



**INSTITUTE OF MANAGEMENT AND  
INFORMATION TECHNOLOGY: CUTTACK**

*(A Constituent College of Biju Patnaik University of  
Technology: Odisha)*

**DEPARTMENT OF MBA**

**INDUSTRIAL LEGISLATION (18MBA403C)**

**STUDY MATERIAL**

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MBA 2Yrs Syllabus from Admission Batch 2018-19 onwards

4 <sup>th</sup> Semester	18MBA403C	Industrial Legislations	L-T-P 3-0-0	3 Credits	35 hrs
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**Module- I:**

**Labour and Employment Laws in India:** Overviews of labour laws in India, Historical background, objectives, mechanism of dispute settlement, mediation and conciliation, investigation, employment health, benefit, Statutory Regulation of condition of service in certain establishments,. Factories Act,1948; Employees' Compensation Act,1923,

**Module - II:**

Minimum Wages Act,1948; Payment of Wages act, 1936; Employees' Provident Fund Act,1952; Employees' State Insurance Act, 1972; Payment of Bonus Act,1965.

**Module - III:**

Industrial Employment (Standing Order) Act,1946; Industrial Dispute Act,1947; Trade Union Act, 1926.

**Books:**

- Industrial Jurisprudence & Labour Legislation, A.M. Sharma, HPH
- Industrial Relations, Trade Union & Labour Legislation, Sinha, Sinha, Shekhar, Pearson
- Industrial and Labour Legislations, L.M. Porwal and Sanjeev Kumar , Vrinda
- Labour Laws, Taxmann.

  
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## **MODULE I: LABOUR AND EMPLOYMENT LAWS IN INDIA**

### **1.0.Learning Objectives**

After the end of this module, students will be able to learn

- 1.1.Labour Laws in India: An Overview
- 1.2.Classification of Labour laws
- 1.3.Historical Development of Labour Laws in the World
- 1.4. Evolution of Labour Laws in India
- 1.5. Industrial Dispute Act, 1947
- 1.6. The Factory Act, 1948
- 1.7. Employees Compensations Act, 1923

### **1.1. Labour Laws in India: An Overview**

Labour law is also commonly known as ‘the law of employment’. The growth and development of labour laws can be traced back to the establishment of the International Labour Organisation, the only tripartite U.N. agency, in 1919. It brings together governments, employers and workers of 187 member States to set labour standards, develop policies and devise programmes promoting decent work for all women and men. It is devoted to promoting social justice and internationally recognized human and labour rights, pursuing its founding mission that social justice is essential to universal and lasting peace. India has been the permanent member of the governing body of ILO since 1922. This has been a major reason behind the progressive labour legislation in India.

Moreover, labour policy in India has been evolving in response to specific needs of the situation to suit requirements of planned economic development and social justice and has two- fold objectives, namely maintaining industrial peace and promoting the welfare of labour.

Labour is a subject covered in the concurrent list of Indian Constitution. Therefore, both the Central government and the State government are vested with the power to legislate on the matters concerning labour laws. The Central government has the power to legislate with respect to the entries mentioned in the Union List of Schedule VII of the Constitution.

- Regulation of labour and safety in mines and oilfields,
- Industrial disputes concerning Union employees, and
- Union agencies and institutions for professional, vocational or technical training.

On the other hand, both the Central Government and State Governments have the power to legislate with respect to the entries mentioned in the Concurrent List of Schedule VII of the Constitution.

- Trade unions, industrial and labour disputes,
- Social security and social insurance, employment and unemployment, and
- Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

For instance, the central legislation includes the Trade Unions Act, 1926, the Factories Act, 1948, the Payment of Wages Act, 1936, etc. and the State legislation includes the Shop & Establishment Acts (of respective States), Labour Welfare Fund Act (of respective States), etc.

### **1.2. Classification of Labour laws**

India has a number of labour laws that govern almost all the aspects of employment such as payment of wages, minimum wages, payment of bonus, payment of gratuity, contributions to provident fund and pension fund, working conditions, accident compensations, etc. The Government has enacted certain central legislations, viz, the Employees Provident Fund and Miscellaneous Provisions Act, Employees State Insurance Act, Payment of Wages Act, Minimum Wages Act, Equal Remuneration Act, Maternity Benefits Act, etc.

In addition, at the State level, the State Governments usually have a separate Labour Ministry, which seeks to ensure compliance with State labour laws (viz, State Shops and Establishments Act, Labour Welfare Fund Act, etc) through its Labour Department, which is generally operational at the district level.

The various labour legislations enacted by the Central Government can be classified into the following different broad categories:

#### **A. Laws relating to Industrial Relations-**

1. Industrial Disputes Act, 1947
2. Trade Unions Act, 1926

#### **B. Laws relating to Wages**

1. Minimum Wages Act, 1948
2. Payment of Wages Act, 1936
3. Payment of Bonus Act, 1965

#### **C. Laws relating to Social Security**

1. Employees' Provident Funds and Miscellaneous Provisions Act, 1952
2. Employees' State Insurance Act, 1948
3. Labour Welfare Fund Act (of respective States)
4. Payment of Gratuity Act, 1972
5. Employee's Compensation Act, 1923

#### **D. Laws relating to Working Hours, Conditions of Services and Employment**

1. Factories Act, 1948
2. Industrial Employment (Standing Orders) Act, 1946
3. Shops and Commercial Establishments Act (of respective States)
4. Contract Labour (Regulation and Abolition) Act, 1970
5. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
6. Weekly Holiday Act, 1942
7. National and Festival Holidays Act (of respective States) 1963
8. The Plantation Labour Act, 1951
9. The Mines Act, 1952
10. The Dock Workers (Safety, Health & Welfare) Act, 1986

#### **E. Laws relating to Equality and Empowerment of Women**

1. Equal Remuneration Act, 1976
2. Maternity Benefits Act, 1961

#### **F. Prohibitive Labour Laws**

1. Bonded Labour System (Abolition), Act, 1976
2. Child Labour (Prohibition & Regulation) Act, 1986
3. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
4. The Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act, 2013

#### **G. Laws relating to Employment and Training**

1. Apprentices Act, 1961
2. Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

#### **1.3. Historical Development of Labour Laws in the World**

Labour law arose due to the demands of workers for better conditions, the right to organize, and the simultaneous demands of employers to restrict the powers of workers in many organizations and to keep labour costs low. Employers' costs can increase due to workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power - which some employers may oppose. The state of labour law at any one time is therefore both the product of, and a component of, struggles between different interests in society.

International Labour Organisation (ILO) was one of the first organisations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of

Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I. In Great Britain, the Whitley Commission, a subcommittee of the Reconstruction Commission, recommended in its July 1918 Final Report that "industrial councils" be established throughout the world. The British Labour Party had issued its own reconstruction programme in the document titled Labour and the New Social Order. In February 1918, the third Inter-Allied Labour and Socialist Conference (representing delegates from Great Britain, France, Belgium and Italy) issued its report, advocating an international labour rights body, an end to secret diplomacy, and other goals. And in December 1918, the American Federation of Labor (AFL) issued its own distinctively apolitical report, which called for the achievement of numerous incremental improvements via the collective bargaining process.

As the war came to a close, two competing visions for the post-war world emerged. The first was offered by the International Federation of Trade Unions (IFTU), which called for a meeting in Berne in July 1919. The Berne meeting would consider both the future of the IFTU and the various proposals which had been made in the previous few years. The IFTU also proposed including delegates from the Central Powers as equals. Samuel Gompers, president of the AFL, boycotted the meeting, wanting the Central Powers delegates in a subservient role as an admission of guilt for their countries' role in the bringing about war. Instead, Gompers favored a meeting in Paris which would only consider President Woodrow Wilson's Fourteen Points as a platform. Despite the American boycott, the Berne meeting went ahead as scheduled. In its final report, the Berne Conference demanded an end to wage labour and the establishment of socialism. If these ends could not be immediately achieved, then an international body attached to the League of Nations should enact and enforce legislation to protect workers and trade unions.

The British proposed establishing an international parliament to enact labour laws which each member of the League would be required to implement. Each nation would have two delegates to the parliament, one each from labour and management. An international labour office would collect statistics on labour issues and enforce the new international laws. Philosophically opposed to the concept of an international parliament and convinced that international standards would lower the few protections achieved in the United States, Gompers proposed that the international labour body be authorized only to make recommendations, and that enforcement be left up to the League of Nations. Despite vigorous opposition from the British, the American proposal was adopted.

The Americans made 10 proposals. Three were adopted without change: That labour should not be treated as a commodity; that all workers had the right to a wage sufficient to live on; and that women should receive equal pay for equal work. A proposal protecting the freedom of speech, press, assembly, and association was amended to include only freedom of association. A proposed ban on the international shipment of goods made by children under the age of 16 was amended to ban goods made by children under the age of 14. A proposal to require an eight-hour work day was amended to require the eight-hour work day or the 40-hour work week (an exception was made for countries where productivity was low). Four other American proposals were rejected. Meanwhile, international delegates proposed three additional clauses, which were adopted: One or more days for weekly rest; equality of laws for foreign workers; and regular and frequent inspection of factory conditions.

The Commission issued its final report on 4 March 1919, and the Peace Conference adopted it without amendment on 11 April. The report became Part XIII of the Treaty of Versailles. (The Treaty of Versailles was one of the peace treaties at the end of World War I. It ended the state of war between Germany and the Allied Powers. It was signed on 28 June 1919.)

The first annual conference (referred to as the International Labour Conference, or ILC) began on 29th October 1919 in Washington DC and adopted the first six International Labour Conventions, which dealt with hours of work in industry, unemployment, maternity protection, night work for women, minimum age and night work for young persons in industry. The prominent French socialist Albert Thomas became its first Director General. The ILO became a member of the United Nations system after the demise of the League in 1946.

#### **1.4. Evolution of Labour Laws in India**

Earlier labourers were deprived of their rights at their workplaces, they were paid less for their work and their health issues were not considered. The powers of the workers were restricted. After going through such conditions, they raised their voice against it, they demanded more wages and consideration for their health issues, they formed various organizations for this, but it failed. They then decided to go on with their strike with unions and raised the voice so that it could reach the government. Finally, in 1950 in India labour laws were embedded in the constitution which protected the rights labourers looked after health issues and also assured that they are not humiliated at their workplaces.

## Constitution Rights

The articles which directly concerns labour rights are: (14), (16), 19(1) (c), 23-24, 38 and 41-43(A).

- Article 14 concludes that everyone should be equal before the law,
- Article 15 states that state should not discriminate against citizen,
- Article 16 promises equality of opportunity.
- Article 19(c) gives the right to form unions or associations,
- Article 23 prohibits forced labour and
- Article 24 goes on to prohibit child labour which includes that child below the age of 14 years should not be included in hazardous jobs.
- Article 38(1) promotes the welfare of people and
- 38(2) minimizes or decreases the inequality of income.
- Article 43(A) inserted through the 42nd amendment secures the participation of workers in the management of undertakings.

## Trade Unionism and Trade Union Act 1926

In 1920, workers or labourers at different places like Buckingham, Madras went on strike. A suit was filed against the labourers at Madras high court, this issue, day by day, became so serious that it led to the formulation of an Act called as Trade Union Act 1926. This Act gave powers to the Union for certain writ and criminal activities and also provided democracy to them.

## Wage Determination in the Organized Sector

Wages in these sectors were determined through the Minimum Wages Act 1948. Through this act, a minimum wage of labourers is fixed, though this Act provided no justice as the wages at that time was fixed too low for them.

## Employment, Injury Health And Maternity Benefit

The Workmen Compensation Act, 1923 covered all the cases of accident recovery of the employers in the course of employment. The amount of recovery depends upon the amount of injury. In case of death, his wife/ dependant is liable for recovery. In Employers Insurance Act the employers had to contribute a little sum of their wages to an insurance corporation which runs hospitals so that in future or at the time of emergency they could get free checkup and medicines, at the time of accidents.



Maternity Benefit Act, through this Act the female employee who is pregnant can get 90 days of paid leave which was not present earlier. Earlier women salary was cut for these leave or they were terminated from their job.

#### Women and Labour Laws

Women were also benefitted from these laws. Certain laws were passed which were for the welfare of women labourers. Equal pay for equal work was one of them. Women were paid less for the same work which men did. Through this Act, they demanded equal wages to be paid for equal work. They were also awakened against sexual harassment at workplace. They were also given lessons to protect themselves in these situations.

#### Retirement Benefit

This Retirement benefit was covered under the Payment of Gratuity Act and Provident Fund Act. In the first case, they can take up all at last and this can work as their retirement fund. In the second case, both the employers and the employee has to contribute certain fund so that it could be used as a retirement fund for the employee. But the employee used to draw from these funds every year as a result at last or at the time of retirement they could very less amount which was not at all sufficient.

All this led to the making of the labour laws in India. Every person working should have knowledge about their rights and responsibilities. It is only when the person is allowed to make the correct use of his/ his right the organization can grow.

### **1.5. Industrial Dispute Act, 1947**

The main purpose of the Industrial Disputes Act, 1947 is to ensure fair terms between employers and employees, workmen and workmen as well as workmen and employers. It helps not only in preventing disputes between employers and employees but also help in finding the measures to settle such disputes so that the production of the organization is not hampered. In this unit, we are going to discuss the Industrial Disputes Act, 1947 and its importance. This unit encompasses the different authorities and their duties in the settlement of disputes. It also discuss about the reference of disputes. Through this unit, you will be able to know about the different award given by the different authorities under the Act. Thus, you will able to understand through this unit, the procedures of settlement of the disputes as well as the duties of different authorities as well as the way of reference of disputes.

#### **1.5.1. Definition**

Industrial dispute as defined under Sec. 2(k) exists between-

Parties to the dispute who may be

Employers and workmen

## Employers and Employers

### Workmen and workmen

a) There should be a factum of dispute not merely a difference of opinion.

b) It has to be espoused by the union in writing at the commencement of the dispute.

Subsequent espousal will render the reference invalid. Therefore date when the dispute was espoused is very important.

c) It affects the interests of not merely an individual workman but several workmen as a class who are working in an industrial establishment.

d) The dispute may be in relation to any workman or workmen or any other person in whom they are interested as a body.

The laws apply only to the organised sector. Chapter V-B, introduced by an amendment in 1976, requires firms employing 300 or more workers to obtain government permission for layoffs, retrenchments and closures. A further amendment in 1982 (which took effect in 1984) expanded its ambit by reducing the threshold to 100 workers.

### **1.5.2. Applicability:-**

The Industrial Disputes Act extends to whole of India and applies to every industrial establishment carrying on any business, trade, manufacture or distribution of goods and services irrespective of the number of workmen employed therein. Every person employed in an establishment for hire or reward including contract labour, apprentices and part-time employees to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act. This Act though does not apply to persons mainly in managerial or administrative capacity, persons engaged in a supervisory capacity and drawing > 10,000 p.m or executing managerial functions and persons subject to Army Act, Air Force and Navy Act or those in police service or officer or employee of a prison.

### **1.5.3. Objectives of Indian Industrial Dispute Act:**

1. To encourage good relations between labor and industries, and provide a medium of settling disputes through adjudicator authorities.
2. To provide a committee for dispute settlement between industry and labor with the right of representation by a registered trade union or by an association of employers.
3. Prevent unauthorized strikes and lockouts.
4. Reach out to labor that has been laid-off, unrightfully dismissed, etc.
5. Provide labor the right to collective bargaining and promote conciliation.

### **1.6.4. Authorities under the Act and their duties**

The following authorities for Investigation and Settlement of industrial disputes

## INDSUTRIAL DISPUTES MACHINERY



The detailed information about these industries are as follows:

### ***Works Committee (Section 3):***

The works committee is a committee consisting of representatives of employers and workmen (section3). The works committee is a forum for explaining the difficulties of all the parties. The main objective of the works committee is to solve the problems arising in the day-to-day working of a concern and to secure industrial harmony. The function of the working committee is to ascertain the grievances of the employees and to arrive at some agreement. The committee is formed by general or special order by the appropriate Government in an industrial establishment in which 100 or more workmen are employed or have been employed on any day in the preceding 12 months. It consists of the representatives of employers and workmen engaged in the establishment.

It shall be the duty of the working committee to promote measures for securing and preserving amity and good relations between the employers and workmen and, to that end, to comment upon matters of their common interest or concern and to endeavour to compose any material difference of opinion in respect of such matters and decision of the works committees are not binding.

### ***Conciliation Officer (Section 4):***

For promoting and settlement of industrial disputes the appropriate Government may by notification in the Official Gazette, appoint such number of conciliation officer as it thinks fit. The main objective of appointing conciliation officer is to create congenial atmosphere within the industry and reconcile the disputes of the workers and the employers. He may be appointed

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

The duty of the conciliation officer is not judicial but administrative. He has to hold conciliation proceedings, investigate the disputes and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair settlement of the disputes. The conciliation officer is entitled to enter an establishment to which the dispute relates, after reasonable notice and also to call for and inspect any document which he considers relevant. He has to send a report and memorandum of settlement to appropriate Government. The report by the conciliation officer has to be submitted within 14 days of the commencement of the conciliation proceeding or shorter period as may be prescribed by the appropriate Government. The conciliation officer has the power to enter the premises as well can call for and inspect documents.

***Boards of Conciliation (Section 5):***

The appropriate Government may by notification in the Official Gazette, constitute a Board of Conciliation for the settlement of industrial disputes. The Board shall consist of a chairman and 2 or 4 other members in equal numbers representing the parties to the disputes as the appropriate Government thinks fit. The Chairman shall be an independent person. A person is “independent” for the purpose of appointment to a Board, Court or Tribunal if he is uncommitted with the dispute or with any industry directly affected by such dispute. He may be a shareholder of a company connected with or likely to be affected by such disputes. But in such a case he must disclose to the Government the nature and intent of his share [Section 2(i)]. Where the appropriate Government is of the opinion that any industrial disputes exist in an industry, it may refer by order in writing to the Board of Conciliation for settling industrial disputes.

The Board of Conciliation has to bring about a settlement of the dispute. He has to send a report and memorandum of settlement to appropriate Government. He has to send a full report to the Appropriate Government setting for the steps taken by the Board in case no settlement is arrived at. The Board of Conciliation has to communicate the reasons to the parties if no further reference is made. The Board has to submit its report within 2 months of the date on which the dispute was referred to it within the period what the appropriate Government may think fit. The report of the Board shall be in writing and shall be signed by all the members of the Board.

### ***Court of Inquiry (Section 6):***

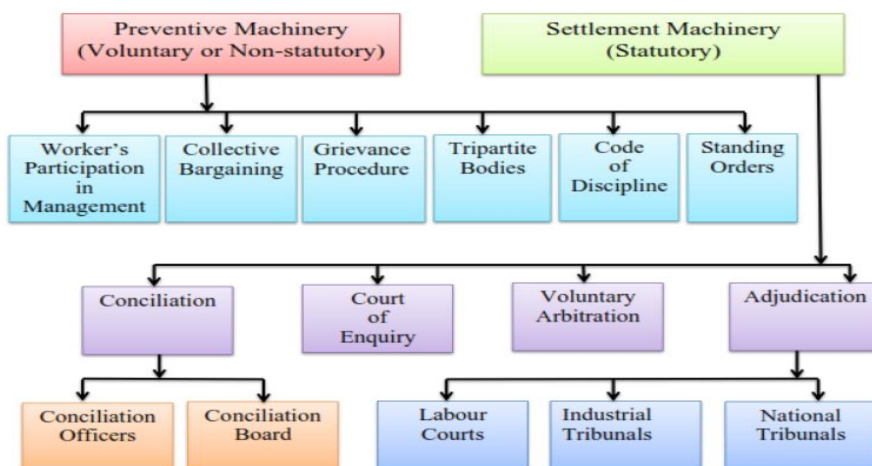
The appropriate Government may by notification in the Official Gazette, constitute a court of inquiry into any matter appearing to be connected with or relevant to settlement of industrial disputes having an independent person or of such independent persons as the appropriate Government may think fit. The court consists of two or more members one of whom shall be appointed by the Chairman. Within a period of 6 months, the court has to send a report thereon to the appropriate Government from the commencement of its any inquiry. This period is not mandatory and it may be extend.

It has the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908, in the following matters—

1. enforcing the attendance of any person and examining him on oath,
2. compelling the production of documents and material objects,
3. issuing commissions for the examination of witnesses,
4. in respect of such other matters as may be prescribed.

