accidents.
- c) The Management System – The management policies, procedures, the manner of supervision training, compensation goes long way in prevention of accident.
- d) Accident Investigation – After occurrence of an accident, an immediate full investigation is necessary to find out the causes and find out corrective measures. Investigation should bring out facts to be addressed.

- e) Controlling Behaviouristic causes – It is related to physiological and psychological factors such as job analysis, job training, supervision, discipline, personal work, physical examination and proper placement of workers.
- f) Supplementary Activities :-
 - i) Safety slogan in the factory premises through poster, pictures, news bulletin boards, exhibition films to make people aware of the safety issues at work place.
 - ii) Safety meetings and campaigns where employer and employees can participate.
 - iii) Standardisation of safety activities.
 - iv) Research in technical, medical, psychological aspects of safety.

3.4.2(a) Accident prevention as a business policy :

Accident prevention programmes are successful in the organization if it has the –

- (a) Full cooperation of trade union leaders for implementation of the safe practices at the work place.
- (b) Exert social pressure on employees to obtain their active involvement in safety.
- (c) Create consciousness of cost and realization that accidents are to be avoided to be able to face competition.
- (d) Improved type, quality and availability of personal protection equipments suitable for Indian condition.
- (e) Introduce some incentive schemes for safety performance.
- (f) Extend the message of safety at work place to every employee/worker and their family to ensure lesser accidents at workplace. If the above mentioned activities are followed by organisation as a part of business policy it will reach a greater extent in preventing work place accidents.

3.4.2(b) Accident prevention at the level of Supervisors / Firemen

The work place accident can never be reduced to zero, however, the frequency and intensity of the accident can be controlled to a particular desirable state. In this process, the role of supervisors or firemen comes into play.

- a) They can develop safe working condition.
- b) They can create safe work habits on a personalized basis.
- c) Promotion of employee participation in safety.
- d) Take corrective action when safety rules are ignored.

3.4.2(c) Accident prevention at the level of Engineer

The Safety Engineer is the general advisor on safety. He has to make the work of supervisor / foremen carrier by taking timely steps to ensure work place safety. The safety engineer has to work in close association of management. The matters of which a safety engineer will report and advise management includes –

- a) Planning of new buildings or changes in the current infrastructure.
- b) Acquisition of new machines and other equipments.
- c) Arrangement for testing, maintenance and repair of equipment and safety devices.
- d) Protection from fire.

3.4.2(d) New areas in maintaining work place safety

As per the emphasis given by psychologists, there must be right man at the right job. With passage of time, this concept has given way to quality of work life. It says that, when a person is happy and satisfied at work, there will be lesser of accident given the infrastructure may not be good. Of late, there is focus on the engineering for human use i.e. ergonomics or human engineering which is fitting the job to the man. The basic principle of ergonomics lies in best mutual adjustment of man and his work, for improving human efficiency and well being.

Ergonomics has gained importance in organizations as a part of health service. Ergonomics involves designing of machines, tools, materials, equipments, manufacturing processes, lay out of work place, work methods and environment to achieve greater efficiency of man and the machines.

Safety programmes inclusive of creating awareness of occupational hazards, safe work practices, use of safety equipments go long way in maintaining accident rates. Employee awareness is created by mean of safety committees, recording and posting safety performance records, providing safety awards and recognition to individual and units for achieving records, formulating rules, regulation regarding work behavior and use of safety equipment and safety training programmes. However, the safety programmes are successful only when the top management is involved in it.

3.4.3 Statutory Safety Provision

- 1) The Factories Act, 1948, Chapter IV
- 2) The Indian Boilers Act, 1923
- 3) The Indian Explosives Act, 1884
- 4) The Petroleum Act, 1934
- 5) The Indian Electricity Act, 1910

These legislations make it mandatory for the organization to follow certain basic safety provisions.

3.4.3(a) Safety Officer

Section 40(b) of the Factories Act, 1948 provides appointment of safety officers in every factory. Safety officers are required to be engaged in those factories where the process or operation involved any risk or bodily injury, poisoning or disease or any other hazard to the health of the persons employed in the factory. The duties of the safety officers include –

- Advise to the concerned department in planning and organizing measures necessary for the effective control of personal injuries.

- To advise on safety aspects in all job studied and to carry out detailed job safety studies of selected jobs.
- To advise the purchasing and stores department in ensuring high quality and availability of personal protective equipments.
- To advise on matters related to carrying out plant safety inspection.
- To investigate selected accidents.
- To render services on matter of reporting and investigation of industrial accident and diseases.
- To promote setting up of safety committees and act as advisor to such committees.
- To design and conduct either independently or in collaboration with the training department, suitable training and educational programmes for the prevention of personal injuries.

3.4.3(b) Role of Safety Officers

- Act as a liaisoning officer with governmental agencies like inspector of factories and also with non-governmental agencies.
- Co-ordinate the safety programmes and initiation throughout the organization.
- Administer safety suggestions schemes.
- Critically assess the safety performance of the organization as well as conduct the safety training and feedback sessions on continuous basis.
- To head committee on safety issues.
- Be a salesman of safety to the top executives and be a technician, planner, organizer and stimular of safety.

3.4.4 Safety Administration

Under the provision of the Factories Act, 1948, the safety matter totally is the responsibility of the occupier. The occupier is required to comply with the safety provision without any delay in case the safety officer could not turn up in time.

Thus it can be said that as per the Factories Act, 1948, safety is solely the managements responsibility. All the manage viz. personnel manager, plant manager, production manager Fireman, Chief Engineer, Safety Officer/ Engineer/ Director, must execute their responsibility in respective departments.

Unit - IV

Objective

The objective of this chapter is to facilitate the distance learner to understand the mechanisms of establishing and maintaining of harmonious environment at the workplace with successful implementation of the labour laws.

After completion of this chapter, you should be able to

- Have a clear concept of labour legislations
- Understand the basic objectives of labour legislations
- Know the origin and factors responsible for the growth of labour legislation
- Understand the main provisions of Factories Act
- Describe the salient features of workmen's compensation and maternity benefit act

Structure

- 4.0 Introduction**
- 4.1 Need For Labour Legislation In India**
- 4.2 Objectives**
- 4.3 Principles Of Labour Legislation**
- 4.4 History and Evolution Of Labour Legislation**
- 4.5 Classification Of Labour Legislation:**
- 4.6 The Factories Act, 1948**
 - 4.6.1 Definitions**
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- 4.7 Workman's Compensations Act, 1923**
 - 4.7.1 Scope And Coverage Of The Act**
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 - 4.7.3 Distribution Of Compensation**
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4.0 INTRODUCTION

The term 'Labour Legislation' is - used to cover all the laws which have been enacted to deal with" employment and non-employment" wages, working conditions, industrial relations, social security and welfare of persons employed in industries.

The term 'labour legislation' is In India; labour legislation is treated as an arm of the State for the regulation of working and living conditions of workers. Organized industry in a planned economy calls for the spirit of co-operation and mutual dependence for attaining the common purpose of greater, better and cheaper production. Since this has not been happening voluntarily, the need for State intervention.

4.1 NEED FOR LABOUR LEGISLATION IN INDIA:

The need for labour legislation may be summarized as under:

- Necessary for the health, safety, and welfare of workers;
- Necessary to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power;
- To encourage and facilitate the workers in the organization;
- To deal with industrial disputes;

- To enforce social insurance and labour welfare schemes.

4.2 OBJECTIVES:

The objectives of labour legislations are:

- Establishment of justice-Social , political and Economic
- Provision of opportunities to all workers; irrespective of caste, creed, religion, beliefs; for the development of their personality.
- Protection of weaker sections in the community.
- Maintenance of Industrial peace.
- Creation of conditions for economic growth.
- Protection and improvement of labour standards.
- Protect workers from exploitation.
- Guarantee right of workmen to combine and form association or unions.
- Ensure right of workmen to bargain collectively for the betterment of their service conditions.
- Make state interfere as protector of social well being than to remain an onlooker.
- Ensure human rights and human dignity.

4.3 PRINCIPLES OF LABOUR LEGISLATION:

4.3.1 Social Justice:

- The essence of democracy is ensuring social justice to all sections of the community.
- This demands the protection of those who cannot protect themselves.
- In modern industrial set-up, workers, left to themselves, are unable to protect their interest.

Therefore, the State has to intervene to help them by granting them freedom of association, the power of collective bargaining and by providing for mediation or arbitration in the case of industrial conflict.

4.3.2 Social Equity:

- Legislation based on this principle provides for achievement of definite standards.
- Standards in terms of living, position in society etc. of the working population.

- These standards for the working class can be achieved by bringing about changes in the Law of our land.
- Power to change the Law is exercised by the government.
- Existing laws may be amended to meet the changed standards.

4.3.3 National Economy:

Measures have to be provided through legislation to:

- Ensure normal growth of industry for the benefit of the nation as a whole;
- Satisfy the physical and intellectual needs of the citizens;
- Ensure the growth of industrial efficiency such as to adjust the wage system with a view to increase the productivity and prosperity of the workers.

4.3.4 International Uniformity:

- Since its inception, securing minimum standards (for the working population – worldwide) on a uniform basis in respect of all labour matters has been the main objective of ILO.
- To this end, conventions are passed at the conferences of ILO.
- As a member of the ILO, adopting these conventions would require appropriate legislation to be brought about.
- The influence of international labour conventions has been significant in shaping the course of labour legislation in India.

4.4 HISTORY AND EVOLUTION OF LABOUR LEGISLATION:

The history of labour legislation in India is naturally interwoven with the history of British colonialism. Considerations of British political economy were naturally paramount in shaping some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for

indenturing workers became necessary. This was obviously labour legislation in order to protect the interests of British employers.

Then came the Factories Act. It is well known that Indian textile goods offered stiff competition to British textiles in the export market and hence in order to make India labour costlier the Factories Act was first introduced in 1883 because of the pressure brought on the British parliament by the textile magnates of Manchester and Lancashire. Thus we received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. While the impact of this measure was clearly welfarist the real motivation was undoubtedly protectionist!

To date, India has ratified 39 International Labour Organization (ILO) conventions of which 37 are in force. Of the ILO's eight fundamental conventions, India has ratified four - Forced Labour 1930, Abolition of Forced Labour 1957, Equal Remuneration 1951, and Discrimination (employment and occupation) 1958.

4.4.1 The organised and the unorganized

An important distinction that is popularly made nowadays in all discussions relating to labour legislation is between workers in the organised/formal sector and those in the informal/informal sector. Many who make this distinction do so with ulterior motives, yet we must reckon with it - especially because out of the total workforce in the country, 92 percent work in the informal sector while only eight percent work in the formal sector.

At the outset it must therefore be remembered that those who were unorganised yesterday are organised today and those who are unorganised today aspire to become the organised tomorrow. Moreover, many rights, benefits, and practices, which are popularly recognised today as legitimate rights of the workers, are those that have accrued as a result of the struggles carried out by the earlier generation of workers. The

attempt, prevalent in some circles to pit one section of workers against the others, must therefore be carefully understood and deserves to be rejected outright.

4.4.2 Trade unionism and the Trade Union Act 1926

There are almost ten major central union organisations of workers based on different political ideologies. Almost every union is affiliated to one of these. These central organisations have state branches, committees, and councils from where its organisation works down to the local level. The first central trade union organisation in India was the All India Trade Union Congress (AITUC) in 1920 - almost three decades before India won independence. At about the same time workers at the Buckingham and Carnatic Mills, Madras went on strike led by B P Wadia. The management brought a civil suit against the workers in the Madras High Court and not only obtained an injunction order against the strike but also succeeded in obtaining damages against the leader for 'inducing a breach of contract'. This was followed by widespread protests that finally yielded in the Trade Union Act 1926 giving immunity to the trade unions against certain forms of civil and criminal action. Apart from this aspect the Trade Union Act also facilitated registration, internal democracy, a role for outsiders and permission for raising a political fund subject to separate accounting requirements.

The Trade Union Act facilitates unionization both in the organized and the unorganized sectors. It is through this law that the freedom of association that is a fundamental right under the Constitution of India is realized.

The right to register a trade union however does not mean that the employer must recognize the union – there is in fact no law which provides for recognition of trade unions and consequently no legal compulsion for employers, even in the organized sector, to enter into collective bargaining. Yet in reality because of the strength of

particular trade unions there is fairly widespread collective bargaining, especially in the organised sector.

4.4.3 Wage determination in the unorganized sector

Wage determination in India has been achieved by various instruments. For the unorganised sector the most useful instrument is the Minimum Wages Act 1948. This law governs the methods to fix minimum wages in scheduled industries (which may vary from state to state) by using either a committee method or a notification method. A tripartite Advisory Committee with an independent Chairman advises the Government on the minimum wage. In practice unfortunately, the minimum wage is so low that in many industries there is erosion of real wage despite revision of the minimum wage occasionally. A feeble indexation system has now been introduced in a few states only.

4.4.4 Collective bargaining in the organised sector

An important factor that is not much recognised, but which still prevails in many organised sector units is fixing and revising wages through collective bargaining. The course of collective bargaining was influenced in 1948 by the recommendations of the Fair Wage Committee that reported that three levels of wages exist - minimum, fair, and living.

These three wage levels were defined and it was pointed out that all industries must pay the minimum wage and that the capacity to pay would apply only to the fair wage, which could be linked to productivity. In addition to this the fifteenth Indian Labour Conference, a tripartite body, met in 1954 and defined precisely what the needs-based minimum wage was and how it could be quantified using a balanced diet chart.

This gave a great boost to collective bargaining; many organised sector trade unions were able to achieve reasonably satisfactory indexation and a system of paying an annual bonus. It is now the law, that a thirteenth month of wage must be paid as a deferred wage to all those covered by the Payment of Bonus Act. The minimum bonus payable is 8.33 percent and the maximum is 20 percent of the annual wage.

4.4.5 Strikes and lockouts

Workers have the right to strike, even without notice unless it involves a public utility service; employers have the right to lockout, subject to the same conditions as a strike. The parties may sort out their differences either bilaterally, or through a conciliation officer who can facilitate but not compel a settlement which is legally binding on the parties, even when a strike or a lockout is in progress. But if these methods do not resolve a dispute, the government may refer the dispute to compulsory adjudication and ban the strike or lockout.

4.4.6 Conciliation, arbitration, and adjudication

When parties engaging in collective bargaining are unable to arrive at a settlement, either party or the government may commence conciliation proceedings before a government appointed conciliation officer whose intervention may produce a settlement, which is then registered in the labour department and becomes binding on all parties. If conciliation fails it is open to the parties to invoke arbitration or for the appropriate government to refer the dispute to adjudication before a labour court or a tribunal whose decision may then be notified as an award of a binding nature on the parties. Disputes may be settled by collective bargaining, conciliation, or compulsory adjudication.

4.4.7 Colonial dispute settlement machinery

The Industrial Disputes Act 1947 (IDA) provides for the settlement machinery above. The framework of this legislation, which is the principle legislation dealing with core labour issues, is of colonial origin. This law originated firstly in the Trade Disputes Act 1929, introduced by the British, when there was a spate of strikes and huge loss of person days and secondly through Rule 81A of the Defence of India Rules 1942, when the British joined the war efforts and wanted to maintain wartime supplies to the allied forces. Interestingly the interim government on the eve of formal independence retained this framework by enacting the IDA, which still remains on the statute book.

4.4.8 Developments after independence

Even though the IDA was primarily meant for industry in the organised sector, its present application has now extended well into the unorganised sector, through judge-

made law. Its pro-worker protection clauses and safeguards against arbitrary job losses have evolved over a period of time both through the process of sustained legislative amendments and through the process of judicial activism spread over more than five decades.

The original colonial legislation underwent substantial modification in the post-colonial era because independent India called for a clear partnership between labour and capital. The content of this partnership was unanimously approved in a tripartite conference in December 1947 in which it was agreed that labour would be given a fair wage and fair working conditions and in return capital would receive the fullest co-operation of labour for uninterrupted production and higher productivity as part of the strategy for national economic development and that all concerned would observe a truce period of three years free from strikes and lockouts.

4.4.9 Regulation of job losses

Space does not allow a detailed discussion of this transformation in labour policy and consequent amendments to labour law, but provisions that deal with job losses must be noted. Under the present law any industrial establishment employing more than 100 workers must make an application to the Government seeking permission before resorting to lay-off, retrenchment, or closure; employers resorting to any of the said forms of creating job losses, is acting illegally and workers are entitled to receive wages for the period of illegality. The Reserve Bank of India commissioned a study into the causes of sickness in Indian industry and they reported cryptically, 'Sickness in India is a profitable business'. This chapter in the IDA, which has been identified as offering high rigidity in the area of labour redundancy, has been targeted for change under globalization and liberalization.

4.4.10 Protection of service conditions

A feature of the IDA is the stipulation that existing service conditions cannot be unilaterally altered without giving a notice of 21 days to the workers and the union.

Similarly if an industrial dispute is pending before an authority under the IDA, then the previous service conditions in respect of that dispute cannot be altered to the disadvantage of the workers without prior permission of the authority concerned. This has been identified as a form of rigidity that hampers competition in the era of the World Trade Organization.

4.4.11 Removal from service

A permanent worker can be removed from service only for proven misconduct or for habitual absence - due to ill health, alcoholism and the like, or on attaining retirement age. In other words the doctrine of 'hire and fire' is not approved within the existing legal framework. In cases of misconduct the worker is entitled to the protection of Standing Orders to be framed by a certifying officer of the labour department after hearing management and labour, through the trade union. Employers must follow principles of 'natural justice', which again is an area that is governed by judge-made law. An order of dismissal can be challenged in the labour court and if it is found to be flawed, the court has the power to order reinstatement with continuity of service, back wages, and consequential benefits. This again is identified as an area where greater flexibility is considered desirable for being competitive.

4.4.12 Return to colonial days

Almost all pro-worker developments that accrued since independence are now identified as areas of rigidity and in the name of flexibility there is pressure on the government of India to repeal or amend all such laws. Interestingly, if such a proposal is fully implemented, labour law, especially for the organised sector, will go back to the colonial framework where state intervention was meant primarily to discipline labour, not to give it protection.

4.4.13 Globalization

The most distinctly visible change from globalisation is the increased tendency for offloading or subcontracting. Generally this is done through the use of cheaper forms of

contract labour, where there is no unionisation, no welfare benefits, and quite often not even statutorily fixed minimum wages. Occasionally the tendency to bring contract labour to the mother plant itself is seen. This is very often preceded by downsizing, and since there is statutory regulation of job losses, the system of voluntary retirement with the 'golden handshake' is widely prevalent, both in public and private sectors.

4.4.14 Regulation of contract labour

The Contract Labour (Prohibition and Regulation) Act 1970 provides a mechanism for registration of contractors (if more than twenty workers are engaged) and for the appointment of a Tripartite Advisory Board that investigates particular forms of contract labour, which if found to be engaged in areas requiring perennial work connected with the production process, then the Board could recommend its abolition. A tricky legal question has arisen as to whether the contract workers should be automatically absorbed or not after the contract labour system is abolished. Recently a Constitutional Bench of the Supreme Court held that there need not be such automatic absorption - in effect this 'abolishes' the contract labourer and has given rise to a serious anomaly.

4.4.15 Phase between organized and unorganized

We are already witnessing a reduction in the organised labour force and an increase in the ranks of the unorganised. The above law is a kind of inter-phase in the process of regulating the transition from regular employment to irregular employment. If contract labour is seen as introducing a form of flexibility, a strict enforcement of this Act could have had a salutary effect on the transition process. Instead the enforceability of the Act is now diluted and consequently even the minimum protection envisaged under this law to contract labourers is in jeopardy. Dominant thinking in relation to globalisation is having its effect on the judicial process also, ignoring Directive Principles of State Policy contained in the Constitution of India.

