LABOUR LAW - I

TABLE OF CONTENTS

UNIT – I

EVOLUTION OF LABOUR LEGISLATIONS

Origin and Development of Labour Legislation

Labour legislation has been instrumental in shaping the course of industrial relations in India. Establishment of social justice has been the principle which has guided the origin and development of labour legislation in India. The setting up of the International Labour Organisation gave an impetus to the consideration of the welfare and working conditions of workers all over the world and also led to the growth of labour laws in all parts of the world, including India. Some of the other factors which gave momentum to the development of labour laws in India were the Swaraj Movement of 1921-24 and the appointment of the Royal Commission on Labour in 1929.

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

Later, the Factories Act was enacted. It is well known that Indian textile goods offered stiff competition to British textiles in the export market and hence to make Indian labour costlier the Factories Act was first introduced in 1881 because of the pressure brought to the British Parliament by the textile magnates of Manchester and Lancashire. Thus, we received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. While the impact of this measure was clearly welfarist, the real motivation was undoubtedly protectionist.

The Organized and the Unorganized

An important distinction that is popularly made nowadays in all discussions relating to labour legislation is between workers in the organized/formal sector and those in the unorganized/informal sector. Many who make this distinction do so with ulterior motives, yet we must reckon with it - especially because out of the total workforce in the country, 92 percent work in the informal sector while only eight percent work in the formal sector. At the outset, it must, therefore, be remembered that those who were unorganized yesterday are organized today and those who are unorganized today aspire to become organized tomorrow. Moreover, many rights, benefits, and practices, which are popularly recognized today as legitimate rights of the workers, are those that have accrued as a result of the struggles carried out by the earlier generation of workers. The attempt, prevalent in some circles to pit one section of workers against the others, must, therefore, be carefully understood and deserves to be rejected outright.

Trade Unionism and the Trade Union Act, 1926

There are almost ten major central union organizations of workers based on different political ideologies. Almost every union is affiliated to one or the other of these. These central organizations have state branches, committees, and councils from where its organization works down to the local level. The first central trade union organization in India was the All India Trade Union Congress (AITUC) in 1920 - almost three decades before India won independence. At about the same time workers at the Buckingham and Carnatic Mills, Madras went on strike led by B P Wadia. The management brought a civil suit against the workers in the Madras High Court and not only obtained an injunction order against the strike but also succeeded in obtaining damages against the leader for 'inducing a breach of contract'. This was followed by widespread

protests that finally yielded in the Trade Union Act 1926 giving immunity to the trade unions against certain forms of civil and criminal action. Apart from this aspect the Trade Union Act also facilitated registration, internal democracy, a role for outsiders and permission for raising a political fund subject to separate accounting requirements.

Wage determination in the Unorganized Sector

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

Collective Bargaining in the Organized Sector

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

Strikes and Lockouts

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

Conciliation, arbitration and adjudication

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

Colonial dispute resolution machinery

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

Developments after Independence

Even though the IDA was primarily meant for industry in the organized sector, its present application has now extended well into the unorganized sector, through judge-made law. Its pro-worker protection clauses and safeguards against arbitrary job losses have evolved over a period both through the process of sustained legislative amendments and through the process of judicial activism spread over more than five decades.

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

Protection of Service conditions

A feature of the Industrial Disputes Act, 1947 is the stipulation that existing service conditions cannot be unilaterally altered without giving a notice of 21 days to the workers and the Union. Similarly, if an industrial dispute is pending before an authority under the IDA, then the previous service conditions in respect of that dispute cannot be altered to the disadvantage of the workers without prior permission of the authority concerned. This has been identified as a form of rigidity that hampers competition in the era of the World Trade Organisation.

Globalisation

The most distinctly visible change from globalization is the increased tendency for offloading or subcontracting. This is done through the use of cheaper forms of contract labour where there is no unionization, no welfare benefits, and quite often not even statutorily fixed minimum wages. Occasionally the tendency to bring contract labour to the mother plant itself is seen. This is very often preceded by downsizing, and since there is statutory regulation of job losses, the system of voluntary retirement with the 'golden handshake' is widely prevalent, both in public and private sectors.

Regulation of Contract Labour

The Contract Labour (Prohibition and Regulation) Act 1970 provides a mechanism for registration of contractors (if more than twenty workers are engaged) and for the appointment of a Tripartite Advisory Board that investigates particular forms of contract labour, which if found to be engaged in areas requiring perennial work connected with the production process, then the Board could recommend its abolition. A tricky legal question has arisen as to whether the contract workers should be automatically absorbed or not after the contract labour system was abolished. Concerning this, a Constitutional Bench of the Supreme Court held that there need not be such automatic absorption (Steel Authority of India v. National Union Water Front Workers &Ors. 2001 III CLR 349 (S.C.).) - in effect, this 'abolishes' the contract labourer and has given rise to a serious anomaly.

Women and Labour Law

Women constitute a significant part of the workforce in India, but they lag behind men regarding work participation and quality of employment. According to Government sources, out of 407 million total workforces, 90 million are women workers, largely employed (about 87 percent) in the agricultural sector as labourers and cultivators.

Apart from the Maternity Benefit Act, almost all the major central labour laws apply to women workers. The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of an occupational hazard concerning the safety of women at workplaces, in 1997 the Supreme Court of India announced that sexual harassment of working women amounts to the violation of rights of gender equality. As a logical consequence it also amounts to the violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment Standing Orders Act 1946.

Implementation of labour laws

The Ministry of Labour has the responsibility to protect and safeguard the interests of workers in general and those constituting the deprived and the marginal classes of society, in particular, concerning the creation of a healthy work environment for higher production and productivity. The Ministry seeks to achieve this objective through enacting and implementing labour laws regulating the terms and conditions of service and employment of workers. In 1966, the Ministry appointed the First National Labour Commission (NLC) to review the changes in the conditions of labour since independence and also to review and assess the working of the existing legal provisions. The NLC submitted its report in 1969. The important recommendations of NLC have been implemented through amendments to various labour laws. In the areas of wage policy, minimum wages, employment service.

History of Labour legislations in India

Labour legislation in India has a history of over 125 years. Beginning with the Apprentice Act, passed in 1850, to enable children brought up in orphanages to find employment when they come of age, several labour laws covering all aspects of industrial employment have been passed. The labour laws regulate not only the conditions of work of industrial establishments but also industrial relations, payment of wages, registration of trade unions, certification of standing orders, etc. Also, they provide social security measures for workers. They define legal rights and obligations of employees and employers and also provide guidelines for their relationship. In India, all laws emanate from the Constitution of India. Under the Constitution, labour is a concurrent subject, i.e., both the Central and State governments can enact labour legislation, with the clause that the State legislature cannot enact a law which is repugnant to the Central law.

The Apprentice Act of 1850 was followed by the Factories Act of 1881, and the first State Act was the Bombay Trade Disputes (and Conciliation) Act, 1934, followed by the Bombay Industrial Disputes Act, 1938, which was amended during the war years. This was replaced by the Bombay Industrial Relations Act, 1946. The Central Government at this time introduced the Industrial Employment (Standing Orders) Act, 1946. In 1947, the government replaced the Trade Disputes Act with the Industrial Disputes Act, which was later modified. This law is the main instrument for government intervention in industrial disputes. After independence, many laws concerning social security and regulation of labour employment were enacted, such as the Employees' State Insurance Act, 1948, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Payment of Gratuity Act, 1972, Equal Remuneration Act, 1976, etc.,

Object and nature of labour legislation:

Small business owners often struggle with meeting the regulatory and labour requirements for their businesses. While these requirements can require extra paperwork and time, the objective of protecting workers and ensuring fair, safe and healthy workplaces, leading to increased productivity is mandatory. Hence, the Objectives of labour legislation in India include: -

- To protect and safeguard the interest and well-being of the working class against arbitrary and unilateral actions of employers.
- To regulate and improve upon the working conditions of workers employed in various factories and establishments by stipulating measures to protect and promote their health, safety, and welfare.
- To provide for statutory fixation, payment and periodic revision of need-based minimum wages to employees in the 'sweated' industries and unorganized sector.
- To ensure that the employees are paid their wages on fixed dates, at least once a month and that no arbitrary and unauthorized deductions are made from their wages.
- To ensure that service conditions are spelled out clearly and precisely by employers and made known to workmen and also to specify the mutual rights and obligations of employers and workmen
- To grant freedom of association to the working class to form trade unions and to have the right to organize by providing for the registration of trade unions, and to promote their welfare through collective bargaining and collective action
- To promote industrial peace by providing for an elaborate machinery for the prevention and settlement of industrial disputes.
- To provide social security benefits to employees in the event of the loss of the earnings of the breadwinner due to such eventualities as sickness, maternity, disablement, and death.
- To make statutory provision for the regular training of a certain number of apprentices in different trades.
- To make it obligatory for the employers to notify vacancies to the employment exchange so as to facilitate recruitment market.
- To provide for welfare facilities and social amenities to workers and their families outside their workplace by raising separate welfare funds.
- To regulate the employment and service conditions of contract labour and provide for the abolition of contract labour.
- To provide for regular and periodic furnishing of statistics by industrial or commercial organizations on specified labour matters.
- To regulate and control the working of those industrial units which are likely to become sick and to provide for the takeover of the management of sick or closed units to (or "intending to") making them economically viable.
- To make it obligatory for industries to take effective measures and install and maintain appropriate equipment for the prevention and control of pollution of air and water and protection of the environment.

The principle of Protection: The principle of protection suggests enactment of labour legislation to protect those workers who are not able to protect their interests on their own and also to protect workers in particular industries against the hazards of industrial processes.

The principle of Social Justice: The principle of social justice implies the establishment of equality in social relationships. It aims at removing discrimination suffered by particular groups of labour. History is replete with examples where certain groups of society or labour have been subjected to various sorts of disabilities as compared to other groups or workers in general.

The principle of Regulation: The principle of Regulation generally seeks to regulate the relationships between the employers and their associations, on the one hand, and workers and their organizations, on the other. As the relationships between the two groups have repercussions on the society, the laws enacted on this principle also aim at safeguarding the interests of the society against the adverse consequences of collusion or combination between them. Thus, the principle of regulation seeks to regulate the balance of power in the relationships of the two dominant groups in industrial relations.

The principle of Welfare: Although the protective and social security laws have the effect of promoting labour welfare, labour welfare fund laws have also been enacted, to provide certain welfare amenities to the workers, and often to their family members as well. The main purpose behind the enactment of labour laws on this principle is to ensure the provision of certain basic amenities to workers at their place of work and also, to improve the living conditions of workers and their family members.

The principle of Social Security: Lord William Beveridge, a pioneer in initiating a comprehensive social security plan, mentioned five giants in the path of social progress namely, want, sickness, ignorance, squalor, and idleness. One of the outstanding measures to mitigate the hardship is to make available social security benefits under the coverage of legislation. Social security legislation may be kept under two broad categories – social insurance legislation and social assistance legislation. In social insurance, benefits are generally made available to the insured persons, under the condition of having paid the required contributions and fulfilling certain eligibility conditions. In social assistance also, the beneficiaries receive benefits as a matter of right, but they do not have to make any contributions. The finance is made available by the state or a source specified by the state. Social assistance benefits are generally paid to persons of insufficient means and on consideration of their minimum needs.

The principle of Economic Development: Labour laws have also been enacted keeping in view the need for the economic and industrial development of particular countries. Improvement of physical working conditions, establishment of industrial peace, provision of machineries for settlement of industrial disputes, formation of forums of workers' participation in management, prohibition of unfair labour practices, restrictions on strikes and lock-outs, provision of social security benefits and welfare facilities, certification of collective agreements and regulation of hours of work have direct or indirect bearing on the pace and extent of economic development.

The principle of International Obligation: This principle postulates enactment of labour laws to (or "intending to") giving effect to the provisions of resolutions, adopted by international organizations like ILO, UN, and similar other bodies. In general, the countries ratifying the resolutions or agreements are under the obligation to enforce them. One of the instruments of doing so is the enactment of laws

Concept of Master and servant relationship

Master and servant is a term used to describe the legal relationship between an employer (master) and employee (servant) for purposes of determining an employer's liability for acts of an employee. A master and servant relationship is determined based upon the amount of control the employer exercises over the

service provided by the employee. A master will be liable for acts of an employee committed while within the scope of employment. Such liability attaching to an employer due to acts of an employee is called vicarious liability. The master-servant model of the nineteenth century was only displaced by the modern contract of employment as a result of twentieth-century social legislation and collective bargaining.

Up to the early part of the nineteenth century, legal regulations were in place to protect guild employment. The distinctive feature of the guild system was the preservation of control over the form and pace of work by the 'trade', the collectivity of producers who were subject to the rules of guild membership. A master's relationship with his suppliers and customers was that of an independent contractor, while a journeyman, although paid by the day, could only be hired to work within his apprenticed trade and was protected from low-wage competition by the restrictions on apprenticeship numbers and by the general controls on entry into the trade. Rules regulating competition were thereby linked to a particular conception of property rights within the enterprise. The nature of the 'artisan wage relationship' was that the journeyman 'worked with, nor for, his master, and during slack times he was likely to be kept on for as long as the master could manage'.

The law relating to employment relationships is based on the traditional "master-servant" relationship. In this relationship, the servant works at the direction of the master and engages in work for the benefit of the master. In return, the master compensates the servant for his or her labours. This traditional relationship of master and servant has evolved into the law of agency.

This is distinguished from a relationship between an employer and independent contractor. An employer is generally not vicariously liable for acts of an independent contractor, whether or not they were done within the scope of employment.

The roots of master and servant legislation can be found in the service provisions of the Statute of Artificers of 1563, which gave the local magistrates jurisdiction to set maximum wages and to oversee the performance of the service relationship. However, the disciplinary aspects of master and servant law were significantly strengthened in a series of Acts beginning in the mid-eighteenth century. The first of these so-called Masters and Servant Acts was enacted in 1747 on the basis that the existing laws for the regulation of servants and the payment of their wages 'are insufficient and defective'.

The master-servant model had wider repercussions for the courts' construction of the service relationship, above all by reinforcing the open-ended duty of obedience while further minimizing the employer's duty to provide either work or income. In some cases, courts read into contracts of service, employers' obligations to provide work and to maintain the relationship in being through depressions in trade, as the necessary complements to provisions for extended notice or duration. Without such terms, a worker's agreement to serve the employer exclusively for years would be void as being in restraint of trade. The contract might provide for payment by piece rates or time rates.

Theory of Laissez Faire and state regulation of labour legislation

Consistent with the constitutional mandate the Parliament of India and the State Legislatures have discharged their Constitutional duty by enacting a large number of labour laws whose avowed purpose was to carry out the Constitutional directives as indicated in the Directive Principles of State Policy. Laws have been made, among other things, to ensure minimum wages, to guarantee just and humane conditions of work, to foster trade unions and collective bargaining.

Before the World War I (1914-1918), there was no legislation for the general class of industrial workers or their welfare. Even the regulations under the Factories and Mines legislation were an eyewash because, at that time, the policy of the British Government in India was influenced by the capitalist theory of

laissez-faire – free economy. In economics, laissez-faire describes an environment in which transactions between private parties are free from state intervention, including restrictive regulations, taxes, tariffs and enforced monopolies. The driving idea behind laissez-faire as a theory was that the less the government is involved in free market capitalism, the better off business will be, and then by extension society as a whole.

Being a system of thought, laissez-faire rests on the following axioms:

1. The individual is the basic unit in society.
2. The individual has a natural right to freedom.
3. The physical order of nature is a harmonious and self-regulating system.
4. Corporations are creatures of the State and therefore must be watched closely by the citizenry due to their propensity to disrupt the Smithian spontaneous order.

These axioms constitute the basic elements of laissez-faire thought, although another basic and often-disregarded element is that markets should be competitive, a rule that the early advocates of laissez-faire have always emphasized.

The underlying beliefs that make up the fundamentals of laissez-faire economics include, first and foremost, that the natural world is a self-regulating system, and that natural regulation is the best type of regulation. Laissez-faire economists argue that because of this there is no need for the complicating involvement of government. Government involvement, according to this economic theory, would include any regulation, minimum wage, taxation, or oversight. Laissez-faire economists see taxation on companies as a penalty for production.

The argument for the laissez-faire approach as it appeared in Europe was that the government should only intervene in the market economy to preserve property, life, and individual freedom. Just as many of the liberal French supported free thought, a free market, and free competition were seen as extremely important to the health of a free society.

After the First World War, conditions changed. The experience of World War I influenced a great deal the attitude of the government and the employers to labour in India. The Russian Revolution of 1917, the growing discontent among the Indian working class as well as the increase in political unrest in the country, all contributed to the enactment of labour legislation. Trade unions appeared on the Indian scene in the first half of the 20th century, which deepened and widened labour-management conflicts. The agitation of workers was a powerful factor in shaping legislation.

Over the years' labour laws have undergone a change concerning the object and scope. Early labour legislations were enacted to safeguard the interest of employers. Modern labour legislation, on the other hand, aims at protecting workers against exploitation by employers. The advent of the doctrine of the welfare state is based on the notion of progressive social philosophy which has rendered the old doctrine of laissez-faire obsolete.

The theory of 'hire and fire' as well as the theory of 'supply and demand' which found free scope under the old doctrine of laissez-faire no longer hold good. Indian labour laws have both positive and negative sides. The positive side provides basic rights and facilities for human existence and human dignity – the right to combine, the right to expression, the right to a minimum standard of living, health and safety, and so on.

Role of International Labour Organisation in setting labour stand. .