The report of the Court must be signed by all the members. A member can submit a note of dissent. The Report together with the dissenting note must be published by the appropriate Government within 30 days from its report. A court of enquiry has no power to improve any settlement upon the parties.

### **MECHINERIES FOR HANDLING INDUSTRIAL DISPUTES**



### ***Labour Court (Section 7):***

The appropriate Government may by notification in the Official Gazette, constitute one or more labour court for adjudication of industrial disputes relating to any matters specified in the

Second Schedule. A labour court consists of one person only to be appointed by the appropriate Government.

The main function of the labour court is to hold its proceedings expeditiously and submit its award as the proceeding concludes.

person shall be presiding officer of a labour court unless —

1. he is or has been, a Judge of the High court,
2. he has for a period of not less than three years, been a District Judge or an Additional District Judge or
3. he has held any judicial office in India for not less than seven years; or
4. he has been the presiding officer of a Labour Court constituted under any provincial Act or State Act for not less than five years.
5. he must be an “ independent “ person and must not have attained the age of 65 years.

***Labour Tribunals (Section 7- A):***

The appropriate Government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for adjudication of industrial disputes. A Tribunal shall consist of one person to be appointed by the appropriate Government. The Appropriate Government may appoint two persons as assessors to advise the Tribunal. The person shall be not qualified unless—

1. he is, a Judge of the High court,
2. he has for a period of not less than three years, been a District Judge or an Additional District Judge.
3. The appropriate Government may, if it so thinks fit, may appoint two persons as assessors to advise the Tribunal in the proceeding before it.

The functions of the Tribunals are very much like those of a body discharging judicial functions, although it is not a Court. Its power is different from that of a Civil Court. The proceedings before an Industrial Tribunal are quasi-judicial in nature with all the attributes of a Court of Justice. The Government is empowered under Section 7-A of the Act to constitute for a limited time which comes to an end automatically on the expiry of the said period for any particular case. The duties of Industrial Tribunal are identical with the duties of Labour Court, i.e. on reference of any industrial disputes; the Tribunal shall hold its proceedings expeditiously and submit its award to the appropriate Government.

### ***National Tribunals (Section 7 B)***

The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes. National Industrial Tribunals are involve only in case of the questions of national importance or if they are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such industrial disputes. It consists of one person only to be appointed by the Central Government. The person shall not be qualified for appointment as the presiding officer unless he is, or has been, a Judge of a High Court. Beside these, the Central Government may, if it thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceedings before it.

### ***Notice of change [section 9A]***

under the Industrial Disputes Act 1947 , no employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

1. without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
2. within twenty-one days of giving such notice:

PROVIDED that no notice shall be required for effecting any such change-

1. where the change is effected in pursuance of any 61[ settlement or award]; or
2. where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

### **1.6. The Factory Act, 1948**

What is a Factory (Under Factories Act, 1948)?

**According to Sec 2(m), “factory” means any premises including the precincts thereof—**

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

(ii) whereon twenty or more workers are working or were working on 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].

**We need 3 important clarifications here:**

<b>Clarification 1</b>	<b>Clarification 2</b>	<b>Clarification 3</b>
In order to calculate the number of workers in the industry, we need to consider all the workers in different relays and groups on a particular day.	In case, if there is no manufacturing taking place in any premise then we cannot consider such a premise as 'factory' even if the Electronic Processing Unit or Computer Unit is installed in such premise.	Precincts' means a space enclosed by walls. What will come under precincts of particular premises will depend on the instances of each case

**Object and Scope of The Act**

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



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

#### Other Important Definitions (Under Factories Act, 1948)

- Adult: An "Adolescent" means a person, who completes his fifteenth year of age but not his eighteenth year. Hence, he is someone who crosses the age of a child but is not an adult yet. Sec. 2(b)
- Child: A 'child' means a person who has not completed his 15th year of age. Sec. 2 (c)
- Competent Person: A "competent person", in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory. Sec. 2(ca)
- Calendar year: 'Calendar Year' means the period of 12 months beginning with the first day of January in any year. Hence, it is different from the Financial Year (starts from 1st April). Sec.2(bb)
- Day: It means a period of 24 hours beginning at midnight. Sec. 2(e)
- Week: It means a period of seven days beginning at midnight on Saturday night or such other night (which CIF certifies). Sec. 2(f)
- Transmission machinery: It means any shaft, wheel, drum, pulley, a system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover reaches any machinery or appliance. Sec. 2 (i)
- Worker: "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 the 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. Sec. 2(l)



or of any part of the territory thereof is threatened whether by war or external aggression or internal disturbance.

The State Governments carry out the administration of the Act through:

- (i) Inspecting Staff
- (ii) Certifying Surgeons
- (iii) Welfare Officers
- (iv) Safety Officers.

**(i) *The Inspecting Staff***

**Appointment:** Section 8 empowers the State Government to appoint Inspectors, Additional Inspectors and Chief Inspectors, such persons who possess prescribed qualifications.

Section 8(2) empowers the State Government to appoint any person to be a Chief Inspector.

To assist him, the government may appoint Additional, Joint or Deputy Chief Inspectors and such other officers as it thinks fit [Section 8(2A)].

Every District Magistrate shall be an Inspector for his district. The State Government may appoint certain public officers, to be the Additional Inspectors for certain areas assigned to them [Section 8(5)].

The appointment of Inspectors, Additional Inspectors and Chief Inspector can be made only by issuing a notification in the *Official Gazette*.

When in any area, there are more inspectors than one, the State Government may by notification in the *Official Gazette*, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

Inspector appointed under the Act is an Inspector for all purposes of this Act. Assignment of local area to an inspector is within the discretion of the State Government.

A Chief Inspector is appointed for the whole State. He shall in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State. Therefore, if a Chief Inspector files a complaint, the court can legally take cognizance of an offence. Even assignment of areas under Section 8(6) does not militate in any way against the view that the Chief Inspector can file a complaint enabling the court to take cognizance. The Additional, Joint or Deputy Chief Inspectors or any other officer so appointed shall in addition to the powers of a Chief Inspector, exercise the powers of an Inspector throughout the State.

**Powers of Inspectors**

Section 9 describes the powers of the Inspectors subject to any rules made in this behalf for the purpose of the Act. An Inspector may exercise any of the following powers within the local limits for which he is appointed:

1. He can enter any place which is used or which, he has reasons to believe, is used as a factory.
2. He can 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.
3. Require the production of any prescribed register or any other document relating to the factory. Seize, or take copies of any register, record of other document or any portion thereof.
4. Take measurement and photographs and make such recordings as he considers necessary for the purpose of any examination.
5. 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 or substance or a part thereof, and detain it for so long as is necessary for such examination.

### **Production of documents**

The Factories Act requires the maintenance of certain registers and records. Inspectors have been empowered to ask for the production of any such documents maintained under law, and the non-compliance of this has been made an offence.

#### ***(ii) Certifying Surgeons***

Section 10 provides for the appointment of the Certifying Surgeons by the State Government for the purpose of this Act to perform such duties as given below within such local limits or for such factory or class or description of factories as may be assigned to Certifying Surgeon:

- (a) the examination and certification of young persons under this Act;
- (b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;
- (c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories.

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(c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories.

***(iii) Welfare Officer***

Section 49 of the Act imposes statutory obligation upon the occupier of the factory of the appointment of Welfare Officer/s wherein 500 or more workers are ordinarily employed.

Duties, qualifications and conditions of service may be prescribed by the State Government.

***(iv) Safety Officer***

Section 40-B empowers the State Government for directing a occupier of factory to employ such number of Safety Officers as specified by it where more than 1,000 workers are employed or where manufacturing process involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein. The duties, qualifications and working conditions may be prescribed by the State Government.

Section 6 empowers the State Government to make rules with regard to licensing and registration of factories under the Act on following matters:

(i) submission of plans of any class or description of factories to the Chief Inspector or the State

Government;

(ii) obtaining previous permission of the State Government or the Chief Inspector, for the site on which factory is to be situated and for construction or extension of any factory or class or description of factories. However, replacement or addition of any plant or machinery within prescribed limits, shall not amount to extension of the factory, if it does not reduce the minimum safe working space or adversely affect the environmental conditions which is injurious to health;

(iii) considering applications for permission for the submission of plans and specifications;

(iv) nature of plans and specifications and the authority certifying them;

(v) registration and licensing of factories;

(vi) fees payable for registration and licensing and for the renewal of licences;

(vii) licence not to be granted or renewed unless notice specified under Section 7 has been given.

**Automatic approval**

If an application is made for the approval of site for construction or extension of the factory and required plans and specifications have been submitted by registered post to the State Government or the Chief Inspector and if no reply is received within three months from the date on which it is sent the application stands automatically approved [Section 6(2)]. Where

the rules require the licensing authority to issue a licence on satisfaction of all legal requirements/record reasons for refusal. Licence could not be refused only on a direction from Government (*S. Kunju v. Kerala*, (1985) 2 LLJ 106).

### **Appeal against refusal to grant permission**

If the State Government or Chief Inspector do not grant permission to the site, construction or extension of a factory, or to the registration and licensing of a factory, the applicant may within 30 days of the date of such refusal appeal to:

- the Central Government against the order of the State Government;
- the State Government against the order of any other authority.

### **NOTICE BY OCCUPIER**

Section 7 imposes an obligation on the occupier of a factory to send a written notice, containing prescribed particulars, to the Chief Inspector at least 15 days before an occupier begins to occupy or use a premises as a factory and at least 30 days before the date of resumption of work in case of seasonal factories, i.e. factories working for less than 180 days in a year.

#### **Contents of notice**

A notice must contain following particulars:

- (1) The name and situation of the factory.
- (2) The name and address of the occupier.
- (3) The name and address of the owner of the premises or building (including the precincts, etc., thereof referred to in Section 93).
- (4) The address at which communication relating to the factory should be sent.
- (5) The nature of manufacturing process to be carried on in the factory during next 12 months.
- (6) The total rated horse power installed or to be installed in the factory which shall not include the rated horse power of any separate standby plant.
- (7) The name of the Manager of the factory for the purpose of this Act.
- (8) the number of workers likely to be employed in the factory.

(9) Such other particulars as may be prescribed.

### **Notice where new manager is appointed**

Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof, within seven days from the date on which such person takes over charge.

### **When there is no manager – occupier deemed as manager**

During a period for which no person has been designated as Manager of a factory or during which the person designated does not manage the factory any person found acting as manager, will be the manager for the purposes of the Act. Where no such person is found the occupier should be deemed to be the manager of the factory.

### **GENERAL DUTIES OF THE OCCUPIER**

Section 7A is inserted by the Factories (Amendment) Act, 1987, as under:

- (1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
- (2) Without prejudice to the generality of the provisions of Sub-section (1) the matters to which such duty extends shall include:
  - (a) The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
  - (b) the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
  - (c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
  - (d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and provisions and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
  - (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.



(3) Except in such cases as may be prescribed, every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy with respect to the health and safety of the workers at work and organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

### **GENERAL DUTIES OF MANUFACTURERS ETC.**

Section 7B provides that every person who designs, manufactures, imports or supplies any article (including plant and machinery) or use in any factory, shall observe the following:

(a) ensure, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;

(b) carry out such tests and examination as may be considered necessary for the effective implementation of the provisions of clause (a);

(c) take such steps as may be necessary to ensure that adequate information will be available:

(i) in connection with the use of the article in any factory;

(ii) about the use for which it is designed and tested; and

(iii) about any condition necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers.

The Section further provides that where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see:

(a) that the article (including plant and machinery) conforms to the same standards if such article is manufactured in India, or

(b) if the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India, that the article conforms to such standards.

For the above purpose, the concerned person may carry out or arrange for the carrying out of necessary research with a view to the discovery and so far as is reasonably practicable, the elimination or minimisation of any risk to the health or safety of workers to which design or article (including plant and machinery) may give rise.

The section further provides that if research, testing, etc. has already been exercised or carried out, then no such research is required again.

The above duties relate only to things done in the course of the business carried out by him, and to matters within his control.

However, the person may get relief from the exercise of above duties if he gets an undertaking in writing by the user of such article to take necessary steps that the article will be safe and without risk to the health of the workers.

## **MEASURES UNDER THE FACTORY ACT, 1948**

This Act brought about provision to Health, Safety & Welfare of workers which were presented below.

### **Health**

**Section 11: Cleanliness:-** Section 11 requires the employer or occupier of the factory to maintain cleanliness by keeping the factory free from effluvia arising from any drain or other nuisance. Effluvia has not been defined in the Act but it means the disagreeable vapors arising from decaying matter and for this purpose the dirt and refuse arising out of the manufacturing process shall not be allowed to be accumulated and therefore effective methods for sweeping the floors and benches of the workrooms, stair case, passages should be adopted to dispose of such effluvia. The above mentioned premises should be cleared at least once in a week and disinfected whenever necessary. Section 11 makes elaborate provisions for maintaining whole premises including, walls, partition, ceilings, doors and windows to be cleaned and painted or varnished at least once in 5 years. To ensure proper implementation of these provisions, it is also required that the employer shall maintain a register to enter the dates on which such processes have been carried out [Clauses (a) to (e)]. However an alternative provision is also made under sub-section (2) that if, by the very nature of operations carried out in a factory, it is not practicably possible for the employer to comply with the requirements of sub-section (1) above, the State Government may, by order, exempt such factory or part of the factory, from all or any of the provision of sub-section (1) and specify alternative methods for keeping the factory in a clean state. (Sec. 11)

**Section 12: Disposal of Waste and Effluents:-** Section 12 requires for treatment for disposal of wastes and effluents due to manufacturing process so as to render it innocuous by making

approved method prescribed by the concerned authority. The word ‘innocuous’ is again not defined in the Act but etymologically it means ‘harmless’.

**Section 13: Ventilation and Temperature** is to be maintained in any work room through adequate ventilation and circulation of air. The temperature in the work room should be secured to provide comfort to workers and prevent injury to their health. The Chief Inspector of Factories may prescribe proper measuring instruments and suitable measures for maintaining suitable temperature and ventilation in the work room.

**Section 14: Dust and Fumes** are required to be prevented by suitable measures to give off any dust or fumes likely to be injurious to the workers. Measures should be taken to prevent inhalation and accumulation of such injurious dust and fumes by providing exhaust appliances. It is further required that no stationary internal combustive engine shall be operated unless the exhaust is conducted into open air.

**Section 15: Artificial Humidification** is required to be regulated by prescribed standards of humidification and adequate ventilation and cooling the air in the work room.

**Section 16: Over-crowding** in the work room should be avoided and sufficient elbow-room should be provided for the workers to work comfortably without congestion. It is required that at least 9.9 cubic metres space should be provided for each worker, if the factory is in existence at the time of commencement of this Act, and a space of at least 4.2 cubic metre per worker should be provided in every factory started after the commencement of the Act.

**Section 17: Lighting** should be provided in a suitable manner, by natural or artificial methods or by both. All glazed windows and sky lights should be kept clean and there should not be any glare or reflection from any smooth or polished surface. The lighting should not form shadows so as to cause strain to eyes or cause accident.

**Section 18: Drinking Water** should be made available at all convenient places and all such points shall be legibly marked “drinking water” and no such drinking water should be situated within six metres of any washing place, urinal, latrine, spittoon etc. The water should be wholesome, free from any contamination and during hot weather cool drinking water should be provided to workers.

**Section 19: Latrines and Urinals** should be provided at convenient places and then should be separate latrines and urinals for male and female workers. All latrines and urinals should be kept clean and maintain by prescribed sanitary types and rules.

**Section 20: spittoons** should be provided at suitable places and sufficient manner. There should be maintained properly and no person shall spit within the premises of the factory except in the spittoons. The provision shall be made for penalty in case of violation of this rule.

## Safety

Safety of the worker from any injury or occupational disease is the prime purpose to create conducive and safe environment of work. Therefore provisions are made under Sections 21 to 41 of the Factories Act as under-

**Section 21: Fencing of Machinery:-** it is laid down that in every factory proper fencing should be provided to every moving part of a prime mover and every flywheel connected to prime mover or engine. Every electric motor, rotary converter, part of transmission and every dangerous part of other machinery should be securely fenced by safeguards to prevent any accident, particularly when such machinery is in motion or use. It may be noted that most of the accidents takes place due to non-compliance of this provision in many cases under the Employee's Compensation Act are arising due to the violation of these security measures.

**Section 22: Work on or near machinery in motion:-** Whenever it is necessary to examine any part of machinery, while the machinery is in motion, for the purpose of repair, lubrication or adjusting operation, such examination or operation shall be carried out only by specially trained adult male worker wearing tight fitting clothing and whose name shall be recorded in the prescribed register.

Further during such examination or operation such worker shall not handle a belt at a moving pulley without following the instructions given under clauses (i) to (vii) of this section.

Further no woman or young person shall be allowed to clean or lubricate any prime mover or transmission machinery.

**Section 23: Employment of Young Persons on Dangerous Machines:-** This section prohibits the employer from requiring any young person to work at any machine unless he has been fully instructed as to the dangers arising in connection with the machine. Precautions should be observed to ensure that such person has received sufficient training at the machine and that he is working under adequate supervision by a person who has thorough knowledge and experience of the machine.

**Section 24: Striking gear and devices for cutting power:-** To avoid or atleast to mitigate injury to the persons working at the dangerous machines or prime mover, it is required that the whole process should be provided with suitable striking gear and other mechanical devices to disconnect the power immediately whenever necessary to avoid accident or injury. Similarly when a device, which can be inadvertently shift from 'off to 'on' position is provided in a

factory to cut-off power, arrangements shall be made for locking the device in safe position.

**Section 25: Self-acting machines:-** Wherever self-acting machines are put in operation at least a distance of space of 45 centimetres should be provided from any fixed structure and no person should be able to pass through near to the machine within the prescribed distance of space.

**Section 26: Casing of New Machinery:-** In all machinery driven by power and installed in a factory, every set screw, bolt or key or any revolving shaft, spindle wheel or pinion shall be encased and effectively guarded to prevent danger.

**Sections 27 to 41:-** The other Sections from Section 27 to 41 of this Chapter on safety provide for prohibition of employment of women and children near cotton-opener (Section 27) and safety measure for hoists and lifts, lifting machines, revolving machinery, pressure plant, excessive weights, protection of eyes, protection against dangerous fumes, protection from explosive or inflammable dust or gas, precaution in case of fire etc. and ensure safety of the workers.

### **Hazardous Processes**

This Chapter IV-A relating to Hazardous Processes is provided by an amendment in the year 1987 making provisions under Sections 41-A to 41-H. It requires that the State Government shall constitute a Site Appraisal Committee for the purpose of advising to consider application for grant of permission to the initial location of a factory involving a hazardous process. It requires compulsory disclosure of information by the occupier of such factory where such hazardous processes is involved, in a manner prescribed for taking measures to overcome such hazards arising from the exposure or handling, transportation, storage or processes, so that they could be checked by Chief Inspector or local authority. It also requires for emergency standards, workers' participation in safety management. Section 41-H confers a right on workers to warn about imminent danger and imposes responsibility on the occupier in relation to such hazardous processes. The Central Government may appoint Inquiry Committee in the event of any occurrence of an extraordinary situation involving hazardous process in a factory (Section 41-D). In case the employer fails to provide safety measures as required by this Chapter or such measures are inadequate, the Central Government may direct the Director-General of Factory Advice Service and Labour Institute or any other institute specialised in the matter relating to standards of safety of hazardous process, to lay down emergency standards for enforcement of suitable standards.

## **Welfare**

Chapter V contains provisions for welfare of the workers in the factory and they are incorporated under Sections 42 to 50 of the Factories Act, 1948

**Section 42: Washing Facilities:-** It lays down that in every factory adequate and suitable facilities should be provided for washing separately for male and female workers. All such washing facilities shall be easily accessible and kept clean.

**Section 43: Facilities for storing and drying clothing** require that there should be adequate facilities for keeping clothing not worn during working hours and for the drying of the wet-clothing.

**Section 44: Facilities for sitting** should be provided particularly where the workers are required to work in standing position, so that they may take advantage of any opportunity for rest which may occur in the course of their work.

**Section 45: First-Aid Appliances** should be provided and maintained so as to be readily accessible in case of requirement. The contents of such First Aid Boxes should be maintained properly.

