

Biyani's Think Tank

Concept based notes

Employment Laws

MBA-IV Sem

Ms. Poornima Mathur
Department of Management
Biyani Institute of Science and Management,
Jaipur



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Ph : 0141-2338371, 2338591-95 □ Fax : 0141-2338007

E-mail : acad@biyanicolleges.org

Website : www.gurukpo.com; www.biyanicolleges.org

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Preface

I am glad to present this book, especially designed to serve the needs of the students. The book has been written keeping in mind the general weakness in understanding the fundamental concepts of the topics. The book is self-explanatory and adopts the “Teach Yourself” style. It is based on question-answer pattern. The language of book is quite easy and understandable based on scientific approach.

Any further improvement in the contents of the book by making corrections, omission and inclusion is keen to be achieved based on suggestions from the readers for which the author shall be obliged.

I acknowledge special thanks to Mr. Rajeev Biyani, *Chairman* & Dr. Sanjay Biyani, *Director (Acad.)* Biyani Group of Colleges, who are the backbones and main concept provider and also have been constant source of motivation throughout this Endeavour. They played an active role in coordinating the various stages of this Endeavour and spearheaded the publishing work.

I look forward to receiving valuable suggestions from professors of various educational institutions, other faculty members and students for improvement of the quality of the book. The reader may feel free to send in their comments and suggestions to the under mentioned address.

Author

M-409
EMPLOYMENT LAWS

Course/Paper : 409 MBA Optional(C) Max. Marks : 70 Time : 3 Hrs.

Objectives:

This course is designed to understanding basic concept behind procedural substantive and protective legislation relating to employment laws.

Section A

Trade Unions Act, 1926: Objectives of the act, definitions, coverage, registration & recognition of Trade Unions. **Industrial Employment (Standing Orders) Act, 1946:** Various issues pertaining to employment standing orders. **Industrial Disputes Act, 1947:** Machinery available for settling for grievance handling, penalty, strike lockout, layoff, retrenchment etc.

The Payment of Bonus Act, 1965: Computation of gross benefit and available surplus disqualification for bonus, set on and set off allocable surplus, reference of disputes under the act, penalty special provision with respect to payment of bonus linked with production of productivity.

Employees Provident Funds (and Misc. Provisions) Act, 1952 : Exempted establishments, employee family pension scheme, employee's deposit linked insurance scheme, Mode of Recovery of Money due from employees, protection against attachment, priority of payment of contribution over other debts, employer not to reduce wages etc., liability in case of transfer of establishment.

Workman's Compensation Act, 1923: Objective of the Act Definitions, Dependant Employer, Wages, Workmen, Workmen's Compensation (Employer's Liability for compensation, amount of compensation, Procedure for compensation)

Employee's State Insurance Act, 1948:

Contributions, administrative arrangements, Benefits (Sickness Benefit, Maternity Benefit, Disablement Benefit, Dependants Benefit, medical Benefit, Funeral Benefit, Prescribed Specification for Entitlement Administration of Disablement Benefit), Provision of Medical Treatment by State Government, Penalties. **Minimum Wages Act, 1948:** Definition, all provisions of the act. **Payment of Wages Act, 1936:** Definition, scope and provision of the act.

The Contract Labor Regulation and Abolition Act: Definition, scope and provision of the act.

Factories Act, 1948: Definition, scope and provision of the act. **Shops & Establishment Act :** Ethical issues & Laws at Work Places.

Section B

Case and Problems



Chapter one**Trade Union Act -1926 & Industrial Dispute Act-1947**

1. Write a note on the Historical Background of Indian Trade Unionism?
2. Define Trade Union Act. Explain the procedure of Registration of a trade union and the Privileges of Registered /trade Union?
3. What are the objects on which general funds of a trade union may be spent?
4. What is the procedure for certification of standing orders? "Certified standing orders constitute statutory conditions of employment." Comment.
5. Explain clearly the machinery that exists under the Industrial Disputes Act, 1947 for the settlement of industrial disputes?
6. What is collective Bargaining? Explain its process and provisions in the Trade union Act?
7. Differentiate between:
 - Lockout and lay-off
 - lockout and retrenchment

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Chapter Two**The Payment of Bonus Act 1965**

1. What are the criteria of calculation of Bonus under Bonus Act 1965, write a detailed note on the 'bonus formula'?
2. Explain and illustrate the rule of set on and set off of allocable surplus?
3. What are the special provisions of the payment of Bonus Act 1965 in respect of new Establishment?
4. Does the payment of bonus act 1965, impose any obligation on Employer, to pay a minimum bonus what is the quantum of maximum bonus?
5. Define the following terms:
 - Allocable Surplus
 - Available Surplus
 - Direct Tax
 - Employers and Employee
 - Salary or Wages

Chapter Three**Employee Provident Fund Act 1952**

1. Explain the objects and applicability of the Act?
2. Explain the power and duties of Inspector under the Employee Provident Funds Act?
3. What is Provident Fund? What are the rules of making contribution by an employee and employer?
4. Define Employee Pension Scheme 1995?

Chapter Four

Workman's Compensation Act 1923

1. Define Workman's Compensation Act 1923? Discuss the objects, features and principals, governing compensation as laid down in Workmen's Compensation Act, 1923?
2. Explain the provisions regarding distribution of Compensation to workmen and failure to distribute compensation when becomes due by the employer?
3. How is the amount of compensation payable to an injured workmen calculated under the Workmen's Compensation Act, 1923?
4. Define the following terms, as used in the Workmen's Compensation Act 1923:
 - Partial Disablement
 - Total Disablement
 - Wages
 - Workman
 - Dependant
 - Employer

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Chapter Five**Employee State Insurance Act 1948**

1. State the general provisions regarding benefits under the Employer State Insurance Act 1948?
2. What are the Penalties prescribed by the Employee' State Insurance Act 1948 for contravention of the provisions of the Act or the Rules Trade there under?
3. What are functions of Advisory Board and Central Advisory Board constituted under the Minimum wages Act 1948? Describe their composition also?
4. What do you understand by Minimum rates of wages as specified in the Sec 4 of Minimum wages act 1948? Explain the procedure of fixing the minimum rates of ages?
5. Discuss the Various provision of the payment of wages Act 1936?
6. Explain the provisions regarding:
 - Time of payment of wages
 - Deduction which may be made from the wages.

Chapter Six**The Contract Labor Regulation and Abolition Act**

1. What are the objectives of contract Labour regulation and Abolition Act.1970. What are no the conditions for licensing of contractors and grant of licenses?
2. What provisions have been introduced by the Factories Act for granting annual leave with wage to different categories of workers?
3. Describe the procedures of appointment of Inspectors under the Factories Act 1948. What are their duties?
4. Describe the penalty procedures provided in the Factories Act,1948?
5. What provisions have been introduced by the Factories act for the welfare of workers?
6. Write a short note on the Shops & Establishment Act? And explain its importance, objects and applicability?

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Chapter – 1

THE TRADE UNIONS' ACT, 1926

OBJECT: To provide for the registration of trade unions and to define law relating to registered trade unions.

APPLICABILITY: It extends to the whole of India.

TRADE UNIONS: means any combination whether temporary or permanent formed primarily for the purpose of regulating the relations between workmen and employers for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.

MODE OF REGISTRATION: Any seven or more members of a trade union may apply for registration of a trade union in Form - A to the Registrar appointed for the area. The application shall be accompanied by Schedule I, Schedule II and a byelaw and a resolution authorizing seven ordinary members of the union to make an application for registration of the union, and a treasury chalan of Rs.100/- remitted as registration fee. (Section 4 and 5 read with Regulation: 3 & 5)

REGISTRATION CERTIFICATE: On receipt of the application for registration, the Registrar, after making reasonable enquiry issue a Registration Certificate in Form - B (Section 8 & read with Regulation 6)

CANCELLATION OF REGISTRATION :

A certificate of Registration may be withdrawn or cancelled by the Registrar:

1. On an application of a Trade Union in Form-D, or

2. If the Registrar is satisfied that the certificate is obtained by fraud or mistake or that the trade union had ceased to exist or willfully and after notice from the Registrar contravenes any provisions of the Act or rules etc. (Section 10 read with Regulations 8 to 12)

APPEAL : Any person aggrieved by any order of the Registrar may appeal within two months to the Civil Court not inferior to the court of an Additional or Assistant Principal Civil Court.(Section 11 read with Regulation 13)

CHANGE OF NAME : Any registered trade union may with the consent of not less than 2/3 of its total members make application in Form-H, for the change of its name (Section - 23 read with Regulation - 16)

ANNUAL RETURNS: Every trade union shall send annual returns to the Registrar in triplicate on or before the 1st day of May of the year succeeding the calendar year in Form-L in the case of individual trade unions and in Form-LL in the case of federation of trade unions (Section 28 read with Regulation 21)

PENALTIES: Offences punishable for the failure to submit returns may extend to Rs.5/- and in the case of continuing default with an additional fine which may extend to Rs.5/- for each week and shall not exceed Rs.50.00. Any person who willfully makes, or causes to be made any false entry or any omission from the general statement required by Section 28 etc. shall be punishable which may extend to Rs.500/-. Registered trade unions, furnishing false information's, shall be punishable with fine which may extend to Rs.200/- (Section 31)

WHO CAN FILE PROSECUTIONS:

1. Registrar
2. Persons with the previous sanction of the Registrar.
3. Aggrieved person under Section 32.

The complaint shall be filed within six months of the date on which the offence is alleged to have been committed.

No court inferior to that of a Presidency Magistrate or a Magistrate of First Class shall try any offence under the Act.

AUTHORITIES UNDER THE ACT:

1. Registrar of Trade Unions (under Section - 3)

Labour Commissioner

2. Additional Registrar of Trade Unions

Additional Labour Commissioner (IR & E)

3. Deputy Registrar of Trade Union

Joint Labour Commissioner (P)



Trade Union Act -1926 & Industrial Dispute Act-1947

Q 1 Write a note on the Historical Background of Indian Trade Unionism?

