

## **Notes: 206HRM: Employee Relations and Labour Legislations**

### **Unit 1.Introduction:**

- Background of Employee Relations,
- Concept, definition, scope, objectives, factors,
- Participants & importance of ER,
- Approaches to employee relations –
- The Dunlop's approach,
- The Social Action Approach,
- The Human Relations Approach and
- The Gandhian Approach,
- Labour policies, role of ILO and its influence on legislation in India.

#### **Background of Employee Relations**

The term '**employee relations**' refers to a company's efforts to manage relationships between employers and employees. An organization with a good employee relations program provides fair and consistent treatment to all employees so they will be committed to their jobs and loyal to the company. Such programs also aim to prevent and resolve problems arising from situations at work.

Employee relations programs are typically part of a human resource strategy designed to ensure the most effective use of people to accomplish the organization's mission. **Human resource strategies** are deliberate plans companies use to help them gain and maintain a competitive edge in the marketplace. Employee relations programs focus on issues affecting employees, such as **pay and benefits**, supporting **work-life balance**, and **safe working conditions**.

One of the most effective ways for a company to ensure good employee relations is to adopt a human resource strategy that places a high value on employees as **stakeholders** in the

---

business. Stakeholders are people who are committed, financially or otherwise, to a company and are affected by its success or failure. When employees are treated as more than just paid laborers, but as actual stakeholders with the power to affect outcomes, they feel more valued for the job they do.

Think about the last job you truly loved. Was it because you were treated like an important part of the team? You probably had an interest in seeing the business succeed, like a stakeholder.

**Definition:**

The Institute of Personnel and Development (IPD) defines employee relation as

“that part of personnel; management that enable competent managers through the development of institutions, procedures and policies to reconcile within acceptable limits to the organization, the interest of employers as the buyers of labour service and those of employees as the suppliers of labour services.”

Farnham (1993), suggests that Employee relation are:

“Concerned with the interaction between primary parties who pay for work and those who provide it in the labour market (employers and employees), those acting as secondary parties on their behalf (management or management organization and trade unions) and those providing a third party role on employment matters (state agencies and EU institutions)”

**The Importance of Employee Relation**

- Encourage good organizational climate, mutual understanding and cooperation.
- There is a clear and fair policy in solving the problems of the organization.
- Employee relation treats people as valuable assets.
- There is an equitable, fair and transparent treatment of employees.
- There is an effective communication throughout the organization.
- Shift from Industrial Relations to Employees Relations

**Industrial relation Vs Employee relation**

According to Blyton and Turnbull (2004)- industrial relations: “has acquired a deserved reputation for being dull and because it has too often failed to relate in any meaningful way to the reality of people’s working lives, how these were formed, how they are constrained and how they might be changed.” .

Employee relation is a wider subject than ‘industrial relation’. Nowadays, managements have a preference for the term ‘employee relation’ than ‘industrial relation’ as the latter often invokes conflict, strikes, social disharmony and disagreement. Employee relation is also better understood by the new evolution of today’s life like computerisation, the greater use of robotic, the information technologies and advanced manufacturing methods.

**Scope of ER:**

1. Labour relations, i.e., relations between labour union and management.
2. Employer-employee relations i.e. relations between management and employees.
3. The role of various parties viz., employers, employees, and state in maintaining industrial relations.

**Objectives of ER:**

The primary objective of industrial relations is to maintain and develop good and healthy relations between employees and employers or operatives and management. The same is subdivided into other objectives.

1. Establish and foster sound relationship between workers and management by safeguarding their interests.
2. Avoid industrial conflicts and strikes by developing mutuality among the interests of concerned parties.
3. Keep, as far as possible, strikes, lockouts and gheraos at bay by enhancing the economic status of workers.
4. Provide an opportunity to the workers to participate in management and decision making process.

5. Raise productivity in the organisation to curb the employee turnover and absenteeism.
6. Avoid unnecessary interference of the government, as far as possible and practicable, in the matters of relationship between workers and management.
7. Establish and nurse industrial democracy based on labour partnership in the sharing of profits and of managerial decisions.
8. Socialise industrial activity by involving the government participation as an employer.

**Factors Affecting**

Industrial relations deals with human behavior and management of personnel in an organizational setup. The various factors that influence the relationship between the administration and the employees in an organization are as follows:

**Individual Behavior**

Every person has a different perception, background, skills, knowledge, experience and achievements which influences an individual's behaviour. The employees, therefore, behave differently in different situations, thus impacting the work environment in the organization. Every person has a different perception, background, skills, knowledge, experience and achievements which influences an individual's behaviour. The employees, therefore, behave differently in different situations, thus impacting the work environment in the organization.

---

**Organizational Structure**

The hierarchical structure creates more formal relationships among the employees belonging to different hierarchical levels in an organization. Also, the delegation and execution of decision-making power by the superior influences the industrial relations between the managers and the employees.

**Psychological Factors**

An employee's attitude and mentality towards the employer and the given task; and the employer's psychology towards the workers can be positive or negative, which ultimately impacts the employee-employer relationship.

**Leadership Style**

Every manager possesses certain leadership traits and different style to function even in a formal organization. Through his/her formal or informal ways of generating team spirit and motivating the employees, he/she impacts the organization's industrial relations.

**Economic condition**

To cope up with the changes in the economic conditions or technology, organizations need to restructure the task of the employees including their work duration, conditions and wages; which leads to a difference in their behaviour, attitude, adapting spirit, etc. towards the organization and its people.

**Legal and Political Environment**

The legal framework and political circumstances influence the organization and its industrial relations. It contributes to the framing of rules, rights, authority, powers, roles and responsibilities of all the parties of the organization.

To understand the concept of industrial relations, we should know that; who all are responsible for developing cordial relationships in the organization?

The different persons holding distinct positions in the organization and the external or internal associations involved in the process of building strong industrial relations can be bifurcated into the following two categories:

### **Economic and Technical Environment**

To cope up with the changes in the economic conditions or technology, organizations need to restructure the task of the employees including their work duration, conditions and wages; which leads to a difference in their behavior, attitude, adapting spirit, etc. towards the organization and its people.

### **International Labor Organization (ILO)**

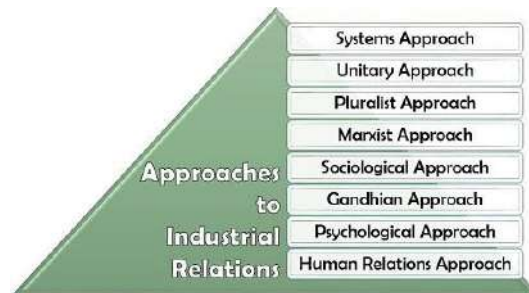
On the international grounds, an association was formed under the name of International Labor Organization in the year 1919 to set up international norms and standards for dealing with industrial disputes and issues of the workers.

Simultaneously, an International Labor Code (ILC) was set up to establish the recommendations and conventions for minimum international labour standards.

The ILC aimed to look into matters like:

- Worker's compensation, i.e., minimum wages;
- employee's work duration and number of holidays;
- women employment;
- employee's safety, security and health in the work environment;
- industrial relations;

## Approaches to Industrial Relations



### Systems Approach

John Dunlop gave the systems theory of industrial relations in the year 1958. He believed that every human being belongs to a continuous but independent social system culture which is responsible for framing his or her actions, behaviour and role.

The industrial relations system was based on **three sets of different variables**:

1. **Actors:** By actors here we mean that the individuals or parties involved in the process of developing sound industrial relations. This variable is denoted by 'A'.
2. **Contexts:** The contexts refer to the setup in which the actors perform the given tasks. It includes the industry markets (M), technologies (T) and the power distribution in the organization and labour unions(P).
3. **Ideology:** The similar ideas, mentality or beliefs shared by the actors helps to blend the system. It can be expressed by the initial (I)

Based on these variables, the following formula was derived by Dunlop:

$$R=f(A,T,M,P,I)$$

This formula represents that the industrial relations system can be seen as a joint function of all the elements mentioned above.

### Unitary Approach

As the name suggests, the unitary approach can be seen as a method of bringing together the teamwork, common objective, individual strategy and mutual efforts of the individuals.

---

This theory believes that the **conflicts are non-permanent malformations**, which are a result of improper management in the organization.

Moreover, if everyone works towards the achievement of the common goals by maintaining peace and cooperation in the workplace, it will tend to benefit everyone associated with the organization. It also considered the organizational conflicts resulting in strikes to be useless and destructive.

The **other aims** of the unitary approach are as follows:

- To create a productive, effective and harmonious work environment;
- to develop a trustworthy, open, fair and transparent work culture;
- to create a cordial work environment;
- to restrict the role of the tribunals and other government associations like the trade unions and initiates direct negotiation between the management and the employees.

### **Pluralist Approach**

The pluralist theory also called the '*Oxford Approach*', was proposed by *Flanders* in the year 1970. This approach explained that the management and the **trade unions are the different and robust sub-groups** which unanimously form an organization.

Collective bargaining was considered to be a useful technique for resolving organizational conflicts. Due to this, the management's role has transformed from imposition and control; to influencing and coordinating with the workers.

Following are some of the highlights of this approach:

- The organization should appoint personnel experts and industrial relations specialists to act as **mediators between the management and trade unions**. They need to look into the matters of staffing, provide consultation to the managers and the unions, and negotiate with both the parties in case of conflicts.
- The organization should ensure that the **trade unions get recognized** and the union leaders or representatives can perform their duties freely.
- In the case of industrial disputes, the organization can avail the services of the **external agent**



**for settlement** of such issues.

- The managers should resolve to a **collective bargaining agreement** when there is a need for negotiation and settlement with the trade unions.

The following formula denotes the Flanders pluralist theory:

Where,

‘**R**’ is the rules of industrial relations;

‘**b**’ is collective bargaining;

‘**c**’ is resolving conflicts through collective bargaining.

It depicts that the rules of industrial relations are a function of collective bargaining, or in other words, it is a function of handling conflicts through collective bargaining.

### **Marxist Approach**

*Lenin* came up with the concept of a Marxist approach in the year 1978, where he emphasized the social perspective of the organization.

This theory perceived that the industrial relations depend upon the relationship between the workers (i.e., employees or labour) and the owners (i.e., employer or capital). There exists a **class conflict between both the groups** to exercise a higher control or influence over each other.

The **assumptions** of this approach are as follows:

- Industrial relations are a significant and never-ending source of conflicts under capitalism which cannot be avoided. However, cases of open disputes are quite unusual.
- Understanding the conceptions of capitalized society, capital accumulation process and the pertaining social relations, give a better overview of the industrial relations.
- The Marxist theory assumed that the survival of the employees without any work is more crucial than the survival of the employer without the labours.

### Sociological Approach

The industries comprise of different human beings who need to communicate with the individuals of other organizations.

Due to the **difference in their attitude**, skills, perception, personality, interests, likes and dislikes, needs, they are usually involved in one or the other conflict. Even the **social mobility** and other aspects including transfer, default, group dynamics, stress, norms, regulations and status of the workers influence their output and the industrial relations.

This theory also emphasizes on the **impact of various changes in the work environment** (i.e., economic, technical and political) on the interactions and relationship shared by the employer, employees, institutions and the government bodies.

### Gandhian Approach

The Gandhian approach to industrial relations was proposed by the father of our nation, *Mahatma Gandhi* or *Mohandas Karamchand Gandhi*, who was also a well-known labour leader.

Following are the various features of the trusteeship or Gandhian theory:

1. Gandhi Ji was not against strikes; instead, he gave the following **conditions to carry out a favourable strike**:
  - The workers or labours can go on a strike only if there is a specific grievance.
  - There should be complete non-violence while carrying out strikes.
  - The ones who are not involved in the strikes should not be tormented.
2. Though Gandhi Ji was not against carrying out strikes, he believed that it should be the **last option** to which the labour should resort to, after the failure of all the constitutional and peaceful ways of resolving conflicts and negotiating with the employer.
3. The Gandhian approach illustrated that nature had provided us with human capabilities and different kinds of property. Thus, such **nature's gift belongs to the whole society** and cannot be considered as of personal possession by anyone.
4. The objective of this theory is to adopt **non-violent ways** to bring in economic parity and material enhancement in a capitalist society.

5. Gandhi Ji perceived that every organization is a **joint venture**, and the labour should be treated as associates or co-partners with the shareholders. Moreover, the workers should have proper knowledge of all the business transactions as it is their right.
6. He focussed on increasing the production and believed that the **gains should be shared with the employees** because of whom it has been possible.
7. He also emphasized that the industrial disputes and conflicts between the parties should be resolved **healthily through interactions**, arbitration and bilateral negotiations.

This theory gained massive popularity and is applied to address disputes and misunderstandings in the organizational setup even today.

### **Psychological Approach**

The psychologists perceived the problem of the industrial relations as a result of the varying perception and mindset of the key participants, i.e., the employees and the management.

The '*thematic application test*' was conducted by *Mason Harie* to understand the behaviour, mindset and perception of the two significant workgroups, i.e., executive and the union leaders, in a particular situation.

In this test, both the groups were asked to rate and interpret the photograph of an ordinary middle-aged person, and the results were drastically contrasting. The union leaders perceived the person to be a '**manager**' whereas, the executives thought that the person was a '**union leader**'.

The **major interpretations** of this test were as follows:

- The general belief of a management representative is entirely different from that of a labour representative.
- Both the management and labour do not consider each other to be trustworthy.
- Even each of these groups considers that the other one lacks emotional and interpersonal attributes.

These contrasting impressions are a result of certain **economic as well as non-economic factors**, like values, power, position, personal objectives, recognition, beliefs, education, social security and income of the individuals.

Also, each of these parties forms a **negative image or perception of each other**. Due to which they always find fault in the actions and behaviour of one another.

As a result of the factors mentioned above, there remains a tensed interpersonal relation leading to conflicts which ultimately hinders the image and interest of the individuals involved.

### **Human Relations Approach**

The person behind the concept of the human relations approach is *Keith Davis*. The organization and the society comprise of human beings who vary in various aspects as their behaviour, emotions, attitude, mindset and personality. But, they have come together to achieve common organizational goals and objectives.

The concept of human relations approach underlines the need for making the individuals familiar with the work situations of the organization and uniting the efforts of the workers. The purpose is to meet the **social, psychological and economic objectives**, by enhancing the overall productivity.

Some of the **primary objectives** of the human relations approach are as follows:

- To ensure cooperation by promoting the mutual interest of the organization;
- to enhance the productivity of the individuals;
- to satisfy the psychological, social and economic needs of the employees.

This theory focused on **enhancing the level of efficiency, worker's morale and job satisfaction** by applying specific techniques or tools and policies.

**Objectives of ILO :-**

The Declaration of Philadelphia set forth 10 objectives, which the ILO was to further and promote among the nations of the world. The theme underlying these objectives is social justice. The objectives are as follows:

1. Full employment and the raising of standards of living,
2. The employment of workers in the occupation in which they can have the satisfaction of giving the fullest measure of their skill, and make their contribution to the common well being,
3. The provision, as a means to the attainment of this end, and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement,
4. Policies in regard to wages and earning, bonus and other conditions of work, calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of protection,
5. The effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency and the collaboration of workers and employers in social and economic measures,
6. The extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care,
7. Adequate protection for the life and health of workers in all occupations,
8. Provision for child welfare and maternity protection,
9. The provision of adequate nutrition, housing and facilities for creation and culture, and
10. The assurance of equality of educational and vocational opportunity.

**The International Labor Organization (ILO)** was set up, with an aim to develop the conditions of labors not only in India but around the world, in the year 1919. India was the instituting member of ILO, which now expanded its primary membership to 145 countries. Indian Labor Organization through its resolutions and recommendations supports countries to lure their own set of labor legislations for the well conduct of the labor class, and the preservation of their rights. The primary objective of action in the ILO is the creation of the International Labor Standards in the form of Resolutions and Recommendations. Resolutions

---

are international treaties and instruments, which generate legally binding responsibilities on the nations that ratify those nations. Recommendations are non-binding but better set out guidelines orienting countrywide policies, procedure and help in developing actions. Labor Law controls matters, such as, remuneration, labor employment, and conditions of employment, trade unions, industrial and labor management relations. They also include social legislations regulating such characteristics as reimbursement for accident triggered to

a worker at work place, maternity benefits fixation of minimum wages, and distribution of the company's profit of the organization's workers, etc. Most of these acts regulate rights and the responsibilities of employee.

### **Major impact of ILO on Labor legislations in India**

With the evolution and expansion of small plants, factories and industries in the Indian subcontinent starting in the mid of the nineteenth century, new possibilities for employment were generated, resulting in a ongoing migration of the labor from poor rural areas to factories and mills located basically in urban areas. During time, in the lack of any control on organization's labor by the state, the employers were very less concerned for the needs of their workers; wages were very low, very long working hours, and unsatisfactory the employees' employment conditions. The situation led to the depiction of a large number of labor legislations beginning since the year of 1881. These labor legislations includes, The Factories Act 1881, Workmen's Compensation Act - 1923, Mines Act 1923, Trade Unions Act-1926, Trade Disputes Act -1929, Payment of Wages Act -1936, Employment of children act- 1938 and Maternity Benefit Act in 1939.