4.4.16 Employment injury, health, and maternity benefit

The Workman's Compensation Act 1923 is one of the earliest pieces of labour legislation. It covers all cases of 'accident arising out of and in the course of employment' and the rate of compensation to be paid in a lump sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity. The younger the worker and the higher the wage, the greater is the compensation subject to a limit. The injured person, or in case of death the dependent, can claim the compensation. This law applies to the unorganised sectors and to those in the organised sectors who are not covered by the Employees State Insurance Scheme, which is conceptually considered to be superior to the Workman's Compensation Act.

The Employees State Insurance Act provides a scheme under which the employer and the employee must contribute a certain percentage of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities. It facilitates both outpatient and in-patient care and freely dispenses medicines and covers hospitalisation needs and costs. Leave certificates for health reasons are forwarded to the employer who is obliged to honour them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical attention rarely approach this facility though they use it quite liberally to obtain medical leave. There are interesting cases where workers have gone to court seeking exemption from the scheme in order to avail of better facilities available through collective bargaining.

The Maternity Benefit Act is applicable to notified establishments. Its coverage can therefore extend to the unorganized sector also, though in practice it is rare. A woman employee is entitled to 90 days of paid leave on delivery or on miscarriage. Similar benefits, including hospitalisation facilities are available under the law described in the paragraph above.

4.4.17 Retirement benefit

There are two types of retirement benefit generally available to workers. One is under the Payment of Gratuity Act and the other is under the Provident Fund Act. In the first case a worker who has put in not less than five years of work is entitled to a lump sum payment equal to 15 days' wages for every completed year of service. Every month the employer is expected to contribute the required money into a separate fund to enable this payment on retirement or termination of employment. In the latter scheme both the employee and the employer make an equal contribution into a national fund. The current rate of contribution is 12 percent of the wage including a small percentage towards family pension. This contribution also attracts an interest, currently 9.5 percent per annum, and the accumulated amount is paid on retirement to the employee along with the interest that has accrued. Unfortunately the employee is allowed to draw many types of loan from the fund such as for house construction, marriage of children, and education etc. As a result very little is available at the time of retirement. This is also a benefit, which is steadily being extended to sections of the unorganized sector, especially where the employer is clearly identifiable.

4.4.18 Women labour and the law

Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 percent) in the agricultural sector as labourers and cultivators. In urban areas, the employment of women in the organised sector in March 2000 constituted 17.6 percent of the total organized sector.

Apart from the Maternity Benefit Act, almost all the major central labour laws are applicable to women workers. The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same

or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of an occupational hazard concerning the safety of women at workplaces, in 1997 the Supreme Court of India announced that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment Standing Orders Act 1946.

4.4.19 Implementation of labour laws

The Ministry of Labour has the responsibility to protect and safeguard the interests of workers in general and those constituting the deprived and the marginal classes of society in particular with regard to the creation of a healthy work environment for higher production and productivity. The Ministry seeks to achieve this objective through enacting and implementing labour laws regulating the terms and conditions of service and employment of workers. In 1966, the Ministry appointed the First National Labour Commission (NLC) to review the changes in the conditions of labour since independence and also to review and assess the working of the existing legal provisions. The NLC submitted its report in 1969. The important recommendations of NLC have been implemented through amendments of various labour laws. In the areas of wage policy, minimum wages, employment service, vocational training, and worker's education, the recommendations made by the NLC have been largely taken into account in modifying policies, processes, and programmes of the government. In order to ensure consistency between labour laws and changes in economic policy, and to provide greater welfare for the working class, the Second NLC was constituted in 1999.

All labour laws provide for an inspectorate to supervise implementation and also have penalties ranging from imprisonment to fines. Cases of non-implementation need to be specifically identified and complaints filed before magistrates after obtaining permission to file the complaint from one authority or the other. Very few cases are filed, very rarely is any violator found guilty, and almost never will an employer be sent to prison. Consequently these powers are used by corrupt officials only for collecting money from employers. This does not however mean that no labour laws are implemented. On the contrary experience has proved that the implementation of such laws is directly proportional to the extent of unionization. This generalization is particularly true of the informal sector.

4.4.20 The unorganized sector

Many of the laws mentioned above apply to the unorganised sector also. In some cases a separate notification may be necessary to extend the application of a particular law to a new sector. It is useful to notice that some pieces of legislation are more general in character and apply across the board to all sectors. The Trade Union Act 1926, The Minimum Wages Act 1948, The Contract Labour (Regulation and Abolition) Act 1970, The Workman's Compensation Act 1923, and The Payment of Wages Act 1936 are examples of this type. In certain cases, even the IDA 1947 would be included.

In addition to the above there are special sectoral laws applicable to particular sectors of the unorganised. Under this category are laws like the Building and Construction Workers Act 1996, the Bonded Labour System (Abolition) Act 1976, The Interstate Migrant Workers Act 1979, The Dock Workers Act 1986, The Plantation Labour Act 1951, The Transport Workers Act, The Beedi and Cigar Workers Act 1966, The Child Labour (Prohibition and Regulation) Act 1986, and The Mine Act 1952.

Broadly speaking these sectoral laws either abolish or prohibit an abominable practice like bonded labour or they seek to regulate exploitative conditions by regulating working hours and conditions of service. A recent trend has been to seek the creation of a welfare fund through the collection of a levy from which medical benefits or pension provisions are made. Workers and management may contribute and attempt to set up tripartite boards for implementation of welfare benefits. In some states like Kerala a large number of such boards have already been set up to take care of welfare in different sectors of employment.

Another contemporary effort is to provide an umbrella statute to take care of employment conditions and social welfare benefits for all unorganised sections. Common central legislation for all agricultural workers is also on the anvil. Many powers are vested in quasi-judicial authorities, labour courts, and magistrates' courts. The power of review is in the High Courts and finally in the Supreme Court.

The general experience, with the occasional exception, is unbearable delay. Even where statutes prescribe reasonable time limits, they are not adhered to. Frustration with labour-related justice is heightened by these unlimited delays. A case of dismissal takes almost ten years for the labour court to decide and if the parties decide to seek judicial review in the higher courts there can be unlimited delay.

For the unorganized sector a renewed attempt to focus on the core labour standard identified by the ILO in its Declaration on Fundamental Rights at Work would still be worthwhile, especially if we take steps to ensure the implementation of the first of those core labour standards namely the freedom of association and the right to collective bargaining. It is only through the organization of potential beneficiaries that we can hope for some benefits at least to percolate down into the hands of the needy.

4.5 CLASSIFICATION OF LABOUR LEGISLATION:

Law is necessary for maintaining peaceful environment for the growth of the industry. Labour legislation in India has developed with the growth of the industry. In the eighteenth century India was not only a great agricultural country but a great manufacturing country too. Asian and European markets were mainly fed by the looms supplied by India, but the British Government in India as a matter of policy discouraged the Indian manufacturers in order to encourage the rising manufacturers of England. Their policy was to make India subservient to the industries of Great Britain and to make Indian people grow only raw materials. The British oppression in India continued for a considerable time which led to the growth of Indian nationalism and to a vigorous renaissance. Nationalism has an obvious economic aspect within our country which was reflected in the urge for economic reforms and for industrialization. In the twentieth century the national movement took a new turn and there was a common demand for the Indian goods. A non-co-operation movement which is known as The Swadeshi movement was started, which urged the people to use goods made in India and to boycott foreign goods. The non-co-operation movement synchronized with periods of economic crisis gave impetus to industrialization. Not only that, growth of Indian private sector owes much to these popular movements. No doubt, the Indian Economist drew their inspiration from British classical Economists but they outgrew those ideas. Like British Economists, Indian Economists not only advocated that the trade and commerce should be free but they laid emphasis on the free trade of local goods. An attempt was made to put forward a theory of economic development and planning suited to conditions of our country. After thirties, the planning was accepted by the national movement as the economic ideology. Thus, planned industrialization became our main goal. In India, the plantation industry in Assam was the first to attract legislative control. The method of recruitment of workers in this industry was full of hardships. Workers were employed through professional recruiters. Workers were not allowed by the planters to leave the tea gardens. A number of Acts were passed from 1863 onwards to regulate the recruitments. These legislations protected the interests of the employers more than safeguarding the interests of the workers. The Factories Act

was passed in 1934 and the Mines Act in 1923. The Workmen's Compensation Act 1923 was passed to protect the interest of the workers. The following Acts have been enacted to promote the conditions of labour and regulate the relation between employer and employee keeping in view the development of industry and national economy:-

- The Apprentices Act, 1961
- The Bonded Labour System (Abolition) Act, 1976
- The Child Labour (Prohibition & Regulation) Act, 1986
- The Children (Pledging of Labour) Act, 1933
- The Contract Labour (Regulation & Abolition) Act, 1970
- The Employees Provident Funds and Misc. Provisions Act, 1952
- The Employees State Insurance Act, 1948
- The Employers Liability Act, 1938
- The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
- The Equal Remuneration Act, 1976
- The Factories Act, 1948
- The Industrial Disputes Act
- The Industrial Employment (Standing Orders) Act, 1946
- The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- The Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988
- The Maternity Benefit Act, 1961
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Mines Act, 1952
- The Payment of Gratuity Act, 1972
- The Payment of Wages Act, 1936

- The Sales Promotion Employees (Conditions of Service) Act, 1976
- The Shops and Establishments Act, 1953
- The Trade Union Act, 1926
- The Workmen's Compensation Act, 1923
- The Weekly Holidays Act, 1942

Mahatma Gandhi had once said, 'A nation may do without its millionaires and without its capitalists, but a nation can never do without its labour'. In India, a number of labour legislation has been enacted to promote the condition of the labour keeping in view the development of industry and national economy. But for industrial regeneration it is necessary that the partners of the industry must cure their respective defects. Since independence both legislation and public opinion have done a lot, to better the condition of the workers. At the same time it is the duty of the workers and their organizations to improve the work –efficiency and help in securing better production resulting in greater profits. Prosperity of the industry should be shared by the management with workers and the community at large. Workers are the dominant partners in the industrial undertakings and without their co-operation, good work, discipline, integrity and character, the industry will not be able to produce effective results or profits. If the human element refuses to co-operate, the industry will fail to run. Therefore, the profit of the industry must be shared between employers, workers and community; The Government and the factory owner must completely understand the labour psychology and a change in their outlook and attitude is desired to secure the industrial peace. Nothing should be done under threat or coercion but on a clear understanding that whatever is good and is due to the labour must be given. Industry owners should treat the workers as co-partners. Workers in the country must understand fully that if they desire to secure their due place in the industrial world they must think more in terms of responsibilities and duties. Sabotage and violence of all kinds, bitterness in thought, word and deed must be eschewed. An improvement in

labor regulations will provide an opportunity to accelerate manufacturing growth and development of nation.

4.6 THE FACTORIES ACT, 1948

The object of the Act is to ensure to the workers employed in the factories, health, safety, and welfare measures, and provide for proper working hours, leave and other benefits.

4.6.1 Definitions

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

- “adult” means a person who has completed his eighteenth year of age;
- “adolescent” means a person who has completed his fifteen year of age but has not completed his eighteenth year;
- “calendar year” means the period of twelve months beginning with the first day of January in any year;]
- “child” means a person who has not completed his fifteenth year of age;
- “competent person”, in relation to any provision of this Act, means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to—
 - the qualifications and experience of the person and facilities available at his disposal; or
 - the qualifications and experience of the persons employed in such institution and facilities available therein,
 - with regard to the conduct of such test, examinations and inspections, and more than one person or institution can be recognized as a competent person in relation to a factory;
- “hazardous process” means any process or activity in relation to an industry specified to the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would—

- cause material impairment to the health of the persons engaged in or connected therewith, or
- result in the pollution of the general environment:
- **Provided** that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule;]
- “young person” means a person who is either a child or an adolescent;
- “day” means a period of twenty-four hours beginning at midnight;
- “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of factories;
- “power” means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;
- “machinery” includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied;
- “manufacturing process” means any process for—
 - making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
 - pumping oil, water, sewage or any other substance; or];
 - generating, transforming or transmitting power; or
 - composing types for printing, printing by letterpress, lithography, photogravure or other similar process or book binding;] [or]
 - constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;
 - preserving or storing any article in cold storage;]
- “worker” means a person [employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal

employer, whether for remuneration or not,] in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process [but does not include any member of the armed forces of the union;]

- “factory” means any premises including the precincts thereof—
 - 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 does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952)], or [a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place;].
- “occupier” of a factory means the person who has ultimate control over the affairs of the factory:
[Provided that—
 - in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
 - in the case of a company, any one of the directors shall be deemed to be the occupier;
 - in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier:]

4.6.2 Factory Inspectorate

To get the plans of a factory approved, an application has to be made to the Chief Inspector of Factories. The application should be accompanied by the necessary documents. The Chief Inspector of Factories, if he is satisfied that the plans are in accordance with the requirements of the Act, will approve them (Section 6 and Rule 3).

Under the Act, the occupier or manager of a factory has to apply to the Chief Inspector of Factories for the registration of the factory and for obtaining the necessary licence. The application should be accompanied by the fees prescribed for the purpose. The Chief Inspector of Factories, if he is satisfied that there is no objection to the grant of a licence, will register the factory and grant a licence for it. The licence so granted may be amended, renewed, revoked or suspended in accordance with the Rules framed under the Act (Section 6 and Rules 5 to 13).

An Inspector appointed under the Act has power to enter any place which is used as a factory; to make an examination of the premises, plant and machinery; to require the production of any register and any other document relating to the factory; and to take statements of any person for the purpose of carrying out the purposes of the Act (Section 9).

The Inspectors are required:

- (i) to carry out duties as laid down under Section 9(b) and (c);
- (ii) to ensure that statutory provisions and rules framed are carried out properly;
and
- (iii) to launch prosecutions against factory owners under the provision of Chapter X of the Act.

Powers of Inspectors:

Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

- enter, with such assistants being persons in the service of the Government, or any local or other public authority, 40[or with an expert] as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;

- make examination of the premises, plant, machinery, article or substance;
- inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;
- require the production of any prescribed register or any other document relating to the factory;
- seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;
- direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);
- take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;
- in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article of substance or a part thereof, and detain it for so long as is necessary for such examination;
- Exercise such other powers as may be prescribed provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

4.6.3 Certifying Surgeons

Section 10 lays down that the State Government is empowered to appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act. They will be

appointed within such local limits or such factory or class of factories as the State Government may think fit. A certifying surgeon is authorised to nominate any qualified medical practitioner to exercise any of his powers under the Act for a specific period. But no person shall be appointed a certifying surgeon if he is, or becomes the occupier of factory or is or becomes directly or indirectly interested therein, or is otherwise in the employment of the factory [Section 10(3)]. However, the State Government may by order in writing and subject to such conditions as may be specified in the order, exempt any person or class of persons from the provisions of Section 10(3) in respect of any factory or class or description of factories.

The certifying surgeon shall carry out such duties as may be prescribed in connection with —

- the examination and certification of young persons under this Act;
- the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;
- exercising the medical supervision for any factory in respect of — (i) illness that has occurred due to the nature of manufacturing process; (ii) injury that is likely to be caused to the health of workers by reason of the adoption of any new manufacturing process; (iii) injury that is likely to occur to the health of young persons.

4.6.4 Health

Every factory must provide appropriate health measures in accordance with the provisions of the Act:

Sections 11 to 20 of the Factories Act, 1948, deals with the health of workers in a factory. These provisions have been incorporated to protect the health of workers. These provisions are in keeping with the object of the Act, as also with Article 42 of the Indian Constitution which requires that the State should make provision for securing just and human conditions of work. These provisions are as under:

4.6.4.1 Cleanliness [Section 11]

Every factory must be kept clean and free from effluvia arising from any drain, privy, or other nuisance. In particular, the following measures must be adopted:

- accumulation of dirt and refuse shall be removed daily from the floors and benches of work rooms, passages and staircases;
- the floor of every work room shall be cleaned at least once in every week by washing, using disinfectants, etc.;
- where the floor is liable to become wet, means of draining shall be provided and maintained;
- all inside walls, partitions, and ceilings etc. when painted otherwise than with washable water paints, shall be repainted or re-varnished at least once in every five years, where they have smooth impervious surfaces they must be cleaned at least once in fourteen months. In any other case they shall be white washed or colour washed at least once in fourteen months;
- where they are painted with washable water paints, be repainted with atleast one coat of such paint at least once in every period of three years and washed at least once in every period of six months;
- all doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years.

If in view of the nature of operations carried on in a factory (or class or description of factories or part of a factory) it is not possible for the occupier to comply with the above provisions, the State Government may by order exempt such factories from any of the provisions and specify alternative methods for keeping the factory clean.

4.6.4.2 Disposal of Wastes and Effluents [Section 12]

- Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein so as to render them innocuous, and for their disposal.
- Such an arrangement must be approved by the authority prescribed under the rules.

4.6.4.3 Ventilation and Temperature [Section 13]

Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom -

- adequate ventilation by the circulation of fresh air; and
- such a temperature as will secure to workers therein reasonable condition of comfort and prevent injury to health.

The walls and roofs of workrooms must be of such material and of such design as to keep the temperature low. Where the maintenance of high temperature is necessary for the process carried on in the factory, the workroom should be separated from the process either by insulating the hot parts or by some effective devices. The State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or parts thereof and direct that proper measuring instruments at such places and in such position as may be prescribed shall be maintained.

If it appears to the Chief Inspector that excessively high temperatures in any factory can be reduced by the adoption of suitable measures, he may serve on the occupier, an order in writing specifying the measures which, in his opinion should be adopted and requiring them to be carried out before a specified date.

4.6.4.4 Dust and Fume [Section 14]

In any factory where dust or fume is given off in any manufacturing process which is likely to be injurious or offensive to the workers, effective measures must be taken to prevent the inhalation of the dust or fume. Any exhaust appliance which may be necessary shall be applied as near as possible to the point of origin of the dust or fume, and such point shall be enclosed so far as possible. The exhaust fumes of

stationary internal combustion engines must be conducted into the open or outside the factory.

4.6.4.5 Artificial Humidification [Section 15]

The State Government is empowered to make rules for all factories in which the humidity of the air is artificially increased. The rules should relate to -

- prescribing standards of humidification;
- regulating the methods for artificially increasing the humidity of the air;
- directing prescribed tests for determining the humidity of the air;
- methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

The water used for humidification shall be taken from a public supply or other source of drinking water or shall be effectively purified before it is so used.

An inspector may by an order in writing, specify measures to be taken to effectively purify water used for artificial humidification; if the water is not taken or purified as specified above. Such order must be complied with before the dates specified therein.

4.6.4.6 Overcrowding [Section 16]

Section 16 provides that there must not be over-crowding in any room of a factory so as to cause injury to the health of the workers. In order to prevent over-crowding the section requires a minimum of 14.2 cubic metres of space per worker for factories built after the commencement of the Act and 9.9 cubic metres for factories built before the commencement of the Act. In calculating the amount of space available, no more than 4.2 metres above the level of the floor is to be counted. The Chief Inspector may paste a notice in the workroom indicating the maximum number of workers who may be employed in the room. The Chief Inspector may by an order in writing, exempt a workroom from the above provisions, if in his opinion, it is unnecessary in the interest of the health of the workers.

4.6.4.7 Lighting [Section 17]

Every part of the factory must be provided with sufficient and suitable lighting, natural or artificial or both. Effective provision must be made for the prevention of glare and the formation of shadows likely to cause eye-strain or the risk of accident to any worker. The State Government may prescribe standards of sufficient and suitable lighting.