Ans. DEVELOPMENT OF TRADE UNIONISM

Background

Freedom of association has been the corner stone of society. This freedom finds its expression in a democratic form of government¹. Trade unionism has been a movement launched against the concentration of economic power in the hands of a few individuals of society and for the purpose of promoting the welfare of working class. Trade union movement is not confined to the premises of one nation or country but it has widened to the international field as well. It may be desirable to mention that besides trade unions in specific countries, there is one international organisation of working class known as International Labour Organisation (ILO) for promoting Labour welfare².

History of Trade Union Movement

Modern trade unionism is a product of conditions created by industrial revolution. The industrial revolution in Great Britain and later on in other countries brought about a sudden and drastic change in the economic sphere. These changes were so sudden that it was difficult to bring about a complete social, economic and political adjustment. The factory system of production completely tore the relationship between the capitalist and the Labour class without replacing it with a new one. It subordinated the workers while at the same time the powers of the masters were considerably increased. The new economic order that was created was a challenge, which workers sought to meet through the formation of associations known as trade unions to defend their living and working conditions.

The theory of free contract, based on free play of human will, did not take into account the social or economic justice for economically weaker sections of society. There was much emphasis on individualism, which resulted in free enterprise. The attitude of non-interference by the state, which regarded industry as a private competitive effort and on that ground granted it universal freedom, was known as the doctrine of *laissez faire*.

History of Trade Union Movement in India

The first cotton mill in India was established in 1851 in Bombay and the first jute mill in 1855 in Bengal. This was the beginning of the modern factory system in India. After 1851 and 1855, the number of factories began to increase both in Bombay and Bengal. Prof. S. N. Dhyani has observed that the year 1875 is landmark in the history of trade union movement. For the first time, in India factory workers united together for securing better working conditions in the factories.

Factories Act, 1881

The growing consciousness of a common cause for amelioration brought the working class closer despite several hindrances. The secretary of state for India was kept informed of all these evils of the modern factory system and the first Factory Commission was appointed in Bombay in the year 1875 and the first Factories Act was passed in 1881. The 1881 Act proved highly inadequate and its provisions regarding protection to child labour and absence of any regulation for women labour were highly disappointing. Consequently, another Factory Commission was appointed in 1884. Mr. Lokhandey organised a conference of workers in Bombay and drew up a memorandum signed by some 5,300 workers to be presented to the Factory Commission. This was the beginning of modern trade union movement in India.

Bombay Mill-hands Association and Other Labour Associations

The conditions, however, did not improve and therefore, another representation was submitted to the government in 1890 reiterating the demands of 1884 and was signed

by about 17,000 workers. In the same year the Bombay mill-hands association was established under the presidentship of Mr. Lokhandey. This was the first labour association in India. The Bombay mill-hands association may not, however, be classified as a genuine trade union. The workers did not have effective organisation of their own. It had no existence as an organised body having no roll or membership, no funds and no rules.

Effects of First War

The declaration of war in 1914 had much helped in the growth of labour movement in India. The entire economic situation was changed. The war and the consequent shortage of shipping facilities led to restricted imports of commodities. There was a considerable increase in the prices of essential commodities like salt, cotton, cloth, kerosene oil, etc. The capitalists were making enormous profits. The cost of living was steadily increasing and wages lagged behind. This economic situation created discontentment and class-consciousness amongst the workers. Their low standard of living was lowered further. The consequent distress of workers whose wages were not correspondingly increased generated a series of strike waves in 1918-19. The strike of Buckingham and Carnatic mills workers in Madras gave a fillip to the trade union movement in the south. The strike improved their working conditions. However, they needed proper guidance and leadership. The non-cooperation movement of Gandhi provided willing leadership to the labour movement.

The Russian revolution and the establishment of Union of Soviet Socialist Republic (USSR) had its own favorable effect on our trade union movement. It brought a ray of hope to the underdog in every country. The setting of ILO, a tripartite body was also helpful in the organisation of labour associations in India.

Indian Trade Unions Act, 1926

The passing of the Indian Trade Unions Act in 1926 is an important landmark in the history of the trade union movement in the country. In addition to giving legal status to the registered trade unions, the registration conferred on trade unions and their members a measure of immunity from civil suits and criminal prosecutions. Registration also enhanced the status of unions in the eyes of the public as well as the

employers and in this process, even unregistered unions benefited, and the movement as a whole gained greater confidence of the workers.

Thus, the Indian Trade Unions Act, 1926, greatly enhanced the status of trade unions in the worker's imagination and in the public minds. Before 1926, trade unions were treated as illegal bodies. It was only after 1926 onwards that the movement acquired a big spurt and dynamism in bringing together the elements, which were hitherto scattered, divided and disunited. It was a great success, rather a leap forward, which they achieved after a prolonged struggle, suffering and sacrifice. The Royal Commission rightly observed that: 'The stimulus given by the Act to trade unionism resulted, not so much from any rights or liabilities that created, as from the enhanced status in the statute book'.

Q2 Define Trade Union Act. Explain the procedure of Registration of a trade union and the Privileges of Registered /trade Union?

Ans. OBJECT: To provide for the registration of trade unions and to define law relating to registered trade unions.

APPLICABILITY: It extends to the whole of India.

TRADE UNIONS: means any combination whether temporary or permanent formed primarily for the purpose of regulating the relations between workmen and employers for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.

Definition

- It is an association either of employees or employers or of independent workers.
- It is a relatively permanent formation of workers.
- "An organization of workers acting collectively who seek to protect and promote their mutual interests through collective bargaining.

- De Cenzo & Robbins (1993)

MODE OF REGISTRATION:

- Registration of TU is not compulsory.
- Minimum **7 workers** of an establishment can form a TU.
- The application for registration should be in the prescribed form and accompanied by the prescribed fee, a copy of the rules of the union signed by at least 7 members and a statement containing:
 - a) The names, addresses and occupations of the members making the application,
 - b) The name of the trade union and the addresses of its head office, and
 - c) The titles, names, ages, addresses and occupations of its office bearers.
- More than one year- than a statement of assets & liabilities.
- Registrar can ask for further information.
- Registrar will check that all the information is correct & complete and the proposed name does not resemble.
- When the registrar is satisfied he issues a certificate of registration.

CANCELLATION OF REGISTRATION:

- a) On an application from the Trade Union to be verified in such manner as prescribed.
- b) On satisfaction of the Registrar that the certificate has been obtained by fraudulent means or mistake or that Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of the Trade Unions Act, 1926 or allowed any rule to continue in force which is inconsistent with any such provision or has rescinded any rule providing any matter provision for which is required by section 6. The Registrar has to provide not less than two months notice previous in writing specifying the ground on which it is proposed to withdraw or cancel the certificate, before actually withdrawing or canceling the certificate.

Privileges of Registered /trade Union:

- A registered TU is a perpetual succession.
- It can acquire, hold, sell, or transfer any movable or immovable property.

- It can sue or be sued in its own name.
- No agreement between the members of a registered TU shall be void or voidable under the ground of a trade.

Q3 What are the objects on which general funds of a trade union may be spent?

Ans. General funds can be spent on:

- Salaries and administrative expenses of of Trade Union
- Expenses relating to disputes and litigation for the Trade Union
- Compensation and allowance to members and dependants for losses arising out of trade disputes and old age and sickness etc. and for education and social or religious benefits
- Furtherence of other objectives of the Trade Union etc.

Obligations :

- The general funds should only spent in the objects specified.
- Separate political fund can be set. Contribution to this fund is not compulsory.
- The account books and membership register should kept open for inspection.
- A copy of alteration done should be sent to the Registrar within 15 days of making alteration.
- An annual statement is prepared in the prescribed forms and duly audited should be sent to the Registrar with in the time.
- This statement should include the changes during the year and a copy of the rules as amended up to date.

S.n.	Offence	Penalty
1	Fail to give any notice or any statement	Fine upto Rs.5 plus additional fine upto Rs. 5 per week (max.Rs.50)
2	Willingly done any mistakes in annual statement & rules	Fine upto Rs. 500

3	If any person, with the intent to deceive, gives an incorrect copy of rules of the union to any member or a prospective member	Fine upto Rs. 200.
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Q4 What is the procedure for certification of standing orders? What are the conditions for their certification?

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

Submission of draft standing orders.—

(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in this industrial establishment.

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

(3) The draft standing orders submitting under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

Conditions for certification of standing orders.

Standing orders shall be certifiable under this Act if--

- (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and
- (b) the standing orders are otherwise in conformity with the provisions of this Act ; and it ⁱⁱ[shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

Certification of standing orders.

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

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications there in which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

Q5 Explain clearly the machinery that exists under the Industrial Disputes Act, 1947 for the settlement of industrial disputes?