**Section 46: Canteen:-** The State Government may make rules that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen shall be provided and maintained by the occupier for the use of workers. The food-stuff, furniture, accommodation and equipment in the canteen shall be of prescribed standard and nature.

**Section 47: Shelters, rest-room and lunch room:-** In every factory where more than 150 workers are employed, adequate and suitable shelters or rest-room and lunch rooms should be provided with facility of drinking water. Such rest-room or shelter shall be well ventilated and maintained in a clean condition.

**Section 48: Creches:-** It is provided that in every factory where more than 30 women workers are ordinarily employed, there shall be provided a suitable room for the use of children under the age of 6 years of such women. The creches should also be well ventilated and maintained in clean conditions. The furniture, construction and accommodation should be as per prescribed rules.

Additionally provision shall be made for the care of children belonging to women workers along with the facility for changing and washing the clothing of such children.

**Section 49: Welfare Officers:-** In every factory when 500 or more number of workers are employed, the occupier shall employ in the factory such number of Welfare Officers as may be prescribed. The State Government may prescribe their qualifications and duties.

### **1.7. Employees Compensations Act, 1923**

The “Employees Compensation Act, 1923” is an Act to provide payment in the form of compensation by the employers to the employees for any injuries they have suffered during an accident. Earlier this Act was known as the Workmen Compensation Act, 1923. When the employer is not liable to pay compensation-

1. If the injury does not end in the entire or partial disablement of the employee for a period exceeding three days.
2. If the injury, not leading in death or permanent total disablement, is caused by an accident which is directly attributable to:
  - The employee having at the time of the accident is under the influence of drink or drugs;
  - The willful disobedience of the employee to an order if the rule is expressly given or expressly framed, for the purpose of securing the safety of employees; or
  - The willful removal or disregard by the employee of any safety guard or other device which has been provided for the purpose of securing the safety of employees.

### **Principles Governing Compensation**

Who will be receiving the compensation on behalf of the deceased?

- A widow or a minor who is a legitimate son or unmarried daughter or a widowed mother is entitled to compensation;
- If the family of the deceased is wholly dependant on the earnings of the employee at the time of his death or a son or daughter who has attained the age of eighteen years;
- A widower;
- A parent other than a widowed mother;
- A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor;
- A minor brother or an unmarried sister or a widowed sister if a minor;
- A widowed daughter-in-law;
- A minor child of a predeceased son;
- A minor child of a predeceased daughter where no parent of the child is alive, or;
- A paternal grandparent if no parent of the employee is alive.

### **Nature of Liability**

Imagine what will happen if an employee who is working putting in great benefits gets to know that he/she will not be getting any benefits. After all, people tend to do something to get

something in return. When the principle of vicarious liability is applied, the employer is liable to pay compensation irrespective of his/her negligence. Employer anticipates it as damages payable to the employees but it is actually a relief for them. An Employer becomes liable when employees have sustained injuries by any accident or unavoidable situations during the course of employment. The question arises: Will an employee who is a part-time worker would still be entitled to the benefits of the Act? Yes, the employer will still get the benefits of the Act.

Who may get the compensation? To what extent the employers are liable?

To be eligible for the Employees' Compensation Act's benefits there are some requirements which need to be fulfilled:

1. You must be an employee of the Company or Organisation.
2. You must have been injured at the workplace or the job was as such that you have been injured.

#### Doctrine of added peril

When an employee performs something which is not required in his duty, and which involves extra danger, the employer cannot be held liable to pay compensation for the injuries caused. In the case of *Devidayal Ralyaram v/s Secretary of State*. It was ruled that the doctrine of added peril was used as defense and the employer was not liable for the compensation.

#### Adjudication of Compensation

The adjudication is done by the commissioner in calculation of the amount of compensation. The quantum of compensation is calculated from the date of the accident.

#### Self-inflicted Injury

If a worker inflicts an injury to himself or herself it is a self-inflicted injury. The injury may be intentional or accidental but the employer is not liable for such injuries. There are some types of jobs that have a high risk for self-inflicted injuries which include-

- Law enforcement
- Medical employees
- Farmers
- Teachers
- Salespeople

#### Contributory negligence

Employees owe a duty to their employers to carry out their work with reasonable care so as to avoid accidents and injury. Employers are vicariously liable for the negligence of their employees but are entitled to claim a contribution or indemnity from their negligent employee in appropriate circumstances. So if there is negligence on the part of both employee and the employer then the employer will be liable to pay compensation to the extent of his own



negligence, not of the employee. Hence, the compensation amount may reduce as the employer will not be liable for the negligence of the employee.

## **Employees' Compensation**

Section 3: Employer's liability for Compensation

### ***Employer's liability in case of occupational diseases***

There are certain occupations which expose employees to particular diseases that are inherent-

- Infra-red radiations;
- Skin diseases due to chemical or leather processing units;
- Hearing impairment caused by noise;
- Lung cancer caused by asbestos dust and Diseases due to effect of extreme climatic conditions.

Example- Miners are at a risk of developing a disease called silicosis. Sometimes miners also develop lung diseases due to exposure to dust. The people who work in agricultural lands, develop diseases through spraying of pesticides. These pesticides are toxic in nature and are health hazards to many farmers.

There are thousands of workplaces where occupation itself is dangerous in nature.

Provided that the employer shall not be liable:

(a) if any injury does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) if any injury does not result in death or permanent total disablement caused by an accident which is directly attributable to-

- if the employee is under the influence of drink or drugs at that time,
- the willful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees,
- the wilful removal by the employee of any safety guard or other devices which he knew to have been provided for the purpose of securing the safety of employees.

### ***Part A of Schedule III***

If an employee contracts any disease that is mentioned in occupational diseases or the employee is employed for a continuous period of six months (this does not include the service period) and not less than that, the employer shall not be liable to pay the compensation as the disease will be deemed to be injury and it shall be considered as out of course of employment.

### ***Part B of Schedule III***

1. Diseases caused by phosphorus or the toxic substance present, all include exposure to risk concerned.

2. Diseases caused by mercury or toxic substances found exposure to the risk concerned.
3. Diseases caused by benzene or the toxic substances found which pose risk to the concerned.
4. Diseases caused by nitro and amino toxic substances of benzene involve risk to the concerned.

These diseases are considered occupational diseases, and they are deemed to be out of the course of employment and therefore the employer will not be liable to pay the compensation.

### ***Part C of Schedule III***

If an employee contracts a disease that is mentioned as an occupational disease which is specific to that employment, during a continuous period that is less than the period mentioned under this part of Schedule 3 is known as occupational diseases. It will be deemed that the disease has arisen out of and in the course of the employment, the contracting of such disease will be deemed to be an injury by accident within the meaning of this Section:

Pneumoconiosis is a disease caused by sclerogenic mineral dust (silicosis, anthracosilicosis, asbestosis) and silico-tuberculosis if silicosis is an essential factor in causing the resultant incapacity or death, such diseases are considered as occupational diseases.

For instance, an office of KLM Consultant was located in a new place. The new place had large areas, and a new wallpaper was also placed, the area painted, and a new carpet was also laid. Employees worked in cubicles. However, within a month of shifting, one of the employees, Rahul Sharma complained of skin allergy. At the new workplace, there were no windows in the cubicle where Rahul had shifted. A photocopy machine was near to his cubicle. Since his shifting, he started complaining of unpleasant odors, a feeling of excessive tiredness and irritation in eyes, nose, and throat.

Also, some paint boxes were kept at the office which was still not removed even after his complaining. He also complained about the increasing noise and distraction there. The rashes which started a week ago with itching and redness now turned more grievous and had spread from the initial location of the hand to surfaces of the wrists. Due to his allergic condition, Rahul had to visit a doctor who advised him to avoid going out. As Rahul had to incur expenses on visiting the doctor and medicines, he approached his employer for compensation.

The company had bought a workplace compensation insurance policy from the insurance company. The Company KLM Consultant considered it as an occupational disease and approached the employee's compensation insurance company to recover its legal liability and hence pay the compensation to Rahul.

After checking all the documents submitted by Rahul, the insurer considered it as an occupational disease and agreed to settle the claim. The insurer covered medical expenses incurred by Rahul on his treatment.

#### Section 3(3)

The Central Government or the State Government gives a notification in the Official Gazette which species the diseases which will be deemed to be occupational diseases under the provisions of sub-section(2) and in the case of notification by the state government, these diseases are declared by the Act.

#### Section 3(4)

No compensation will be payable to an employee unless the disease is directly attributable to a specific injury that arises out of or in the course of employment.

### ***Employment***

Underemployment, an employee is one who works under the employer and has to work as per the terms of the company or the employer.

### ***Personal injury***

A personal injury can be compensated only in some circumstances. Injury sustained by the employee must be a physical injury. Example- If a person is discriminated on the basis of:

- Age
- Sex
- Sexual Orientation
- Transsexual person
- If a person is having a disability
- Religion and belief
- Colour, Nationality
- Pregnancy and Maternity leave
- Marriage or Civil Partnership

In the case of *Richmond Adult Community College v McDougall* (2008), M has suffered injuries mentally, psychological disorders as he was offered a job as a database assistant in a college. But when it learned about the medical history and the psychological disability M was suffering from, the college withdrew the offer. M brought a disability discrimination claim from the college. The tribunal accepted that m was suffering from mental impairment but she was not disabled within the meaning of Section 1 of the Disability Discrimination Act, 1995.

Case Law- *G.S.R.T.C. v. Ashok Kumar Keshavlal Parekh*

### ***Accident***

The Act provides that compensation is provided to employees and their dependants only if the injuries from the accident includes occupational diseases. The accident must occur in the course of employment the Act also applies to railway servants and persons employed in any such capacity as specified in Schedule 2 of the Employees Compensation Act. The people employed in factories, mines, plantations, vehicles, construction works, and certain other hazardous occupations come under Schedule 2.

A fatal accident is one where there is death or a high risk of loss of life of the employee. In the case of a fatal accident, the employee might die or suffer severe disablements and injuries. On the other hand, non-fatal accidents are those accidents that do not have a high probability of death. In the case of non-fatal accidents, the employee or the workman might suffer disabilities or any type of personal injury.

Both fatal and non-fatal accidents are covered by the Employees Compensation Policy, provided such accidents result in the mentioned contingencies in the act. Fatal accidents are taken as those which result in death, or permanent total disablement, permanent partial disablement or fatal injuries. If any of these contingencies occur, the employees' compensation policy would pay the claim faced by the company. In the case of non-fatal accidents though, the covered contingencies might not occur. The employee or worker might not face any type of disablement or injury from such accidents. If the employee or workman suffers from a type of disablement and the disablement does not last for more than 3 days, the claim would not be paid. As a result, in several employees' compensation policies, non-fatal accidents are usually not covered unless they cause a disablement which lasts for more than 3 days.

In *Lister v Romford Ice and Cold Storage Company Limited*, House of Lords upheld the decision of the Court of Appeal that an employee owed a duty in contract to his employer to take reasonable care in the use of a vehicle at work. In the event that the employer was liable to pay damages arising from the employee's negligence, the employer could bring a claim to recover that loss from his employee.

### ***Arising out of and in the course of employment***

Three factors determine whether the act is arising out of or in the course of employment:

- When the injury occurred, the employee must have been engaged in the business of the employer. Also, he must not be doing something for his personal benefit. The accident must occur where the employer was performing his duties.
- The injuries occurred because of the risk incidental to the duties of the work or services or if the nature or condition of employment is inherent.

Reference Case law: *N.A. Chauhan v. N.K. Shah*

### ***Notional extension of Employer's Premises***

When there is a causal connection between the accident and the place where the employee is working, compensation is payable for the disability or death of the person according to the Employees Compensation Act. This is the Doctrine of Notional Extension of the workplace. The theory of this doctrine was executed in some cases:

**Moondra & Co. V/s Mst. Bhawani**

There was a truck driver who was told by his employer to drive a petrol tanker. The driver found a leak in the tank and sought permission from the employer to look for the source of the leakage. While searching he lit a matchstick and the tank caught fire. The driver received burn injuries and died. It was held by the court that the family members of the deceased would be entitled to compensation since the accident took place at the workplace and in the course of employment.

### ***Wilful disobedience of orders or safety devices, etc.***

If the employee disobeys the order expressly given or denies to obey any rules. The rules are made for the safety of the workmen but if they disobey the accident might happen.

The accident can take place if the employee willfully disregards the safety guards or any other device. If the employee knew that he has been provided safety for the purpose of securing employees and still disregards it is said to be done wilfully.

### ***Compensation under Agreement***

A compensation agreement ensures that an individual will get paid for the services he or she has provided to a company as an employee. A compensation agreement ensures that an individual will get paid for the services he or she provides to a company as an employee.

### ***The question of compensation and negligence of employee***

The question of compensation and negligence of employees is explained above in contributory negligence. When there is negligence on the part of the employer and employee, the employer is liable to pay compensation only to the extent of his negligence. He will not be liable to pay the full amount of compensation. So in the case of negligence of the employee, he will get only a part of compensation.

### ***Alternative Remedy under Section 3(5)***

Any right to compensation cannot be conferred by an employee in respect of injuries, if he has instituted a suit for damages in a civil court, in respect of any injury against any employer. No suit for damages shall be maintainable by an employee in any court of law.

### ***Liability of Insurance Company***

If any claim is due to the insurance company, the company cannot escape liability arising out of claim simply because notice was not issued to the company. For instance, if a notice is issued

to the owner of the vehicle it is sufficient to get insurance from the company. In the case of [Ram Karan v. Vijayanand](#) the petition was filed by Ram Karan under section 482 of the code of criminal procedure because he had been illegally deprived of the benefits of the premature release. It was a violation of Articles 14, 19 and 21 of the Constitution of India. It was held that he was entitled to be released as per the rules.

### ***Liability of Insurance Company or owner of vehicle***

The question is whether the insurance coverage is available to the insured employer-owners? The owner of motor vehicles, in relation to their liabilities under the Employment Compensation Act on account of motor accident injuries caused to their employees would include additional statutory liability foisted on the insured employers under Section 40 of the Compensation Act.

#### **Section 4: Amount of compensation**

Where death results from the injury-

In case the employee dies, an amount equal to fifty percent of the monthly wages multiplied by a factor as per given in the Schedule 4 of the act or rupees eighty thousand is given whichever is more.

Where permanent total disablement results from the injury-

In case the employee has total disablement the amount given is sixty percent or rupees ninety thousand whichever is more.

Where permanent partial disablement results from injury-

In the case of permanent partial disablement, the compensation provided is equal to disability as sixty percent or rupees ninety thousand.

### ***Liability of Insurer***

The liability of the insurer is determined on the basis of the wages of the employee. The amount of wages is covered under the insurance policy. The company will be liable to indemnify only that portion of the amount which is under wages.

Causal connection between disease and occupation

The amount of compensation is paid when the insurer certifies that the injury is the result of an occupational disease.

### ***Application of law of pleadings***

An application for pleadings can be filed by the employee under the amount of compensation when he/she thinks that the amount that is decided is not appropriate with respect to the injury incurred.

Section 4-A: Compensation to be paid when due and penalty for default

- When the employer does not accept liability for compensation to the extent claimed, he shall be bound to make a payment may be provisional and such payment shall be deposited to the employee or the commissioner.
- The commissioner can direct the employer to pay interest in addition to the amount at the rate of twelve percent per annum. The rate of interest can also increase which may be specified by the Central Government.

#### Section 5: Method of calculating Wages

The basis for the calculation of compensation is the monthly wage system. It means the amount of wages deemed to be payable for a month. A case dealing with the method of calculating wages was *Zubeda Bano v. Maharashtra Road Transport Corporation, 1990*.

Batta does not amount to wages for computing compensation. It is paid to workman per day to cover special expenses incurred by him due to the nature of his work. Another case was *New India Assurance Co. Ltd., Hyderabad v. Kotam Appa Rao, 1995*.

When the employer has been giving service to the employer during a continuous period of not less than twelve months preceding the accident, and when the employer is liable to pay compensation, the employee will be liable one-twelfth of the total wages. The employer is required to pay the compensation which is due for payment to employees in the last twelve months of that period.

#### Section 6: Review

1. Any half monthly payment can be reviewed by the commissioner under this act if there is an agreement between the parties or if there is an order given by the commissioner. A certificate of a qualified medical practitioner will be accompanied that there is a change in the condition of the employee subject to the rules and regulations under the Act.
2. Any half monthly payment may be reviewed, can be continued, increased, decreased or ended under the act or if the accident is found which resulted in permanent disablement. Such an employee may get less amount because he had already received by way of half monthly payments.

#### Section 7: Communication of Payments

Commutation of half- monthly payments- Any right to receive half- monthly payment agreement between the parties is commutation of payments. If the parties do not agree and the payment continues for not less than six months then on the application of either party, the Commissioner will redeem the payment of a lump sum amount which was agreed by the parties.

#### Section 8: Distribution of Compensation

### Rights of heirs of dependents

1. Compensation will not be provided to the employee whose injury has resulted in death and lump sum payment will also be not provided who is under a legal disability. The compensation may be deposited to the commissioner and a direct payment will not be allowed by the employer to the employee.
2. In the case of a deceased employee, an employer can make payment to any dependant advances. The compensation will amount to equal to three months' wages of the employee and the amount shall not exceed the compensation payable to the dependant. If the amount exceeds, it may be deducted by the commissioner from the compensation and repaid to the employer.
3. An amount not less than ten rupees which is payable may be deposited with the commissioner on behalf of that person.
4. The receipt of the commissioner will be sufficient discharge of the amount if any compensation is deposited with him.
5. When any compensation is deposited with the commissioner and he is payable to any person, he may if the person to whom the compensation is to be payable is not a woman or a person with a legal disability then he may pay the money to the person who is entitled to get the compensation.
6. When any lump sum amount is deposited with the commissioner and he is payable to a woman or a person who is legally disabled, such amount can be invested for the benefit of any other woman or a person with a disability. The commissioner may direct the amount in such cases.

### Section 9: Compensation not to be assigned, attached or charged

Compensation not to be assigned, attached or charged, save as provided by this Act, no lump sum or half- monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

### Section 10: Notice and claims of the accident

A claim for compensation cannot be entertained by a commissioner unless the notice of the accident is given in a certain manner.

#### ***Condonation of delay***

It means that if the employee has delayed in claiming for the compensation it is said to be condoned.



### **Section 10A: Power to acquire statements from employers regarding fatal accidents**

When a commissioner receives information about the death of an employee, because of an accident that is arising out of or in the course of employment, he can send a registered post or a notice to the employer of the employee, to submit a notice within thirty days of service. The statement or notice shall be in a prescribed form mentioning the circumstances under which the death took place. Also stating that whether the employer is liable or not to deposit compensation on the death of the employee.

### **Section 10B: Reports of fatal accidents and serious bodily injuries**

A notice is required to be given to any authority when any law is in force for the time being, if any accident occurs on the premises of the employer which results in the death of employee or serious bodily injury the person on behalf of employer is required to give a notice within seven days of the death. This person shall send a report to the commissioner giving details of the death or serious bodily injury. It will be done only when it is provided by the state government that instead of sending the report to the commissioner it is sent to another authority to whom a notice can be given. "Serious bodily injury" means injury to a limb or permanent loss of sight or hearing or fracture of limbs or the insured person is absent from work for more than twenty days.

### **Section 11: Medical Examination**

When an employee brings to the notice that he has met with an accident, before the expiry of three days he will be examined free of charge by a qualified medical practitioner.

If the employee refuses to submit himself or herself for examination or in any way obstructs the same, his right to compensation shall be suspended.

If the employer voluntarily leaves without having been examined in the place where he is employed, his right to compensation shall be suspended until he returns and offers himself for examination.

The incorporation of words "assessment of loss of earning capacity by the qualified medical practitioner" in Section 4(1)(c)(ii) has some purpose and it is not a case of ambiguity.

If there's no provision that the Commissioner to see the compensation and he ignores the medical practitioner's report, there is no question of avoiding it by Commissioner.

unless he desires a second report from the Medical Board; *New Asian nation Assurance Co. Ltd. v. Sreedharan, 1995.*

### **Section 12: Contracting**

#### ***Trade or business of the principal***

When a person(principal) is in the course of some business or trade, with any other person(contract) for the execution of any work, the principal will be liable to pay the amount

to the employee who has been employed in the business. The principal is liable because compensation has to be claimed from the principal and the amount of wages will be calculated by the employer.

