CLASS: BBA 5th semester

Industrial Relations and Labour Law

BBA 531-18 INDUSTRIAL RELATIONS AND LABOUR LAWS

OBJECTIVE AND EXPECTED OUTCOME OF THE COURSE:

To give insight into industrial relations and related aspects prevailing in a company and to familiarise the students with various Labour Legislations applicable to a Company

UNIT-I

Definition, Concepts, Nature of industrial relations, Importance of industrial relations, Approaches to industrial relations, Nature of Trade Unions, Trade Union movement in India, Reasons for employees to join trade Unions, Problems of Trade Unions & Remedies. Quality circles, history of QC, Organization structure of QC, Benefits of QC, Problems of QC.

UNIT-II

Concept of collective bargaining, Prerequisites for collective bargaining, the collective bargaining process, Principles of Collective Bargaining, Essential conditions for the success of collective bargaining, Meaning & Concept of grievance – causes of grievance – effects of grievance - Grievance redressal procedure.

UNIT-III

Meaning & causes of Industrial Conflicts, Types of Industrial Conflicts. Strikes & Lockouts, Machinery for resolving Industrial Disputes under Law. Meaning of workers participation in management, concepts and objectives of workers participation in management, growth and development of workers participation in management, types of workers participation in management.

UNIT-IV

Overview and aspects covered by Factories Act , Industrial Disputes Act ,Payment of wages Act, Payment of Bonus Act, ESI Act, Payment of Gratuity Act, Minimum Wage Act, PF Act.

SUGGESTED READINGS/BOOKS:

1. Davar:Personnel management and Industrial Relations.
2. Memoria ,C.B:Dynamics of industrial Relations in India.
3. Johnson:Introduction to Industrial Relations.
4. Sharma A.M:Industrial Relations.
5. Ghosh, Biswanth:Personnel management and Industrial Relations.
6. Bhagdiwall Flippo:Personnel management and Industrial Relations.
7. Kapoor, N.D:Labour Legislation.
8. Memoria ,C.B:Personnel management

UNIT-I

Labour law. **Labour law** (also known as **labor law** or **employment law**) mediates the **relationship** between workers, employing entities, trade unions and the government. Collective **labour law** relates to the tripartite **relationship** between employee, employer and union.

Industrial Relations (IR): Concept, Scope and Objectives

Industrial Relations (IR): Concept, Scope and Objectives!

Concept of IR:

Basically, IR sprouts out of employment relation. Hence, it is broader in meaning and wider in scope. IR is dynamic and developing socio-economic process. As such, there are as many as definitions of IR as the authors on the subject. Some important definitions of IR are produced here.

Scope of IR:

Based on above definitions of IR, the scope of IR can easily been delineated as follows:

1. Labour relations, i.e., relations between labour union and management.

2. Employer-employee relations i.e. relations between management and employees.

3. The role of various parties' viz., employers, employees, and state in maintaining industrial relations.

4. The mechanism of handling conflicts between employers and employees, in case conflicts arise.

The main aspects of industrial relations can be identified as follows:

1. Promotion and development of healthy labour — management relations.

2. Maintenance of industrial peace and avoidance of industrial strife.

3. Development and growth of industrial democracy.

Objectives of IR:

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

Thus, the objectives of IR are designed to:

1. Establish and foster sound relationship between workers and management by safeguarding their interests.

2. Avoid industrial conflicts and strikes by developing mutuality among the interests of concerned parties.

3. Keep, as far as possible, strikes, lockouts and gheraos at bay by enhancing the economic status of workers.

4. Provide an opportunity to the workers to participate in management and decision making process.

5. Raise productivity in the organisation to curb the employee turnover and absenteeism.

6. Avoid unnecessary interference of the government, as far as possible and practicable, in the matters of relationship between workers and management.

7. Establish and nurse industrial democracy based on labour partnership in the sharing of profits and of managerial decisions.

8. Socialize industrial activity by involving the government participation as an employer.

5 Importance of Industrial Relation for Employees and Employers

Industrial relations usually imply good and positive relations between the employees and employers. The good IR help run an industry effectively and successfully, i.e., the desideratum of the day. The importance of IR can be imbued with multiplicity of justifications.

To mention, good IR help:

1. Foster Industrial Peace:

Under the mechanism of IR, both employees and managers discuss the matter and consult each other before initiating any actions. Doubts, if any, in the minds of either party are removed. Thus, unilateral actions that prop confusion and misunderstanding disappear from the scene. In

this way, IR helps create a peaceful environment in the organisation. Peace, in turn, breeds prosperity.

2. Promote Industrial Democracy:

Industrial democracy means the government mandated worker participation at various levels of the organisation with regard to decisions that affect workers. It is mainly the joint consultations that pave the way for industrial democracy and cement relationship between workers and management. This benefits the both. The motivated workers give their best and maximum to the organisation, on the one hand, and share their share of the fruits of organisational progress jointly with management, on the other.

3. Benefit to Workers:

IR benefits workers in several ways. For example, it protects workers against unethical practices on the part of management to exploit workers by putting them under inhuman working conditions and niggardly wages. It also provides a procedure to resolve workers' grievances relating to work.

4. Benefit to Management:

IR protects the rights of managers too. As and when workers create the problem of indiscipline, IR provides mangers with a system to handle with employee indiscipline in the organisation.

5. Improve Productivity:

Experiences indicate that good industrial relations serve as the key for increased productivity in industrial organisations. Eicher Tractors, Alwar represents one such case. In this plant, productivity went up from 32 per cent to 38 per cent between 1994 and 1997. This increase is attributed to the peaceful IR in the plant.

Similar other success stories abound in the country. As reported by V.S.P. Rao, Sundaram Fasteners (A TVS group company which begged the prestigious GM award for the fourth successive year in 1999 as a quality supplier of radiator caps) is well known for zero breakdowns, zero accidents and zero defects. Company did not lose even a single day due to strike. The per-employee productivity is comparable to the best in the world. One study rates the company among the 20 most competitive companies in the Asia.

Approaches to Industrial Relations: Unitary Approach, Pluralistic Approach, Marxist Approach and a Few Other Approaches

Approaches to Industrial Relation – Top 3 Approaches: Unitary Approach, Pluralistic Approach and Marxist Approach

Approach # 1. Unitary:

The unitary approach is based on the strong argument that there is only one source of authority i.e., the management, which owns and controls the dynamics of decision making in issues relating to negotiation and bargaining. Under unitary approach, industrial relations are grounded in mutual co-operation, individual treatment, team-work, and shared goals.

Work place conflict is seen as a temporary aberration, resulting from poor management, from employees who do not mix well with the organizational culture. Unions co-operate with the management and the management's right to manage is accepted because there is no 'we-they' feeling.

The underlying assumption is that everyone benefits when the focus is on common interest and promotion of harmony. Conflict in the form of strikes is not only regarded as necessary but destructive.

Advocates of the unitary approach emphasize on a reactive industrial relations strategy. They seek direct negotiations with employees. Participation of government, tribunals and unions is not sought or is seen as being necessary for achieving harmonious employee relations.

The unitary approach is being criticized as a tool for seducing employees away from unionism and socialism. It is also criticized as manipulative and exploitative.

Approach # 2. Pluralistic:

The pluralistic approach totally departs from the unitary approach and assumes that the organization is composed of individuals who form distinct groups with their own set of aims, objectives, leadership styles, and value propositions.

The organization is multi structured and there will be continued tension due to conflicts within and between the various sectional groups. In contrast to the unitary approach, the pluralistic approach considers conflict between management and employees as rational and inevitable.

The pluralistic approach perceives:

i. Organizations as coalitions of competing interests, where the role of the management is to mediate amongst the different interest groups.

ii. Trade unions as legitimate representatives of employee interests.

iii. Stability in industrial relations as the product of concessions and compromises between management and unions.