Ans. INDUSTRIAL DISPUTES ACT, 1947

INTRODUCTION

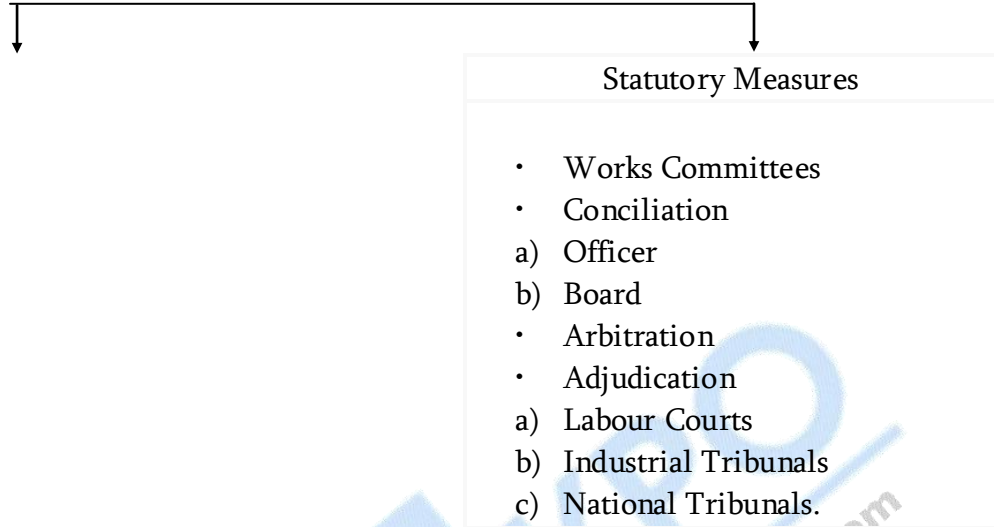
The Industrial Disputes Act, 1947 is an important social legislation enacted to provide for investigation and settlement of Industrial Disputes and for maintaining industrial harmony. It is an Act enacted to ensure specific justice to both employers and workmen and to advance the progress of the industry by bringing about Harmony and cordial relationship between the parties. The Act also enumerates the contingencies as to when a strike or lock-out can be lawfully resorted to, when they can be declared illegal. conditions for laying-off retrenching, discharging or dismissing a workman; circumstances under which an Industrial Establishment can be closed down and several other matters related to industrial employees and the employers.

WHAT IS AN INDUSTRIAL DISPUTE?

Section 2(k) of the Industrial Disputes Act, 1947 defines an 'industrial dispute' as 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 and conditions of employment of any person. An 'industrial dispute' must necessarily be a dispute in an industry.

Machinery for prevention and settlement of dispute





Voluntary Methods

1. Collective Bargaining

- It is a procedure by which the terms and conditions of employment of workers are regulated by agreements between their bargaining agent and employers.
- It is a kind of rule making exercise. Both labor and management agree to set of rules that govern workplace relations from time to time.

2. Trade union:

- Strong TU helps prevent industrial disputes. They can bargain with employers effectively and seek quick redressal of grievances.

Voluntary Methods
<ul style="list-style-type: none"> • Collective Bargaining • Trade unions • Joint Consultant • Standing Orders • Grievance Procedure

3. Joint Consultant:

There are two types of JC:

A. Works Committees:

According to the act, 1947, works committees have to set up in all those industrial units which employ 100 or more persons and are composed of an equal number of employers and employee representatives.

B. Joint Management Council

- It consist of representatives of management, technicians, & workers.
- It is voluntary, not obligatory.
- Equal number of members (Min:6, Max:12)
- Look after three matters: (i) Information sharing (ii) Consultative (iii) Administrative matters.

4. Standing Orders

It refers to the rules and regulations which govern the conditions of employment of workers. They specify the conditions of employment.

It highlighted the matters like:

(a) Classification of employees (b) Hours of work, holidays, paydays, wage rates, (c) shift working (d) Attendance and late coming (e) Leave rules (f) Temporary stoppages of work (g) Termination, suspension, & disciplinary actions etc.

5. Grievance Procedure

It may be defined as “ any real or imagined feeling or personal injustice which an employee has concerning his employment relationship. In this both the parties have to follow certain steps;

Code of Discipline: It aims at preventing disputes by providing for voluntary and mutual settlement of dispute through negotiations without the interference of an outside agency.

Obligations of Both the parties:

Unilateral action

Should not indulge in strike and lockouts without notice.

Neither party will resort unfair labor practices.

Both employers and union will educate workers regarding their obligations.

Obligations for managers:

- Manager will not increase workload without prior agreement with workers.
- Discourage unfair practices, take prompt actions to redress grievances.
- Agrees to implement all awards and agreements, take disciplinary action.

Obligations for unions:

- Not indulge in physical duress, not to permit employees to do union work during working hours.
- Discourage negligence of duty, careless operations, damage to property.

Settlement Machinery

1. Works Committees:

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 (16 of 1926).

2. Conciliation:

It is a process by which representatives of workers and employers are brought together before a third person or a group of persons with a view to persuade them to come to a mutually satisfying agreement.

1. Conciliator tries to bridge the gulf between the parties.
2. Tries to reduce the differences to the extent possible
3. He persuades parties to take a fresh look at the whole issue.
4. He only advances the possible lines of solution. He never tries to force the parties to accept his viewpoint.
5. It is flexible.

Conciliation Officer:

Central and state govt. can appoint a conciliation officer to mediate in all disputes brought to his notice.

- The officer enjoys the power of civil court.

- He can call and witness disputing parties on oath and interpret the facts of the case
- He is expected to give judgment in 14 days.
- He may do all such things he thinks fit for the purpose.

Board of Conciliation:

When the conciliation officer fails to resolve the dispute between the parties, the govt. can appoint a board of conciliation.

- It is not a permanent institution, created for a specific dispute.
- It consists of a chairman and two or four other members nominated in equal numbers by the parties to the dispute.
- The chairman who is appointed by the govt should not be connected with the dispute or with any industry directly affected by such dispute.
- The board is expected to submit the report in 2 months.

Court of Enquiry

In case the conciliation proceeding fails to resolve a dispute, a court of enquiry is constituted by the government to investigate the dispute and submit the report within six months. It is a fact finding body.

3. **Voluntary Arbitration** : Voluntary Arbitration is a binding, adversarial dispute resolution process in which the disputing parties choose one or more arbitrators to hear their dispute and to render a final decision or award after an expedited hearing

Voluntary arbitration implies that the two contending parties, unable to compromise their differences by themselves or with the help of mediator or conciliator, agree to submit the conflict/ dispute to an impartial authority, whose decisions they are ready to accept. In other words, under voluntary arbitration the parties to the dispute can and do they refer voluntarily and dispute to arbitration before it is referred for adjudication. This type of reference is known as “voluntary reference”, for the parties themselves volunteer to come to a settlement through an arbitration machinery.

The essential elements in voluntary arbitration are:

- (1) The voluntary submission of dispute to an arbitrator.
- (2) The subsequent attendance of witnesses and investigations.
- (3) The enforcement of an award may not be necessary and binding because there is no compulsion.
- (4) Voluntary arbitration may be specially needed for disputes arising under agreements.
- (5)

4. Adjudication (Compulsory Arbitration):

Compulsory Arbitration is a non-binding, adversarial dispute resolution process in which one or more arbitrators hear arguments, weigh evidence and issue a non-binding judgment on the merits after an expedited hearing. The arbitrator's decision addresses only the disputed legal issues and applies legal standards. Either party may reject the ruling and request a trial de novo in court.

Compulsory arbitration is one where the parties are required to accept arbitration without any willingness on their part. When one of the parties to an industrial dispute feels aggrieved by an act of the other, it may apply to the appropriate government to refer the dispute to adjudication machinery. Such reference of a dispute is known as “compulsory” or “involuntary” reference, because reference in such circumstances does not depend on the sweet will of either the contending parties or any party to the dispute. It is entirely the discretion of the appropriate govt. based on the question of existing dispute, or on the apprehension that industrial dispute will emerge in particular establishment.

Under compulsory arbitration, the parties are forced to arbitration by the state when:

- The parties fail to arrive at a settlement by a voluntary method
- When there is a national emergency which requires that the wheels of production should not be obstructed by frequent work-stoppages
- The country is passing through a grave economic crisis.
- There is a grave public dissatisfaction with the existing industrial relations
- Public interest and the working conditions have to be safeguarded and regulated by the state.
- Compulsory arbitration leaves no scope for strikes and lock-outs; it deprives both the parties of their very important and fundamental rights.

1. Labour Courts.-

- The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.
- Labour Court shall consist of one person only to be appointed by the appropriate Government
- A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless-
 1. he is, or has been, a Judge of a High Court; or
 2. he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
 3. he has held any judicial office in India for not less than seven years; or
 4. He has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

2. Industrial Tribunals.-

- The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule ⁵[and for performing such other functions as may be assigned to them under this Act].
- A Tribunal shall consist of one person only to be appointed by the appropriate Government.
- A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-
 - he is, or has been, a Judge of a High Court; or
 - he has, for a period of not less than three-years, been a District Judge or an Additional District Judge; ⁷[* * *]

3. National Tribunals.-

- 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.
- A National Tribunal shall consist of one person only to be appointed by the Central Government
- A person shall not be qualified for appointment as the presiding officer of a National Tribunal ²[unless he is, or has been, a Judge of a High Court.]
- The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

Q6 Write a short note about the provisions of strikes and lockout?

• **STRIKE:**

The section 2(q) of the Act defines the term strike as (i) cessation of work by a body of workmen employed in any industry acting in combination or (ii) a concerted refusal of any number of workers who are or have been employed in any industry to continue to work or to accept employment or (iii) a refusal under a common understanding of any number of workers who are or have been employed in any industry to continue to work or to accept employment.

• **LOCKOUT:**

Section 2(l) of the Act defines Lockout as “closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him”

Prohibition of strike lock-out

The government is competent to prohibit the continuance of any strike or lockout in connection with an industrial dispute which may be in existence after referring such a dispute for adjudication to the Labour Court/Industrial Tribunal. { Sec 10(3)}

Payment of full wages to workmen pending proceeding in higher courts.

Where in any case the Labour Court or Industrial Tribunal directs reinstatement of a workman by its award and the employer challenges such an award in the High Court or the Supreme Court, the employer shall be liable to pay such workman full wages last drawn by him (before the termination of his services) during the period of pendency of such proceedings in the aforesaid courts subject to the condition that the workman will give affidavit to the employer to the effect that he has not been employed in any establishment during the relevant period (Sec 17B).