When the principal will be liable to pay he will be indemnified by the contractor or any other person from whom the employee can claim compensation. The agreement between the principal and the contractor about the right amount and indemnity will be settled by the commissioner.

***On, in or about the premises***

If the accident occurred at a different place that is either on the premises of the workplace or any other place, the employee will not be able to recover compensation from the employer. Other than this no other constraint is there and employees can recover compensation from the contractor instead of principal.

**Section 13: Remedies of employer against a stranger**

When an employee recovers compensation as he suffered any injury and creates a legal liability of some other person other than the person by whom the compensation was paid, the other person will be entitled to be indemnified by the person who is liable to pay damages.

**Section 14: Insolvency of employer**

1. When an employer enters into a contract with any insurer in respect of any liability to an employee, and if the employer becomes insolvent or makes a composition or scheme or arrangement with his creditors in this event the company is insolvent. The employee can recover the amount of compensation if the company is winding up and it is the case of insolvency.
2. If in any case in the case of insolvency, the contract of the employer with the insurer is void or voidable due to any reason such as non compliance on the part of the employer, if the contract is not void or voidable the insurer may be entitled to prove in the proceeding or at the time of liquidation for the amount to be paid to the employee.
3. In case the liability of the insurer to the employee is less than the liability of the employer to the employee, the employee may prove for the balance amount of the compensation in the insolvency proceedings or at the time of liquidation.
4. When the compensation is a half monthly payment, the amount due for the said purpose will be taken in a lump sum amount. The amount payable will be half monthly payment, if it be could be redeemable it will be proof.

5. The insolvency of the employer shall not be applied where a company has wound up voluntarily merely for purposes of reconstruction of the company or amalgamation with another company.

***Section 14-A: Compensation to be first charge on assets transferred by Employer***

When an employer transfers his assets or property before any amount is due to him in respect of any compensation, and the liability accrued is now before the date in law it is the first charge on that part of the assets or property so transferred as it consists of immovable property.

**Section 15: Special provisions relating to Masters and Seamen**

When the person injured in the aircraft is the master of the ship and he is the employer, but the accident happened and commenced on the ship, it is not necessary for the seaman to give any notice of the accident for compensation for the injuries suffered.

In such cases the death of the seaman or the master, the claim for compensation may be made within one year without the notice after the news of death is received by the claimant. Also if the ship is deemed to have been lost, within eighteen months of the date on which the ship was or is deemed to have been lost.

***Section 15-A: Special provisions relating to captains and other members of the crew of aircrafts***

If the captain of the aircraft is serving and he is the employer but an accident occurs, any crew member or the captain it is not necessary for any crew member to give notice of the accident.

In such cases the death of the seaman or the master, the claim for compensation may be made within one year without the notice after the news of death is received by the claimant. Also if the ship is deemed to have been lost, within eighteen months of the date on which the ship was or is deemed to have been lost.

When an injured captain or any other crew member of the aircraft or the ship is discharged from any depositions or testimony of a witness is taken by a judge or magistrate the central government or any state government may enforce any proceedings on the basis that the evidence is admissible:

- if the deposition or testimony of witness is authenticated by the signature of the Judge, Magistrate, or consular officer before it is made.
- if the person who is accused or he/she is the defendant is having the opportunity by himself or his agent to cross-examine the witness.
- if the deposition or the testimony of the witness is or was made in the course of a criminal proceeding and the proceeding was made in the presence of the person who is accused.

### ***Section 15-B: Special provisions relating to employees abroad of companies and motor vehicles***

The special provision related to employees abroad and motor vehicles will be applied to the persons or employees who are recruited by the companies registered in India and under the Motor Vehicles Act, 1998.

- The notice of the accident and the compensation claimed may be served on the agent of the company. Or the notice may be served on the local agent or the owner of the motor vehicle in the country of the accident.
- In case the employee dies, the provisions made in this section 15-B shall apply. The claim for compensation may be made within one year after the news of the death of the claimant has been received.
- Therefore, in case of any compensation claimed, the commissioner shall entertain the claim. Although as provided in the section is not much preferred in due time.

### **Section 16: Returns as to Compensation**

The state government can direct any person who is employing an employee at a specified class, specified time and authority that is specified in the notification of official gazette. The state government may also direct to specify the number of injuries in respect of compensation and the amount that has been paid by the employer during the previous year as compensation.

### **Section 17: Contracting out**

If an employee has made a contract or agreement before or after the commencement of the act, and if he voluntarily ceases the right to compensation from the employer it shall be considered null and void. The employee cannot seek compensation for any personal injury arising out of or in the course of employment and the liability will be reduced of any person who is entitled to pay compensation under this Act.

### **Section 18-A: Penalties**

Penalties Arise when whoever-

- Fails in maintaining a book that is required to maintain under sub [Section 3](#) of [Section 10](#).
- The person fails to make a report that is needed to send under section 10B.
- Fails to inform the employee of his rights to claim compensation needed under [Section 17A](#). He or she will be punished with fine which is not less than fifty thousand rupees that can be extended to one lakh rupees.
- No prosecution can take place under this section.

## **Commissioners**

### Section 19: Reference to Commissioner

The question arises about the liability of any person under the act, who will pay the compensation. A question arises about the person who is injured or not or how much amount is to be given or the duration of the compensation. Also about the extent of the disability the person who is suffering and will get compensation. All such issues are to be resolved by the commissioner.

### ***Jurisdiction of Civil Court***

The Jurisdiction of the civil court does not have the authority to settle, decide or deal with questions that are not required to be dealt with under the act if it dealt by the commissioner.

### Section 20: Appointment of Commissioner

Commissioner means a commissioner for employee compensation appointed under [Section 20](#). The state government or the central government may appoint any person to be commissioner for workmen's or employees' compensation act in some specified areas. Every commissioner is identified as a public servant in the Indian Penal Code.

1. If the state government appoints more than one commissioner for any area, a specific order may regulate the business.
2. Any commissioner may choose a person or more persons who possess knowledge and assist him in holding the inquiry.

### Section 21: Venue of proceedings and transfer

The provisions under the act will be subject to the commissioner as well if there is a matter related to rules and regulations. The rules made under the act before the commissioner for the area where-

- The accident happened that resulted in the injury.
- If the employee dies and if the dependent claims compensation it will reside.
- Employer's office is registered.

No matter should be processed before a commissioner other than the commissioner who has jurisdiction in the area where the accident happened. It shall not happen without giving notice in the manner prescribed.

If the employee is the mater of the ship or seaman or a captain or crew member of the aircraft or employee in a motor vehicle, meets with an accident outside India, then such matter shall be done by the commissioner.

### Section 22: Form of Application

No other application for any matter of the commissioner for dependants should be made for compensation. Until and unless some question arises between the parties there is no settlement as per agreement.

### ***Liability of insurer***

The insurance company and the insurer are the same and it provides the insurance policies to the employer. The employer takes the insurance for the employee for the risks associated with their work. So when there is an accident and injury occurs the employer claims the insurance for the employee. In this case, the employer is the insured.

### ***Defective application***

An application to a commissioner can be made and it will be accompanied by a fee as prescribed. If the applicant is illiterate or because of any other reason is not able to furnish information in written form then the application shall be in the direction of the commissioner.

### ***Section 22-A***

The power of commissioner is required to further deposit in the cases which talks about fatal accidents-

When any amount is deposited by an employer as compensation payable in respect of an employee whose injuries resulted in his death, and the commissioner thinks that amount or sum was not sufficient, he may state a notice in writing giving reasons, he may call upon the employer to show why he could not make a further deposit within such time as stated in the notice.

If the employer fails to satisfy the Commissioner, the Commissioner may make an award determining the total amount to be paid, and requires the employer to deposit the deficient amount.

### **Section 23: Powers and Procedure of Commissioners**

He has the power to award compensation more than what is claimed by the employee if the facts warrant the award. A case dealing with the commissioner was *Karnataka State Road Transport Corporation v. B.T. Somashekaraiah*, 1994.

### **Section 24: Appearance of Parties**

A person may appear or become a witness for the purpose of examination, an application or act is required to be made by a person to a commission. It may be done on behalf of a legal practitioner or an official of the insurance company or registered trade union or an inspector appointed under Section 8 of the Factories Act, 1948, or any other officer which is specified by the state government with the permission of the commissioner or a person who is authorised to do so.

### ***Section 25: Method of Recording Evidence***

The commissioner makes a brief written message(memorandum) of the evidence of every witness as the examination process proceeds. The memorandum should be in written form and duly signed by the commissioner. The form so signed by the commissioner must be in his own handwriting and it will be a part of the record.

### **Section 25A: Time limit for disposal of cases relating to compensation**

The Commissioner can dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.

### **Section 26: Cost**

All costs, incidental to any proceedings before a Commissioner, shall, subject to rules made under this Act, be in the discretion of the Commissioner.

### **Section 27: Power to submit cases**

A commissioner can submit a Question related to law so that the High Court can decide the compliance with the standards or rules if the High Court wants to do so.

### **Section 28: Registration of agreements**

A memorandum should be sent by the employer to the commissioner when a lump sum amount is payable as compensation due by the agreement either half monthly payment or payment being payable to a woman or a person with a legal disability. The memorandum must be genuine and should be registered in the prescribed manner.

However, a memorandum cannot be recorded before seven days after the communication has taken place between the commissioner and the concerned parties.

### **Section 29: Effect of failure to register agreement**

The employer will be liable to pay the full amount of compensation if the registration of the agreement of memorandum is not sent to the commissioner as required under the section. The employer will pay the compensation as he is liable to pay under the provisions of the Act (Section 4). Until the commissioner directs to deduct more than half of the amount to be paid to the employee as compensation.

### **Section 30: Appeals**

An appeal may lie to the High Court by following the orders of the commissioner.

- A lump sum amount as compensation is awarded as an order, and redemption of half the monthly payment is away.
- An order may refuse to allow gain of a half monthly compensation.

- Distribution of compensation by order among the family members of the deceased, or disallowing of any claim of a person.

### ***Substantial Question of Law***

If there is difficulty in applying the facts to the law it will not amount to a substantial question of law. Reference case- Asmath Bedi(dead) v. Marimuthu.

The period of limitation under section 30 is sixty days if a person makes an appeal. An appeal lies against the order of commissioner who will compensate only when a substantial question of law. The scope in section 30 of the Act for appealing against the order that is passed by the commissioner is very limited. An appeal shall not lie against any order unless a substantial question of law.

Can courts intervene on question of fact?

Yes, the courts can intervene on the question of fact. This was done in the case of Mangala Ben vs Dilip Motwani. It was first held that there is no substantial question of law. In the opinion of the Court, the finding of the Commissioner does not prove that the deceased was in the employment of the owner. The learned Commissioner further held that the claimant did not produce any evidence to prove that the deceased was employed for the purposes Dilip Motwani's trade or business. He observed that in the absence of such evidence, the deceased cannot be held to be an employee. In the opinion of the court, the Commissioner committed error of law in holding that the burden lay on the claimant to prove that the deceased was employed for the purposes of the respondent's trade or business. The appellate court has no jurisdiction to entertain an appeal unless the same involves a substantial question of law, Nisan Springs (Pvt) Ltd v. Om Jain, 1990.

### ***When does an appeal lies?***

An appeal lies when there is a judgment passed by the court but the employee or his dependants are not satisfied and then they appeal.

### ***Effect of death of claimant***

If the injury of the employee results in his death, the employer shall give compensation in addition to the compensation that is deposited with the commissioner. A sum of five thousand rupees and not less than that will be given to the eldest surviving dependant of the employee.

### ***Third proviso to Section 30(1)***

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.



### ***Review, Revision, Remand, and Writ***

If an employee is not satisfied with the decision of the court regarding the compensation, he can appeal for review by the court. Review can be made only after the decree is passed by the court or an order is made. If there is an error in the decision by the court appeal can be made for revision which can be done only by the High Court. An employee can writ if he has been wrongly remanded. Remand means In custody of the court.

### ***Appeal not accompanied with certificate by the Commissioner under Proviso (3)***

If the appeal is not accompanied by a certificate by the commissioner that is payable and deposited with him then no appeal by the employer under clause (a) shall lie against the law. The period of limitation under the section for the appeal will be sixty days.

### ***Condonation of delay***

If the appeal by the employee is delayed it is known as condonation of delay. An appeal is filed when the employee is not satisfied by the decision of the court and want to appeal again for the decision. So when the employee gets delayed in appealing the suit it will be condoned.

### ***Section 30-A: Withholding of certain payments pending decisions of appeal***

The commissioner may withhold the payment of any amount which is deposited with him when an employer appeals under section 30 and it is directed by the High Court.

### **Section 31: Recovery**

The commissioner can recover any amount payable by any person as arrears of land revenue. The commissioner will be deemed to be a public officer if there is an agreement for the payment of the compensation under the meaning of section 5 of the Revenue Act, 1890.

### **Rules**

#### **Section 32: Power of the State Government to make rules**

The state government has the power to make rules and regulations for the purpose of this act. These rules provide all the matters without prejudice namely:

- The state government prescribes certain intervals where an application may be made under Section 6 is subject to conditions when not accompanied by a medical certificate by a qualified practitioner.
- The state government prescribes some intervals where an employee is required to submit himself to undergo certain medical examination of section 11.
- The state government prescribes a procedure that needs to be followed by the commissioners. It is required when there is disposal of cases under the act and by the parties.

- The state government regulates the transfer of matters. It also regulates cases from one commissioner to another and also transfer of money in some cases.

#### Section 34: Publication of rules

The power to make rules in Section 32 will be subject to the conditions of the rules which are made after previous publication. Rules so published in the Official Gazette will have an effect in the Act.

#### Section 35: Rules to give effect to arrangements with other countries for the transfer of money paid as compensation

The Central Government may make rules for transfer money to any foreign country which is deposited with a commissioner under the act by a notification. A person who resides in a foreign country or is about to reside may be awarded the money deposited under the law relating to employees. The amount related to fatal accidents shall not be transferred without the consent of the employer under the commissioner.

#### Section 36: Rules made by the Central Government to be laid before Parliament

Every rule made under the act by the Central government is laid before each house of parliament while it is in session for thirty days. It may be done in one session or in two sessions before the expiry of the session. The houses may make any modifications in the rule or the houses may agree that the rule should not be made.

### **Conclusion**

The Act is basically made for the employees so that when they incur expenses for the injury suffered during an accident, they can get compensation from the employers. The basic rule of Vicarious liability applies in the act. The employer is the master and the employee is the servant. The employee gets compensation only when the injury takes place in the course of employment and in the workplace.

### **Summery**

Labour law is also commonly known as ‘the law of employment’. The formulation of Indian labour legislations was greatly influenced by the conventions of ILO. The object is to protect the interests of workers and ensure industrial democracy. Therefore, for the smooth functioning of industry, a number of labour legislations were enacted from time to time relating to industrial relation, wages, social security, working hours, conditions of services and employment, equality and empowerment of women in workplace, prevention of child labour and employment and training. The main purpose of ID Act, 1947, is to ensure industrial harmony through preventive and settlement industrial dispute machineries. The main object of the

Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc. The “Employees Compensation Act, 1923” is an Act to provide payment in the form of compensation by the employers to the employees for any injuries they have suffered during an accident.

### **Review Questions**

#### **Long Type Questions**

1. Describe the historical development of labour legislation in India.
2. Compare and contrast arbitration and adjudication machineries under ID Act, 1947.
3. Describe the objects and various provisions of Factory Act, 1948.
4. Describe the objects and various provisions Employee Compensation Act, 1923.

#### **Short type Questions**

1. Explain the factors responsible for enactment of several labour legislations in India.
2. Explain the classification of labour legislation in India.
3. Explain the concerns of labour rights in constitution.
4. Explain the objects and applicability of ID Act, 1947.
5. Critique preventive machineries under ID Act, 1947.
6. Distinguish between industrial relation and industrial disputes.
7. Explain the factors contributing to industrial dispute in India.
8. Distinguish between strike and lockouts.
9. Distinguish between lay off and retrenchment.
10. Explain the role of labour court in India.
11. Explain the role of Industrial Tribunal in India.
12. Explain the role of National Tribunal in India.
13. Explain the object and scope of factory Act.
14. Explain the role of certifying officer under the factory act.
15. Explain the role of welfare officer under the factory act.
16. Explain the principles governing employee compensation under workmen compensation act, 1923.

#### **Very short type Questions**

1. Why is labour legislation significant in a country like India?

2. Write two labour legislation in India relating to Industrial relation.
3. Write two labour legislation in India relating to wage.
4. Write two labour legislation in India relating to social security.
5. Write two labour legislation in India relating to working conditions.
6. Write two labour legislation in India relating to empowerment of women.
7. Write two labour legislation in India relating to employment and training.
8. What were the roles of work committees?
9. What were the roles of work committees?
10. What were the roles of conciliator?
11. What were the roles of Board of conciliation?
12. Write two of the names of preventive machinery of industrial dispute in India.
13. What is industrial dispute?
14. What is a factory?
15. Who is a worker according to factory act?
16. What is manufacturing process according to Factory Act?
17. What do you mean by 'compensation' as defined under Workmen Compensation act, 1923?

## Subjects Discussed in Labour Court, National Tribunal and Industrial Tribunal

### Labour Court

- Labour policy and legislation;
- Safety, health and welfare of labour;
- Social security of labour;
- Policy relating to special target groups such as women and child labour;
- Industrial relations and enforcement of labour laws in the central sphere;
- Adjudication of industrial disputes through Central Government Industrial Tribunals-cum-Labour Courts and National Industrial Tribunals;
- Workers' education;
- Labour and employment statistics;
- Emigration of labour for employment abroad;
- Employment services and vocational training;
- Administration of central labour and employment services; and
- International cooperation in labour and employment matters.

### National Tribunal

Central government may, by notification in the official Gazette, constitute one or more National Tribunals for the adjudication of Industrial Disputes in:

- National matters.
- Matters in which industries are more than one state, or are affected by the outcome of the dispute.
- The duty of the National Tribunal to hold its proceedings fast and submit its report to the central government within the specified time given

### Industrial Tribunal

#### SECOND SCHEDULE

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and

### THIRD SCHEDULE

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

## Important Provisions of the Constitution of India relevant to the Factories Act

The Fundamental Rights and the Directive Principles of State Policy of the Constitution of India are also relevant to the Factories Act as the workers working therein are also the Citizens of India and as such are entitled to those Rights.

- Article 14** Dealing with Equality before Law
- Article 19** Providing for Protection of Certain Rights regarding Freedom of Speech
- Article 23** dealing with Prohibition of Traffic in human beings and forced labour
- Article 24** Prohibition of Employment of Children in Factories.
- Article 32** Remedies for Enforcement of Rights conferred by this Part of the Constitution of India
- Article 39** Certain Principles of Policy to be followed by the State
- Article 39-A** Equal Justice and Free Legal Aid
- Article 42** Provisions for Just and Humane Conditions of work and maternity benefit
- Article 43** Living wage, etc. for workers
- Article 43-A** Participation of Workers in Management and Industries

## Conventions of International Labour Organisation and the Factories Act, 1948

ILO's Convention No. 29	Relating to Forced Labour
Convention No. 105	Relating to Abolition of Forced Labour
Convention Nos. 3 & 103	Concerning Maternity Protection
Convention No. 183	Concerning Maternity Benefit
Convention Nos. 110, 4, 89 & 45 of Women employed in industry	Dealing with Conditions of Work and Night Work
Convention Nos. 5, 10, 33 59, 60, 138 Employment	Concerning Minimum Age for Admission to
Convention Nos. 6, 14, 79 90 Persons	Concerning Night Work by Children and Young
Convention No. 146	Concerning Minimum Age, National Policy,
Hazardous Employment, Conditions of Work and Enforcement	
Convention No. 182	Concerning Worst Forms of Child Labour

## MODULE II

### 2.0. Learning Objectives

After the end of this module, students will be able to understand various provisions of:

- 2.1. Minimum Wages Act, 1948
- 2.2. Payment of Wages Act, 1936
- 2.3. Employee Provident fund Act, 1952
- 2.4. Employees' State Insurance Act, 1972
- 2.5 Payment of Bonus Act, 1965

### 2.1. MINIMUM WAGES ACT, 1948

Minimum wages act, 1948 is a welfare legislation. It provides wages requires for livelihood. The purpose of the Act is to provide that no employer shall pay to workers in certain categories of employments wages at a rate less than the minimum wage prescribed by notification under the Act. In fact, the sole purpose of this act is to prevent exploitation of sweated and unorganised labour, working in competitive market.