Legitimacy of the management's authority is not automatically accepted. Conflict between the management and workers is understood as inevitable and, in fact, is viewed as conducive for

innovation and growth. Employees join unions to protect their interests and influence decision-making by the management.

Unions, thus, balance the power between the management and employees. In the pluralistic approach, therefore, a strong union is not only desirable but necessary. Similarly, society's interests are protected by state intervention through legislation and industrial tribunals which provide orderly process for regulation and resolution of conflict.

The theories on pluralism were evolved in the mid-sixties and early seventies when England witnessed a resurgence of industrial conflicts. However, the recent theories of pluralism emanate from British scholars, and in particular, from Flanders and Fox.

According to pluralists, industrial conflict is inevitable and it needs to be contained within the social mechanism of collective bargaining, conciliation, and arbitration.

Approach # 3. Marxist:

Also known as the 'Radical Perspective', the Marxist approach is based on the proposition that the economic activities of production, manufacturing, and distribution are majorly governed by the objective of profit. Marxists, like the pluralists, regard conflict between employers and employees as inevitable.

However, pluralists believe that the conflict is inevitable in all organizations. Marxists see it as a product of the capitalist society. Adversarial relations in the workplace are simple one aspect of class conflict. The Marxist approach, thus, focuses on the type of society in which an organization functions.

Conflict arises not only because of competing interests within the organization, but because of the division within society between those who won or manage the means of production and those who have only their labour to offer. Industrial conflict is, thus, seen as being synonymous with political and social unrest.

The Marxist approach argues that for social change to take place, class conflict is required. Social change initiates strong reactions from the worker class and bridges the gap between the economically settled owners of factors of production and the economically dependent worker class. This approach views pluralism as unreal and considers industrial disputes and class conflicts as inevitable for the circular functioning of an industry.

Trade unions are seen both as labour reaction to exploitation by capital, as well as a weapon to bring about a revolutionary social change. Concerns with wage-related disputes are secondary. Trade unions focus on improving the position of workers within the capitalist system and not to overthrow. For the Marxists, all strikes are political.

Besides, Marxists regard state intervention via legislation and the creation of industrial tribunals as supporting management's interest rather than ensuring a balance between the competing

groups. This view is in contrast to the belief of the pluralists who argue that state intervention is necessary to protect the overall interest of society.

To Marxists, the pluralist approach is supportive of capitalism, the unitary approach anathema. Consequently, enterprise bargaining, employee participation, cooperative work culture, and the like which help usher in cordial industrial relations are not acceptable to Marxists.

Such initiatives are regarded as nothing more than sophisticated management techniques designed to reinforce management control and the continuation of the capitalist system.

Approach .4 M K Gandhi – The Gandhian Approach:

Gandhiji can be called one of the greatest labour leaders of modern India. His approach to labour problems was completely new and refreshingly human. He held definite views regarding fixation and regulation of wages, organisation and functions of trade unions, necessity and desirability of collective bargaining, use and abuse of strikes, labour indiscipline, and workers participation in management, conditions of work and living, and duties of workers.

The Ahmedabad Textile Labour Association, a unique and successful experiment in Gandhian trade unionism, implemented many of his ideas.

Gandhiji had immense faith in the goodness of man and he believed that many of the evils of the modern world have been brought about by wrong systems and not by wrong individuals. He insisted on recognising each individual worker as a human being. He believed in nonviolent communism, going so far as to say that "if communism comes without any violence, it would be welcome."

Gandhiji laid down certain conditions for a successful strike. These are – (a) the cause of the strike must be just and there should be no strike without a grievance; (b) there should be no violence; and (c) non-strikers or "blacklegs" should never be molested.

He was not against strikes but pleaded that they should be the last weapon in the armory of industrial workers and hence, should not be resorted to unless all peaceful and constitutional methods of negotiations, conciliation and arbitration are exhausted. His concept of trusteeship is a significant contribution in the sphere of industrial relations.

According to him, employers should not regard themselves as sole owners of mills and factories of which they may be the legal owners. They should regard themselves only as trustees, or co-owners. He also appealed to the workers to behave as trustees, not to regard the mill and machinery as belonging to the exploiting agents but to regard them as their own, protect them and put to the best use they can.

In short, the theory of trusteeship is based on the view that all forms of property and human accomplishments are gifts of nature and as such, they belong not to any one individual but to

society. Thus, the trusteeship system is totally different from other contemporary labour relations systems. It aimed at achieving economic equality and the material advancement of the "have-nots" in a capitalist society by non-violent means.

Gandhiji realised that relations between labour and management can either be a powerful stimulus to economic and social progress or an important factor in economic and social stagnation. According to him, industrial peace was an essential condition not only for the growth and development of the industry itself, but also in a great measure, for the improvement in the conditions of work and wages.

At the same time, he not only endorsed the workers' right to adopt the method of collective bargaining but also actively supported it. He advocated voluntary arbitration and mutual settlement of disputes.

He also pleaded for perfect understanding between capital and labour, mutual respect, recognition of equality, and strong labour organisation as the essential factors for happy and constructive industrial relations. For him, means and ends are equally important.

5. Human Resource Management Approach:

The term, human resource management (HRM) has become increasingly used in the literature of personnel/industrial relations. The term has been applied to a diverse range of management strategies and, indeed, sometimes used simply as a more modern, and therefore more acceptable, term for personnel or industrial relations management.

Some of the components of human resource management are – (a) human resource organisation; (b) human resource planning; (c) human resource systems; (d) human resource development; (e) human resource relationships; (f) human resource utilisation; (g) human resource accounting; and (h) human resource audit. This approach emphasises individualism and the direct relationship between management and its employees. Therefore, it questions the collective regulation basis of traditional industrial relations.

6. Psychological Approach to Industrial Relations:

According to psychologists issues to industrial relations have the differences in the perception of management, unions and rank and file of workers. The perpetual differences arise due to differences in personalities, attitudes, etc. Similarly, factors like motivation, leadership, group versus individual goals, etc., are responsible for industrial conflicts.

7. Sociological Approach to Industrial Relations:

Industry is a social world in miniature, organisations are communities of individuals and groups with differing personalities, educational and family backgrounds, emotions, sentiments, etc., these differences in individuals create problems of conflict and competition among the members of industrial societies.

Meaning and Nature of Trade Unions

A trade union or labour union is a continuing long term association of employees formed to promote, protect and improve, through collective action, the social, economic and political interests of its members.

Meaning

The **trade union** is an association, either of employees or employers or of independent workers. It is a relatively permanent combination of workers and is not temporary or casual. It is an association of workers engaged in securing economic benefits for its members.

According to Section 2(b) of the Trade Unions Act of 1926, "a **trade union** is any combination of persons, whether temporary or permanent, primarily for the purpose of regulating the relations between workers and employers, or between workers and workers and for imposing restrictive conditions on the conduct on the conduct of any trade or business, and includes the federation of two or more trade unions."

Characteristics of Trade Unions

1. **Association of employees**: A trade union is essentially an association of employees belonging to a particular class of employment, profession, trade or industry. For example, there are unions for teachers, doctors, film, artistes, weavers, mine workers and so on.
2. **Voluntary Association**: An employee joins the trade union out of his free will. A person cannot be compelled to join a union.
3. **Permanent Body**: A trade union is usually a permanent body. Members may come and go but the trade union remains.
4. **Common Interest**: The member of a trade union have certain matters of common interest-job security, better pay and working conditions and so on, which bring them together.
5. **Collective Action**: Even when an individual employee has any grievance over certain management decisions, the matter is sorted out by the intervention of the trade union Employees are able to initiate collective action to solve any problem concerning any particular employee or all the employees.
6. **Rapport with the Management:** The trade union seeks to improve relations between the employees and employers. The officials of the trade union hold talks with the members of the management concerning the problems of the employees in order to find an amicable solution. It is thus possible for the employees to have better rapport with the management.

Need for Trade Unions

Workers join trade unions to achieve certain objectives that they may not be able to achieve in their personal capacity. Trade unions are necessary.