### **The Factories Act 1881**

This act is the basis of all industrial and labor laws in India. It contained requirements for working hours of women and workers with the minimum age of children for employment. When International Labor Organization was established in 1919, this Act was amended and subsequently retracted, resulting in the declaration of the Factories Act 1934. It makes

provision for health, safety, and hygienic condition of the workers, special provision for women and young workers. It also forbids child labor. It provides limits of work for a child in factories, including

### **Mines Act 1923**

This Act makes provisions for laborers working in Indian mines. The working hours for labor employed on surface were limited to fifty per week and ten per day. According to the Mines Act, periods of work shall not be more than 12 hours in any day, this also includes rest period. For workers who are employed underground, the daily limit for them is nine hours per day. The Act does not cover provisions related to overtime work. No worker can work more than six days in a week. The Act does not make any provision for wages during the day of rest.

### **Trade Union Act and Payment of Wages Act**

The Indian government under British set up an enquiry committee in 1926 to determine the shortcomings for anomaly of payment of wages to industrial laborers. As the result Trade union act of

1926 came up. The Royal Commission on Labor was appointed in 1929, the commission considered the reports and suggestions of the enquiry committee and recommended for implementing prevention of disorders relating to payment of wages. The Payment of Wages Act 1936 was passed to regulate the payment of wages to definite classes of people employed in industry. The object of the Act obviously was to offer a low-priced and quick therapy for employees to whom the Act applied and to recover wages due to these employees. For this purpose, a special tribunal was created, but due to some integral imperfections in the statute the repossession of judgmental wages remained difficult.

### **The Weekly Holidays Act of 1942**

This act recommends one paid holiday in a week for people working in any restaurant, shop, or theatre excluding position of management, and confidential positions. The government is authorized to award additional paid half-day holiday in a week.

**The Industrial Disputes Act, 1947**

This act came into being on the 1st day of April 1947. The Act provided for establishment of industrial tribunals by the appropriate government in British India. It established a full-fledged industrial tribunal for adjudication of industrial disputes for the first time. The Industrial Employment (Standing Orders) Act, 1946 This act came into force for the first time to employers in industrial establishments which are employing hundred or more workers. This act provides the way to define the terms and conditions of employment of worker in the form of standing orders.

The Merchant Shipping Act, 1923 provided for an agreement between the master of the ship and seaman concerning their terms of service.



## **Unit 2 – Mechanism for harmonious ER:**

- Collective bargaining –
- definition, meaning, nature, essential conditions,
- functions and importance,
- process and its implementation,
- Workers participation in management & Problem solving attitude,
- Grievance, meaning and forms,
- sources, approaches,
- procedures,
- model grievance procedure and
- grievance handling committees

### **Definition of Collective Bargaining:**

Industrial disputes between the employee and employer can also be settled by discussion and negotiation between these two parties in order to arrive at a decision.

According to Beach, “Collective Bargaining is concerned with the relations between unions reporting employees and employers (or their representatives).

It involves the process of union organization of employees, negotiations administration and interpretation of collective agreements concerning wages, hours of work and other conditions of employees arguing in concerted economic actions dispute settlement procedures”.

According to Flippo, “Collective Bargaining is a process in which the representatives of a labor organization and the representatives of business organization meet and attempt to negotiate a contract or agreement, which specifies the nature of employee-employer union relationship”.

**Collective Bargaining Involves:**

- (i) Negotiations
- (ii) Drafting
- (iii) Administration
- (iv) Interpretation of documents written by employers, employees and the union representatives
- (v) Organizational Trade Unions with open mind.

**Essential Pre-Requisites for Collective Bargaining:****Effective collective bargaining requires the following prerequisites:**

- (i) Existence of a strong representative trade union in the industry that believes in constitutional means for settling the disputes.
- (ii) Existence of a fact-finding approach and willingness to use new methods and tools for the solution of industrial problems. The negotiation should be based on facts and figures and both the parties should adopt constructive approach.
- (iii) Existence of strong and enlightened management which can integrate the different parties, i.e., employees, owners, consumers and society or Government.
- (iv) Agreement on basic objectives of the organization between the employer and the employees and on mutual rights and liabilities should be there.
- (v) In order that collective bargaining functions properly, unfair labor practices must be avoided by both the parties.
- (vi) Proper records for the problem should be maintained.
- (vii) Collective bargaining should be best conducted at plant level. It means if there are more than one plant of the firm, the local management should be delegated proper authority to negotiate with the local trade union.
- (viii) There must be change in the attitude of employers and employees. They should realise that differences can be resolved peacefully on negotiating table without the assistance of third party.
- (ix) No party should take rigid attitude. They should enter into negotiation with a view to

reaching an agreement.

(x) When agreement is reached after negotiations, it must be in writing incorporating all terms of the contract.

### **Main Features of Collective Bargaining:**

**Some of the salient features of collective bargaining are:**

#### **1. It is a Group Action:**

Collective bargaining is a group action as opposed to individual action. Both the parties of settlement are represented by their groups. Employer is represented by its delegates and, on the other side; employees are represented by their trade union.

#### **2. It is a Continuous Process:**

Collective bargaining is a continuous process and does not end with one agreement. It provides a mechanism for continuing and organised relationship between management and trade union. It is a process that goes on for 365 days of the year.

#### **3. It is a Bipartite Process:**

Collective bargaining is a two party process. Both the parties—employers and employees—collectively take some action. There is no intervention of any third party. It is mutual given-and-take rather than take-it-or-leave-it method of arriving at the settlement of a dispute.

#### **4. It is a Process:**

Collective bargaining is a process in the sense that it consists of a number of steps. The starting point is the presentation of charter of demands by the workers and the last step is the reaching of an agreement, or a contract which would serve as the basic law governing labour-management relations over a period of time in an enterprise.

#### **5. It is Flexible and Mobile and not Fixed or Static:**

It has fluidity. There is no hard and fast rule for reaching an agreement. There is ample scope for compromise. A spirit of give-and-take works unless final agreement acceptable to both the parties is reached.

#### **6. It is Industrial Democracy at Work:**

Collective bargaining is based on the principle of industrial democracy where the labour union

represents the workers in negotiations with the employer or employers. Industrial democracy is the government of labour with the consent of the governed—the workers. The principle of arbitrary unilateralism has given way to that of self-government in industry. Actually, collective bargaining is not a mere signing of an agreement granting seniority, vacations and wage increase, by sitting around a table.

**7. It is Dynamic:**

It is relatively a new concept, and is growing, expanding and changing. In the past, it used to be emotional, turbulent and sentimental, but now it is scientific, factual and systematic.

**8. It is a Complementary and not a Competitive Process:**

Collective bargaining is not a competitive process i.e., labour and management do not coopt while negotiating for the same object. It is essentially a complementary process i.e., each party needs something which the other party has, namely, labour can put greater productive effort and management has the capacity to pay for that effort and to organise and guide it for achieving the enterprise's objectives.

The behavioural scientists have made a good distinction between “distributive bargaining” and “integrative bargaining”. The former is the process of dividing up the cake which represents what has been produced by the joint efforts of management and labour.

In this process, if one party wins something, the other party, to continue the metaphor of the cake, has a relatively smaller size of the cake. So it is a win-lose' relationship. The integrative bargaining, on the other hand, is the process where both the parties can win—each party contributing something for the benefit of the other party.

**9. It is an Art:**

Collective bargaining is an art, an advanced form of human relations.

**Means of Collective Bargaining:**

Generally, there are four important methods of collective bargaining, namely, negotiation, mediation, conciliation and arbitration for the settlement of trade disputes. In this context R.F.Hoxie said that arbitration is often provided for in collective bargaining under certain

contingencies and for certain purposes, especially when the parties cannot reach agreement, and in the interpretation of an agreement through negotiation.

Conciliation is a term often applied to the art of collective bargaining, a term often applied to the action of the public board which attempts to induce collective bargaining.

Mediation is the intervention usually uninvited, of some outside person or body with a view of getting conciliation or to force a settlement, compulsory arbitration is extreme mediation. All these things are aids or supplement to collective bargaining where it breaks down. They represent the intervention of outside parties.

### ***Constituents of Collective Bargaining:***

**There are three distinct steps in the process of collective bargaining:**

- (1) The creation of the trade agreement,
- (2) The interpretation of the agreement, and
- (3) The enforcement of the agreement.

Each of these steps has its particular character and aim, and therefore, each requires a special kind of intellectual and moral activity and machinery.

### **1. The Creation of the Trade Agreement:**

In negotiating the contract, a union and management present their demands to each other, compromise their differences, and agree on the conditions under which the workers are to be employed for the duration of the contract. The coverage of collective bargaining is very uneven; in some industries almost all the workers are under agreement, while in others only a small portion of the employees of the firms are covered by the agreement.

The negotiating process is the part of collective bargaining more likely to make headline news and attract public attention; wage increases are announced, ominous predictions about price increase or reduction in employment are made.

## **2. The Interpretation of the Agreement:**

The administrative process is the day-to-day application of the provisions of the contract to the work situation. At the time of writing the contract, it is impossible to foresee all the special problems which will arise in applying its provisions. Sometimes, it is a matter of differing interpretations of specific clause in the contract, sometimes; it is a question of whether the dispute is even covered by the contract. Nevertheless, each case must somehow be settled. The spirit of the contract should not be violated.

## **3. Enforcement of the Agreement:**

Proper and timely enforcement of the contract is very essential for the success of collective bargaining. If a contract is enforced in such way that it reduces or nullifies the benefits expected by the parties, it will defeat basic purpose of collective bargaining. It may give rise to fresh industrial disputes. Hence, in the enforcement of the contract the spirit of the contract should not be violated.

However, new contracts may be written to meet the problems involved in the previous contract. Furthermore, as day-to-day problems are solved, they set precedents for handling similar problems in future. Such precedents are almost as important as the contract in controlling the working conditions. In short, collective bargaining is not an on-and-off relationship that is kept in cold storage except when new contracts are drafted.

## **Workers Participation in Management**

### **Definition:**

Like other behavioural terms, WPM means different things to different people depending upon their objectives and expectations. Thus, WPM is an elastic concept. For example, for management it is a joint consultation prior to decision making, for workers it means co-determination, for trade unions it is the harbinger of a new order of social relationship and a new set of power equation within organisations, while for government it is an association of labour with management without the final authority or responsibility in decision making.

According to Keith Davis, “Workers’ participation refers to the mental and emotional involvement of a person in a group situation which encourages him to contribute to group goals and share in responsibility of achieving them”.

In the words of Mehtras “Applied to industry, the concept of participation means sharing the decision-making power by the rank and file of an industrial organisation through their representatives, at all the appropriate levels of management in the entire range of managerial action”.

### **Characteristics:**

#### **The following are the main characteristics of WPM:**

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

#### **The objective of WPM**

1. Increase in productivity for the benefit of all concerned to an enterprise, i.e., the employer, the employees and the community at large.
2. Satisfaction of worker’s urge for self-expression in the matters of enterprise management.
- 3 Making employees better understood of their roles in the organisation.

**The following are the forms of participation:**

***Form # 1. Works Committee:***

Enterprises with a workforce of 100 or more workers constitute a works committee with equal number of representatives from employees and the management. This committee has to evolve ways and means for maintaining cordial and harmonious relations between employees and the management.

***Form # 2. Joint Management Council (JMC):***

JMCs were introduced in 1958. These councils are formed at plant level with equal number of employee and employer representatives. These are mainly consultative and advisory ones. The scope of JMCs encompasses matters like working conditions, indiscipline, absenteeism, accident prevention, preparation of holiday schemes etc. It is generally alleged that both works committee and JMC are similar in scope and function. Hence multiplicity of bipartite consultative bodies did not serve the purpose.

***Form # 3. Board of Representation:***

Under this scheme, one or two representatives of workers are nominated or elected to the Board of Directors. The basic idea is to safeguard worker's interest, and usher in industrial harmony and good relations between workers and management. This is the highest form of participation. Government of India introduced this scheme in public sector enterprises like Hindustan Antibiotics Ltd, BHEL, NTC, National Coal Mines Development Corporation, Hindustan Organic Chemicals, etc.

Public Sector Banks have introduced the scheme from 1970 onwards. The representative unions have to give a panel containing names out of which one will be selected by the Government. The success of the worker director depends in his role in the board and his prior consultation communication with the other workers. He should articulate the worker's concern very effectively and cogently with facts and figures and enlighten the management of the implications of various proposals at the board.



***Form # 4. Participation through Ownership:***

Workers by becoming shareholders take part in management. Management sell shares at reduced price to its committed and loyal workforce. Such workers are allowed to pay the price in installments or allowed financial accommodation to buy the shares. But participation is distinct from management. But its effect on participation is observed to be limited. In some cases, sick companies are allowed to be taken over by workers. For example, Kamani Tubes, New Central Jute mills, etc., are some of the companies taken over by worker's cooperatives.

***Form # 5. Participation through Complete Control:***

It is called self-management. Yugoslavia is the country practicing this model. This gives a complete control to the workers to directly manage all aspects of industries through their representatives. This method ensures complete identification of workers with their organization. The scope for industrial conflict becomes lesser under the self-management method. But the success of the method depends on the intensity of interest shown by workers in the management.

***Form # 7. Job Enlargement and Job Enrichment:***

Job enlargement means addition of task elements horizontally. Job enrichment means adding motivators to the existing job. Both are mechanisms to relieve the job holders of the monotony of work. They serve as participative mechanisms as they offer freedom and scope to use their wisdom.

***Form # 8. Suggestion Scheme:***

Suggestions are invited from workers on the various aspects of work. Management reviews the suggestions made and put the constructive suggestions into action. Some companies share financial benefits accruing through good suggestions with the workers who contribute the suggestion. This mechanism kindles the creative or innovative urge in the workers. This is a win-win mechanism. The rewards awarded should be commensurate with the benefits derived from the suggestion.

***Form # 9. Quality Circle (QC):***

A Quality Circle (QC) consists of 7 to 10 people drawn from the same work area, who meet regularly to define, analyse and solve quality and related problems in their area. Membership is voluntary and meetings are held once a week for an hour. During the meetings, members are trained in problem-solving. This concept originated from Japan. In India, the experience of quality circle is a mixed one.

***Form # 10. Empowered Team and Autonomous Teams:***

Empowerment means transferring authority and responsibility to employees. When power is transferred to employees, they experience a sense of ownership and control over their job. At the same time, it engenders in them a sense of accountability.

- Empowered team sets its own target.
- Decides the method of work.

**Grievance Management – Introduction**

Organizations are a part of society and employee has certain expectations which must be fulfilled by the organization where he is working. Due to different social background and various psychological factors employees occasionally have to be uncomfortable or aggrieved about certain managerial decisions, practices or service conditions.

In some cases, the employees have complaints against their employers, while in others it is the employers who have a grievance against their employees. For smooth running of the organisation, it is necessary to pay immediate attention on these grievances and complaints.

**Definitions:**

Dale Yader defines a grievance as “a written complaint filed by an employee and claiming unfair treatment.

Keith Davis, defines a grievance as “any real or imagined feeling of personal injustice which an employee has concerning his employment relationship

The International Labour Organisation (ILO) defines grievances as “a complaint of one or more workers in respect of wages, allowances, conditions of work and interpretation of service stipulations, covering such areas as overtime, leave, transfer, promotion, seniority, job assignment and termination of service.”

#### **Grievance Management – Nature**

Grievances are symptoms of conflicts in the enterprise. So they should be handled very promptly and efficiently. Coping with grievances forms an important part of any manager's job. The manner in which he deals with grievances determines his efficiency of dealing with subordinates. A manager is successful if he is able to build a team of satisfied workers removing their grievances. While dealing with grievances of subordinates, it is necessary to understand the nature of grievances.

#### **Grievance Management forms–**

**A grievance may take any one of the following forms:**

##### **(i) Factual:**

Factual grievances arise when legitimate needs of employees remain unfulfilled, e.g., wage hike has been agreed but not implemented.

##### **(ii) Imaginary:**

When an employee's grievance is because of wrong perception, wrong attitude or wrong information. Though it is not the fault of management, the responsibility for their redressal still rests with the management.

##### **(iii) Disguised:**

An employee may have dissatisfaction for reasons that are unknown to himself. If he or she is under pressure from family, friends, relatives, neighbours, he or she may reach the work spot with a heavy heart. If a new recruit gets a new table and cupboard, this may become an eye sore to other employees who have not been treated like wise previously.

**Grievance Management methods –**

Grievance should be redressed by adopting proactive approach rather than reactive approach. The proactive approach addresses the factors responsible for emergence of grievance. In other words, management does not allow grievance causing situation to emerge.

But in reactive approach, a particular grievance gets redressed but the underlying cause continues to exist. Unless it is rooted out lock, stock and barrel, there cannot be any permanent solution.

**The following are the proactive methods of addressing grievances:**

**1. Exit Interview**

Information collected from the exiting employee on various aspects of working conditions forcing him to quit is supposed to be more credible than those expressed by the existing workers.

**2. Gripe Box System:**

Employees may be encouraged to drop anonymous complaints as they may fear that their identity may invite victimisation especially when they complain against the management. This method is more appropriate when there is lack of trust and understanding between employees and their supervisors.

**3. Opinion Survey:**

Various surveys like morale survey, attitude survey, job satisfaction survey, grievance survey or comprehensive survey comprising all the above aspects, reveal vital inputs about the negative aspects of functioning of the organization. Since the survey is conducted by persons other than the supervisor and the respondent's identity is not insisted upon, information collected is likely to be reliable.