4.6.4.8 Drinking Water [Section 18]

Arrangements shall be made to provide and maintain at suitable points a sufficient supply of wholesome drinking water. All such points shall be clearly marked 'drinking water' in a language understood by a majority of the workers. Every such point shall not be situated within six metres of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination. Factories employing over 250 workers are required to provide cool drinking water during hot weather.

4.6.4.9 Latrines and Urinals [Section 19]

Section 19 requires sufficient latrine and urinal accommodation and there must be separate closed accommodation for male and female workers. Such accommodation must be adequately lighted, ventilated and maintained in a clean and sanitary condition. These should be situated at suitable places accessible to the workers. Sufficient number of sweepers should be employed to keep urinals, latrines and washing places clean. Where more than 250 workers are ordinarily employed, all latrines and urinal accommodation shall be of prescribed sanitary types. The floors and internal wall upon a height of ninety centimetres of the latrines and urinals and the sanitary blocks shall be made in glazed tiles or otherwise finished to provide smooth, polished impervious surface. The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the number of male and female workers. Other rules

regarding sanitation, including the obligation of the workers in this regard may be made.

4.6.4.10 Spittoons [Section 20]

There shall be provided a sufficient number of spittoons at convenient places and they shall be maintained in a clean and hygienic condition. No person shall spit anywhere except in the spittoons. A notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises. If a person violates this provision he may be fined upto rupees five.

4.6.5 Safety

Sections 21 to 41 of the Act contain the provisions relating to the safety of the workers. These provisions are absolute in character and it is the duty of the occupier of every factory to comply with them. They are summarised as under:

4.6.5.1 Fencing of Machinery [Section 21]

Compulsory fencing of all sorts of machinery is provided for by this section. In every factory, every dangerous part of any machinery shall be securely fenced by safeguards of substantial construction which shall be constantly maintained and kept in position while the parts of machinery they are fencing are in motion or in use. The fencing of machinery etc. must be secure and safe. It must be in accordance with the best known method. A machine is said to be securely fenced if fenced against dangers which may be reasonably foreseen. The liability to fence is absolute and the employer cannot evade his liability on commercial or mechanical reasons. The State Government may also prescribe by rules such further precautions in respect of any particular machinery or its part for securing the safety of the workers. It may also exempt any particular machinery or part thereof from the provisions of this section.

4.6.5.2 Work on or near Machinery in Motion [Section 22]

With a view to ensure the safety of the workers, Section 22 requires that examination, lubrication, etc. of the machinery while it is in motion should be carried out only by a specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier). The name of such a male worker should have been recorded in the register prescribed in this behalf.

Such worker shall not handle a belt at a moving pulley unless —

- the belt is not more than fifteen centimeters in width;
- the pulley is normally for the purpose of drive and not merely a fry-wheel or balance wheel (in which case a belt is not permissible);
- the belt joint is either laced or flush with the belt;
- the belt, including the joint and pulley rim are in good condition;
- there is reasonable clearance between the pulley and any fixed plant or structure;
- secure foothold and where necessary secure handhold are provided for operator; and
- any ladder in use for carrying out any examination or operation aforesaid is securely fixed or lashed or is firmly held by a second person.

No woman or young person shall be allowed to clean, lubricate or adjust any part of the machinery while it is in motion if it is likely to expose her or him to risk or injury from any moving part.

The State Government may prohibit by notification in the Official Gazette, in any specified factory or class or description of factories the cleaning, lubricating or adjusting by any person of specific part of machinery when those parts are in motion.

4.6.5.2 Employment of Young Persons on Dangerous Machines [Section 23]

No young person shall be required or allowed to work at any dangerous machine unless —

- he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed; and

- he has received sufficient training in work at the machine or is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

The State Government may prescribe what machines are dangerous for the purpose of this section. This section only applies to young persons and not to women.

4.6.5.3 Striking Gear and Devices for Cutting off Power [Section 24]

In every factory, suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery. Such gear or appliance shall be so constructed, placed and maintained as to prevent the belt from creeping back on to the fast pulley.

Driving belts when not in use shall not be allowed to rest or ride upon shafting in motion. Suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom.

When a device, which can inadvertently shift from 'off' to 'on' position, is provided in a factory to cut off power, arrangements shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machine, to which the device is fitted.

4.6.5.4 Self-acting Machines [Section 25]

No traversing part of a self-acting machine in any factory and no material carried thereon shall be allowed to run on its outward or inward traverse within a distance of forty-five centimetres from any fixed structure which is not part of the machine. This restriction would apply if the space over which it runs is a space over which any person is liable to pass, whether in the course of employment or otherwise.

The Chief Inspector may permit the continued use of a machine installed before the commencement of the Act which does not comply with these requirements. He may impose such conditions for ensuring safety as he may think fit to impose.

4.6.5.5 Casing of New Machinery [Section 26]

All machinery driven by power and installed in any factory after 1st April 1949 must be encased or otherwise effectively guarded as to prevent danger. It is a punishable offence to sell or let out on hire any machine which does not comply with the above provision. The offender may be punished with imprisonment up to three months or fine up to Rs. 500 or both.

It is noteworthy that this section places an obligation on the agents, sellers and hirers also and provides for a fine in case of breach. The obligation is cast upon middlemen also.

4.6.5.6 Prohibition of Employment of Women & Children Near Cotton-openers [Sec. 27]

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work. But if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

4.6.5.7 Hoists and Lifts [Section 28]

In every factory every hoist and lift shall be of good mechanical construction, sound material and adequate strength. They should be properly maintained and thoroughly examined by a competent person at least once in every period of six months. A register containing the prescribed particulars of every such examination shall also be kept.

Every hoistway and liftway must be sufficiently protected by a proper enclosure fitted with gates. The maximum safe working load must be clearly marked on every hoist or lift and a larger load should not be carried thereon. The cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side affording access to a landing. Every gate referred to above shall be fitted with interlocking

device to ensure that the gate cannot be opened except when the cage is at a landing and that the cage cannot be moved unless the gate is closed.

In the case of hoists and lifts installed after commencement of the Act:

- there should be at least two ropes or chains separately connected with a cage and balance weight, each capable of carrying the whole weight of the cage with its maximum load;
- efficient devices should be provided and maintained to support the cage in the event of breakage of ropes, chains or attachments;
- an efficient automatic device should be provided and maintained to prevent the cage from over running.

The Chief Inspector may permit the continued use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of this Section upon such conditions for ensuring safety as he may think fit to impose.

The State Government may in respect of any class or description of hoist or lift grant exemption from the application of the above provisions.

4.6.5.8 Lifting Machine, Chains, Ropes and Lifting Tackles [Section 29]

In every factory, lifting machines, chains, ropes and lifting tackles must be of good construction, sound material and adequate strength and free from defects. These shall be properly maintained and thoroughly examined by a competent person at least once in every period of twelve months. A register shall be kept containing the prescribed particulars of every such examination. No lifting machine and no chain, rope or lifting tackle shall be loaded beyond the safe working load which shall be plainly marked thereon.

4.6.5.9 Revolving Machinery [Section 30]

In every factory in which the process of grinding is carried on, there shall be permanently affixed or placed near each machine a notice indicating the maximum safe working speed. Effective measures must be taken to ensure that the safe working speed is not exceeded.

4.6.5.10 Pressure Plant [Section 31]

If in any factory any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.

The State Government may make rules for the exemption and testing of machinery and prescribe safety measures.

4.6.5.11 Floors, Stairs and Means of Access [Section 32]

In every factory all floors, steps, stairs, passages, and gangways shall be of sound construction and properly kept and maintained and shall be kept free from obstructions and substances likely to cause persons to slip.

A sufficient number of hand rails must also be provided where it is necessary. Safe means of access must be provided and maintained at every place at which any person is at any time required to work.

4.6.5.12 Pits, Sumps, Opening in Floor etc. [Section 33]

In every factory, every fixed vessel, sump, tank, pit or opening in the ground or in a floor, which may be a source of danger, shall be either securely covered or fenced. An omission to securely fence is a continuing offence.

4.6.5.13 Excessive Weights [Section 34]

No person shall be employed in any factory to lift, carry or move any load so heavy as is likely to cause him injury. State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories.

4.6.5.14 Protection of Eyes [Section 35]

In respect of any manufacturing process carried on in any factory involving risk of injury to the eyes from particles or fragments thrown off in the course of process or by reason of exposure to excessive light, the State Government is given the power

to make rules requiring that such factories must provide effective screens or suitable goggles to protect the employed persons.

4.6.5.15 Precautions Against Dangerous Fumes, Gases, etc. [Section 36]

No person shall be required or allowed to enter any chamber, tank, vat, pit, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of ingress. No person shall be required or allowed to enter such premises until all practicable measures have been taken.

4.6.5.16 Precautions Regarding the use of Portable Electric Lights [Section 36-A]

In any factory, no portable electric light or any other electric appliance of voltage exceeding twenty four volts shall be permitted for use inside any chamber, vat, tank, pit, flue, or other confined space unless adequate safety devices are provided.

4.6.5.17 Explosive or Inflammable Dust, Gas, etc. [Section 37]

Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by (a) effective enclosure of the plant or machinery used in the process; (b) removal or prevention of the accumulation of dust, gas, fume or vapour; (c) exclusion of effective enclosure of all possible sources of ignition.

The State Government is empowered to make rules to exempt any factory from compliance of this Section.

4.6.5.18 Precautions in Case of Fire [Section 38]

- In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread, both internally and externally and to provide and maintain —
 - safe means of escape for all persons in the event of a fire, and
 - the necessary equipment and facilities for extinguishing fire.

- Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such cases.

4.6.5.19 Power to Require Specifications of Defective Parts or Tests of Stability [Sec. 39]

This section empowers the inspector to serve on the manager or occupier or both of a factory an order in writing requiring him to furnish specifications of defective parts or he may order to carry out tests as he may specify and to inform him of the result.

4.6.5.20 Safety of Buildings and Machinery [Section 40]

Section 40 empowers the inspector to serve on the manager or occupier or both of a factory an order in writing specifying the measures which should be adopted before a specified date for safety of buildings and machinery. In case of imminent danger the inspector is empowered to prohibit the use of such building, machinery and so on until properly repaired or altered.

4.6.5.21 Maintenance of Buildings [Section 40-A]

Where it appears to the inspector that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be taken and requiring the same to be carried out before such date as is specified in the order.

4.6.5.22 Safety Officers [Section 40 - B]

- In every factory-
 - wherein one thousand or more workers are ordinarily employed, or
 - wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, the occupier shall, if so required by

the State Government by notification in the Official Gazette, employ such number of Safety Officers as may be specified in that notification.

- The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government.

Safety

- To fence dangerous parts of the machines;
- To prohibit employment of women and children near cotton openers;
- To protect workers from repairing machinery in motion;
- To maintain hoists and lifts of good mechanical construction, of sound materials, and adequate strength;
- To keep all floors, steps, stairs, passages and gangways in good condition;
- To prohibit any person from carrying or moving any load so heavy as to be likely to cause him injury;
- To protect workers from injury to eyes from particles or fragments thrown off in the course of the manufacturing process;
- To protect workers from dangerous fumes, inflammable dust, gas, such other materials, and
- To protect workers from fire and provide for precautionary measures.

4.6.6 Welfare

Provisions relating to the welfare of the factory workers have been made in Sections 42-50 in Chapter V of the Factories Act, which are as under:

4.6.6.1 Washing Facilities [Section 42]

In every factory —

- adequate and suitable facilities for washing shall be provided and maintained for the use of workers;

- separate and adequately screened facilities shall be provided for the use of male and female workers;
- such facilities shall be easily accessible and shall be kept clean.

The State Government may make rules prescribing adequate standards of facilities for washing.

4.6.6.2 Facilities for Storing and Drying Clothing [Section 43]

In every factory facilities must be provided for the storage of clothing not worn during working hours and for the drying of wet clothing.

4.6.6.3 Facilities for Sitting [Section 44]

In every factory where workers are obliged to work in a standing position, suitable arrangements for sitting should be made so that such workers may take advantage of an opportunity for rest which may occur in the course of their work.

Where the Chief Inspector is of the opinion that workers in a particular manufacturing process or room are able to do their work efficiently in a sitting position, he may by an order in writing require the occupier of the factory to provide seating arrangements before a specified date.

4.6.6.4 First Aid Appliances [Section 45]

The Act has made the provision for first aid appliances obligatory. Every factory must have first aid boxes or cupboards equipped with the prescribed contents so as to be readily accessible during all working hours. The number of such boxes or cupboards to be provided and maintained must not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory. Each first aid box or cupboard shall be kept in the charge of a separate responsible person who holds certificate of first aid treatment recognised by the State Government and who shall always be readily available during the working hours of the factory.

In every factory where more than 500 workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size containing the prescribed equipment. The ambulance room shall be in the charge

of properly qualified nursing staff. These facilities shall be made readily available during the working hours of the factory.

4.6.6.5 Canteen [Section 46]

Section 46 casts statutory duty on an occupier of a factory, to provide a canteen conforming to the rules which may be prescribed by the State Government.

In every factory employing more than 250 workers, the State Government is given the right to require such factories to maintain a canteen for the use of the workers.

This section authorises the State Government to make rules in respect of canteens providing for —

- (a) the date by which the canteen shall be provided;
- (b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
- (c) the foodstuffs to be served therein and the charges which may be made thereof;
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of a canteen;
- (e) the items of expenditure in the running of the canteens which are not to be taken into account in fixing the cost of the foodstuffs and which shall be borne by the employer.

4.6.6.6 Shelters, Rest Rooms and Lunch Rooms [Section 47]

In every factory where more than 150 workers are employed, adequate and suitable shelter or rest rooms and a suitable lunch room shall be provided and maintained for the use of workers. But there is no need to provide and maintain a lunch room, where any canteen is maintained in accordance with the provisions of Section 46. The section further provides that where a lunch-room exists, no worker shall eat any food in the workroom. Such shelters or rest rooms shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

4.6.6.7 Creches [Section 48]

In every factory wherein more than 30 women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women. These rooms are called creches. Such rooms must have adequate accommodation and shall be adequately lighted and ventilated. They shall be maintained in a clean and sanitary condition. Such rooms shall be under the charge of women trained in the care of children and infants. Suitable provision must be made in such creches for washing and changing the clothing of the children and for the supply of free milk or refreshments or both. Facilities must be provided to mothers to feed their children at necessary intervals.

4.6.6.8 Welfare Officers [Section 49]

The main duty to look after the welfare of the workers lies on the welfare officer of a factory. As such, in every factory wherein 500 or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed. The State Government may prescribe the duties, qualifications and conditions of service of such officers.

4.6.7 Hours of Work

The main restrictive provisions of the Act about the working hours of adults are:

- (a) A worker cannot be employed for more than forty-eight hours in a week (Section 51).
- (b) He must be given a holiday for a whole day in every week (Section 52).
- (c) If a worker is deprived of any of the weekly holidays, he shall be given compensatory holidays (Section 53).
- (d) A worker cannot be employed for more than nine hours in a day (Section 54).
- (e) A worker must be given an interval of rest of at least half an hour after five hours of work (Section 55).
- (f) The total periods of work, inclusive of rest interval, must not be spread over more than ten and half hours in a day (Section 56).

(g) If a worker works for more than nine hours in a day or for more than forty-eight hours in a week, he shall be paid for overtime work at the rate of twice the ordinary rate of wages (Section 59).

The State Government may make rules in respect of adult workers in factories providing for the exemption, to such an extent and subject to such conditions as may be prescribed. In making rules under this section, the State Government shall not exceed, except in respect of exemption, the following limits of work, inclusive of over-time:

- (i) The total number of hours of work in any day shall not exceed ten.
- (ii) The spread over, inclusive of the intervals for rest, shall not exceed twelve hours in any day.
- (iii) The total number of hours of work in a week, including over-time, shall not exceed sixty.
- (iv) The total number of hours of over-time shall not exceed fifty in any one quarter

4.6.8 Employment of Women

That women should not be employed during night for their own safety and welfare was a philosophy of bygone age out of tune with modern claims of equality, especially between sexes, was brought out by Andhra Pradesh High Court in the case of *Triveni K.S. and Ors. v. Union of India and Ors.* (2002 III LLJ 320).

The High Court observed, after referring to Articles 2,3 and 5 of the Convention 89 of the ILO that it had to be seen whether the State was following the Convention. Under Section 66(2) of the Factories Act, the State had been authorised to prescribe working hours for women without any restrictions in fish curing and fish canning industries. This exception was not for protecting women but for protecting the fish which would deteriorate. It looked an absurd argument that women would be safe in fish curing or canning industry during night but not safe in a textile industry. The High Court in consequence, struck down Section 66(1)(b) as unconstitutional and declared that the same safeguards provided to

women in fish industry should be given to workers in other industries during night time.

The main restrictive provisions of the Act about the employment of women and children are:

- (a) A woman worker cannot be employed except between the hours of 6 a.m. and 7 p.m.
- (b) The employment of a child below the age of 14 years is totally prohibited.
- (c) A child who has completed the age of 14 years but has not completed the age of 15 years can be employed for a maximum period of 4½ hours in a day.
- (d) A child cannot be employed during the night-time, *i.e.*, from 10 p.m. to 6 a.m.
- (e) A child worker must have a certificate of fitness granted by a Certifying Surgeon.
- (f) The manager must maintain a register of child workers in the prescribed form.
- (g) A child who has completed the age of 15 years but has not completed the age of 18 years can be employed as an adult if he has a certificate of fitness to perform a full day's work (Sections 66 to 71).

4.7 Workmen's Compensation Act 1923

Workmen's Compensation Act is one of the oldest social security legislation in India. Before constitution of such act it was almost impossible for an injured workman to recover damages or compensation for any injury sustained by him in the ordinary course of his employment. Of course, there were rare occasions when the employer was liable under the common law for his own personal negligence. The dependants of a deceased workman could, in rare cases, claim damages under the Indian Fatal Accidents Act, 1885, if the accident was due to a wrongful act, neglect or fault of the person who caused the death. In 1921, the government formulated some proposals for the grant of compensation and circulated them for opinion. The proposals received general support. As a result, the Workmen's Compensation Act was passed in March 1923 and was put

into force on July 1, 1924. Subsequently, there were a number of amendments to the Act. The Act contains 36 sections and four Schedules.

Object of the Act

The object of the Act is to make provision for the payment of compensation to workers for accidents arising out of and in the course of employment. The scheme of the Act is not to compensate the workman in lieu of wages, but to pay compensation for the injury sustained to him.

4.7.1 Scope and Coverage

The Act extends to the whole of India and applies to any person who is employed, otherwise than in a clerical capacity, in the railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads, bridges, etc., electricity generation, cinemas, catching or training of wild elephants, circus, and other hazardous occupations and employments specified in Schedule II to the Act. Under Sub-Section (3) of section 2 of the Act, the state governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months' notice in the Official Gazette. The Act, however, does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employees' State Insurance Act, 1948 as disablement and dependants' benefit are available under this Act.

The coverage of the Act has been extended to cooks employed in hotels and restaurants.

4.7.2 Definitions

"Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20;

"Compensation" means compensation as provided for by this Act;

"Dependant" means any of the following relatives of a deceased workman, namely:—

- a widow, a minor legitimate 5a[or adopted] son, and unmarried legitimate [or adopted] daughter, or a widowed mother; and
- if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;
- if wholly or in part dependent on the earnings of the workman at the time of his death,
 - (a) a widower,
 - (b) a parent other than a widowed mother,
 - (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate 6[or adopted] if married and a minor or if widowed and a minor,
 - (d) a minor brother or an unmarried sister or a widowed sister if a minor,
 - (e) a widowed daughter-in-law,
 - (f) a minor child of a pre-deceased son,
 - (g) a minor child of a pre-deceased daughter where no parent of the child is alive, or
 - (h) a paternal grandparent if no parent of the workman is alive.