- **To ensure job security and right pay for the members**: One of the basic needs of any employee is security of service. The main reason why an employee joins a union is to get him secured. Apart from job security and employees need to get pay commensurate with their qualifications and skills. Trade unions strive to get both job security and correct pay for all employees.
- **To ventilate the grievances of employees to the management:** When the employees in general or some in particular have any grievance, they may not be able to convey the same to the management in their personal capacity. Such grievances may be brought to the knowledge of the management through the trade union. The members of the management may be indifferent to the demands of the individual employees but they cannot be so when it comes to union demands.

Nature and Scope of Trade Unions

The employer's association or professional bodies were not included in any of the above definitions. The employee's unions are different from that of the employers or professional bodies. The employee's unions are primarily concerned with the terms and conditions of employment of their members. The employer's associations on the other hand are concerned among other things with influencing the terms of purchase of services in favour of their members. Hence, the two should not be placed in one category. The associations of professional members also differ fundamentally from employees unions. Professional associations include self employed as well as the employees where as trade unions consist only of the people who are employed by others. In India the term Trade Union refers besides employee's organizations to employers association also. Similarly in Britain, even the associations of professional people such as Artists Federation or Musicians Unions are also recognized as Trade Unions.

Thus trade unions are a major component of the modern industrial relation system. A trade union of workers is an organization formed by workers to protect their interests. i.e. improve their working conditions etc. All trade unions have objectives or goals to achieve, which are contained in their constitution and each has its own strategy to reach those goals.

Trade Unions are now considered a sub-system which seeks to serve the specific sub-groups interest and also considers itself a part of the organization, in terms of the latter's viability and contribution to the growth of the community of which it is a part.

Purpose of Trade Unions

Trade unions came into being for a variety of purposes. Individual workers found it more advantageous to band together and seek to establish their terms and conditions of employments. They realized that if they bargained as individuals, the employer would have a better leverage, for an individual would not matter as much as a group in terms of the running of the enterprise. A group's contribution is much larger than an individual's so are the effects of its withdrawal. An individual may not be able to organize and defend his interests as well as a group can. Therefore workers saw the advantages of organizing themselves into groups to improve their terms and conditions of employment. Employers also found it advantageous to deal with a group

or a representative of a group rather than go through the process of dealing with each individual over a length of time. Precisely, the major objectives of trade union are the following:

- Better wages
- Better working conditions
- Protection against exploitation
- Protection against victimization
- Provide welfare measures
- Promote industrial peace
- Take up Collective Bargaining
- Look after the interest of trade

6 Phases of Trade Union Movement in India

The six phases of trade union movement in India are as follows: A. Pre-1918 Phase B. 1918-1924 Phase C. 1925-1934 Phase D. 1935-1938 Phase E. 1939-1946 Phase F. 1947 and Since.

Trade unionism is a world-wide movement. The evolution and growth of trade unionism has been sine qua non with growth in industrialisation. Accordingly, the evolution of trade unionism in India is traced back towards the latter half of the nineteenth century.

The origin and development of trade union movement in India may well be studied under distinct phases with their distinguishing features from others.

A historical account of the various phases of trade union movement in India is presented now:

A Pre-1918 Phase:

The setting up of textiles and jute mills and laying of the railways since 1850 payed the way for that emergence of industrial activity and, in turn, labour movement in India. Some researchers have traced the origin of labour movement in India dated back to 1860. However, most of the writers on the subject trace the history of labour movement in India since 1875.

The first labour agitation, under the guidance and leadership of Mr. S. S. Bengalee, a social reformist and philanthropist, started in Bombay in 1875 to protect against the appalling conditions of workers in factories, especially those of women and children and appealed to the authorities to introduce legislation for the amelioration of their working conditions.

As a result, the first Factory Commission was appointed in Bombay in the year 1875 and the first Factories Act was passed in 1881. Mr. N. M. Lokhande may be said to be the founder of organised labour movement in India who founded the first trade union in the country, namely, the Bombay Mill Hands Association (1890).

This was followed by a series of associations such as the Amalgamated Society of Railway Servants in India (1897), The Printers' Union of Calcutta (1905), The Madras and Calcutta Postal Union (1907), and the Kamgar Hitwardhak Sabha (1910). All these unions aimed at promoting welfare facilities for workers and spreading literacy among them.

The broad features of the labour movement during the pre-1918 phase may be subsumed as:

(i) The movement was led mostly by the social reformers and philanthropists and not by the workers.

(ii) There was, in fact, no trade union in existence in the true sense.

(iii) The labour movement was for the workers rather than by the workers.

(iv) The movement was confined to the revolt against the conditions of child labour and women workers working in various industries under appalling conditions.

B. 1918-1924 Phase:

The phase 1918-1924 is considered as the era of formation of modem trade unionism in the country. The trade union movement got momentum just after the close of the World War I. The postwar economic and political conditions contributed to the new awakening of class consciousness among the workers. This led to the formation of trade unions in the truly modem sense of the term.

As a result, Ahmedabad Textile Labour Association (1917), led by Shrimati Ansuyaben Sarabhai; the Madras Labour Union (1918), led by B. P. Wadia; Indian Seamen's Union, Calcutta Clerk's Union; and All India Postal and RMS Association were formed.

The various factors that influenced the growth of trade union movement in India during this phase may be briefly catalogued as follows:

1. The wretched conditions of workers on account of spiralling prices of essential commodities during the post-World-War I led workers to form trade unions to improve their bargaining power and, in turn, living conditions.

2. The political scenario characterized by the home-rule movement and the martial law in Punjab made the politicians to recognize the workers movement as an asset to their cause. At the same time, workers also needed able guidance and leadership from the politicians to settle their grievances with the employers.

3. The Russian Revolution also swayed the labour movement in India showing a new social order to the common man in the country.

4. The setting up of the International Labour Organisation (ILO) in 1919 also gave a big fillip to the labour movement in India. India becoming a founder-member of the ILO required deputing delegates to the ILO. Mr. N. M. Joshi for the first time was deputed as the representative from India to International Labour Conferences and Sessions. It ignited workers' anxiety to organize. As a result, the All India Trade Union Congress (AITUC) was formed in 1920. By 1924, the trade union movement in India proliferated to the extent of 167 trade unions with a quarter million members.

This period in the history of trade union movement has been described as the Early Trade Union Period.

C. 1925-1934 Phase:

With increasing hardships of workers, the signs of militant tendencies and revolutionary approach in trade unionism got expression into violent strikes since 1924. The communists gained influence in L trade union movement during this period. They split the Trade Union Congress twice with their widening differences with the left-wing unionists.

The moderate section under the leadership of Mr. N. M. Joshi and Mr. V. V. Giri seceded from the Congress and set up a separate organization named the National Trade Unions Federation (NTUF).

Another split in AITUC took place in 1931 at its Calcutta session when the extreme left wing under the leadership of Messrs S. V. Deshpande and B T Randive broke away and formed a separate organization, namely, the All India Red Trade Union Congress Two Years later, the National Federation of Labour was formed to facilitate unity among all the left-wing organizations of labour. As a result, the AITUF and NFL merged to form the National Trade Union Federation (NTUF).

Another important feature of this period was the passing of two Acts, namely, the Trade Unions Act 1926 and the Trade Disputes Act, 1929 which also gave a fillip to the growth of trade unionism in India. The former Act provided for voluntary registration and conferred certain rights and privileges upon registered unions in return for obligations. The later Act provided for the settlement of trade unions. This phase of the Indian labour movement may be described as The Period of Left Wing Trade Unionism.

D. 1935-1938 Phase:

The Indian National Congress was in power in seven provinces in 1937. This injected unity in trade unions. As a result, the All India Red Trade Union Congress itself with the AITUC in 1935. After three years in 1938, the National Trade Union Congress (NTUC) also affiliated with the AITUC. Other factors that contributed to the revival of trade unions were increasing awakening among the workers to their rights and change in the managerial attitude towards trade unions.