**4. Meetings:**

Group meeting, periodical interviews, collective bargaining sessions, informal get-togethers may be used to collect information about grievances.

**5. Open-Door Policy:**

Under this policy any employee can lodge complaint or file his grievance with the manager

---

---

designated for this purpose. The very objective of this policy is to encourage upward communication.

### **Grievance Management – Causes of Grievances in Industrial Organizations**

In order to tackle the grievances efficiently, it is necessary to find and analyse the grievances of the subordinates. If a grievance is found to be genuine or real, the corrective action should be taken immediately. But if the grievance arises due to imagination or disturbed frame of mind of the worker, then it is necessary to explain and clear up the matter. Before dealing with the grievances, their causes must be diagnosed.

But when the grievances are not given expression by the subordinates, it is manager's job to detect the possible grievances and their causes. He may realize the existence of grievances because of high labour turnover, high rate of absenteeism and poor quality of work. These problems will go on multiplying if the causes of grievances are not cured.

Grievances generally arise from the day-to-day working relations in the undertaking, usually a worker or trade union protest against an act or omission or management that is considered to violate worker's rights.

Grievances typically arise on such questions as discipline and dismissal, the payment of wages and other fringe benefits, working time, over-time and time-off entitlements, promotions, demotion and transfer, rights deriving from seniority rights of supervisors and union officers, job classification problems, the relationships of work rules to the collective agreement and the fulfilment of obligations relating to safety and health laid down in the agreement.

Such grievances, if not dealt with in accordance with a procedure that secures the respect of the parties, can result in embitterment of the working relationship and a climate of industrial strife.

**In brief, the following are the causes of grievances in industrial organizations:**

**(i) Grievances Resulting from Personal Maladjustment:**

(a) Over-ambition

(b) Excessive self-esteem

(c) Impractical attitude to life.

**(ii) Grievances Arising from Management Policy:**

(a) Wage payment

(b) Job rates

(c) Leave and overtime

(d) Seniority and promotion

(e) Role ambiguity

(f) Disciplinary action

(g) Absence of employee development plan

(h) Transfer.

**(iii) Grievances Resulting from Working Conditions:**

(a) Strained employer-employee relationship.

(b) Unfavourable physical conditions such as excessive heat, low temperature, excessive humidity etc.

(c) Tight production standards.,

(d) Non-availability of proper tools, machines and equipment for doing the job.

(e) Changes in schedules or procedures.

(f) Mismatch between the job and the worker.

Grievance should be redressed by adopting proactive approach rather than reactive approach. The proactive approach addresses the factors responsible for emergence of grievance. In other words, management does not allow grievance causing situation to emerge.

But in reactive approach, a particular grievance gets redressed but the underlying cause continues to exist. Unless it is rooted out lock, stock and barrel, there cannot be any permanent solution.

**The following are the proactive methods of addressing grievances:**

**1. Exit Interview**

Information collected from the exiting employee on various aspects of working conditions forcing him to quit is supposed to be more credible than those expressed by the existing workers.

**2. Gripe Box System:**

Employees may be encouraged to drop anonymous complaints as they may fear that their identity may invite victimisation especially when they complain against the management. This method is more appropriate when there is lack of trust and understanding between employees and their supervisors.

**3. Opinion Survey:**

Various surveys like morale survey, attitude survey, job satisfaction survey, grievance survey or comprehensive survey comprising all the above aspects, reveal vital inputs about the negative aspects of functioning of the organization. Since the survey is conducted by persons other than the supervisor and the respondent's identity is not insisted upon, information collected is likely to be reliable.

**4. Meetings:**

Group meeting, periodical interviews, collective bargaining sessions, informal get-togethers may be used to collect information about grievances.

**5. Open-Door Policy:**

Under this policy any employee can lodge complaint or file his grievance with the manager designated for this purpose. The very objective of this policy is to encourage upward communication.

**Grievance Procedure:**

**i. Conformity with Existing Legislation:**

The procedure should be designed to supplement the existing statutory provisions. Where practicable the procedure can make use of such machinery as the law might have already provided for.

**ii. Acceptability:**

Everybody must accept the grievance procedure. In order to be generally acceptable it must ensure

- (a) a sense of fair-play and justice to the worker,
- (b) Reasonable exercise of authority to manager,
- (c) Adequate participation of the union.

**iii. Simplicity:**

The procedure should be simple enough to be understood by every employee. The steps should be as few as possible. Channels for handling grievances should be carefully developed. Employees must know the authorities to be contacted at various levels. Information about procedure can be thoroughly disseminated among all employees through pictures.

**iv. Promptness:**

The grievance should be speedily settled. Justice delayed is justice denied. The procedure should aim at a rapid disposal of the grievance.

**The executives can achieve this by incorporating the following features in procedure:**

- (a) The grievances should be settled at the lowest possible level.
- (b) No matter should ordinarily be taken up at more than two levels.
- (c) Different types of grievances may be referred to appropriate authorities. It may be useful to classify grievances as those arising from personnel relationship and others arising out of conditions of employment. In the former case, a grievance should be taken up in first instance, with the authority in the line management immediately above the officer against whom the complaint is made.

Thereafter, the matter may go to the grievance committee comprising representatives of management and worker. Other grievances should be taken up in the first instance with the authority designated by the management. Thereafter, a reference may be made to the grievance committee and finally to the top management.

- (d) Time limit should be fixed at each step and it should be rigidly followed at each level.

**v. Training:**

In order to ensure effective working of the grievance procedure it is necessary that

---



supervisors and the union representatives be given training in grievance handling.

**vi. Follow-up:**

The working of the procedure should be reviewed periodically by the personnel department and necessary structural changes introduced to make it more effective.

**The most common grievance procedure is in four steps which is explained below:**

**I<sup>st</sup> Step:**

The first step involves a presentation of the employee's grievance to the immediate supervisor because he is the first step of the ladder. If the organisation is unionized, a representative of the union may also join him. This step offers the greatest potential for improved labour relations. The large number of grievances are settled at this stage but grievance, which are related to the issue of policies of the organisation are beyond the limit of supervisor, then the aggrieved moves to next step.

**II<sup>nd</sup> Step:**

If the employee is not satisfied with decision of 1st step or fails to receive an answer within the stipulated period, he shall, either in person or accompanied by his departmental representative if required, present his grievance to the head of department designated by the management for the purpose of handling grievance. (A fixed time shall be specified during which of any working day, aggrieved employee could meet the departmental head for presentation of grievances).

The departmental head shall give his answer within three days of presentation of his grievance. If the action cannot be taken within that period, the reason for the delay should be recorded.

**III<sup>rd</sup> Step:**

If the decision of the departmental head is unsatisfactory the aggrieved employee may request for forwarding of his grievance to the Grievance Committee which shall make its recommendations to the manager within seven days of the employee's request. If the recommendations cannot be made within the time limit, the reason for such delay should be recorded. The unanimous recommendations of the grievance committee, the views of the members and the relevant papers shall be placed before the manager for final decision.

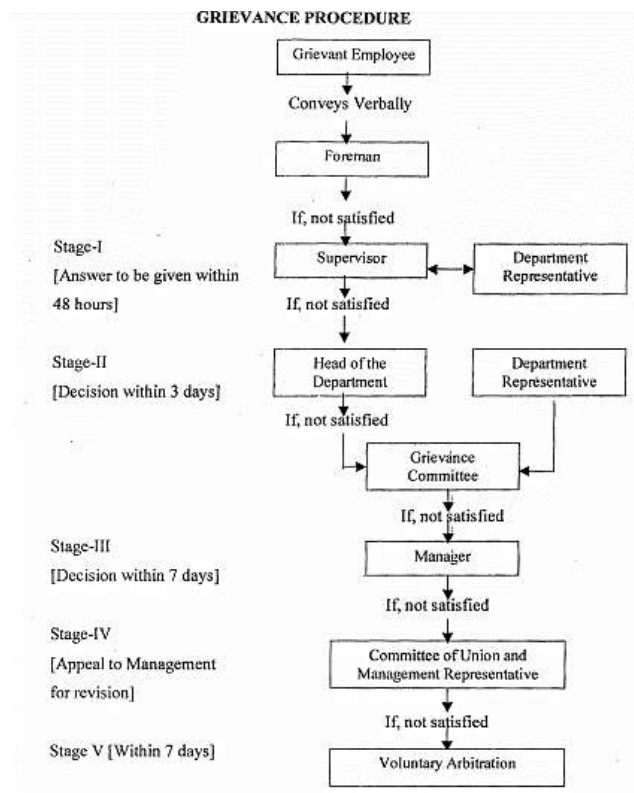
In either case, the final decision of the management shall be communicated to the concerned

---

employee by the personnel officer within three days from the receipt of the Grievance Committee recommendations.

#### **IV<sup>th</sup> Step:**

If the decision of the management is not communicated to the employee within stipulated period or if it is unsatisfactory for him, he shall have right to appeal to the management for revision., if he so desires, he shall have the right to take a union official along with him to facilitate discussion with management. Management shall communicate its decision to him within a week of the presentation of the employee's revised petition.



#### **V<sup>th</sup> Step:**

If no agreement is possible, the union and the management may refer the grievance to voluntary arbitration within a week from the date of the receipt by the employee of the management's decision.

The formal conciliation machinery shall not intervene till all the steps in the model grievance procedure have been exhausted. A grievance shall be presumed to assume the form of a

dispute only when the final decision of the top management in this respect is not acceptable to the employee.

Further, in case of any grievance arising out of discharge or dismissal of an employee, the above mentioned procedure shall not apply. Discharge or Dismissed employee shall have the right to appeal either to dismissing authority or to a superior authority who shall be specified by the management within a week from the date of dismissal discharge.

At present, Indian industries are using either the Model Grievance Procedure or procedures formulated by themselves with certain modifications in the Model Grievance Procedure as per their requirements. In general the grievance procedures are voluntary in nature constitution of the Grievance Committee.

**Mechanism for grievance handling committee:**

Every organization requires a mechanism for handling grievances. This mechanism usually consists of a number of steps arranged in a hierarchical order.

The number of these steps varies with the size of the organization. In a small organization, the supervisor and the manager may be only two steps-but a big organization may have as many as ten steps. The first and the last steps are almost the same for all organizations. Though a labor union is not essential to the establishment and operation of a grievance procedure, yet it is an important factor to it.

The grievance first is reported to the frontline-supervisor, as he is the first rung of the ladder. If the concern is unionized, a representative of the union may also join him. This step is very necessary to preserve the authority of the supervisor over his workers. But the supervisor cannot handle all grievances because many of them involve issues or policies that are beyond the limits of the authority. There may be some grievances that he may fail to redress and find solution for.

Hence provision is made for a second step in handling grievances. This second step may be the personnel officer himself or some middle-level line executive. If the concern is unionized, some higher personnel in the union hierarchy may join him. It should, however, be remembered that by injecting the personnel office.

### **Unit 3 –Legislations governing Employee Relations**

#### **The Industrial Disputes Act 1947 –**

- Definition of industry, workmen and industrial dispute,
- authorities under the act,
- procedure,powers and duties of authorities,
- strikes and lockouts,
- layoff,
- retrenchment and closure,

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

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

“Industrial dispute” means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labor, of any person;

Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute.”

#### **AUTHORITIES UNDER THIS ACT**

##### **1. Works Committee:-**

- (1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the

appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment, so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926.

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

## **2. Conciliation Officers:-**

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

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

## **3. Board of Conciliation:-**

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

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

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

---

---

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

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number : Provided that, if the appropriate Government notifies the Board that the services of the Chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

#### **4. The Central Government :-**

(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

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

(3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal<sup>4</sup> [unless he is, or has been, a Judge of a High Court.]

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

### **PROCEDURE, POWERS AND DUTIES OF AUTHORITIES**

#### **Procedure and power of conciliation officers, Boards, Courts and Tribunals:-**

(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit

(2) A conciliation officer or a member of a Board, [or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal] may, for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

---

(3) Every Board, Court, [Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, when trying a suit, in respect of the following matters, namely-

- (a) Enforcing the attendance of any person and examining him on oath;
- (b) Compelling the production of documents and material objects;
- (c) Issuing commissions for the examination of witnesses;

(4) A Conciliation Officer [may enforce the attendance of any person for the the purpose of examination of such person or call for] and inspect any document which he has ground for considering to be relevant to the industrial dispute [or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) [in respect of enforcing the attendance of any person and examining him or of compelling the production of documents]

(5) A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.

(6) All conciliation officers, members of a Board or Court and the presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

[(7) Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court, Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue].

(8) Every [Labour Court, Tribunal or National Tribunal] shall be deemed to be a Civil

---



---

Court for the purposes of [Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974)]

**Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.-**

Where an Industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter]

**Duties of conciliation officers:-**

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government 5[or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.



(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, 1[Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government: 2[Provided that, 3[subject to the approval of the conciliation officer] the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute].

#### **Duties of Board:-**

(1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the

---

---

proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its finding thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to public utility service, the appropriate Government does not make a reference to a 4[Labour Court, Tribunal or National Tribunal] under Section 10, it shall record and communicate to the parties concerned its reasons there for.

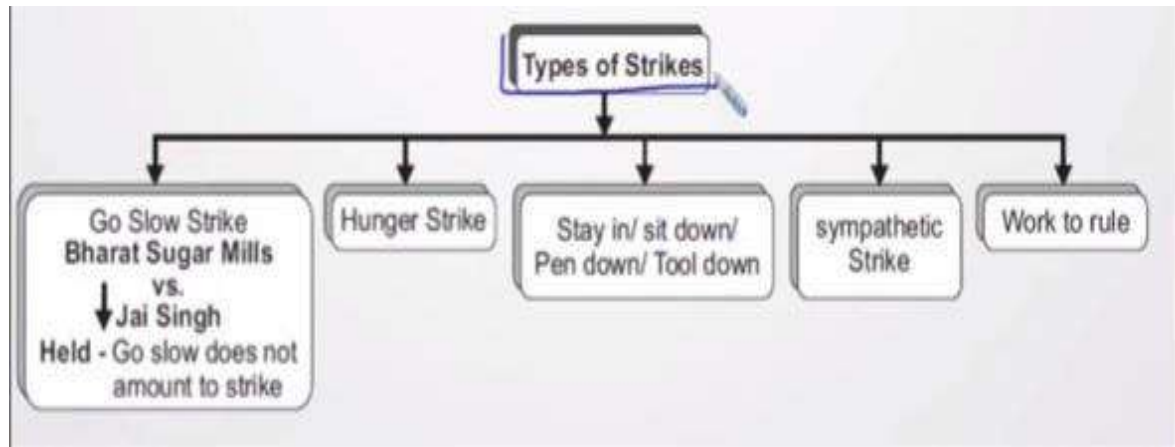
(5) The Board shall submit its report under this section within two months of the date 5 [on which the dispute was referred to it] or within such shorter period as may be fixed by the appropriate Government: Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate: Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute

#### **Duties of Courts:-**

A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

#### **Duties of Labour Courts, Tribunals and National Tribunals:-**

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2-A) of Section 10], submit its award to the appropriate Government.]

**Strikes and Lock outs:-**

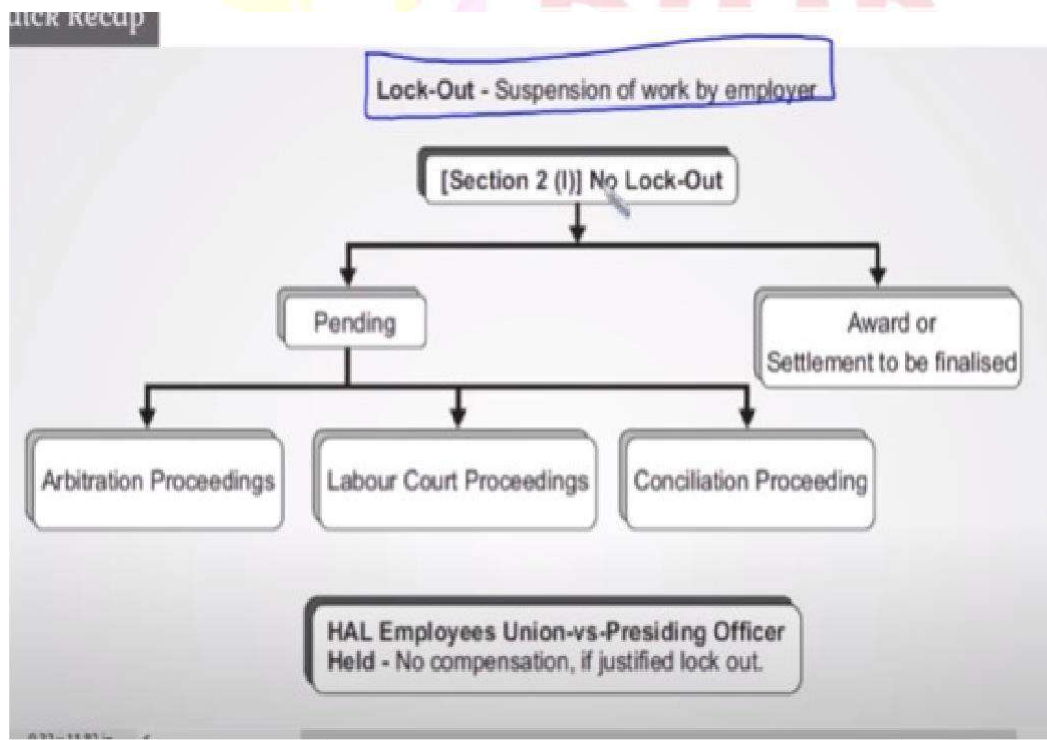
- (1) No person employed in a public utility service shall go on strike in breach of contract-
- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
  - (b) within fourteen days of giving such notice; or
  - (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
  - (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- (2) No employer carrying on any public utility service shall lock-out any of his workmen-
- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
  - (b) within fourteen days of giving such notice; or
  - (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
  - (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- (3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally

or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day.