The establishment of the ILO in 1919, of which India has been a member since inception, also gave great fillip to labour legislation in India because it adopted many of its conventions and recommendations on international standards for improvement in labour conditions. The ILO embodies a vision of universal humane conditions of labour to attain social justice and peace among nations. The contemporary expression of this vision is the Decent Work Agenda. The ILO's original and most important task has been the development, promotion, and monitoring of international labour standards. Another significant event as far as our country is concerned, was the formation of the All India Trade Union Congress in 1920. As a result, after 1920, labour legislation took great strides in India.

The main subject areas of the international labour standards include the fundamental rights at work, which are contained in the eight so-called core labour standards of the ILO. These are freedom of association and the right to organize; the right to collective bargaining; the abolition of forced labour; a minimum age for employment and the effective abolition of child labour; the prohibition of workplace discrimination; as well as the mandate for equal pay for women and men for work of equal value. These standards rank among the general human rights according to the declarations of the United Nations and the European Social Charter.

The remaining ILO Conventions are also part of international law and refer to substantive standards for the labour market; employment and training; enterprise development; remuneration; working hours and rest periods; workplace health and safety; social security; particularly vulnerable workers; and collective labour relations and social dialogue.

A path to decent work: International labour standards are first and foremost about the development of people as human beings. In the ILO's Declaration of Philadelphia of 1944, the international community recognized that "labour is not a commodity." Indeed, labour is not like an apple or a television set, an inanimate product that can be negotiated for the highest profit or the lowest price. Work is part of everyone's daily life and is crucial to a person's dignity, well-being, and development as a human being. Economic development should include the creation of jobs and working conditions in which people can work in freedom, safety, and dignity.

An international labour framework for fair and stable globalization: Achieving the goal of decent work in the globalized economy requires action at the international level. The world community is responding to this challenge in part by developing international legal instruments on trade, finance, environment, human rights and labour.

Equal opportunity and equal treatment: Equal opportunities and equal treatment in employment and occupation avoid social conflict and entail higher economic growth. Discrimination amounts to the exclusion of workers from employment in general or particular activities, thereby reducing human resource capacity. It implies the waste or under-utilization of talent and labour market skills. Both discrimination and the failure to provide equal pay for work of equal value are demoralizing and de-motivating, and may cause overt or hidden conflict at the workplace.

Improving economic performance: International labour standards are sometimes perceived as entailing significant costs and thus hindering economic development. A growing body of research indicates, however, that compliance with international labour standards often accompanies improvements in productivity and economic performance. Higher wage and working time standards and respect for equality can translate into better and more satisfied workers and lower turnover of staff. Investment in vocational training can result in a better-trained workforce and higher employment levels. Safety standards can reduce costly accidents and health care fees. Employment protection can encourage workers to take risks and to innovate.

Social protection such as unemployment schemes and active labour market policies can facilitate labour market flexibility; they make economic liberalization and privatization sustainable and more acceptable to the public. Freedom of association and collective bargaining can lead to better labour-management consultation and cooperation, thereby reducing the number of costly labour conflicts and enhancing social stability.

A safety net in times of crisis: strengthening social dialogue, freedom of association, and social protection systems in the region would provide better safeguards against economic downturns.

Reducing poverty: Economic development has always depended on the acceptance of rules. Legislation and fully functioning legal institutions ensure property rights, the enforcement of contracts, respect for procedure, and protection from crime - all legal elements of good governance without which no economy can operate. A market governed by a fair set of rules and institutions is more efficient and brings benefit to everyone. The labour market is no different. Fair labour practices set out in international labour standards and applied through a national legal system ensure an efficient and stable labour market for workers and employers alike.

Policies to promote full, productive and freely chosen employment are central to any development effort. Large-scale labour surplus is a major impediment to implementing international labour standards.

International labour standards comprise conventions, recommendations, and protocols. Conventions are international treaties ratified by member states. Once a member state has ratified a convention, it becomes legally binding on that state. The ILO currently has a total of 189 conventions on its books. Eight of these 189 conventions are referred to as fundamental conventions. The ILO can adopt revising conventions to replace older ones, or adopt protocols to add new provisions to older conventions.

Since the foundation of the International Labour Organization (ILO) in 1919, more than 180 Conventions and over 190 Recommendations have been adopted by the International Labour Conference. The 1998 ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up stipulates eight core Conventions which all ILO Member States, under their membership and acceptance of the ILO Constitution, have agreed to respect, to promote, and to realize in good faith. They include standards concerning the freedom of association and the right to bargain collectively; the abolition of forced labour; equality of opportunity and treatment in employment and occupation; equal pay for men and women for work of equal value; minimum age for employment; and the elimination of the worst forms of child labour. They constitute some of the universally recognized human rights. Respect for them is thus a moral imperative. The other ILO Conventions cover substantive standards, also called social rights, concerning minimum wages and wage payment; hours of work; holidays and periods of rest; the protection of workers with special needs, such as women prior to and after childbirth, migrant workers, home workers, and indigenous and tribal populations; occupational safety and health; labour inspection; employment security; social security and social services; the settlement of labour disputes; full, productive and freely chosen employment; and employment services and human resource development.

In addition to the ILO instruments, the sources of globally applicable international labour law include other international agreements, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of the United Nations, the UN Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

UNIT – 2

TRADE UNIONS ACT, 1926

The Trade Unions Act, 1926 provides for formation and registration of trade unions and, in certain respects, defines the law relating to registered Trade Unions. The Act was formulated in 1926 to (or "intending to") render lawful association of workers and to provide certain privileges and protection to registered trade unions.

Scope and Objectives of the Act

The Act applies to registered trade unions and extends to the whole of India including the state of Jammu and Kashmir. The Act applies to all kinds of unions of workers and association of employees. The Act aims at regularizing the labor-management relation. The key contents of the Act are as follows:

- Conditions governing the registration of trade unions.
- Obligations imposed upon a registered trade union.
- Rights and liabilities of registered trade unions.

History of the Trade Union Movement

Trade unions in India have come a long way since the first organized trade union the Madras Labour Union, one of the earliest unions, was formed in 1918.

At the beginning of the last century, a few groups were formed amongst workers in India so as to improve their bargaining power about their service conditions and wages. These were akin to trade unions of the present day India. The earliest known of such unions were the Printers' Union formed in Calcutta in 1905 and the Bombay Postal Union formed in 1907. The trade union movement in India began after the end of First World War due to the need for coordination of activities of individual unions. The movement, over a period, systematically spread to almost all industrial centers and became an integral part of the industrial process in India. Various trade unions were formed during such period, such as the Madras Labour Union in 1918, the All India Trade Union Congress ("AITUC") in 1920, the Bengal Trade Union Federation in 1922 and the All India Railwaymen's Federation in 1922. In March 1921, Shri N.M. Joshi, the then General Secretary of the AITUC, recommended through a resolution that the Government should introduce legislation for the registration and protection of trade unions in India. Eventually, the Trade Unions Act, 1926 was enacted for the purpose of ensuring governance and protection of trade unions. The country's manufacturing sector, in particular, is heavily unionized, and many Indian trade unions have an affiliation with a political party.

Definitions

Section 2 (g) "trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises;

Section 2 (h) of the Trade Union Act, 1926 defines a trade union as "any combinations, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation or two or more trade unions."

All workmen have the right to form a union or refuse to be a member of any union [O.K.Ghosh v. Joseph, AIR 1963 SC 812]. However, not all workers' organizations are considered trade unions. For example, the Madras High Court has held that an association of sub-magistrates of the judiciary, tahsildars, etc., is not a trade union because the members are engaged in sovereign and regal functions of the government [Tamil Nadu NGO Union v. Registrar, Trade Unions (AIR 1962 Mad High Court)]

Registration of Trade Unions

Sections 3 to 14 of the Act deals with Registration of Trade Unions.

Section 4. Mode of registration.-

Any seven or more members of trade union by subscribing to the rules of trade union and otherwise by complying with provisions of the act shall apply for registration of trade union. Application made under sub-section 1 for registering trade union, such application shall not be invalid if at any time after submission of application and before registration of trade union person who made application but not more than half of it give application to registrar to not be a part of the trade union or so.

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

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

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

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

So, the minimum of seven members are required for registration of a trade union and at least ten percent or one hundred of the workmen, whichever is less, are the members of such Trade Union on the date of making of an application for registration.

Section 5. Application for registration.-

Every application for registration of a Trade Union shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely: -

(a) the names, occupations and addresses of the members making the application;

(aa) in the case of a trade union of workmen, the names, occupations, and address of the place of work of the members of the Trade Union making the application

(b) the name of the Trade Union and the address of its head office; and

(c) the titles, names, ages, addresses, and occupations of the office-bearers of the Trade Union.

Where the Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

Rules of a Trade Union:

Under Section 6 of the Act, a trade union can be registered only when its constitution contains the following provisions:

- Name of the trade union;
- The whole of the objects for which the trade union has been established;
- The whole of the purposes for which the general funds of a trade union shall be applicable.
- The maintenance of a list of the members of the trade union and adequate facilities for the inspection thereof by the office-bearers and members of trade union;
- The payment of a subscription by members of the trade union which shall be not less than twenty-five nayepaise per month per member;
- The manner in which rules will be amended varied and/or rescinded;
- The manner in which the members of the executive and the other office-bearers of the trade union shall be appointed and removed;
- The manner in which the funds of the trade union shall be kept and audited, and inspection of the books of accounts by the office bearers and members of the trade union be made;
- The conditions under which any member shall be entitled to have benefits under the rules and under which fine or forfeiture shall be imposed on the members; and The manner in which the trade union shall be dissolved.

Section 8.Registration.-

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

If the Registrar fails to register a trade union within three months of application, an appeal can be made to the High Court under Article 226 of the Constitution [ACC Rajanka Limestone Quarries Workers' Union v. Registrar of Trade Unions (AIR 1958)].

Section 9. Certificate of registration.-

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

Section9A. Minimum requirement about membership of a Trade Union.-

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

Registrar's satisfaction that all primary requirements of the TU Act have been complied with. The Registrar, in deciding whether to grant registration, must base its decision on whether the technical requirements of registration are being fulfilled, and not whether the trade union could be described as lawful [Re India Stream Navigation Workers Union (AIR 1936 SC)]

Section 10. Cancellation of registration.-

A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar

(a) On the application of the Trade Union to be verified in such manner as may be prescribed, or

(b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6:

(c) If the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members:

Provided that not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

So, before the cancellation of registration of a trade union, two months prior notice is to be served on the union by the Registrar, thereby complying with the principles of natural justice. In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association [(2006) 11 SCC 731 (2)] the Supreme Court has held that an unregistered trade union or a trade union whose registration has been cancelled has no rights either under the TU Act or the IDA. This case highlights the importance of registration of trade unions.

Section 11.Appeal.-

(1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal, -

(a) Where the head office of the Trade Union is situated within the limits of a Presidency-town, to the High Court, or

(aa) where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal, to that Court or Tribunal, as the case may be;

(b) Where the head office is situated in any other area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the appropriate Government may appoint in this behalf for that area.

(2) The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order for withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

(3) For the purpose of an appeal under sub-section (1) an appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil

Procedure, 1908 (5 of 1908), and may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the said Code.

(4) In the event of the dismissal of an appeal by any Court appointed under clause (b) of sub-section (1), the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers of an appellate Court under sub-sections (2) and (3), and the provisions of those sub-sections shall apply accordingly.

So, by way of appeal, the Union may register its grievances and the appellate court shall have the same powers as that under the Code of Civil Procedure, 1908.

Section 12. Registered office.-

All communications and notices to a registered Trade Union may be addressed to its registered office. Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing, and the changed address shall be recorded in the Register referred to in section 8.

Rights and Liabilities of Registered Trade Unions

In order to distinguish between a Registered and an unregistered trade union, the Act grants certain rights, privileges, immunities and liabilities to a Registered Union which are discussed below:

Rights of a Registered Trade Union

- It becomes a body corporate by the name under which it is registered and becomes a legal entity distinct from the members of which it is incorporated.
- It has a perpetual succession and a common seal.
- It has the power to acquire and hold both movable and immovable properties.
- It has the power to enter into a contract.
- It can sue and be sued by the name under which it is registered.

The case of **All India Bank Employees' Association v. N.I.Tribunal** [AIR 1962 SC 171] laid down the rights of the members of the trade unions that are encompassed within the fundamental right to freedom of speech and expression

- The right of the members of the union to meet
- The right of the members to move from place to place
- The right to discuss their problems and propagate their views
- The right of the members to hold property

Section 20.Right to inspect books of Trade Union.-

The account books of a registered Trade Union and the list of members thereof shall be open to inspection by an office-bearer or member of the Trade Union at such times as may be provided for in the rules of the Trade Union.

Section 21.Rights of minors to membership of Trade Unions.-

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

A registered trade union is deemed to be a body corporate, giving it the status of a legal entity that may, inter alia, acquire and hold property, enter into contracts, and sue others. Generally, registration of trade unions under the TU Act does not automatically imply that a particular trade union has gained recognition status granted by the employer.

In Balmer Lawrie Workers' Union, Bombay and Anr.v. Balmer Lawrie & Co. Ltd. and Ors., [AIR 1985 SC 311] the underlying assumption made by the Supreme Court was that a recognized union represents all the workmen in the industrial undertaking or the industry.

Immunities and Privileges of a Registered Trade Union

Section 17. Criminal conspiracy in trade disputes.

No office-bearer or member of a registered Trade Union shall be liable to punishment under sub-section (2) of section 120B Indian Penal Code (45 of 1860), in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence.

Section 18. Immunity from civil suit in certain cases.-

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

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.

Recognition of Trade Unions

Only a recognized trade union can represent its workers before the management. The Supreme Court in Kalindi and Others v. Tata Locomotive and Engineering Co. Ltd [AIR 1960 SC 914] the held that there is no right to representation as such unless the company, by its standing orders, recognizes such right.

Section 19. Enforceability of agreements.-

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

Provided that nothing in this section shall enable any Civil Court to entertain any legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed.

In Food Corporation of India Staff Union v. Food Corporation of India and Others [AIR 1995 SC 1344], the Supreme Court laid down norms and procedure to be followed for assessing the representative character of trade unions by the 'Secret Ballot' system

Section 21A.Disqualifications of office-bearers of Trade Unions.-

Any person who is a major, sound mind and not disqualified under law can become an office bearer of a trade union. In this section 21A, the Act lays down the following persons who are disqualified to become office bearers of trade union, namely,

(1) A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office-bearer of a registered Trade Union if -

(i) he has not attained the age of eighteen years,

(ii) he has been convicted by a Court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

(2) Any member of the executive or other office-bearer of a registered Trade Union who, before the commencement of the Indian Trade Unions (Amendment) Act, 1964 (38 of 1964), has been convicted of any offence involving moral turpitude and sentenced to imprisonment, shall on the date of such commencement cease to be such member or office-bearer unless a period of five years has elapsed since his release before that date.

Trade Union Funds

Section 15. Objects on which general funds may be spent.-

The general funds of a registered Trade Union shall not be spent on any objects other than the following, namely: -

(a) The payment of salaries, allowances and expenses to office-bearers of the Trade Union;

(b) The payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;

(c) the prosecution or defence of any legal proceeding to which the Trade Union or any ember thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;

(d) The conduct of trade disputes on behalf of the Trade Union or any member thereof;

(e) The compensation of members for loss arising out of trade disputes;

(f) Allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;

(g) The issue of, or the undertaking of liability under, policies of assurance on the lives of members or under policies insuring members against sickness, accident or unemployment;

(h) The provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;

(i) The upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;

(j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and

(k) subject to any conditions contained in the notification, any other object notified by the appropriate Government in the official Gazette.

Section 16. Constitution of a separate fund for political purposes.-

Some trade unions maintain a political fund. This is a separate account which the trade union can use to provide financial support for a political party. For example, they could donate to a party or particular politician, produce leaflets in support at an election, or support party conference costs. Section 16 lays down the provisions governing a separate fund for political purposes.

(1) A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2).

(2) The objects referred to in sub-section (1) are: -

(a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution or of any local authority, before, during, or after the election in connection with his candidature or election; or

(b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(c) the maintenance of any person who is a member of any legislative body constituted under the Constitution or of any local authority; or

(d) the registration of electors or the election of a candidate for any legislative body constituted under the Constitution or for any local authority; or

(e) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

(2A) In its application to the State of Jammu and Kashmir, references in sub-section (2) to any legislative body constituted under the Constitution shall be construed as including references to the Legislature of that State.

(3) No member shall be compelled to contribute to the fund constituted under sub-section

(1); and a member who does not contribute to the said fund shall not be excluded from any benefits of the Trade Union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the Trade Union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to the Trade Union.

Collective Bargaining

One of the aims of a trade union is to negotiate with employers about matters affecting their members and other employees. Once a trade union is recognized in a workplace, the negotiations they have with the employer are called collective bargaining; these negotiations will be regarding terms and conditions of employment. Collective bargaining has been defined by the Supreme Court as "the technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion" [**Karol Leather KaramchariSangathan v. Liberty Footwear Company (1989) 4 SCC 448**]. It is a process of discussion and negotiation between employer and workers regarding terms of employment and working conditions. Workers are generally represented by trade unions for expressing their grievance concerning service conditions and wages before the employer and the management. Refusing to bargain collectively in good faith with the employer is considered to be an unfair labour practice as per the provisions of the Industrial Disputes Act, 1947. The collective agreements reached by these negotiations usually set out wage scales, working hours, training, health and safety, overtime, grievance mechanisms, and rights to participate in workplace or company affairs. This is generally an effective system as it usually results in employers undertaking actions to resolve the issues of the workers

Amalgamation and Dissolution of Trade Unions

Any registered trade union may amalgamate with any other union(s), provided that at least 50% of the members of each such union record their votes and at least 60% of the votes so recorded are in favour of amalgamation. A notice of amalgamation signed by the secretary and at least seven members of each amalgamating union, should be sent to the registrar, and the amalgamation shall be in operation after the Registrar registers the notice. Sections 24 to 26 deal with the provision of Amalgamation of trade unions.