In 1938, one of the most developments took place was the enactment of the Bombay Industrial Disputes Act, 1938. An important provision of the Act, inter alia, to accord compulsory recognition of unions by the employers gave a big fillip to the growth of trade unionism in India.

E. 1939-1946 Phase:

Like World War I, the World War II also brought chaos in industrial front of the country. Mass retrenchment witnessed during the post-World War II led to the problem of unemployment .This compelled workers to join unions to secure their jobs. This resulted in big spurt in the membership of registered trade unions from 667 in 1939-40 to 1087 in 1945-46.

Somuchso workers in the registered trade unions witnessed a phenomenal increase from 18,612 to 38,570 during the same period. The AITUC again split in 1941 when Dr. Aftab Ali, President of the Seamen s Association, Calcutta disaffiliated his union from the Congress and formed a new organization known as the "Indian Federation of Labour".

The year 1946 was also marked by two important enactments, namely, the Industrial Employment (Standing Orders) Act, 1946 and the Bombay Industrial Relations Act, 1946. Both the Acts, through their provisions, contributed to strengthen the trade unionism in the country.

F. 1947 and Since:

Proliferation of trade unions in the pattern of proliferation of political parties has been a distinguishing feature in the trade union history of India during the post-Independence period. In May 1947, the Indian National Trade Union Congress (INTUC) was formed by the nationalists and moderates and was controlled by the Congress Party. Since by then, the AITUC is controlled by the Communists.

The Congress socialists who stayed in AITUC at the time of the formation of INTUC subsequently formed the Hind Mazdoor Sabha (HMS) in 1948 under the banner of the Praja Socialist Party. Subsequently, the HMS was split up with a group of socialist and formed a separate association, namely, "Bhartiya Mazdoor Sabha" (BMS) which is now an affiliate of the Bhartiya Janata Party (B JP). Years after, the communist party split into various fractions forming the United Trade Union Congress (UTUC) and the Center of Indian Trade Unions (CITU).

Later again, a group disassociated itself from the UTUC and formed another UTUC—Lenin Sarani. Of late, with the emergence of regional parties since 1960, most of the regional parties have shown its inclination to a trade union wing, thus, adding to the proliferation of trade unions in the country. Thus, it is clear that the origin and growth of trade union movement in India is riddled with fragmented politicization.

Why do Workers Join a Trade Union? (Reasons)

Human beings are rational creature. They usually act upon rationally in different spheres of their lives. Similarly, workers join a union with a rationale approach whether joining a union will be beneficial or not. This can simply be decided by making a cost-benefit analysis in this regard. The excess of benefits over costs, i.e., profit or reward, justifies workers' joining to a trade union. Researchers have devoted a great deal of time and effort to study "why do employees choose to join a union. Major ones among them are the following:

Job Security:

Employees need to have a sense of job security and want to be sure that management will not make unfair and arbitrary decisions about their employment. They look unions to ensure that their jobs are duly protected against layoffs, recall, promotion, etc.

Wages and Benefits:

Employees work for livelihood, i.e., bread-and-butter. Obviously, bread-and-butter issues of employees are always important issues in their unionization. The employees may think that the union, with its united strength, will ensure fair wages at par with those of other workers in the community, benefits such as medical facility, pensions, paid sick leave, vacations and holidays for them.

Working Conditions:

Employees like to work in a healthy and safe environment. Although there are statutory provisions for providing employees safe work environment employees still feel more secured knowing that trade union is directly involved in safety and health issues relating to them.

Fair and Just Supervision:

The days are long gone when managers / leaders could rule employees with an iron fist. Thanks to the trade unions that brought about a change or shift in leadership styles from autocratic to democratic, or say, people oriented to ensure that the managers treat their employees fairly, justly, and respectfully. Employees can only be disciplined for "just cause." In case of mistreatment from the employer, the employee may file a written grievance against the employer. The complaint will be heard and resolved through a formal grievance procedure involving collective discussion by both union and management representatives.

Powerlessness:

Employees individually often feel voiceless or powerless to bring about changes that will benefit them'. But, it is union that provides them a powerful, collective voice to communicate to management their dissatisfaction and frustration. This is based on labour philosophy 'unity is the strength".

Need to Belong:

Man is a social animal. Hence, need to belong is strong in both his personal and work lives. The union, from this point of view, provides a mechanism for bringing people together not only to promote common job-related interests but also to organise programmers, functions, and social events from time to time, to create a strong bond among the union members'.

To conclude, the management's failure in ensuring job security, fair remuneration, safe and healthy working conditions, fair supervision, involvement in decision making, sense of belonging etc., to employees motivates them to join a union.

Problems of Trade Unions & Remedies

1. Trade Union leadership: The nature of leadership significantly influences the union-management relations as the leadership is the lynch-pin of the management of trade unions. The leadership of most of the trade unions in India has been outside leadership mainly drawn from political parties.

The evil effects of outside leadership: The evil effects of outside leadership analyzed by National Commission on Labour are as follows:

1. Outside leadership undermined the purposes of Trade Unions and weakened their authority. Personal benefits and prejudices sometimes weighed more than unions.
2. Outside leadership has been responsible for the slow growth of Trade Unions.
3. Internal leadership has not been developed fully.
4. Most of the leaders cannot understand the worker' problems as they do not live the life of a worker.

Measures to minimize the evil effects of outside leadership: In view of the limitations of outside leadership, it is desirable to replace the outside leaders progressively by the internal leaders. The National Commission on Labour, 1969, also stated that outsiders in the Trade Unions should be made redundant by forces from within rather than by legal means. Both the management and trade unions should take steps in this direction. The steps may be:

- Management should assure that the victimisation will be at zero level, even if the
- trade unions are led by insiders;
- Extensive training facilities in the areas of leadership skills, management
- techniques and programmes should be provided to the workers;
- Special leave should be sanctioned to the office bearers.

Union rivalry has been the result of the following factors:

1. The desire of political parties to have their basis among the industrial workers;
2. Person-cum-factional politics of the local union leader;
3. Domination of unions by outside leaders;
4. Attitude and policies of the management, i.e., divide and rule policy; and
5. The weak legal framework of trade unions.

Measures to minimise union rivalry: In view of the evil effects of inter-union rivalry and the problem of formation of one union in one industry, it may be necessary to consider the recommendations of National Commission on Labour, 1969. The recommendations of NCL to minimise union rivalry are:

1. Elimination of party politics and outsiders through building up of internal leaders;
2. Promotion of collective bargaining through recognition of sole bargaining agents;
3. Improving the system of union recognition;
4. Encouraging union security; and
5. Empowering labour courts to settle inter-union disputes if they are not settled within the organisation.

2. Multiple unions: Multiple unionisms both at the plant and industry levels pose a serious threat to industrial peace and harmony in India. The situation of multiple unions is said to prevail when two or more unions in the same plant or industry try to assert rival claims over each other and function with overlapping jurisdiction. The multiple unions exist due to the existence of craft unions, formations of two or more unions in the industry. Multiple unionism is not a phenomenon unique to India. It exists even in advance countries like UK and USA. Multiple unionism affects the industrial relations system both positively and negatively. It is sometimes desirable for the healthy and democratic health of labour movement. It encourages a healthy competition and acts as a check to the adoption of undemocratic practice, authoritative structure and autocratic leadership. However, the negative impacts of multiple unions dominate the positive impacts. The nature of competition tends to convert itself into a sense of unfair competition resulting in inter-union rivalry. The rivalry destroys the feeling of mutual trust and cooperation among leadership. It is a major cause for weakening the Trade Union Movement in India. Multiple unionism also results in small size of the unions, poor finances, etc.

3. Union Rivalry: The formal basis for Trade Union Organisation is provided by the Indian Trade Union Act, 1926. The relevant article reads as follows: "Any seven or more members of a trade union may be subscribing their name to the roles of the trade union and by otherwise complying with the provisions of this act with respect to the registration, apply for registration of the trade union under this Act."