“Mmmployer” includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;

“Managing agent” means any person appointed or acting as the representative of another person for the purpose of carrying on such other person’s trade or business, but does not include an individual manager subordinate to an employer;

“Minor” means a person who has not attained the age of 18 years;]

“Partial disablement” means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the

disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:

“Qualified medical practitioner” means any person registered and declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

“Total disablement” means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

“Wages” includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

“Workman” implies a person should first be employed; second, he should be employed for the purposes of the employer’s trade or business; and, third, the capacity in which he works should be one set out in the list in Schedule II of the Act.

4.7.3 Distribution of Compensation

The compensation shall be paid by the employer to a workman for any personal injury sustained by him in an accident arising out of and in the course of his employment. In Schedule I to the Act, the percentage loss of earning capacity or disablement caused by different types of injuries has been listed. However, the employer will not be liable to pay compensation for any kind of disablement (except death) which does not continue for more than three days, if the injury is caused when the workman was under the influence of drink or drugs or willfully disobeyed a clear order or violated a rule expressly framed for the purpose of securing his safety or willfully removed or disregarded a safety device.

A workman is also not entitled to compensation if he does not present himself for medical examination when required, or if he fails to take proper medical treatment which aggravates the injury or disease. In case it is not fatal, an employment injury may

cause any injury resulting in permanent total disablement; permanent partial disablement; or temporary disablement (Section 3).

The rate of compensation in case of death is an amount equal to 50 percent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of ` 80,000, whichever is higher. Where permanent total disablement results from the injury, the compensation will be an amount equal to 60 percent of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of ` 90,000 whichever is higher.

Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the above purposes will be deemed to be four thousand rupees only. The ceiling on maximum amount of compensation is 4.56 lakh in case of death and ` 5.48 lakh for permanent total disablement.

Where permanent partial disablement results from the injury, if 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. The percentage loss of earning capacity depends on the loss of limbs and varies from 1 percent to 90 percent.

In the case of an injury not specified in Schedule I, such percentage of the compensation is payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury. Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but shall not in any case exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

In case of temporary disablement, a half-monthly payment of the sum equivalent to 25 percent of monthly wages of the workman has to be paid. Half-monthly payment as compensation will be payable on the 16th day from the date of disablement. In cases where the disablement is for 28 days or more, compensation is payable from the date of disablement. In other cases, it is payable after the expiry of a waiting period of 3 days.

Thereafter, the compensation will be payable half-monthly during the period of disablement or during a period of 5 years, whichever is shorter.

There is also a provision for commutation of half-monthly payments to a lump sum amount by agreement between the parties or by an application by either party to the Commissioner for Workmen's Compensation if the payments continue for not less than six months (Section 4 and 7).

If the workman contracts any occupational disease peculiar to that employment, that would be deemed to be an injury by accident arising out of and in the course of his employment for purposes of this Act. In the case of occupational diseases, the compensation will be payable only if the workman has been in the service of the employer for more than six months.

Some of the occupational diseases listed in Schedule III to the Act are: anthrax, poisoning by lead, phosphorous or mercury, telegraphist's cramp, silicosis, asbestosis, and bagassosis (Section 3).

Authority

It is provided that all cases of fatal accidents should be brought to the notice of the Commissioner for Workmen's Compensation; and if the employer admits the liability, the amount of compensation payable should be deposited with him. Where the employer disclaims his liability for compensation to the extent claimed, he has to make provisional payment based on the extent of liability which he accepts, and such payment must be deposited with the Commissioner or paid to the workman. In such cases, the Commissioner may, after such enquiry as he thinks fit, inform the dependants that it is open to them to prefer a claim and may give such other information as he thinks fit. Advances by the employers against compensation are permitted only to the extent of an amount equal to 3 months' wages. If the injury of the workman results in his death, the employer shall, in addition to the compensation, deposit with the commissioner a sum of ` 1,000 for payment of the same to the eldest surviving dependent of the workman towards the funeral expenses. The employer is required to file annual returns giving details of the compensation in order to indemnify the person

who incurred funeral expenses. The employer is required to file annual returns giving details of the compensation paid, the number of injuries and other particulars (Sections 4A, 8 and 16).

The amount deposited with the Commissioner for Workmen's Compensation is payable to the dependants of the workman. The amount of compensation is to be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit (Sections 2 and 8).

If an employer is in default, in paying the compensation within one month from the date it fell due, the Commissioner may direct the recovery of not only the amount of the arrears but also a simple interest at the rate of six percent per annum on the amount due. If, in the opinion of the Commissioner, there is no justification for the delay, an additional sum, not exceeding 50 percent of such amount, may be recovered from the employer by way of interest and penalty (Section 4-A).

Contracting Out

A contract or agreement, whereby the workman relinquishes his right to compensation from the employer for the personal injury arising out of and in the course of employment, is null and void to the extent to which such contract or agreement purports to remove or reduces, the liability for, the payment of compensation. The compensation payable to the workman or to his dependants cannot be assigned, attached or charged (Section 9).

Claims

In case the compensation is not paid by the employer, the workman concerned or his dependants may claim the same by filing an application before the Commissioner for Workmen's Compensation. The claim shall be filed within a period of two years of the occurrence of the accident or death. The application which is filed after the period of limitation can be entertained if sufficient cause exists. An appeal will lie to the High Court against certain orders of the Commissioner if a substantial question of law is involved. An appeal by an employer against an award of compensation is incompetent unless the memorandum of appeal is accompanied by a certificate that the employer

has deposited the amount of such compensation. Unless such a certificate accompanies the memorandum of appeal, the appeal cannot be regarded as having been validly instituted. The period of limitation for an appeal under Section 30 is sixty days (Sections 10 and 30).

Obligations of Employers

Pay compensation for the employment injury or deposit the amount with the Commissioner for Workmen's Compensation as soon as it falls due.

- Do not deduct from the compensation amount any expenses incurred by the workman for his medical treatment.
- Notify to the Commissioner, or any other authority specified by the Government for this purpose, any accident occurring on his premises which results in death or serious bodily injury, explaining the circumstances attending death or serious injury within seven days of occurrence.
- Submit an annual return to the government 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 may be required by the authority concerned.
- Arrange to get registered any agreement made with the worker or his dependents settling the amount of lump-sum payable as compensation, or by way of redemption of half-monthly payments on account of temporary disablement, with the Commissioner.

Obligations of Workmen

- Give notice of the accident and the occupational disease in the prescribed form for claiming compensation.
- Submit to medical examination by a qualified medical practitioner and follow the treatment and instructions given by him.

Administration

The Act is administered by state governments which are required to appoint Commissioners for Workmen's Compensation. The functions of the Commissioner include:

- Settlement of disputed claims;
- Disposal of cases of injuries involving death; and
- Revision of periodical payments (Section 20).

The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise (Section 31).

The Act made provision for the framing of the rules by the State and Central Government and also their publication (Sections 32-36).

AMOUNT OF COMPENSATION SHALL BE AS PER THE PROVISIONS OF THIS ACT:

	an amount equal to 39a[fifty] per cent of the monthly wages of the deceased workman
(a) where death results from the injury	multiplied by the relevant factor;
	or
	an amount of 39b[eighty] thousand rupees, whichever is more;
	an amount equal to 39c[sixty] per cent of the monthly wages of the injured workman
(b) where permanent total disablement results from the injury	multiplied by the relevant factor;
	or
	an amount of 39d[ninety] thousand rupees, whichever is more.

Explanation I: For the purposes 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 last birthday immediately

preceding the date on which the compensation fell due.

Explanation II: Where the monthly wages of a workman exceed 39e[four] thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be 39e[four] thousand rupees only;

- (i) 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
- (c) where permanent partial the loss of earning capacity caused by that disablement results from the injury injury, and
- (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

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 purposes 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, a half-monthly payment of the sum equivalent to whether total or partial, results from twenty-five per cent of monthly wages of the

the injury

workman, to be paid in accordance with the provisions of sub-section (2).

4.8 THE MATERNITY BENEFIT ACT, 1930

4.8.1 Scope and coverage of the Act

The Maternity Benefit Act is a piece of social legislation enacted to promote the welfare of working women. It prohibits the working of pregnant women for a specified period before and after delivery. It also provides for maternity leave and payment of certain monetary benefits to women workers during the period when they are out of employment because of their pregnancy.

The Act extends to the whole of India and applies to every establishment, factory, mine or plantation, including any such establishment belonging to the government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. The Act was brought into force in mines with effect from 1st November 1963, after repealing the Mines Maternity Benefit Act, 1941.

The State government may extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. But the State government can do so only with the approval of the Central Government, after giving not less than two months' notice, by a notification in the Official Gazette, of its intention to do so.

The Act was amended on May 1, 1976 to extend the benefits to all women employees earning more than the wage ceiling in establishments covered by the E.S.I. Act. The Act was also amended in the year 1988 providing, inter-alia, for extension of its provisions to shops and establishments, employing 10 or more persons.

The Act specifically excludes the applicability of the provisions of the Act to any factory or other establishment to which provisions of the Employees' State Insurance Act, 1948, apply for the time being.

4.8.2 Definitions

“Appropriate Government” means, in relation to an establishment being a mine, 6[or an establishment wherein 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;

“Child” includes a still-born child;

“Delivery” means the birth of a child;

“Employer” means,-

- 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;
- in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;
- in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;

“Establishment” means—

- a factory;
- a mine;
- a plantation;
- an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

“Factory” means a factory as defined in clause (m) of section 2 of the Factories Act 1948 (63 of 1948);

“Inspector” means an Inspector appointed under section 14;

“Maternity benefit” means the payment referred to in sub-section (1) of section 5;

“Medical termination of pregnancy” means the termination of pregnancy permissible under the provisions of Medical Termination of Pregnancy Act, 1971(34 of 1971);]

“Mine” means a mine as defined in clause (j) of section (2) of the Mines Act, 1952 (35 of 1952);

“Miscarriage” means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (45 of 1860);

“Plantation” means a plantation as defined in clause (f) of section 2 of the Plantations Labour Act,

“Prescribed” means prescribed by rules made under this Act;

“State government” in relation to a Union territory, means the Administrator thereof;

“Wages” means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes-

- such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;
- incentive bonus; and
- the money value of the concessional supply of food grains and other articles, but does not include—
 - a. any bonus other than incentive bonus;
 - b. over-time earnings and any deduction or payment made on account of fines;
 - c. any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and
 - d. any gratuity payable on the termination of service;

“Woman” means a woman employed, whether directly or through any agency, for wages in any establishment.

4.8.3 Provisions:

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence.

The maximum period for which any woman shall be entitled to maternity benefit shall be 12 weeks in all whether taken before or after childbirth. However she cannot take more than six weeks before her expected delivery.

Prior to the amendment of 1989, a woman employee could not avail of the six weeks leave preceding the date of her delivery; she was entitled to only six weeks leave following the day of her delivery. However, by the above amendment, the position has changed. Now, in case a woman employee does not avail of six weeks leave preceding the date of her delivery, she can avail of that leave following her delivery, provided the total leave period, i.e. preceding and following the day of her delivery does not exceed 12 weeks.

Who is Entitled to Maternity Benefit

1. Every woman employee, whether employed directly or through a contractor, who has actually worked in the establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery, is entitled to receive maternity benefit.
2. The qualifying period of 80 days shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of immigration.
3. For calculating the number of days on which a woman has actually worked during the preceding 12 months, the days on which she has been laid off or was on holidays with wages shall also be counted.
4. There is neither a wage ceiling for coverage under the Act nor there is any restriction as regards the type of work a woman is engaged in.

Notice For Maternity Benefit

A woman employee entitled to maternity benefit may give a notice in writing (in the prescribed form) to her employer, stating as follows:

1. that her maternity benefit may be paid to her or to her nominee (to be specified in the notice);
2. that she will not work in any establishment during the period for which she receives maternity benefit; and
3. that she will be absent from work from such date (to be specified by her), which shall not be earlier than 6 weeks before the date of her expected delivery.

The notice may be given during the pregnancy or as soon as possible, after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from work after the day of her delivery. The failure to give notice, however, does not disentitle the woman to the benefit of the Act.

Restriction on Employment of Pregnant Women

1. No employer should knowingly employ a woman during the period of 6 weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy. Besides, no woman should work in any establishment during the said period of 6 weeks.
2. Further, the employer should not require a pregnant woman employee to do an arduous work involving long hours of standing or any work which is likely to interfere with her pregnancy or cause miscarriage or adversely affect her health, during the period of 1 month preceding the period of 6 weeks before the date of her expected delivery, and any period during the said period of 6 weeks for which she does not avail of the leave.

Discharge or Dismissal to be Void

When a pregnant 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 give notice of discharge or dismissal in such a day that the notice will expire during such absence or to vary to her disadvantage any of the conditions of her services.

Dismissal or discharge of a pregnant woman shall not disentitle her to the maternity benefit or medical bonus allowable under the Act except if it was on some other ground.

Other Benefits

Leave for miscarriage and illness

In case of miscarriage or medical termination of pregnancy, a woman shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage or medical termination of pregnancy.

Leave for Tubectomy operation

In case of tubectomy operation, a woman shall, on production of prescribed proof, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of operation.

Leave for illness

Leave for a maximum period of one month with wages at the rate of maternity benefit are allowable in case of illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy or tubectomy operation.

Medical bonus

Every woman entitled to maternity benefit shall also be allowed a medical bonus of Rs. 250, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

Duties of Employers

Important obligations of employers under the Act are:

1. To pay maternity benefit and/or medical bonus and allow maternity leave and nursing breaks to the woman employees, in accordance with the provisions of the Act.

2. Not to engage pregnant women in contravention of section 4 and not to dismiss or discharge a pregnant woman employee during the period of maternity leave.

Right of Employees

Important rights of an employee are:

1. To make a complaint to the Inspector and claim the amount of maternity benefit improperly withheld by the employer.
2. To appeal against an order of the employer depriving her of the maternity benefit or medical bonus or dismissing or discharging her from service, to the competent authority, within 60 days of the service of such order.

Penalties For Contravention of Act by Employer

For failure to pay maternity benefit as provided for under the Act, the penalty is imprisonment up to one year and fine of Rs. 5000. The minimum being 3 months and Rs. 2000 respectively.

For dismissal or discharge of a woman as provided for under the Act, the penalty is imprisonment up to one year and fine upto Rs. 5000. The minimum being 3 months and Rs. 2000 respectively. Disentitle the woman to the benefit of the Act.

4.9 CONCLUSION

Labour legislations seek to regulate the relations between an employer and his employees by safeguarding their interests. This chapter in detail, covers the concepts labor legislation, its objectives and growth. In addition, the various provisions of Factories Act Workman's Compensation Act and Maternity benefit Act are thoroughly discussed to familiarize the learners with the means of regulating employer-employee relations.

4.10 SELF ASSESSMENT QUESTIONS

Short and medium type questions

1. Define objectives of Labour legislation.

2. What are the principles of labour legislation?
3. What are the factors influencing labour legislation?
4. Define objectives of I L O.
5. Writes short notes on :
 - a) Employment of Women
 - b) Social Security
 - c) Employment of Children and Young person
6. Define the following terms:
 - a) Young Person
 - b) Power
 - c) Worker
 - d) Factory
 - e) Occupier
 - f) Manufacturing Process
7. Define Welfare Measures Under Factories Act.
8. What are the Working hours for Adults?
9. Shorts Note on:
 - a) Restriction on employment of Women
 - b) Annual leave with Wages
 - c) State's power to make rule
 - d) Hazardous Processes
10. What is the Working hour for Children and Women in a factory?
11. What are rules with regard to weekly holidays in the Factories Act?
12. Define general and special penalties for offences Under the Factories Act 1948.
13. What are the rights and obligations of Workers Under the factories Act 1948?
14. What do you mean by Welfare of Worker?
15. What are the safety provisions provided Under the factories Act?

16. Write short notes on:
- a) Partial Disablement
 - b) Total Disablement
 - c) Wages Under W. C. Act
 - d) Workman
 - e) Accident
 - f) Employer Under W. C. Act
17. What is the compensation for death Under W. C. Act?
18. What is the obligation of an employer Under W. C. Act?
19. What are the benefits available under Maternity Benefits Act?
20. What are the conditions for the payment of Maternity benefit under Maternity Benefit Act
21. State the different kinds of leave Under M. B. Act.

Long type questions

- 1) Discuss the need of labour legislation in India. Explain the objectives and principles of labour legislation.
- 2) Explain the origin and growth of labour legislation. Critically examine the impact of ILO on labour legislation. Discuss the objectives of ILO.
- 3) Explain the term 'worker' as defined under the Factories Act, 1948. State if the following are workers under Factories Act 1948.
 - a) A cleaner of a railway running
 - b) Partners working in a firm
 - c) Artists working in a film studio
- 4) Who is an occupier of a factory ? How is he so called and what are his responsibilities ?

- 5) Discuss in brief the provisions of Factories Act , 1948 regarding safety and welfare of workers.
- 6) Comment . Does the Factories Act apply to factories belonging to central government ?
- 7) Evaluate, Can the state government exempt from all provisions of the Factories Act institution of education in a work place or reformation.
- 8) Discuss the provisions regarding licensing and registration of factories with special reference to notice by occupier as required by the Act.
- 9) Enumerate the chief measures to be adopted for looking after the health of the workers employed in factory.
- 10) “The keystone of the Factories Act safely first and safety last”. Comment.
- 11) Describe various statutory measures for safety of workers in Factory.
- 12) Enumerate the health and welfare provisions under the Factories Act,1948.
- 13) Give a summary of the provisions of the Factories Act,1948 relating to regulation of hours of work.
- 14) What are the restrictions on the employment in factories of women and young persons under Factories Act,1948.
- 15) Discuss the provisions relating to leave with wages under Factories Act.
- 16) Describe briefly the content of the register of adult workers to be maintained under the provisions of the Factories Act 1948.
- 17) What are the rights and obligations of workers under the Factories Act ?
- 18) Discuss the scope and object of workmen’s compensation Act.
- 19) When is a employer liable and not liable to pay compensation for personal injury to a workman ?

- 20) Discuss the various types of compensation payable under the Workmen's Compensation Act.
- 21) Define and Discuss 'arising out of' and 'in the course of employment' as used in section 3 of the W.C. Act.
- 22) What is an occupational disease ? When are more than one employers liable for an occupational disease contracted by a workman ?
- 23) How is the amount of compensation payable to an injured workman calculated under the W.C. Act 1923 ?
- 24) What is the time of payment of compensation ? State the penalty for default of it.
- 25) Discuss the various kinds of leave to which a woman is entitled under the Maternity Benefit Act 1961.
- 26) What are the conditions for the payment of maternity benefit under the M.B. Act 1961 and under what condition benefit can be forfeited ?
- 27) Discuss the powers and duties of inspectors appointed under the M.B. Act.
- 28) Discuss the main provisions of the Maternity Benefit Act 1961

Unit - V

Objectives

The Objective of this unit is to impart the knowledge to the students to know the legislations relating to provident fund act, gratuity act, and other acts relating to wages.