Strike and Lockouts

Prior notice of strike/lockout in certain cases

No person employed in a “ public utility service” shall go on strike in breach of contract without giving to the employer notice of strike; within six weeks before striking; within 14 days of giving such notice or before the expiry of date of strike specified in any such notice or during the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings.

No employer of any public utility service shall lockout any of his workman without giving notice of lockout in the prescribed manner within six weeks before the lockout or within 14 days of giving such notice or before the expiry of the date of lockout, specified in any such notice or during the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings.

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 lockout during the pendency of conciliation proceedings, before a Board and seven days after the conclusion of such proceeding during the pendency of proceeding before the Labour Court or Industrial Tribunal and two months after the conclusion of such proceeding during the pendency of arbitration proceedings before an Arbitrator and two months after the conclusion of such proceedings and during any period for which a settlement or award is in operation in respect of any matter covered by the settlement or award (Sec 23)

Deemed illegality of strike/lockout

A strike or a lock out shall be deemed to be illegal after the same is commenced or declared in contravention of the provisions of section 22 or 23 of the Act or it is continued in contravention of an order made under sub section (3) of section 10 or sub section (4A) of section 10A of the Act.

However, a lockout or a strike declared in consequence of an illegal strike or illegal lockout shall not be deemed to be illegal. (section 24).

Q7 Differentiate between:

1. Lockout and lay-off:

A lay-off generally occurs in a business which continues to operate; whereas a "lock-out is a closure of business for the time-being.

In the case of a "Lay off", the employer is unable to give employment to one or more workman. However, in the case of a "lock-out," the employer deliberately closes the business and locks out the whole body of workman.

In the case of a "lay-off," the employer may be liable to pay compensation as provided by S. 25C, 25D and 25E of the Act, but liability for compensation cannot be invoked in case of a "Lock out," as the liability of the employer in cases of "lock-out" would depend on whether the "Lock out" was justified and legal or not.

But whatever the liability, the provisions applicable to the payment of "Lay-off" compensation cannot be applied to cases of "Lock-out".

"Lock-out" is resorted to by the employer as a weapon of collective bargaining and also, ordinarily involves an element of malice or ill will. On the other hand, a "Lay-off" is actuated by the exigencies of the business

2. Lockout and Retrenchment:

LOCKOUT:

Section 2(1) of the Act defines Lockout as “closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him”

RETRENCHMENT:

Retrenchment connotes in its ordinary acceptance that the business itself is being continued, but that apportion of the Labour force is discharged as surplus. It means the discharge of surplus Labour by the employer for any reason whatsoever. Section 2(oo) of the Act defines the term “retrenchment” which means:

- (1) The termination by the employer of the services of a workmen;
- (2) The termination may be for any reason whatsoever;
- (3) But the termination should not be a measure of punishment by way of disciplinary action.

The following are not retrenchment:

- (1) Voluntary retirement of a workmen, or
- (2) Retirement of a workmen on reaching the age of superannuation if the contract of employment between the employer and the workmen concerned contains a stipulation in that behalf.

Chapter Two

The Payment of Bonus Act 1965

1. What are the criteria of calculation of Bonus under Bonus Act 1965, write a detailed note on the 'bonus formula'?

Ans. The Payment of Bonus Bill having been passed by both the Houses of Parliament received the assent of the President on 25th September, 1965. It came on the Statute Book as THE PAYMENT OF BONUS ACT, 1965 (21 of 1965).

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

Eligibility for bonus.—Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

Calculation of Bonus:

The Bonus formula as envisaged in the Act for the payment of minimum of minimum and maximum bonus to their employees in an accounting year so that they are not deprived of any bonus to the employees in a year. Bonus is payable even if there are losses in that particular accounting year.

Bonus Formula

- Calculate the Available Surplus
- Available surplus = Gross Profit- (Depreciation admissible u/s 32 of the income tax act + development Allowance)
-

Computation of gross profits.—The gross profits derived by an employer from an establishment in respect of the accounting year shall—

(a) In the case of a banking company, be calculated in the manner specified in the First Schedule;

(b) In any other case, be calculated in the manner specified in the Second Schedule;]

Computation of available surplus.—The available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in section 6;

Provided that the available surplus in respect of the accounting year commencing on any day 1968 and in respect of every subsequent accounting year shall be the aggregate of –

(a) the gross profits for that accounting year after deducting there from the sums referred to in section 6; and

(b) an amount equal to the difference between --

(i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

(ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.]

Sums deductible from gross profits.—The following sums shall be deducted from the gross profits as prior charges, namely:—

(a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from the date) continue to be such notional normal depreciation;

- (b) any amount by way of ¹[development rebate or investment allowance or development allowance] which the employer is entitled to deduct from his income under the income-tax Act;
- (c) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
- (d) such further sums as are specified in respect of the employer in the ²[Third Schedule].

Calculation of direct tax payable by the employer.—³[Any direct tax payable by the employer] for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:-

- (a) in calculating such tax no account shall be taken of --
- (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
- (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of section 32 of the Income-tax Act;
- (iii) any exemption conferred on the employer under section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of section, 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965 (10 of 1965);
- (b) where the employer is a religious or a charitable institution to which the provisions of section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
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- (c) where the employer is individual or a Hindu Undivided Family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;
- (d) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;
- (e) no account shall be taken of any rebate ¹[(other than development rebate or investment allowance or development allowance)] or credit or relief or deduction (not herein before mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

Calculation of bonus with respect to certain employees.—Where the salary or wage of an employee exceeds ⁴[two thousand and five hundred rupees] per mensem, the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wage were [two thousand and five hundred rupees] per mensem.]

2. Explain and illustrate the rule of set on and set off of allocable surplus?

Ans. The Allocable surplus is the workers share in the available surplus.

Set on and set off of allocable surplus.—

- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent. of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.
-

- (2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 10, and there is no amount of sufficient amount carried forward and set on under sub-section (1) which could be utilized for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.
- (3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.
- (4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

3. What are the special provisions of the payment of Bonus Act 1965 in respect of new Establishment?

Ans. Special provisions with respect New Establishment -

- (1) Where an establishment newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act in accordance with the provisions of sub-section (1A), (1B) and (1C).

(1A) In the first five accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this act in relation to that year, but with out applying the provisions of section 15.

(1B) For the sixth and seventh accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 15 shall apply subject other following modifications, namely:--

(i) For the sixth accounting year --

set on or set off, as the case may be, shall be made in the manner illustrated in the ¹[Fourth Schedule] taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;

(ii) For the seventh accounting year --

set on or set off, as the case may be, shall be made in the manner illustrated in the ¹[Fourth Schedule] taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting year.

(1C) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 15 shall apply in relation to such establishment as they apply in relation to any other establishment.

Explanation I. – For the purpose of sub-section (1), an establishment shall not be newly set up merely by reason of a change in its location, management, name or ownership.

Explanation II. -- For the purpose of sub-section (1A), an employer shall not be deemed to have derived profit in any accounting year unless –

(a) H has made provision for that year's depreciation to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income-tax, law; and

(b) The arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation III. – For the purpose of sub-section (1A), (1B) and (1C), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the decision of the appropriate Government, made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority.]

(2) The provisions of ¹[sub-section (1), (1A), (1B) and (1C)] shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments:

Provided that if an employer in relation to an existing establishment consisting of different (departments or undertakings or branches (whether or not in the same industry) set up at different periods has, before the 29th May, 1965, been paying bonus to the employees of all; such departments or undertakings or branches, irrespective of the date on which such departments or undertakings or branches were set up, on the basis of the consolidated profits computed in respect of all such departments or undertaking or branches, then, such employer shall be liable to pay bonus in accordance with the provisions of this Act to the employees of all such departments or undertaking or branches (whether set up before or after that date) on the basis of the consolidated profits computed as aforesaid.

4. Does the payment of bonus act 1965, impose any obligation on Employer, to pay a minimum bonus what is the quantum of maximum bonus?

Ans. Yes the payment of Bonus act imposes an obligation on an employer to pay the bonus even if there are losses in that particular year.

Payment of minimum bonus.—Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent

accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effecting relation to such employee as if for the words "one hundred rupees", the words "sixty rupees" were substituted.]

Payment of maximum bonus.—(1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting; year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent, of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.]

5. Define the following terms:

- Allocable Surplus
- Available Surplus
- Direct Tax
- Employers and Employee
- Salary or Wages

Ans.

Allocable Surplus: means-

- in relation to an employer, being a company ³[(other than a banking company)] which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the
-

dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;

- in any other case, sixty percent of such available surplus;

Available Surplus: — The available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in section 6;

Provided that the available surplus in respect of the accounting year commencing on any day 1968 and in respect of every subsequent accounting year shall be the aggregate of –

- (a) The gross profits for that accounting year after deducting there from the sums referred to in section 6; and
- (b) An amount equal to the difference between --
 - (i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
 - (ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.]

- **Direct Tax: “direct tax” means-**

- (a) Any tax chargeable under-
 - The Income Tax Act;
 - (ii) The Super Profits Tax Act, 1963 (14 of 1963);
 - (iii) The Companies (Profits) Surtax Act, 1964 (7 of 1964);
 - (iv) The agricultural income-tax law; and
- (b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act;

- **Employers and Employee: -**

“Employee” means any person (other than an apprentice) employed on a salary or wage not exceeding ¹[three thousand and five hundred rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

“Employer includes”

- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and
 - (ii) In relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;
- **Salary or Wages:** “salary or wage” means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include-
 - I. any other allowance which the employee is for the time being entitled to;
 - II. the value of any house accommodation or supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
 - III. Any traveling concession;
 - IV. Any bonus (including incentive, production and attendance bonus);
-

- V. Any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- VI. Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;
- VII. Any commission payable to the employee.