This provision has led to the formation of multiple unions and resulted in interunion rivalry in different industries. But the inter-union rivalry breaks the very purpose of the trade unions by weakening the strength of collective bargaining. On the other hand, the existence of a single, strong union not only protects the employee interests more effectively but also halts the various

unproductive activities of the unions and forces the leaders to concentrate on the strategic issues. Further, it helps to bring about congenial industrial relations by bringing about a system of orderliness in dealing with the employees and by facilitating expeditious settlement of disputes.

The state of rivalry between two groups of the same union is said to be inter union rivalry. Inter and intra-union rivalries have been a potent cause of industrial disputes in the country. They are responsible for weal bargaining power of trade unions in collective bargaining. These rivalries are responsible for slow growth of trade union movement in the country.

4. Finance: Sound financial position is an essential ingredient for the effective functioning of trade unions, because in the process of rendering services or fulfilling their goals, trade unions have to perform a variety of functions and organise programmes which require enormous financial commitments. Hence, it is imperative on the part of a trade union to strengthen its financial position.

But it is felt that the income and expenditure of trade unions in India over the years is such, with few exceptions, that the financial position of the union is generally weak, affecting their functioning. It is opined that, "trade unions could be more effective, if they paid more attention to strengthening their organisations and achieving higher attention of financial solvency."

The primary source of income to the unions is membership subscription. Their other sources of union finances are donations, sale of periodicals, etc. The items of expenditure include: allowances to office bearers, salaries to office, annual convention/meeting expenses, rents, stationery, printing, postage, telegrams, etc.

Most of the trade unions in India suffer from inadequate funds. This unsound financial position is mostly due to low membership and low rate of membership fee. Trade Union Act, 1926, prescribed the membership fee at 25 paise per member per month. But the National Commission on Labour recommended the increase of rate of membership subscription from 25 paise to Re. 1 in the year 1990. But the Government did not accept this recommendation.

As the National Commission on Labour observes, " an important factor limiting the effective functioning of unions in our country has been their financial weakness.. In most unions, poor finances are the result of inadequate membership strength. This in turn, can be traced to the small size of units. In a majority of unions, the rate of contributions required of members is also small. With a relatively low rate of unionisation, total funds collected are small. The general picture of finances of unions is disappointing."

5. Low membership: The average membership figures of each union are quite depressing. In 1992-93 the average membership figure was 632, a steady fall from 3,594 per union from 1927-28. "Because of their small size, unions suffer from lack of adequate funds and find it difficult to engage the services of experts to aid and advise members in times of need'. They can't bargain with the employer effectively on their own.

6. Heterogeneous nature of labour: Since workers come to the factory with varying backgrounds, it is difficult for them to put a joint front in case of trouble. Employers exploit the

situation, under the circumstances, by dividing workers on the basis of race, religion, language, caste, etc.

7. Lack of Interest: For a large majority of workers, unionism even today remains a foreign issue. In fact, workers avoid union activities out of sheer disinterestedness. Those who become part of the union, do not also participate in the union work enthusiastically. In such a scenario, it is not surprising to find outside political leaders exploiting the situation serve their own personal agenda.

8. Absence of paid office bearers: Weak finances do not permit unions to engage the services of full time, paid office bearers. Union activists, who work on a part time basis, neither have the time nor the energy to take up union activities sincerely and diligently.

9. Other problems: The other factors responsible for the unsound functioning of trade unions in India are:

1. **Illiteracy:**Workers in India fail to understand the implications of modern trade unionism. Their illiteracy coupled with ignorance and indifference account for the predominance of outside leadership.
2. **Uneven growth:** Trade unionism activities are, more or less, confined to major metros in India and traceable only in large scale units (especially cotton textile. The membership fees should be raised as the amount of wages of the workers increased significantly, compared to the situation in 1926 when Trade Union Act provided for the collection of 25 paise per month per member as subscription fee. Even amended Rs.l/- is not sufficient. Some other source of finance may also explored to make trade union financially healthy.

Other Measures

- Trade unions should extend welfare measures to the members and actively pursue social responsibilities. Social responsibility of Trade Unions should go beyond their limited constituency within members only.

- The Trade Union Act, 1926 should be amended and the number of members required to form a trade union should be increased from 7 to 50% of the employees of an organisation. Similarly, the scope for the outside leadership should be reduced from 50% to about 10%. The membership subscription should be enhanced from 25 paise to 1 % of the monthly wage of the worker.

- Trade Unions should make efforts to raise their declining membership which is world over phenomenon.

Quality circles

A *quality circle* or *quality* control *circle* is a group of workers who do the same or similar work, who meet regularly to identify, analyze and solve work-related problems. It consists of minimum three and maximum twelve members in number

A quality circle is a volunteer group composed of workers , usually under the leadership of their supervisor , who are trained to identify, analyze and solve work-related problems and present their solutions to management in order to improve the performance of the organization, and motivate and enrich the work of employees. When matured, true quality circles become self-managing, having gained the confidence of management.

Participative management technique within the framework of a companywide quality system in which small teams of (usually 6 to 12) employees voluntarily form to define and solve a quality or performance related problem. In Japan (where this practice originated) quality circles are an integral part of enterprise management and are called quality control circles.

"**A Quality Circle** is volunteer group composed of members who meet to talk about workplace and service improvements and make presentations to their management with their ideas." (Prasad, L.M, 1998).

BENEFITS OF QUALITY CIRCLES

There are no monetary rewards in the QC's. However, there are many other gains, which largely benefit the individual and consecutively, benefit the business. These are:

- Self-development: QC's assist self-development of members by improving self-confidence, attitudinal change, and a sense of accomplishment.
- Social development: QC is a consultative and participative programme where every member cooperates with others. This interaction assists in developing harmony.
- Opportunity to attain knowledge: QC members have a chance for attaining new knowledge by sharing opinions, thoughts, and experience.
- Potential Leader: Every member gets a chance to build up his leadership potential, in view of the fact that any member can become a leader.
- Enhanced communication skills:The mutual problem solving and presentation before the management assists the members to develop their communication skills.
- Job-satisfaction: QC's promote creativity by tapping the undeveloped intellectual skills of the individual. Individuals in addition execute activities diverse from regular work, which enhances their self-confidence and gives them huge job satisfaction.

- Healthy work environment: QC's creates a tension-free atmosphere, which each individual likes, understands, and co-operates with others.

- Organizational benefits: The individual benefits create a synergistic effect, leading to cost effectiveness, reduction in waste, better quality, and higher productivity.

Objectives of Quality Circle

The perception of Quality Circles today is 'Appropriateness for use1 and the tactic implemented is to avert imperfections in services rather than verification and elimination. Hence the attitudes of employees influence the quality. It encourages employee participation as well as promotes teamwork. Thus it motivates people to contribute towards organizational effectiveness through group processes. The following could be grouped as broad intentions of a Quality Circle:

1. To contribute towards the improvement and development of the organization or a department.
2. To overcome the barriers that may exist within the prevailing organizational structure so as to foster an open exchange of ideas.
3. To develop a positive attitude and feel a sense of involvement in the decision making processes of the services offered.
4. To respect humanity and to build a happy work place worthwhile to work.
5. To display human capabilities totally and in a long run to draw out the infinite possibilities.
6. To improve the quality of products and services.
7. To improve competence, which is one of the goals of all organizations?
8. To reduce cost and redundant efforts in the long run.
9. With improved efficiency, the lead time on convene of information and its subassemblies is reduced, resulting in an improvement in meeting customers due dates.
10. Customer satisfaction is the fundamental goal of any library. It will ultimately be achieved by Quality Circle and will also help to be competitive for a long time.