After studying this chapter, you should be able to

- Understand the concept of social security
- Have a clear concept of different legislations.
- Understand the utility of various social security legislations.
- Understand the basic objectives of wage legislations.
- Understand the salient features of payment of wages Act.
- Explain the main provisions of minimum wages Act.
- Describe the features of Bonus Payment of Bonus Act.

STRUCTURE

- 5.1.The Employees' State Insurance Act, 1948
- 5.2.The Employees' Provident Funds Act, 1952
- 5.3 The payment of Gratuity Act 1972
- 5.4 The Payment of Wages Act 1936
- 5.5 The Minimum Wages Act 1948
- 5.6 The Payment of Bonus Act 1965
- 5.7 Conclusion
- 5.8 Self Assessment Questions

5.1. The Employees' State Insurance Act, 1948

The Employees' State Insurance Act, 1948 *provide for certain benefits to employees in case of sickness maternity and "employment injury" and to make provision for certain other matters in relation thereto.*

5.1.1 Applicability

Under Section 1(4) of the Act, the implementation of the scheme is territorial. The Act applies in the first instance to all factories (as per Factory Act 1948) or are being gradually extended, under Section 1(5) of the Act to cover:

- Smaller power-using factories employing 10 to 19 persons;
- Non-power using factories employing 20 or more persons;
- Shops, Hotels and restaurants;
- Cinemas, including preview theatres;
- Newspaper establishments; and
- Road motor transport undertakings employing 20 or more persons.

The Act, however, does not apply to a mine or railway running shed, and specified seasonal factories. The State Government may extend the provisions of the Act to cover other establishments or class of establishments, industrial, commercial, agricultural or otherwise, in consultation with the Corporation and with the approval of the Central Government, after giving six months' notice of its intention to do so in the Official Gazette.

Definitions

Employee: The term "employee" as defined under Section 2(9) of the Act, refers to any person employed on wages in, or in connection with, the work of a factory or establishment to which this Act applies.

Wages: "Wages" means all remuneration paid in cash if the terms of the contract are fulfilled, and includes any payment in any period of authorised leave, lockout or strike which is not illegal or lay-off, and includes other remuneration paid at intervals not exceeding two months but does not include:

- (i) Contribution paid to the provident fund or pension fund;
- (ii) Travelling allowance or value of travelling concession;
- (iii) Sum paid to defray special expenses; and
- (iv) Gratuity payable on discharge.

Contributions

The main sources of finance are the contributions from employers and employees and one-eighth share of expenses by State Governments towards the cost of medical care. Employees' contribution has to be calculated individually for each employee at 1.75 per cent of the wages paid/payable for every wage period. The employers' contribution, however, may be calculated at the rate of 4.75 per cent of the total wages paid to all the employees covered under the ESI Scheme in each wage period, rounded to the next higher multiple of five paise.

The total value of the combined employers' and the employees' share has to be deposited in the State Bank of India or in any other authorised bank or branch through a challan in quadruplicate as per the proforma on or before the 21st of the month following the calendar month in which the wages fall due. An employer who fails to pay his contribution within the periods specified shall be liable to pay interest and damages for late payment under Section 85(b) of the Act. The Act has laid down the purposes for which the fund may be expended. The accounts of the Corporation shall be audited by auditors appointed by the Central Government.

Employees whose average daily wage is below ` 40 are exempted from payment of their contribution; only the employer's contribution will be payable at 4.75 per cent in respect of such employees.

"Contribution period" and "benefit period" is fixed for the purpose of paying contributions and deriving benefits under the Act. In respect of the contribution period from 1st April to 30th September, the corresponding benefit period shall be from 1st January of the year following, to 30th June, and in respect of the contribution period

from 1st October to 31st March of the year following, the corresponding benefit period shall be from 1st July to 31st December of the year following. In the case of a newly employed person, the first contribution period shall commence from the date of his employment, and the corresponding first benefit period shall commence on the expiry of 9 months from the said date (Rule 2 and Regulation 4). The daily rate at which sickness benefit is payable to an insured employee during the period of his sickness is called “standard benefit rate.”

Registration

The registration of a factory/establishment with the Employees’ State Insurance Corporation is a statutory responsibility of the employer under Section 2-A of the Act, read with Regulation 10-B. The owner of a factory/establishment to which the Act applies for the first time is liable to furnish to the appropriate regional office, within 15 days after the Act becomes applicable, a declaration of registration in Form 01. On receipt of the 01 Form, the regional office will examine the coverage; and after it is satisfied that the Act applies to the factory/establishment, will allot a code number to the employer.

The forms for the registration of employees are the declaration form and return of declaration forms (covering letter). The principal employer should get the declaration form filled in by every employee covered under the scheme.

Maintenance of Registers

The statutory registers to be maintained up to date are:

- (a) Register of Employees;
- (b) Accident Book in which every accident to employees during the course of employment is recorded; and
- (c) Inspection Book (to be produced before an Inspector or any other authorised officer).

As and when required certain other forms, such as ESIC 32, ESIC 37, ESIC 53, ESIC 71, ESIC 72, ESIC 86, ESIC 105, shall be filled up.

Administration

The Scheme is administered by a corporate body called the Employees' State Insurance Corporation. It comprises members representing vital interest groups like employees, employers, the parliament, central and state governments and medical profession. This broad based body is primarily responsible for policy planning, decision-making and oversees the functioning of the scheme through a Standing Committee drawn from the main corporate body. The Corporation is headed by Union Minister of Labour as its Chairman.

The chief executive officer of the Corporation is its Director-General, who is also an ex-officio member of the Corporation and its Standing Committee. He is responsible for the formulation of policy, over-all supervision, co-ordination and liaison with Central and State Governments. The ESIC has set up a network of regional and local offices all over the country for the implementation of the Scheme. Each regional office is under the charge of a Regional Director. The Regional Office maintains all the records of insured persons within its area and administers local offices. The medical benefit is administered by the concerned state governments except in Delhi and Noida area of Uttar Pradesh where the Corporation runs the medical units directly.

Benefits

Sickness and Extended Sickness Benefit: Sickness benefit represents periodical payments made to an insured person for the period of certified sickness after completing nine months in insurable employment. To qualify for this benefit, contributions should have been paid for at least 78 days in the relevant contribution period. The maximum duration for availing sickness benefit is 91 days in two consecutive benefit periods. There is a waiting period of 2 days which is waived if the insured person is certified sick within 15 days of the last spell for which sickness benefit was last paid. The sickness benefit is paid at a standard rate for 28 wage slabs. The rates of payment vary from ` 14/- to ` 125/- per day averaging just above 50 percent of the daily wages.

After exhausting the sickness benefit payable upto 91 days, an insured person if suffering from tuberculosis/leprosy, mental and malignant diseases or any other specified long term diseases is entitled to extended sickness benefit at a higher rate of not less than 70 percent of average daily wage for a further period of 124 days/two years provided he has been in continuous employment for a period of two years or more in a factory or establishment to which the provisions of the Act apply.

Maternity Benefit: Maternity benefit implies cash payment to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, premature birth of a child as certified by a duly appointed medical officer or midwife. For entitlement to maternity benefit, the insured woman should have contributed for not less than 70 days in the immediately preceding two consecutive contribution periods corresponding to the benefit period in which the confinement occurs or is expected to occur. The daily rate of benefits double the standard sickness benefit rate, i.e. full wages.

Maternity benefit is normally payable for a maximum period of 12 weeks in case of confinement, 6 weeks in case of miscarriage or medical termination of pregnancy which can be extended upto one additional month in case of sickness arising out of confinement and duly certified by an authorised medical officer. Maternity benefit continues to be payable even in the event of death of an insured woman, during her confinement, or during the period of 6 weeks immediately following her confinement leaving behind a child for the whole of that period, and in case the child also dies, during the said period, until the death of the child.

Disablement Benefit: In case of temporary disability arising out of an employment injury, disablement benefit is admissible to an insured person for the entire period so certified by an insurance medical officer/practitioner for which the insured person does not work for wages. The benefit is not subject to any contributory condition and is payable at a rate which is not less than 70 percent of the daily average wages. The benefit is, however, not payable if the incapacity is less than 3 days excluding the date of accident.

In case an employment injury results in permanent, partial or total loss of earning capacity, periodical payments are made to the insured persons for life at a rate depending on the actual loss of earning capacity as may be certified by a duly constituted medical board. Commutation of periodical payments into lump sum one time payment is permissible in certain cases.

Dependants' Benefit: Periodical pension is paid to the dependants of a deceased insured person where death occurs as a result of an employment injury or occupational disease. The widow receives monthly pension for life or until remarriage, at a fixed rate equivalent to 3/5th of the disablement benefit rate and each dependant child is paid an amount equivalent to 2/5th thereof until he/she attains 18 years of age, provided that, in case of infirmity, the benefit continues to be paid till the infirmity lasts. However, it is subject to the condition that the total dependants' benefit distributed among the widow and legitimate or adopted children of the deceased insured person, does not exceed, at any time, the full rate of disablement benefit. In case it exceeds the given ceiling, the share of each of the dependants is, proportionately reduced. The benefit is not payable to married daughters.

In case the insured person does not leave behind any widow or child, the benefit is payable to other dependants including parents.

The amount of pension paid to the dependants of a deceased insured person is reviewed vis-à-vis the cost of living index and increases are granted from time to time to compensate for erosion in its real value.

Medical Benefit: An insured person and his family members become entitled to medical care from the date he enters the insurable employment and the entitlement continues as long as the insured person is in insurable employment or is qualified to claim sickness, maternity or disablement benefit. The entitlement to medical care is extended upto two years to persons suffering from any specified chronic or long-term diseases. Medical treatment to persons, who go out of coverage during the period of treatment, is not discontinued till the spell of sickness ends. All insured persons and members of their family are entitled to free, full and comprehensive

medical care under the scheme. The package covers all aspects of healthcare from primary to super-specialist facilities, such as: (i) Out-patient treatment; (ii) Domiciliary treatment; (iii) Specialist consultation and diagnostic facilities; (iv) In-patient treatment; (v) Free supply of drugs and dressings; (vi) X-ray and laboratory investigations; (vii) Vaccination and preventive inoculations; (viii) Ante-natal care, confinement and post-natal care; (ix) Ambulance service or conveyance charges; (x) Free diet during admission in hospitals; (xi) Free supply of artificial limbs, aids and appliances for physical rehabilitation; (xii) Family welfare services and other national health programme services; (xiii) Medical certification; and (xiv) Special provisions including super-specialty treatment.

Funeral Benefit: Funeral expenses are in the nature of a lump sum payment upto a maximum of ` 2500 made to defray the expenditure of the funeral of deceased insured person. The amount is paid either to the eldest surviving member of the family or, in his absence, to the person who actually incurs the expenditure on the funeral.

Rehabilitation Benefit: The corporation grants rehabilitation allowance to the insured persons, for each day, on which they remain admitted in an artificial limb centre, on the rates, which generally conform to double the standard sickness benefit rate.

All the benefits under the scheme are paid in cash except medical benefit, which is given in kind.

Restrictions

When a person is entitled to any of the benefits provided under this Act, he shall not be entitled to receive any similar benefit under any other enactment. An insured person will not be entitled to receive for the same period:

- (a) Both sickness benefit and maternity benefit; or
- (b) Both sickness benefit and disablement benefit for temporary disablement; or
- (c) Both maternity benefit and disablement benefit for temporary disablement.

Where a person is entitled to more than one of the benefits, he has an option to select any one of them.

Protection

The employer cannot dismiss, discharge or otherwise punish an employee during the period he/she is in receipt of sickness benefit or maternity benefit, or of disablement benefit, or is under medical treatment for sickness, or is absent from work as a result of illness which arises out of pregnancy or confinement. Any notice of dismissal, discharge or reduction during the period specified above is invalid and inoperative.

An employer can discharge or punish an employee on due notice if:

- (i) He/she has received temporary disablement benefit and remained absent for six months or more continuously;
- (ii) He/she is under medical treatment for sickness, otherwise than T.B. or a disease arising out of pregnancy, and has remained absent continuously for six months or more; and
- (iii) He/she is under medical treatment for T.B. or a malignant disease and has remained absent continuously for 18 months or more (Section 73 and Regulation 98).

Penalties and Damages

The Act provides for penalties and damages for various offences. It also provides that if any person commits any offence after having been convicted by the court, he will be punishable, for every such subsequent offence, with imprisonment for a term which may extend to one year or with fine up to ` 2,000 or both. If the subsequent offence is for failure to pay any contribution, then for every such subsequent offence a person is liable to punishment for a term of imprisonment which may extend up to one year and which shall not be less than 3 months; and he will also be liable to pay a fine up to ` 4,000.

Any contribution due under the Act and not paid can be recovered through the District Collector under Section 45-B of the Act as arrears of land revenue. The employer can raise any dispute for adjudication in the Employees' Insurance Court of the area, set up under Section 74 of the Act.

Under Regulation 31-A, the employer is liable to pay interest at the rate of 6 per cent per annum for each day of default or delay in the payment of his contribution. In addition, under Section 85-B of the Act, the Corporation is empowered to recover damages from the employer who fails to pay the contribution or delays payment. The amount of damages, however, cannot exceed the amount of contribution. The damages can also be recovered as arrears of land revenue.

Under Section 85-B, the power to levy damages is only discretionary. The power to levy and recover damages is in the nature of quasi-penal provision. Hence the ESI authorities will be obliged to give reasonable opportunity to the employer and hold proper adjudication before levying damages.

Miscellaneous

Cash benefits payable under the Employees' State Insurance Act are not liable to attachment or sale in execution of any court decree or order. Also, the right to receive any benefit is not transferable or assignable.

Where a dispute arises under the provisions of the Act, that matter has to be decided by the Employees' Insurance Court and not by a civil court. An appeal will lie to the High Court from an order of the Employees' Insurance Court if it involves a substantial question of law. The period of limitation for appeal is 60 days. The delay can be condoned for sufficient reasons.

Obligations of Employers

- (1) Get his factory or establishment registered within 15 days after the Act becomes applicable, by supplying the information required in the prescribed form for obtaining from the regional office the employer's Code Number which is to be used on all documents to be prepared and completed by him in connection with this Act, rules and regulations.
- (2) Arrange allotment of Insurance Number to all employees covered by the Act by completing and filling their declaration forms and submitting them with the regional or local office as the case may be, well before the appointed day, or the day fixed by the government.

- (3) Assist employees in obtaining their identity certificates, and pending the receipt of these certificates he has to issue certificates of employment in favour of the employees, so that they may be able to claim cash and medical benefit in the meanwhile. He should hand over to his employees their identity cards and medical acceptance cards issued by the Corporation.
- (4) He should not dismiss, discharge or reduce or punish otherwise any employee during the period he/she is under medical treatment, or is absent from work as a result of illness duly certified in accordance with the regulations under this Act.
- (5) Maintain such registers and records of the establishment, and also afford facilities to the Inspector to enter the premises of the establishment and examine any person, books or document relating to employment and wages to see the provisions of the Act and regulations are being complied with.
- (6) Reimburse to the Corporation the excess expenditure incurred due to insanitary working and living conditions in the factory or establishment or housing colony.

Obligations of Employees

- (1) Assist the employer in obtaining registration, insurance number and identity cards from the ESI authorities.
- (2) Obtain necessary sickness and other certificates from the medical authorities specified in the Act and the regulations for claiming cash benefits, and deposit the same with the local office.
- (3) Give notice of accident causing employment injury to the employer and other authorities, and submit for medical examination as and when necessary to claim disablement benefit.
- (4) Repay to the corporation any benefit or payment received which he was not entitled to under the Act.
- (5) Submit the claims for the benefits within the prescribed time and along with the prescribed documents.

5.2 The Employees Provident Fund Act 1952

On 15th November 1951, the Government of India promulgates the Employees' Provident Funds Ordinance which came into force on that date. It was subsequently replaced by the Employees' Provident Funds Act passed on 4th March 1952. The Act was passed with a view to making some provision for the future of the industrial worker after his retirement or for his dependants in case of his early death and inculcating the habit of saving among the workers. The object of the Act is to provide substantial security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread-winner and in some other contingencies.

5.2.1 Applicability of the Act

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is applicable from the date of functioning or date of set-up of establishments provided the factory/establishment employed twenty or more persons. The Act, however, does not apply to co-operative societies employing less than 50 persons and working without the aid of power. The Central Government is empowered to apply the provisions of this Act to any establishments employing less than 20 persons after giving not less than two months' notice of its intention to do so by a notification in the Official Gazette. Once the Act is applied, it does not cease to be applicable even if the number of employees falls below 20. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with the mutual consent of the employer and the majority of the employees under Section 1(4) of the Act.

5.2.2 Definitions

Employee: “Employee” as defined in Section 2(f) of the Act means any person who is employed for wages in any kind of work manual or otherwise, in or in connection with the work of an establishment and who gets wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the establishment.

Employer: In relation to a factory establishment, as per Section 2(e) of the Act the employer means the owner or occupier including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory and in relation to other establishment, the person who has the ultimate control over the affairs of the establishment.

5.2.3 Membership

Employees drawing a pay not exceeding ` 6,500 per month are eligible for membership of the fund. Every employee employed in or in connection with the work of a factory or establishment shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

An employee shall cease to be the member of provident fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the scheme, whichever is earlier.

5.2.4 Contribution

The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10% of the pay of the employees. The term “wages” includes basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any. The Act, however, provides that the Central Government may, after making such enquiries as it deems fit, enhance the statutory rate of contribution to 12% of wages in any industry or class of establishments.

The contributions received by the Provident Fund Organisation from unexempted establishments as well as by the Board of Trustees from exempted establishments shall be invested, after making payments on account of advances and final withdrawals, according to the pattern laid down by the Government of India from time to time. The

exempted establishments are required to follow the same pattern of investments as is prescribed for the unexempted establishments. The provident fund accumulations are invested in government securities, negotiable securities or bonds, 7-year national saving certificates or post office time deposits schemes, if any.

Rate of Interest

Under para 60(1) of the Employees' Provident Fund Scheme, the Central Government, on the recommendation of the Central Board of Trustees, declares the rate of interest to be credited annually to the accounts of provident fund subscribers.

Withdrawals

Under the scheme, a member may withdraw the full amount standing to his credit in the fund in the event of:

- (i) Retirement from service after attaining the age of 55;
- (ii) Retirement on account of permanent and total incapacity;
- (iii) Migration from India for permanent settlement abroad; and
- (iv) Termination of service in the course of mass retrenchment (involving 3 or more persons). The membership for this purpose is reckoned from the time of joining the covered establishment till the date of the settlement of the claim.

A member can withdraw up to 90 % of the amount of provident fund at credit after attaining the age of 54 years or within one year before actual retirement on superannuation whichever is later.

The Scheme provides for non-refundable partial withdrawals/advances to meet certain contingencies:

- (1) Financing of life insurance policies;
- (2) House-building;
- (3) Purchasing shares of consumers co-operative credit housing societies;
- (4) During temporary closure of establishments;
- (5) Illness of member, family members;
- (6) Member's own marriage or for the marriage of his/her sister, brother or daughter/son and post-matriculation education of children;

- (7) Damages to movable and immovable property of members due to a calamity of exceptional nature;
- (8) Unemployment relief to individual retrenchee members;
- (9) Cut in supply of electricity to the factory/establishment; and
- (10) Grant of advance to members who are physically handicapped for the purchase of equipment.

Nomination

If there is no nominee, the amount shall be paid to the members of the family in equal shares except:

- (a) Sons who have attained majority;
- (b) Sons of a deceased son who have attained majority;
- (c) Married daughters whose husbands are alive;
- (d) Married daughters of a deceased son whose husbands are alive.

The nomination form shall be filled in duplicate and one copy duly accepted by the provident fund office will be kept by members. In case of change, a separate form for a fresh nomination should be filled in duplicate.