Chapter Three

Employee Provident Fund Act 1952

1. Explain the objects and applicability of the Act?

Ans. The Employees' Provident Funds and Miscellaneous provisions Act, 1952, is social security legislation for employees working in factories and other establishments. A dedicated Provident fund has been created with contributions from employer and employee. The objective is to provide monetary assistance to employees and their families, when they are in distress, unable to meet family and social obligations, and to protect them in old age, disablement, early death (of the employee) and in some other contingencies.

Introduction:

- Act came into force from 1st November 1952
- The provisions are intended for the better future of the industrial worker of his retirement and also for his dependents in the event of his death in the course of employment.

■ Retirement Benefit:

1. Provident Fund- it an effective old age and survivor benefit.
2. Family Pension Scheme- It is the long term financial security to the families of industrial employees in the event of their premature death.
3. Deposit linked insurance – Besides the family pension, a compulsory life insurance benefit would be payable to the survivors of the employee in the event of death in service. In case of retirement, a lump sum payment up to a prescribed maximum would be made to the employee depending upon the length of the service.

Object of the Act

- To make some provisions for the future of the Industrial worker after his retirement.
- The Act is provided substantial security and timely monetary assistance to industrial employees and their families.
- To meet family and social obligations and to protect them in old age, disablement, early death and in some other contingencies.

Applicability of the Act

- The Employees' provident funds and Miscellaneous Provision Act, 1952 is applicable from the date of functioning or date of set-up of establishments. Provided the factory/establishment employed 20 or more persons.
- Act does not include:
 - On co-operative societies employing less than 50 persons and working without aid of power.
 - Central Govt. is empowered to apply the provisions of this Act to any establishment employing less than 20 persons after giving the notice with in 2 months in official Gazette.
 - Central Govt. is empowered to apply the provisions of this Act to any establishment employing less than 20 persons after giving the notice with in 2 months in official Gazette.
 -
 - Once the Act is applied, it does not cease to be applicable, even if the number of employees fails below 20.

2. Explain the power and duties of Inspector under the Employee Provident Funds Act?

Ans. Inspectors

(1) The appropriate government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act 75. And may define their jurisdiction.

(2) Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with any 77 or for the purpose of ascertaining whether any of the provisions of this Act or of any 57 have been complied with 25[in respect of 12[an establishment] to which any 77[Scheme or the Insurance Scheme] applies or for the purpose of ascertaining whether the provisions of this Act or any 77[Scheme or the Insurance Scheme] are applicable to any 59[establishment] to which the 77[Scheme or the Insurance Scheme] has not been applied or for the purpose of determining whether the conditions subject to which exemption was granted under section 17 are being complied with by the employer in relation to an exempted 12[establishment].

(a) Require an employer 26[or any contractor from whom any amount is recoverable under section 8A] to furnish such information as he may consider necessary;

(b) at any reasonable time 78[and with such assistance, if any, as he may think fit, enter and search] any 59[establishment], or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the 75[establishment];

(c) examine, with respect to any matter relevant to any of the purposes aforesaid, the employer 26[or any contractor from whom any amount is recoverable under sections 8A], his agent or servant or any other person found in charge of the 59[establishment], or any premises connected there with or whom the Inspector has reasonable cause to believe to be or to have been, an employee in the 59[establishment]; 124[(d) makes copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;]

(e) exercise such other powers as the 125[Scheme or the Insurance Scheme] may provide. 126[(2A) Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with the 127[Pension] Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of the 127[Pension] Scheme have been complied with in

respect of an establishments to which the 127[Pension] Scheme applies, exercise all or any of the powers conferred on him under clause (a), (b), (c) or (d) of sub-s. (2).] 129[(2B) The provisions of the 128[Code of Criminal Procedure, 1898], shall, so far as may be, apply to any search or seizure under sub-section (2) 129[or under sub-section (2A), as the case may be,] as they apply to any search and seizure made under the authority of a warrant issued under 130[section 98] of the said Code.

3. What is Provident Fund? What are the rules of making contribution by an employee and employer?

Ans. Provident Fund

It is a mandatory, tax-qualified, defined, contribution retiral benefit plan wherein equal contribution at the specified rate is made by the employer and the employee and the same is payable in lump sum on retirement.

■ Contributions:

- Employees and employer – 10% of the employees pay.
- Can be extended to 12 % by the Central Government.
- Wages: includes the basic wage, D.A, Cash value of food and retaining allowance.
- The contribution received by the PF organization from exempted or board of trustees from unexempted establishments shall be invested.
- After making payment on accounts of advances and final withdrawals.
- Investment will be done in the government securities, negotiable securities or bonds, 7- year national saving certificates or post office time deposits schemes.

1. Employee's Contribution:

- Establishment- 202 persons- or sick industrial company or in the jute, beedi, brick, coir or gaur industry – 10%.
- In case of – 201 persons- 12%.
- An amount equal to 8.33% of the employees pay shall be remitted to the pension fund and the balance of employer's contribution will continue to remain in provident fund account.

2. Employer's Contribution:

- Pay exceeds from Rs. 5000pm. The contribution to Pension Fund shall be limited to 8.33% of his pay Rs.5000 only.
- The employee may voluntarily opt for the employer's contribution @ 8.33% of the full wages.

3. Towards Deposit- Linked Insurance Fund:

- 0.5% of the wages, D.A. etc
-

Wages not to be reduced on account of Employer's contribution

The employer cannot reduce the wages or other benefit such as pension, gratuity or provident fund of an employee, on account of the employer's contribution or the administrative charges paid by him.

The employer is entitled to deduct the employee's contribution from his wages.

4. Define Employee Pension Scheme 1995?

Ans. Introduction:

- Made applicable on 16th November 1995.
- Memberships:
 - Every member of EPF
 - Every member who was the member of EFPS
 - All new entrants.
 - Every existing member.
- Contribution: not required to continue separately under the act. Employers share of 8.33 % is diverted to pension fund.
- Service for Pension: A person is entitled for pension after completing the age of 58 years, with a minimum service of 10 years.
 - Six months or more is treated as one year and services less than 6 months shall be ignored.
 -
- Determination of Pension able Salary: It is the salary shall be the average monthly pay drawn in any manner.

Benefits:

- Member's Pension:
 - Superannuation pension- 20 yrs & 58 age.
 - Retirement Pension- 20 yrs & before 58 age.
 - Short service pension- 10 years or more but less than 20 years.
- Monthly reduced Pension: It is allowed at the option of the member from a date earlier than 58 years of age but not earlier than 50 years.
- Commuted value of Pension: Maximum of 1/3 of the normal pension
- Return of Capital
- Withdrawal Benefit
- Permanent & total disablement pension
- Monthly widow pension, monthly orphan pension
- Administration
- Administrated by Tripartite Central Board of Trustees.
- Regional Committees set up under the PF scheme shall advise the Regional Boards.
- Come into force from August 1, 1976
- Applicable to all factories to which the employees PF funds is applicable.
- Employers- 0.5% of the employee pay.
- Central Government- 0.25% of the pay.
- Administrative- 0.01% of the employee's wages- or minimum Rs.2 every month.
- Central Government- 0.005% or Min. Rs 1
- Inspection charges- 0.02%.

Chapter Four

Workman's Compensation Act 1923

1. Define Workman's Compensation Act 1923? Discuss the objects, features and principals, governing compensation as laid down in Workmen's Compensation Act, 1923?

Ans. Object: The objective of this Act is that in the case of an employment injury compensation be provided to the injured workman and in case of his death to his dependants.

Features of the Act

- The Act provides social security to the workers. It is the insurance of the workers against certain risks.
- Under section 2(1) it does not cover persons employed in administrative or clerical capacity drawing more than Rs. 3500 p.m. (except railway servants).
- The compensation under the Act is payable if injury has been caused by accident arising out of or in the course of employment.
- The term 'wages' refers in the Act includes overtime pay and the value of concessions or benefits in the form of food, clothing, accommodation.
-
- The amount of compensation is depend on the nature and extent of disablement (or death) and his average monthly wages.
- In case of fatal accident:-
- Inform to the commissioner of Labour
- Employer's have to deposit the amount to the Commissioner with in 30 days.
- Dependent can claim if employer denies to give the compensation.

Applicability of the Act

- It covers all workmen employed on railways, factories, mines etc.
- It includes all the factory engage in industry specifies in the Schedule II of the Act.
- It applies on seaman, shipmasters or building construction and loading or unloading operations.

Act does not apply to the persons:

- Employed in administrative or clerical capacity.
- Employed in casual work.
- Employed in Armed Force
- Claiming compensation under the Employee State Insurance Act 1948.

2. Explain the provisions regarding distribution of Compensation to workmen and failure to distribute compensation when becomes due by the employer?**Ans. Employer to pay compensation:**

In case a personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer is liable to pay compensation in accordance with the provision of the Act within 30 days from the date when it fell due otherwise he would also be liable to pay interest and penalty.

When employer is not liable:

In case the disablement of workman is three or less days; except in case of death when the injury is caused due to influence of drink or drug taken by the workman or upon his willful disobedience to obey safety rules or removal of safety guards by him.

Amount of compensation :

- (1) **In case of death:-** an amount equal to 50% of the monthly wage multiplied by the relevant factor as given in Schedule IV of the Act or Rs. 80,000/-whichever is more.

- (2) **In case of permanent total disablement**, it is 60% or Rs. 90,000/-whichever is more.
- (3) **In case of permanent partial disablement** occurs then the compensation is proportionate to the disability arrived as at (2) above.

Notice: An injured person or his dependants have to give a notice to the employer to pay compensation.

Claim: Upon the failure or refusal of an employer to give compensation, an application is to be made in Form - F to the Commissioner under the Workmen's Compensation Act, 1923 who is the Assistant Labour Commissioner or the Labour-cum-Conciliation Officer of the area where the accident took place or where the claimant ordinarily resides or where the employer has his registered office. After hearing both the parties, the Commissioner decides the claim.