History and Working of Quality Circles:

Q.C. was conceived in Japan in 1962 as a forum for training its work force for improving the quality of products. Q.C. is a voluntary one. Employees are free to join or not to join. In it, 8 to 10 employees including the Supervisor from same workshop doing similar work join together as a group. The Supervisor can become leader of the group, if the members of Q.C. so desire.

It is a part time activity; members of Q.C. are allowed to meet for an hour every week. During the various meetings, these groups progressively identify, select, analyse and solve the problems. Later they offer their proposed solutions to management for consideration, approval and implementation. Additionally a senior officer from same workshop is nominated as facilitator who guides the activities of the group. A Management Committee at senior level is also formed,

which overview the progress of Quality Circles. Training of members, leaders and facilitators is very important for the success of programme.

Rules for Quality Circles:

(a) Each member can contribute an idea on his turn in rotation.

(b) Each member offers only one idea per turn regardless of how many he or she has in mind.

(c) Not everyone has an idea during each rotation, when this occurs just say "Pass".

(d) No criticism or comments should be passed on the ideas being contributed by the member whatever old it may look to be, welcome their ideas.

(e) During brain-storming, no evaluation of suggested idea should occur. This applies equally to leader, phrases such as "We have tried it before", "Impractical", "Well" "May be it would work". "Doubtful", "Very good" etc. should not be uttered.

(f) Members can vote by raising their hands.

(g) Only supporting votes are taken. Votes against the ideas are not allowed.

(h) The time allotted for brain-storming session should be variable. The length of time that can be spent profitably will vary widely with nature of problem and the group itself. As a general practice, one hour is probably the minimum.

(i) While members give their ideas, they are recorded by the Recorder on a large sheet.

(j) It is often helpful to set a goal originally, i.e. Let us start for 30 ideas.

(k) When all members say "pass" then the first phase of brain-storming session is over. This means all ideas have been exhausted.

(l) Now all the ideas recorded on the sheet are displayed.

(m) These massive number of ideas are then narrowed down by the process of voting. The voting technique works because the members are experts in their areas. Members vote on each idea. The leader records each vote next to the idea.

(n) Members can vote for as many ideas as they feel have value. Only supporting votes are taken.

(o) Leader draws a circle around those ideas that receive the most votes. The members thus find that many of the top ideas will be so identified.

(p) Now the members can focus on a few important ideas instead of being somewhat confused by a large number of them. These few important ideas are voted on to give ranking to the circle ideas. Leader writes the ranking number beside each idea that has been circled.

(q) A member can ask for voting on any idea and argue for or against it. Others can join, if they wish. Only when the discussion has finished then the voting take place.

Idea ranked in the session can then be taken up for analysis or solution later on.

Steps for Setting up Quality Circles:

For starting Quality Circles in an organisation, following steps should be taken:

(i) First of all Managers, Supervisors and Foremen must be made to understand the concepts and activities of Q.C.

(ii) Management's total support and commitment should be made known to everyone in the organisation.

(iii) Steering committee is formed with the top management personnel to give direction to Quality Circle activities.

(iv) A facilitator (or sometimes known as promoter) is selected from the senior management level, who will serve as coordinator and advisor to the circle.

(v) Supervisor and foreman are then trained to act as Q.C. leaders.

(vi) Members of each circle must be selected from the persons who are doing similar type of work or belong to the same department or section.

(vii) Membership to the circle is voluntary.

(viii) First few meetings of the circle are held with a view to train them.

(ix) To start with, only one to two circles should be formed in an organisation, and then increase the number gradually as more and more experience is gained.

(x) Meetings must be held regularly, may be once in a week initially and once in a month on completion of basic training of members.

(xi) Everyone's suggestion or problem matching with the circle's objectives is discussed.

(xii) Total participation of team members must be encouraged.

(xiii) Recommendations of the circle must be considered and decisions should be taken without delay.

Quality Circle

Quality circles consist of a basically formal, institutionalized mechanism for productive and participative problem solving interaction among the employees of an organization. **Quality circles** are made of groups of employees (normally 6 to 12) who perform similar tasks or share an area of responsibility.

Structure for Quality Circle

1. Top Management.

- Visibly demonstrate its understanding, support and faith in Quality Circle activity.
- Provide adequate budget for QC activity.
- Institute an award system, which can motivate employees to voluntarily join the circles.
- Promote healthy competition between circles.
- Provide time to time inputs to eventually lead the activity towards self sustenance.
- Attend Management presentations of Quality Circles.
- Respond to the suggestions/recommendations made by QCs in prompt and positive manner.
- Monitor the progress of the activity on regular basis.
- Make QC activity review a mandatory point for the regular Management reviews.

2. Steering Committee.

This committee comprises of senior managers with executive powers and will have following functions to perform towards Quality Circle activity.

- Give full support to the activity in their respective areas.
- Develop working methodology and overall framework for QC activity.
- Establish program objectives and requirement of resources.
- Provide policy guidelines and directions.
- Nominate coordinator and facilitators.
- Attend Management presentations of QCs
- Obtain feedback from the facilitator and act on his recommendations.
- Decide on the rewards to QCs, based on their performance.
- Continuously monitor the QC activity.

3. Coordinator.

Coordinator is a person appointed by the steering committee, who will coordinate the QC activity throughout the organization so that the activity runs in a smooth, effective and self-sustaining manner. He will have following functions to perform.

- Registering all the Quality Circles in the organization.
- Liasoning with facilitators for regular and timely meetings of the QCs and Management presentations.
- Convening the steering committee meetings and circulate the minutes.
- Organizing all documentation and publication of QC cases.
- Giving all the assistance required by QCs.
- Publishing news letter on QC activity.
- Preparing training material and organizing training of facilitators and leaders
- Keeping track of QC activity outside the organization and disseminating the relevant information within the organization
- Creating awareness of QC activity at grass roots level in order to motivate employees at all levels to join the activity.
- Organizing conventions on QCs.

4. Facilitator.

He is a senior officer of the department nominated by the Steering Committee to carry out following functions, which will help and consolidate the Quality Circle activities in his department.

- Attending the Quality Circle meetings at least for a brief time.
- Giving guidance to Circles for conducting the meetings as per laid down system and ensuring that proper records are maintained of each meeting.
- Arranging for the necessary training to Circle members with the help of the Coordinator.
- Providing the necessary facilities and resources to the Circles.
- Arranging for any external help required by the Circles.
- Resolving the problems faced by the Circles.
- Acting as a link between Circles and the Management.
- Collection and dissemination of information, publications, literature etc. related to Quality Circle activity.
- Arranging periodic get-togethers of the Circle members with participation of Management personnel.
- Cultivating and promoting participative culture within his department.

5. Leader.

A person chosen by the Circle members from amongst themselves. Leader can change by rotation. During starting phase of a Circle, a supervisor can be the Leader but eventually, any member can be nominated as a Leader by the Circle members. Functions of the Leader are:

- Convening and conducting the Circle meetings as per the laid down schedule.
- Maintaining all the documentation related to the Circle activities.
- Arranging for the necessary training of the Circle members with the help of Facilitator.
- Ensure involvement of every member.
- Setting goals and reviewing progress during each meeting.
- Drawing an action plan and delegate responsibilities to the Circle members.
- Encouraging a consensus approach in problem solving.
- Get external help as and when required with the help oh Facilitator.
- Prepare for Management presentations.

6. Members.

Members are the basic and most important element of Quality Circles. They are mostly drawn from the work area where the Quality Circle is formed and continue to be members of the Circle as long as they are the part of that work area. Their functions are:

- Be regular and punctual for the Quality Circle meetings.
- Get conversant with various statistical tools recommended for problem solving.
- Identify problems in the work area and put these forth for consideration in the Circle meeting.
- Contribute ideas for problem solving.
- Cooperate with other members and the leader to form a cohesive team.
- Take part in Management presentations.

Implementation of Quality Circle activity

Introduction of Quality Circle activity must be preceded by implementation of Total Quality Control (TQC). This will help in developing management attitudes and practices oriented towards quality of processes and creating a culture conducive to defect free operations. Creation of a 'Flexible workforce' and implementation of Quality Circle activity can become complementary activities. Once a suitable atmosphere is created within the organization, following steps can be taken for implementation of Quality Circle activity.