Section 23. Change of name.

Any registered Trade Union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of section 25, change its name.

Section 24.Amalgamation of Trade Unions.-

Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such trade Union entitled to vote are recorded, and that at least sixty per cent of the votes recorded are in favour of the proposal.

Any registered trade union may be amalgamated with any other trade union provided at least 50% of the members of each such union record their votes and at least 60% of the votes so recorded vote in favour of amalgamation. A notice of amalgamation, signed by at least seven members and the secretary of each amalgamating union should be send to the Registrar. After the registration of the notice of amalgamation, the amalgamated trade union shall come in operation.

Section 25. Notice of change of name or amalgamation.-

(1) Notice in writing of every change of name of every amalgamation, signed, in the case of a change of name, by the Secretary and by seven members of the Trade Union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto, shall be sent to the Registrar, and where the head office of the amalgamated Trade Union is situated in a different State, to the Registrar of such State.

(2) If the proposed name is identical with that by which any other existing Trade Union has-been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub-section (2), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name in the register referred to in section 8, and the change of name shall have effect from the date of such registration.

(4) The Registrar of the State in which the head office of the amalgamated Trade Union is situated shall, if he is satisfied that the provisions of this Act in respect of amalgamation have been complied with and that the Trade Union formed thereby is entitled to registration under section 6, register the Trade Union in the manner provided in section 8, and the amalgamation shall have effect from the date of such registration.

Section 26. Effects of change of name and of amalgamation.-

(1) The change in the name of a registered Trade Union shall not affect any rights or obligations of the Trade Union or render defective any legal proceeding by or against the Trade Union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

(2) An amalgamation of two or more registered Trade Unions shall not prejudice any right of any of such Trade Unions or any right of a creditor of any of them.

Section 27.Dissolution.-

(1) When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution, be sent to the Registrar, and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and the dissolution shall have effect from the date of such registration.

(2) Where the dissolution of a registered Trade Union has been registered, and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

Thus, for dissolution of a registered trade union can be dissolved, notice of dissolution signed by any seven members and the secretary of the union should be sent to the Registrar within 14 days of the dissolution. The funds of the union shall be divided by the Registrar amongst its members in the manner prescribed under the rules of the union or as laid down by the government.

The following reasons may be included in levying penalties:

- Failure to submit returns
- Supplying false information regarding Trade Unions
- Cognizance of offences

UNIT - 3

THE INDUSTRIAL DISPUTES ACT, 1947

The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations. This Act deals with the retrenchment process of the employees, procedure for layoff, procedure, and rules for strikes and lockouts of the company.

Industrial Disputes have adverse effects on industrial production, efficiency, costs, quality, human satisfaction, discipline, technological and economic progress and finally, on the welfare of the society. A discontent labour force, nursing in its heart mute grievances and resentments, cannot be efficient and will not possess a high degree of industrial morale. Hence, the Industrial Dispute Act of 1947 was passed as a preventive and curative measure.

The Industrial Disputes Act, 1947, came into force on the first day of April 1947. Its aim is to protect the workmen against victimization by the employers and to ensure social justice to both employers and employees. The unique object of the Act is to promote collective bargaining and to maintain a peaceful atmosphere in industries by avoiding illegal strikes and lock outs. The Act also provides for regulation of lay-off and retrenchment. The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

Scope and Applicability

The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations. The Act also lays down:

1. The provision for payment of compensation to the workman on account of closure or lay off or retrenchment.
2. The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
3. Unfair labour practices on the part of an employer or a trade union or workers.

Objects of the Act

Justice Krishna Iyer has categorically observed in L I C of India v. D J Bahadur, (1980) Lab. I.C. 1218 (SC), that the Industrial Dispute is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute-resolutions and set up the necessary infrastructure so that the energies of partners in productions may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill.

The Supreme Court in Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea State (1958), IL.L.J.500 (SC), has successfully summed up the objectives of the Act as follows:

i. promotion of measure for securing and preserving amity and good relations between the employer and workmen;

ii. an investigation and settlement of industrial disputes, between employers and employees, employers and workmen or workmen and workmen, with a right of representation by a registered trade union or a federation of trade unions or an association of employers or a federation of associations of employers;

iii. prevention of illegal strikes and lock-outs;

iv. relief to workmen in the matter of lay-off and retrenchment and;

v. collective bargaining

The Industrial Disputes Act 1947 extends to the whole of India and regulates labour law so far as trade unions are concerned and applies to every industrial establishment carrying on any business, trade, manufacture or distribution of goods and services irrespective of the number of workmen employed therein. It came into force April 1, 1947.

Section 2: Definitions

(a) S. 2(a) "appropriate Government" means-

(i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956), or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948(46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961(47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 19.6 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, or the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987) or the Banking Service Commission established under section 3 of the Banking Service Commission Act, 1975, or an air transport service, or a banking or an insurance company ,a mine, an oil-field, a Cantonment Board or a major port, the Central Government; and

(ii) in relation to any other industrial dispute, the State Government;

Provided that in a case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Govt or the State Govt, as the case may be, which has control over such industrial establishment.

The Act has not laid down any criteria for determining the 'appropriate Government.' When a question arises regarding which of the State Governments is the 'appropriate Government', such question should be answered after taking into consideration the facts and circumstances involved in each case. Hence, no strait-jacket formula can be laid down or followed. Situs of employment, the place where the workman has

been served with the order of termination or discharge, etc., are all factors to be taken into consideration or determining 'appropriate Government.'

Concerning Union territory, one must read 'Central Government' for 'State government' in Section 2(a) (ii) of the Act [Leela Separators (P) Ltd v. The Secretary (Labour), Delhi Administration and others – 1981 (43) FLR. 170]

The industrial disputes arise not necessarily at the place where the workmen are residing and working, but at the place where their employer is exercising effective control over them [Lipton Limited And Another v. Their Employees -1959 (1) LLJ. 431 at 436]

The Central Government is the appropriate Government concerning an industrial dispute concerning the office of the Regional Provident Fund Organisation. [Regional Provident Fund Commissioner, Karnataka v. Karnataka Provident Fund Employees Union and another -- 1984 (65) FIR. 324]

2 (s)"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed. discharged or retrenched in connection with. or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employees of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or because of the powers vested in him, functions mainly of a managerial nature.

The Courts have interpreted this definition and have identified various determining factors to know whether a person is "workman" or not. The factors which should be considered are (a) whether there is a Master-Servant relationship; (b) when a person is performing various functions which overlap in their characteristics, the nature of the main function for which the claimant is employed should be considered; (c) work is either manual, skilled, unskilled, technical operational, clerical or supervisory in nature, the mere fact that it does not fall within the exception would not render a person to be workman; and (d) that the exceptions are not applicable. Further, designation, the source of employment, the method of recruitment, terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment should not be considered while determining whether a person can be termed as 'workman." [Devinder Singh v. Municipal Council, (2011) 6 SCC 584]

Where the relationship between employer and employee in an industry is established, the person employed is deemed to be a workman unless found specifically excluded. The burden of proving that the person was to a workman lies upon the management when challenged in a court of competent jurisdiction. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be a relationship between employer and employee. Unless a person is thus employed, there can be no question of his being a workman within the definition of the term as contained in the Act. [Workmen of the Food Corporation of India v. Food Corporation of India – 1985 (2) LLJ. 4]

An employee who in the interest of the employer has the responsibility to control directly the work done by the other workers and if the work is not done correctly to guide them to do it correctly following norms shall certainly be a Supervisor. A supervisory work may be contra-distinguished from managerial and administrative work and, so also a supervisor from manager and administrator. Supervisor's predominant function is to see that work is done by workers under him following the norms laid down by the management: he has no power to take any disciplinary action" [G. M. Pillai v. A.P. Lakhmikaf Judge, III Labour Court, 1998 LLR 310].

The Supreme Court of India has ruled that the entire labour force irrespective of the nature and duties of the post falls within the definition of 'workman' and only the managerial and supervisory force to the extent excepted in the definition stand excluded from the definition of the word 'workman' under Section 2(s) of the Act [S K Verma v. Mahesh Chandra - AIR 1984 SC 1462]

Probationer is a workman under the Act [Motor Machinery Manufacturers Ltd v. Industrial Tribunal, Delhi and others - 1963 (1) LLJ. 222]

Casual workman falls within the definition [Tapan Kumar Jana v. Calcutta Telephones and others - 1980 LIC 508]

The ID Act does not differentiate between part-time, full-time, casual, daily wage, regular or permanent workman. All such individuals are subject to ID Act if they fulfill the ingredients as provided in section 2(s). [Dinesh Sharma and Ors. v. State of Bihar and Ors. 1983(31) BLJR 207]

2 (j)"industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

When clause (c) of section 2 of the Industrial Disputes (Amendment) Act, 1982 (46 of 1982) comes into force, clause (j) shall stand substituted as follows:

2 (j) "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,-

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes-

(sanitation;);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include-

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation: For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of 112 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy, and space; or

(7) any domestic service; or

(8) any activity, being a profession practiced by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals concerning such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals if the number of persons employed by the cooperative society, club or other like bodies of individuals concerning such activity is less than ten;

Is Hospital an Industry?

In State of Bombay v. Hospital Mazdoor Sabha,[AIR 1960 SC 610] the Supreme Court held the State is carrying on an 'undertaking' within Sec. 2(j) when it runs a group of hospitals for the purpose of giving medical relief to the citizens and for helping to impart medical education. The court observed as follows:

- An activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an 'undertaking.
- It is the character of the activity in question which attracts the provisions of Sec. 2 (j), who conducts the activity and whether it is conducted for profit or not, do not make a material difference.

In Management of Safdarjung Hospital v. Kuldip Singh[AIR 1970 SC 1406], it was held that a place of treatment of patients run as a department of the government was not an industry because it was a part of the functions of the government. Charitable hospitals run by Government or even private associations cannot be included in the definition of an industry because they have not embarked upon economic activities analogous to trade or business. If hospitals, nursing home or a dispensary is run as a business in a commercial way, there may be elements of the industry.

In Dhanrajgiri Hospital v. Workmen[AIR 1975 SC 2032], the main activity of the hospital was imparting of training in nursing and the beds in the hospital were meant for their practical training. It was held not to be an industry, as it was not carrying on any economic activity like trade or business.

In Bangalore Water Supply v A. Rajappa[AIR 1978 SC 548], the Supreme Court overruled Safdarjung Hospital and Dhanrajgiri Hospital cases and approved the law laid down in Hospital Mazdoor Sabha case. It was held that hospital facilities are surely services and hence industries. The government departments while undertaking welfare activities cannot be said to be engaged in discharging sovereign functions and hence fall within the ambit of Sec.2(j) of the Act.

Is Law firm an Industry?

In National Union of Commercial Employees v. M.R. Meher,[_ AIR 1962 SC 1080] it was held that a solicitor's firm is not an industry, although specifically considered, it is organized as an industrial concern. The court held that a person following a liberal profession does not carry on his profession in any intelligible sense with the active co-operation of his employees, and the principal/sole capital which he brings into his profession is his special and peculiar intellectual and educational equipment. Subsidiary work which is a purely incidental type and which is intended to assist the solicitor in doing his job has no direct relation to the professional service ultimately rendered by the solicitor. There is, no doubt, a kind of co-operation between the solicitor and his employees, but that co-operation has no direct or immediate relation to the advice or service which the solicitor renders to his client.

However this was overruled by Bangalore Water Supply case [AIR 1978 SC 548], wherein it was held that in view of the infrastructure of the offices of professional persons, the contribution to the success of the institution comes not merely from the professional or specialist but from all those whose excellence in their respective spheres makes for total proficiency.

Is Educational institution an Industry?

Applying the triple test formulae as laid down in Bangalore Water Supply and Sewerage Board case [AIR 1978 SC 548], the Supreme Court over ruled the earlier decision in University of Delhi v. Ramnath (AIR 1963 SC 1873) and held that in case of university or an educational institution, educational services are provided to the society to satisfy human wants and wishes. Hence, educational institution is an industry.

Is Municipal Corporation an Industry?

A municipal corporation carries out various activities, sovereign as well as non- sovereign. The regal or sovereign functions described as primary and inalienable functions of the state though statutorily delegated to a corporation are necessarily excluded from the purview of definition. Where a particular department of corporation falls under definition of industry all employees of that departments would be entitled to benefits of Industrial Dispute Act irrespective of their nature of services and where a department discharges both industrial and non-industrial functions predominant functions of department shall be criterion for purposes of Industrial Disputes Act.(Corporation of City of Nagpur v. Its Employees (AIR 1960 SC 675)

2 (k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

It was held by the Supreme Court that the Jurisdiction of the Civil Court was impliedly barred in cases of the dismissal or removal from service, The appropriate forum for such relief was one constituted under Industrial Disputes Act, 1947 [ChandrakantTukaramNikam and others v. Municipal Corporation of Ahmedabad and another(2002) I L.L.J. 842 (S.C)].

It was held that, a dispute relating to a single workman may be an industrial dispute if either it is espoused by the union or by a number of workmen irrespective of the reason the union espousing the cause of workman was not the majority of the union[Jadhav J. H. v. Forbes Gobak Ltd - (2005) I L.L.B. 1089 (SC)]

From Individual dispute to Industrial dispute

For an individual dispute to be declared as an Industrial Dispute, the following conditions are to be satisfied:

1. A body of workmen or a considerable number of workmen are found to have made common cause with the individual workman;

2. That the dispute (individual dispute) was taken up or sponsored by the workmen as a body (trade union) or by a considerable Section of them before the date of reference.

Bombay Union of Journalists vs. The Hindu [1961, II LLJ 727 Bom]: A person working in 'The Hindu, Madras' was terminated for claiming as a full-time employee. The Bombay Union of Journalist raised the dispute. It was found that there were ten employees of which seven in administrative side and only three in journalism side. Of these three, only two were the members of the union. Therefore, the Supreme Court held that the Bombay Union of Journalists is not competent to raise this dispute. Even if it had raised, it could not have become an industrial dispute.

Workmen of Indian Express Newspapers Ltd. vs. Management Indian Express Newspapers [AIR 1970, SC 737]: A dispute relating to two workmen of Indian Express Newspapers Ltd, was espoused by the Delhi Union of Journalists which was an outside union. About 25 percent of the working journalists of the Indian Express were members of that union. But there was no union of the journalists of the Indian Express. It was held that the Delhi Union of Journalists could be said to have a representative character for the working journalists employed in the Indian Express, and the dispute was thus transformed into an industrial dispute.

Espousal of a dispute before a reference is made even by a minority union, having a membership of substantial number of workmen, is sufficient to make such a dispute an industrial dispute i Management of M/S Pradip Lamp v. Pradip Lamp Workers Karamcharya - 1970 (1) LLJ 507]

Once a dispute is referred to Tribunal by appropriate Government the presumption of it being on " industrial dispute" is there. The Workers Union v. The VIIIth Industrial Tribunal W.B. 1994 (68) FLR 701 (Cal)

If a Labour Court after considering the entire evidence before it gives a finding that the applicant is a workman, the High Court will not be justified in disturbing that finding and take a different view and in case of the High Court does so, the Supreme Court will interfere with the High Court's order M/s. Loe and Cold Storage Co. Pvt Ltd. v. State of U.P 1996 (72) FLR 104 (ALL).

2 (b) "Award" means an interim or a final determination of any industrial dispute or of any question relating to that by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A;

2 (p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Once the matter is settled, no further industrial dispute can be raised- 1997(1) LLJ 20 (Mad).

2 (n) "public utility service" means

(i) any railway service or any transport service for the carriage of passengers or goods by air;

(ia) any service in, or in connection with the working of, any major port or dock;

(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation ;

(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension:

2 (q) "strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;

Mere illegality of the strike does not per se spell unjustifiability. **Gujarat Steel Tubes v. Gujarat Steel Tubes Mazdoor Sabha; (1980) I.L.L.J. 137 (SC).**

2 (l) "lock-out" means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;

(la) "major port" means a major port as defined in clause (8) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

(lb) "mine" means a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

(ll) "National Tribunal" means a National Industrial Tribunal constituted under section 7B;

(lll) "office-bearer," in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;

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

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-removal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill- health;

Workmen employed during the crushing season in Sugar Mills – Due to closure such workmen ceased to do work – It would not amount to retrenchment. **Morinda Co-op. Sugar Mills Ltd. v. Ram Kishan& Others.1996 LLR 214 (SC).**

Striking off the name of the workman from the rolls by management in termination of service. Such termination of service is retrenchment within the meaning of Sec. 2(oo) of the Act as decided by the Supreme Court in **Punjab Land Development v. The Presiding Officer Labour Court, Chandigarh, 1990 (61) FLR 73(SC)**

2 (kkk) "lay-off" means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster-rolls of his industrial establishment and who has not been retrenched ;

Explanation: Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid Off for that day within the meaning of this clause:

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

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;

The employer should give reasons before laying off the workmen – Disconnection of the power supply and financial crisis due to non-receipt of sanction to develop land from Government – As reasons for laying off worked not relevant and proper. **Hope Textiles Ltd v. State of M.P., 1992 (65) FLR 770 (M.P).**

Lay off by its very nature is for a short duration and cannot be for years -1996 (2) LLJ 423.