The Act provides for fixation / periodic revision of minimum wages in employments where the labour is vulnerable to exploitation. Under the Act, the appropriate Government, both Central and State can fix / revise the minimum wages in such scheduled employments falling in their respective jurisdiction.

The term 'Minimum Wage Fixation' implies the fixation of the rate or rates of minimum wages by a process or by invoking the authority of the State. Minimum wage consists of a basic wage and an allowance linked to the cost of living index and is to be paid in cash, though payment of wages fully in kind or partly in kind may be allowed in certain cases. The statutory minimum wages has the force of law and it becomes obligatory on the part of the employers not to pay below the prescribed minimum wage to its employees. The obligation of the employer to pay the said wage is absolute. The process helps the employees in getting fair and reasonable wages more particularly in the unorganised sector and eliminates exploitation of labour to a large extent. This ensures rapid growth and equitable distribution of the national income thereby ensuring sound development of the national economy. It has been the constant endeavour of the Government to ensure minimum rates of wages to the workers in the sweated industries and which has been sought to be achieved through the fixation of minimum wages, which is to be the only solution to this problem.



## **II Concepts**

### **II(a) Minimum Wage**

The Act under section 2(h) defines wages, but does not define “minimum wages”. As it is not possible to bring down a uniform minimum wage for all the industries throughout the country. Section 2(h) “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 –

(a) any house accommodation supply of light water medical attendance or

(b) 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 person fund or provident fund or under any scheme of social insurance;

(iii) any traveling allowance or the value of any traveling 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;

### **II(a)(i) Essential Ingredient**

1. Wage should be by way of **remuneration**
2. It should be capable of **being expressed in terms of**
3. It should be payable to a person employed in respect of his employment or of work done in such employment.
4. It should be payable to a
5. It should be payable if the terms of employment, express or implied, are fulfilled.
6. It includes **house rent allowance**.
7. It does not include house accommodation, supply of light, water, medical attendance, traveling allowance, contribution of employer towards provident fund, gratuity, any scheme of social insurance etc.

### **II(b) Classification of Wages**

The Supreme Court has classified “Wages” into three categories. They are:

1. The Living Wage ( highest standard of wage)

2. The Fair Wage (between living and minimum wage)
3. The Minimum Wage.( it is the lowest standard of wage)

The living and fair wages are acquired by workers with their “collective bargaining”. When the workers have no unions and who have no capacity of collective bargain could not demand the employers for their just and genuine wage. The State come to rescue them through such legislations.

### **III Main provisions under the Act**

#### **1. Fixing of minimum rates of wages Section 3**

1. The appropriate Government may fix the minimum rates of wages payable to employees employed in an employment specified in Part – I or Part – II of the Schedule and in an employment subsequently added to the Schedule. The Government may review the minimum rates of wages and revise the minimum rates at intervals not exceeding five years.
2. The appropriate Government may refrain from fixing minimum wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment.
3. The appropriate Government may fix separate minimum rates of wages for time rate and for piece rate. Different wage rates may be fixed for different scheduled employments, different classes of work in the same scheduled employment, for adults, adolescents, children and apprentices and for different localities and for any one or more of the wage periods, viz., by the hour or by the day or by the month or by such larger wage period as may be prescribed.

#### **2. Minimum rate of wages (Section 4)**

Any minimum rate of wages fixed or revised may consist of

1. a basic rate of wages and a special allowance; or
2. a basic rate of wages with or without cost of living allowance and the cash value of concessions in respect of supplies of essential commodities at concessional rates; or
3. an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any.

#### **3 Procedure for fixing and revising minimum wages (section 5)**

The appropriate Government is required to appoint an Advisory Board for advising it, generally in the matter of fixing and revising minimum rates of wages.

The Central Government appoints a Central Advisory Board for the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages as well as for co-ordinating the work of Advisory Boards.

The Central Advisory Board consists of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, in equal number and independent persons not exceeding one third of its total number of members. One of such independent persons is to be appointed the Chairman of the Board by the Central Government.

#### **4 Wages in kind (section 11)**

Minimum wages payable under this Act are to be paid in cash. However, the payment of minimum wages can be made wholly or partly in kind, by notifying in the official Gazette, where it is customary to pay wages either wholly or partly in kind.

#### **5 Payment of minimum rate of wages (Section 12)**

The employer is required to pay to every employee, engaged in a scheduled employment under him, wages at a rate not less than the minimum rate of wages notified for that class of employees without any deduction except as may be authorised. ( see the Payment of Wages Act 1936 (4 of 1936) for permissible deduction)

#### **6. Fixing hours for normal working day\_(section 13)**

In regard to any scheduled employment, minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may

1. fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;
2. provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;
3. provide for payment for work on a day of rest at a rate not less than the overtime rate.

#### **4. Overtime (Section 14)**

If any employee whose minimum rate of wages is fixed under the Act works on any day in excess of the number of hours constituting normal working day, the employer is required to pay him for excess hours at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

### **8. Wages for two or more classes of work (Section 16)**

If an employee does two or more classes of work, to each of which a different rate of wages is applicable, the employer is required to pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

### **9. Maintenance of registers and records (Section 18)**

Every employer is required to maintain registers and records giving particulars of employees, the work performed by them, the wages paid to them, the receipts given by them and any other required particulars.

### **10 Inspections (Section 19)**

The appropriate Government may, by notification in the official Gazette, appoint inspectors for the purpose of this Act and define the local limits for their functions.

### **11. Claims (Section 20)**

The appropriate Government may, by notification in the official Gazette, appoint Labour Commissioner or Commissioner for Workmen's Compensation or any officer not below the rank of Labour Commissioner or any other officer with experience as a judge of a civil court or as a Stipendiary Magistrate, to hear and decide for any specified area, all claims arising out of the payment of less than the minimum rates of wages as well as payment for days of rest or for work done.

### **12. Penalties for Offences(Section 22)**

Any employer who contravenes any provision of this Act shall be punishable with imprisonment for a term, which may extend to six months or with fine, which may extend to five hundred rupees or with both.

## **2.2. PAYMENT OF WAGES ACT, 1936**

### **OBJECT OF THE ACT**

The Payment of Wages Act regulates the payment of wages to certain classes of persons employed in industry and its importance cannot be under-estimated. The Act guarantees payment of wages on time and without any deductions except those authorised under the Act. The Act provides for the responsibility for payment of wages, fixation of wage period, time and mode of payment of wages, permissible deduction as also casts upon the employer a duty to seek the approval of the Government for the acts and permission for which fines may be

imposed by him and also sealing of the fines, and also for a machinery to hear and decide complaints regarding the deduction from wages or in delay in payment of wages, penalty for malicious and vexatious claims. The Act does not apply to persons whose wage is Rs. 24,000/- or more per month. The Act also provides to the effect that a worker cannot contract out of any right conferred upon him under the Act.

**[Section 1]. Short title extent commencement and application**

(1) This Act may be called the Payment of Wages Act 1936.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may by notification in the Official Gazette appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any factory to persons employed (otherwise than in a factory) upon any railway by a railway administration or either directly or through a sub-contractor by a person fulfilling a contract with a railway administration and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of section 2.

(5) The State Government may after giving three months' notice of its intention of so doing by notification in the Official Gazette extend the provisions of this Act or any of them to the payment of wages to any class of persons employed in any establishment of class of establishments specified by the Central Government or a State Government under sub-clause (h) of clause (ii) of section 2:

Provided that in relation to any such establishment owned by the Central Government no such notification shall be issued except with the concurrence of that government.

(6) **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 **twenty four thousand** 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**

**"employed person"** [sec 2 (i)] includes the legal representative of a deceased employed person;

**"employer"**[sec 2 (ia)] includes the legal representative of a deceased employer;

**"industrial or other establishment"**[sec 2 (i1)] means any -

- (a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- (aa) air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;
- (b) Dock wharf or jetty;
- (c) inland vessel mechanically propelled;
- (d) mine quarry or oil-field;
- (e) plantation;
- (f) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;
- (g) establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;
- (h) any other establishment or class of establishments which the Central Government or a State Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

**"wages" [sec 2 (iv)]** means all remuneration (whether by way of salary allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms 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 -

- (a) any remuneration payable under any award or settlement between the parties or order of a court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) 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 deductions but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include -

(1) 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;

(2) 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;

(3) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

### **Responsibility for payment of wages [Section 3].**

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid.

- In the case of the factory, manager of that factory shall be liable to pay the wages to employees employed by him.
- In the case of industrial or other establishments, persons responsibility of supervision shall be liable for the payment of the wage to employees employed by him.
- In the case of railways, a person nominated by the railway administration for specified area shall be liable for the payment of the wage to the employees.
- In the case of contractor, a person designated by such contractor who is directly under his charge shall be liable for the payment of the wage to the employees. If he fails to pay wages to employees, person who employed the employees shall be liable for the payment of the wages .

### **[Sec 5 (3)]**

With the consultation of the central government, state government having power and can change the person responsible for the payment of the wages in Railways, or person responsible to daily-rated workers in the Public Works Department of the Central

Government or the State Government.

**Fixation of wage-periods. [Section 4]**

Every person responsible for the payment of wages under section 3 shall fix periods in respect of which such wages shall be payable. No wage-period shall exceed one month. That means wage can be paid on daily, weekly, fortnightly (for every 15 days) and monthly only. Wage period for payment of wages to employees by employer should not exceed 30days i.e. one month according to this act.

But wages cannot be paid for quarterly, half yearly or once in a year.

**Time Of Payment Of Wages. [Section 5]**

- In railway factory or industrial or other establishment, if there are less than 1000 employees, wages of employees should be paid before the expiry of the 7th day after the last day of the wage period. (ex:- wages should be paid on starting of present month within 7 days i.e. before 7th date if wage is paid on 1st in previous month )
- In other railway factory or industrial or other establishment, if there are more than 1000 employees, wages of employees should be paid before the expiry of the 10th day after the last day of the wage period. (ex:- wages should be paid on starting of present month within 10 days i.e. before 10th date if wage is paid on 1st in previous month )
- For employees of port area, mines, wharf or jetty, wages of employees should be paid before the expiry of the 7h day after the last day of the wage period.

**[Sec 5 (2)]**

If the employee is terminated or removed for the employment by the employer the wage of that employee should be paid within 2 days from the day on which he was removed or terminated.

**Illustration:** if the employee was terminated or removed from the employment by the employer on 10th of this month, his wage should be paid within 2 days from the day on which he was removed or terminated, i.e. his/her wage should be paid by 12th date of this month and this date should not exceed.

**[Sec 5 (4)]**

Except the payment of wage of the terminated employee, all the wages of the employees should be paid by their employer on the working day only.



## **Section 6. (THE PAYMENT OF WAGES (AMENDMENT) ACT, 2017)**

All wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee:

Provided that the appropriate Government may, by notification in the Official Gazette, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account."

## **7. DEDUCTIONS WHICH MAY BE MADE FROM WAGES.**

At the time of payment of the wage to employees, employer should make deductions according to this act only. Employer should not make deductions as he like. Every amount paid by the employee to his employer is called as deductions.

The following are not called as the deduction

- Stoppage of the increment of employee.
- Stoppage of the promotion of the employee.
- Stoppage of the incentive lack of performance by employee.
- Demotion of the employee
- Suspension of the employee

The above said actions taken by the employer should have good and sufficient cause.

### **Deductions [Sec 7 (2)]**

Deduction made by the employer should be made in accordance with this act only. The following are said to be the deductions and which are acceptable according to this act.

- Fines,
- Deductions for absence from duty,
- Deductions for damage to or loss of goods made by the employee due to his negligence,
- Deductions for house-accommodation supplied by the employer or by government or any housing board,
- Deductions for such amenities and services supplied by the employer as the State Government or any officer,
- Deductions for recovery of advances connected with the excess payments or advance payments of wages,
- Deductions for recovery of loans made from welfare labour fund,

- Deductions for recovery of loans granted for house-building or other purposes,
- Deductions of income-tax payable by the employed person,
- Deductions by order of a court,
- Deduction for payment of provident fund,
- Deductions for payments to co-operative societies approved by the State Government,
- Deductions for payments to a scheme of insurance maintained by the Indian Post Office
- Deductions made if any payment of any premium on his life insurance policy to the Life Insurance Corporation with the acceptance of employee,
- Deduction made if any contribution made as fund to trade union with the acceptance of employee,
- Deductions, for payment of insurance premia on Fidelity Guarantee Bonds with the acceptance of employee,
- Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employee of fake currency,
- Deductions for recovery of losses sustained by a railway administration on account of failure by the employee in collections of fares and charges,
- Deduction made if any contribution to the Prime Minister's National Relief Fund with the acceptance of employee,
- Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees with the acceptance of employee,

### **Limit for deductions [Sec 7 (3)]**

The total amount of deductions from wages of employees should not exceed 50%, but only in case of payments to co-operative societies, deduction from wages of employee can be made up to 75%.

### **FINES. [Sec 8]**

Fine should be imposed by the employer on employee with the approval of the state government or prescribed authority. Employer should follow the rules mentioned below for and before imposing of fine on the employee.

1. Notice board of fines on employee should be displayed in the work premises and it should contain activities that should not be made by employee.

2. Fine should not be imposed on the employee until he gives the explanation and cause for the act or omission he made.
3. Total amount of fine should not exceed 3% of his wage.
4. Fine should not be imposed on any employee who is under the age of 15 years.
5. Fine should be imposed for one time only on the wage of the employee for the act or omission he made.
6. Fines should not be recovered in the way of installments from the employee.
7. Fine should be recovered within 60 days from the date on which fine were imposed.
8. Fine should be imposed on day act or omission made by the employee.
9. All fines collected from the employee should be credited to common fund and utilize for the benefit of the employees.

#### **DEDUCTIONS FOR ABSENCE FROM DUTY. [Sec 9]**

- Deductions can be made by the employer for the absence of duty by the employee for one day or for any period.
- The amount deducted for absence from the duty should not exceed a sum which bears the same relationship to the wage payable in respect of the wage-period as this period of absence does to such wage-period. (Example: if the salary of an employee is 6000/- per month and he was absent for duty for one month. Deduction from the salary for absence of duty should not exceed 6000/-)
- Employee present for the work place and refuses to work without proper reason shall be deemed to be absent from duty.
- If 10 or more persons together absent for the duty without any notice and without reasonable cause, employer can make 8 day of wages as deduction from their wage.

#### **DEDUCTIONS FOR DAMAGE OR LOSS. [Sec 10]**

Employer should give an opportunity to the employee to explain the reason and cause for the damage or loss happened and deductions made by employer from the employee wage should not exceed the value or amount of damage or loss made by the employee.

**[Sec 10 (2)]** All such deduction and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

### **DEDUCTIONS FOR SERVICES RENDERED. [Sec 11]**

House-accommodation amenity or service provided by the employer should be accepted by the employee, than only the employer can make deduction from the wage of the employee. Deduction should not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied.

### **DEDUCTIONS FOR RECOVERY OF ADVANCES. [Sec 12]**

In case of advance paid to the employees by the employer before employment began, such advance should be recovered by the employer from the first payment of the wages /salary to the employee. But employer should not recover the advance given for the travelling expense for the employee.

### **DEDUCTIONS FOR RECOVERY OF LOANS. [Sec 12A]**

Deductions for recovery of loans granted for house-building or other purposes shall be subject to any rules made by the State Government regulating the extent to which such loans may be granted and the rate of interest payable thereon.

### **DEDUCTIONS FOR PAYMENTS TO CO-OPERATIVE SOCIETIES AND INSURANCE SCHEMES. [Sec 13]**

Deductions for payments to co-operative societies or deductions for payments to scheme of insurance maintained by the Indian Post Office or with employee acceptance deductions made for payment of any premium on his life insurance policy to the Life Insurance Corporation shall be subject to such conditions as the State Government may impose.

### **MAINTENANCE OF REGISTERS AND RECORDS. [Sec 13A]**

Every employer should maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

Every register and record required to be maintained and preserved for a period of three years after the date of the last entry made therein. It means for every transaction made within employer and employee should have 3 years of record.

### **INSPECTORS**

#### **[Sec 14]**

The state government may appoint an inspector for purpose of this act. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860 [Sec 14(5)]. The inspector of this act is having powers mentioned below

- Inspector can make enquiry and examination whether the employers are properly obeying the rules mentioned under this act.
- Inspector with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act.
- Inspector can supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment.
- Seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer.

**Facilities to be afforded to Inspectors. [Sec 14A]**

Every employer shall afford an Inspector all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under this Act.

**CLAIMS ARISING OUT OF DEDUCTIONS FROM WAGES OR DELAY IN PAYMENT OF WAGES AND PENALTY FOR MALICIOUS OR VEXATIOUS CLAIMS. [Sec 15] (2005 amendments)**

To hear and decide all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid, including all matters, incidental to such claims, there will be a officer mentioned below appointed by the appropriate government.

- (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 years' experience; or
- (c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or
- (d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
- (e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims:

Appropriate Government considers it necessary so to do, it may appoint more than one

authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

**[Sec 15(2)]**

If any employer does opposite to the provisions of this act, any unreasonable deduction has been made from the wages of an employed person, or any payment of wages has been delayed, in such case any lawyer or any Inspector under this Act or official of a registered trade union authorized to write an application to the authority appointed by government for direction of payment of wages according to this act. Every such application shall be presented within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made. Time of making an application can be accepted if there is reasonable cause.

**[Sec 15(3)]**

After receiving of the application the authority shall give an opportunity to hear the applicant and the employer or other person responsible for the payment of wages and conducts the enquiry if necessary. It is found that there is mistake with employer; authority shall order the employer for payment of the wage or refund to the employee of the amount deducted unreasonably or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit. There will not be any compensation payable by employer if there is a reasonable and genuine cause in delay in the payment of wages.

**POWERS OF AUTHORITIES APPOINTED. [Section 18]**

Taking evidence and of enforcing the attendance of witnesses and compelling the production of documents.

**SINGLE APPLICATION IN RESPECT OF CLAIMS FROM UNPAID GROUP.**

**[Section 16]**

There is no necessity of many applications if there are many employees whose wages has not been paid. Such all employees can make one application to the authority for payment of wages according to this act.

**APPEAL. [Section 17]**

In the following situation the parties who ever dissatisfied can appeal to the district court

- If the application dismissed by above authorities
- Employer imposed with compensation exceeding 300/- rupees by the authorities.
- If the amount exceeding 25/- rupees withheld by the employer to single unpaid employee. 50/- in case of many unpaid employees

## **PENALTY FOR OFFENCES UNDER THE ACT. [Section 20] (2005 amendments)**

### **Reasons for penalty**

- Delay in payment of wages
- Un reasonable deductions
- Excess deduction for absence of duty
- Excess deduction for damage or loss to employer
- Excess deduction for house-accommodation amenity or service

**Punishable with fine which shall not be less than 1000/- rupees but which may extend to 7500/- rupees.**

- If Wage period exceed one month.
- Failure in payments of wages on a working day.
- Wages not paid in form of current coin or currency notes or in both.
- Failure to maintain record for collected fines from employee.
- Improper usage of fine collected from employees.
- Failure of employee to display notice containing such abstracts of this Act and of the rules made.

**punishable with fine which may extend 3000/- rupees**

- Whoever obstructs an Inspector in the discharge of his duties under this Act
- Whoever willfully refuses to produce on the demand of an Inspector any register or other document.
- Whoever refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorized by or under this Act

**punishable with fine which shall not be less than 1000/- rupees but which may extend to 7500/- rupees**

Whoever repeats the same offence committed before.

Imprisonment for a term which shall not be less than one month but which may extend to 6 months and fine which shall not be less than 3750/- rupees but which may extend 20500/-

rupees.

### **PAYMENT OF UNDISBURSED WAGES IN CASE OF DEATH OF EMPLOYED PERSON. [Sec 25A]**

- Paid by the employer to the person nominated by the employee.
- Wage deposited by the employer with the prescribed authority, the employer shall be discharged of his liability to pay those wages.
- Where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed

### **1.3.EMPLOYEE PROVIDENT FUND ACT, 1952**

Labour Laws of India refers to laws regulating labour in India. The Constitution of India gives us series of fundamental labour rights in the constitution, viz equality at work, right to join and take actions in trade unions, decent working conditions, protection against exploitation, oppression and mismanagement, protection against sexual harassment, payment of minimum wages, payment if equal wages, post retirement security, medical benefits, health & safety at work etc.