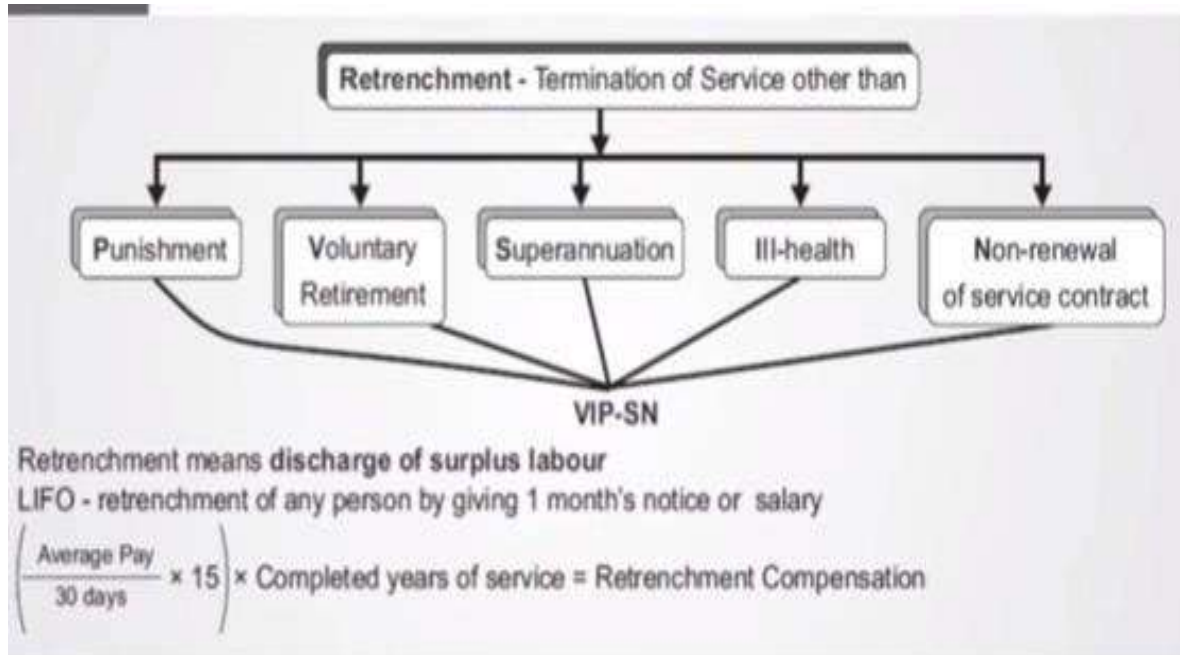


## **22. General prohibition of strikes and lock-outs.-**

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-

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

(b) during the pendency of proceedings before 1[a Labour Court, Tribunal or National Tribunal]and two months after the conclusion of such proceedings; during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under subsection (3-A) ofSection 10-A; or]



#### **Penalty for lay-off and retrenchment without previous permission.-**

Any employer who contravenes the provisions of Section 25M or 36 The Industrial Disputes Act, 1947 Sec. 25R of Section 25- shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

#### **Penalty for closure.-**

Any employer who closes down an undertaking without complying with the provisions of subsection (1) of Section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

**The Contract Labour (Regulation and Abolition) Act 1970**

- Advisory boards,
- registration of establishment,
- Licensing of Contractors,
- Welfare and health of contract labour,
- registers and other records to be maintained

[5th September, 1970.] An Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. Be it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:

-

**THE ADVISORY BOARDS****Central Advisory Board.-**

(1) The Central Government shall, as soon as may be, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

(2) The Central Board shall consist of—

- (a) a Chairman to be appointed by the Central Government;
- (b) the Chief Labour Commissioner (Central), ex-officio;
- (c) such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, the opinion of the Central Government, ought to be represented on the Central Board.

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Board shall be such as may be prescribed: Provided that the number of members nominated to represent the workmen shall not be less than the number of members

---

nominated to represent the principal employers and the contractors.

**State Advisory Board.-**

(1) The State Government may constitute a board to be called the State Advisory Contract Labour Board (hereinafter referred to as the State Board) to advise the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

(2) The State Board shall consist of—

(a) a Chairman to be appointed by the State Government;

(b) the Labour Commissioner, ex-officio, or in his absence any other officer nominated by the State Government in that behalf;

(c) such number of members, not exceeding eleven but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board.

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the State Board shall be such as may be prescribed: Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

**Power to constitute committees.-**

(1) The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.

(2) The committee constituted under sub-section (1) shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(3) The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed: Provided that no fees shall, be payable to a member who is an officer of Government or of any corporation established by any law for the time being in



force.

## **REGISTRATION OF ESTABLISHMENTS EMPLOYING CONTRACT LABOUR**

### **Appointment of registering officers.-**

The appropriate Government may, by an order notified in the Official Gazette—

- (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers for the purposes of this Chapter; and
- (b) define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

### **Registration of certain establishments.-**

(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment: Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

## **LICENSING OF CONTRACTORS**

### **1.Appointment of licensing officers.—**

The appropriate Government may, by an order notified in the Official Gazette,--

- (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter; and
- (b) define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.



**2.Licensing of contractors.-**

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

**3. Grant of licences.-**

(1) Every application for the grant of a licence under sub-section (1) of section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

(2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

(3) A licence granted under this Chapter shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

**WELFARE AND HEALTH OF CONTRACT LABOUR****Canteens.-**

(1) The appropriate Government may make rules requiring that in every establishment—

(a) to which this Act applies,

(b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and

- (c) wherein contract labour numbering one hundred or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for—
- (a) the date by which the canteens shall be provided;
  - (b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and
  - (c) the foodstuffs which may be served therein and the charges which may be made thereof.

**Rest-rooms.-**

- (1) In every place wherein contract labour is required to halt at night in connection with the work of an establishment—
- (a) to which this Act applies, and
  - (b) in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed.
- (2) The rest rooms or the alternative accommodation to be provided under subsection (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

**Other facilities.-**

It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain—

- (a) a sufficient supply of wholesome drinking water for the contract labour at convenient places;
- (b) a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and
- (c) washing facilities.

**First-aid facilities.-**

There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first-aid box equipped with the prescribed contents at every place where contract labour is employed by him.

**Registers and other records to be maintained.-**

- (1) Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.
- (2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

## **Unit 4 Legislation governing Union and Wages**

### **The Trade Union Act 1926-**

- Formation and registration of Trade Unions,
- Principle privileges of a registered trade union,
- rights of recognised trade unions,
- types and structure of trade unions,
- impact of globalisation on trade union movement

#### **Definitions**

**Appropriate Government** [Section. 2]: In relation to Trade Unions whose objects are not confined to one state 'the appropriate Government' is the Central Government. In relation to other Trade Unions, the 'appropriate Government' is the State Government.

**Executive** [Section. 2(a)]: Executive means the body of which the management of the affairs of a Trade Union is entrusted.

**Trade Dispute** [Section. 2(g)]: A trade dispute means any dispute between the employers and workmen, the workmen and workmen and the employers and employers which is connected with the employment or non-employment, or the terms of employment, or the conditions of labour of any person. 'Workmen' mean all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

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

Provided that this Act shall not affect -

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

**Registered Trade Union** [Section. 2(e)]: A registered Trade Union means a 'Trade Union' registered under the Act.

## **REGISTRATION OF TRADE UNIONS**

### **[Section 3] Appointment of Registrars.**

a) The appropriate government shall appoint a person to be the registrar of trade unions for each state. The appropriate government may appoint as many additional and deputy registrars of trade unions as it thinks fit for the purpose of exercising and discharging under the superintendence and direction of the registrar.

Such powers and functions of the registrar under this Act as it may, by order, specify and define the local limits within which any such additional or deputy registrar shall exercise and discharge the powers and functions so specified.

### **[Section 4] Mode of registration**

#### **Minimum Requirement of Registration of Trade Union (2001 amendment)**

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

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

**[Section 5] Application for Registration.**

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-

- (a) the names, occupations and addresses of the members making application;
  - (aa) 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;"
- (b) the name of the trade union and the address of its head office; and
- (c) the titles, names, ages, addresses and occupations of the [office-bearers] of the trade union.

If Trade Union has already been existing for one year or more, for its registration the members should submit all the details such as general statement of the assets and liabilities of the Trade Union going to be registered by the Registrar of Trade Union.

**[Section . 6] Provisions to be contained in the rules of a Trade Union (2001 amendment)**

For registration of the Trade Union, provision or rules mentioned below should be followed by the member for registration of the Trade Union according to this act.

- a) The name of the Trade Union.
  - b) The object of the Trade Union.
  - c) General funds of the Trade Union by its members should be properly used for Lawful purpose.
  - d) Maintenance of list of members in the Trade Union and their facilities to be provided.
  - e) Half of the members of the trade union must be the member who actually engaged in an industry with which trade union is connected.
  - f) the payment of a minimum subscription by members of the Trade Union which shall not be less than—
    - (i) one rupee per annum for rural workers;
    - (ii) three rupees per annum for workers in other unorganized sectors; and
-

(iii) twelve rupees per annum for workers in any other case;

g) Disciplinary action against member of the Trade Union and procedures in imposition of fines on members.

h) the manner in which the rules shall be amended, varied or rescinded;

- the manner in which the members of the executive and the other of the Trade Union shall be elected and removed
- executive members and other office bearers should be elected for the period of maximum 3 years..

i) Funds of the Trade Union should be safe guarded, annual audit is necessary, and account books should be maintained for the purpose of inspection if necessary.

j) Procedure how to wind up the Trade Union

### **Registration [Section 8]**

All the documents submitted with details and information is correct by the members of the Trade Union going to be registered, the Registrar will register the Trade Union.

### **Certificate of Registration. [Section 9]**

The Registrar registering a Trade Union under Section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive that the Trade Union has been duly registered under this Act.

A Supreme Court judgment poses an old question to India's labour movement: how to unionise contract workers.

### **Minimum requirement about membership of a Trade Union. [Section 9A]**

A registered Trade Union of workmen shall at all times continue to have not less than 10% or 100 of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members.

- If Registrar of the Trade Union stops registration of the Trade Union or withdrawal of the registration, members can appeal to Labour Court or an Industrial Tribunal, with in jurisdiction.
- Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of Section 9 or setting aside the order for withdrawal.

### **[Section 13] Features of Registered Trade Union.**

- Registered Trade Union will have perpetual succession (will not stop after the death of the members of the Trade Union).
- Every registered Trade Union will have common seal.
- Every registered Trade Union can acquire and hold both movable and immovable property.
- Every registered Trade Union can sue others.
- Every registered Trade Union can be sued by others also.

### **Rights and Liabilities of Registered Trade Unions:**

#### **1. Objects on Which General Funds May Be Spent:**

The general funds of a registered trade union shall not be spent on any other objects than the payment of salaries, allowances and expenses to the office bearers of the trade unions; expenses for the administration of the trade union; the presentation or defence of any legal proceeding to which the trade union or any member thereof is a party; the conduct of trade disputes and compensation of members for loss arising out of trade disputes; provision of education, social or religious benefits for members; upkeep of a periodical published.

#### **2. Constitution of a Separate Fund for Political Purposes:**

A registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made for the promotion of the civic and political interests of its members, in furtherance of any of the objects such as the payment of any expenses incurred, either directly or indirectly; the holding of any meeting or the distribution of any literature/documents in support of any such candidate; the registration of



electors of the selection of a candidate for any legislative body constituted under or for any local authority; the registration of electors or the selection of a candidate for any legislative body constituted under/or for any local authority; holding of political meetings of any kind.

### **3. Criminal Conspiracy in Trade Disputes:**

No office bearer or member of a registered trade union shall be liable to punishment under sub-section (2) of Section 120 B of the Indian Penal Code, 1860 in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in section its unless the agreement is an agreement to commit an offence.

### **4. Immunity from Civil Suit in Certain Cases:**

(i) No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

A registered trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any fortuitous act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by the executive of the trade unions.

### **5. Enforceability of Agreements:**

Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered trade union shall not be void or voidable merely by reason of the fact that any to the subjects of the agreement are in restraint of the trade.

### **6. Right to Inspect Books of Trade Unions:**

The account books of a registered trade union and the list of members thereof shall be open to

inspection by an office bearer or member of the trade union at such times as may be provided for in the rules of the trade union.

**7. Right of Minors to Membership of Trade Unions:**

Any person who has attained the age of 18 years may be a member of a registered trade union subject to any rules of the trade union to the contrary, and may subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules.

**8. Effects of Change of Name and of merger:**

The change in the name of a registered trade union shall not affect any rights or obligations of the trade union or render defective any legal proceeding by or against the trade union. An amalgamation of 2 or more registered trade unions shall not prejudice any right of any of such trade unions or any right of a creditor of any of them.

**Employer's Organisations:**

Under the trade union Act the term trade unions also includes employer's organisations. But strictly speaking, an employer's association means formal body of employers only.

**According to Mr. Naval Tata, the objectives of an employer's association are:**

- (i) To promote collective bargaining.
- (ii) To develop healthy and stable industrial relations.
- (iii) To bring employer's viewpoint to the notice of the Govt, and
- (iv) To represent employers at national and international forums.

There are at present more than 800 registered associations of employers in India. These are of three types:

1. Local associations to promote the interests of employers in a particular industry or city, e.g., Indian Jute Mills Association.

2. Regional associations such as the Southern India's Mill Owners' Association which serve the needs of employers in a particular region.
3. National or apex associations which co-ordinate the efforts of local and regional associations. These are federations to which local and regional associations are affiliated. FICCI, CII, are examples of these federations. These federations perform several functions such as advice, education, communication, representation.

**Structure:**

**Structure of National Trade Unions consists of 4 levels as given below:**

1. Conventions/sessions
2. General council (President, VP, Secretary-General, etc.)
3. Provincial bodies (at state level chairman, secretariats)
4. Local bodies (affiliated unions)

National convention/conferences are held at periodic intervals, say annually or bi-annually. This is the highest policymaking body. This is presided over by the president of the union attended by the delegates such as chairmen of state units, representatives of specialized services, legal experts and delegates from international bodies and special invitees. Office bearers are also elected by this conference.

General council consists of president, vice-president, secretary and other office bearers. It carries out policy decisions taken by convention. Various standing committees are set up on rendering study, analysis and recommendations on various aspects like legislative measure, Research and publications, international services etc.

State units are headed by chairman of state/regional areas. State units also liaise with National Headquarters; keep a close watch of faithful implementation of labour legislation and practices. It assists/influences state government to pass labour friendly legislation and executive/administration actions.

---

It is also responsible for membership of various unions representing workers in industrial

undertakings (units) and/or representing trade and industrial units affiliated to the central trade union. These state units get themselves attached to State/Provincial/HQ/Regional unions/Units.

Headquarters (HQ) unions are responsible for welfare of its members and membership drive. As bargaining agents they are involved in collective bargaining with Central Government/ and or State government and assist passing legislative measures.

### **Types or Structure of trade union**

The trade union structure is composed three components:- Basic Unions, Industrial federations, National federations.

#### **(1) Basic union**

This is the main union formed by the direct participation of the workers Grass root level. There exists 5,242 registered basic union in BD. Basic union can be divided by:-

- General trade union: Trade union which is formed directly with all level of people i.e. wage earner (without specialized skills)
- Industrial union: Trade union formed by the workers of an enterprise belonging to a particular industry like, jute industry, garment industry etc.
- Craft union: Trade union formed with skilled professionals of different industries.
- Blue collar union: Trade union formed with the workers who are directly involved in production process of an organization.
- White collar union: Trade union formed with the workers who are not directly involved in production process of an organization.
- Mixed union: Combination of blue and white collar union.
- CBA union: Trade union formed with the bargaining agent of workers. They are elected for definite time period.

**(2) Industrial federations**

Industrial federations are formed with the affiliation of different basic unions belonging to a particular industry. At present there exist more than 90 registered industrial federations in BD.

**(3) National federations**

It stands on the apex position of the structure of the trade union. National federations are the controllers and coordinators of affiliated basic union and industrial federations. At present there exist 23 registered national federations in BD and they are united under SKOP(Sramik Karmachari Oikko Parishad)

**Rights and Liabilities of a Registered Trade Union**

Here are the rights and liabilities of registered trade unions under the Trade Union Act, 1926.

**1. Objects on Which General Funds May Be Spent:**

Funds of a general trade union cannot be spent on any other objects than the payment of salaries, allowances and expenses to the office bearers of the trade unions; expenses for the administration of the trade union; the presentation or defiance of any legal proceeding to which the trade union or any member thereof is a party; the conduct of trade disputes and compensation of members for loss arising out of trade disputes; provision of education, social or religious benefits for members; upkeep of a periodical published.