(cc) "Closure" means the permanent closing down of a place of employment or part thereof;

Strikes and Lockout – Sections 22 to 25 of the ID Act, 1947

Where there is a right, there is always a duty. Today, in every country, irrespective of its economic policy, recognises the right of their workers to strike. But this weapon must be used as a last resort because if this right is misused, it will create a problem in the production and financial profit of the industry and would ultimately affect the economy of the country.

Today, most of the countries, especially India, are dependent upon foreign investment and under these circumstances, it is necessary that countries who seek foreign investment must keep some safeguard in their respective industrial laws under Article 19 of the Constitution of India. But the right to strike is not a fundamental right and with this right statutory restrictions are attached to the Industrial Disputes Act, 1947.

In **All India Bank Employees Association v. National Industrial Tribunal,** [1962 AIR 171], the Supreme Court held "the right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of article 19 but by totally different considerations."

Section 2 (q) of the Act defines 'strike'. Sections 22, 23, and 24 recognize the right to strike. Section 24 declares as to when a strike is illegal. It defines 'illegal strikes' as those which are in contravention to the procedure of going to strike, as laid down under Sections 22 and 23. The provision thereby implies that all strikes are not illegal and strikes in conformity with the procedure laid down, are justified. Further, Justice Krishna Iyer had opined that " an illegal strike could be a justified one." It is thus beyond doubt that the Industrial Disputes Act, 1947 contemplates a right to strike.

It is held that the workmen are entitled to wages for strike period only if the strike was notcommenced or declared in contravention of sections 22 or 23 and justified. The question of fact can only be decided on evidence on record – **Syndicate Bank v. K. Umesh Nayak AIR 1995 SC 319.**

The strike is a collective stoppage of work by workmen undertaken to bring pressure upon the employer. It is a spontaneous and concerted withdrawal of workmen from production. A strike in usually organized by common agreement on the part of the workers to (or "intending to") obtaining or resisting change to their conditions of work while, Lockout is a weapon in the hands of the employer; which is used to curb the militant spirit of the workers. In Lock-out, an employer shuts down his place of business as a method of reprisal, or as an instrument of coercion or as a mode of exerting pressure upon the employees to (or "intending to") dictate his own terms to them.

Strikes and lockouts have now become important factors in the employer -employee relations.

Section 22. Prohibition of Strikes and Lockouts

(1) No person employed in a public utility service shall go on strike in breach of contract-

  (a) without giving the employer notice of a strike, as hereinafter provided, within six weeks before striking; or

  (b) within fourteen days of giving such notice; or

  (c) before the expiry of the date of strike specified in any such notice as aforesaid; or

  (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workmen-

  (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or

  (b) within fourteen days of giving such notice; or

  (c) Before the expiry of the date of lock-out specified in any such notice as aforesaid. or

  (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or a particular class of public utility services.

However, notice of strike or lockout will not be necessary where there is already in existence a strike or lockout in the public utility service. The employer in such a case must notify to concerned authority as may be appointed by the appropriate Government, of the declaration of a strike or lockout. The notice of strike or lockout shall be given by a such number of persons in the prescribed manner [Sec.22 (4) & (5)].

In Kairbetta Estate v. Rajmanickam [1960] II L.L.J. 275 (S.C.)], Justice Gajendragadkar opined: "In the struggle between the capital and labour, the weapon of strike is available to labour and is often used, as is the weapon of lock-out available to the employer and can be used by him". In Punjab National Bank v. Their Employees, [1953 AIR 296] it was held that in the case of a strike, the employer might bar the entry of the strikers within the premises by adopting an effective and legitimate method in that behalf. He may call upon employees to vacate, and on their refusal to do so, take due steps to suspend them from employment, proceed to hold proper inquiries according to the standing order and pass proper orders against them subject to the relevant provisions of the Act.

Section 23. General prohibition of strikes and Lockouts

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

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

(b) during the pendency of proceedings before a Labor Court, Tribunal or National Tribunal and two months, after the conclusion of such proceedings;

(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

It was held in the case of Cox and Kings Limited v. Their Employees' [(1910) I KBP 506] that a strike a considered justified if it is in connection with a current labour dispute or directed against an unfair labour practice of the employer.

In Bangalore Silk Throwing Factory v Its Workmen, [(1957) ILLJ (L.A.T. Bombay). 435] Bombay Appellate Tribunal held that the dismissal of workers was against natural justice and further stated that the management had the right in law to fill up their places and 'The management are bound only to reinstate such strikers whose places have not been filled'.

Section 24. Illegal Strikes and Lockouts

(1) A strike or lock-out shall be illegal if-

(i) it is commenced or declared in contravention of section 22 or section 23; or

(ii) it is continued in contravention of an order made under sub-section (3) of section 10 or sub-section (4A) of Section 10A.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labor Court, Tribunal or National Tribunal], the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section(3) of section 10 or sub-section (4A) of section 10A.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

In T.K. Rangarajan v. Government of Tamilnadu and Others [2003 SOL Case No. 429], Justice M. B. Shah, speaking for a Bench of the Supreme Court consisting of himself and Justice A. R. Lakshmanan, said, "Now coming to the question of the right to strike - in our view no such right exists with the government employee."

Section 25. Prohibition of financial aid to illegal strikes and Lockouts

This section of the Act prohibits financial aid to illegal strikes and lockouts in the following ways:

- spending or applying for money:
- money spent or applied in direct furtherance or support of an illegal strike,

Punishments (Sec. 28)

For any violation of provisions of Sec. 25, punishment is imposed by Sec. 28 of the Act. According to the provision, even a person who is not a workman can be penalized violating the provisions of Sec. 25. The effect of Sections 25 and 28 is the prosecution to support a conviction for breach of Sec.25 must prove that:

- (i) the strike or lock-out in question was illegal

  (ii) the accused had knowledge that-

  (a) the strike or lockout was illegal and

  (b) the money spent or applied by him was in direct furtherance or support of a strike or lockout.

  (iii) that the money was actually spent or applied by the accused.

However, assistance to strikers in any other from, for example, supplying clothes, food, etc. is not prohibited under Sec. 25 of the Act.

Lay-off and Retrenchment

Section 25A to Section 25 J of Chapter V-A deals with Layoff while Section 25 K to Section 25 S of Chapter V-B deals with Retrenchment.

Lay-off

Lay-off is a practice whereby the employer cannot give employment to workmen for various reasons including shortage of raw materials, coal or power, accumulation of stocks, break-down of machinery etc., or for any other connected reason. It has been defined under Section 2(kkk) of the Act. If a workman, whose name is on the muster rolls of the industrial establishment presents himself for work and is not given employment within two (2) hours of presenting himself, he shall be deemed to have been laid-off for that day. Central India Spinning, Weaving, and Manufacturing Co. Ltd. Nagpur v. State Industrial Court 1959 - Held that the words, "failure, refusal, or inability" are key to the definition and means that the unemployment is due to a cause independent of any action or inaction of the workmen.

All industrial establishments in India have to ensure compliance with the various labour legislations, including the Act. The application of the provisions of lay-off is restricted under Section 25A. It states that industrial establishments with below fifty (50) workmen on an average per working day in the preceding calendar month, or industrial establishments which are of a seasonal character, or industrial establishments to which Chapter VB of the Act applies, will not be bound by Section 25C to 25E (both inclusive). This implies that such workmen:

(i) will not be entitled to any compensation for being laid off.

(ii) will not be entered into the muster rolls of the employer

(iii) will not fall under any of the exceptions to avail compensation.

It is important to note that workmen are entitled to compensation only if they have been in continuous service. Section 25B of the Act defines continuous service as follows: a workman is said to be of continuous service if he provides uninterrupted service, which includes interrupted service due to sickness, accident, strikes which are not illegal, lock-out or cessation of work not due to the fault of the workman. In other words, the duration when the workman is out of the office on account of illness is not excluded while computing continuous service.

The service is construed as continuous for a period of 1 year if the workman works in the previous year for:

- 190 days- below the ground in a mine
- 240 days- in any other job.

The service is construed as continuous for a period of 6 months if the workman works in the preceding six months for:

- 95 days- below the ground in a mine
- 120 days- in any other job.

In Sur Enamel & Stamping Works Ltd v. Their Workmen [(1963) 2 LLJ 367, 379 (SC)], the Supreme Court held that before a workman can be considered to have completed "one year of continuous service" in an industry, it must be shown that he was employed for a period of at least twelve calendar months and during those twelve calendar months he had worked at least two hundred and forty days.

Continuous service for one year is enough if a person has worked for 240 days in a period of 12 months – AIR 1981 SC 422.

Compensation for Lay off

Laying-off workmen result in depriving them of the opportunity to work and earn wages. Therefore, it becomes the duty of the employer to provide compensation to the workmen if their case falls within the scope of the Section 25C of the Act. However, no compensation can be awarded in advance of actual lay-off on grounds of social justice. This particular section states that any workman:

(a) whose name is borne on the muster-rolls of an industrial establishment and,

(b) who has completed at least one year of continuous service under the employer.

shall be paid compensation for the period during which he was laid-off, which shall be equal to fifty percent of the total of the basic wages and dearness allowance that should be payable to him had such workman not been so laid-off.

Maintaining muster-rolls is a universal practice by industrial establishments. Its purpose is to record the attendance of workmen employed. However, the purpose is not limited to the same. It also acquires importance on lay-off of workmen. If the name of the workman is not mentioned on the muster-rolls of an establishment, he cannot get laid-off under the Act. According to Section 25D, it is the duty of the employer to maintain muster-rolls of workmen and failure to comply with this provision can attract penalty under Section 31(2) of the Act.

If during the one-year period of continuous service, the workman is laid-off for more than forty-five days, no further compensation will be paid if there is an agreement in that respect between the workman and the employer. Upon the expiry of this period, the employer can retrench the workman and the compensation then paid would exclude the amount already paid during the forty-five day period of layoff.

Further, if the workman is a "badli" workman or a casual workman, he would fall outside the ambit of Section 25C. However, if a "badli" workman has completed one (1) year of continuous service in the industrial establishment, he will be treated as a permanent workman for all purposes [**English Electric Co. of India Ltd v. Industrial Tribunal Madras (1987) 1 LLJ 141**].

Workman not entitled to Compensation

Section 25E of the Act highlights situations when a workman is not entitled to compensation even after being laid-off. Thus section 25E works like an exception to Section 25C. A workman is not entitled to compensation if:

(i) he refuses to accept any alternate employment offered by the employer in the same establishment, or in any other establishment of the same employer, provided such establishment is within a five miles radius from the previous establishment. Further, such alternate employment should not call for any special skill or experience, and the employer must pay at least the same wages as were previously paid to the workman.

(ii) he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) such lay-off is due to a strike or slowing-down of production by workmen in another part of the establishment.

The burden of proof is on the employer to show that the workman is disentitled to claim compensation because his case falls under the purview of Section 25E.

It is clear that the lay off does not terminate or bring to an end to the contract of employment. The employees continue to be on the master roll of the employer, and they have to be reinstated as soon as normal working is resumed *Anusuyabai Vrs. Mehta* 1959 (2). LLJ 742.

Special Provisions relating to Lay-Off

Section 25M in Chapter IV B of the Act further points out that prior approval from the "appropriate government" is required to lay-off a workman when the industrial establishment (not being of a seasonal character or in which work is performed only intermittently), has more than hundred workmen employed on an average per working day for the preceding twelve months. The appropriate government has the final authority to decide whether the establishment is, in fact, seasonal or not and such decision shall be final. It also provides stringent penalties for contravention of the provisions of Chapter VB along with providing compensation to the workman for any "illegal" lay-off.

Retrenchment

The Bombay High Court in **State Bank of India v. N. Sundaramony [(1974) 1 MLJ 358]** held that wherein the court held that an analysis of the definition reveals four essential ingredients, namely

- There must be a termination of the service of a workman
- The termination must be by the employer
- For any reason whatsoever, and
- Otherwise than as by way of punishment inflicted by way of disciplinary action

Procedure for calculation of Retrenchment compensation

While effecting retrenchment of the workmen, it is obligatory on the part of the employer to pay retrenchment compensation at the rate of 15 days wages (for every completed year) to be calculated on the last drawn salary of an employee. The calculation of compensation is to be based from the date of appointment and in case an employee has completed 240 days, he will be entitled to 15 days retrenchment compensation besides one month's notice or salary in lieu thereof as if he has worked for one year. 240 days includes Sundays or off days as well as the festival or national holidays.

In case an employee has worked for more than one year, the procedure is that in case the subsequent period of one year is less than six months then it will be counted as one year for calculation of compensation. While making calculations the period of notice is also to be taken into consideration.

Failure to tender retrenchment compensation along with an order of termination would be violative of S. 25-F. The tender should be for Precise amount, made simultaneously with termination. Merely asking a worker to come and collect compensation does not satisfy the requirement of law – 1999(1) LLJ 997.

Condition Precedent to Retrenchment

Section 25F provides the conditions precedent to retrenchment. According to this section, the employer must satisfy the following conditions before retrenching an employee employed for a period of continuous period of not less than one year –

(i) the workman has been given one month notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid instead of such notice, wages for the period of the notice:

(ii) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and

(iii) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

Calculation of average pay is done by dividing the last drawn monthly salary by 25 and then multiplying the dividend by 15 for every completed year of continuous work.

If Termination from service is found to be violative of Sec. 25-F, then the order must be set aside and reinstatement will all benefits should be directed – All India Radio v. Santosh Kumar, AIR 1998 SC 941 AIR 1998 SC 941.

Compensation to workmen in case of transfer of undertakings (Sec . 25 FF)

This section provides that in case of transfer of ownership or management of an undertaking from one employer to another, every workman:

(a) shall, before such transfer entitled to notice, and

(b) shall also be entitled to compensation in accordance with provisions of

Sec. 25-F, as if the workman had been retrenched.

To entitle a workman compensation under this section, the following conditions must be simultaneously complied with:

(1) the service of the workman has not been interrupted by the transfer, and

(2) terms and conditions of service to the workman, after such transfer, are not in any way less favourable to the workman than those applicable immediately before the transfer.

Notice to be given of intention to close down any undertaking (Sec. 25-FFA)

Any employer who intends to close down an undertaking shall serve, at least 60 days noticebefore the date on which the intended closure is to become effective, in a prescribed manner on the appropriate Government. This section does not apply to:

(a) an undertaking in which

(i) less than 50 workmen are employed, or

(ii) less than fifty workman were employed, on an average, per working day in the preceding 12 months;

(b) an undertaking set-up for the construction of building, bridges, roads, canals. dams or for other construction work or project.

Section 25N also lays down the conditions precedent to retrenchment –

(i) No workman employed in any industrial establishment to which this Chapter (Chapter VA) applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid instead of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(ii) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment, and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(iii) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such inquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(iv) Where an application for permission has been made under sub-section (1), and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

Procedure for Retrenchment

The well-recognised principle of retrenchment in industrial law is 'first come last go' and 'last come first go'. This principle has been incorporated in Sec 25-G of the Act. The protection provided under this section can be claimed by a workman on fulfilment of the following conditions:

- The workman must be a workman within the meaning of Sec. 2(s) of the Act.
- The workman should be an Indian Citizen.
- The workman should be employed in an establishment which is an industry within the meaning of Sec. 2(j) of the Act.
- The workman should belong to a particular category of workmen in the establishment; and
- There should be no agreement contrary to the principle of 'first come last go' between the employer and workman.

Section 25G lays down the procedure of retrenchment. Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched, and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman. The employer is also required to maintain a seniority list of the workmen. The system of last in first out is to be followed in retrenching workmen.

Termination of service of an employee who was on probation because he failed to achieve the target of business. Such termination would not amount retrenchment. The Competent Authority can terminate services of such probationers whose performance is unsatisfactory without giving any notice – M Venugopal v. Divisional Manager, AIR 1994 SC 1343.

Sec. 25H Re-employment of retrenched Workman

According to this section, when a workman has been retrenched by an employer on the ground of surplus staff such a workman should first be given an opportunity to join service whenever an occasion to employ another hand arises. To claim preference in employment under this section, a workman must satisfy the following conditions:

- He should have been retrenched prior to re-employment
- He should be a citizen of India; and
- He should have been retrenched from the same category of service

25-O Procedure for closing down an undertaking

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter (Chapter VA) applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

PROVIDED that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section(1),the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regards to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order. and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1), and the appropriate government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

PROVIDED that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

In the absence of proof of satisfactory service of notice, permission for retrenchment of workmen cannot be granted – Shiv Kumar v. State of Haryana; 1994 (4) SCC 445.

Where the Company was losing continuously and all efforts to making it viable having become fruitless and was not able to carry on its activity any further and after following proper procedures sought for closure, Govt. was justified in granting permission for its closure – Dayakar Reddy v. MD Allwyn Auto Ltd; 2000 (1) LLJ 1439 (SC.)

Section 25FFF. Compensation to workmen in case of closing down of undertakings.-

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of -

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on;

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

(1A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if -

- (a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;
- (b) the service of the workman has not been interrupted by such alternative employment; and
- (c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1B) For the purposes of sub-sections (1) and (1A), the expressions "minerals" and "mining operations" shall have the meanings respectively assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).

(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months.

Where the project completely wound up and workers were retrenched but due to the effect of the interim orders of Court salary had been given without work. However, the workers were not entitled to compensation on account of closure of project –**Dandakaranya Project Koreput, (Management) v. Its Workmen; AIR 1997 SC 852.**

Right to close the business is an integral part of fundamental right to carry on business and Court cannot compel a party to continue business knowing dull well that it would entail loss – **2000 (1) LLJ 903.**

Penalty for Lay-Off and Retrenchment with Previous Permission (Sec. 25-Q)

Any employer who contravenes the provision of Sec. 25 M or Sec. 25 N, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to Rs. 1000/-, or with both.