The labour laws of our country are divided in to center and states. Some of the acts are state subject whereas remaining acts are central acts.

Whenever we hear of Provident Fund, the first scary thought which comes to our mind is this is something which is deducted from the salary which reduces the net take home salary.

However, Provident Fund deductions are not permanent deductions from your salaries. These deductions are your valuable savings which gives you returns at the time of withdrawal.

Even though some amount of your salary is deducted and deposited in your provident fund account, it is a kind of savings which will help you at the time of your retirement.

Provident Fund deductions not only helps you in saving your money but also gives insurance benefits to your family members after your death.

In this article, emphasis is given on basic knowledge about the Provident Fund Act, its practical aspects and its benefits.



The name of the Act itself gives you the intention behind formation of this act. “PROVIDENT” meaning “timely preparation for future” and “FUND” meaning “money saved or made available for a particular purpose”.

Hence, we can understand that, *Provident Fund means we prepare for our future today by saving some of our hard-earned money.*

**THE ACT: –**

This Act is called the Employees Provident Fund & Miscellaneous Provisions Act, 1952. It extends to whole of India. The Act is now applicable to the Union Territory of Jammu & Kashmir & Ladakh with effect from 1<sup>st</sup> November 2019.

This act is a central act and applicable to all establishments fulfilling the applicability criteria.

This act applies to;

1. Every establishments / factory engaged in activities specified in Schedule I and in which twenty and more persons are employed.
2. An establishment to which this act applies shall continue to governed by this act notwithstanding that the number of persons employed therein at any time falls below twenty.

**Exemptions:**

As per section 16 of the act, the act is not applicable establishment registered under Co-operative Societies Act 1912 or any other law for the time being in force in any state relating to co-operative societies, employing less than 50 persons and working without aid of power or

Any other establishment under control of Central or State Government and whose employees are entitled to provident fund benefits or old age pension in accordance with any scheme or rule framed by Central or State Government or

Any establishment set up by Central, State or Provincial act and whose employees are entitled to provident fund benefits or old age pension in accordance with any scheme or rule framed by Central or State Government or

**Definitions: –**

1. Provident Fund Wages means Basic Salary plus Dearness Allowance

2. Employee means any person who is employed for wages for any kind of work who gets wages directly or indirectly by the employer and includes an apprentice, not being an apprentice engaged under the Apprentice Act 1961 or under the standing orders of the establishment.

3. Covered Employee (Member) means employee drawing BASIC salary (Basic + Dearness Allowance) less than Rs.15,000/- per month.

*\*as per Supreme Court Judgement dated 28th February 2019 in Civil Appeal No 6221 of 2011, special allowances paid to employees will attract PF contribution up to statutory basic limit of Rs.15000/- per month in other words whose basic salary plus dearness allowance is more than Rs.15000/- per month will not be impacted by this judgement.*

*As per the judgement, subject to maximum limit of Rs.15000/-, PF will be attracted on all components of salaries except the following,*

– HRA

– Overtime

– Annual Statutory Bonus

– Leave Encashment

– Production or incentive bonus when variable linked with productivity

– Service charges collected from customers and paid to employees

– Notice pay in lieu of termination

– One month wage u/s 32(2)(b) of Industrial Dispute Act

– Commission to be given on sales not to all employees

4. Exempt employee means employee drawing BASIC salary (Basic + Dearness Allowance) more than Rs.15,000/- per month.

5. Exempted establishment means an establishment in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme, as the case may be, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein

6. Factory means any premises including the precincts thereof in any part of which a manufacturing process is being carried out on or is ordinarily so carried on, whether with aid of power or without aid pf power.

7. Contribution means depositing the monthly deduction to the Provident Fund (PF) Account.

8. Employee contribution means deduction of 12% of the basic salary every month and depositing in his respective PF account

9. Employer contribution means depositing 12% of basic salary of employee by employer from his own to the employee PF account.

**Practical implementation of the act: –**

1. As read above, the act is applicable to all establishments employing 20 and more employees. However, please be clear that, there is no wage criteria for applicability of this act. This act is applicable as soon as the head count reaches 20 employees irrespective of their salaries.

2. Employee means direct or indirect employee. Hence, not only the employees on your company roll are considered but also the employees who are appointed on contract or appointed through a contractor are also covered under the act.

3. Any employee who was previously the member of the act in the previous employment will automatically get covered under the act in the present establishment irrespective of his/her basic salary.

4. The employer with the consent of the employee has the option to cover the employee under the act even if the basic salary of the employee is beyond the prescribed limit, however subject to deduction limited to the applicable wages.

Example, an employee is drawing basic salary Rs.20,000/- can be covered under the act, however his monthly contributions will be deducted on Rs.15,000/- only.

This will always be a management discretion whether to cover the employees drawing basic salaries more than the prescribed limit or not.

Further, also there is no restriction to deduct contributions on the prescribed limit only. If the employee wants, he/she can ask the employer to deduct 12% on the entire basic salary even if it is above the prescribed limit of Rs.15,000/-. However again it will be a management discretion to deduct PF on entire basic as it will increase the cost of the employer also.

5. The due dates to deposit PF dues to EPFO is on or before 15<sup>th</sup> of every month.

Following are the heads of PF deductions:

1. Employee Contribution – 12% of basic salary (basic + dearness allowance)

2. Employer Contribution – 12% of basic salary (basic + dearness allowance)
3. Administration Charges – 0.5% of PF wages or Rs.500/- whichever higher
4. Inspection Charges – 0.5 % of Pension wages

Please note apart from point no.1 i.e. employee contribution, all other remaining charges are contributed by the employer.

Employer contribution is calculated per employee basis whereas administration and inspection charges are calculated on the entire PF wages of all the covered employees.

Note: The deductions mentioned above are as per the latest amendment of the act. The rates and wages amendments are mentioned below for easy reference.

**Amendments in wages and rates of contributions:-**

PF Wages limit increased from Rs.6500/- to Rs.15000/-	01/09/2014
PF admin & EDLI charges revised from 1.10% and 0.01% to 0.85% & 0.01% subject to minimum Rs.500/- and Rs.200/-respectively.	01/01/2015
PF admin & inspection charges revised to 0.65% subject to minimum Rs.500/- and EDLI charges 0.01% waived off	01/04/2017
PF admin charges reduced from 0.65% to 0.50%	01/06/2018

From the above table, we can understand that,

1. Wages limit to get under the PF act has been increase from Rs.6500/- to Rs.15000/- with effect from 1<sup>st</sup> September 2014. This has helped to cover more and more employees under the act thereby extending the benefits of this act to large number of employments of the country.
2. The administration and EDLI charges contributed by the employer were revised from 1.10% of PF wages and 0.01% of Pension wages to 0.85% of PF wages and 0.01 % of pension wages subject to minimum Rs.500/- and Rs.200/- respectively whichever is higher.

To make this point clearer, please note, if the administration charges of 0.85% on PF wages comes to below Rs.500/-, and EDLI contribution of 0.01% on pension wages comes to below Rs.200/- then the employer should contribute flat Rs.500/- & Rs.200/- as the case may be.

3. Again with effect from 1<sup>st</sup> April 2017, the admin charges were revised from 0.85% to 0.65% or Rs.500/- whichever higher. However, EDLI charges of 0.01% or Rs.200/- are completely waived off.

4. From 1<sup>st</sup> June 2018, admin charges are again reduced from 0.65% or Rs.500/- whichever higher to 0.50% or Rs.500/- whichever higher

From the above amendments in rates of contribution. It is understood that the Government has reduced the burden from the employer to some extent. This will definitely motivate the employers to cover more employees under the act.

### **Online facilities to employees:**

Under the ease of doing business, EPF organization has launched a separate portal of EPF eligible employees to avail various benefits under the act thereby reducing the burden on employers.

The employees can take the following benefits under the online facilities,

1. Activate **Universal Account Number (UAN)**
2. Check PF accumulation balance in PF Passbook
3. Update KYC details
4. File transfer claims
5. File withdrawal claims
6. Submit Nominee details

### **Major points to be considered under EPF:**

1. As the EPF Act is applicable to both direct and indirect employees, it is the duty of principal employer to ensure the contractors comply under the act and if that is not the case, it is the duty of the principal employer to do the compliance of contractual employees under own EPFO code.
2. Obtain EPF Form 11 from exempted employee
3. Update KYC details of employees in EPF portal
4. Ensure employees activate their UAN and update nominee details

5. Organize orientation of new employees and make them understand various benefit under the Act

### **Benefits to employees under the act**

1. \*\* The EPF contribution deducted from employees salaries along with the employer contribution can be withdrawn by the employees on retirement.
2. EPFO also pays interest at applicable rate at the time of withdrawals
3. In case of urgency, employee can avail facility of advance withdrawal while in service from his PF accumulations. There is no requirement to submit any document for the same.
4. Advance withdrawal can be taken for medical emergency, higher education, marriage, construction of house etc.
5. In case of death of member while on service, the nominee of the member are entitled for monthly pension from EPFO.
6. In case of death of employee, EPFO gives benefit up to Rupees Six Lakhs under Employees Deposit Linked Insurance Scheme subject to fulfillment of prescribed conditions.
7. Employee after attaining age of 58 years is eligible for monthly pension however the employee should have completed 10 years of continuing service.

### **\*\* Provisions related to TDS on withdrawal from Employees Provident Fund Scheme, 1952 (FORM No. 19)**

#### **No TDS in respect of the following cases:-**

- Transfer of PF from one account to another PF account.
- Termination of service due to Ill health of member /discontinuation of Business by employer/completion of project/other cause beyond the control of member.
- If employee withdraws PF after a period of five year.
- If PF payment is less than Rs. 50,000/- but the member has rendered service of less than 5 years.
- If employee withdraws amount more than or equal to Rs. 50,000/-, with service less than 5 years but submits Form 15G/15H along with their PAN

#### **TDS will be deducted in respect of the following cases:**

– If employee withdraws amount more than or equal to Rs. 50,000/-, with service less than 5 years, then

a) TDS will be deducted @ 10% if Form-15G/15H is not submitted provided PAN is submitted.

b) TDS will be deducted @ maximum marginal rate (i.e. 34.608%) if employee fails to submit PAN.

**Notes:**

1. TDS is deductible at the time of payment.

2. TDS will be deducted under Section 192A of Income Tax Act, 1961.

3. Form 15H is for senior citizens (60 years & above) and Form 15G is for individuals having no taxable income. Form 15G & 15H are self declarations and may be accepted as such in duplicate.

4. Members must quote PAN in Form No.- 15G / 15H and in Form No. 19.

**Voluntary registration under the act**

Establishment having less than 20 employees can also obtain registration under the Act which is called as Voluntary Registration. Under voluntary registration all the employees become eligible for PF from commencement of their employment. Contribution rate under voluntary registration is 10%.

**Employees deposit linked insurance (EDLI) scheme**

Under this scheme insurance cover is given by EPFO to the nominee or legal heir of active member of EPFO who gets a lumpsum payment in case of death of the member during the service period.

There is no minimum service period for availing EDLI Benefits.

The claim amount under EDLI is 30 times the average monthly salary in preceding 12 months subject to maximum of Rs.6,00,000/- (Rupees Six Lakhs).

**2.4. EMPLOYEES' STATE INSURANCE ACT, 1972**

The Employees' State Insurance Act incorporates a number of sections, these sections provide for medical benefits and insurance for any employees working under factories registered under

the ESI Corporation. This is an exciting prospect from both an employee's and a legal perspective as the beginning of a formal social security program in India.

### **Application and scope of the Act**

The Employees' State Insurance Act, 1948 (ESI), enables the financial backing and support to the working class in times of medical distress such as:

- Sickness.
- Maternity Leave.
- Disorders(mental or physical).
- Disability.
- Death.

It is a self-financed initiative, which serves as a type of social security scheme, to prevent the working class from any financial problems arising out of the above medical issues.

### **Establishment of Employees' State Insurance Corporation**

The ESI Act exercises its function through the Employees' State Insurance Corporation, established via Section 3, a body created to maintain social security. It was established on 24 February, 1952. The corporation is supposed to grant relief to the employees in case of medical emergencies.

### **Constitution of Corporation**

The composition of the ESIC is defined in Section 4, and it is as follows:

- The Director-General.
- Chairman, appointed by the Central Government.
- Vice-Chairman appointed by the Central Government.
- Not more than 5 persons nominated by the Central Government.
- 1 person to represent each state.
- 1 person representing the Union Territories.
- 10 persons representing employers.



- 10 persons representing employees.
- 2 persons representing the medical profession.
- 3 members of parliament (2: Lok Sabha and 1: Rajya Sabha).

### Term of office of members of the Corporation

Via Section 5, the following members are appointed for up to a 4 year period:

- Director-General.
- Chairman.
- Vice-Chairman.
- The 5 people nominated by Central Government.
- The members representing each state.
- The members representing each Union Territory.

### Eligibility for re-appointment or re-election

An outgoing member of ESIC, the Standing Committee of ESIC, or the Medical Benefit Council is automatically eligible for re-appointment or re-election into office as the case may be, at the pleasure of the appointing Central Government.

### Authentication of orders, decisions, etc.

The signature of the Director-General of ESIC is the only necessary requirement to authenticate an outgoing order or a decision, there is no other way to authenticate or enforce an order.

The Director-General can also temporarily delegate his authority to any other officer. In this case, the signature of the authorised officer will also suffice to authenticate an order.

### Constitution of Standing Committee

The composition of the Standing Committee of ESIC is as follows:

- A chairman appointed by Central Government.

- 3 members within the corporation representing 3 state governments.
- 3 members within the corporation representing employers.
- 3 members within the corporation representing employees.
- 1 member within the corporation representing the medical profession.
- One MP belonging to the corporation.
- The Director-General.

#### Terms of office of members of Standing Committee

The following members are appointed for a two year period:

- The Chairman.
- The 3 members representing the states.

#### Medical Benefit Council

The Medical Benefit Council is an advisory body on matters related to the administration of medical benefits under the ESI scheme. It consists of:

- The Director-General of ESIC as Chairman.
- The Director-General of Health Services as co-Chairman.
- The Medical Commissioner of ESIC.
- One member for each state appointed by State Government.
- Three members representing employers.
- Three members representing employees.
- Three members including one woman representing the medical profession.

#### **Tenure of the members of the Medical Benefit council**

The following members of the Medical Benefit Council are appointed for a period of 4 years, these are:

- The Director-General of ESIC as Chairman.
- The Director-General of Health Services as co-Chairman.
- The Medical Commissioner of ESIC.
- One member for each state appointed by State Government.

### Resignation of membership

The resignation of a member of the Corporation is complete when a notice for the same, in writing, is delivered to the Central Government, and his seat shall fall vacant upon acceptance of his resignation.

### Cessation of Membership

A member of the ESIC shall cease to be a member of his respective body (Corporation, Standing Committee or Medical Council) upon failing to attend three consecutive meetings. However, the same member can be restored by the concerned body via the rules made by the Central Government.

If in the opinion of the Central Government, any employer, employee or medical representative fails to represent their qualification, they shall cease to be members of ESIC.

### Disqualification

A person can be disqualified as a member of ESIC if:

- If he is declared to be of unsound mind by a qualified court.
- If he is an undischarged insolvent.
- If at any time, he has been convicted of an offence regarding moral turpitude.

### Filling of vacancies

Any vacancy in the office of ESIC shall be filled by appointment or election, as the case may be.

A member of ESIC can only hold the ex-member's spot in the respective committee, if the original holder of that position was found to be eligible for the same. Otherwise, the position is void.

## Fees and allowances

The fees which are payable to the members of the ESIC for their services can be payable at any time, at the discretion of the Central Government. There is no definitive schedule.

## Principal Officers

The Principal Officers referred to under this Section are the Director-General and/or Financial Commissioner, to act as the CEO for ESIC.

They serve as whole-time officers and are not permitted to undertake any work outside of office jurisdiction without the sanction of the Central Government.

The time period for the appointment of any principal officer may not exceed 5 years.

The operation of their fees, disqualification, and cessation of seats operate in the same manner as that of their subordinates.

## Staff

ESIC has the jurisdiction to employ staff of officers as may be necessary for the optimum running of the corporation, however, according to the prerequisites in Section 17, the sanction for creating any staff position has to be acquired from the Central Government. Their salary shall be prescribed by the Central government within a particular range, which cannot be exceeded.

The scale of pay will be determined on the basis of their educational qualifications, method of recruitment, duties, and responsibilities, etc.

## Powers of the Standing Committee

The Standing Committee, with its powers defined in Section 18, shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation, while authorised and under the jurisdiction of the corporation.

The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf.

The Standing Committee also, in its discretion, may submit any other case or matter for the decision of the Corporation.

#### Corporation's Power to promote measures for the health of insured persons

ESIC, in its jurisdiction, may take initiatives that promote health and welfare amongst its employees, while also promoting rehabilitation and re-employment for past employees who were injured or disabled in the course of employment.

The funding and expenditure for such initiatives is at the discretion of the Central Government.

#### Meetings

ESIC, its Standing Committee, and its Medical Council shall meet periodically to observe rules and procedures in regard to the efficient functioning of the corporation. Such observations can be specified as per the regulations in regard to the meeting.

#### Supersession of the Corporation and Standing Committee

The supersession of the Corporation and the Standing Committee occurs when there is a persistent failure to perform the duties prescribed to both parties. In such a case, the Central Government, via a notification in the Official Gazette, can take the place of the corporation, or with the consultation of the corporation, can take the place of the Standing Committee.

The supersession of the corporation will take place by rendering all of the seats of the corporation, previously occupied by the members, as vacant.

In the case of the Standing Committee, a new one shall be constituted immediately as per Section 8 of the ESI Act.

## Duties of the Medical Benefit Council

The Medical Council's functions are as follows:

- Advise the other two ESIC bodies on matters relating to the implementation that would be beneficial in the medical field. It acquires certification for the grant of medical benefits.
- Investigate against complaints lodged against medical practitioners with relevance to the medical relief offered.

## Duties of Director General and the Financial Commissioner

The duties of the Director-General and Financial Commissioner are prescribed by the ESI Act itself in accordance with the Central Government. These tasks may concern various arenas from management to miscellaneous tasks.

## Validity of the act of the Corporation

No act of any ESIC body shall be termed as invalid with respect to their own rules and regulations. Invalidity cannot be claimed on the eligibility or ineligibility of a particular member of that office.

## Regional Boards, Local Committees, Regional and Local Medical Benefit Council

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them powers and functions.

## **Finance and Audit**

### Employees' State Insurance Fund

The Employees' State Insurance Fund is the primary monetary source for the ESIC to perform its functions. All contributions paid under this Act and all other money received on behalf of the Corporation shall be paid into this fund to be held and administered by the Corporation.

These could be in the form of grants, donations or gifts by the government.

## Expenses of the fund

The ESI Fund is responsible for maintaining the expenses of ESIC, which are as follows:

- Payment of benefits and provision of medical treatment and attendance to insured persons and their families, if required.
- Payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils.
- Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, etc.
- Establishment and maintenance of hospitals, dispensaries, and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and their families, if required.
- Payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and their families, if required.

## Administrative expenses

Administrative expenses are termed so, those expenses which cover the costs of administration of ESIC, prescribed by the Central Government.

## Holding of Property

ESIC is subject to conditions prescribed by the Central Government, in terms of acquiring, hold, sell or transfer any property, movable or immovable, vested in or acquired by it, so as to fulfill the purposes of the corporation. The ESIC also has the ability to invest in property as and when required, under the jurisdiction of the Central government. It can also delegate property for the benefit of its staff.

## Vesting of the property in the Corporation

Any and all property acquired by ESIC, before its establishment, will be brought into the accounting books of the corporation.

## Budget Estimates

Every year, ESIC frames and projects a potential budget showcasing how much expenditure it proposes to incur, and how it will discharge its liabilities during the following year. This is then submitted to the Central Government for approval.

## Accounts

The Corporation shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government.

## Audit

The Corporation prepares accounts regularly which are audited annually by the comptroller and Auditor-General of India, and any audit which leads to an expenditure will be payable to the above parties.

Any person appointed by the Comptroller and Auditor-General to act on their behalf will temporarily have the same powers as the above parties and are authorised to demand the production of books, accounts, connected vouchers, and other documents and papers. They shall also be authorised to inspect any offices of ESIC at any time.