Transfer

When a member leaves service in one establishment and obtains re-employment in another establishment, whether exempted or unexempted, in the same region or in another region, he is required to apply for the transfer of his provident fund account to the Regional Provident Fund Commissioner in the prescribed form. The actual transfer of the provident fund accumulations with interest thereon takes place in cases of:

- (i) Re-employment in an establishment, whether exempted or unexempted, in another region/sub-region;
- (ii) Re-employment in an exempted establishment in the same region/sub-region;
- (iii) Leaving service in an exempted establishment and re-employment in an unexempted establishment;

(iv) Re-employment in an establishment not covered under the Act.

A member of the fund is entitled to get full refund of both the shares of contributions made by him as well as by his employer with interest thereon immediately after leaving the service.

Account Slips

As soon as possible after the completion of each accounting year, every member of the fund shall be supplied with an account slip showing:

- (a) The opening balance;
- (b) The amount contributed during the year;
- (c) The amount of interest credited or debited during the year; and
- (d) Closing balance.

Errors, if any, should be brought to the notice of the Commissioner within six months.

Settlement of Claims

All provident fund/pension claims (complete in all respects) shall be settled within 30 days. Any delay beyond that period will attract interest @ 12% per annum recoverable from the salary of the P.F. Commissioner.

Exemption

An establishment/factory may be granted exemption under Section 17 if, (i) in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contributions are not less favourable than those specified in Section 6 of the Act, and (ii) if the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable than the benefits provided under the Act or any scheme in relation to the employees in any other establishment of a similar character. While recommending to the appropriate government grant of exemption under this section, the Employees' Provident Fund Organisation usually takes into consideration the rate of contribution, the eligibility clause, the forfeiture clause and the rate of interest. Also, the totality of the benefits provided under the rules of the exempted funds is taken into consideration.

The Central Government is empowered to grant exemption to any class of establishments from the operation of the Act for a specified period, on financial or other grounds under section 16(2). The exemption is granted by issue of notification in the Official Gazette and subject to such terms and conditions as may be specified in the notification. The exemption does not amount to total exclusion from the provisions of the Act. The exempted establishments are required to constitute a Board of Trustees according to the rules governing the exemptions to administer the fund, subject to overall control of the Regional Provident Fund Commissioner. The exempted establishments are also required to maintain proper accounts, submit prescribed returns, invest provident fund accumulations in the manner prescribed by the Central Government from time to time, and to pay inspection charges. Exemption is liable to be cancelled for breach of any of these conditions.

Obligations of Employers

- (1) Send to the Provident Fund Commissioner within 15 days of the commencement or application of the scheme a consolidated return specifying the employees required or entitled to become members.
- (2) Arrange to pay employee's and employer's contributions and also the administrative and inspection charges as required under the Act and the scheme.
- (3) Maintain such accounts in relation to the amounts contributed by him and his employees as directed by the Central Board of Trustees.
- (4) Send to the Regional Provident Fund Commissioner within 15 days of the close of the month a monthly consolidated statement showing the recoveries made from the wages of each employee and the amount contributed by the employer in respect of each such employee.
- (5) Furnish to the Regional Provident Fund Commissioner particulars of owners, occupiers, directors, partners, managers or any other persons who have the ultimate control over the affairs of the factory or establishments, and send by

registered post intimation of any change in such particulars within 15 days of such change in the prescribed manner.

- (6) Transfer within a specified time, the amount of accumulation to the credit of the employee of an exempted establishment who is member of a provident fund, if he leaves the employment and obtains re-employment. Similar transfer is to be effected in the case of an exempted employee if his exemption is cancelled.
- (7) Prepare and maintain contribution cards in respect of every employee who is a member or is entitled to become a member of the provident fund as required under the Act and the Scheme.
- (8) Maintain an inspection notebook for an inspector to record his observation on his visit to the establishment.

Obligations of Employees

- (1) Furnish to the employer particulars about himself or his nominee as required by the provident fund organisation.
- (2) Inform the employer in writing at the time of employment whether he is a member of a provident fund, and if so, he may give his previous provident fund account number and particulars of the last employer.

The Employees' Pension Scheme, 1995

The Employees' Pension Scheme is compulsory for all the persons who were members of the Family Pension Scheme 1971. It is also compulsory for the persons who have become members of the provident fund from 16-11-1995 i.e. the date of introduction of the Scheme. The provident fund subscribers who were not members of the Family Pension Scheme, have an option to join the Pension Scheme. The Scheme came into operation w.e.f. 16-11-1995, but the employees, including those covered under the voluntary retirement scheme have an option to join the scheme w.e.f. 1-4-1993.

Eligibility

Minimum 10 year's contributory service is required for entitlement to pension. Normal superannuation pension is payable on attaining the age of 58 years. Pension on a discounted rate is also payable on attaining the age of 50 years. Where pensionable service is less than 10 years, the member has an option to remain covered for pensionary benefits till 58 years of age or claim return of contribution/withdrawal benefits.

Benefits

The Scheme provides for payment of monthly pension in the following contingencies:

- Superannuation on attaining age of 58 years;
- Retirement;
- Permanent total disablement;
- Death during service;
- Death after retirement/superannuation/permanent total disablement;
- Children pension;
- Orphan pension.

(1) The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service. The formula for calculation of monthly member's pension is as under:

To illustrate, if the contributory service is 33 years and pensionable salary is ` 5,000/- p.m., the above formula operates as given below:

$$\begin{aligned}\text{Member's Pension} &= \\ &= ` 2500/- \text{ p.m.}\end{aligned}$$

(2) Pensionable salary will be average of last 12 months' pay.

Family Pension

The provisions relating to the family pension are as under:

(1) The rate of minimum widow pension is ` 450/- p.m. The maximum may go upto ` 2500/- p.m. payable as normal member's pension on completion of nearly 33 years'

service. Family pension upto ` 1750/- p.m. is also payable to the widow of the member who has contributed only for one month to the pension fund.

(2) In addition to the widow pension, the family is also entitled to children pension. The rate of children pension is 25% of widow pension for each child subject to a minimum of ` 150/- p.m. per child payable upto two children at a time till they attain the age of 25 years.

(3) If there are no parents alive, the scheme provides for orphan pension at the rate of 75% of the widow pension payable to orphans subject to the minimum of ` 250/- p.m. per orphan.

Option for Return of Capital

Under the Employees' Pension Scheme, the employees have an option to accept the admissible pension or reduced pension with return of capital. In the case of the employee opting for 10% less pension than the actual entitlement, the scheme provides for return of capital equivalent to 100 times of the original pension in the event of death of the pensioner.

Finance

The Employees' Pension Scheme, 1995 is financed as under:

(1) Under the scheme, neither the employer nor the employee is required to make additional contribution. A Pension Fund has been set up and from 16-11-95 the employer's share of provident fund contribution representing 8.33% of the wage is being diverted to the said fund. All accumulations of the ceased Family Pension Fund have been merged in the Pension Fund.

(2) The Central Government is also contributing to the Pension Fund at the rate of 1.16% of the wage of the employees.

(3) The invested corpus of Pension Fund as on 31-3-2000 was 27410.13 crore.

Investment of Pension Fund

(1) Family Pension corpus as on 15-11-95 and the Central Government's contribution from 16-11-95 onward are invested in the public account of the Government of India.

(2) Other accretions to the Pension Fund are being invested as per the pattern prescribed by the Ministry of Finance from time to time.

Pension Beneficiaries

The beneficiaries of the ceased Family Pension Scheme continue to get benefits under the new Pension Scheme. Pension is being disbursed through the nationalised banks. The Pension Fund is required to be evaluated through a qualified actuary on annual basis. Based on the evaluation results, the benefit quantum could be revised.

Administration

The pension scheme will be administered by the tripartite Central Board of Trustees set up under the Employees' Provident Fund and Miscellaneous Provisions Act. The Regional Committees set up under the provident fund scheme shall advise the Regional Boards on matters relating to administration and implementation of the scheme in their respective regions.

Obligations of Employers

- (1) Every employer shall send to the Regional Provident Fund Commissioner (RPFC) within three months of the commencement of this Scheme, a consolidated return of the employees entitled to become members of the Employees' Pension Scheme with wages, dearness allowance, and retaining allowances. If no employee is entitled, then a nil report may be sent to the RPFC.
- (2) Every employer shall send to the RPFC within 15 days of the close of each month a return of the employees leaving service during the preceding month.
- (3) The principal employer shall ensure that every contractor submits to him within seven days of the close of every month, a statement showing the particulars in respect of employees employed by or through him for its further submission to the RPFC.
- (4) The employer shall prepare an Employees' Pension Fund Contribution Card in respect of each employee who has become member of the EPF.
- (5) The employer shall ensure the collection of particulars concerning the members and his family in the prescribed form.

- (6) Every employer shall furnish to the RPFC particulars of all factories and establishments covered by the Act and the Scheme, their branches, departments, owners, occupiers, directors, partners, managers or any other person or persons who have ultimate control of the establishment and also send intimation of any change in such particulars within 15 days by a registered post.
- (7) The employer shall before taking any person into employment, ask him/her to state in writing whether or not he/she is a member of the Employees' Pension Fund. If the person concerned was not in employment previously, he/she shall furnish to the employer particulars concerning him/her and his/her family in the prescribed form.
- (8) Every employer shall carry out all directions issued by the Central Board for the purpose of implementing this Scheme.
- (9) Every employer has also to remit to the Employees' Pension Fund within 15 days of the close of every month a part of the contribution representing 8.33 percent of the employees pay by a separate bank draft or cheque bearing himself the remittance charges.

Obligations of Employees

- (1) Every employee entitled to be the member of the Pension Scheme has to furnish particulars about himself and his family to the employer which in turn has to be furnished to the Commissioner.
- (2) A member applying for benefits on permanent and total disablement during employment will have to undergo such medical tests as may be prescribed by the Central Board.
- (3) The employee who opts for the Pension Scheme with effect from 1.4.93 will have to refund contribution along with interest in the Employees' Pension Fund from the said date.

Exemption

The Central Government may exempt an establishment from the operation of all the provisions of the Employees' Pension Scheme, 1995 subject to the conditions laid down in the annexed schedule.

5.3 The Payment of Gratuity Act 1972

The Act provides for a scheme of compulsory payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, motor transport undertakings, shops or other establishments and for matters connected therewith or incidental thereto.

Applicability

The Act is *applicable* to:

- Every factory, mine, oilfield, plantation, port and railway company;
- Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a state, in which 10 or more persons are employed or were employed on any day of the preceding 12 months;
- To every motor transport undertaking in which 10 or more persons are employed or were employed on any day of the preceding 12 months;
- Such other establishments or class of establishments in which 10 or more employees are employed or were employed on any day of the preceding 12 months, as the Central Government may, by notification, specify in this behalf.

The provisions of the Act have been extended to all educational institutions, registered trusts and societies employing 10 or more persons.

A shop or establishment once covered shall continue to be covered notwithstanding that the number of persons employed therein at any time falls below 10.

Definitions

Completed Year of Service: The term 'completed year of service' means continuous service for one year. An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order imposing a punishment or penalty or treating the absence as break in service has been passed in accordance with the standing orders, rules or regulation governing the employees of the establishment), lay-off, strike or a lockout or cessation of work not due to any fault of the employees, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

- (i) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of the above clause for any period of one year or six months, he shall be deemed to be in continuous service under the employer if he has actually worked for 190 days during the preceding 12 months in an establishment which works less than 6 days a week and 240 days in any other case;
- (ii) Further, for determining the continuous period of six months, an employee should have completed 95 days in an establishment which works for not less than 6 days in a week and 120 days in any other case.

Employee: An employee is a person (other than apprentice) employed on wages (no wage ceiling) in any establishment, factory, mine, oilfield, plantation, railway company or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, where the terms of such employment are express or implied, and includes any such person, who is employed in a managerial or administrative capacity, but does not include any person who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957. The family consists of:

- (a) In the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependant parents and the widow and children of his predeceased son, if any;
- (b) In the case of female employee, herself, her husband, her children, whether married or unmarried, her dependant parents, and the dependant parents of her husband, and the widow and children of her predeceased son, if any.

A female employee can exclude her husband from her family by a notice in writing to the controlling authority. In such event, her husband and his dependent parents will not be deemed to be included in her family unless the said notice is subsequently withdrawn.

Retirement: The term 'retirement' has been defined under the Act as the termination of the service of an employee otherwise than on superannuation. Superannuation means the attainment of such age by the employee as is fixed in the contract or conditions of service as the age on the attainment of which he has to leave the employment; where there is no such provision, then attainment of the age of 58 years by the employee.

Wages: The term 'wages' under the Act 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, overtime wages and any other allowance.

Payment of Gratuity

The Act authorises the appropriate government to appoint any officer as a controlling authority for the administration of the Act.

Eligibility for Gratuity

The Act confers a right on the employee to receive gratuity. It is payable to an employee on the termination of his employment after he has rendered continuous

service for not less than 5 years — on his superannuation; or on his retirement or resignation; or on his death or disablement due to accident or disease. However, the completion of 5 years of continuous service for earning gratuity is not necessary if the termination of the employment of any employee is due to death or disablement.

In case of death of the employee gratuity is payable to his nominee or to the guardian of such nominee.

Amount of Gratuity

For every completed year of service or part thereof in excess of six months, the employer has to pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the concerned employee. In the case of piece-rated employee, daily wages are computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment. For this purpose, the wages paid for any overtime work will not be taken into account. In the case of an employee employed in a seasonal establishment, and who is not so employed throughout the year, the employer shall pay gratuity at the rate of 7 days wages for each season.

The amount of gratuity payable to an employee is not to exceed rupees three lakhs and fifty thousand.

If an employee is employed on reduced wages after disablement, his wages for the period preceding his disablement will be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement will be taken to be the wages so reduced for the purpose of computing the gratuity.

The right of employees to receive better terms of gratuity under any award or agreement or contract with the employer is not taken away by this Act.

Forfeiture

If the services of an employee have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, his gratuity can be forfeited to the extent of the damage or loss so caused to the employer. The gratuity payable to an employee can be wholly forfeited, if the

services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence or an offence involving moral turpitude committed by him in the course of his employment.

The Act provides for the grant of exemption from the operation of the Act to any person or class of persons if they are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act.

Nomination

An employee who has completed one year of service has to name his/her nominee in the prescribed form. An employee in his nomination can distribute the amount of gratuity amongst more than one nominee. If an employee has a family at the time of making the nomination, it has to be made in favour of one or more members of the family. If nomination is made in favour of a person who is not a member of his family, the same is void. However, if the employee has no family at the time of making a nomination, he can make the nomination in favour of any person. But if such employee acquires a family subsequently, then such nomination becomes invalid forthwith, and thereafter the employee has to make a fresh nomination in favour of one or more members of his family. Nomination once made can be modified after giving due notice to the employer. If a nominee predeceases the employee, a fresh nomination is required to be made (Section 6).

A person who is entitled to gratuity has to apply himself or through an authorised person to the employer for gratuity within the prescribed time. Even if the application is made after the prescribed time, the employer has to consider the same. Similarly, the employer has to give notice to the person entitled to gratuity and to the controlling authority immediately after it became payable, specifying the amount of gratuity, and thereafter make arrangements for its payment (Section 7).

Settlement of Claims

The employee and the employer or any other person raising the dispute regarding the amount of gratuity may make an application to the controlling authority to decide the dispute. No appeal by an employer shall be admitted unless the employer produces

a certificate of the controlling authority to the effect that he has deposited with the controlling authority an amount equal to the amount of gratuity required to be deposited or deposits with the appellate authority such amount.

The Act stipulates that an aggrieved employee can file an application to the controlling authority for recovery of the amount of gratuity. The controlling authority will issue a certificate to the collector for recovery of that amount. The collector shall recover the amount, together, with compound interest, at the rate of nine per cent per annum from the date of expiry of the prescribed time as arrears of land revenue, and pay the same to the person entitled to it (Section 8).

Offences and Penalties

The Act declares certain acts as offences and prescribes penalties for them. Whoever, for the purpose of avoiding any payment to be made under this Act, makes or causes to be made any false statement or false representation, is punishable with imprisonment up to 6 months and/or fine up to ` 1,000 (Section 9).

The Act exempts the employer in certain cases from liability to be punished. If an employer is charged with an offence punishable under this Act, he will be entitled to lodge any other person whom he charges as the actual offender before the court at the time appointed for the hearing. In such a case, the employer has to give to the complainant not less than three clear days' notice in writing of his intentions to file a complaint (Section 10).

No court shall take cognizance of any offence punishable under this Act unless a complaint is made by or under the authority of the appropriate government (Section 11).

The Act protects the controlling authority or any other person from legal proceedings in respect of anything which is done in good faith (Section 12).

Gratuity amount cannot be attached in execution of any decree or order of any civil, revenue or criminal court (Section 13).

Notwithstanding anything contained in any other enactment, instrument or contract, the provisions of this Act would prevail (Sec. 14).

The Act confers power on the appropriate government to make rules for the purpose of carrying out the provisions of this Act (Sec. 15).

The Act also empowers the appropriate government to appoint inspectors with various powers to inspect documents and ensure payment of gratuity to the employees as prescribed under the Act.

Obligations of Employers

- (1) Pay gratuity to the employees as required by the provisions of the Act and the rules framed thereunder.
- (2) Determine the gratuity as soon as it becomes payable, and give notice of the same to the employee concerned and the controlling authority. In case of dispute regarding the amount determined, the admitted amount of gratuity must be deposited with the Controlling Authority. If the latter decides that any more gratuity is due to the employees, the same must also be deposited with him.
- (3) Obtain an insurance in the prescribed manner for his liability for payment of gratuity under the Act, or establish an approved gratuity fund in the prescribed manner.

Obligations of Employees

- (1) An employee eligible for payment of gratuity under the Act, or any person authorised in writing to act on his/her behalf, has to apply to the employer within such time and in such form as may be prescribed under the rules for payment of gratuity as soon as it becomes due.
- (2) Every employee, after completing one year of service, has to nominate members of his/her family who may receive gratuity in case of his/her death.

The object of the Act is to regulate the payment of wages to certain classes of persons employed in industry in a particular form and at regular intervals; and to

prevent unauthorised deductions from the wages. The Act is concerned merely with the fixation of wage periods and not with the fixation of wages.

Applicability

The Act is applicable to persons employed in any factory, railway, and to such other establishments to which the appropriate Government may, by notification, extend the provisions of the Act after giving three months' notice to that effect. In the case of industrial establishments owned by the Central Government the notification can be issued with the concurrence of the Central Government.

This Act applies to wages payable to an employed person in respect of a wage period if such wages for that wage period do not exceed Rs. 6,500 per month or such other higher sum, which on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organisation, the Central Government may, after every five years, by notification in the Official Gazette, specify.

Definitions

Wages: "Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which, if the terms of employment express or implied were fulfilled, would be payable to a person employed in respect of his employment or of work done in such employment. It includes:

- (i) any remuneration payable under any award or settlement between the parties or order of a court;
- (ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (iii) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deduction but does not provide for the time within which the payment is to be made;
- (iv) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

However, it does not include:

- (i) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
- (ii) the value of any house accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (iii) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
- (iv) any travelling allowance or the value of any travelling concession;
- (v) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (vi) any gratuity payable on the termination of employment (Sec. 2-vi).

Employed Person: Employed person includes the legal representative of a deceased employed person.

Employer: Employer includes the legal representative of a deceased employer.