Penalty for Closure (Sec. 25 R)

Any employer who closes down an undertaking without complying with the provisions of sub-section (1) of Sec. 25-0 shall be permissible with imprisonment for a term which may extend to six months, o(with fine which may extend to Rs. 5000/ -, or with both.

Similarly, any employer who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of Sec. 25-0 or a direction is given under Sec. 25-P shall be permissible with imprisonment for a term which may extend to Rs. 5000/-, or with both. Where the contravention continuous further, with a further which may extend to Rs. 2000/- for every day during the contravention continues after the conviction.

No employer or workmen or a Trade Union, whether registered under Trade Union's Act, 1926 or not, shall eommit any unfair labour practice (Sec. 25-T)

Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both.

Machineries for Settlement.of Disputes

(i) Works Committee

(ii) Conciliation Officer

(iii) Board of Conciliation

(iv) Courts of Inquiry

(v) Labour Court

(vi) Industrial Tribunal

(vii) National Tribunal

Section 3. Works Committee

(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

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

Works Committee is not intended to supplement or supersede the unions for the purpose of collective bargaining. They are not authorized to consider real or substantial changes in the conditions of service. Their task is only to smooth away frictions that may arise between the workmen and the management in day to day work. They cannot decide any alteration in the conditions of service by rationalization. If the workmen's representatives on the works committee agree to a scheme of rationalization, that is not binding either on workers or on the mills. North Brook Jute Co. Ltd. v. Workmen, AIR 1960 SC 879.

Section 4.Conciliation officer.

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

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

Section 5. Board of Conciliation

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

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

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

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

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

Section 6.Court of Inquiry.

The appropriate Government may, by notification in the Official Gazette, constitute Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute when necessary. A Court may consist of one or more independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman. A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number provided that, if the appropriate Government notifies the Court that the services of the chairman have ceased to be available, the Court shall not act until a new chairman has been appointed.

Section 7.Labour Court.

(1) 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.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless -

- (a) he is, or has been, a Judge of a High Court; or
- (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

- (c) Repealed.
- (d) he has held any judicial office in India for not less than seven years; or
- (e) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.
- (f) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

- (g) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.]

Section 7A. Industrial Tribunal.

(1) 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 and for performing such other functions as may be assigned to them under this Act.

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

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless -

- (a) he is, or has been, a Judge of a High Court; or
- (aa) he has, for a period of not less than three years, been a District Judge or an Additional District Judge;
- (b) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

- (c) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.

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

When the identical issue between the same party was pending before Industrial Tribunal, then High Court ought not to have entrained writ petition involving the question of fact. State Bank of India and Others v. State Bank of India Canteen;1998(5) SCC 74.

Section 7B.National Tribunal.-

(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central

Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

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

(3) A person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is, or has been, a Judge of a High Court.

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

Reference Of Certain Individual Disputes To Grievance Settlement Authorities

9C. Setting up of Grievance Settlement Authorities and reference of certain individual disputes to such authorities.- (1) The employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the preceding twelve months, shall provide for, in accordance with the rules made in that behalf under this Act, a Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment.

(2) Where an industrial dispute connected with an individual workman arises in an establishment referred to in sub-section (1), a workman or any trade union of workmen of which such workman is a member, refer, in such manner as may be prescribed such dispute to the Grievance Settlement Authority provided for by the employer under that sub-section for settlement.

(3) The Grievance Settlement Authority referred to in sub-section (1) shall follow such procedure and complete its proceedings within such period as may be prescribed.

(4) No reference shall be made under Chapter III with respect to any dispute referred to in this section unless such dispute has been referred to the Grievance Settlement Authority concerned and the decision of the Grievance Settlement Authority is not acceptable to any of the parties to the dispute.

Reference Power of the Government

Reference Of Disputes To Boards, Courts Or Tribunals

Section 10.Reference of disputes to Boards, Courts or Tribunals.-

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, -

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the Second Schedule or the Third Schedule, to a Tribunal for adjudication

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended, and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.

(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be shall confine its adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.

(6) Where any reference has been made under sub-section (1A) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly, -

- (a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and
- (b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.

Explanation. - In this sub-section, "Labour Court" or "Tribunal" includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate Government, is referred to a National Tribunal, then notwithstanding anything contained in this Act, any reference in section 15, section 17, section 19, section 33A, section 33B and section 36A to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government but, save as aforesaid and as otherwise expressly provided in this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.

(8) No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government.

Reference – Power of the Govt. – Nature of power to be exercised – Appropriate Govt. can decide as to whether the industrial dispute exists or is apprehended – which is based on the subjective satisfaction of such Govt. – Whether Govt. is not obliged to issue any notice or to hear the employer -**Sultan Sing v. State of Haryana, (1996) IL.L.J. 879 (SC).**

While acting under the provisions of Section 10, the Govt. does not act judicially or quasi-judicially. The act of reference as provided in Sec. 10, does not empower the Govt. to adjudicate the dispute. After the reference is made, the Govt. goes out of a picture. **Bhagawati Pd. Tiwari v. Union of India, 1996-I-LLN 316.**

The jurisdiction of the Industrial Tribunal in an industrial dispute is limited to the points specifically referred for its adjudication and matters incidental thereto and therefore, the Tribunal in the present case illegally traveled beyond the terms of reference. The industrial adjudication constituted under the Act is not vested with any inherent power of jurisdiction. **Badarpur Thermal Power Station v. Central Govt. I.T. II, Dhanbad, - 1995(71) FLR 712 (Pat.)**

The function of appropriate government while exercising power under section 10, is administrative and not judicial or quasi-judicial. It cannot go into merits of the dispute and decline reference – 2000(1) LLJ 414.

Voluntary Arbitration

Section 10A. Voluntary reference of disputes to arbitration

(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(1A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

(2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer, and the appropriate Government shall, within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

(3A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3) issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(4A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3A), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(5) Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to arbitrations under this section.

Telecommunication department, whether an industry u/s 2(j) of Act. Issuance of notification by Central Government but Amendment made not brought into force. It is not necessary to consider this point. The court is bound by the view taken in Bangalore water supply case reported in 1973 – Ranjit Singh and Others v. State of Madhya Pradesh;1997(8) SCC 768.

Unfair Labour Practices

Section 25T.Prohibition of unfair labour practice.

No employer or workman or a trade union, whether registered under the Trader Unions Act, 1926 (16 of 1926) or not, shall commit any unfair labour practice.

Section 25U.Penalty for committing unfair labour practices.

Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

The Fifth Schedule to the Industrial Dispute Act, 1947 lays down as to what constitutes Unfair labour practices

On The Part Of Employers And Trade Unions Of Employers

(1) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say.-

(a) threatening workmen with discharge or dismissal, if they join a trade union;

(b) threatening a lock-out or closure, if a trade union is organized;

(c) granting a wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at an organization.

(2) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say,

(a) an employer taking an active interest in organizing a trade union of his workmen; and

(b) an employer showing partiality or granting favor to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.

(3) To establish employer-sponsored trade unions of workmen.

(4) To encourage or discourage membership in any trade union by discriminating against any workman, that is to say,

(a) discharging or punishing a workman, because he urged other workmen to join or organize a trade union;

(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);

(c) changing seniority rating or workmen because of trade union activities;

(d) refusing to promote workmen of higher posts on account of their trade union activities;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

(5) To discharge or dismiss workmen-

(a) by way of victimization;

(b) not in good faith, but in the colourable exercise of the employer's rights;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of a domestic inquiry or with undue haste;

(g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

(6) To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

(7) To transfer a workman mala fide from one place to another, under the guise of following management policy.

(8) To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.

(9) To show favouritism or partiality to one set of workers regardless of merit.

(10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

(11) To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

(12) To recruit workman during a strike which is not an illegal strike.

(13) Failure to implement award, settlement or agreement.

(14) To indulge in acts of force or violence.

(15) To refuse to bargain collectively, in good faith with the recognized trade unions.

(16) Proposing or continuing a lock-out deemed to be illegal under this Act.

On The Part Of Workmen And Trade Unions Of Workmen

(1) To advise or actively support or instigate any strike deemed to be illegal under this Act.

(2) To coerce workmen in the exercise of their right to self-organization or to join a trade union or refrain from, joining any trade union, that is to say-

(a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;

(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.

(3) For a recognized union to refuse to bargain collectively in good faith with the employer.

(4) To indulge in coercive activities against certification of a bargaining representative.

(5) To stage, encourage or instigate such forms of coercive actions as wilful, ,"go-slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.

(6) To stage demonstrations at the residence of the employers or the managerial staff members.

(7) To incite or indulge in wilful damage to employer's property connected with the industry.

(8) To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.]

Victimization

Victimization means one of two things. One is when the workmen concerned is innocent, and yet he is punished because he has in some way displeased the employer. For example, by being an active member of the union of workmen who were acting prejudicially to the interests of the employer]. The second instance is where an employee has committed an offence but is given a punishment quite out of proportion to the gravity of the offence, simply because he has incurred the displeasure of the employer, or where the punishment is shockingly disproportion to the misconduct.

UNIT - 4

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

Earlier the economic law of demand and supply in the labour market settled mutually beneficial bargain between the employer and the workman. It was taken as granted that such a bargain would secure fair terms and conditions of employment to the workmen. They had an abiding faith in the unity of this law. But the working of this law has betrayed their faith. Later workmen found that they did not possess adequate bargaining strength to secure fair terms and conditions of service, they organized themselves in trade unions and insisted on collective bargaining with the employer. The advent of trade unions and collective bargaining created new problems for maintaining industrial peace and production for the society. Workmen started putting forth their demands. Recognizing the rough deal that was being given to the workers by employers who would not define their conditions of service and the inevitability of industrial strife in such a situation, the Legislature made an attempt to intervene by introducing the Industrial Employment (Standing Orders) Bill, 1946.

Scope and Objectives of the Act.

An Act to require employers in industrial establishments formally to define conditions of employment under them and to make the said conditions known to workmen employed by them. The Act applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months:

Experience has shown that 'standing orders' defining the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc., go a long way towards minimizing friction between the management and workers in industrial undertakings. Discussion on the subject at the tripartite Indian Labour Conference revealed a consensus in favour of the legislation. The Bill accordingly seeks to provide for the framing of 'standing orders' in all industrial establishments employing one hundred or more workers. In the first instance, the Act will apply to the categories of industrial establishments specified in clause (2)(e), which include, besides factories and railways, mines, quarries and oil fields, tramway or motor, omnibus services, docks, wharves and jetties, inland steam vessels, plantations, and workshops. The government will be competent to extend the Act to other classes of industrial establishments or to grant exemptions where necessary, by notification. Within six months from the date on which the Act becomes applicable to an industrial establishment the employer is required to frame draft 'standing orders' and submit them to the Certifying Officer for certification. The draft should cover all the matters specified in the Schedule to the Act and any other matter that the Government may prescribe by rules. The Certifying Officer will be empowered to modify or add to the draft standing orders so as to render them certifiable under the Act. It will not be his function (nor of the Appellate Authority) to adjudicate upon their fairness or reasonableness. There will be a right of appeal against the decisions of the Certifying Officers.

The object of the Act is to have uniform Standing Orders providing for the matters enumerated in the Schedule to the Act, and hence, it was not intended that there should be different conditions of service for those who are employed before and those employed after the Standing Orders came into force and finally, once the Standing Orders come into the force, they bind all those presently in the employment of the concerned establishment as well as those who are appointed thereafter. Agra Electric Supply Co. Ltd. v. Aladdin, (1969) 2 SCC 598; U.P. Electric Supply Co. Ltd. v. Their Workman, (1972) 2 SEC

Definitions

Section 2(b) "appropriate Government" means in respect of industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oil-field, the Central Government, and in all other cases, the State Government:

Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties;

Section 2(c)"Certifying Officer" means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act;

Section 2(d) "employer" means the owner of an industrial establishment to which this Act for the time being applies, and includes— (i) in a factory, any person named under clause (f) of sub-section (I) of section 7, of the Factories Act, 1948 (63 of 1948), as manager of the factory; (ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department; (iii) in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment;

Section 2(g) "standing orders" means rules relating to matters set out in the Schedule;

Section 2(h) "trade union" means a trade union for the time being registered under the Indian Trade Unions Act, 1926 (16 of 1926);

Section 2(i) "wages" and "workman" have the meanings respectively assigned to them in clauses (rr) and (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)].

Section 2(e) "industrial establishment" means— (i) an industrial establishment as defined In clause (ii) of section 2 of the Payment of Wages Act, 1936 (4 of 1936), or (ii)a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948), or (iii) a railway as defined in clause (4) of section 2 of the Indian Railways Act, 1890 (9 of 1890), or (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;

Procedure for Certification of Standing Orders

Section 3: Submission of Draft Standing Orders

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

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

(3) The draft standing orders submitted 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.

Matters to be provided in Standing Orders under this Act (The Schedule)

- Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or badlis.
- Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
- Shift working.
- Attendance and late coming.
- Conditions of, the procedure in applying for, and the authority which may grant leave and holidays.
- The requirement to enter premises by certain gates, a liability to search.
- Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising there from.
- Termination of employment, and the notice thereof to be given by employer and workmen.
- Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
- Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
- Any other matter which may be prescribed.

This Act contains a general provision requiring employers in the industrial establishments to define terms and conditions of the employment under them and to make such terms and conditions known to the workmen employed by them, from the very beginning; **Narendra Pal Gahlot v. Slate of Uttar Pradesh, (1994) LLR 21.**

Section 4. Conditions for certification of Standing Orders

Standing orders shall be certifiable under this Act, if-

(a) Provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) The standing orders are otherwise in conformity with the provisions of this Act;

And it 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.

When the settlement was arrived at between the workmen and the company and which is still in force, the parties are to remain bound by the terms of that settlement. Till the settlement is terminated, Certified Standing Orders cannot be allowed to be amended; **Barauni Refinery PragatishilShramikParishad v. Indian Oil Corporation Ltd., (1990) 61 FLR 203 (SC).**

The certified standing orders have the overriding effect on other service rules or regulations; **S. Alamelu v. The Superintending Engineer, South Arcot Electricity System, 1990 LLR 457 (Mad)**

Section 5. Certification of Standing Orders

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

(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 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 therein which his order under sub-section (2) of the certified 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 the trade union or other prescribed representatives of the workmen.

The certified standing orders, when come in force, will be binding to the existing as well as those employees who are appointed subsequently; **Hyderabad Allwyn Ltd, Co. v. Addl. Industrial Tribunal-cum-Labour Court; (1990) 76 FJR 139 (AP).**

Once this Act becomes applicable to an establishment, it does not cease to apply on account of a subsequent fall in the number of the workmen in the establishment; **Balakrislma Pillai v. Anand Engineering Works (P) Ltd., (1974) II LLN 199 (Bom).**

Section 7. Date of operation of Standing Orders

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

Section 10. Duration and modification of Standing Orders

Section 10 of the Act states that the standing orders shall remain in effect and can be modified only upon the mutual agreement signed off between the employer or workmen and an application made to the Certifying Officer on the same. In case of any such modification, the parties (i.e. employer, workman or trade union representative) shall mutually agree on the same by way of execution of an agreement. However, any such modification shall not be carried before expiry of 6 months from which the standing orders were previously modified or certified. The employer or the workmen representative or the trade union shall make a fresh application to the Certifying Officer for the modification of the standing orders. Such application must accompany with five copies of the proposed modification. It shall also be attached to the copy of the agreement if so entered into between the employer and workmen/ trade union.The section reads as under:

(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen [1][or a trade union or other representative body of the workmen] be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

(2) Subject to the provisions of sub-section (1), an employer or workman [3][or a trade union or other representative body of the workmen) may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five Copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen] a certified copy of that agreement shall be filed along with the application.

(3) The provisions of this Act shall apply in respect of an application under sub-section (1) as they apply to the certification of the first standing orders.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

Section 12-A. Temporary application of model standing orders.

(1) Notwithstanding anything contained in Sections to12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under Section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of Section 9, sub-section (2) of Section 13 and Section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

Explanation to Section 12-A.—Where there are two categories of workmen, one in respect of the daily rated workmen and the other in respect of the monthly rated workmen, if there are certified standing orders in respect of the daily rated workers only, the prescribed model standing orders should be deemed to have been adopted for those who are employed on the monthly basis until such categories have their own certified standing orders.

Thus, the Act provides for temporary application of the model standing orders to the industrial establishment and such model standing orders shall be applicable from the date on which the said Act has become applicable to the particular industrial establishment till the date of the receipt of the certified standing orders. In case, there are no certified standing orders, then the model standing orders are deemed to be applicable to that industrial establishment.

Domestic Enquiry and Disciplinary proceedings

For the smooth functioning of industry, the defined codes of discipline, contracts of service by awards, agreements and standing orders must be adhered to. In the event of an employee not complying with these codes of conduct, he is liable to face disciplinary actions initiated by the Management according to the Standing Order. This procedure is called Domestic Enquiry, and it is conducted following the standing order/agreements.

The domestic enquiry is not considered as a legal requirement under the Industrial Disputes Act, or other substantive laws such as the Factories act, Mines Act, etc. but has been provided under the standing orders to be framed in the Industrial Employment (Standing Order Act) 1946. It is now well-established that such standing orders have the force of law and constitute statutory terms of employment. The case law established over a long period has made it obligatory for the employers to hold a fair and just enquiry to prove the misconduct before awarding any serious punishment.