**2. Constitution of a Separate Fund for Political Purposes:**

A registered trade union may constitute a separate fund, from contributions, separately levied for or made to that fund, from which payments may be made for the promotion of the civic and political interests of its members, in furtherance of any of the objects such as the payment of any expenses incurred, either directly or indirectly; the holding of any meeting or the distribution of any literature/documents in support of any such candidate; the registration of electors of the selection of a candidate for any legislative body constituted under or for any local authority; the registration of electors or the selection of a candidate

for any legislative body constituted under/or for any local authority; holding of political meetings of any kind.

### **3. Criminal Conspiracy in Trade Disputes:**

Under this act, no office-bearer or member of a registered trade union shall be liable to punishment under sub-section (2) of Section 120 B of the Indian Penal Code, 1860 in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in section its unless the agreement is an agreement to commit an offence.

### **4. Immunity from Civil Suit in Certain Cases**

No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

A registered trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any fortuitous act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by the executive of the trade unions.

### **5. Enforceability of Agreements:**

Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered trade union shall not be void or voidable merely by reason of the fact that any to the subjects of the agreement are in restraint of the trade.

### **6. Right to Inspect Books of Trade Unions:**

The account books of a registered trade union and the list of members thereof shall be open to inspection by an office-bearer or member of the trade union at such times as may be

provided for in the rules of the trade union.

#### **7. Right of Minors to Membership of Trade Unions:**

Any person who has attained the age of 18 years may be a member of a registered trade union subject to any rules of the trade union to the contrary, and may subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules.

#### **8. Effects of Change of Name and of Amalgamation:**

The change in the name of a registered trade union shall not affect any rights or obligations of the trade union or render defective any legal proceeding by or against the trade union. An amalgamation of 2 or more registered trade unions shall not prejudice any right of any of such trade unions or any right of a creditor of any of them.

#### **Trade Union Movement in India:**

Trade union movement in our country has a century-long history. The first quarter of the present century saw the birth of the trade union movement, but the seeds of the movement were sown much earlier.

In the twenties, soon after the World War I, working class in our country realised the effectiveness of labour strike as a means of obtaining concessions, higher wages and better working conditions.

Many strikes were declared consequently and most of them were successful. This success led to the formation of several unions.

The AITUC was set up in 1920 with the objectives of representing worker's interests, to co-ordinate the activities of all labour organisations in the country, and to spread the message about the need for union movement. Hundreds of unions came into being in big and small industries. Their number, as well as membership, increased considerably.

A landmark in the history of labour movement was the enactment of the Trade Unions Act 1926. The Act gave a legal status to the registered trade unions and conferred on them and their members a measure of immunity from civil suits and criminal presentation. Registration of union gave them respectability before employers and the general public.

Towards the end of 1920s, there was a split in the union movement, the split being caused by the leader's ideological differences. The AITUC was captured by the communists. The moderates formed a new organisation, called All India Trade Union Federation. Ideological differences and splits had their effect on strikes too. Majority of the strikes failed.

Unlike 1920s, the 1930s were not favourable to the trade union movement. The presentation of the communists involved in the Meerut conspiracy case and the failure of the Bombay textile strike of 1929 brought a lull in trade union activities.

Economic depression of the period also added to the dull phase of union movement. Retrenchments and strikes were common, the latter being mostly ineffective. There were further splits in the movement, but just before the World War II some unity was achieved.

The unity was shattered during the World War II because of ideological differences and mounting cost of living. Industrial unrest increased and the Govt, banned strikes and lockouts invoking the Defence of India Rules. Luckily workers realized the need for an organized movement to secure relief. This realisation led to an increase in the number of unions.

The aftermath of independence was not good for unions. The hopes of workers to secure better facilities and wages from the national government were not realized. There was large scale unrest and strikes and lock outs multiplied.

The disunity in the trade union ranks was aggravated by the starting of three central labour organisations, namely the INTUC in 1947, the Hind Mazdoor Sabha (HMS) in 1948, and



the United Trade Union Congress (UTUC) in 1949.

As years went by, more unions and central organisations came into being the movement became deeply entrenched as of today, there are 50,000 registered unions and most of them are affiliated to one or the other central trade union.

### **Impact of globalisation on trade union movement**

The term Globalization has come to represent different things to different people, depending on the context in which it is used. It is a multi-faceted and multidimensional term that has a very broad definition, and has become incorporated into various fields of study. It is, however, important to note that it is a process that started almost as far back as human civilization and exploration, one that has grown and accelerated ever since. It is only in the 1990s that academics have started commenting on what is now termed 'Globalization Theory', in which some have gone as far as equating it to the Industrial Revolution in terms of its scope and spread. The process has not always been called globalization, and the history of this phenomenon is widely contested and debated, making it difficult to actually determine when it started. In fact, it remains a debatable topic as to whether or not the term is analytically useful. It is, at this point, unnecessary to relay all the events and developments associated with globalization. It is, however, important for the purpose of this study to note some of the most significant developments in the process in order to see how it evolved and grew to become one of the most pervasive forces in the world, one which changed and transformed many facets of human life in a revolutionary way. The evolutions of the economic, political, and social spheres have been greatly influenced by the increasing scope of globalization and the effects thereof. The structure of the global political economy, meaning the regulations and institutions governing the actions of states, has come to favor the more influential and powerful states and individuals. Capitalism, as the dominant economic ideology, demands certain structural and institutional characteristics such as the free flows of goods and capital, a monetary system which deals with exchange rates, control over capital movements and the

managing of reserve assets. The need for industrialization, accumulation and growth prompted the powerful states to alter the protectionist status quo of the 1800s. Beginning around 1850 and continuing with accelerated pace later in the 20th century was an emerging trend where states began replacing mercantilist policies with more liberal measures that created an open market system. This served the dual purpose of gaining competitive advantage with products one can produce efficiently and having access to other resources in lesser-developed countries, such as raw materials and agricultural produce. Trade unions have been formed out of the backdrop of capitalism and against capitalism and the accumulation process of the bourgeoisie, giving workers strength through solidarity. The various changes in the economic system, greater mobility, and localities open to organisations and capital were fundamentally against trade unions and the fight for working class issues. These changes will first be assessed and noted as for their influence on unions around the world, discussed with the eye on looking at the condition of the global trade union movement today.

**Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act 1971 –**

- Unfair labour practices on the part of Employers and Employees,
- authorities and
- punishments under the act,

An Act to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings ; to state their rights and obligations; to confer certain powers on unrecognized unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid.

**AUTHORITIES UNDER THIS ACT.**

- 1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.
- (2) The Industrial Court shall consist of not less than three members, one of whom shall be the President.
- (3) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint : Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint, or the industry.
- (4) Every member of the Industrial Court shall be a person who is or has been a judge of a High Court or is eligible for being appointed a Judge of such Court : Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.
- (5) It shall be the duty of the Industrial Court—
  - (a) to decide an application by a union for grant of recognition to it ;
  - (b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act ;
  - (c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union ;
  - (d) to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of Schedule IV ;
  - (e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices ;
  - (f) to decide references made to it on any point of law either by any civil or criminal court ; and
  - (g) to decide appeals under section 42.

(6) The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts, having jurisdiction in such local areas, as may be specified in such notification, and shall appoint persons having the prescribed qualifications to preside over such Courts : Provided that, no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra ; and is not more than sixty years of age.

(7) It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under this Act.

(8) The State Government may, by notification in the Official Gazette, appoint such number of Investigating Officers for any area as it may consider necessary, to assist the Industrial Court and Labour Courts in the discharge of their duties.

(9) (1) The Investigating Officer shall be under the control of the Industrial Court, and shall exercise powers and perform duties imposed on him by the Industrial Court.

(2) It shall be the duty of an Investigating Officer to assist the Industrial Court in matters of verification of membership of unions, and assist the Industrial and Labour Courts for investigating into complaints relating to unfair labour practices.

(3) It shall also be the duty of an Investigating Officer to report to the Industrial Court, or as the case may be, the Labour Court the existence of any unfair labour practices in any industry or undertaking, and the name and address of the persons said to be engaged in unfair labour practices and any other information which the Investigating Officer may deem fit to report to the Industrial Court, or as the case may be, the Labour Court.

#### **UNFAIR LABOUR PRACTICES.**

In this Act, unless the context requires otherwise, 'unfair labour practices' mean any of the practices listed in Schedules II, III and IV.

- No employer or union and no employees shall engage in any unfair labour practice.
- Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal

with such complaint either under section 5, or as the case may be, under section 7, of this Act Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint.

- The Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint.
  - On receipt of a complaint under sub-section (1), the Court may, if it so considers necessary, first cause an investigation into the said complaint to be made by the Investigating Officer, and direct that a report in the matter may be submitted by him to the Court, within the period specified in the direction.
  - While investigating into any such complaint, the Investigating Officer may visit the undertaking, where the practice alleged is said to have occurred, and make such enquiries as he considers necessary. He may also make efforts to promote settlement of the complaint.
  - The Investigating Officer shall, after investigating into the complaint under sub- section (4) submit his report to the Court, within the time specified by it, setting out the full facts and circumstances of the case, and the efforts made by him in settling the complaint. The Court shall, on demand and on payment of such fee as may be prescribed by rules, supply a copy of the report to the complainant and the person complained against.
  - If, on receipt of the report of the Investigating Officer, the Court finds that the complaint has not been settled satisfactorily, and that facts and circumstances of the case require, that the matter should be further considered by it, the Court shall proceed to consider it, and give its decision.
  - The decision of the Court, which shall be in writing, shall be in the form of an order. The order of the Court shall be final and shall not be called in question in any civil or criminal court.
  - The Court shall cause its order to be published in such manner as may be prescribed. The order of the Court, shall become enforceable from the date specified in the order.
  - The Court shall forward a copy of its order to the State Government and such officers of the State Government as may be prescribed.
-

An order of the Court shall be binding on—

- (a) all parties to the complaint ;
- (b) all parties who were summoned to appear as parties to the complaint, whether they appear or not, unless the Court is of opinion that they were improperly made parties ;
- (c) in the case of an employer who is a party to the complaint before such Court in respect of the undertaking to which the complaint relates, his heirs, successors or assigns in respect of the undertaking to which the complaint relate.
- (d) where the party referred to in clause (a) or clause (b) is composed of employees, all persons, who on the date of the complaint, are employed in the undertaking to which the complaint relates and all persons who may be subsequently employed in the undertaking.

### **Minimum Wages Act 1948 –**

- Definition of wages, fixation and revision of minimum wages,
- advisory boards and committees,
- fixing hours for a normal working day,
- wages for worker who works for less than normal working day,
- maintenance of registers and records

#### **Introduction**

India is a labour-intensive country as we have a great amount of human capital to invest in our industries and other areas of work. Minimum wage is an indispensable part of any such country because there is a huge chunk of population which is dependant on daily wages for their bread and butter.

The concept of minimum wages in India was brought in by Mr K. G. R. Chaudhary in 1920. After the International Labour Conference, 1928, the machinery of wage-fixing was brought into actual policy formulation. The bill regarding the same was brought in 1946 and by the year 1948, the bill was enforced and we had saviour rights for all the blue-collar workers.

Blue-Collar Workers refer to those people whose profession requires them to perform manual labour. The advent of this Act ensured that sweated labour was protected from any type of exploitation and their rights are duly recognized.

### **Objective of the Act**

There were several objectives that this Act needed to ensure:

1. Minimum wages need to be ensured to all blue-collar workers in the organized sector.
2. Prohibition of exploitation of labour in the workplace.
3. The Act would empower the government to fix minimum wages and revise those wages from time to time according to the economic situation of the country.
4. To ensure the application of this Act to a maximum number of organized sector employers.

### **Definition**

**“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 2[ and includes house rent allowance but does not include-  
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;

Any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

Any travelling allowance or the value of any travelling concession;

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

any gratuity payable on discharge.



**“Employee”** means any person who is employed for hire or reward to do any work skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out worker to whom any articles or materials are given out by another person, to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the

### **Salient features of the Act**

The act has some salient features, let us have a look at them.

1. The Act specifies for minimum wages for all government sectors employees, both centre and state.
2. The minimum wages include House Rent Allowances. Therefore, Minimum Wages is equal to (=) Minimum Payment + Special Allowances

There are several kinds of wage-fixing mechanisms:

1. Minimum Wage Rate;
2. Minimum Piece Rate;
3. Guaranteed Time Rate;
4. Time Rate or Piece Rate Applicable to Overtime.

Classes of fixing minimum rates of wages

1. different scheduled employments;
2. different classes of work in the same scheduled employment;
3. adults, adolescents, children and apprentices; and
4. different localities (zone-wise).

3. There is a standard criteria of fixing minimum wage rate. Standard family consists of four members where it is considered that three consumption units are required on



one earner.

4. The food requirement must be ascertained by the regular calorie intake by the family.
5. It is considered that the family requires clothing of 72 yards.
6. The rent is considered to correspond to the minimum area.
7. The expenditure is generally considered to be 20% of the minimum wage earned.
8. The social expenditure is also considered to be 25% of the total minimum wage.
9. The minimum wages must be revised within 5 years and the revised special allowance must be announced every six months.
8. The regional labour commission shall be the authority for claiming the remedy under Section 20 of the Act. In Gujarat, Assistant Commissioner of labour shall be the authority.

**Fixation of Minimum Rates of Wages, Working Hours and Determination of Wages and Claims, etc.**

Section 3 of the Act mentions all the procedures. Section 3(2) suggests that the appropriate government shall fix the following keeping all the considerations in the formulation of policies:

- Minimum piece rate;
- Minimum time rate;
- Overtime rate; This must be a substitution of the rate which was pre-decided by the employer;
- Guaranteed time rate system.

The government has to revise the minimum rates. In order to do that, the following things need to be kept in mind:

1. The rates vary from every locality, Scheduled Employment, apprentices, children, adolescents and adults.
2. The rates may be fixed, monthly, weekly, daily or hourly. This time may be fixed for a longer wage period as well.

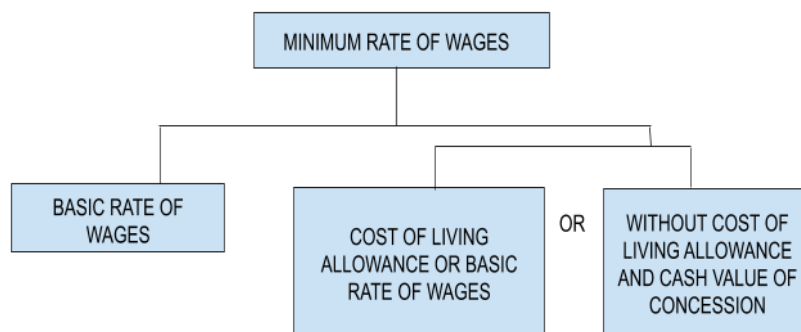
### **Fixation of minimum rates of wages**

The policy formulation regarding minimum wage happens only after due deliberation on the following:

1. The minimum wages must be in compliance with the cost of living index of the employees.
2. The basic wage rate with or without the cost of living allowance along with the authorised cash value of concessions pertaining to the supply of essential basic commodities at subsidized rates.
3. Comprehensive basic wage rate will include the cash value of the concessions, cost of living and the basic rate.

### **Minimum rates of wages**

The minimum rate of wages is clearly defined in the table given below:



### **Procedure for fixing and revising minimum wages**

Section 5 of the Act gives the procedure for fixing and revising the minimum wages. The appropriate government shall appoint committees and subcommittees that may enable to advise on

---

the fixation of minimum wages. The appropriate government is also supposed to publish the minimum wage fixation in the newspapers so as to inform the stakeholders regarding the changes implemented. This publication has to be done at least before two months of the implementation.

The stakeholders may also raise issues if any after the publication. The ascertainment of the minimum wage is then published in the Official Gazette. There may also be consultations regarding the revision of wages, with the Advisory Board. One may wonder, what constitutes an Advisory Board. Let us know what is it and its constitution.

### **Advisory Board**

Section 7 of the Act suggests the formation of the Advisory Board. The government requires advice regarding the living cost indices, the requirements etc. An advisory board helps with the same requirements that were mandated under Section 5 of the Act.

### **Central Advisory Board**

The Act also provides for the formation of a Board of Boards, for the management and regulation of all the Advisory Boards of India. This board shall comprise of members elected by the Central Government and the employees of the advisory boards. The formation of this board is given in Section 8 of the Act.

### **Composition of committees**

Section 9 of the Act consists of the composition of the committees. It is mentioned that the committee shall comprise of members, who are elected by the employees of the scheduled employment. This committee will also contain the members from the scheduled employees but that must not exceed one-third of the total number of committee members.

**Correction of errors**

The appropriate government is provided with the liberty of correcting arithmetic and clerical errors. The correction will be published immediately in the official gazette. The notice will also be provided to the advisory board. The notice will also be up for suggestions.

**Wages in kind**

Minimum wages in this Act will be paid in cash only. However, if there are any concessions that are provided to the stakeholders by the government, shall be paid in the prescribed manner according to this Act. Section 11 of the Act prescribes the manner.

**Fixing hours of normal working days**

Section 13 provides for the fixing of normal working hours in a working day. The fixation of normal working hours includes:

1. The fixed number of working hours will include intervals from time to time.
2. The fixed period must also include a day of rest in every seven days.
3. The rest day must also be included in the pay, payment for not less than the overtime rate.