Contracting out:

Any contract or agreement whereby an injured person or his dependant relinquishes or reduce his right to receive compensation is null and void to that extent.

Appeal:

An appeal lie to the High Court against the orders of the Commissioner with regard to the awarding or refusing to award compensation, or imposing interest or Penalty, or regarding distribution of compensation etc.

Recovery: The amount of compensation awarded by the Commissioner is to be recovered as arrears of land revenue.

In case of Failure to distribute the payment:

Any contract by a worker waiving his right to be compensated under this Act is null and void. Compensation should be paid early—delay beyond 1 month attract interest @ 6% p.a. and penalty of up to 50% of the compensation. Certain other offenses attract fine up to RS 5,000.

3. How is the amount of compensation payable to an injured workman calculated under the Workmen's Compensation Act, 1923?

Ans.

- **Eligibility**

Any workman who is injured by accident arising out of and in the course of his employment in specified list of employment contracts any disease specified therein as an occupational disease peculiar to that occupation

- **Penal Provisions**

Any contract by a worker waiving his right to be compensated under this Act is null and void. Compensation should be paid early—delay beyond 1 month attract interest @ 6% p.a. and penalty of up to 50% of the compensation. Certain other offenses attract fine up to RS 5,000.

Amount of compensation

(1) Subject to the provisions of this Act the amount of compensation shall be as follows namely :-

where death results from the injury an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees whichever is more; where permanent total disablement results from the injury an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of sixty thousand rupees whichever is more. **Explanation I :** For the purpose of clause (a) and clause (b) relevant factor in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his birthday immediately preceding the date on which the compensation fell due;

Explanation II : Where the monthly wages of a workman exceed two thousand rupees his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be two thousand rupees only;

(c) where permanent partial disablement results from the injury

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

Explanation II : In assessing the loss of earning capacity for the purpose of sub-clause (ii) the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

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

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

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day -

from the date of disablement where such disablement lasts for a period of twenty-eight days or more or after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight

days; and thereafter half-monthly during the disablement or during a period of five years whichever period is shorter : Provided that -

there shall be deducted from any lump sum or half monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half monthly payment as the case may be; and no half monthly payment shall in any case exceed the amount if any by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident. Explanation : Any payment or allowance which the workmen has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

On the ceasing of the disablement before the date on which any half monthly payment falls due there shall be payable in respect of that half monthly a sum proportionate to the duration of the disablement in that half month. If the injury of the workman results in his death the employer shall in addition to the compensation under sub-section (1) deposit with the Commissioner a sum of one thousand rupees for payment of the same of the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure. 4A. Compensation to be paid when due and penalty for default Compensation under section 4 shall be paid as soon as it falls due. (2) In cases where the employer does not accept the liability for compensation to the extent claimed he shall be bound to make provisional payment based on the extent of liability which he accepts and such payment shall be deposited with the Commissioner or made to the workman as the case may be without prejudice to the right of the workman to make any further claim.

direct that the employer shall in addition to the amount of the arrears pay simple interest thereon at the rate of twelve per cent annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette on the

amount due; and if in his opinion there is no jurisdiction for the delay direct that the employer shall in addition to the amount of the arrears and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty : Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

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

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

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

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

service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period.

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

4. Define the following terms, as used in the Workmen's Compensation Act 1923:

Partial Disablement: "partial disablement" means where the disablement is of a temporary nature such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement and where the disablement is of a permanent nature such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time :

Provided that every injury specified in Part II of Schedule shall be deemed to result in permanent partial disablement;

Total Disablement: "total disablement" means such disablement whether of a temporary or permanent nature as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement :

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity as specified in the said Part II against those injuries amount to one hundred per cent or more;

- **Wages:** "wages" includes any privilege or benefit which is capable of being estimated in money other than a traveling allowance or the value of any traveling concession or a contribution paid by the employer of a workman towards any

pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

• **Workman:** "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is –

(i) a railway servant as defined in Section 3 of the Indian Railways Act 1890 (9 of 1890) not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II or

(a) A master seaman or other member of the crew of a ship.

(b) A captain or other member of the crew of an aircraft

(c) A person recruited as driver helper mechanic cleaner or in any other capacity in connection with a motor vehicle

(d) a person recruited for work abroad by a company and who is employed outside India in any such capacity as is specified in Schedule II and the ship aircraft or motor vehicle or company as the case may be is registered in India or;

(ii) employed in any such capacity as is specified in Schedule II whether the contract of employment was made before or after the passing of this Act and whether the contract is expressed or implied oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall where the workman is dead includes a reference to his dependants or any of them.

• **Dependant:** "dependent" means any of the following relatives of a deceased workman namely :-

(i) a widow a minor legitimate or adopted son an unmarried legitimate or adopted daughter or a widowed mother; and

(ii) if wholly dependant on the earnings of the workman at the time of his death a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependant on the earnings of the workman at the time of his death-

-
- (a) a widower
 - (b) a parent other than a widowed mother
 - (c) a minor illegitimate son an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and minor
 - (d) a minor brother or an unmarried sister or a widowed sister if a minor (e) a widowed daughter-in-law
 - (f) a minor child of a pre-deceased son
 - (g) a minor child of a pre-deceased daughter where no parent of the child is alive or
 - (h) a paternal grandparent if no parent of the workman is alive;

Explanation: For the purpose of sub-clause (ii) and items (f) and (g) of sub-clause (iii) references to a son daughter or child include an adopted son daughter or child respectively.

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

Chapter Five

Employee State Insurance Act 1948

1. State the general provisions regarding benefits under the Employer State Insurance Act 1948?

Ans.

Introduction:

- It came into force from 19th April 1948.
- It aims at providing for certain cash benefits to employees in the event of sickness, employment injury, and medical facilities in kind.
- It contains certain provisions for certain other matters having bearing thereon.

Features of the Act

- It is a piece of social welfare legislation.
- It secures the human conditions at work.
- This Act is different from that of factory act.
- Extensive regulations have been framed under the Act to identify the employees who would be entitled to the benefits.
- Employees are to be registered and their contribution cards or identity cards are prepared, so that he is entitled to claim various benefits.
- Elaborate machinery is provided for the effective administration of the Act.
- The apex body, ESI Corporation subordinate to which are Standing Committee and Medical Benefit Council for the above reason.
- It is a public corporation controlled and subsidized by the government.
- The funds required for functioning of the scheme are raised by from contributions, both of employer's and employees, donations and gift from the government, local bodies, and individuals.

- For adjudication of disputes claims, employee Insurance Courts are being created.
- It includes:
 - Sickness benefits
 - Maternity benefits
 - Disablement benefits
 - Dependants benefits
 - Medical benefits
 - Funeral Expenses.

Applicability of the Act

- Smaller power using factories employing 10 to 19 persons.
- Non- Power using factories employing 20 or more persons.
- Shops
- Hotels and restaurants,
- Cinemas halls,
- Newspaper establishments
- Road motor transports undertaking, employing 20 or more persons.

Act does not apply to the persons:

- A mine or railway running.
- And specified seasonal factories.
- State government may extend the provisions of the act to cover other establishments, industries, commercials, or agricultural in consultation with the ESI cooperation and with the approval of the central government, after giving 6 months notice of its intention to do so in the official Gazette.

Benefits

1. Medical benefit

Full medical facilities for self and dependants are admissible from day one of entering insurable employment. Whereas, the primary, out patient, in patient and specialist services are provided through a network of panel clinics, ESI dispensaries and

hospitals, super specialty services are provided through a large number of advanced empanelled medical institutions on referral basis.

Eligibility to medical benefit

- From day one of entering insurable employment for self and dependants such as spouse, parents and children own or adopted.
- For self and spouse on superannuation subject to having completed five years in insurable employment on superannuation or in case of having suffered permanent physical disablement during the course of insurable employment.
- The rate of contribution for superannuated/ disabled is Rs 1,220 per annum payable in lump sum at the local office for availing full medical care for self and spouse.

2. Sickness benefit [cash]

Sickness benefit is payable to an insured person in cash, in the event of sickness resulting in absence from work and duly certified by an authorized insurable medical officer/ practitioner.

- The benefit becomes admissible only after an insured has paid contribution for at least 78 days in a contribution period of 6 months.
- Sickness benefit is payable for a maximum of 91 days in two consecutive contribution period.[one year]
- Payment is to be made by the local office within 7 days of certificate of sickness at a standard rate, which is not less than 50% of the wages.¹² [The logic behind fixing of 78 & 91 days of contribution is based on certain statistics worked by the corporation to give cash benefits. But the officials in the corporation don't know how it is fixed.]

(A) Extended sickness benefit [cash]

Extended sickness benefit is payable to insured persons for the period of certified sickness in case of specified 34 long-term diseases that needs prolonged treatment and absence from work on medical advice.

- For entitlement to this benefit an insured person should have been in insurable employment for at least 2 years. He/ she should also have paid contribution for a minimum of 156 days in the preceding 4 contribution periods or say 2 years.
- ESI is payable for a maximum period of 2 years on the basis of proper medical certification and authentication by the designated authority.
- Amount payable in cash as extended sickness benefit is payable within 7 days following the submission of complete claim papers at the local office concerned.

(B) Enhanced sickness benefit [cash]

This cash benefit is payable to insured persons in the productive age group for under going sterilization operation, viz., vasectomy/ tubectomy.

- The contribution is the same as for the normal sickness benefit.
- Enhanced sickness benefit is payable to the IP's for 14 days for tubectomy and for seven days in case of vasectomy.
- The amount payable is double the standard sickness benefit rate that is, equal to equal to full wages.

3. Disablement Benefit

- If a member suffers an injury in the course of his employment he will receive free medical treatment and benefit in cash.
- **Temporary disablement** – 70% of his wages
It should not lasted for at least 3 days, excluding day of the accident.
 - **Permanent disablement** – a life pension at full rate that is about 70 % of his wages.
 - **Partial Permanent disablement:** A portion of it will be given as life pension. The benefit is paid for Sundays as well.