The accounts of the Corporation, before being forwarded to the Central Government, have to be verified by the Comptroller and Auditor-General, or any of their representatives. After verification, the accounts can be forwarded to the Central Government along with any comments on the report, given by the above parties.

## Annual report

The Corporation shall submit an annual report of its work and activities to the Central Government.



### Budget etc. to be placed before Parliament

The annual report, the audited accounts of the Corporation along with the report of the Comptroller and Auditor-General of India, and the comments of the Corporation on such report under section 34 and the budget, as finally adopted by the Corporation, shall be placed before the Parliament.

### Valuation of assets and liabilities

The Corporation shall, at intervals of three years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government: Provided that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.

### **Contributions**

#### All employees to be insured

All employees employed in the factories which meet ESIC prescribed rules (under Section 2) are insured for all the benefits offered by it.

#### Contribution

- The contribution is a determinable amount of money payable by both the employer and the employee, as per the situation, to the corporation.
- The rates, while usually prescribed by the government, are not set in stone, and are subject to change. Rates defined by the government are mostly set as the unit standard for the contribution payable by the employer.

- In the case of the employee's contribution, the wage period in relation to the respective employee shall be held as a unit to determine the compensation payable, and are normally due on the last day of the wage period.
- Failure to pay contributions by the employer will make him liable to pay an interest rate of 12%.

#### Principal employer to pay contribution in the first instance

- The primary employer has to collectively pay the contribution, both his own and that of his employees, regardless of whether they are directly employed under him or are working through an immediate employer.
- If a directly employed employee fails to pay his contributions, then the employer can recover that contribution only by deducting the wages of said employee.
- The employer bears all the transfer costs of the payment to the Corporation.

#### Recovery of contribution from the immediate employer

In the case of an employee who is indirectly employed under the principal employer, via an immediate employer, the principal employer shall be entitled to recover the payment made on behalf of an indirect employee, from the immediate employer, as a debt payable to him. The immediate employer also has to prepare a list of all the employees under him and submit the same to the principal employer, before paying his dues.

#### General provisions as to payment of contribution

In case an employee's wage falls below the prescribed wage range prescribed by the Central Government, the employee shall not be liable for his contribution and it shall not be payable.

#### Method of payment of contributions

The manner for payments which the Act provides regulations for, has been elaborated in the following conditions:

- The nature and time of contribution being paid.

- Payment which involves the usage of stamps or other adhesives fixed upon the books of accounts, or any other documents.
- The evidence of the contributions, which reaches the Corporation, is to be dated.
- The different entries in the books of accounts along with the details of the insured persons.
- The replacement of documents which have been lost, destroyed or defaced.

#### Employers to furnish returns and maintain registers in certain cases

According to the provisions given as per the ESI Act, the principal and immediate employers are to submit all the investment profits, as well as any and all details relating to their employees in any factory under their jurisdiction. In case of failure to submit a return, that the corporation had reasonable cause to believe, should have been submitted, the corporation can require the employers to present all the details.

#### Social Security Officers and their functions

ESIC has the power to appoint persons as Social Security Officers. Their functions are mostly to serve a role in inspecting the function of the corporation.

- If required, he can acquire any information from any employer as he sees fit.
- He can enter any corporation at any time and can get all the accounts, books and other employment documents presented to him without any due notice. This can include information like wages, expenses, etc.
- He can inspect and look into any matter regarding the employers and employees as and when required under the jurisdiction of the court.
- He can make copies or take extracts from any register or account back as per his discretion.

#### **Determination of Contribution in certain cases**

A Social Security officer is restricted from exercising his functions and discharging his duties, if the accounting statements of the factory/establishment are not submitted, or not maintained in accordance with Section 44 of the ESI Act. As such, the Corporation may, with the available information, determine the contribution (defined under Section 39) amount payable to employees. However, this procedure will not take place until after the person in charge has been given a reasonable opportunity to be heard regarding the absence of such records.

## **Appellate Authority**

In the scenario specified in Section 45A, once the employer in charge is heard, and he is not satisfied with the verdict given by the corporation, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of the verdict. He must also pay a sum of 25% of his calculated contribution, in order to file the appeal. In case he is successful, the corporation will also refund the contribution paid by him.

## **Recovery of contributions**

Any and all contributions which are payable under the provisions of ESI Act, can be recovered, termed as 'arrears of land revenue'.

## **Issue of certificate to the Recovery Officer**

In lieu of Section 45B, where the contribution is to be recovered, an authorised officer of the corporation issues a certificate bearing his signature and the amount to be recovered, to a Recovery Officer, who then proceeds to recover the amount specified from the factory where the default took place. He does this via:

- Attachment or sale of the property of the factory, or the employer, as per the situation.
- The arrest of the employer and getting him detained in prison.
- Appointing a receiver for the management of the property acquired, be it from the factory or the employer.

## **Recovery Officer to whom the certificate is to be forwarded**

For the contribution certificate to be forwarded to the Recovery Officer, the factory employer must be under the jurisdiction of the Officer in the following ways:

- The location where the employer carries on his business and where the factory is located.
- The location where the employer resides or he has any personal property situated within the Officer's jurisdiction.

- The inability to recover the amount solely through the sale of property alone.

### **The inability to recover the amount solely through the sale of property alone**

The analysis of the recovery amount, as per the certificate issued to the Recovery Officer, operates on his word only. The factory or any authority related to it cannot question the Officer on the correctness of the amount, and no objection shall be entertained. However, with a prior intimation, an arithmetical mistake can be corrected by an authorised officer, along with any orders about withdrawal or cancellation of a certificate.

### **Stay of proceedings under certificate and amendment or withdrawal thereof**

It is at the discretion of the Recovery Officer, within the boundaries of the ESI Act, to halt legal proceedings if the time he has allocated for the recovery of an amount, has expired. The Recovery Officer is also entitled to receive constant updates about the status of payment of any due amount.

If, as a result of an appeal, the amount due is decreased, then the Recovery Officer temporarily halts the recovery of the now decreased amount.

### **Other modes of recovery**

Some of the other modes of recovery are elaborated within Section 45G. These are rarer modes of recovery, due to the primary modes of recovery often being preferred:

- The defaulting employer may be required to pay a sum which was deducted from the arrears after the sale of the property.
- There might not be any penalty issued but the defaulting employer would be required to pay the entire outstanding amount directly to the Director-General of the Corporation.
- Any joint shareholders who held money with the defaulting employer might be forced to give up their shares to the Corporation until they are equal to the defaulting employer's shares, as compensation.

### **Application of certain provisions of the Income-tax Act**

The arrears of the amount of contributors, which are to be sold to cover the remaining costs, can be affected by decisions from the Assessing Tax Officer or Tax Recovery Officer. They can make changes which shall apply to all the interests and damages.

## **Benefits**

Section 46 of the ESI Act grants benefits to employees as social security in case of injury, which can be availed during the course of employment. There are 6 types of benefits that can be availed:

- Medical benefit.
- Sickness benefit.
- Maternity benefit.
- Dependants' benefits.
- Disablement benefits.
- Other benefits.

### **Medical Benefits**

These benefits are guaranteed to the employee as soon as he/she is hired, with the benefits extending to their family members as well. This benefit covers the payment of all treatment expenses in lieu of medical issues faced by the employee

### **Sickness Benefits**

The employees covered by the ESI Act can avail periodical payments in case of sickness as per Section 46(1)(a), as long as the medical condition is verified by the appointed medical practitioner.

The compensation is approximately 70% of their wages, with the upper limit for availing compensation being 91 days in a year.

In a period of 6 months of employment, the employee must have been working for a minimum of 78 days, else the benefit cannot be claimed.

## Maternity Benefits

As per Section 46(1)(b) of the ESI Act, an insured woman can claim periodical payments in case of occurrence of any of the following situations:

- confinement (labour leading to birth or birth after 26 weeks)
- miscarriage
- sickness arising out of pregnancy
- premature birth of child

The benefit is payable for three months, with an extension of one month, if required. The minimum work duration must be 70 days in the year preceding the year of pregnancy.

## Dependants' Benefits

Section 46(1)(d) prescribes periodical payments (often made monthly) to the dependants/family members of the person who dies during the course of employment, with the cause of death being an employment injury or an occupational hazard. Compensation is generally 90% of the employee's wages.

## Disablement Benefits

In case an employee suffers an injury during the course of employment which results in their disablement. The nature of the disablement may be temporary or permanent. Unlike the other benefits, there is no minimum work contribution required to avail the disablement benefit, although eligibility for the same will be determined by the Medical Board.

This determination also affects the amount of compensation granted, if any, with the general percentage of wages granted being around 90%.

## Other Benefits

'Other benefits' refer to the miscellaneous benefits apart from the five major benefits that can be availed by the employees. These are as follows:

- **Funeral Expenses:** Compensation of Rs. 10,000 is granted to the eldest surviving member of an employee's family to perform his last rites.
- **Vocational Rehabilitation:** The benefit is payable to disabled employees undergoing rehabilitation.
- **Old age medical care:** This benefit is available for retired employees, or those who left employment after suffering an injury, with general compensation being Rs. 120 p/m.

### **Scheme for other beneficiaries**

#### **Scope of Section 53 and 61**

Section 53 of the ESI Act acts as a deterrent for employees, in order to prevent them or their families from claiming benefits provided under the scope of Workmen's Protection Act, so long as they are still insured under the reliefs offered by the ESI Act.

Section 61 acts like an extension to Section 53, in the sense that while Section 53 only bars employees from receiving compensation under the Workmen's Compensation Act, Section 61 bars employees from receiving compensation from any other enactment so long as they are still insured under the ESI Act.

#### **Power to frame scheme**

The Central Government holds the power to frame schemes for other beneficiaries and their family members, mostly for providing medical facilities in ESI hospitals. However, this must be within the framework of the ESI Act and must be notified in the Official Gazette.

#### **Scheme for other beneficiaries**

Schemes implemented for beneficiaries may cover for a number of matters such as:

- The time and nature of the usage of medical facilities.
- The presentation of particulars and details about the beneficiary and his family as per the needs of the Corporation.
- Miscellaneous matters which may be necessary to fully implement the scheme.



### Power to amend schemes

Via a notification in the Official Gazette, the Central Government may add to, amend, introduce variations, or rescind the scheme.

## **Adjudication of Disputes and Claims**

### Constitution of Employees' Insurance Court

Via a notification in the Official Gazette, an Employees' Insurance Court will be constituted by the State Government, with a set amount of judges as per the decision of the State Government.

The same court may be appointed for two or more local areas, or two courts or more courts may be appointed for the same local area.

### Power of Employees' Insurance Court

The Employees' Insurance Court will function with the same powers as that of a Civil Court, in which, to enforce the provisions of the ESI Act, it can enforce witness attendance, compel document and material evidence to be presented, it can administer an oath and can record evidence.

All expenses incurred before a proceeding are subject to the discretion and liability of the court itself.

### Reference to High Court

An Employees' Insurance Court, according to Section 81 may submit any question of law for the decision of the High Court and if it does so, the answer to the question shall hold precedence before any judgment. Appeal

Section 82 defines that no appeal can be laid down as against an order from the Employees' Insurance Court. However, appeals from the High Court can stand if they involve a substantial question of law.

## Penalties

### Punishments

Sections 84, 85, and 85A cover all the punishments for default listed within the ESI Act.

- **False Statement:** Any person caught increasing the payment or benefit to avoid payment by himself is known to make a false statement. Punishable with up to six months and/or with fine not greater than Rs. 2000. Insured persons convicted of this will not be entitled to cash benefits.
- **Failure to pay contribution:** Persons failing to pay the contribution, unlawfully deducts wages or benefits, unfairly punishes an employee, obstructs inspector's duties, etc. can be punishable for up to three years, no less than one year with a fine up to Rs. 10000.
- **Subsequent Punishment:** If a person is found committing the same offence twice, he shall be punished with imprisonment for a term extending up to two years with a fine of Rs. 5000 for each subsequent offence.

### Power to recover damages

If an employer fails to pay the contributions due in any aspect, whether it be from his side or his employee's side, the Corporation can recover the deficit from him by way of penalty. However, this recovery of contribution will not take place until after the person in charge has been given a reasonable opportunity to be heard regarding the failure to pay the contribution.

### Power of Court to make orders

Along with the power of the court to recover damages, it also has provisions to enforce judicial orders. If the defaulting employer fails to meet the time conditions for payments that have been stated by the Court, the employer will be deemed to have committed another offence, which can be punishable with imprisonment and/or fines.

### Prosecution

Section 86 dictates that any sort of prosecution cannot take place under the provisions of ESI Act unless it has previously obtained the sanction of the Insurance Commissioner or any other

authorised authority such as the Director-General of the Corporation. No court lower than a First Class Magistrate can try an offence under the ESI Act, and no Court will take cognizance of any offence reported under this Act.

### Offences by companies

Taking inference from the concept of business entity, where every company is its own individual i.e. it is a separate legal entity of its own and can sue or be sued in a court of law accordingly.

As such, when an offence is said to have been committed by a company, all of its managerial employees, who were responsible for the company at the time, will be tried along with the company, deemed to be guilty of the same offence. They are liable for punishment accordingly.

### Miscellaneous

#### Exemptions

Sections 87, 88, 90, 91 and 91A list the criteria under which certain exceptions to benefits can be made under ISA. Via a notification in the Official Gazette, the appropriate government (appropriate here meaning the government exercising more authority, in a closer proximity), can exempt the following from the benefits of the ESI Act (if they were enjoying those same benefits before):

- Factory/establishment or a class of factories/establishments.
- Persons or classes of persons.
- Factories or establishments belonging to the Government or any local authority.
- Any of the above from a particular provision of the Act.
- Any of the above to be exempted prospectively for a specified time period.

### Misuse of benefits

In case of any misuse of benefits by the insured persons, the Central Government can, at its discretion, publish a notice in the Official Gazette that disentitles such persons from their benefits that they have under ESI Act.

### Delegation of powers

The bodies of ESIC possess authority that they can delegate to authorised personnel, at their discretion. These authorised personnel can exercise the powers given to them by their specific ESIC bodies, but only for a temporary period.

### Medical care for the families of insured persons

Medical care is guaranteed for family members of the insured person, covered at the cost of the Corporation if the funds at the time permit the coverage.

## **Judicial Precedence**

### Mr. A. Tehan V/S M/S. Associated Electrical Agencies & Anr.

In this case, the plaintiff was under the employment of defendant 1 for carrying out television repairs. On July 17, 1987, he was injured during the course of employment while repairing a television set, when a component burst and he suffered injuries on his face.

After claiming relief from the ESIC Corporation under Section 46 of the Act, he then filed an appeal asking for compensation under the Workmens' Compensation Act, which required an amount paid by the defendant.

This was challenged by the defendant in the Bombay High Court via an appeal, which contested their payment of the compensation, and called into usage Sections 38 and 46 of the ESI Act, which lay the foundation for the insurance offered by the Act. (Section 38 guaranteeing that every worker is insured and Section 46 defining the relief available to workers).

This was further verified by the High Court, whose Division Bench further stated that the worker's appeal for the amount to be paid by the plaintiff could not be upheld. Instead, he would receive appropriate relief, to be determined by the ESIC.

#### [Western India Plywood Ltd V/S Shri. P. Ashokan](#)

In this case, the defendant, P. Ashokan, was appealing to claim damages from the appellant, his employer, 'Western India Plywood Ltd.' as compensation for an injury which he had suffered during the course of employment. However, the defendant had already claimed compensation from ESIC for his injuries as he was insured under the ESI Act.

The appeal was filed in lieu of the existence of Articles 53 and 61, the former restricting compensation to be availed from the Workers' Compensation Act, and the latter restricted compensation being availed from any law or action other than the ESI Act. This bar would only hold if the employee who had suffered the injury had received adequate compensation for the same.

The Full Bench assigned to this judgment then attempted to define what could constitute as 'adequate compensation' if an injury had been suffered, for which the reliefs received by the ESIC under Sections 38 and 46 of the ESI Act were eligible as 'adequate compensation'.

The final judgment laid down by the bench was to both, restrict the employee from getting double relief as compensation from his employer, and to define the objective of Section 53, which was then laid down as not only a bar to guarantee only the required amount of relief for an injury by ESIC, but also to save the employer from facing more than one claim in relation to the same accident, i.e. an indirect form of double jeopardy, in which he may have to compensate twice for the same injury.

#### [Kerala CBSE School Management vs State Of Kerala](#)

This is one of the premier landmark judgments in relation to the ESI Act as the basis of this case is the determination of whether a particular institution can be covered under the ESI Act or not.

The matter originally under contention was the release of a new notification by the Kerala State Government in the Official Gazette, which extended the scope of the ESI Act, i.e. which organisations could fall under it, was extended to schools and other educational institutions. The matter was then decided through the interpretation of the statute in Section 1 of the ESI Act.

It was held that educational institutions, while not being commercial in nature, nor having the functions of a traditional factory, was not completely excluded from the statute itself, and could still be applied as an instrument under the ESI Act.

The deciding contention was when the final responsibility towards educational institutions was discussed. Since the Central Government had a priority to control and manage most educational institutions, the notification which extended the provision of the ESI Act to schools was held valid.

For a working-class employee in India, the ESI Act is an essential utility that works in their favour, while also being beneficial for sectors outside that of the working class.

The ESI Act is unique in the fact that it works in advantageous ways for both employees and employers. While employees are insured under the act and get financial aid in case of an injury, the employers are also protected from being jeopardized twice in lieu of paying compensation to the employees.

The Employees' State Insurance Act, apart from medical benefits provided to employees, also controls many more indirect aspects of efficiently managing the Corporation established by the Act, be it its sales proceedings, account management or separation of powers amongst its various officers.

### **1.5: PAYMENT OF BONUS ACT, 1965**

The payment of bonus is dealt by “**Payment of Bonus Act, 1965**”, read with “**payment of Bonus Rules, 1975**”, (central rules)B, the main purpose of the enactment is to impose a legal obligation on the employer to provide for payment of bonus.

The Payment of Bonus Act applies to every factory and establishment employing not less than 20 persons on any day during the accounting year.

## **What is Bonus?**

Bonus is considered as “reward” or any additional payment made to their monthly remuneration, given by the employer to the employee in any establishment. The basic objective to give the bonus is to share the profit earned by the organisation amongst the employees.

Any payment made in kind is perquisite, not a bonus.

The Minimum bonus will be provided 8.33% of the salary during the year, or one hundred rupees will be given in case of employees above 15 years and sixty rupees in case of employees below 15 years, whichever is higher. The maximum bonus is 20% of salary during the accounting year.

## **What are the Establishments/Industries/Factories to which the act is Applicable?**

The act is extent to the whole of India, and the act is applicable to :

- Every Factory
- Other Establishments where 20 or more persons are employed on any day during the year
- Any Establishment or Class of establishment notified in the Gazette by the Appropriate Government
- Part-time Employees also included.

The Establishments covered under the Act Shall continue to pay the bonus even if the number of employees falls below subsequently.

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## **What are the categories of Establishments to which the Act is not applicable?**

- Employees of General Insurance Business or LIC
  - Seamen defined under the Merchant Shipping Act
  - Employees of RBI
  - Employees of Unit Trust of India, IDBI, Deposit Insurance Corporation etc
- 

## **What are the Eligibility criteria required to be fulfilled by the employees to receive Bonus?**

Any person is eligible to receive a bonus under the act, on fulfilment of the following criteria:

- The employee must receive salary/wage up to Rs. 21,000/- per month (By the Amendment of 2015)
- The employee must have worked in the factory or establishment for not less than 30 days in a year

However, on the commission of certain acts, the employee gets disqualified from getting a bonus, such as any frauds, violent behaviour, riots, theft, misappropriation or sabotage of any property. (Section 9 of the Act)

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### **What is the Maximum time for Payment of Bonus?**

The bonus shall be paid within 8 months from the end of the accounting year, or within a month from the date of enforcement of the act.

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### **How is the Amount of Bonus payable calculated?**

The act prescribes for the minimum bonus, that is 8.33% of the employee's Salary/wages, which is the least percent mandatorily to be paid by every establishment or organisation covered by the act, (Section 10 of the Act); on the other hand, the maximum amount of bonus shall not exceed, 20% of the salary/wages of the employees (Section 11 of the Act).

exceed, 20% of the salary/wages of the employees (Section 11 of the Act). The ceiling amount on which the bonus payable is calculated is **Rs. 7,000 per month** (amendment of 2015), earlier this amount was Rs 3,000. Therefore, if the employee receives Gross Salary up to of **Rs 21,000 per month**, the employee is eligible to receive bonus.