Dismissal of an employee without holding a fair and just domestic enquiry amounts to the violation of the principles of natural justice and is frowned upon by the Labour Courts/Industrial Tribunals and adverse conclusions may be drawn against the employer not holding a domestic enquiry, in so much so that the dismissal without holding a domestic enquiry is deemed to be illegal.

The procedure for carrying out disciplinary action has not been prescribed by any statute or notification and has been evolved through practice and judicial precedents. In Sur Enamel and Stamping Works (P) Ltd. v. Their Workmen [AIR 1963 SC 1914] the SC in an attempt to lay down the procedure for conducting an enquiry for industrial adjudication provided that (a) the workman proceeded against must be informed clearly of the charges levelled against him; (b) the witnesses must be examined in the presence of the workman; (c) the workman must be given a fair opportunity to cross-examine the witnesses including himself if he so wishes; and (d) the Enquiry Officer must record his findings with reasons in his report.

Preliminary enquiry: When an act of misconduct has been committed, and the Disciplinary Authority receives a complaint, it may conduct a preliminary enquiry. This enquiry is conducted before the charges are framed and is not part of a domestic enquiry. At this stage, the management carries out investigations before launching enquiries against the workman, and determines whether there is sufficient material evidence to initiate a domestic enquiry. The law on a preliminary investigation is if the employer makes the enquiry it is not incumbent upon him to call for the explanation of the workman before serving the charge-sheet since it may be used as a strategy for fishing out the defence of the workman. However, it is pertinent to note that the evidence recorded in a preliminary enquiry cannot be used in the domestic enquiry because the workman has not had the opportunity to defend himself against such evidence. Upon conclusion of the preliminary enquiry, if the workman is found innocent, the employer need not undergo the following procedure. In such cases, the employer is only required to issue a show cause notice to the workman. However, if the workman is found guilty, the management has to hold a proper enquiry before dismissing him, which can be initiated only by supplying him with a charge-sheet.

Charge-sheet: Domestic enquiry commences once a charge-sheet is issued to the workman. A charge-sheet essentially contains detailed particulars of the misconduct, specific charges against the workman and the relevant clauses of the Standing Order under which the workman is liable to the punished. It is pertinent to note that the charge-sheet is to be sent by the employer to the workman by registered post and in case it is returned un-served, the employer must get the charges published in the local newspaper in the regional language understood by the workman.

Explanation: Pursuant to service of the charge-sheet, the workman must be given an opportunity to submit an explanation to the Officer with respect to the alleged act or omission leading to misconduct. Accordingly, he must be granted reasonable time towards submitting the explanation, and the enquiry must not be concluded unless this period has expired. It is pertinent to note that there are no defined parameters of what constitutes "reasonable period," and it depends on the facts and circumstances of each case, nature of charges, nature of proposed action, etc.,

The charge sheet, however, is not expected to be a record of evidence. The person signing the charge sheet is not an accuser. He does not make himself responsible for the truth of the facts set out in the charge sheet. He merely tells the accused what he is supposed to have done. [Bennet Coleman & Co. LAC p.2 1956]

Enquiry report: Once the employer and the workman have been heard, and the Officer is required to prepare a reasoned enquiry report and submit it to the Authority. This enquiry report must also be supplied to the workman upon conclusion of the enquiry. Since the Officer's may not be well acquainted with the law, minor discrepancies in the report which have no bearing on the decision may well be overlooked by the judiciary. The Authority finally decides the matter and the penalty to be imposed, in case it agrees with

the findings of the Officer. If the Authority does not agree with the findings, it records its own findings based on the evidence on record. While doing so, if the Authority does not agree with the Officer's finding that the accused workman is not guilty, it may afford another opportunity to the workman to defend himself. However, once the Authority decides to impose punishment, it must be communicated to the workman at the earliest.

The decision of the Authority is appealable, provided the Standing Orders allow the appellate Authority created by the management to hear the matter again. The decision of the appellate Authority was final and binding upon the parties, and the domestic enquiry would be deemed concluded. However, this position has changed since the inception of section 11- A in the Act.

The Supreme Court in **Powari Tea Estate v. M.K. Barktaki (1965 II LLJ 102)**, held that the charge must not contain any expression which would give rise to reasonable apprehension in the mind of the workman against whom the enquiry is held that the management has already made up its mind as to his guilt. So, it must only state the misconduct alleged for which the enquiry has to take place.

Section 10-A. Payment of subsistence allowance.

Where a workman is suspended by employer pending investigation or enquiry into complaints or charges of misconduct against him, the workman shall be paid subsistence allowance equal to 50% of wages for the first ninety days of his/her suspension and 75% of wages for remaining period till completion of disciplinary proceedings, provided the delay in completion of the disciplinary proceeding is not attributable to the workman. 'Wages' has same meaning as under section 2(rr) of Industrial Disputes Act. Any dispute pertaining to the subsistence allowance shall be referred to the Labour Court constituted under the Industrial Disputes Act, 1947.The said section reads as follows:

Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance-

(a) at the rate of fifty per cent of the wages which workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

If any dispute arises regarding the subsistence allowance payable to a workman, the workman or the employer concerned may refer the dispute to the Labour Court within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situated and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Not withstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.

Once the amendments have been certified, the certified standing orders operate. However, the law made under the provisions of the Act; **May & Baker Ltd. v. Shri Kishore Jai KishandasIchaporia, (1991) 63 FLR 319 (Bom).**

Subsistence allowance paid during the period of suspension cannot be recovered; **R. Govendraj v. Government Tool Room Training Centre, (1990) 1 CLR 442 (Karn).**

UNIT - 5

LAW RELATING TO WAGES

MINIMUM WAGES ACT, 1948

The primary intention of the minimum wages was to provide the same wages to the worker rendering the similar type of labour in the same field of industry and to prevent discrimination. In 1928, the International Labour Conference, at Geneva, adopted a draft convention on minimum wages mandating the member states to provide for minimum rates of wages for workers employed in industries where wages are exceptionally low and to bring out uniformity in the wages, by way of legislation.

Thus, the need for a legislation for fixation of minimum wages in India received an impetus after World War II. To provide for machinery for fixing and revision of minimum wages, a draft Bill was prepared and discussed at the 7th session of the Indian Labour Conference in November, 1945, which was debated and discussed in both the Houses of Parliament. Wage fixing authorities have been guided by the norms prescribed by the Fair Wage Committee in the settlement of issues relating to wage fixation in organised industries.

The main objective of this Act, is fixing a minimum rate of wages to be paid to both skilled and unskilled labours working in industries where the labours are not organized and sweated labours are most dominant. The Act aims at preventing the exploitation of workers or labours in some industries, for which, the appropriate Government is empowered to take steps to prescribe minimum rates of wages in certain employment. Provisions had been made for the appointment of Advisory Committees and Advisory Boards, the latter for co-ordination work of the Advisory Committees. The Committees and the Boards will have equal representation of employers and workmen. Except on initial fixation of minimum wages, consultation with the Advisory Committee will be obligatory on all occasions of revision.

The act also applies to Schedule employments, which comes under a schedule that is under central or state government's purview. The appropriate Governments are empowered to declare that a given industry be classified as scheduled employment if the number of employees exceeds 1000. That is if the number of employees being employed in a particular employment in a given state exceeds 1000, then the state government has the right to declare it as a scheduled employment.

Theories of Wages and Wage Policy

Theories of wages are a series of systematic attempts to explain what factors determine the level of wage.

(a) The Subsistence Theory of Wages: Propounded by David Ricardo, this theory illustrates that the labourers are paid to enable them to subsist and perpetuate the race without an increase. According to this theory, wages tend to settle at the level just sufficient to maintain the workers and his family at the minimum subsistence level.If wages rise above the subsistence level, the workers are encouraged to marry and to have large families, and if the labour supply is decreased, the wages again rise to the subsistence level. Hence this theory is called as 'subsistence wages.'

(b) The Standard of Living Theory of Wages: A modified form of the subsistence theory was propounded by some writers, which may be called as the standard of living theory of wages. This theory moves forward and states that the wages are determined not by subsistence level but by the standard of living to which a class of labourer becomes habituated. However, critics state that the effect of the standard of living on wages is only indirect because workers cannot get higher wages simply by raising their standard of living, until they also raise their marginal productivity.

(c) The Wage-Fund Theory: Propounded by Adam Smith, this theory is based on the assumption that a pre-determined fund of wealth has been created, and the wages are being paid out of the said fund by the employers. So the payment of wages is directly proportional or linked to the fund allocation and the demand for labour and the rates of wages depend on the pooled fund already created, resulting in high labour if the high fund is allocated and low fund resulting in low wages.

(d) Residual Claimant Theory: Developed by Francis A Walker, this proposes that there are four factors of production namely, land, labour, capital and entrepreneurship and that the labourers are paid what if left after making payments to other factors of production. Hence, the name Residual Claimant theory.

(e) The Marginal Productivity theory of wages: This theory was propounded by Phillips Henry Wick-Steed and John Bates Clark. As per this theory, wages are thus determined in accordance with the production contributed by the last worker i.e. production of the last worker is called as marginal production.

(f) Cost of Production Theory: Ricardo states that natural price of labour depends upon the price of the food, necessaries convenience, required for the support of labourer and his family. With a rise in the price of the food and necessaries, the natural price of labour will rise and vice versa. This is because the power of labourer to support himself, and the family does not depend upon the quantity of money which he receives as wages but the quantity of food necessaries, and conveniences which become essential to him which money will purchase, resulting in the cost of production theory of labour.

(g) Supply and demand theory of wages - The fundamental principle of determination is that wages depend on the relation between demand for and supply of labour, subject to certain reservation necessitated by the peculiarities of labour. The supply of labour means the number of workers who would offer themselves for employment at each possible wage rate. The relationship between wage and the quantity of labour is a direct one.

Concept of Wages

Section 2(d) "cost of living index number" in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employee in such employment;

Section 2 (h) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include-

(i) the value of- (a) any house, accommodation, supply of light, water, medical attendance, or (b) any other amenity or any service excluded by general or special order of the appropriate government; (ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance;

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

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

(v) any gratuity payable on discharge;

The essential ingredients as per the definition of wages include,

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

A detective agency is not covered under the provisions of this Act. There is no logic that when the employees as engaged through the detective agency worked in an engineering industry, the employer is liable to pay the minimum wages but when the same employees engaged by the detective agency are on private duty, they are not entitled to such minimum wages. Hence, no relief could be granted, either against the contractor or the principal employer, [Linge Gowda Detective and Security Chamber (P) Ltd. v. Authority under Minimum Wages Act, 1998 LTR 77].

Section 3: Fixing of minimum rates of wages

The appropriate Government shall fix the minimum rates of wages payable to employees or instead of fixing minimum rates of wages under this clause for the whole state fix such rates for a part of the State which the State can review at such intervals as it may think fit, such intervals not exceeding five years. Can also refrain fixing minimum wages for any scheduled employment if in the state there are less than 1000 employees engaged in such employment.

The appropriate Government may fix— (a) a minimum rate of wages for time work i.e. 'a minimum time rate' (b) a minimum rate of wages for piece work i.e. 'minimum piece rate', (c) a minimum rate of remuneration for employees employed in piece work to give to such employees a minimum rate of wages on a time work basis i.e. 'a guaranteed time rate'. (d) a minimum rate to apply in place of the minimum rate which would be applicable, in respect of overtime work done by employees i e. 'overtime rate'.

Where any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, or an award made by any Tribunal is in operation, and a notification fixing or revising the minimum rates of wages is issued during the pendency of such proceeding or the operation of the award, then, 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.

In fixing or revising minimum rates of wages under this section, different minimum rates of wages may be fixed for different scheduled employments; different classes of work; adults, adolescents, children and apprentices; different localities; minimum rates of wages may be fixed by any one or more of the following wage- periods, namely by the hour, day or month or 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.

The section lays down as follows:

(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;

(h) 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, 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 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").

(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.

Section 4: 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.

Thus, any minimum rate of wages fixed or revised by the appropriate Government for any scheduled employments under section 3 may consist of (i) a basic rate of wages and a special allowance at a rate to be adjusted, (ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions instead of subsidized essential commodities; 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. The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be calculated by the competent authority at intervals and instructions given by the appropriate Government.

Irrelevant considerations while fixing Minimum Wages

- Employer is finding difficult to carry business on basis of minimum wages
- Financial capacity of the employer
- Financial loss by the employer in the previous year
- Employer finding it difficult to import raw materials
- Regional / Industry principles

InMahendra Chandra v. State, AIR 1971 32, the Supreme Court held that: 'Special allowance' defined in Section 4(1) is a variable amount and is part of wages, being linked with the cost of living index number. 'Trip allowance' is not a part of 'Special allowance' because trip allowance has nothing to do with the cost of living index number.

The Edward Mills Co. Ltd., Beawar and Ors.v.The State of Ajmer and Anr. [MANU/SC/0106/1954]

It was ruled that the words 'law in force' as occurring in Article 372 of the Constitution are elaborate enough to include a legislative enactment as well as the regulation that had the force of law - The order made under Section 94 (3) of the Government of India Act, 1935 is equal to a legislative provision - Under Section 27 of the Minimum Wages Act, 1948 there was enough power granted to the 'Appropriate Government' to include to either part of the schedule any employment, which the Government was of the opinion that minimum wages might be fixed by way of notification and such grant of power was warranted and constitutional and it did not exceed the limit of permissible delegation - It was also ruled that Rule 3 of the rules framed under Section 30 of the Act empowered the State Government to fix the tenure of the advisory committee appointed under Section 54 of the Act and it has the power to extend the tenure as per the circumstances

A.M. Allisonv.B.L. Sen [MANU/SC/0073/1956]

Labour and Industrial - Minimum basic wages - Intention of the Govt. in issuing notification was to increase the basics wages while maintaining the basic workload or task assigned - Appeal dismissed

Section 5: Procedure for fixing and revising minimum wages

As per this section, the appropriate Government shall either appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision or by notification in the Official Gazette, publish its proposals for informing the persons likely to be affected thereby and specify a date, not less than two months form the date of the notification, on which the proposals will be taken into consideration. After considering the advice of the committee or committees appointed all representations received by it before the date specified in the notification the appropriate Government shall, by notification in the Official Gazette, fix, or revise the minimum rates of wages in respect of each scheduled employment, and it shall come into force after three months from the date of its issue; the appropriate Government shall consult the Advisory Board also.

(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall either-

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or

(b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (a) of sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate government shall, by notification in the Official Gazette fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:

PROVIDED that where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate government shall consult the Advisory Board also.]

Karmani Metals and Alloys Ltd v. Workmen, AIR 1967 SC 1175 : Minimum wages must be paid irrespective of the extent of profits, financial condition of the establishment or the availability of workmen, on lower wages

Section 12. Payment of minimum rates of wages

(1) Where in respect of any scheduled employment a notification under section 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorised within such time and subject to such conditions as may be prescribed.

(2) Nothing contained in this section shall affect the provisions of the Payment of Wages Act, 1936.

So, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deduction except as may be authorised within such time and subject to such conditions as may be prescribed.

In U. Unichoyi and Ors. v. The State of Kerala, [MANU/SCC/0233/1961] the case debated on validity in enactment of the wage structure fixation as per the notification - It was also debated if the fixation was ultra vires - Whether the fixation considered employer's capacity to pay - It was held that the constitutional validity of the Minimum Wages Act, 1948 would not be doubted - Also the hardship caused to the employers by the wages fixed under the Act were irrelevant considerations in fixing the wages.

Section 13. Fixing hours for a normal working day, etc.,
(1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate government may-

(a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;

(c) provide for payment for work on a day of rest at a rate not less than the overtime rate.]

(2) The provisions of sub-section (1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed:-

(a) employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented;

(b) employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

(c) employees whose employment is essentially intermittent;

(d) employees engaged in any work which for technical reasons has to be completed before the duty is over;

(e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause (c) of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

Workmen of the Bombay Port Trust v.Trustees of Port of Bombay [MANU/SCC/0245/1961] The case questioned whether wages were payable for Sunday, the 'weekly off' day on which no works was done and for Sunday on which work was done without compensatory off day - The case debated on the meaning of 'weekly holiday' with in the frame work of Section 13 of the Minimum Wages Act, 1948 - It was held that neither the Act nor Minimum Wages Rules contained any provision for such additional payment over and above what would be payable for over time work - Therefore, the workmen could not get three times the ordinary rate - The meaning of 'weekly off' meant Sunday when no work has to be done under the Act.

Advisory Boards under the Act

Section 7. Advisory Board

For the purpose of coordinating 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.

Section 8. 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.

Section 9.Composition of Committees, etc.

Each of the committees, sub-committees 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.

Section 19. Inspectors

Section 19 (1) empowers Inspectors to:

- Enter any premises or place, at all reasonable hours, with such assistants, where employees are employed to work or work is given out to out-workers, for the purpose of examining any register, record of wages or notices required to be kept or exhibited by or under this Act or rules made thereunder.
- Examine any person who is an employee employed therein or employee to whom work is given out therein
- Require any person to give any information, with respect to names and addresses of the persons, to, for and from whom the work is given out and with respect to payments to be made for the work
- Seize or take copies of such register, the record of wages or notices or portions thereof as he may consider relevant in respect of an offense under the Act.
- Exercise such other powers as many be prescribed.

The section stipulates as follows;

(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 and define the local limits within which they shall exercise their functions.