- It can be **lumpsum amount** –if the rate of benefit is less than 1.50 paisa per day.

4. **Dependent's Benefits:**

Helps the insured person's family who dies.

- Pension – 40% more than the standard rate.
- Paid to widow and children till the time she marries or son and unmarried daughters up to the age of 18.
- And to infirm or wholly dependent offspring as long as the infirmity lasts.
- Whether the widow nor a child is left, the dependent benefit is payable to a dependent parent or grandparent for life at the rate of 3/10.
- If there are 2 or more parents or grandparents, the amount payable to them shall be equally divided between them.

5. **Funeral Benefits:** an amount not exceeding rupees 1500/-.

- It is payable to the eldest surviving member of the family.
- Time limit- 3 months from the death.

6. **Medical Benefits:** It consists of free medical attendance and treatment of insured person and their families.

- Restricted Medical Care: It consists of out-patient medical care at dispensaries or panel clinics.
- Expanded Medical Care: This consists of consultation with specialists and supply of such medicines and drugs as may be prescribed by them.
- Full Medical Care: It consists of hospitalization facilities.

Services of specialists and such drugs and diet as are required for in patients.

An insured person and members of his family are entitled to medical care of all the above three varieties.

2. **What are the Penalties prescribed by the Employee' State Insurance Act 1948 for contravention of the provisions of the Act or the Rules Trade there under?**

Ans. Penalties and Damages

- If any person commits any offence after having been convicted by the court he will be punishable for every such subsequent offence, with imprisonment for a term, which may extend up to Rs.2000 or both
- If subsequent offence is for failure to pay any contribution, then for every such subsequent offence a person is liable to punishment for a term imprisonment which may extend up to one year and which shall not be less than 3 months, and he will also be liable to pay a fine up to Rs.4000.
- Any contribution due under the Act and not paid can be recovered through the District Collector.
- Employer is liable to pay interest at the rate of 6 percent per annum for each day of default or delay in the payment of his contribution.
- ESIC is empowered to recover damages from the employer who fails to pay the contribution or delay payment.
- The amount of damages cannot exceed the amount of contribution.
- The damage can also be recovered as arrears of land revenue.

Rules

- The employer can not dismiss, discharge or otherwise punish an employee during the period he/she is in receipt of sickness benefit or maternity benefit, or of disablement benefit or is under medical treatment for sickness, or is absent from work as a result of illness which arises out of pregnancy or confinement.
- Any notice of dismissal, discharge or reduction during the period specified above is invalid and inoperative.
- An employer can discharge or punish an employee on due notice if:
 - He/She has received temporary disablement benefit and remained absent for 6 months or more continuously.

- He/She is under medical treatment for sickness, other than T.B. or a disease arising out of pregnancy, and has remained absent continuously for 6 months or more.
- He/She is under medical treatment for T.B. or a malignant disease and has remained absent continuously for 18 months or more.

3. What are functions of Advisory Board and Central Advisory Board constituted under the Minimum wages Act 1948? Describe their composition also?

Ans. Advisory committees and sub-committees

Advisory Board

For the purpose of co-ordinating work of ¹⁵[committees and sub-committees appointed under section 5] and advising the appropriate government generally in the matter of fixing and revising minimum rates of wages, the appropriate government shall appoint an Advisory Board.

Central Advisory Board

(1) For the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for co-ordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.

(2) The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

Composition of committees, etc.

Each of the committees, sub-committees ¹⁶[***] and the Advisory Board shall consist of persons to be nominated by the appropriate government representing employers and

employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate government.

4. What do you understand by Minimum rates of wages as specified in the Sec 4 of Minimum wages act 1948? Explain the procedure of fixing the minimum rates of wages?

Ans. Minimum rate of wages

(1) Any minimum rate of wages fixed or revised by the appropriate government in respect of scheduled employments under section 3 may consist of-

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorised; or

(iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government.

Fixing of minimum rates of wages

(1) The appropriate government shall, in the manner hereinafter provided,-

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

PROVIDED that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;]

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary:

PROVIDED that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.]

(1A) Notwithstanding anything contained in sub-section (1), the appropriate government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time, ¹¹[***] the appropriate government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment ¹²[as soon as may be after such finding.]

(2) The appropriate government may fix-

(a) a minimum rate of wages for time work (hereinafter referred to as "a minimum time rate");

(b) a minimum rate of wages for piece work (hereinafter referred to as "a minimum piece rate");

(c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time rate");

(d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as "overtime rate").

¹³[(2A) Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment, any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 (14 of 1947) or before any like authority under any other law for the time being in force, or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be, where the notification is issued during the period of operation of an award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period.]

(3) In fixing or revising minimum rates of wages under this section, -

(a) different minimum rates of wages may be fixed for-

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employment;
- (iii) adults, adolescents, children and apprentices;
- (iv) different localities;

[(b) minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or
- (iv) by such other larger wage-period as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated:]

PROVIDED that where any wage-periods have been fixed under section 4 of the Payment of Wages Act, 1936 (4 of 1936), minimum wages shall be fixed in accordance therewith.

5. Discuss the Various provision of the payment of wages Act 1936?

• **Ans.**

•

• **Application: -**

- The Payment of Wages Act, 1936 is a central legislation which applies to the persons employed in the factories and to persons employed in industrial or other establishments specified in sub-clauses (a) to (g) of clause (ii) of section 2 of this Act. This Act does not apply on workers whose wages payable in respect of a wage period average Rs. 1600/- a month or more. Since the minimum wages in Delhi are much higher, this Act has become almost redundant in its present form. The Ministry of Labour has already initiated the process for suitable amendment of this Act.

SALIENT FEATURES

- (i) This Act has been enacted with the intention of ensuring timely payment of wages to the workers and for payment of wages without unauthorized deductions.
- (ii) The salary in factories/establishments employing less than 1000 workers is required to be paid by 7th of every month and in other cases by 10th day of every month.
- (iii) A worker, who either has not been paid wages in time or an unauthorized deductions have been made from his/her wages, can file a Claim either directly or through a Trade Union or through an Inspector under this Act, before with the Authority appointed under the Payment of Wages Act. The power for hearing and deciding Claims under this Act has been vested at present with the Presiding Officer of a Labour Court.

- **Applicability**
 - (i) Every person employed in any factory, upon any railway or through subcontractor in a railway and a person employed in an industrial or other establishment.
 - (ii) The State Government may by notification extend the provisions to any class of person employed in any establishment or class of establishments.
- **Eligibility**

Every person who is employed in any of the above mentioned establishments and who is drawing less than Rs. 1,600 per month.
- **Benefits : the Act prescribes for**
 - (i) The regular and timely payment of wages (on or before 7th day or 10th day after last day of the wage period in respect of which the wages are payable)
 - ii) Preventing unauthorized deductions being made from wages and arbitrary fines.
- **Penal Provisions** Penalties are from Rs. 200-1000. Repeat offenses attract 1 to 6 months imprisonment and fine from Rs. 500-3000. Delay wage payments attract penalty of Rs. 100 per day of delay.

7. Explain the provisions regarding:

○ Time of payment of wages:

(1) The wages of every person employed upon or in-- (a) any railway, factory or 1*[industrial or other establishment] upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day, (b) any other railway, factory or 1*[industrial or other establishment], shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable: 2*[Provided that in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the seventh day from the day of such completion.]

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

where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.]

(3) The State Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) 3*[or to persons employed as daily-rated workers in the Public Works Department of the Central Government or the State Government] from the operation of this section in respect of the wages of any such persons or class of such persons: 3*[Provided that in the case of persons employed as daily-rated workers as aforesaid, no such order shall be made except in consultation with the Central Government.]

(4) 4*[Save as otherwise provided in sub-section (2), all payments] of wages shall be made on a working day.

Wages to be paid in current coin or currency notes. 6. Wages to be paid in current coin or currency notes.- All wages shall be paid in current coin or currency notes or in both:

○ **Deduction which may be made from the wages.**

Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:-

- (a) Fines if any, imposed on the employee under the rules
- (b) Deductions for absence from duty;
- (c) Deductions for damage to or loss of goods expressly entrusted to the employed person or custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- (d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority

engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette.

(e) Deductions for such amenities and services supplied by the employer as the State Government or any officer specified by it in this behalf] may, by general or special order, authorize;



Chapter Six

The Contract Labor Regulation and Abolition Act

1. Define contract Labour regulation and Abolition Act.1970. What are the conditions for licensing of contractors and grant of licenses?

Ans. Scope and Coverage

- Act came into force from 10th February 1971
- The Act applies to every establishment in which 20 or more workmen are employed or were employed on any day on the preceding 12 months as contract labour ,
- And to every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen. It does not apply to establishments
- An establishment wherein work is of intermittent and seasonal nature will be covered by the Act if the work performed is more than 120 days and 60 days in a year respectively.
- The Act also applies to establishments of the Government and local authorities as well.

Act does not cover

- Persons employed as managerial and administrative capacity.
- Supervisors, drawing wages exceeding Rs.500.
- Out workers.

Meaning

- Contract Labour: A workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer;
- Contractors: contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods of articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub- contractor;

Administration of the Act

- Administrated by both the Central and State government.
- The central government act in regards to Railways, Cantonment Boards, Major ports, miners and oil fields, banking & insurance and any other industry controlled by Central government.
- Other than those mentioned above are the concern of State Government.

THE MAIN PROVISIONS OF THE ACT

Setting up of Advisory Boards:

1. The Central Government and State Governments are required to set up Central and State Advisory Contract Labour Boards.
2. The number of nominees of the workers is to be equal to that of Industry and contractors, both on the State & Central Boards.