For bonus calculation only employee's Salary/Wages and Dearness allowance is considered. Therefore, if the Basic Salary and Dearness Allowance is less than Rs. 7,000 (calculation ceiling), the Bonus will be calculated on the actual amount, and in case the Basic Salary and Dearness Allowance, exceeds Rs. 7,000; bonus will be calculated on Rs 7000 only.

### **Bonus Calculation:**



1. Basic Salary + DA < 7,000, then in such cases, Bonus Payable = (Basic Salary + DA) \* Amount %, either 8.33% (establishment is supposed to give even in case of deficit) or could go up to 20%
  2. Basic Salary + DA > 7000, then in such cases, Bonus Payable= Rs. 7000, % either 8.33% (establishment is supposed to give even in case of deficit) or could go up to 20%.
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### **What is the Statutory compliance on the part of Employer?**

Considering the Act, there are certain obligations or the compliances on the part of the Employer which they are supposed to comply to, if not, they could be subjected to certain offences or penalties provided in the act.

Several compliances that the employer needs to follow are:

- The employer shall pay the amount of Bonus within 8 months, from the end of the accounting year, in cash
  - The employer shall prepare Registers such as:
    - Register having the entire computation of allocable surplus, in FORM A
    - Register showing set-on and set-off, in FORM B
    - Register containing details such as amount of bonus payable, deductions to be made, the amount disbursed, in FROM C
  - Employer shall upload details of Annual Returns in FORM D, on the Portal of Ministry of Labour and Employment, on or before 1st day of Feb, every year
  - Every employer is supposed to file Annual Return in FROM D, to the inspector on or before 1st Feb every year
  - In case of any disputes relating to the payment of bonus, and the case is before any authority, then in such cases, amount shall be paid within 1 month from the date the award passed becomes enforceable.
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### **What are the Offences and Penalties provided by the Act?**

- If any person contravenes any provision of the act or rules, then such person shall be punished with “imprisonment” which may extend up to 6 months; or “fine” which may extend up to Rs 1,000; or both
- If any person receives any direction under the Act, and fails to comply with it, such person shall be punished with “imprisonment” which may extend up to 6 months; or “Fine” up to Rs 1000 or both
- In case the offence under the act is committed by the company, then every person responsible for the business of the company (Managing Director, CEO, CFO, Managerial Head), will be punished accordingly

### **What are the Recent updates/Changes under the Act?**

In recent years, there has been an amendment in the year 2015, which is Payment of Bonus (Amendment) Act, 2015, came into force on 1st April 2014, the calculation ceiling for payment of bonus was increased to Rs.7,000.

Furthermore, the Payment of Bonus (Amendment) Rules, 2016 was published in the official gazette, which made an amendment to the central rules of 1975.

### **Summery**

Minimum wages act, 1948 is a welfare legislation. The purpose of the Act is to provide that no employer shall pay to workers in certain categories of employments wages at a rate less than the minimum wage prescribed by notification under the Act. In fact, the sole purpose of this act is to prevent exploitation of sweated and unorganised labour, working in competitive market. The Payment of Wages Act regulates the payment of wages to certain classes of persons employed in industry. The Act provides for the responsibility for payment of wages, fixation of wage period, time and mode of payment of wages, permissible deduction as also casts upon the employer a duty to seek the approval of the Government for the acts and permission for which fines may be imposed by him and also sealing of the fines, and also for a machinery to hear and decide complaints regarding the deduction from wages or in delay in payment of wages, penalty for malicious and vexatious claims. Provident Fund deductions are not permanent deductions from your salaries. These deductions are your valuable savings which gives you returns at the time of withdrawal. Even though some amount of your salary is deducted and deposited in your provident fund account, it is a kind of savings which will help you at the time of your retirement. Provident Fund deductions not only helps you in saving your money but also gives insurance benefits to your family members after your death.

## **Review Questions**

### **Long Type Questions**

1. Describe the object and various provisions of Minimum Wage Act, 1948.
2. Describe the object and various provisions of Payment of Wage Act, 1948.
3. Describe the object and various provisions of Provident Fund Act, 1952.
4. Describe the object and various provisions of Employee State Insurance Act, 1972.
5. Describe the object and various provisions of Payment of Bonus Act, 1965.

### **Short Type Questions**

1. Explain the concepts of minimum wage, fair wage and living wage.
2. Explain provisions of minimum wages act, 1948.
3. Distinguish between blue-collar and white-collar employees with examples.
4. Distinguish between piece rate and time rate wages.
5. Explain the procedure for fixing and revising minimum wages.
6. Explain the provisions of Payment of Wage Act, 1936.
6. Explain the provision of 'deduction' under the Payment of Wage Act, 1936.
7. Explain the concept of 'provident fund' and its significance.
8. Explain the practical applications of Provident Fund Act, 1952.
7. Explain the application and scope of Employee State Insurance Act, 1972.
8. Explain the composition of ESIC.
9. Explain the roles of social security officers and their functions of ESIC.
10. Explain the applicability of Payment of Bonus Act, 1965

### **Very short types Questions**

1. What is minimum wage?
2. What is fair wage?
3. What is living wage?
4. What does 'appropriate government' stand for?
5. What are the purposes of payment of wages act, 1936.
6. Why was provident fund significant?
7. What is bonus?
8. What is the % of salary to be paid as minimum bonus per year?
9. What is the object of Payment of Wage Act, 1936?
10. Expand ESIC,

## MODULE 3

### 3.1. Learning Objectives

*After the end of this module, the students will be able to learn various provisions of:*

3.1. Industrial Employment (Standing Order) Act, 1946

3.2. Trade Union Act, 1926

This Unit discusses 2 of labour legislation (a) Industrial Employment (Standing Order) Act, 1946 and (b) The Trade Union Act, 1926. The Industrial Dispute Act which is also the part of this module is not discussed as it is discussed in details in Module 1.

### 3.1. Industrial Employment (Standing Order) Act, 1946

The concept of ‘Standing Orders’ is one of the recent growth in relation to Indian labour-management. Prior to 1946, there existed chaotic conditions of employment, wherein the workmen were engaged on an individual basis with uncertain and vague terms of employment. The Act was enacted as a simple measure to remedy this situation – by bringing about uniformity in the terms of employment in industrial establishments so as to minimize industrial conflicts.

The Preamble of the Act imposes a compulsion upon the employers, “to define with sufficient precision the conditions of employment” and make the same known to the workmen.

#### Application of the Act

Section 1 of the Act provides that the Act shall apply to the industrial establishments (within India) with an engagement of more than a hundred workmen at present or as noted on any day in the preceding year unless provided by the appropriate Government for application to any such industrial establishment – with less than a hundred employees.

#### Exclusion of certain industrial establishments

Certain industrial establishments have been excluded from its application via various statutory provisions enlisted in this Act:

- Section 1(4) excludes those establishments to which Chapter VII of the BIRA or MPIESOA applies unless controlled by the Central Government.
- Section 13-B excludes those establishments whose workmen are subject to the Fundamental & Supplementary Rules; various Civil Services Rules; or any other rules provided by the ‘appropriate Government’.

- The provisions of Sections 10 and 12-A(1) do not apply to the establishments under the control of the States of Gujarat/Maharashtra.

Power to exempt: Section 14

Section 14 empowers the appropriate Government to exempt any industrial establishment from being subject to all or any of the provisions of this Act, either conditionally/unconditionally.

Special features of the Act

The Act envisages three important features, they are:

- Concept of Standing Orders;
- Adjudicatory powers of the Certifying Officer; and
- CSOs (short for – Certified Standing Orders) to have the force of law.

Whether a contract can override in the certified Standing Orders?

CSOs cannot be deemed as a statutory concept, but can also not be confined to the individualistic notions of a contract, as they transcend its limits. Hence, standing orders effectuated in compliance with the statutory provisions may be considered as a special kind of contract or a 'statutory contract'.

Herein, to answer the question of whether a contract can override in the CSO, it can be concurred from the [Western India](#) case, that “the employer & workmen cannot enter into a contract overriding the statutory contract as embodied in the CSO, except when such a contract is entered into in compliance with Section 10(1), so as to modify such CSO, but not otherwise.

Standing orders

Section 2(g) of the Act states that “standing orders” are the rules relating to matters set out in the Schedule, i.e. with reference to:

- The classification of workmen;
- Manner of intimation to workers about work and wage-related details;
- Attendance, and conditions of granting leaves, etc.;
- Rights & liabilities of the employer/ workmen in certain circumstances;
- Conditions of 'termination of'/'suspension from' employment; and
- Means of redressal for workmen, or any other matter.

### Submission of Draft Standing Orders: Section 3

A statutory obligation is imposed by the Act upon the employer(s) to submit, individually/ jointly, five copies of a 'Draft Standing Order' within six months of its applicability to the industrial establishment, which should be inclusive of the matters enlisted in the Schedule and of the MSOs (short for – Model Standing Orders), if any, and to which shall be annexed such documents containing particulars of the workmen employed.

### **S.K. Sheshadri v H.A.L and others, (1983)**

In this case, the Hon'ble Karnataka High Court held that, as long as the Standing Orders fall within the Schedule to the Act, irrespective of the fact that they contain additional provisions which are not accounted for in the MSOs, the Standing Orders would not be deemed to be invalid or ultra vires of the Act. The MSOs only serve as a model for framing the Standing Orders.

### **Hindustan Lever v Workmen, (1974)**

In the present case, the issue relating to the 'transfer of workmen' was highlighted by concurring that, the Manager is vested with the discretion of transfer of workmen amongst different departments of the same company, so far as the terms of the contract of employment are not affected. Further, if the transfer is found to be valid, the onus of proving it to be invalid lies on the workmen in dispute.

### **Management of Continental Construction Ltd. v Workmen of Continental Construction, (2003)**

In the instant case, the employer's right to terminate the service of a probationer was recognised by declaring that, if a person is an employee on probation, it is an inherent power of the employer to terminate during/ at the end of the probationary period, provided, that even while acting in accordance with the CSO, the employer's action be fair and consistent with the principles of natural justice.

#### Conditions for Certification of Standing Orders: Section 4

Section 4 of the Act declares the conditions upon the fulfilment of which, a standing order can be certified. It thereby requires a standing order to provide for all the matters set out in the Schedule of the Act and be in conformity with the provisions of this Act.

#### Deviation from Model Standing Orders

Section 4(b) when read with Section 3(2) of the Act, requires the draft standing order to, as far as practicable, be in conformity with the MSO, hence, in cases where it cannot be so claimed, the appropriate authority may permit deviation from the MSO, and negate the addition of such impracticable provision in the Standing Order.

#### Reasonableness of Standing Order

The proviso to Section 4 of the Act, as amended by Act 56 of 1956, necessitates the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the contents of such Draft Standing Order in order to proceed with its certification.

#### Matters not covered by the Schedule

The Act contemplates by itself that the Standing Orders must cover matters included in the Schedule initially, and those which may be added to the Schedule by the appropriate Government in exercise of the authority conferred on it under Section 15. Any other provisions of such kind may be made if so certified by the Certifying Officer to be fair and reasonable under Section 4 of the Act.

#### Different set of Standing Orders

“Once the standing orders are certified, they constitute the conditions of the service binding upon the management and the employees serving already and in employment or who may be employed after certification.” This implies that different set of standing orders cannot exist in respect of distinct sections of workmen or the employer(s), for that would frustrate the intent of the legislature by rendering the conditions of employment as indefinite & diversified, just as existed prior to the enactment of the said Act.

### Certification Process: Section 5

The procedure for certification of Standing Order, as prescribed under Section 5 of the Act, is threefold:

- The Certifying Officer to send a copy of the Draft Standing Order to the workmen or trade union, along with a notice calling for objections, that shall be submitted to him within 15 days of receiving such notice.
- Upon receipt of such objections, the employer and workmen to be given an opportunity of being heard, after which the Certifying Officer shall decide and pass an order for modification of the Standing Order.
- Finally, the Certifying Officer shall certify such Standing Order, and thereby, within seven days, send a copy of it annexed with his order for modification passed under Section 5(2).

### Appeals: Section 6

Any related party aggrieved by the order of the Certifying Officer may appeal to the ‘appellate authority’ within 30 days, provided that its decision, of confirming such Standing Order or amending it, shall be final. The appellate authority shall thereafter send copies of the Standing Order, if amended, to the related parties within seven days.

### Modification of Standing Order: Section 10

A CSO cannot be modified, except on agreement between the related parties, until six months from the last modification or operation of such standing order under Section 7. Further, subject to Section 10(1) and other provisions of this Act, the parties may apply to the Certifying Officer for modifications in the standing order by annexing five copies of the proposal or a certified copy of the agreement for modifications.

### Payment of Subsistence Allowance: Section 10-A

Section 10-A of the Act stipulates for the payment of subsistence allowance by the employer to a workman who is suspended, pending the investigation/ inquiry of his misconduct, at the rate of 50% for the first 90 days, and 75% for the remaining period if the delay is not attributable to the workman. The Act also allows an appeal to the Labour Court constituted under IDA-1947 in case of a dispute relating to such subsistence allowance, whose decision shall be final.



Moreover, it declares that the provisions applicable to a particular State, if more beneficial, shall prevail over this Section.

#### Temporary Application of Model Standing Orders: Section 12-A

Section 12-A provides that in spite of the provisions under Section 3 – 12, in the period between the applicability of this Act and operation of the CSO, MSOs to be adopted, with Sections 9, 13(2), and 13-A applying in the same way as would apply to a CSO. It also declares that if there exist two categories of workmen, and the daily rated have a CSO in existence for them, then the MSO be adopted for the monthly rated workmen.

#### Penalties and procedure: Section 13

The Act makes it a penal offence in case of a violation of Section 3 or 10 of the Act by the employer, by imposing a fine of Rs. 5000 and an additional Rs. 200 per day for a continuing offence. Further, in case of an infringement of the CSO, a fine of Rs. 100 and an additional of Rs. 25 per day for a continuing offence. The Section declares that no prosecution shall be instituted under it except on prior approval by the appropriate Government, and when instituted, be tried only by such Courts not inferior to the Metropolitan/Judicial Magistrate of Second Class.

#### Interpretation of Standing Orders: Section 13-A

Any question relating to the application/interpretation of this Act may be referred to the Labour Courts constituted for this purpose, whose decision shall be final and binding on all parties.

#### Delegation of Powers: Section 14-A

The appropriate Government may delegate its powers under the Act to an Officer/Subordinate Authority to the Central or the State Government, as the case may be, and subject to such directions as may be provided under the notification.

#### Power to make rules: Section 15

The Act empowers the appropriate Government to make rules for the purpose of this Act, in consultation with representatives of related parties, relating to:

- Additional matters to be included in the Schedule & the procedure for modification;

- Set out MSOs;
- Procedure to be followed by Certifying Officers & appellate authorities;
- The fee to be charged for the copies of registered standing orders, and any other matter so prescribed.

Provided that the rules made by the Central Government be passed/annulled through each House of Parliament without prejudice to the validity of anything done under it.

The Act is a regulatory regime to formally define the employment relations between the workmen/trade union and the employer. A very prominent initiative of this Act is the concept of ‘standing orders’ which is amorphous in nature being a contract promulgated statutorily, that represent the will of the parties so regulated. Finally, it may be stated that, though it lays an exemplary notion, it requires thorough reforms in respect of the present scenario of employment practised by the principal employer so as to fulfil the Constitutional objective of securing socio-economic justice substantially.

### **3.2. Trade Union Act, 1926**

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

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

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

**Trade Unions Act, 1926** deals with the registration of trade unions, their rights, their liabilities and responsibilities as well as ensures that their funds are utilised properly. It gives legal and corporate status to the registered trade unions. It also seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the

working class. The Act is applicable not only to the union of workers but also to the association of employers. It extends to whole of India.

### **Definition**

Section 2 of the Act defines various terms used in the Act, some of the definitions are given here under:

**Executive** means the body, by whatever name called, to which the management of the affairs of a trade union is entrusted.[ Section 2 (a)]

**Office-bearer** in the case of a trade union, includes any member of the executive thereof, but does not include an auditor.[ Section 2 (b)]

**Registered office** means that office of a trade union which is registered under this Act as the head office thereof. [Section 2 (d)]

**Registered trade union** means a trade union registered under this Act.[ Section 2 (e)]

**Trade dispute** means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labor, of any person, and “workmen” means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.[ Section 2 (g)]

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

### **Mode of registration**

Section 4 provides that any seven or more members of a Trade Union may by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union .

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

### **Application for registration**

Section 5 stipulates that every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:

- the names, occupations and address of the members making application;
- in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;
- the name of the Trade Union and the address of its head office; and
- the titles, names, ages, addresses and occupations of the office-bearers of the Trade Union.

Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed

### **Provisions contained in the rules of a Trade Union**

A Trade Union shall not be entitled to registration under the Act, unless the executive thereof is constituted in accordance with the provisions of the Act, and the rules thereof provide for the following matters, namely:—

- the name of the Trade Union;
- the whole of the objects for which the Trade Union has been established;
- the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
- the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of Trade Union;
- the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as office-bearers required under section 22 to form the executive of the Trade Union;

- the payment of a minimum subscription by members of the Trade Union
- the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;
- the manner in which the rules shall be amended, varied or rescinded;
- the manner in which the members of the executive and the other office-bearers of the Trade Union shall be elected and removed;
- the duration of period being not more than three years, for which the members of the executive and other office-bearers of the Trade Union shall be elected;
- the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office ebearers and members of the Trade Union; and
- the manner in which the Trade Union may be dissolved

### **Certificate of Registration**

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of the Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under the Act.

### **Incorporation of registered Trade Union**

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

### **Cancellation of registration**

A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar on the following grounds –

- on the application of the Trade Union to be verified in such manner as may be prescribed;
- if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the Trade

Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision or has rescinded any rule providing for any matter provision for which is required by section 6;

- if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members:

### **Returns**

Section 28 of the Act provides that there shall be sent annually to the Registrar, on or before such date as may be prescribed, **a general statement**, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of December. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

Together with the general statement there shall be sent to the Registrar a statement showing changes of office bearers

made by the Trade Union during the year to which the general statement refers together also with a copy of the rules of the Trade Union corrected up to the date of the despatch thereof to the Registrar. **A copy of every alteration** made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration.

For the purpose of examining the abovementioned documents the Registrar, or any officer authorised by him by general or special order, may at all reasonable times inspect the certificate of registration, account books, registers, and other documents, relating to a Trade Union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than ten miles from the registered office of a Trade Union.

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- on the application of the Trade Union to be verified in such manner as may be prescribed;
- if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision or has rescinded any rule providing for any matter provision for which is required by section 6;
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## **Summery**

The concept of 'Standing Orders' is one of the recent growth in relation to Indian labour-management. Prior to 1946, there existed chaotic conditions of employment, wherein the workmen were engaged on an individual basis with uncertain and vague terms of employment. The Act was enacted as a simple measure to remedy this situation – by bringing about uniformity in the terms of employment in industrial establishments so as to minimize industrial conflicts. The Act imposes a compulsion upon the employers, “to define with sufficient precision the conditions of employment” and make the same known to the workmen. Trade Unions Act, 1926 deals with the registration of trade unions, their rights, their liabilities and responsibilities as well as ensures that their funds are utilised properly. It gives legal and corporate status to the registered trade unions. It also seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class.

## **Review Questions**

### **Long Type Questions**

1. Describe the object and provisions of Industrial Employment (Standing Order) Act, 1946
2. Describe the object and provisions Trade Union Act, 1926

### **Short Type Questions**

1. Explain the concept of standing order and its significance.
2. Explain the salient features of Industrial Employment (Standing Order) Act, 1946.
3. Explain the certification procedure of standing order.
4. Explain the trade union registration process.
5. Explain the issues of trade unions in India.

### **Very Short Type Questions**

1. Write the applicability of Industrial Employment (Standing Order) Act, 1946.
2. What is the role of certifying officer under Industrial Employment (Standing Order) Act, 1946?
3. Which court or tribunal discusses the Issues regarding standing order?
4. What is the role of certifying officer under Industrial Employment (Standing Order) Act, 1946?
5. What is the role of certifying officer under Trade Union Act, 1926?
6. What is a trade union?