- Discussions between different layers of organizational structure wiz Top Management – Departmental Heads, Departmental Heads – Sectional heads, Sectional Heads – Supervisors, Supervisors – Operators about the concept of Quality Circle and its relevance to the organization.
- Training programs for different levels to explain the basics of Quality Circles and the role each level is expected to play in the activity.
- Gathering the feedback from participants on their views and inhibitions.
- Clearing the doubts in everybody's minds and make them receptive to the concept.
- Form a Steering Committee to give overall direction to the effort.
- Select a coordinator and entrust him with the job of working out a methodology, which is suitable for the organization for starting the activity.
- Select the departments where the pilot Quality Circles can be started.
- Select the Facilitator and Leaders and train them to play their role effectively.
- Motivate the members to join voluntarily and train them for their role.

- Start the meetings of pilot Circles and closely follow their work.
- Arrange for the Management presentations for the pilot Quality Circles and give wide publicity for their achievements.
- Extend the activity to few more departments.
- Keep on encouraging areas where the activity is not started by showing them the achievements of the working Quality Circles in other areas and the benefits and recognition they have received.

Management Presentation

This is the most vital part of the Quality Circle activity as it gives an opportunity to the Circle members to present the work they have done in identifying the problem in their work area and the systematic efforts they have put in to analyze the problem and find a solution for the same.

Quality Circle Training

Training for Quality Circle activity covers following aspects:

1. Bringing in the awareness about "What is Quality Circle Activity?" and "How it can be beneficial to every participating individual as well as to the organization.?" This is necessary to overcome initial resistance to the new idea and prepare the the employees to voluntarily accept the change.
2. Prepare every person involved in the Quality Circle activity to play his role effectively.

People are to be trained for specific roles and the specific training to be given to each level is given below.

Training for Members

- Introduction to Quality Circle activity and its benefits to the individual and to the organization.
- Basic Statistical Quality Control tools.
- Problem solving tools e.g. 7 step breakthrough sequence.
- Brainstorming.
- Record keeping and reporting.
- Presentation skills.

Training for Leaders

- Quality Circle principles and its working.
- Effective communication.
- Leadership.
- Motivation.
- Art of conducting meetings.
- Goal setting and follow-up.
- Collection, analysis and presentation of data.
- Making effective presentation.

- Team building.

Training for Facilitator

- Quality Circles – Its genesis, concept and philosophy.
- Roles of Facilitator and Leader.
- Group dynamics.
- Conflict resolution.
- Proactive Management.
- Likely problems in Quality Circle activity and their solutions.

Training for Coordinator and Top Management

- Role of Top Management in Quality Circle activity.
- Empowering people.
- Appraisal and reward systems.

UNIT 2nd

Collective Bargaining: Definition, Types, Features and Importance

In this article we will discuss about:-

1. Definition of Collective Bargaining

2. Forms of Collective Bargaining

3. Essential Pre-Requisites

4. Main Features

5. Means;

6. Constituents

7. Theories

8. Importance

9. Hindrances

10. Scope

11. Government Policy

12. Advantages

13. Disadvantages.

Definition of Collective Bargaining:

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

This is also commonly known as collective bargaining as both the parties eventually agree to follow a decision that they arrive at after a lot of negotiation and discussion.

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

"Collective Bargaining is a mode of fixing the terms of employment by means of bargaining between organized body of employees and an employer or association of employees acting usually through authorized agents. The essence of Collective Bargaining is bargaining between interested parties and not from outside parties".

Collective Bargaining Involves:

(i) Negotiations

(ii) Drafting

(iii) Administration

(iv) Interpretation of documents written by employers, employees and the union representatives

(v) Organizational Trade Unions with open mind.

Essential Pre-Requisites for Collective Bargaining:

Effective collective bargaining requires the following prerequisites:

(i) Existence of a strong representative trade union in the industry that believes in constitutional means for settling the disputes.

(ii) Existence of a fact-finding approach and willingness to use new methods and tools for the solution of industrial problems. The negotiation should be based on facts and figures and both the parties should adopt constructive approach.

(iii) Existence of strong and enlightened management which can integrate the different parties, i.e., employees, owners, consumers and society or Government.

(iv) Agreement on basic objectives of the organisation between the employer and the employees and on mutual rights and liabilities should be there.

(v) In order that collective bargaining functions properly, unfair labour practices must be avoided by both the parties.

(vi) Proper records for the problem should be maintained.

(vii) Collective bargaining should be best conducted at plant level. It means if there are more than one plant of the firm, the local management should be delegated proper authority to negotiate with the local trade union.

(viii) There must be change in the attitude of employers and employees. They should realise that differences can be resolved peacefully on negotiating table without the assistance of third party.

(ix) No party should take rigid attitude. They should enter into negotiation with a view to reaching an agreement.

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

It may be emphasised here that the institution of collective bargaining represents a fair and democratic attempt at resolving mutual disputes. Wherever it becomes the normal mode of setting outstanding issues, industrial unrest with all its unpleasant consequences is minimised.

Main Features of Collective Bargaining:

Some of the salient features of collective bargaining are:

1. It is a Group Action:

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

2. It is a Continuous Process:

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

3. It is a Bipartite Process:

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

4. It is a Process:

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

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

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

6. It is Industrial Democracy at Work:

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

7. It is Dynamic:

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

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

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

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

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

9. It is an Art:

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

Theories of Collective Bargaining:

There are three important concepts on collective bargaining which have been discussed as follows:

1. The Marketing Concept and the Agreement as a Contract:

The marketing concept views collective bargaining as a contract for the sale of labour. It is a market or exchange relationship and is justified on the ground that it gives assurance of voice on the part of the organised workers in the matter of sale. The same objective rules which apply to

the construction of all commercial contracts are invoked since the union-management relationship is concerned as a commercial one.

According to this theory, employees sell their individual labour only on terms collectively determined on the basis of contract which has been made through the process of collective bargaining.

2. The Governmental Concept and the Agreement as Law:

The Governmental Concept views collective bargaining as a constitutional system in industry. It is a political relationship. The union shares sovereignty with management over the workers and, as their representative, uses that power in their interests. The application of the agreement is governed by a weighing of the relation of the provisions of the agreement to the needs and ethics of the particular case.

3. The Industrial Relations (Managerial) Concept as Jointly Decided Directives:

The industrial relations concept views collective bargaining as a system of industrial governance. It is a functional relationship. Group Government substitutes the State Government. The union representative gets a hand in the managerial role. Discussions take place in good faith and agreements are arrived at. The union joins with company officials in reaching decisions on matters in which both have vital interests. Thus, union representatives and the management meet each other to arrive at a mutual agreement which they cannot do alone.

Importance of Collective Bargaining:

The collective bargaining advances the mutual understanding between the two parties i.e., employees and employers.

The role of collective bargaining may be evaluated from the following point of view:

(1) From Management Point of View:

The main object of the organisation is to get the work done by the employees at work at minimum cost and thus earn a high rate of profits. Maximum utilization of workers is a must for the effective management. For this purpose co-operation is required from the side of the employees and collective bargaining is a device to get and promote co-operation. The labour disputes are mostly attributable to certain direct or indirect causes and based on rumors, and misconceptions. Collective bargaining is the best remedial measure for maintaining the cordial relations.

(2) From Labour and Trade Union Point of View:

Collective bargaining can be made only through the trade unions. Trade unions are the bargaining agents for the workers. The main function of the trade unions is to protect the economic and non- economic interests of workers through constructive programmes and

collective bargaining is one of the devices to attain that objective through negotiations with the employers, Trade unions may negotiate with the employer for better employment opportunities and job security through collective bargaining.