There are certain exceptions related to those employees whose work is of nature that is irregular. Such exceptions will be provided only after the consent of the appropriate government.

**Overtime**

If any employee works for more than prescribed hours then that person is entitled to excess payment for that period. However, it is also mentioned that nothing in this Act must be prejudicial to Section 59 of the Factories Act, 1948. Section 14 of the Act provides for overtime.

**Wages of worker who works for less than normal working day.-**

If an employee whose minimum rates of wages has been fixed under this Act by the day, works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day: Provided, however, that he shall not be entitled to receive wages for a full normal working day,-

- (i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and
- (ii) in such other cases and circumstances as may be prescribed.

**Wages for two or more classes of work**

When two or more classes of work are performed by a single employee, the minimum wage will be altered according to the time invested in each class of work and remuneration provided in such work. Section 16 of the Act, this practice is mentioned.

**Minimum time-rate wages of piece work**

The minimum time rate must be given to those who are employed on the piece-rate system. The system must not be a minimum piece rate but only minimum time rate. The minimum time rate is a system, where the wages are paid on the basis of the time worked. Section 17 of the Act provides for this clause.

**Maintenance of registers and records**

The employers are supposed to maintain a record register in order to ascertain that all the employees are being minimum wages. This register also needs to be exhibited and must be available for perusal at all times. The authorities are supposed to check these registers. Section 18 of the Act provides for this clause.

**Inspectors**

Inspectors are appointed by the appropriate government in order to make sure that the administration is carried out well. There are certain powers which are given to the inspectors, which are listed below:

- The inspectors may enter any premises in order to carry out investigations regarding the minimum wage remuneration.
- The inspectors may examine or give any information important to the investigation.
- They also have the seize or make copies of any of the documents important to the investigation.



## **Unit 5 Legislation governing working environment**

### **The Factories Act 1948 –**

- Definitions of factory, manufacturing process, worker, occupier;
- Provisions under health,
- safety and
- welfare,
- working hours,
- Annual leave with wages,
- Prohibition of employment of young children,

#### **Definitions:**

**(a) Factory** means any premises including the precincts thereof:-

i) Wherein 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) Wherein 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.

**(b) Worker** means a person (employed directly or through any agency including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any kind of work incidental to or connected with the manufacturing process, or the subject of manufacturing process (but does not include any member of the armed forces of the Union).

(c) **Manufacturing** process means any process for: -

- i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal or
- ii) Pumping oil, water, sewage or any other substance or
- iii) Generating, transforming or transmitting power or
- iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding,
- v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels,
- vi) Preserving or storing any article in cold storage.

(d) **"occupier"** of a factory means the person, who has ultimate control over the affairs of the factory,

Provided that-

- (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- (ii) in the case of a company, any one of the directors, shall be deemed to be the occupier;
- (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case maybe, shall be deemed to be the occupier

### **Section 11: Cleanliness in Every Factory**

Under Section 11, every factory need to keep itself clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

- Accumulation of dirt and refuse should be removed daily by any effective method from the floors of workrooms and from staircases and passages and disposed of in a suitable and efficient manner.



- In case the floor is subject to become wet during the working time, then they should take proper drainage process or steps.
- Clean the worker's floor every week with proper disinfectant or any other effective method of cleaning.
- Paint or repaint walls, ceilings, and staircases of the factory once in every 5 years.
- Repaint the walls once in every 3 years in case of washable water paints.
- Paint and varnish all doors and window-frames and other wooden or metallic framework and shutters at least once in a period of 5 years.

**Section 12: Disposal of Effluents and Wastes**

Under this section following things should be considered:

- (a) It is necessary for the factories to arrange proper and effective waste treatment and its disposal.
- (b) The State Government may make rules prescribing the arrangements for the disposal and treatment of waste and effluents.

**Section 13: Ventilation and Temperature**

- Effective and suitable provisions should be made in every factory for securing and maintaining in every workroom proper ventilation by circulation of fresh air. It also involves providing an adequate temperature at the workplace. For this, they should select the material of the walls accordingly.
- The State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories.
- Lastly, if it appears to the Chief Inspector that excessively high temperature in any factory can be reduced by the adoption of suitable measures, he can order them to use such a method.

**Section 14: Dust and Fume**

- If dust and fume release in the manufacturing process of a factory then they should take effective measures to prevent its inhalation and accumulation in the workplace. For this, they should use proper exhaust appliances in the workplace.
- In any factory, no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air.

**Section 15: Artificial Humidification**

1. In respect of all factories in which the humidity of the air artificially increases, the State Government may make rules,-

- Firstly, prescribing standards of humidification;
- Secondly, regulating the methods used for artificially increasing the humidity of the air;
- Directing tests for determining the humidity of the air for correct carrying out and recording.
- Lastly, prescribing methods for securing adequate ventilation and cooling of the air in the workrooms.

2. In any factory in which the humidity of the air artificially increases, they should purify the water (drinking water) before the supply.

**Section 16: Overcrowding**

- Firstly, no room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.
- Secondly, a factory built after the commencement of this Act at least 14.2 cubic meters of space for every worker employed therein, and for the purposes of this subsection, no account shall be taken of any space which is more than 4.2 meters above the level of the floor of the room.
- If the Chief Inspector by order in writing, may or may not post a notice specifying the

maximum number of workers who may be employed in the room.

### **Section 17: Lighting**

Firstly, There should be proper lighting in all the places of the factory from where the workers of the factory pass.

In every factory, effective provision shall, so far as is practicable, be made for the prevention of-

- glare, either directly from a source of light or by reflection from a smooth or polished surface;
- the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker.

### **Section 18: Drinking Water**

This section states that in every factory, there should be proper arrangements for a sufficient supply of wholesome drinking water and shall be legibly marked as “drinking water”.

### **Section 19: Latrines and Urinals**

This section states that every factory should make arrangements of latrine and urinals for the employees and the rules are laid down by the State Government in this behalf.

### **Section 20: Spittoons**

There should be a sufficient number of spittoons in the factories for the employees and they should be in clean and hygienic condition according to this law

### **Safety Measures (Under the Factories Act, 1948)**

#### **Section 21: Fencing the Machinery**

This section states that the factory should fence the following machinery or substantial construction and maintain them in the right position:

- (a) Every moving part of a prime-mover and every flywheel, whether the prime-mover or flywheel is in the engine-house or not.

- (b) The headrace and tailrace of every water-wheel and water-turbine.
- (c) Any part of a stock bar which projects beyond the headstock of a lathe.
- (d) Every part of an electric generator, a motor or rotary converter.
- (e) Every part of transmission machinery.
- (f) Every dangerous part of any other machinery.

### **Section 22: Work on or Near Machinery in Motion**

(a) Firstly, whenever machinery is in motion and it becomes necessary to do the inspection, lubrication, repairs, etc., the factory should appoint a specially trained expert man, wearing tight-fitting clothes to do the job.

Moreover, such worker shall not handle a belt at a moving pulley unless:

1. the belt is not more than fifteen centimeters in width
2. the belt, including the joint and the pulley rim, is in good repair
3. there is reasonable clearance between the pulley and any fixed plant or structure
4. the pulley is normally for the purpose of the drive

(b) Secondly, the factory owners should not allow any woman or young person to clean, lubricate or adjust any part of a prime-mover or of any transmission machinery while prime-mover or transmission machinery is in motion.

### **Section 23: Employment on Dangerous Machines**

This section states that the factory owners or managers cannot allow any worker to work any machine without instructing him/her about the dangerous outcomes and the relevant precautions. Moreover, before the appointment, the manager has to see that the worker has relevant skills and knowledge to work on the machinery.

**Section 24: Devices for Cutting off Power**

- (a) In every factory, there should be suitable devices for cutting off power in emergencies from running machinery in all the workrooms. In the case of factories which do not belong to this Act have to just do the arrangements in the workroom in which electricity is used to generate power.
- (b) The factory should provide and maintain suitable striking gear or other efficient mechanical appliance to move driving belts.
- (c) Driving belts when not in use shall not be allowed to rest.

**Section 25: Self-Acting Machinery**

This section states that no factory should allow any traversing part of a self-acting machine in any factory to run within a distance of forty-five centimeters from any fixed structure which is not part of the machine.

**Section 26: Casing of New Machinery**

In all machinery driven by power and installed in any factory after the commencement of this Act,-

- (a) every set screw, bolt or key on any revolving shaft, spindle, wheel shall be so sunk, encased or otherwise effectively guarded as to prevent danger;
- (b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.

**Section 27: Prohibition of Employment of Women and Children Near Cotton-Openers**

This section states that the factory should not employ any woman or child in any part of a factory for pressing cotton in which a cotton-opener is at work.

**Section 28. Hoist and lifts.-**

- (i) every hoist and lift shall be of good mechanical construction, sound material and adequate strength. It shall be properly maintained and thoroughly examined by a competent person at least once in every period of six months and a register shall be kept containing the prescribed particulars of every such examination,
- (ii) every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part,
- (iii) the maximum safe working load shall be marked on every hoist or lift and no load greater than such load shall be marked on every hoist or lift and no load greater than such load shall be carried thereon,
- (iv) the cage of every hoist and lift shall be fitted with a gate on each side from which access is afforded to a landing,
- (v) such gates of the hoist and lift shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.
- (vi) Lifting machines, chains, ropes and lifting tackles

**Section 29 hoist and lift,**

In any factory the following provisions shall be complied with respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:

- (a) all parts including the working gear, whether fixed or movable, shall be
  - (i) of good construction, sound material and adequate strength and free from defects;
  - (ii) properly maintained;
  - (iii) thoroughly examined – by a competent person at least once in every period of 12 months or at such

intervals as Chief Inspector may specify in writing and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine or no chain, rope or lifting tackle, shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register and where it is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain, rope or lifting tackle in use shall be displayed in prominent positions on that premises;

(c) while any person is employed or working on or near the wheel track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within 6 meters of that place

### **Section 30 Safety measures in case of use of revolving machinery**

Act prescribes for permanently affixing or placing a notice in every factory in which process of grinding is carried on. Such notice shall indicate maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon such shaft or spindle necessary to secure such safe working peripheral-speed. Speed indicated in the notice shall not be exceeded and effective measures in this regard shall be taken.

### **Section 31 Pressure plant**

Provides for taking effective measures to ensure that safe working pressure of any plant and machinery, used in manufacturing process operated at pressure above atmospheric pressure, does not exceed the limits. The State Government may make rules to regulate such pressures or working and may also exempt any part of any plant or machinery from the compliance of this section.

### **Section 32 Floor, stairs and means of access**

(a) all floors, steps, stairs passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstruction and substances likely to cause persons to

slip and where it is necessary to ensure safety, steps, stairs passages and gangways shall be provided with substantial handrails,

(b) there shall, be so far as is reasonably practicable, be provided, and maintained safe means of access of every place at which any person is at any time required to work;

(c) when any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably, practicable, by fencing or otherwise, to ensure the safety of the person so working.

### **Section 33 Pits, openings in floors etc.**

In every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction, or contents is or may be source of danger shall be either securely covered or securely fence. The State Government may exempt any factory from the compliance of the provisions of this Section subject to such conditions as it may prescribe.

### **Section 34 Excessive weights**

provides that no person shall be employed in any factory to lift, carry or make any load so heavy as to be likely to cause him injury. The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

### **Section 35 Protection of eyes**

requires the State Government to make rules and require for providing the effective screens or suitable goggles for the protection of persons employed on or in immediate vicinity of any such manufacturing process carried on in any factory which involves (i) risk of injury to the eyes from particles or fragments thrown off in the course of the process or; (ii) risk to the eyes by reason of exposure to excessive light.



**Section 36 Precautions against dangerous fumes, gases etc.**

provides (1) that no person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flu or other confined space in any factory in which any gas, fume, vapor or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), until all practicable measures have been taken to remove any gas, fume, vapor or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapor and unless:

(a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapor or dust; or

(b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person outside the confined space.

**Section 36A Precautions regarding the use of portable electric light**

Act provides that in any factory (1) no portable electric light or any other electric appliance of voltage exceeding 24 volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flu or other confined space unless adequate safety devices are provided; and (2) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flu or other confined space unless adequate safety devices are provided, no lamp or light other than that of flame proof construction shall be permitted to be used therein.

**Section 37 Explosive or inflammable dust gas, etc.**

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

**Section 38 Precautions in case of fire**

provides that in every factory all practicable measures shall be taken to outbreak of fire and its spread, both internally and externally and to provide and maintain (a) safe means of escape for all persons in the event of fire, and (b) the necessary equipment and facilities for extinguishing fire.

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

**Section 39 Power to require specification of defective parts or test to stability**

states that when the inspector feels that the conditions in the factory are dangerous to human life or safety he may serve on the occupier or manager or both notice in writing requiring him before the specified date to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, machinery or plant can be used with safety or to carry out such test in such a manner as may be specified in the order and to inform the inspector of the results thereof.

**Section 40 Safety of buildings or machinery**

provides that the inspectors in case of dangerous conditions of building or any part of ways, machinery or plant requires the manager or occupier or both to take such measures which in his opinion should be adopted and require them to be carried out before a specified date. In case the danger to human life is immediate and imminent from such usage of building, ways of machinery he may order prohibiting the use of the same unless it is repaired or altered.

**Section 40-A Maintenance of buildings**

provides that if it appears to the inspector that any building or part of it is in such a state of disrepair which may lead to conditions detrimental to the health and welfare of workers he may serve on the manager or occupier or both, an order in writing specifying the measures to be carried out before a specified date.

**Section 40-B Safety officers**

provides that in every factory (i) where 1,000 or more workers are ordinarily employed or (ii) where the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein, the occupier shall employ such number of safety officers as may be specified in the notification with such duties and qualifications and conditions of service as may be prescribed by State

**Welfare Provisions****Section 42. Washing facilities.-**

(1) In every factory-

- adequate and suitable facilities for washing shall be provided and maintained for use of the workers therein;
- separate and adequately screened facilities shall be provided for the use of male and female workers;
- such facilities shall be conveniently accessible and shall be kept clean.

(2) The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

**Section 43. Facilities for storing and drying clothing.-**

The State Government may, in respect of any factory or class or description of factories make rules requiring the provision therein of suitable place for keeping clothing not worn during working hours and for the drying of wet clothing.

**Section 44. Facilities for sitting.-**

- (1) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.
- (2) If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room, are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.
- (3) The State Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process.

**Section 45. First-aid-appliances.-**

- (1) There shall, in every factory, be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory.
- (2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard.
- (3) Each first-aid box or cupboard shall be kept in the charge of a separate responsible person, who holds a certificate in first-aid treatment recognized by the State Government and who shall always be readily available during the working hours of the factory.
- (4) In every factory wherein more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory.

**Section 46. Canteens.-**

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

(2) Without prejudice in the generality of the foregoing power, such rules may provide for-

- (a) the date by which such canteen shall be provided;
- (b) the standard in respect of construction, accommodation, furniture and other equipment of the canteen;
- (c) the foodstuffs to be served therein and the charges which may be made therefor;
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
- (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer
- (e) the delegation to Chief Inspector subject to such conditions as may be prescribed, of the power to make rules under clause (c).

**Section 47. Shelters, rest-rooms and lunch-rooms.-**

(1) In every factory wherein more than one hundred and fifty workers are ordinarily employed adequate and suitable shelters or rest-rooms and a suitable lunch-room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers:

Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section:

Provided further that where a lunch-room exists no worker shall eat any food in the work-room.

(2) The shelters or rest-room or lunch-room to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) The State Government may-

- (a) prescribe the standards, in respect of construction accommodation, furniture and other equipment of shelters, rest-rooms and lunch-rooms to be provided under this

section;

- (b) by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

**Section 48. Creches -**

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

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

(3) The State Government may make rules-

- (a) prescribing the location and the standards in respect of construction, accommodation; furniture and other equipment of rooms to be provided, under this section;
- (b) requiring the provision in factories to which the section applies, of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;
- (c) requiring the provision in any factory of free milk or refreshment or both for such children;
- (d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

**Section 49. Welfare Officers. -**

(1) In every factory wherein five hundred or more workers are ordinarily employed the occupiers shall employ in the factory such number of welfare officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1). 50. Power to make rules to supplement this Chapter. -

The State Government may make rules-

- (a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter,
- (b) requiring in any factory or class or description of factories that representatives of the workers employed in the factories shall be associated with the management of the welfare arrangements of the workers.

### **Working Hours of Adults**

#### **Section 51. Weekly hours. -**

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

#### **Section 52. Weekly holidays. -**

(1) No adult worker shall be required or allowed to work in a factory on first day of the week (hereinafter referred to as the said day), unless-

- (a) he has or will have a holiday for whole day on one of three days immediately before or after the said day, and
- (b) the manager of the factory has, before the said day or the substituted day under clause (a), whichever is earlier,-
  - o (i) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and
  - o (ii) displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be canceled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be canceled, whichever is earlier.

(3) Where, in accordance with the Provisions of sub-section (1), any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

### **Section 53. Compensatory holidays. -**

(1) Where, as a result of the passing of an order of the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

(2) The State Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.

### **Section 54. Daily hours. -**

Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day.

Provided that subject to the previous approval of the Chief Inspector the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts.

### **Section 55. Intervals for rest. -**

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

(2) The State Government or, subject to the control of the State Government, the Chief Inspector, may, by written order and for the reason specified therein, exempt any factory from the provisions of sub-section (1) so however that the total number of hours worked by a worker without an interval does not exceed six.