■ **Central Advisory Board :**

- Central Advisory Contract Labour Board
- A Chairman to be appointed by the Central Government
- the Chief Labour Commissioner
- Not exceeding seventeen but not less than eleven,

■ State Advisory Board :

- State Advisory Contract Labour Board
- A Chairman to be appointed by the State Government
- Labour Commissioner
- Not exceeding eleven but not less than nine

Registration of Establishment:

- Registered with the registration officer.
- It can be cancelled by the Registrar in case of suspension.
- If the application for registration is complete in all respects then registrar officer can issue a certificate of registration.
- Registration fees of 25 to 500 rupees depending upon the number of workers.

Prohibition of Employment of Contract Labour:

- Whether the work is of Perennial nature.
- Whether the work is incidental or necessary for the work of an establishment.
- Whether the work is sufficient to employ a considerable number of whole-time workmen.
- Whether the work is being done ordinarily through regular workman in that establishment or a similar establishment.

License of Contractors:

- Every contractor has to obtain a license for employing contract labour. In the application:
 - Location of establishment, nature of the work & other particulars required for licensing.
 - License fees – vary from Rs.5 – Rs.125 (depend upon the no. of workers)
 - It also prescribes the hours of work, fixation of wages, and essential amenities.
 - Contractor has to deposit security.

- On the expiry of license it has to be renewed.
- In case of misrepresentation it can be suspended.

Welfare and health of contract labour:

- Sufficient supply of drinking water.
- Sufficient number of latrines and urinals.
- Washing facilities.
- First- aid box equipped with prescribed contents.
- Canteen (if work is continued for 6 months and 100 or more workers are employed).

Responsibility for payment of wages:

- Contractor is responsible to pay regular and timely payment of wages.
- The payment is made in the presence of authorized representative of principal employer.
- If the contractor does not make payment, the principal employer will do the same.

Penalties:

- In case of contravention:
 - A imprisonment for 3 months or,
 - Fine ranging to Rs.500/- - Rs. 1000/-
 - Additional fine can also be imposed.

2. What provisions have been introduced by the Factories Act for granting annual leave with wage to different categories of workers?

Ans. Concept

- The Factories Act, is a social legislation which has been enacted for occupational safety, health and welfare of workers at work places.
- This legislation is being enforced by technical officers.

Object of the Act

- Protect human beings from being subject to unduly long hours of bodily strain or manual labour.
- To provide Healthy Sanitary & working conditions.
- Prevention from accidents

APPLICABILITY

- It applies to factories covered under the Factories Act, 1948. The industries in which ten (10) or more than ten workers are employed on any day of the preceding twelve months and are engaged in manufacturing process being carried out with the aid of power
- Twenty or more than twenty workers are employed in manufacturing process being carried out without the aid of power, are covered under the provisions of this Act.

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.

Explanation1: 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 in clause (i) 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.

²⁶[(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 the discharge, dismissal, quitting of employment, superannuating 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 superannuating 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 a 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) ²⁷[or in contravention of sub-section (10)] shall be entitled to carry forward the ²⁸[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 of the factory constituted under section 3 of the Industrial Disputed Act, 1947 (XIV of 1947), or a similar Committee 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 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 places 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.

3. Describe the procedures of appointment of Inspectors under the Factories Act 1948. What are their duties?

Ans. INSPECTORS. - (1) The State Government may, by notification in the Official Gazette, appoint such persons as possess the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(2) The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

(2A) The State Government may, by notification in the Official Gazette, appoint as many Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors and as many other officers as it thinks fit to assist the Chief Inspector and to exercise such of the powers of the Chief Inspector as may be specified in such notification.

(2B) Every Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointed under sub-section (2A) shall, in addition to the powers of a Chief Inspector specified in the notification by which he is appointed, exercise the powers of an Inspector throughout the State.

(3) No person shall be appointed under sub-section (1), sub-section (2) sub-section (2A) [ra-38] or sub-section (5), or having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) Every District Magistrate shall be an Inspector for his district.

(5) The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(6) In any area where there are more Inspectors than one the State Government may, by notification as aforesaid, declare the powers, which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

(7) Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed under this section shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority as the State Government may specify in this behalf.

POWERS & DUTIES OF INSPECTORS. –

Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed, - (a) enter, with such assistants being persons in the service of the Government, or any local or other public authority, or with an expert as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;

(b) make examination of the premises, plant, machinery, article or substance;

(c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;

(d) require the production of any prescribed register or any other document relating to the factory;

(e) seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;

(f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);

(g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;

(h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article of substance or a part thereof, and detain it for so long as is necessary for such examination; (i) exercise such other powers as may be prescribed :

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

4. Describe the penalty procedures provided in the Factories Act, 1948?

Ans. General penalty for offences

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to ²[two years] or with fine which may extend to ³[one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to ⁴[one thousand rupees] for each day on which the contravention is so continued:

Explanation. - In this section and in section 94 "serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any, bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.]

Enhanced penalty after previous conviction,

If any person who has been convicted of any offence punishable under section 92 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to ²[three years] or with fine ³[which shall not be less than ⁴[ten thousand rupees] but which may extend to ⁵[two lakh rupees]] or with both.

Penalty for obstructing Inspector

Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents any worker in a factory from appearing before, or being examined by, an Inspector, shall be punishable with imprisonment for a term which may extend to ¹[six months] or with fine which may extend to ²[ten thousand rupees] or with both.

Penalty for wrongfully disclosing results of analysis under section 91. -

Whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under section 91, shall be punishable with imprisonment for a term which may extend to ³[six months] or with fine which may extend to ⁴[ten thousand rupees] or with both.

Penalty for contravention of the provisions of sections 41B, 41C and 41H. -

Whoever fails to comply with or contravenes any of the provisions of section 41B, 41C or 41H or the rules made thereunder, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

Offences by workers. –

Subject to the provisions of section III, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to ⁶ [five hundred rupees].

Where a worker is convicted of an offence punishable under sub-section (1) the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

Penalty for using false certificate of fitness. –

Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with imprisonment for a term which may extend to ⁷[two months]. or with fine which may extend to ⁸[one thousand rupees] or with both.

Penalty for permitting double employment of child.

If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or

Obtaining any direct benefit from his wages shall be punishable with fine which may extend to ¹[one thousand rupees], unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person

If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.]

5. What provisions have been introduced by the Factories act for the welfare of workers?

Ans. SALIENT FEATURES OF THE ACT ARE

1. Approval of Factory Building Plans before construction/extension, under the Delhi Factories Rules, 1950 .
2. Grant of Licences under the Delhi Factories Rules, 1950, and to take action against factories running without obtaining Licence.
3. Renewal of Licences granted under the Delhi Factories Rules, 1950, by the Dy. Chief Inspectors of Factories .
4. Inspections of factories by District Inspectors of Factories, for investigation of complaints, serious/fatal accidents as well as suo moto inspections to check compliance of provisions of this Act relating to :-
 - I. Health
 - II. Safety
 - III. Welfare facilities
 - IV. Working hours
 - V. Employment of young persons
 - VI. Annual Leave with wages etc.

(Sec 42) WASHING FACILITIES

- In every factory –
 - (a) Adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein;
 - (b) Separate for male and female workers;
 - (c) Such facilities shall be conveniently accessible and shall be kept clean.

(Sec 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 places for keeping clothing not worn during working hours and for the drying of wet clothing
-

Sec 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.

(Sec 45) FIRST AID APPLIANCES

- 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 State Government and who shall always be readily available during the working hours of the factory.
- (4) In every factory wherein more than 500 workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and nursing staff. These facilities shall always be made readily available during the working hours of the factory.

(Sec 46) CANTEENS

The State Government may make rules requiring that in any specified factory wherein more than 250 are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Such rules may provide for –

- (a) The date by which such canteen shall be provided;
- (b) The standards in respect of construction, accommodation, furniture and other equipment of the canteen;
- (c) The foodstuffs to be served therein and the charges which may be made therefore;
- (d) The constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
- (e) 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;
- (f) The delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause.

47. SHELTERS, REST ROOMS AND LUNCH ROOMS.

1. In every factory wherein more than 150 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.
2. The shelters or rest rooms or lunch rooms 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 –
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;

Sec 48. CRECHES. -

- a. In every factory wherein more than 30 women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.
- b. 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.
- c. The State Government may make rules –
 1. prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided, under this section;

2. Requiring the provision in factories to which this 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;
3. Requiring the provision in any factory of free milk or refreshment or both for such children;
4. Requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

Sec 49. WELFARE OFFICERS.

1. In every factory wherein five hundred or more workers are ordinarily employed the occupier 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).

Power to make rules to supplement this Chapter

The State Government may make rules-

1. 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;
 2. Requiring in any factory or class or description of factories that representatives of the workers employed in the factory shall be associated with the management of the welfare arrangements of the workers.
6. Write a short note on the Shops & Establishment Act? And explain its importance, objects and applicability?

Ans. The Shops and Establishment Act is a state legislation act and each state has framed its own rules for the Act. The object of this Act is to provide statutory obligation and rights to employees and employers in the unauthorized sector of employment, i.e., shops and establishments.

This Act lays down the following rules

- Working hours per day and week.
- Guidelines for spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work.
- Employment of children, young persons and women.
- Rules for annual leave, maternity leave, sickness and casual leave, etc.
- Rules for employment and termination of service.

Registration

- Registration of shop/establishment is necessary within *thirty days* of commencement of work.
- *Fifteen days* of notice is required to be served before the closing of the establishment
- State government can exempt, either permanently or for specified period, any establishments from all or any provisions of this Act.

Check-Off Provision

- Upon proper notification by the union, union shop and agency shop employers are required to:
 1. Deduct union dues and agency fees from employees' wages, and
 2. Forward these dues to the union.

This is called a *check-off provision*.