Industrial Establishment: It means any:

- (a) tram-way service, or motor transport service engaged in carrying passengers or goods, or both by road for hire or reward;
- (b) air transport service other than such service belonging to, or exclusively employed in the military, naval or airforce of the Union, or the Civil Aviation Department of the Government of India;
- (c) dock, wharf, or jetty;
- (d) inland vessel mechanically propelled;
- (e) mine, quarry or oil field;
- (f) plantation;
- (g) workshop, or other establishments in which articles are produced, adapted, or manufactured, with a view to their use, transport or sale;

- (h) establishment in which any work relating to the construction, development or main-tenance of buildings, roads, bridges or canals or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission, or distribution of electricity, or any other form of power is being carried on; and
- (i) any other establishment, or class of establishments, which the Central or a State Govern-ment may, notify in the Official Gazette.

Wage Payment

The responsibility for the payment of wages under the Act is that of the employer or his representative. In the absence of the employer, a person who employs the labourers and with whom they enter into a contract of employment will be regarded as the employer (Section 3).

No wage period shall exceed one month in any case. The main purpose of this provision is to ensure that inordinate delay is not caused in the payment of wages and that a long time does not elapse before wages are paid for the period for which an employee has worked.

Wages may be payable daily, weekly, fortnightly and monthly. But the payment thereof must not extend over a period longer than one month (month means a solar month; a period of four weeks or 30 days).

Where less than 1,000 persons are employed, wages shall be paid before the expiry of the 7th day and in other cases before the expiry of the 10th day, after the last day of the wage period. If for instance the wage period fixed is the first day of January to the thirty-first day of January an employed person working in any railway, factory or industrial establishment in which less than one thousand persons are employed would be entitled to receive his wages before the seventh day of February and in other cases on the tenth day of February in respect of the wage period of January.

In case the employer terminates the services of an employee, the employee is entitled to receive the wage earned by him before the expiry of the 2nd working day

from the day on which his employment has been terminated [(Section 5(2))]. The weekly or other recognised holiday is to be excluded in computing the second working day.

All wages shall be paid in current coin or currency notes or in both. The employer may, after obtaining the written authorisation of the employed person, pay the wages either by cheque or by crediting the wages into his bank account (Section 6).

Deductions from Wages

Wages shall be paid to an employed person without deductions of any kind except those authorised by or under the Act. Withholding of increment or promotion (including the stoppage of increment at an efficiency bar); reduction to a lower post or time scale or to a lower stage in a time scale and suspension are not deemed to be deductions from wages (Section 7).

The term 'deduction from wages' has not been defined in the Act. However, the Act specifies the heads from Sections 7 to 13 under which deductions from wages may be made, namely, fines, deductions for absence from duty, deductions for damage to or loss of goods of the employer, deductions for house accommodation made available by the employer, deductions for amenities and services made available by the employer, deductions for recovery of advances or for adjustment of over-payments of wages, deductions for recovery of loans, deductions for income-tax payable by the employee, deductions for payments to co-operative society, deductions provided under different statutes, deductions made with the written authorisation of persons for payment of life insurance premium or national small savings.

Deductions may be made by an employer, with the written authorisation of the employed person, from the wages payable to such an employed person, for payment of contribution to any welfare fund constituted by the employer for the welfare of employed persons and the members of their families, and also for the payment of the fees payable by the employed person for membership of any registered trade union.

There are also certain deductions peculiar to railways, such as deductions for recovery of losses sustained by railway administration on account of certain omissions and commissions on the part of the employees.

The total amount of deduction which may be made in any wage period from the wages of an employed person shall not exceed 75 per cent of such wages in case where such deductions were wholly or partly made for payment to co-operative societies; and in any other case, 50 per cent of such wages [Section 7(3)].

There are certain conditions and limits subject to which fines may be imposed. These are:

- (i) A fine can be imposed only for such acts or omissions as are specified by the employer and previously approved by the state government;
- (ii) A notice specifying such acts or omissions must be exhibited on the premises in which employment is carried on;
- (iii) A person involved must be informed in writing the reasons for imposing fine;
- (iv) No fine shall be imposed on an employed person who is under the age of 15 years;
- (v) No fine shall be recovered from an employed person by instalments after the expiry of 90 days from the day on which it was imposed;
- (vi) The total amount of fine in one wage period shall not exceed an amount equal to 3 per cent for that wage period;
- (vii) All realisations by way of fine have to be recorded in a register and must be applied only for such purpose as are beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority (Section 8).

The Act authorises deductions for actual absence from duty. However, if 10 or more employed persons acting in concert absent themselves without due notice and without reasonable cause, such deductions may be made for a maximum period of 8 days (Section 9).

Deductions from wages for damage or loss caused to the employer by the neglect or default of the employed person have been laid down under the Act. Such deductions can be made only after giving the person concerned an opportunity of showing cause

against the deductions. All such deductions and realisations are to be recorded in a register (Sec. 10).

The Act provides for deductions for different services rendered by the employer, recovery of advances and loans, payments to co-operative societies and insurance scheme (Sections 11 to 13).

There are certain conditions imposed on deductions for recovery of advance as per the rules. These are:

- (1) An advance of wages shall not exceed four months' wages.
- (2) The advance may be recovered in instalments by deductions from wages spread over not more than 18 months.
- (3) No instalment shall exceed one-third of the wages for the month.
- (4) The rate of interest charged for advances shall not exceed 6¼% per annum.

Authorities

The Act makes provision for the appointment of inspectors (Section 14). The Inspector of Factories is also the Inspector under this Act.

The Act also provides for the appointment of a person to be the authority to hear and decide, for any specified area, claims arising out of deductions from wages or delay in payment of wages (Section 15).

The aggrieved person himself, or on his behalf, any legal practitioner or any official of a registered trade union can submit an application to the authority within 12 months. Such application may be admitted if the applicant satisfies the authority that he had sufficient cause for not making the application within the prescribed period. A single application can be preferred before the authority in respect of claims from the same unpaid group. The authority may direct the employer to refund the amount wrongly deducted or the payment of the delayed wages, together with the payment of such compensation as he thinks fit.

There are five distinct categories of persons prescribed as authorities under Section 15(1) of the Act. They are:

- (a) any Commissioner for Workmen's Compensation; or

- (b) any officer of the Central Government exercising functions as -
 - (i) Regional Labour Commissioner; or
 - (ii) Assistant Labour Commissioner with at least two year's experience; or
- (c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two year experience; or
- (d) a presiding officer of any Labour Court or Industrial Tribunal; or
- (e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate.

Claims and Appeal

Claims arising out of deduction from wages and delay in payment of wages and penalty for malicious claims will be heard and decided by the authority appointed by the government for any specified area. Employees of the same unpaid group may file joint application for realisation of the dues and compensation.

The authority under the Act can only adjudicate upon claims regarding deductions and delay in payment of wages and not upon any dispute in respect of wages.

An appeal lies against the decision of the authority to a Court of Small Causes in a metropolitan town and before the District Court elsewhere within a period of one month. A memorandum of appeal by an employer shall be accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the deduction appealed against. Further the employer can appeal provided the total amount deducted exceeds ` 300. The authority and the court is empowered to order conditional attachment of property of the employer or other persons responsible for payment of wages. They have all the powers of a civil court under the Civil Procedure Code (Sec. 17, 17A and 18).

An employer shall stand discharged of his liability to pay unpaid wages if he pays them to the nominee of the deceased person and in case he is not able to do so, if he deposits them with the prescribed authority (Section 25-A).

Offences and Penalties

The Act prescribes penalties for offences committed under the Act and the procedure to be followed in the trial of offences. The jurisdiction of a civil court is barred in entertaining any suit for the recovery of wages or any deduction from wages (Section 21).

Any contract or agreement whereby an employed person relinquishes any right conferred by this Act shall be null and void (Section 23).

Obligations of Employers

1. To fix the wage-period not exceeding one month (Section 5).
2. To pay wages in cash or by cheque after taking written authorisation of the employed person (Section 6).
3. To pay wages on any working day.
4. To make deductions permissible only under Section 7 from the wages of the employed person.
5. To ensure that deductions do not exceed 75% where payment to a co-operative society is to be made, and in other cases, deductions do not exceed 50%.
6. To seek, before imposing fines approval of list of acts and omissions from the prescribed authority.
7. Not to impose fines exceeding 3% of the wages on the employee.
8. To give show-cause notice to the employed person before imposing fines.
9. To recover fines within 90 days of the date of offence.
10. To afford facilities to Inspectors for entry, inspection, supervision, examination or inquiry under the Act.
11. To display abstract of the Act and the Rules in English and in a language understood by the majority of workmen.
12. To maintain following register in the prescribed forms:
 - (i) Register of wages;
 - (ii) Register of fines;
 - (iii) Register of deductions for damage or loss;
 - (iv) Register of advances.

Apart from maintaining necessary records and registers, the employer is required to display an abstract of the Act at a conspicuous place (Section 13-A).

Obligations of Employees

Every employee is entitled:

1. To receive his wages in the prescribed wage period in cash or by cheque or by credit to his bank account (Sec. 3).
2. To refuse to agree to any deductions and fines other than those authorised under the Act (Sec. 7 and 8).
3. To approach within six months the prescribed authority to claim unpaid or delayed wages, unauthorised deductions and fines along with compensation (Sec. 15 and 16).
4. To appeal against the direction made by the authority if the amount of wages claimed exceeds rupees one hundred (Sec. 17).

5.4 The Payment of Wages Act 1936

The object of the Act is to regulate the payment of wages to certain classes of persons employed in industry in a particular form and at regular intervals; and to prevent unauthorised deductions from the wages. The Act is concerned merely with the fixation of wage periods and not with the fixation of wages.

Applicability

The Act is applicable to persons employed in any factory, railway, and to such other establishments to which the appropriate Government may, by notification, extend the provisions of the Act after giving three months' notice to that effect. In the case of industrial establishments owned by the Central Government the notification can be issued with the concurrence of the Central Government.

Definitions

Wages: “Wages” means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which, if the terms of employment express or implied were fulfilled, would be payable to a person employed in respect of his employment or of work done in such employment. It includes:

- (i) any remuneration payable under any award or settlement between the parties or order of a court;
- (ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (iii) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deduction but does not provide for the time within which the payment is to be made;
- (iv) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

However, it does not include:

- (i) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
- (ii) the value of any house accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (iii) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
- (iv) any travelling allowance or the value of any travelling concession;
- (v) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (vi) any gratuity payable on the termination of employment (Sec. 2-vi).

Employed Person: Employed person includes the legal representative of a deceased employed person.

Employer: Employer includes the legal representative of a deceased employer.

Industrial Establishment: It means any:

- (a) tram-way service, or motor transport service engaged in carrying passengers or goods, or both by road for hire or reward;
- (b) air transport service other than such service belonging to, or exclusively employed in the military, naval or airforce of the Union, or the Civil Aviation Department of the Government of India;
- (c) dock, wharf, or jetty;
- (d) inland vessel mechanically propelled;
- (e) mine, quarry or oil field;
- (f) plantation;
- (g) workshop, or other establishments in which articles are produced, adapted, or manufactured, with a view to their use, transport or sale;
- (h) establishment in which any work relating to the construction, development or main-tenance of buildings, roads, bridges or canals or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission, or distribution of electricity, or any other form of power is being carried on; and
- (i) any other establishment, or class of establishments, which the Central or a State Government may, notify in the Official Gazette.

Wage Payment

The responsibility for the payment of wages under the Act is that of the employer or his representative. In the absence of the employer, a person who employs the labourers and with whom they enter into a contract of employment will be regarded as the employer (Section 3).

No wage period shall exceed one month in any case. The main purpose of this provision is to ensure that inordinate delay is not caused in the payment of wages and

that a long time does not elapse before wages are paid for the period for which an employee has worked.

Wages may be payable daily, weekly, fortnightly and monthly. But the payment thereof must not extend over a period longer than one month (month means a solar month; a period of four weeks or 30 days).

Where less than 1,000 persons are employed, wages shall be paid before the expiry of the 7th day and in other cases before the expiry of the 10th day, after the last day of the wage period. If for instance the wage period fixed is the first day of January to the thirty-first day of January an employed person working in any railway, factory or industrial establishment in which less than one thousand persons are employed would be entitled to receive his wages before the seventh day of February and in other cases on the tenth day of February in respect of the wage period of January.

In case the employer terminates the services of an employee, the employee is entitled to receive the wage earned by him before the expiry of the 2nd working day from the day on which his employment has been terminated [(Section 5(2)]. The weekly or other recognised holiday is to be excluded in computing the second working day.

All wages shall be paid in current coin or currency notes or in both. The employer may, after obtaining the written authorisation of the employed person, pay the wages either by cheque or by crediting the wages into his bank account (Section 6).

Deductions from Wages

Wages shall be paid to an employed person without deductions of any kind except those authorised by or under the Act. Withholding of increment or promotion (including the stoppage of increment at an efficiency bar); reduction to a lower post or time scale or to a lower stage in a time scale and suspension are not deemed to be deductions from wages (Section 7).

The term 'deduction from wages' has not been defined in the Act. However, the Act specifies the heads from Sections 7 to 13 under which deductions from wages may be made, namely, fines, deductions for absence from duty, deductions for damage to or loss of goods of the employer, deductions for house accommodation made available by

the employer, deductions for amenities and services made available by the employer, deductions for recovery of advances or for adjustment of over-payments of wages, deductions for recovery of loans, deductions for income-tax payable by the employee, deductions for payments to co-operative society, deductions provided under different statutes, deductions made with the written authorisation of persons for payment of life insurance premium or national small savings.

Deductions may be made by an employer, with the written authorisation of the employed person, from the wages payable to such an employed person, for payment of contribution to any welfare fund constituted by the employer for the welfare of employed persons and the members of their families, and also for the payment of the fees payable by the employed person for membership of any registered trade union.

There are also certain deductions peculiar to railways, such as deductions for recovery of losses sustained by railway administration on account of certain omissions and commissions on the part of the employees.

The total amount of deduction which may be made in any wage period from the wages of an employed person shall not exceed 75 per cent of such wages in case where such deductions were wholly or partly made for payment to co-operative societies; and in any other case, 50 per cent of such wages [Section 7(3)].

There are certain conditions and limits subject to which fines may be imposed. These are:

- (i) A fine can be imposed only for such acts or omissions as are specified by the employer and previously approved by the state government;
- (ii) A notice specifying such acts or omissions must be exhibited on the premises in which employment is carried on;
- (iii) A person involved must be informed in writing the reasons for imposing fine;
- (iv) No fine shall be imposed on an employed person who is under the age of 15 years;
- (v) No fine shall be recovered from an employed person by instalments after the expiry of 90 days from the day on which it was imposed;

- (vi) The total amount of fine in one wage period shall not exceed an amount equal to 3 per cent for that wage period;
- (vii) All realisations by way of fine have to be recorded in a register and must be applied only for such purpose as are beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority (Section 8).

The Act authorises deductions for actual absence from duty. However, if 10 or more employed persons acting in concert absent themselves without due notice and without reasonable cause, such deductions may be made for a maximum period of 8 days (Section 9).

Deductions from wages for damage or loss caused to the employer by the neglect or default of the employed person have been laid down under the Act. Such deductions can be made only after giving the person concerned an opportunity of showing cause against the deductions. All such deductions and realisations are to be recorded in a register (Sec. 10).

The Act provides for deductions for different services rendered by the employer, recovery of advances and loans, payments to co-operative societies and insurance scheme (Sections 11 to 13).

There are certain conditions imposed on deductions for recovery of advance as per the rules. These are:

- (1) An advance of wages shall not exceed four months' wages.
- (2) The advance may be recovered in instalments by deductions from wages spread over not more than 18 months.
- (3) No instalment shall exceed one-third of the wages for the month.
- (4) The rate of interest charged for advances shall not exceed 6¼% per annum.

Authorities

The Act makes provision for the appointment of inspectors (Section 14). The Inspector of Factories is also the Inspector under this Act.

The Act also provides for the appointment of a person to be the authority to hear and decide, for any specified area, claims arising out of deductions from wages or delay in payment of wages (Section 15).

The aggrieved person himself, or on his behalf, any legal practitioner or any official of a registered trade union can submit an application to the authority within 12 months. Such application may be admitted if the applicant satisfies the authority that he had sufficient cause for not making the application within the prescribed period. A single application can be preferred before the authority in respect of claims from the same unpaid group. The authority may direct the employer to refund the amount wrongly deducted or the payment of the delayed wages, together with the payment of such compensation as he thinks fit.

There are five distinct categories of persons prescribed as authorities under Section 15(1) of the Act. They are:

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as -
 - (i) Regional Labour Commissioner; or
 - (ii) Assistant Labour Commissioner with at least two year's experience; or
- (c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two year experience; or
- (d) a presiding officer of any Labour Court or Industrial Tribunal; or
- (e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate.

Claims and Appeal

Claims arising out of deduction from wages and delay in payment of wages and penalty for malicious claims will be heard and decided by the authority appointed by the government for any specified area. Employees of the same unpaid group may file joint application for realisation of the dues and compensation.

The authority under the Act can only adjudicate upon claims regarding deductions and delay in payment of wages and not upon any dispute in respect of wages.

An appeal lies against the decision of the authority to a Court of Small Causes in a metropolitan town and before the District Court elsewhere within a period of one month. A memorandum of appeal by an employer shall be accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the deduction appealed against. Further the employer can appeal provided the total amount deducted exceeds ` 300. The authority and the court is empowered to order conditional attachment of property of the employer or other persons responsible for payment of wages. They have all the powers of a civil court under the Civil Procedure Code (Sec. 17, 17A and 18).

An employer shall stand discharged of his liability to pay unpaid wages if he pays them to the nominee of the deceased person and in case he is not able to do so, if he deposits them with the prescribed authority (Section 25-A).

Offences and Penalties

The Act prescribes penalties for offences committed under the Act and the procedure to be followed in the trial of offences. The jurisdiction of a civil court is barred in entertaining any suit for the recovery of wages or any deduction from wages (Section 21).

Any contract or agreement whereby an employed person relinquishes any right conferred by this Act shall be null and void (Section 23).

Obligations of Employers

1. To fix the wage-period not exceeding one month (Section 5).
2. To pay wages in cash or by cheque after taking written authorisation of the employed person (Section 6).
3. To pay wages on any working day.
4. To make deductions permissible only under Section 7 from the wages of the employed person.
5. To ensure that deductions do not exceed 75% where payment to a co-operative society is to be made, and in other cases, deductions do not exceed 50%.

6. To seek, before imposing fines approval of list of acts and omissions from the prescribed authority.
7. Not to impose fines exceeding 3% of the wages on the employee.
8. To give show-cause notice to the employed person before imposing fines.
9. To recover fines within 90 days of the date of offence.
10. To afford facilities to Inspectors for entry, inspection, supervision, examination or inquiry under the Act.
11. To display abstract of the Act and the Rules in English and in a language understood by the majority of workmen.
12. To maintain following register in the prescribed forms:
 - (i) Register of wages;
 - (ii) Register of fines;
 - (iii) Register of deductions for damage or loss;
 - (iv) Register of advances.

Apart from maintaining necessary records and registers, the employer is required to display an abstract of the Act at a conspicuous place (Section 13-A).

Obligations of Employees

Every employee is entitled:

1. To receive his wages in the prescribed wage period in cash or by cheque or by credit to his bank account (Sec. 3).
2. To refuse to agree to any deductions and fines other than those authorised under the Act (Sec. 7 and 8).
3. To approach within six months the prescribed authority to claim unpaid or delayed wages, unauthorised deductions and fines along with compensation (Sec. 15 and 16).
4. To appeal against the direction made by the authority if the amount of wages claimed exceeds rupees one hundred (Sec. 17).