**Section 56. Spreadover. -**

The period of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spreadover more than ten and a half hours in any day:

Provided that the Chief Inspector may, for reasons to be specified in writing, increase the spreadover up to twelve hours.

**Section 57. Night shifts. -**

Where a worker in a factory works on a shift which extends beyond midnight,-

- (a) for the purposes of sections 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;
- (b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

**Section 58. Prohibition of overlapping shifts. -**

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

(2) The State Government or subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt on such conditions as may be deemed expedient, any factory or class or description of factories or any department or section of a factory or any category or description of workers therein from the provisions of sub-section (1).

**Section 59. Extra wages for overtime. -**

(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages

at the rate oft twice his ordinary rate of wages.

(2) For the purposes of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

(3) Where any workers in a factory are paid on a piece-rate basis, the time-rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar months during which the overtime work was done, and such time-rates shall be deemed to be the ordinary rates of wages of those workers:

Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time-rate shall be deemed to be equivalent to the daily average of the earnings of the worker for the days on which he actually worked in the week in which the overtime work was done.

(4) The cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

(5) The State Government may make rules prescribing-

- (a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed; and
- (b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

#### **Section 60. Restriction on double employment. -**

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

---

**Section 61. Notice of periods of work for adults. -**

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

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 51, 52, 54, 55, 56 and 58.

(3) Where all the adult workers in a factory are required to work during the same periods, the manager of the factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work during the same periods, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in such group.

(5) For each group, which is not required to work on a system of shifts, the manager of the factory shall fix the periods during which the group may be required to work.

(6) Where any group is required to work on system of shifts and the relays are to be subject to pre- determined periodical changes or shifts, the manager of the factory shall fix the periods during which each relay of the group may be required to work.

(7) Where any group is to work on a system of shifts and the relays are to be subject to pre-determined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts, whereunder the period during which any relay or group may be required to work and the relay which will be working at any time of the day shall be known for any day.

(8) The State Government may prescribe forms of the notice required by sub-section (1) and the manner in which it shall be maintained.

(9) In the case of a factory beginning work after the commencement of this Act, a copy of the notice referred to in sub-section (1) shall be sent in duplicate to the Inspector before the day on which work is begun in the factory.

(10) Any proposed change in the system of work in any factory which will necessitate a change in the notice referred to in sub-section (1) shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since that last change.

**Section 62. Register of adult workers. -**

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

- (a) the name of each adult worker in the factory;
- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shift, the relay to which he is allotted; and
- (e) such other particulars as may be prescribed:

Provided that if the Inspector is of opinion that any muster-roll or register maintained as a part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster-roll or register shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

(1A) No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult workers.

(2) The State Government may prescribe the form of the register of adult workers, the manner in which it shall be maintained and the period for which it shall be preserved.

**Section 63. Hours of work to correspond with notice under section 61 and register under section 62. -**

No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.

**Section 64. Power to make exempting rule. -**

(1) The State Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory or empowering the Chief Inspector to declare any person, other than a person defined by such rules as a person holding position of supervision or management or employed in a confidential position in a factory if, in the opinion of the Chief Inspector, such person holds such position or is so employed and the provision of this Chapter, other than the provisions of clause (b) of sub-section (1) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined or declared :

Provided that any person so defined or declared shall, where the ordinary rate of wages of such person does not exceed the wage limit specified in sub-section (6) of section 1 of the Payment of Wages Act, 1936 (4 of 1936), as amended from time to time, be entitled to extra wages in respect of overtime work under section 59.

(2) The State Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed-

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of section 61 which the State Government may deem to be expedient, subject to such conditions as it may prescribe.

(4) In making rules under this section, the State Government shall not exceed, except in respect of exemption under clause (a) of sub-section (2), the following limits of work inclusive of overtime :

- (i) the total number of hours of work in any day shall not exceed ten;
- (ii) the spreadover, inclusive of intervals for rest, shall not exceed twelve hours in any one day;

Provided that the State Government may, in respect of any or all of the categories of workers referred to in clause (d) of sub-section (2), make rules prescribing the circumstances in which, and the conditions subject to which, the restrictions imposed by clause (i) and clause (ii) shall not apply in order to enable a shift worker to work the whole or part of a subsequent shift in the absence of a worker who has failed to report for duty;

- (iii) the total number of hours of work in a week including overtime, shall not exceed sixty;
- (iv) the total number of hours of overtime shall not exceed fifty for any one quarter.

(5) Rules made under this section shall remain in force for not more than five years.

### **Section 65. Power to make exempting orders. -**

(1) Where the State Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is reasonable to require that the periods of work of any adult worker in any factory or class or description of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

(2) The State Government or, subject to the control of the State Government the Chief Inspector may, by written order, exempt on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional pressure of work.

(5) Any exemption granted under sub-section (2) shall be subject to the following conditions, namely:

- (i) the total number of hours of work in any day shall not exceed twelve;
- (ii) the spreadover, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;
- (iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;
- (iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five.

**Section 66. Further restriction on employment of women. -**

(1) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:-

- (a) no exemption from the provisions of section 54 may be granted in respect of any woman;
- (b) no woman shall be required or allowed to work in any factory except between the hours 6 A.M. and 7 P.M.;

Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories, vary the limits laid down in clause (b), but so that no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 A.M..

- (c) there shall be no change of shifts except after a weekly holiday or any other holiday.

(2) The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions, is necessary to prevent damage to, or deterioration in any raw material.

(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.

### **Employment of Young Persons**

#### **Section 67. Prohibition of employment of young children. -**

No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

#### **Section 68. Non-adult workers to carry tokens. -**

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory, unless -

- (a) a certificate of fitness granted with reference to him under section 69, is in the custody of manager of the factory, and
- (b) such child or adolescent carries while he is at work, a token giving a reference to such certificate.

#### **Section 69. Certificate of fitness. -**

(1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory, in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.



(2) The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew-

- (a) certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work;
- (b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year and is fit for a full day's work in a factory:

Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

(3) A certificate of fitness granted or renewed under sub-section (2)-

- (a) shall be valid only for a period of twelve months from the date thereof;
- (b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring reexamination of the young person before the expiry of the period of twelve months.

(4) A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.

(5) Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.

(6) Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance

with those conditions.

(7) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

**Section 70. Effect of certificate of fitness granted to adolescent. -**

(1) An adolescent, who has been granted certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 69, and who while at work in a factory carries a taken giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapters VI and VIII;

(1A) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M.

Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories,-

- (i) vary the limits laid down in this sub-section so, however, that no such section shall authorise the employment of any female, adolescent between 10 P.M. and 5 A.M.
- (ii) grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved. (2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause (b) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

**Section 71. Working hours for children. -**

(1) No child shall be employed or permitted to work in any factory-

- (a) for more than four and a half hours in any day;
- (b) during the night.

*Explanation.* - For the purpose of this sub-section "night" shall mean a period of at least twelve consecutive hours which shall include the interval between 10 P.M. and 6 A.M.

(2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

(3) The provisions of section 52 shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.

(4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

(5) No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.

**Section 72. Notice of period of work for children. -**

(1) There shall be displayed and correctly maintained in every factory in which children are employed, in accordance with the provisions of sub-section (2) of section 108, a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of section 71.

(3) The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by sub-section (1) of this section.

**Section 73. Register of child workers. -**

(1) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing -

- (a) the name of each child worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted, and
- (e) the number of his certificate of fitness granted under section 69.

(1A) No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.

(2) The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

**Section 74. Hours of work to correspond with notice under section 72 and register under section 73. -**

No child shall be employed in any factory otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made beforehand against his name in the register of child workers of the factory.

**Section 75. Power to require medical examination. -**

Where an Inspector is of opinion -

- (a) that any person working in factory without a certificate of fitness is a young person, or
- (b) that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, -

he may serve on the manager of the factory a notice requiring that such person or young

person, as the case may be, shall be, examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.

**Section 76. Power to make rules. -**

The State Government may make rules-

- (a) prescribing the forms of certificate of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificate, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates;
- (b) prescribing the physical standards to be attained by children and adolescents working in factories;
- (c) regulating the procedure of certifying surgeons under this Chapter;
- (d) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

**Section 77. Certain other provisions of law not barred. -**

The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938 (XXV of 1938).

**Annual Leave with Wages****Section 78. Application of Chapter.-**

(1) The provisions of this Chapter shall not operate to prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement including settlement or contract of service:

Provided that if such award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this Chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favourable therein, the provisions of sections 79 to 82, so far as may be, shall apply.

(2) The provisions of this Chapter shall not apply to workers in any factory of any railway administered by the Government, who are governed by leave rules approved by the Central Government

**Section 79. Annual leave with wages.-**

(1) Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of -

- (i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;
- (ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

*Explanation 1.* - For the purposes of this sub-section-

- (a) any days of lay-off, by agreement or contract or as permissible under the standing orders;

- (b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and
- (c) the leave earned in the year prior to that in which the leave is enjoyed;

shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more, but he shall not earn leave for these days.

*Explanation 2.* - The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

(2) A worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (t) or, as the case may be, clause (ii) of sub-section (1) if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

(3) If a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death, calculated at the rates specified in sub-section (1), even if he had not worked for the entire period specified in sub-section (1) or sub-section (2) making him eligible to avail of such leave, and such payment shall be made -

- (i) where the worker is discharged or dismissed or quits employment before the expiry of the second working day from the date of such discharge, dismissal or quitting; and
- (ii) where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.

(4) In calculating leave under this section, fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.

(5) If a worker does not in any one calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall

be added to the leave to be allowed to him in the succeeding calendar year:

Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a child:

Provided further that a worker, who has applied for leave with wages but has not been given such leave in accordance with any scheme laid down in sub-sections (8) and (9) or in contravention of sub-section (10) shall be entitled to carry forward the leave refused without any limit.

(6) A worker may at any time apply in writing to the manager of a factory not less than fifteen days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year:

Provided that the application shall be made not less than thirty days before the date on which the worker wishes his leave to begin, if he is employed in a public utility service as defined in clause (n) of section 2 of the Industrial Disputes Act, 1947 (XIV of 1947):

Provided further that the number of times in which leave may be taken during any year shall not exceed three.

(7) If a worker wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave even if the application for leave is not made within the time specified in sub-section (6); and in such a case wages as admissible under section 81 shall be paid not later than fifteen days, or in the case of a public utility service not later than thirty days from the date of the application for leave.

(8) For the purpose of ensuring the continuity of work, the occupier or manager of the factory, in agreement with the Works Committee for the factory constituted under section 3 of the Industrial Disputes Act, 1947 (XIV of 1947), or a similar Committee constituted under any other Act or if there is no such Works Committee or a similar Committee in the factory, in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing whereby the grant of the leave allowable under this section may be regulated.



(9) A scheme lodged under sub-section (8) shall be displayed at some conspicuous and convenient place in the factory and shall be in force for a period of twelve months from the date on which it comes into force, and may thereafter be renewed with or without modification for a further period of twelve months at a time, by the manager in agreement with the Works Committee or a similar Committee, or as the case may be, in agreement with the representatives of the workers as specified in sub-section (8), and a notice of renewal shall be sent to the Chief Inspector before it is renewed.

(10) An application for leave which does not contravene the provisions of sub-section (6) shall not be refused, unless refusal is in accordance with the scheme for the time being in operation under sub-sections (8) and (9).

(11) If the employment of a worker who is entitled to leave under sub-section (1) or sub-section (2), as the case may be, is terminated by the occupier before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave, the worker quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount payable under section 80 in respect of the leave not taken, and such payment shall be made, where the employment of the worker is terminated by the occupier, before the expiry of the second working day after such termination, and where a worker who quits his employment, on or before the next pay day.

(12) The unavailed leave of a worker shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

### **Section 80. Wages during leave periods.-**

(1) For the leave allowed to him under section 78 or section 79, as the case may be, a worker shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the day on which he actually worked during the months immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash

equivalent of advantage accruing through the concessional sale to the worker of foodgrains and other articles:

Provided that in the case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of foodgrains and other articles.]

(2) The cash equivalent of the advantage accruing through the concessional sale to the worker of foodgrains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

*Explanation 1.* - "Standard family" means a family consisting of a worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

*Explanation 2.* - "Adult consumption unit" means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years, and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6 respectively of one adult consumption unit.

(3) The State Government may make rules prescribing -

- (a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed; and
- (b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

**Section 81. Payment in advance in certain cases. -**

A worker who has been allowed leave for not less than four days, in the case of an adult, and five days, in the case of a child, shall, before his leave begins, be paid the wages due for the periods of the leave allowed.

**Section 82. Mode of recovery of unpaid wages.-**

Any sum required to be paid by an employer, under this Chapter but not paid by him, shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936 (IV of 1936).

**Section 83. Power to make rules.-**

The State Government may make rules directing managers of factories to keep registers containing such particulars as may be prescribed and requiring the registers to be made available for examination by Inspectors.

**Section 84. Power to exempt factories.-**

Where the State Government is satisfied that the leave rules applicable to workers in a factory provide benefits which in its opinion, are not less favourable than those for which this Chapter makes provisions, it may by written order, exempt the factory from all or any of the provisions of this Chapter subject to such conditions as may be specified in the order.

*Explanation.* - For the purposes of this section, in deciding whether the benefits which are provided for by any leave rules are less favourable than those for which this Chapter makes provision, or not, the totality of the benefits shall be taken into account

**Maharashtra Shops & Establishment (Regulation of Employment and Conditions of Service) Act, 2017 –**

- Scope,
- Registration of establishments,
- opening and closing hours,
- hours of work,
- interval for rest,
- spread over,
- wages for overtime and weekly off,
- leave with pay and payment of wages and
- welfare
- provisions, offences and penalties

**Scope:**

An Act First published, after having received the assent of the Governor in the "Maharashtra Government Gazette", on the 7th September 2017.

An Act to provide for the regulation of conditions of employment and other conditions of service of workers employed in shops, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments and for matters connected therewith or incidental thereto.

Whereas it is expedient to provide for the regulation of employment and other conditions of service of workers employed in shops, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments and for matters connected therewith or incidental thereto; it is hereby enacted in the Sixty-eighth Year of the Republic of India .

***Preliminary***

**Short title, extent, application and commencement.-**

1. This Act may be called the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017.
2. It extends to the whole of the State of Maharashtra.

3. The provisions of this Act, except section 7, shall apply to the establishments employing ten or more workers and the provisions of section 7 shall apply to the establishments employing less than ten workers.

4. It shall come into force on such date as the State Government may by notification in the *Official Gazette* appoint.

### ***Registration of Establishments***

(1) Within a period of sixty days from the date of commencement of this Act or the date on which establishment commences its business, the employer of every establishment employing ten or more workers shall submit application online in a prescribed form for registration to the Facilitator of the local area concerned, together with such fees and such self-declaration and self-certified documents as may be prescribed, containing-

- (a) the name of the employer and the manager, if any;
- (b) the postal address of the establishment;
- (c) the name, if any, of the establishment;
- (d) the actual nature of the business of the establishment ; and
- (e) such other particulars as may be prescribed :

Provided that, nothing contained herein above shall apply to the establishments already having valid registration or renewal under the Maharashtra Shops and Establishments Act until expiry of their registration or renewal.

(2) On receipt of the application along with documents and the fees online, the Facilitator shall, register the establishment in the register of establishments in such manner as may be prescribed and shall issue online, in a prescribed form, a registration certificate along with the Labour Identification Number (LIN) to the employer within the prescribed time limit. The Facilitator shall verify the correctness of the application and documents attached thereto within such time as may be prescribed. The registration certificate shall be produced whenever it is demanded by the Facilitator.

(3) A registration certificate granted under sub-section (2) shall be valid for such period as may be requested by the applicant and specified therein subject to a maximum period of ten years. An application for the renewal of a registration certificate shall be submitted online not less than thirty days before the date of expiry of the registration certificate or of the renewed registration certificate, as the case may be, and shall be accompanied by such fees, and the renewed registration certificate shall be in such form, as may be prescribed.

(4) If the application for the renewal of a registration certificate is submitted after the expiry of the period specified in sub-section (3) but within thirty days after the date of expiry of the registration certificate or of the renewed registration certificate, as the case may be, such application shall be accompanied by an additional fee as late fee equal to half of the fee payable for the renewal of a registration certificate. Suspension of all or any of provisions of this Act.

(5) In the event of any doubt or difference of opinion between an employer and the Facilitator with respect to any provisions of this Act, the Facilitator shall refer the matter to the prescribed authority which shall, after inquiry as it thinks proper, decide the matter and its decision shall be final for the purposes of this Act.

***Opening and Closing Hours, Hours of Work, Interval for Rest, Spread-Over, Wages for Overtime and Weekly off***

1. **Opening and closing hours of establishment.-** Notwithstanding anything contained in this Act, the State Government may, fix, by notification in the *Official Gazette*, in the public interest, such hours for opening and closing of different classes of establishments and for different premises, shopping complex or mall or for different area or areas and for different period.

2. **Daily and weekly hours of work in establishment and interval for rest.-** Subject to the other provisions of this Act, no adult worker shall be required or allowed to work in any establishment for more than nine hours in any day and forty-eight hours in any week. No adult worker shall be asked to work continuously for more than five hours unless he has been given a break of not less than half an hour:

Provided that, the working hours or weekly holiday may be relaxed in case of work of

urgent nature with the previous permission of the Facilitator.