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

(a) enter, at all reasonable hours, with such assistants (if any), being persons in the service of the government or any local or other public authority, as he thinks fit, any premises or place where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act for the purpose of examining any register, record of wages or notices required to be kept or exhibited by or under this Act or rules made there under, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee employed therein or an employee to whom work is given out therein;

(c) require any person giving out-work and any out-workers, to give any information, which is in his power to give, with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;

(d) seize or take copies of such register, record or wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer]; and

(e) exercise such other powers as may be prescribed

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

Section 19 (4) says that any person required to produce any document or thing or to give any information by an inspector shall be deemed to be legally bound to do so with the meaning of Section 175 and Section 176 of Indian Penal Code, 1860.

20. Claims

The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank or Labour Commissioner to be the Authority to hear and decide all claims arising out of payment of less than the minimum rates of wages. Where an employee has any claim of the nature referred to in sub- section, the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector; every such application shall be presented within six months form the date on which the minimum wages became payable, but any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period. Section 20 (1) of Minimum Wages Act, 1948 says that the appropriate Government, by way of notification in Official Gazette, appoint Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any officer with experience of a Judge of Civil Court of as a Stipendiary Magistrate to be authority to hear and decide for any specified area all claims arising out of payment of remuneration for days of rent less than the minimum rate of wages or in respect of the payment of or for work done on such days, or of wages at the overtime rate etc.,

Section 20 (2) says a claim petition can be submitted

- by the employee
- by any legal practitioner on behalf of the employee
- by a registered trade union authorized in writing to act on behalf of the employee
- by any inspector
- by any person acting with the permission of the Authority

Section 22. Penalties for certain offences

Any employer who

(a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act, or

(b) contravenes any rule or order made under section 13;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both:

PROVIDED that in imposing any fine for an offence under this section, the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

Section 22A. General provision for punishment of other offences

Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall, if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

Section22B. Cognizance of offences

(1) No court shall take cognizance of a complaint against any person for an offence-

(a) under clause (a) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part, and the appropriate government or an officer authorised by it in this behalf has sanctioned the making of the complaint;

(b) under clause (b) of section 22 or under section 22A, except on a complaint made by or with the section of, an Inspector.

(2) No court shall take cognizance of an offence-

(a) under clause (a) or clause (b) of section 22, unless complaint thereof is made within one month of the grant of sanction under this section;

(b) under section 22A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Section 22C. Offences by companies

(1) If the person committing any offence under this Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section-

(a) "company" means any body corporate and includes a firm or other association of individuals, and

(b) "director" in relation to a firm means a partner in the firm

Section 26. Exemptions and exceptions

According to this section, the appropriate Government may direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees. The appropriate Government may by notification in the Official Gazette, direct that. for a certain specified period, all provisions of this Act or any of them shall not apply to all or any class of employees employed in any scheduled employment or to

any locality where there is carried on a scheduled employment. Nothing in this Act shall apply to the wages payable by an employer to a member of his family who is living with him and is dependent on him.

The section states that

(1) The appropriate Government may, subject to such conditions, if any, as it may think fit to impose, direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees.

(2) The appropriate Government may if for special reasons it thinks so fit, by notification in the Official Gazette, direct that subject to such conditions and for such period as it may specify the provisions of this Act or any of them shall not apply to all or any class of employees employed in any scheduled employment or to any locality where there is carried on a scheduled employment.

(2A) The appropriate Government may, if it is of opinion that, having regard to the terms and conditions of service applicable to any class of employees in a scheduled employment generally or in a scheduled employment in a local area.1[or to any establishment or a part of any establishment in a scheduled employment], it is not necessary to fix minimum wages in respect of such employees of that class1[or in respect of employees in such establishment or such part of any establishment] as are in receipt of wages exceeding such limit as may be prescribed in this behalf, direct, by notification in the Official Gazette and subject to such conditions, if any, as it may think fit to impose, that the provisions of this Act or any of them shall not apply in relation to such employees.

(3) Nothing in this Act shall apply to the wages payable by an employer to a member of his family who is living with him and is dependent on him.

Explanation: In this sub-section, a member of the employer's family shall be deemed to include his or her spouse or child or parent or brother or sister.

PAYMENT OF WAGES ACT, 1936

With the growth of industries in India, problems relating to payment of wages to persons employed in the industry took an ugly turn. The industrial units were riot making payment of wages to their workers at regular intervals, and wages were not uniform. The industrial workers were forced to raise their heads against their exploitation.

In 1926, Government of India wrote to local governments to ascertain the position concerning the delays which occurred in the payment of wages to the persons employed in Industry. The material so collected was placed before the Royal Commission on Labour which was appointed in 1929. On the report of the Commission, Government of India re-examined the subject and in February, 1933 the Payment of Wages Bill, 1933, was introduced in the Legislative Assembly and circulated for the purpose of-eliciting opinions. A motion for the reference of the Bill to a Select Committee was tabled, but the motion could not be passed, and the Bill lapsed. In 1935 the Payment of Wages Bill, based on the same principles as the earlier Bill of 1933 but thoroughly revised was introduced in the Legislative Assembly on 15th February, 1935. The Bill was referred to the Select Committee. The Select Committee presented its report on 2nd September, 1935. Incorporating the recommendations of the Select Committee, the Payment of Wages Bill, 1935 was again introduced in the Legislative Assembly.

The Payment of Wages Bill, 1935 having been passed by the Legislative Assembly received its assent on 23rd April, 1936. It came on the Statute Book as The Payment of Wages Act, 1936 (4 of 1936).

Objective of the Act

The Payment of Wages Act, 1936 was enacted with a view to ensuring that wages payable to employed persons covered by the Act were disbursed by the employers within the prescribed time limit and that no deductions other than those authorised by law were made by them. The last amendment was made in 1982 with many proposals have been received by the Government for amending various provisions which are creating practical difficulties in enforcement of this Act. To bring this law in uniformity with other labour laws as also to make it more effective and practicable, it is proposed to make, inter alia, the following changes:—

(i) Enhancing the wage ceiling of Rs. 1600 per month to Rs. 6500 per month:

(ii) To substitute the expressions "the Central Government" or "a State Government" by the expression "appropriate Government":

(iii) Removing the ambiguities/weakness from the extant provisions of the Act and prescribing more effective grievance redressal.

(iv) Strengthening compensation and penal provisions of the Act: The penal provisions of the Act have become almost insignificant due to the passage of time as well as the decrease in money value since these provisions were last amended in 1982.

With the primary objective of avoiding unnecessary delay in the payment of wages and preventing unauthorized deductions from the wages of the employed persons, the Payment of Wages Act, 1936 has been drafted.The Act applies to those persons who are employed in any factory, also to persons employed upon any railway by a railway administration and to industrial or other factories. The persons employed by a railway administration may have been employed either directly or through a sub-contractor by a person fulfilling a contract with a railway administration.

Definitions

Section 2(vi) "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

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

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of 1 [the appropriate Government];

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

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

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

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

Section 7. Deductions which may be made from wages.—

Although the wages of an employed person shall be paid to him without deductions of any kind, the Act allows certain deductions from the wages of an employee.The section reads out as follows:

(1) Notwithstanding the provisions of the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

(2) 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;

(b) deductions for absence from duty;

(c) deductions for damage to or loss of goods expressly entrusted to the employed person for 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 subsidising 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, authorise;

Explanation.—The word "services" in this clause does not include the supply of tools and raw materials required for the purposes of employment

(f) deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages; (ff) deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof; (fff)deductions for recovery of loans granted for house-building or other purposes approved by the State Government, and the interest due in respect thereof;]

(g) deductions of income-tax payable by the employed person;

(h) deductions required to be made by order of a Court or other authority competent to make such order;

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or any recognized provident fund as defined in clause (38) of section 2 of the Income-tax Act, 1961 (43 of 1961) or any provident fund approved in this behalf by the appropriate Government, during the continuance of such approval;

(j) deductions for payments to co-operative societies as approved by the appropriate Government or any officer specified by it in this behalf] or to a scheme of insurance maintained by the Indian Post Office;

(k) deductions, made with the written authorisation of the person employed employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government;] [(kk) deductions made, with the written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 (16 of 1926), for the welfare of the employed persons or the members of their families, or both, and approved by the appropriate Government or any officer specified by it in this behalf, during the continuance of such approval. (kkk) deductions made, with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 (16 of 1926);]

(l) deductions, for payment of insurance premia on Fidelity Guarantee Bonds;

(m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;

(n) deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration, whether in respect of fares, freight, demurrage, wharfage and carnage orin respect of sale of food in catering establishments or in respect of sale of commodities ingrain shops or otherwise;

(o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;]

(p) deductions, made with the written authorisation of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify;

(q) deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

(3)Notwithstanding anything contained in this Act, the total amount of deductions which may be made under sub-section (2) in any wage-period from the wages of any employed person shall not exceed—

(i) in cases where such deductions are wholly or partly made for payments to co-operative societies under clause (j) of sub-section (2), seventy- five per cent, of such wages, and

(ii) in any other case, fifty per cent, of such wages;

Provided that where the total deductions authorised under sub-section (2) exceed seventy-five per cent, or, as the case may be, fifty per cent, of the wages, the excess may be recovered in such manner as may be prescribed.

The requirement of making a deposit at the time of filing of an appeal does not destroy the remedy of the appeal; [**Nagar Palika v. Prescribed Authority, (1992) 64 FLR 1005**].

If the workman did not work, although the work was offered to him, he is not entitled to wages; [**Modi Industries v. State of Uttar Pradesh, (1992) 64 FLR 471**]

The prescribed Authority has been conferred power to entertain the application even beyond the period of 12 months; [**Rahat Hussain Khan v. Third Addl. District Judge, (1992) 64 FLR 302**]

Compensation up to 10 times cannot be granted in the case of back wages awarded by the Industrial Tribunal; [**Municipal Council v. Khubilal, (1992) 64 FLR 752 (Raj)**].

An employer can deduct the wages under section 7(2)(b) of the Act for absence from duty. Absence from duty by an employee must be on his own volition and it cannot cover his absence when he is forced by circumstances created by the employer from carrying out his duty- In the case in hand as the absence of the employees was not voluntary in as much as they were not allowed to resume their work without signing the guarantee bond no deduction can be made under the Act; [**French Motor Car Co. Ltd. Workers Union v. French Motor Car Co. Ltd; (1990) LLR 366**] ;

It is well-settled that "go-slow" is a serious misconduct being a covert and a more damaging breach of the contract of employment; [**Bank of India v. T.S. Kelawala, (1990) LLR 313 (SC)**].

If the absence from duty is due to coercion and the workman is not a consenting party, then the management has no power to deduct wages; [Kothari (Madras) Ltd. v. Second Addl. District judge-cum-Appellate Authority; (1990) 76 FJR 209 (AP)].

The workman cannot be denied the wages when he reports himself on duty, but the work is not taken from him by the employer; [J.D.A. v. Labour Centre, (1990) 60 FLR 81 (Raj)].

The appeal is not made to a personal designation but to a court. Revision lies against the appellate order of the High Court; [Bharatpur Central Co-op. Bank Ltd. v. Rattan Singh, (1990) II CLR 516 (Raj)].

The Divisional Engineer, G.I.P. Railways v. MahadeoRaghoo and Anr [MANU/SC/0053/1955]

The case debated on whether the house rent allowance fell within the definition of wages under the Payment of Wages Act, 1936. The court ruled that the HRA was admissible only so long as an employee was stationed at one of the specified places and had not been offered Government quarters. Once such an employee had been offered suitable accommodation and he has refused it, he ceases to be entitled to the HRA and that allowance ceases to be wages within the meaning of the definition of section 2 (iv) of the Act, because it is no more payable under the terms of the contract

Section 8: Fines

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

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

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise, than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent, of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employed person who is under the age of fifteen years. (6) No fine imposed on any employed person shall be recovered from him by instilments or after the expiry of ninety days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for tine payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation: When the persons employed upon or in any railway, factory or industrial or other establishment are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

Thus, as per the section, Fines can be imposed in respect of only those acts or omissions of the employed persons which are approved by the authority. The employer must display on his premises a list of acts or omissions for which fines can be imposed. Before imposing a fine on an employed person he must be given an opportunity of showing cause against the fine. The amount of fine must not exceed 3 percent of the wages. A fine cannot be imposed on an employed person who is under the age of 15 years. A fine cannot be recovered by installments or after 90 days from the day of the act or omission for which it is imposed. The moneys realized from fines must be applied to purposes beneficial to employed persons.

Section 9.Deductions for absence from duty.

If any person is absent for whole or any part of the day, then he is subjected to the deduction from his wages. If 10 or more persons are absent from their wage-period without giving any reasonable cause, then a deduction of wages upto 8 days shall be made from their wages.

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

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a large proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work: Provided that, subject to any rules made in this behalf by the appropriate Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation. For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

Section 10.Deductions for damage or loss.

If there is any loss or damage caused by the person so employed, then the deduction for such damage or loss can be made from his wage. Such deduction shall not caused to the damage or loss caused to the employer. The employee shall be given an opportunity of showing cause before making such deduction and all such deductions shall be recorded in the register.

(1) A deduction under clause (c) or clause (o) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person.

(1A)A deduction shall not be made under clause (c) or clause (m) or clause (n) or clause (o) of sub-section (2) of section 7 until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

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

Section 11. Deductions for services rendered

If the person employed accepts the facility of accommodation or any other services, then a deductions of such services or accommodation provided by the employer shall be made from the wages of the employee.

However, a deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person, unless the house-accommodation amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house accommodation amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions as the appropriate Government may impose. Besides section 11-A deals with Deductions in respect of house accommodation while section 11B is for Deductions in respect of electricity and section 11C is in respect of profession tax.

Section 12. Deductions for recovery of advances

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

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

(aa) recovery of an advance of money given after employment began shall be subject to such conditions as the appropriate Government may impose;

(b) recovery of advances of wages not already earned shall be subject to any rules made by 5 the appropriate Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

Thus, all the advances paid to the employee before the starting of the employment shall be deducted from the first payment of the wages made to the employee. But, if an advance is given after the beginning of the employment then its recovery is subjected to the following conditions laid down by the appropriate government.

12A. Deductions for recovery of loans

Deductions for recovery of loans granted under clause (fff) of sub-section (2) of section 7 shall be subject to any rules made by the appropriate Government regulating the extent to which such loans may be granted and the rate of interest payable thereon. Such deductions can be made from the wages of the employee. This deduction will also add the rate of interest to be chargeable on the loan granted

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

If any deduction has been made under clause (j) and clause (k) of sub-section (2) of section 7 in regard to the payment to the co-operative societies or insurance policy schemes, such deductions shall be made according to the conditions laid down by the State Government.

The Apex Court, in the case of O.P. Gupta v. Union of India, [MANU/SC/0670/1987 : AIR 1987, SC 2257] has heavily criticized the act of the employer of carrying out deductions under different heads from the suspension allowance payable to an employee. It was concluded that the employer cannot be permitted to pay inadequate quantum of subsistence allowance to a suspended employee.

In the case of K.Varadrajav. Corporation Bank. Manglore and another, 2004(III) CLR 623, the Karnataka High Court held that deduction of loan installments from the suspension allowance is unauthorized as the rules do not permit such deductions from the subsistence allowance. It was further concluded that if the service rules applicable to the employee suspended, permit deduction from the subsistence allowance, the employer may then cause such deductions.

In the case of Karnataka Central Co.op.Bank Ltd., Dharwad v. S.D. Karpi, [1988 LAB.I.C. 111] , it has been held that subsistence allowance is paid to an employee so as to ensure that he survives and faces the enquiry. The said payment is not on account of any service rendered to the employer. Subsistence allowance is not paid by way of wages, but is only aimed at ensuring that the suspended employee is not made to starve or struggle to survive while facing the domestic enquiry.

Procedure and provisions relating to fine deduction from the pay

In the case of fines that need to be imposed on the employee, it should only be for the acts and omissions that are mentioned in the list of which has been approved by the appropriate Government. Fines should not exceed 3% of the wages in a month. This needs to be recovered within 90 days of the date of act or omission, be imposed after a proper show cause procedure and cannot be imposed on an employee of less than 15 years of age.

Employers have compulsorily to maintain following registers in the prescribed forms-

- Register of wages;
- Register of fines;
- Register of deduction for damages or loss
- Register of advances.

Provision relating to timely payment of wages to employees

As per the provisions under Payment of Wages Act, 1936 wages needs to be paid-

- On a working day and before the expiry of the 7th day after the last day of the wage period, where there are less than 1000 workers employed and in rest case on the 10th day [section 5(1)]
- Before the expiry of the second day, to the person whose employment is terminated [section 5(2)].
- In current coin or currency notes and by cheques or by crediting the wages in the employee's bank account after obtaining his written authority; [section 6]

Responsibility of the employer towards payment of wages to employee (Section 3)

Every employer shall be responsible for the payment of all wages required to be paid under the Payment of Wages Act, 1936 to persons employed by him and in case of persons employed-

- In the case of contractor, a person designated by such contractor who is directly under his charge;
- A person designated by the employer as a person responsible for complying with the provisions of the Act

Section 14. Inspectors

An inspector appointed under The Factories Act, 1948 shall be an inspector for fulfilling the purposes of this Act also for all the factories. The State Government has the authority to appoint a person to be an inspector for attaining the objective of this Act. An inspector has the power to make examinations and inquiries, enter, inspect and search any premises, supervise upon the payment of employees of any railways, can ask for production of documents and registers, seize and take copies of such registers or documents and any other powers which he is authorised to do under this Act. Every inspector acting under this Act shall be a public servant and is not authorise to compel any person for answering or stating anything.

(1) An Inspector of Factories appointed under 2 sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) The appropriate Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) The appropriate Government may, by notification in the Official Gazette, Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial or other establishments in respect of which they shall exercise their functions.