5.5 The Minimum Wages Act 1948

The Act extends the concept of social justice to the workmen employed in certain scheduled employments by statutorily providing for them minimum rates of wages. It is a piece of social legislation which provides protection to workers in employments in which they are vulnerable to exploitation by reason of the lack of organisation and bargaining power and where sweated labour is most prevalent.

Applicability

The Act extends to the whole of India. Provisions of the Act, therefore, are applicable to any employer who employs any person in a scheduled employment within Indian territory (Section I).

The Act is not applicable to all employments or industries. A schedule appended to the Act gives a list of employments covered by the Act. It covers an establishment regardless of the number of workers actually employed. Some of the employments are listed in Part I of the schedule. Part II of the schedule contains employment in agriculture and other allied activities.

The appropriate government may add to the schedule any other employment in respect of which it is of the opinion that minimum rates of wages should be fixed.

In Maharashtra, the provisions of the Act have been extended to all shops and commercial establishments covered under the Bombay Shops and Establishments Act, 1948.

The contract labour, falling within the purview of the Contract Labour (Regulation and Abolition) Act, 1970, has to be paid minimum wages under the Minimum Wages Act.

Definitions

The Act contains a number of definitions. Some of the important definitions are following:

Appropriate Government: In this Act, the term 'appropriate government' means:

Central Government — for any scheduled employment carried on under the authority of Central Government or railway administrations and for a mine, oil-field or major port or any corporation established by a central act.

State Government — for any other scheduled employment carried on within its territory.

Wages: “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 to a person employed in respect of his employment or of work done in such employment, and includes house rent allowance but does not include:

- (i) The value of any house accommodation, supply of light, water, medical attendance; or any other amenity or any service excluded by general or special order of the appropriate government;
- (ii) Any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance;
- (iii) Any travelling allowance or the value of any travelling concession;
- (iv) Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- (v) Any gratuity payable on discharge.

Cost of Living Index Number: The term ‘cost of living index number’ means the index number ascertained and declared by the competent authority by notification in the official Gazette to be the cost of living index number applicable to the employers in scheduled employments.

Competent Authority: The term ‘competent authority’ means the authority appointed by the appropriate government by notification in its official Gazette to ascertain from time to time the cost of living index number applicable to the employees in the scheduled employments specified in such notification.

Employer: The term ‘employer’ means any person who employs one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act. The term ‘employer’ also includes:

- I Manager of a factory as defined under the Factories Act, 1948.

- I Head of department or any person appointed for the supervision and control of employees or Chief Executive Officer of a local authority in case the scheduled employment is carried on under Central Government or a local authority.
- I In any other case the person responsible for supervision, control or payment of wages.

Employee: The term 'employee' means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment. This also includes out-workers to whom materials are given for processing at premises other than that of the employer or an employee declared to be an employee. But this does not include any member of the Armed Forces of the Union.

Fixing of Minimum Rates of Wages

When, in respect of an employment, the appropriate government has fixed and notified minimum rates of wages, the employer is bound to pay every employee engaged in that employment at rates not less than the rates notified.

The appropriate government may review wages at such intervals as they think fit but not exceeding five years, and revise them, if necessary.

The appropriate government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which less than 1000 employees are employed in the whole State.

The minimum rates of wages may be fixed (Section 3).

- (i) For different employments
- (ii) For different classes in the same employment
- (iii) For adolescents, children and apprentices
- (iv) For different localities.

The rates of wages may be:

- (i) A time rate
- (ii) A piece rate
- (iii) A guaranteed time rate
- (iv) An overtime rate

The rates may be fixed by the hour, by the day or by the month or by any other longer period as may be prescribed. However, if wage periods have been fixed under Section 4 of the Payment of Wages Act, 1936 then the wages shall be paid accordingly.

The rate fixed may consist of the basic rate of wages and cost of living allowance and the cash value of concessions in respect of supply of essential commodities at concessional rates (Section 4).

There is also a provision of special allowance as part of the minimum wages in all the scheduled employments in the central sphere. The special allowance is linked to the consumer price index and is revised periodically.

In fixing or revising the minimum wages, the appropriate government shall either (Section 5):

- (a) Appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be; or
- (b) By notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

After considering the advice of the said committee or representations received, the appropriate government will, by notification in the gazette, fix or revise the minimum rates of wages. Unless otherwise provided, the decision shall come into force on the expiry of three months from the date of notification. When fixation is made on the basis of representations, the appropriate government shall consult the advisory board also. The government is not bound to accept the committee's recommendations.

The Act also empowers state governments to constitute advisory boards to co-ordinate the work of different committees and sub-committees and advise the government on the fixation of minimum wages. Similarly, the Central Government is empowered to constitute a Central Advisory Board to advise Central and State Government, and to co-ordinate the work of the advisory boards. These bodies consist

of an equal number of employers' and employees' representatives and of independent persons not exceeding one-third of their total strength. One of the independent persons shall be appointed as the chairman by the appropriate government.

The minimum wages payable under the Act are to be paid in cash. But it also provides for authorisation of payment in kind where the appropriate government considers it necessary. It may direct the supply of essential commodities at concession rates by notifying it in the Official Gazette. Authorised deductions are allowed under the Act. The appropriate government may fix the number of hours of work, rest day, payment of overtime in respect of scheduled employments. Provision has been made in the Act for the maintenance of registers and records in the prescribed manner (Sections 11-18).

Registers, Notices, Abstract and Returns

Every employer liable to pay minimum rate of wages in the scheduled employment, in terms of the relative Minimum Wages Notification is required to maintain —

- (1) Register of wages containing the following particulars:
 - (i) the minimum rate of wages payable to each employee;
 - (ii) number of days for which each employee worked overtime for each wage period;
 - (iii) the gross wages of each employee for the wage period;
 - (iv) all deductions from wages, showing the kinds of deduction; and
 - (v) the wages actually paid to each employee for each period.
- (2) Register of Overtime payment in Form IV.
- (3) Muster-Roll in Form V.
- (4) Register of Fines in Form I.
- (5) Register of deduction for damage or loss caused by the neglect or default of the employees.

Every employer is required to:

- (i) Put up a notice in Form XIII containing the minimum rate of wages fixed and keep it in clean and legible condition.
- (ii) Exhibit an extract of the Act and Rules thereunder with name and address of the Inspector in English and in the language understood by the majority of the employees. This should be kept clean and legible. (The Inspector will direct the place where notices and abstract are to be exhibited.)
- (iii) Give annual return to the Labour Commissioner in Form III, and Exhibit a notice in Form XII in the public motor vehicles in case of employment in public motor transport.

Inspectors

The appropriate government appoints inspectors for the purposes of this Act, and defines the local limits within which they exercise their functions.

Within the local limits an Inspector can:

- (i) Enter any premises or places where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed.
- (ii) Examine any register, record of wages or notices required to be kept or executed by or under this Act or rules made thereunder.
- (iii) Examine any person whom he finds in any such premises or places and who he has reasonable cause to believe, is an employee employed therein or an out-worker.
- (iv) Require any person given out-work and any out-workers, to give any information, which is in his power to give.
- (v) Seize or take copies of such registers, records of wages or notices or portions thereof as he may consider relevant.

The Inspectors are public servants. Any person, who is called upon to provide any relevant information, is legally bound to provide information to the inspectors under the provisions of Indian Penal Code.

Authorities under the Act

The appropriate government appoints, by notification in the Official Gazette for any specified area, an authority to hear and decide claims arising out of payment of wages at less than the minimum rates of wages and other incidental matters. The authority so appointed has powers of a civil court.

The authority so appointed can be:

- (i) Any commissioner for workmen's compensation, or
- (ii) Any officer of the central government exercising functions as a labour commissioner, or
- (iii) Any officer of the state government not below the rank of labour commissioner, or
- (iv) Any other officer with experience as a judge of a civil court, or as a stipendary magistrate.

An employee or any legal practitioner or any other official of a registered trade union, authorised in writing, or any inspector can apply to the authority for settlement of disputes with respect to non-payment or payment of less than the minimum wages.

Any such application can be made within six months from the date on which minimum wages become payable. However, the delay may be condoned by the authority if the failure to submit the application was for sufficient reason. The authority, after hearing the employer and conducting any enquiry as deemed fit may direct the employer to make payment of minimum wages as well as compensation, if any. If the authority is satisfied that the application made by any person was either malicious or vexatious, it may direct that a penalty be paid upto ` 50 to the employer.

The Act prohibits civil courts from entertaining any suits for their recovery of minimum wages payable under the Act.

Enforcement

The central government is the appropriate authority for the enforcement of the Act in relation to any scheduled employment carried on by or under the authority of the central government, railway administration, a mine, oilfield, a major port, or any corporation established by a central act. The chief labour commissioner (central) is in

charge of implementation of the Act in the central sphere. In the state sphere, officers of the industrial relations machinery are entrusted with the enforcement of the Act, in addition to the enforcement of other labour laws. In some states, a small number of whole-time inspectors are appointed exclusively for the enforcement of the Act. In some states, in addition to the officers of the labour department, officials of the revenue department, panchayat departments and agricultural departments have been authorised to work as inspectors for the purposes of the Act.

Offences and Penalties

The Act lays down penalties for violation of the provisions of the Act.

If any employer pays to any employee less than the minimum rates of wages fixed for that employee's class of work; or contravenes any rule or order made by the appropriate government under Section 13 regarding hours of work, he would be punished with imprisonment upto six months or with fine of ` 500 or with both (Section 22).

Any contract or agreement whereby an employee relinquishes or reduces his right under this Act shall be null and void. However, the Act does not prevent an individual from entering into an agreement which is more advantageous or beneficial to him (Section 25).

Obligations of Employers

- (1) Once the minimum wages are notified and become effective the employer must pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees.
- (2) The employer may make deductions out of wages as may be authorised.
- (3) The employer shall pay overtime at double the ordinary rate of wages for the period of work done beyond 9 hours on any day or 48 hours in any week or for rest day.
- (4) The employer must pay minimum wages in cash unless the appropriate government authorises their payment wholly or partly in kind. The government

may direct the supply of essential commodities at concessional rates by notifying it in the official gazette.

- (5) Every employer shall issue wage slips in the form prescribed containing prescribed particulars to every person employed.
- (6) Every employer shall get the signature or the thumb impression of every person employed on the wage group and the wage slips.
- (7) The employer or his agent should authenticate the entries in the wage books and the wage slips.
- (8) The employer shall allow a rest day with wages to the employees every week which ordinarily should be Sunday or any other day. No employee shall be required to work on a day fixed as rest day, unless he is paid wages for that day at the overtime rate and is also allowed a substituted rest day with wages.
- (9) The employer shall not make deductions from wages except those authorised by or under the rules.

5.6 The Payment of Bonus Act 1965

The object of the Act is to maintain peace and harmony between labour and capital by allowing the employees to share in the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour

Applicability

The Act applies to all factories and establishments employing 20 or more persons on any day during an accounting year. Such an establishment continues to be governed by the Act notwithstanding that the number of persons employed therein falls below 20. Establishments also include departments, undertaking and branches (Section 1).

Definitions

Employee

The definition of “employee” includes any person (other than an apprentice) employed on a salary or wage not exceeding ` 3,500* per month in any industry doing any skilled or unskilled, manual, supervisory, managerial, administrative, technical, or clerical work for hire or reward. The term of employment may be expressed or implied.

There must, however, be a contract of service between the person employed and the employer [Section 2(13)].

Appropriate Government

The term "appropriate government" means

- (i) in relation to an establishment in respect of which appropriate government under the Industrial Disputes Act, 1947 is the Central Government;
- (ii) in relation to any other establishment, the Government of the State in which that establishment is situated.

Employer

The term "employer" includes

- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and the manager of the factory;
- (ii) in relation to any other establishment, the person who, or the authority which has the ultimate control over the affairs of the establishment. Where the said affairs are entrusted to a manager or managing director, such manager or managing director is the employer.

Accounting Year

The term "accounting year" means:

- (i) In relation to a corporation, the year ending on the day on which the books and accounts of corporation are to be closed and balanced;
- (ii) In relation to a company, the period in respect of which profit and loss account is laid before the annual general meeting (first day of April or 31st of March).

Salary or Wage

The term "salary or wage" includes:

- (i) Basic pay and dearness allowance but not any other allowance.
- (ii) It excludes the value of any house accommodation or of supply of light, water, medical attendance or amenity or any service or of any concessional supply of foodgrains or other articles, any travelling concession, any contribution paid or

payable by the employer to any pension fund or provident fund, retrenchment compensation, and gratuity [Section 2(21)].

Calculation of Bonus

If an establishment consists of different departments or undertakings or branches, whether situated in the same place or in different places, unless a separate balance sheet and profit and loss account are prepared and maintained in respect of them, all such departments or undertakings or branches should be treated as parts of the same establishment for the purpose of computation of bonus, and once they are treated as parts of the same establishment, they should be continued to be treated as such (Section 3).

The determination of gross profit is the first step towards calculating the amount of bonus. The gross profits in the case of a banking company should be calculated in the manner specified in the First Schedule, and in any other case as specified in the Second Schedule. From the gross profit certain prior charges are to be deducted — remuneration to partners or proprietors, a return of 8.5 percent on equity capital and 6 percent in reserves, depreciation under the Income Tax Act, development rebate or investment allowance, direct taxes, dividends paid or payable — to arrive at the available surplus. The bonus is to be paid out of the allocable surplus. In case of a company, the allocable direct taxes, dividends paid or payable — to arrive at the available surplus. The bonus is to be paid out of the allocable surplus. In the case of a company, the allocable surplus is 67 percent of the available surplus and in other cases it is 60 percent (Sections 4, 5 and 7).

Eligibility for Bonus

Every employee shall be entitled to be paid bonus by his employer in an accounting year, provided that he has worked in the establishment for not less than 30 working days in that year (Section 8).

An employee will be disqualified from receiving bonus if he is dismissed from service for:

- (a) Fraud;

- (b) Riotous or violent behaviour while on the premises of the establishment;
- (c) Theft, misappropriation or sabotage of any property of the establishment (Section 9).

Amount of Bonus

The Act imposes a statutory obligation on the employer to pay bonus at the minimum rate of 8.33 percent of the salary earned by an employee or ` 100, whichever is higher, in an accounting year. It shall be paid irrespective of profits and loss or whether there is allocable surplus or not in an accounting year. The maximum is fixed at 20 percent (Sections 10 and 11).

Where the salary or wage of an employee exceeds ` 2,500 per mensem, the bonus payable to such employee shall be calculated as if his/ her salary or wage was ` 2,500. There is also a provision under the Act for proportionate reduction in bonus where the employee has not worked for all the working days in any accounting year (Sections 12 and 13).

The excess of allocable surplus, if any, after distributing the maximum bonus as provided under Sec. 10, shall be set-on and taken into account up to the fourth accounting year. In the case of any shortage or want of allocable surplus, the amount distributed as bonus shall be carried forward for set-off and adjusted out of the allocable surplus. The Fourth Schedule illustrates the method of distribution and set-off or set-on of the amount available for bonus out of the allocable surplus (Section 15).

Newly set-up establishments get exemption from payment of bonus for a period of six years following the accounting year in which the goods produced or manufactured are sold for the first time and, in the alternative, up to the year when the new establishment shows profits, whichever is earlier (Section 16).

Explanation: A newly set-up unit is exempted from the payment of bonus for atleast five years, if it does not make any profits. If at any time, within first five years, it makes profits, it loses the exemption under the Act. From the sixth year onwards, the provisions of the Act become applicable to even newly set-up units.

Under the Act, adjustment can be made towards payment of customary or puja bonus against bonus payable under the Act (Sec. 17).

If an employee is found guilty of misconduct causing financial loss to the employer, then the employer can deduct the amount of loss from the amount of bonus payable to the employee for the year in which he was found guilty of misconduct (Section 18).

Time Limit for Payment of Bonus

The bonus shall be paid within a period of 8 months from the close of the accounting year. If there is a dispute, it shall be paid within one month from the date on which the award becomes enforceable. The appropriate government may extend the said period up to a maximum of 2 years (Section 19).

Claim for Bonus

If any bonus is due to an employee under a settlement, award or agreement, the employee himself, or any other person authorised by him in writing in this behalf, or in the case of death of the employee, his assignee or heirs, may make an application for its recovery to the appropriate government. The government, if satisfied, may issue a certificate to the collector to recover the same as arrears of land revenue. The application must be made within one year (Section 21).

However, the mode of recovery prescribed under Section 21 shall be available only if the bonus sought to be recovered is “under a settlement or an award or an agreement.” It will not apply to the recovery of bonus which is payable under the Act.

A dispute about bonus payable under the Act will have to be raised by the employees concerned in accordance with the provisions of the Industrial Disputes Act, 1947, or any corresponding state law applicable to them, for such a dispute is deemed to be an industrial dispute within the meaning of such laws (Sections 22 and 39).

If accounts are audited by duly qualified auditors of a company or by the Comptroller and Auditor-General of India, then the statements and particulars contained in such balance sheets and profit and loss accounts will be presumed to be accurate. It shall not be necessary for the corporation or the company to prove the

accuracy of such statements. If the trade unions require any clarification, the court may direct the employer to furnish necessary clarification (Section 24).

The Act provides for the appointment of inspectors and for the maintenance of registers and records (Sections 26 and 27).

If any person contravenes any provision of the Act or any rule made thereunder; or fails to comply with any direction given to him, he would be punished with imprisonment up to 6 months, or with fine up to ` 1,000, or with both (Section 28).

Mode of Payment

It is open to an employer to pay bonus linked with production or productivity instead of bonus based on profits, if there is an agreement to that effect between him and his employees, but subject to the provisions of the Act in respect of payment of minimum and maximum bonus (Section 31A).

Employees can enter into an agreement or a settlement with their employer for grant of bonus under a formula different from that under the Act, i.e., bonus linked with production or productivity; but subject to the provisions of the Act in respect of payment of minimum and maximum bonus (Section 31A).

Exemption

The Act does not apply to the following establishments (Sec. 32):

- (i) Newly set up establishments or units or branches of existing establishments for six years from the date of starting production unless such establishments make profit;
- (ii) Government institutions;
- (iii) Reserve Bank of India;
- (iv) Deposit Insurance Corporation;
- (v) Industrial Development Bank of India;
- (vi) Agricultural Refinance Corporations;
- (vii) Unit Trust of India;
- (viii) Industrial Finance Corporations;
- (ix) State Financial Corporations;

- (x) Employees of insurance companies and the Life Insurance Corporation;
- (xi) Seamen;
- (xii) Stevedore Labour;
- (xiii) Universities and other educational institutions;
- (xiv) Hospitals, chambers of commerce and social welfare institutions;
- (xv) Inland water transport;
- (xvi) Employees employed through contractors on building operations.

If the appropriate government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments is of the opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishment, from all or any of the provisions of the Act (Section 36).

The Central Government may make rules for the purpose of carrying into effect the provisions of this Act (Section 38).

Obligations of Employers

- (1) Work out and pay annual bonus to the employees as required under the Act.
- (2) Maintain the following registers:
 - I Register showing the computation of allocable surplus in Form A.
 - I Register showing set on and set off of the allocable surplus in Form B.
 - I Register showing the details of the amount of bonus due to each employee, deductions therefrom and the amount disbursed, in Form C.
- (3) 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.

Administration

The appropriate government is empowered to appoint inspectors for the purpose of enforcement of the Act. The Central Government has appointed the Chief Labour

Commissioner (Central), Dy. Labour Commissioners (Central), and Labour Enforcement Officers (Central) as inspectors under the Act.