3. **Spread-over in establishments.-** The spread-over of a worker in establishment shall not exceed ten and half hours in any day, and in case a worker entrusted with intermittent nature of work or urgent work, the spread over shall not exceed twelve hours.

4. **Wages for overtime.-** Where a worker in any establishment is required to work beyond nine hours a day or forty-eight hours a week, he shall be entitled, in respect of the overtime work, wages at the rate of twice his ordinary rate of wages. The total number of overtime hours shall not exceed one hundred and twenty-five hours in a period of three months.

5. **Weekly holiday for worker.-** (1) (a) A department or any section of a department of the establishment may work in more than one shift at the discretion of the employer and if more than one shift is worked, the worker may be required to work in any shift at the discretion of the employer.

### ***Leave with pay and Payment of Wages***

#### **Leave.-**

(1) Every worker shall be allowed a weekly holiday with wages.

(2) Every worker shall be entitled to eight days casual leave with wages in every calendar year which shall be credited into the account of the worker on a quarterly basis, but shall lapse if unavailed at the end of the year.

(3) Every worker who has worked for a period of two hundred and forty days or more in an establishment during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of one day for every twenty days of work performed by him during the previous calendar year.

(4) Subject to the provision of clause (3) every worker, who has been employed for not less than three months in any year, shall for every sixty days on which he has worked during the year be allowed leave, consecutive or otherwise, for a period of not more than five days.

(5) Every worker shall be permitted to accumulate earned leave upto a maximum of forty-five days.

(6) Where the employer refuses to sanction the leave under sub-section (3) which is due when applied fifteen days in advance, then the worker shall have a right to encash leave in excess of forty-five days:

Provided that, if a worker is entitled to leave other than casual and festival leave under this section, is discharged by his employer before he has been allowed the leave, or if, having applied for and having been refused the leave, he quits his employment on account of retirement, resignation, death or permanent disability, the employer shall pay him full wages for the period of leave due to him.

(7) A worker shall be entitled to eight paid festival holidays in a calendar year, namely, 26th January, 1st May, 15th August and 2nd October and four such other festival holidays as may be agreed to between the employer and the workers as per the nature of business, before the commencement of the year. For holiday on these days, he shall be paid wages at a rate equivalent to the daily average of his wages (excluding overtime), which he earns during the month in which such compulsory holidays falls:

Provided that, the employer may require any worker to work in the establishment on all or any of these days, subject to the conditions that for such work the worker shall be paid double the amount of the daily average wages and also leave on any other day in lieu of the compulsory holiday.

(8) For the purpose of sub-section (3),-

(a) any days of lay-off, by agreement or contract or as permissible under the model standing orders or standing order certified under Industrial Employment (Standing Orders) Act, 1946;

(b) in the case of a woman worker, maternity leave as provided for in the Maternity Benefits Act, 1961;

(c) the leave earned in the year prior to that in which the leave is availed; or

(d) the worker has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, shall be deemed to be days on which the worker has worked in any establishment for the purpose of computation of the period of two hundred



and forty days or more, but shall not earn leave for these days.

(9) The leave admissible under this section shall be exclusive of all holidays whether occurring during or either at the end of the period of leave.

(10) Every worker shall be paid for the period of his leave earned under sub-sections (3) and (4) at a rate equivalent to the daily average of his wages for the days on which he actually worked during the preceding three months, exclusive of any earnings in respect of overtime.

### ***Welfare Provisions***

#### **A. Health and safety of workers.-**

(1) Every employer shall take such measures relating to the health and safety of the workers including cleanliness, lighting, ventilation and prevention of fire as may be prescribed.

(2) Every employer shall be responsible for providing constant adequate supervision of the workers employed in the establishment and to ensure the compliance with the rules relating to health and safety made under subsection (1) and for taking steps necessary to prevent accidents.

**B. First-aid.-** Every employer shall provide at the place of work first-aid facilities as may be prescribed.

**C. Drinking water.-** The employer shall make effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed in the establishment, a sufficient supply of wholesome drinking water.

**D. Latrines and urinals.-** The employer shall provide sufficient latrine and urinal for men and women as may be prescribed and these shall be so conveniently situated as may be accessible for the workers employed in the establishment :

Provided that, several employers may provide common facilities of latrines and urinals, in case it is not possible, in an establishment due to constraint in space or otherwise.

**E. Creche facility.-** In every establishment wherein fifty or more workers are employed, there shall be provided and maintained a suitable room or rooms as crèche for the use of children of such workers :

Provided that, if a group of establishments, so decide to provide a common crèche within a radius of one kilometre, then, the same shall be permitted by the Chief Facilitator, subject to such conditions as may be specified in the order.

- F. **Canteen.-** The State Government shall require the employer to provide and maintain in the establishment, wherein not less than one hundred workers are employed or ordinarily employed to maintain a canteen for the use of its workers :

Provided that, if a group of establishments, so decide to provide a common canteen, then the same shall be permitted by the Chief Facilitator by an order, subject to such condition.

### ***Offences and Penalties***

#### **A. Penalty for contravention of provisions of this Act.-**

(1) Whoever, contravenes the provisions of this Act or the rules made thereunder shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing contravention, with an additional fine which may extend to two thousand rupees for every day during which such contravention continues :

Provided that, the total amount of fine shall not exceed two thousand rupees per workers employed.

(2) If any person who has been convicted of any offence punishable under sub-section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punished on a subsequent conviction with fine which may extend to two lakh rupees

:Provided that, the total amount of fine shall not exceed two thousand rupees per workers employed.

#### **B. Penalty for contravention of provisions of this Act which resulted in accident.-**

Save as otherwise expressly provided in this Act, where an employer on being held guilty of contravention of any of the provisions of this Act or any rules made thereunder which has resulted in an accident causing serious bodily injury or death of a worker, he shall, on conviction, be punished with imprisonment which may extend to six months, or with fine which shall not be less than two lakh rupees and which may be extended to five lakh rupees,

or with both.

**C. Penalty for obstructions or refusal to provide register, etc.-**

1. Whoever, willfully obstructs the Facilitator in exercise of any powers conferred on him by or under this Act or refuses or willfully neglects to afford a Facilitator any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to an establishments, shall, on conviction, be punished with fine which may extend to two lakh rupees.
2. Whoever, willfully refuses to produce on the demand of a Facilitator any register or other document kept in pursuance of this Act or the rules made thereunder or prevents or attempts to prevent or does anything which he has reason to believe to prevent any person from appearing before, or being examined by, a Facilitator acting in pursuance of his duties under this Act, shall, on conviction, be punished with fine which may extend to two lakh rupees :  
Provided that, total amount of fine shall not exceed two thousand rupees per worker employed.

**D. Cognizance of offences.-**

1. No Court shall take cognizance of any offence punishable under this Act and the rules made there under unless a complaint in respect thereof is made by the Facilitator within three months of the date on which the alleged commission of the offence came to the knowledge of the Facilitator  
Provided that, where the offence consists of disobeying a written order made by a Facilitator, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.
2. No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act or the rules made there under.

**E. Compounding of offences.-**

1. Any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a Gazetted Officer, as the State Government may, by notification, specify, with fine provided for such offence, in the manner as may be prescribed.
2. Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date-
  - of commission of a similar offence which was earlier compounded;
  - of commission of similar offence for which such person was earlier convicted.
3. Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the State Government.
4. Every application for the compounding of an offence shall be made in such form and manner as may be prescribed.
5. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.
6. Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.
7. Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be liable to pay a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.
8. No offence punishable under the provisions of this Act shall be compounded except under and in accordance with the provisions of this section.

**Maternity benefit Act, 1961 – Entire Act and latest amendment**

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows: - 1. Short title, extend and commencement. This Act may be called the Maternity Benefit Act, 1961. (2) It extends to the whole of India .It shall come into force on such date as may be notified in this behalf in the Official Gazette, -3 (a) in relation to mines and to any other establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, by the Central Government, and] (b) in relation to other establishments in s State, by the State Government.

**Application of Act.** -- (1) It applies in the first instance, to every establishment being a factory, mine or plantation 4[including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances]: Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of so doing, by notification . In the official on In the official Gazette, declare that all or any of the provisions of this. Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.(2) 5[Save as otherwise provided in 6 [sections 5A and 5B] nothing contained in this Act] shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (84 of 1948), apply for the time being.

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

- (a) “appropriate Government” means in relation to an establishment being a mine 7[or an establishment where persons are employed for the exhibition of equestrian, acrobatic and other performances], the Central Government and in relation to any other establishment, the State Government;
- (b) “child” includes a still-born child;
- (c) “delivery” means the birth of a child;
- (d) “employer” means –

- (i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;
  - (ii) in relation to an establishment which is under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;
  - (iii) in any other case, the person who are the authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;.
- (e) “Establishment” means –
- (i) a factory;
  - (ii) a mine;
  - (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatics and other performances; or an establishment to which the provisions of this Act have been declared under sub-section (4) of section 2 to be applicable;]
- (f) “factory” means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (g) “Inspector” means an Inspector appointed under section 14;
- (h) “maternity benefit” means the payment referred to in sub-section (1) of section 5;
- (i) “mine” means a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952)
- (j) “miscarriage” means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage the causing of which is punishable under the Indian Penal Code (45 of 1860);
- (k) “plantation” means a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);
- (l) “prescribed” means prescribed by rules made under this Act;
- (m) “State Government” in relation to a Union territory, means the Administrator thereof;

(n) “wages” means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes –

- (1) such cash allowances (including dearness allowance and house rental allowance) as a woman is for the time being entitled to;
- (2) incentive bonus; and
- (3) the money value of the concessional supply of food grains and other articles, but does not include –
  - (i) any bonus other than incentive bonus;
  - (ii) overtime earnings and any deduction or payment made on account of fines;
  - (iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for
  - (iv) the time being in force; and
  - (v) any gratuity payable on the termination of service;
- (vi) “woman” means a woman employed, whether directly or through any agency, for wages in any establishment.

## **2. Employment of, or work by, women prohibited during certain period. –**

- (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
- (2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
- (3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section
- (4) any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

## **3. Right to payment of maternity benefit. –**

Subject to the provisions of this Act, every woman shall be entitled to, and her employer

shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.

**Notice of claim for maternity benefit and payment thereof. –**

1. Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.
2. In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.
3. Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.
4. On receipt of the notice, the employer shall permit such woman to absent herself from the establishment until the expiry of six weeks after the day of her delivery.
5. The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on the production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.
6. **The failure to give notice** under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.
7. **Payment or maternity benefit in case of death of a woman.** – If a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity



benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (3) of section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representative.

8. **Payment of medical bonus.** -- Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of twenty-five rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.
9. **Leave for miscarriage.** – In case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage.
10. **Leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage.**  
– A woman suffering illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall, on production of such proof as may be prescribed, be entitled in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.
11. **Nursing breaks.** – Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.
12. **Dismissal during absence or pregnancy.** – (1) Where a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.  
(1)(a) The discharge or dismissal of a woman at any time during her pregnancy, if the

woman but for such discharge of dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus: Provided that where the dismissal is for any prescribed gross misconduct the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

(b) Any woman deprived of maternity benefit or medical bonus or both may, within sixty days from the date on which the order of such deprivation is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefits or medical bonus or both, shall be final.

(c) Nothing contained in this sub-section shall affect the provisions contained in subsection (1).

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

(a) the nature of work assigned to her by virtue of the provisions contained in subsection (3) of section 4 : or

(b) breaks for nursing the child allowed to her under the provisions of section 11.

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

**15. Powers and duties of Inspectors.** – An Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely: -  
enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where women are employed or work is given to them in an establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspection;

(a) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment:

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself:

(b) require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notices received from them under this Act; and

(c) take copies of any registers and records or notices or any portions thereof.

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

**17. Power of Inspector to direct payments to be made. –**

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

(2) The Inspector may, of his own motion or on receipt of a complaint referred to in subsection (1), make an enquiry or cause an inquiry to be made and if satisfied that payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders.

(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

(4) The decision of the prescribed authority where an appeal has been preferred to it under sub-section (3) or of the Inspector where no such appeal has been preferred, shall be final.

(5) Any amount payable under these sections shall be recoverable as an arrear of land revenue.

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

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

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

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

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

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

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any such offence.

**NOTES.** – Sections 21 to 23 deal with penalties under the Act and procedure to try offences committed under this Act.

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

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

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

**27. Effect of laws and agreements inconsistent with this Act.** – (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:

Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favorable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favorable benefits in respect of that matter, notwithstanding that she is entitled to

receive benefit in respect of other matters under this Act.

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

**28. Power to make rules. –**

- (1) The appropriate Government may, subject to the condition of previous publication and by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for –
- (a) the preparation and maintenance of registers, records and muster rolls;
  - (b) the exercise of powers (including the inspection of establishments) and the performance of duties by Inspectors for the purposes of this Act;
  - (c) the method of payment of maternity benefit and other benefits under this Act in so far as provision has not been made therefore in this Act;
  - (d) the form of notices under section 6;
  - (e) the nature of proof required under the provisions of this Act;
  - (f) the duration of nursing breaks referred to in section 11;
  - (g) acts which may constitute gross misconduct for purposes of section 12;
  - (h) the authority to which an appeal under clause (b) of sub-section (2) of section 12 shall lie, the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;
  - (i) the authority to which an appeal shall lie against the decision of the Inspector under section 17; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;
  - (j) the form and manner in which complaints be made to Inspectors under subsection (1) of section 17 and the procedure to be followed by them when making inquiries or causing inquiries to be made under sub-section (2) of that section;
  - (k) any other matter which is to be, or may be, prescribed.

(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session 11[or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session, aforesaid,] both Houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**The Maternity (Amendment) Bill 2017, an amendment** to the Maternity Benefit Act, 1961, was passed in Rajya Sabha on August 11, 2016, in Lok Sabha on March 09, 2017, and received an assent from President of India on March 27, 2017.[2] The Maternity Benefit Act, 1961 protects the employment of women during the time of her maternity and entitles her of a ‘maternity benefit’ –

i.e. full paid absence from work – to take care for her child. The act is applicable to all establishments employing 10 or more employees.

The provisions of The Maternity Benefit (Amendment) Act, 2017 are effective from April 1, 2017. However, provision on crèche facility (Section 111 A) shall be effective from July 1, 2017.

**The Sexual**  
**harassment of women at workplace(Prevention, prohibition and Redressal) Act, 2013**

Definitions of sexual harassment, employee, workplace, complaints committee, complaint mechanism, Aggrieved Woman, Chairperson;  
Constitution of Internal Complaints Committee,  
Complaint,  
Inquiry into complaint,  
duties of employer.

In this Act, unless the context otherwise requires, —

**“aggrieved woman” means—**

- (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
- (ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

**“Chairperson”** means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of section 7;

**“domestic worker”** means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

**“employee” means** a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied



and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

**“Internal Committee”** means an Internal Complaints Committee constituted under section 4;

**“Local Committee”** means the Local Complaints Committee constituted under section 6;

**“Member”** means a Member of the Internal Committee or the Local Committee, as the case may be;

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

**“Presiding Officer”** means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;

**“respondent”** means a person against whom the aggrieved woman has made a complaint under section 9;

**“sexual harassment”** includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(vi) **“workplace” includes—**

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution,

establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

(vi) a dwelling place or a house;

(vii) “unorganised sector” in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

## **CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE**

### **Constitution of Internal Complaints Committee.—**

(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”: 6 Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1): Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

---

Prof.Shrawani Parse

[www.dimr.edu.in](http://www.dimr.edu.in)

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee, —

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

## **COMPLAINT**

### **Complaint of sexual harassment.—**

(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident: Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in

writing: Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation: Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be. 11.

#### **Inquiry into complaint.—**

(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable: 9 Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the

settlement arrived at under sub-section

(2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police: Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee. (2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:— (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; and (c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

### **INQUIRY INTO COMPLAINT**

#### **Action during pendency of inquiry.—**

(1) During the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the local Committee, as the case may be, may recommend to the employer to—

- (a) transfer the aggrieved woman or the respondent to any other workplace; or
- (b) grant leave to the aggrieved woman up to a period of three months; or
- (c) grant such other relief to the aggrieved woman as may be prescribed.

(2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(3) On the recommendation of the Internal Committee or the Local Committee, as the case

may be, under sub-section

(1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

**13. Inquiry report.—**

(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15: Provide that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause

(ii), the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days

of its receipt by him. 14. Punishment for false or malicious complaint and false evidence.—

(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed: Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section: Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

#### **15. Determination of compensation.—**

For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to—

- (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) the loss in the career opportunity due to the incident of sexual harassment;



- (c) medical expenses incurred by the victim for physical or psychiatric treatment;
- (d) the income and financial status of the respondent;
- (e) feasibility of such payment in lump sum or in installments.

**Prohibition of publication or making known contents of complaint and inquiry proceedings.—**

Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner: Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

**Penalty for publication or making known contents of complaint and inquiry proceedings.—**

Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.



**DUTIES OF EMPLOYER****Duties of employer.—**

Every employer shall—

- (a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;
- (b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;
- (c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- (d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- (e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- (f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;
- (h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place; 12
- (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (j) monitor the timely submission of reports by the Internal Committee.