(4) An Inspector may,—

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made thereunder are being observed;

(b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable rime for the purpose of carrying out the object of this Act;

(c) supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment;

(d) require by a written order the production at such place, as may be prescribed, of any register or record maintained in pursuance of this Act and take on the spot or otherwise statements of any persons which he may consider necessary for carrying out the purposes of this Act;

(e) seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer;

(f) exercise such other powers as may be prescribed: Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(4A) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search or seizure under this sub-section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

Section 14A. Facilities to be afforded to Inspectors

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

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

(1)The appropriate Government may, by notification in the Official Gazette, appoint—

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

(b) any officer of the Central Government exercising functions as,— (i) Regional Labour Commissioner; or (ii) Assistant Labour Commissioner with at least two years' experience: or

(c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or

(d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or

(e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons, employed or paid in that area, including all matters incidental to such claims:

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section

Provided that where the appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.] Provided that every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(2) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees:

Provided that a claim under this Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority;

Provided further that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner: Provided also that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or

(c) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing an application under this section is satisfied—

(a) that the application was either malicious or vexatious, the authority may direct that a penalty not exceeding three hundred seventy five rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or

(b) that in any case in which compensation is directed to be paid under sub-section (3), the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a penalty not exceeding three hundred seventy five rupees be paid to the appropriate Government by the employer or other person responsible for the payment of wages.

(4A) Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final.

(4B) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193,219 and 228 of the Indian Penal Code (45 of I860).

(5) Any amount directed to be paid under this section may be recovered—

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

The Authority has no jurisdiction to entertain and decide claims involving complicated questions of law and facts. Continuance of such proceeding will amount to be an abuse of the process of law; [Abdul Waheed v. Authority, Payment of Wages Act, (1995) II LLJ 1079].

Compensation upto ten times cannot be granted in case of back wages awarded by the Industrial Tribunal; [Municipal Council v. Khubilal, (1992) 64 FLR 752 (Raj)]

The workman cannot be denied the wages when he reports himself on duty but the work is not taken from him by the employer; [J.D.A. v. Labour Court, (1990) 60 FLR 81 (Raj)]

Where the company was closed without any proper notice to the workmen and the workmen claimed wages for the period they were kept out of employment, section 25FFF of the Industrial Disputes Act was not applicable and the claim amounted to wages and not compensation and the authority under the Payment of Wages Act had jurisdiction to determine the same; [Banjarwala Tea Estate v. District Judge, 1981 Lab 1C 370]

Thus the authority may direct the refund of the amount deducted or delayed payment together with the payment of such compensation to the employee. The compensation in such cases shall not increase 10 times the amount deducted in the former case and not exceeding Rs.3000 and shall not be less than Rs.1500. If the authority is satisfied that the delay was due to bonafide error/dispute or the person responsible was unable to make payment due to exceptional circumstances delay was caused by the employee for making the application for the payment.

Section 17. Appeal

An appeal may be preferred against an order dismissing wholly or in part an application made under Section-15(2) or a direction made to refund to the employed person the amount deducted from wages or under Sec. 15 (4) by the Authority for payment of penalty to the employerand such appeal shall lie in the Presidency town before the Court of small causes and elsewhere before the district court. The appeal may

be preferred within 30 days of the date on which the order or direction was made. The Court may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision.

The appeal and deposit and information of deposit to court have to be within limitation of 30 days from the date of receipt of the certified copy of the impugned order; [**MurudharKshethriyaGramin Bank v. Bhagwan Ram, (1995) II LLJ 1076**].

Where an authority concerned passed an ex parte order against the management, the management ought to have availed of the remedy available under this section before filing a writ petition; [**Laxmi Industrial Corp. v. K.K. Tewari, (1995) II LLJ 276**].

Appeal is not made to a persona designata but to a court. Revision lies against the appellate order to the High Court; [**Bharatpur Central Co-op. Bank Ltd, v. Rattan Singh, (1990) II CLR 516 (Raj)**].

Section 17A. Conditional attachment of property of employer or other person responsible for payment of wages

The Authority or the Appellate Court can attach the property of an employer pending the disposal of such claim if it is satisfied that the employer is likely to evade payment of any amount that may be ordered to be paid by it.

(1) Where at any time after an application has been made under sub-section (2) of section 15 the authority, or where at any time after an appeal has been filed under section 17 by an employed person or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act or any other person permitted by the authority to make an application under sub-section (2) of section 15 the Court referred to in that section, is satisfied that the employer or other person responsible for the payment of wages under section 3 is likely to evade payment of any amount that may be directed to be paid under section 15 or section 17, the authority or the Court, as the case may be, except in cases where the authority or Court is of opinion that the ends of justice would be defeated by the delay, after giving the employer or other person an opportunity of being heard, may direct the attachment of so much of the property of the employer or other person responsible for the payment of wages as is, in the opinion of the authority or Court, sufficient to satisfy the amount which may be payable under the direction.

(2) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to attachment before judgment under that Code shall, so far as may be, apply to any order for attachment under sub-section (1).

Section 18. Powers of authorities appointed under section 15

Every authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for the purposes of section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Where an authority passed an order directing a party to produce the documents asked for by another party, the order would be liable to be quashed when the order was in the form of a bold directive to the party to produce the documents asked for by another party and it did not contain any recital about the documents which was to be produced and about their relevancy to the controversy which the authority was called upon to decide; [**Newspapers Ltd, Allahabad v. State of Uttar Pradesh, 1982 Lab I C 776**].

Section 20. Penal Provisions for contravention of the Act.

- For contravention of Section 5, 7 8, 9, 10, 11, 12 and 13, which mentions timely payment of wages, deductions which may be made from wages including fines, damage/loss or recovery of advances and loans. In such case, the punishment is fine not less than Ra. 1000 which may be extent to Rs. 5000. On subsequent conviction, the fine not less than Rs. 5000 may extend to Rs. 10,000.

- For failing to maintain registers, wilfully refusing or without lawful excuse neglecting to furnish information or refusing to answer or wilfully giving a false answer to any question necessary for obtaining any information required to be furnished under this Act. For such offences, fine shall not be less than Rs. 1000 and may be extended to Rs. 5000. For second or subsequent conviction fine not less than Rs. 5000 and may extend to Rs. 10,000.

- For wilfully obstructing an Inspector in the discharge of his duties and on refusal to produce of any register or other documents fine not less than Rs. 1000 extendable uptoRs. 5000. On subsequent conviction fine, not less than Rs. 5000 and may be extended uptoRs. 10,000.

- On conviction for any offence and again guilty of contravention of the same provision. Failing or neglecting to pay wages to any employee punishment of imprisonment not less than one month which may extend up to six months and fine not less than Rs. 2000 extendable uptoRs. 15,000 may be done. Additional fine uptoRs. 100 for each day.

The executing court cannot go beyond the order as passed. The High Court would not interfere in such a matter where the petitioner is not complying with the mandatory directions issued by competent authority; [Union of India v. Competent Authority, 1998 LLR]

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MODEL QUESTION PAPER

LABOUR LAW - I

PART A (2 x 12 = 24 marks)

Answer TWO of the following in about 500 words each.

Q1. Identify the rights and liabilities of a Registered Trade Union under the Trade Union Act, 1926

Q2. Explain the powers and procedures of Conciliation Officer and Board of Conciliation constituted under the Industrial Disputes Act, 1947.

Q3. Discuss the provisions relating to authorized deductions from the wages of an employed person under the Payment of Wages Act, 1936

PART B (2 x 7 = 14 marks)

Answer TWO of the following in about 300 words each

Q4. Define industrial dispute. Explain when the individual dispute of a workman will become an industrial dispute under the Industrial Disputes Act, 1947

Q5. Analyse the provisions relating to registration and modification of standing orders under the Industrial Employment Standing Orders Act, 1946

Q6. Define wages and discuss the different kinds of wage structure and its components under wage laws in India

PART C (5 x 4 = 20 marks)

Q7. Write short notes on 5 of the following:

a. Amalgamation of Trade Union

b. Illegal Strike

c. Works Committee:

d. Lay Off

e. Domestic Enquiry

f. Collective Bargaining

g. Unfair labour practices

Part D (2 x 6 = 12 marks)

Answer TWO of the following by referring to relevant provisions of law and decided cases. Give cogent reasons in support of your answers

Q8. While working on a machine, a worker accidentally drops an appliance worth Rs 10,000 which is broken. The employer deducts the value of the appliance on instalment basis from the worker's wages. Identify whether the deduction is justified or not

Q9. The Non-Gazetted Government Officers Union applied to the Registrar of Trade Unions for registration. The application was rejected by the Registrar. Discuss the validity of his stand

Q10. A was a workman engaged on a casual basis for doing a particular urgent work. A's service was terminated by the employer on completion of the work. Identify whether the termination amounts to layoff or retrenchment under the Industrial Disputes Act, 1947. Support your discussion with relevant case laws.

Answer Key

Q1. Identify the rights and liabilities of a Registered Trade Union under the Trade Union Act, 1926

A1. Registration optional – Registered TUs get special rights and liabilities – Right to form Unions is a fundamental right Art 19(1)(c) – Concomitant rights are not fundamental rights TK Rangarajan Vs Govt of TN – General fund – right to collect and conserve funds, general and political – Section 15, Section 6 – Inspection, Audit and Annual returns – Immunity from criminal liabilities S. 17 – Immunity from civil liability S 18 – protection to protected workmen - Cases

Q2. Explain the powers and procedures of Conciliation Officer and Board of Conciliation constituted under the Industrial Disputes Act, 1947.

A2. Conciliation Officer – Section 4 Appointment - Section 11(2) power of entry and inspection of premises – S. 11(4) Power to call for and inspect documents – S. 11(6) public servants – Duties S 12 – Administrative, not judicial or quasi-judicial Jaswant Sugar Mills Vs Lakshmi Chand – Failure report and Government's power of reference

Board of Conciliation – S 5 Appointment – Section 11 Powers, functions, and procedure – S 13 Duties

Q3. Discuss the provisions relating to authorized deductions from the wages of an employed person under the Payment of Wages Act, 1936

A3. S. 7 – 7(1) and 7(2) – Authorised deductions – fines – absence from duty – damage or loss – house accommodation – amenities and services – recovery of advances or adjustment for overpayment – recovery of loans – recovery of building loans etc – income tax – order of court – for payment of cooperative societies etc from provident fund – for payment to cooperative societies or insurance schemes or EIC – insurance premium or fidelity guarantee bond – recovery of losses – limit of deduction S. 7(3)

Part B

Q4. Define industrial dispute. Explain when the individual dispute of a workman will become an industrial dispute under the Industrial Disputes Act, 1947

A4. S 2(k) definition of industrial dispute – collective bargaining ideal is implicit – interpretation of dispute as per Wester India Automobile Association Vs Industrial Tribunal – individual dispute – support by a substantial number of workmen in the industry or a section thereof can make it an industrial dispute – Newspapers Ltd Vs Industrial Tribunal UP – Requisites – substantial number of fellow workmen – whether automatic termination of service attracts S 2A

Q5. Analyse the provisions relating to registration and modification of standing orders under the Industrial Employment Standing Orders Act, 1946

A5. Draft Standing Orders S. 3 – Condition for certification S 4 – Duties of Certifying Officer S. 5 - Certifictation of standing orders S 5 – Certified standing orders have force of law – who are bound – Appeals against certification S 5(2) and S 6 – Operative date of standing orders etc S7 – Modification S 10 – Conditions for modification – procedure for modification – powers of the Certifying officer and Appellate Authority

Q6. Define wages and discuss the different kinds of wage structure and its components under wage laws in India

A6. Express Newspapers Vs Union of India – Living Wage, Fair wage and Minimum Wage – Definition of wages under Minimum Wages Act and Payment of Wages Act – Statutory minimum wage

Part C

Q7.

a. Amalgamation of Trade Union

Ans: S 24 of Trade Union Act - procedure and conditions

b. Illegal Strike

Ans: S. 24 Industrial Disputes Act – Grounds for illegal strikes p violation of Sections 22 and 23 – Impact of illegal strike on wages, trade union immunities, and disciplinary action

c. Works Committee:

Ans: S 3 of Industrial Disputes Act – Functions – North Brooks Jute Company Vs Their workmen – Efficacy

d. Lay Off

Ans: Chapter VA – S 2(kkk) – right of compensation – Badli workman – Continuous service – S 25E

e. Domestic Enquiry:

Ans: if an employee does not comply with the standing order/codes of conduct, liable to face disciplinary actions initiated by the Management according to the Standing Order - called Domestic Enquiry and conducted in accordance with the standing order/agreements- obligatory for the employers to hold a fair and just enquiry to prove the misconduct before awarding any serious punishment - else, it is a violation of the principles of natural – **SurEnamel and Stamping Works (P) Ltd. v. Their Workmen [AIR 1963 SC 1914]** – preliminary enquiry – charge sheet – enquiry report

f. Collective Bargaining

Ans: Bank Empoyees Association Vs National Industral Tribunal – US Congress definition – Definition by the Industrial relations handbook – Scope – Indian context – advantages and disadvantages – bargaining power

g. Unfair labour practices

Ans: S 2(ra) read with V Schedule of Industrial Disputes (Amendment) Act, 1982 – Code of Discipline in Industry, 1958

Part D

Q8. While working on a machine, a worker accidentally drops an appliance worth Rs 10,000 which is broken. The employer deducts the value of the appliance on instalment basis from the worker's wages. Identify whether the deduction is justified or not

Q9. The Non-Gazetted Government Officers Union applied to the Registrar of Trade Unions for registration. The application was rejected by the Registrar. Discuss the validity of his stand

Q10. A was a workman engaged on casual basis for doing a particular urgent work. A's service was terminated by the employer on completion of the work. Identify whether the termination amounts to layoff or retrenchment under the Industrial Disputes Act, 1947. Support your discussion with relevant case laws.

For Questions 8, 9 and 10: Steps to be followed

1. Facts of the Case: Briefly summarise the key facts as per the question
2. Issue: Enumerate the legal issue(s) involved
3. Decision: Explain the legal provisions related to the case and the decision to be taken
4. Relevant case law: Cite a relevant case law relating to the facts of the case

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REFERENCES:

Statutory Materials :

1. Industrial Disputes Act, 1947
2. Trade Unions Act, 1926
3. Industrial Employment (Standing Orders) Act, 1946
4. Payment of Wages Act, 1936
5. Minimum Wages Act, 1948

Books

1. Madavan Pillai, Labour and Industrial Laws
2. S.N. Misra, Labour and Industrial Laws
3. V.G. Goswami, Labour Law
4. O.P. Malhotra, Industrial Disputes Act, 1947
5. K.D.Srivastava, Law Relating to Trade Union
6. K.D.Srivastava, Industrial Employment (Standing Orders) Act, 1946

Web Sources:

1. http://www.ilo.org/ifpdial/areas-of-work/labour-dispute/lang—en/index.htm.
2. http://www.whatishumanresource.com/the-industrial-disputes-act-1947
3. http://osnacademy.com/contentImage/841409574429Labour%20Legislation.pdf
4. http://www.jusmaxima.com/attachments/Labour_Laws_in_India.pdf
5. https://www.ukessays.com/essays/economics/wage-determination-in-india-economics-essay.php.
6. http://elearning.nokomis.in/UploadDocuments/Industrial%20Relations.%20&%20Labour%20laws/Chp%2016%20Labour%20Laws%20An%20Overview/PPT/Chapter%2016.pdf.
7. http://studiognot.com/public/english/template1/samples/norm/introduction/why.htm
8. http://library.fes.de/pdf-files/bueros/genf/50036.pdf
9. http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/India-Trade-Unions-and-Collective-Bargaining.pdf.
10. http://ncw.nic.in/acts/TheTradeUnionsAct1926.pdf
11. https://indiankanoon.org
12. http://www.delhi.gov.in/wps/wcm/connect/doit_labour/Labour/Home/Acts+Implemented/Details+of+the+Acts+Implemented/The--Trade+Unions+Act%2C+1926/.

13. http://www.ilo.org/dyn/natlex/docs/WEBTEXT/32075/64876/E26IND01.htm

14. http://www.yourarticlelibrary.com/trade-unions/procedures-for-the-registration-of-trade-unions/35465/.

15. http://www.whatishumanresource.com/the-industrial-disputes-act-1947.

16. https://labour.telangana.gov.in/Faqs.do

17. https://sites.google.com/site/wwwkatiyarkatiyar/team-roster-and-stats/act.

18. http://www.advocatekhoj.com/library/bareacts/industrial/2.php?Title=Industrial%20Disputes%20Act,%201947&STitle=Definitions.

19. http://www.advocatekhoj.com/library/bareacts/industrial/2.php?Title=Industrial%20Disputes%20Act,%201947&STitle=Definitions.

20. http://www.legalservicesindia.com/article/article/retrenchment-under-industrial-dispute-act-1947-773-1.html.

21. http://www.psalegal.com/upload/publication/assocFile/LABOURBULLETIN-ISSUEIII.pdf

22. http://hanumant.com/IndustrialDisputeAct.html

23. http://hrylabour.gov.in/docs/labourActpdfdocs/Industrial_Employment_Act.pdf.

24. http://aipnbsf.org/files/Microsoft%20Word%20-%20Domestic%20Enquiry.pdf.

25. http://industrialemploymentact1946.blogspot.in/2010/03/industrial-employment-standing-orders_22.html.

26. http://www.kkhsou.in/main/EVidya2/management/minimum_wages.html

27. https://elibrarywcl.files.wordpress.com/2015/02/minimum_wages-act_1948.pdf.

28. http://www.lawnotes.in/Section_4_of_Minimum_Wages_Act,_1948.