(3) From Government Point of View:

Government is also concerned with the process of collective bargaining. Government passes and implements several labour legislations and desires it to be implemented in their true sense. If any person violates the rules and laws, it enforces them by force.

Collective bargaining prevents the Government from using the force because an amicable agreement can be reached between employer and employees for implementing the legislative provisions. Labour problems shall be minimised through collective bargaining and industrial peace shall be promoted in the country without any force.

Collective bargaining is a peaceful settlement of any dispute between worker and employers and therefore it promotes industrial peace and higher productivity resulting an increase in the Gross National Product or the national income of the country.

Main Hindrances for Collective Bargaining:

The main objective of developing collective bargaining technique is to improve the workers-management relations and thus maintain peace in industries. The technique has developed in India only after India got independence and got momentum since then.

The success of collective bargaining lies in the attitude of both management and workers which is actually not consistent with the spirit of collective bargaining in India. There are certain problems which hinder the growth of collective bargaining in India.

The following factors or activities act as hindrances to effective collective bargaining:

(1) Competitive Process:

Collective bargaining is generally becoming a competitive process, i.e., labour and management compete each other at negotiation table. A situation arises where the attainment of one party's goal appears to be in conflict with the basic objectives of the other party.

(2) Not Well-Equipped:

Both the parties—management and workers—come to the negotiation table without doing their homework. Both the parties start negotiations without being fully equipped with the information, which can easily be collected from company's records. To start with, there is often a kind of ritual, that of charges and counter charges, generally initiated by the trade union representatives. In the absence of requisite information, nothing concrete is achieved.

(3) Time to Protest:

The immediate objective of the workers' representatives is always some kind of monetary or other gains, accrue when the economy is buoyant and the employer has capacity to pay. But in a period of recession, when demand of the product and the profits are falling, it is very difficult for the employer to meet the demands of the workers, he might even resort to retrenchment or even closure collective bargaining is no answer to such a situation.

(4) Where Prices are Fixed by the Government:

In industries, where the prices of products are fixed by the Government, it becomes very difficult for the employer to meet the demands of workers which would inevitably lead to a rise in cost of the products produced. Whereas the supply price to the consumers cannot be increased. It will either reduce the profits of the firm or increase the loss. In other words, it will lead to closure of the works, which again is not in the interest of the workers.

(5) Outside Leadership:

Most of the Indian trade unions are led by outsiders who are not the employees of the concerned organisations. Leader's interests are not necessarily to be identical with that of the workers. Even when his bonafides are beyond doubt, between him and the workers he leads, there cannot be the degree of understanding and communication as would enable him to speak on behalf of the workers with full confidence. Briefly, in the present situation, without strong political backing, a workers' organisation cannot often bargain successfully with a strong employer.

(6) Multiplicity of Trade Unions:

One great weakness of collective bargaining is the multiplicity of trade unions. In a multiple trade union situation, even a well recognised, union with long standing, stable and generally positive relationship with the management, adopts a militant attitude as its deliberate strategy.

In Indian situation, inter-union rivalries are also present. Even if the unions combine, as at times they do for the purpose of bargaining with the employer they make conflicting demands, which actually confuse employer and the employees.

(7) Appointment of Low-Status Executive:

One of the weaknesses of collective bargaining in India is that the management deputes a low-status executive for bargaining with the employees. Such executive has no authority to commit anything on behalf of the management. It clearly indicates that the management is not at all serious and the union leaders adopt other ways of settling disputes.

(8) Statutory Provisions:

The constraints are also imposed by the regulatory and participative provisions as contained in the Payment of Wages Act, the Minimum Wages Act, and Payment of Bonus Act etc. Such provisions are statutory and are not negotiable.

(9) Fresh Demands at the Time of Fresh Agreement:

At the time when the old agreement is near expiry or well before that, workers representatives come up with fresh demands. Such demands are pressed even when the industry is running into loss or even during the period of depression. If management accepts the demand of higher wages and other benefits, it would prefer to close down the works.

(10) Agreements in Other Industrial Units:

A prosperous industrial unit in the same region may agree with the trade unions to a substantial increase in wages and other benefits whereas a losing industry cannot do that. There is always pressure on the losing industries to grant wages and benefits similar to those granted in other (relatively prosperous) units in the same region.

Scope of Collective Bargaining:

Collective bargaining broadly covers subjects and issues entering into the conditions and terms of employment. It is also concerned with the development of procedures for settlement of disputes arising between the workers and management.

A few important issues around which collective bargaining enters in this developing country are as follows:

"Recognition of the union has been an important issue in the absence of any compulsory recognition by law. In the under-developed countries in Asia, however, on account of the tradition concept of management functions and the immaturity of the industrialist class there is much resistance from the employers to recognise the status of the unions."

Bargaining upon wage problems to fight inflation or rising cost of living and to resist wage cuts during depression has resulted in several amicable agreements. But, no statistics are available for such amicable settlements. Therefore, Daya, points out, "It has been customary to view collective bargaining in a pattern of conflict; the competitively small number of strikes and lock-outs attract more attention than the many cases of peaceful settlement of differences."

Overtime work, holidays, leave for absence and retirement continue to be issues for bargaining in India, although they are not regarded as crucial.

Collective Bargaining in the Post- Independence Period:

Before Independence, the collective bargaining as it was known and practiced was virtually unknown in India. It was accepted, as a matter of principle, for usage in union management relations by the state.

Though it was emphasised in the First Five Year Plan that the State would encourage mutual settlement, collective bargaining and voluntary arbitration; to the utmost extent and thereby reduce number of intervention of the state in union management relations.

However, because of the imperatives of political and economic factors, the State was not prepared to encourage voluntary arbitrations and negotiations and the resulting show of strength by the parties. The State, therefore, armed itself with the legal powers which enabled it to refer disputes to an arbitrator or an adjudicator if the two parties fail to reach a mutually acceptable agreement.

This move of compulsory arbitration and adjudication was opposed by several labour leaders because they believed that this would destroy the picture of industrial relations in India. Dr. V.V. Giri expressed his views on this point at the Indian Labour Conference in 1952, "Compulsory arbitration" he declared, "has cut at the very root of trade union organisation…If the workers find that their interests are best promoted only by combining, no greater urge is needed to forge a band of strength and unity among them. But compulsory arbitration sees to it that such a band is not forged… It stands there is a policeman looking out for signs of discontent, and at the slightest provocation, takes the parties to the court for a dose of costly and not wholly satisfactory justice."

Despite this controversy, collective bargaining was introduced in India for the first time in 1952, and it gradually gained importance in the following years. The information, however, on the growth of collective bargaining process is very meager, and the progress made in this respect has not been very conspicuous, though not negligible. The data released by the Labour Bureau show that the practice of determining the rates of wages and conditions of employment has spread to most of the major segments of the national economy.

A sample, study covering the period from 1956 to 1960 conducted by the Employer's Federation of India has revealed that collective bargaining agreements have been arrived in respect of disputes ranging from 32 to 49 percent. Most of the collective bargaining agreements have been entered into at plant level. In this connection, the National Commission on Labour has thrown ample light on the progress of collective agreement.

In its own words, "Most of the collective bargaining (agreements) has been at the plant level, though in important textile centres like Bombay and Ahmedabad industry level agreements have been (fairly) common… Such agreements are also to be found in the plantation industry in the South, and in Assam, and in the coal industry. Apart from these, in new industries—chemicals, petroleum, oil refining and distribution, aluminium and electrical equipment, automobile repairing—the arrangement for the settlement of disputes through voluntary agreements have become common in recent years. In the ports and docks, collective agreements have been the role at individual centres. On certain matters affecting all the ports, all India agreements have been reached. In the banking industry, after the series of awards, employers and unions have, in recent years, come closer to reach collective agreements. In the Life Insurance Corporation (LIC) with the exception of the Employer's decision to introduce automation which has disturbed industrial harmony in some centres, there has been a fair measure of discussion across the table by the parties for the settlement of disputes."

The collective bargaining reached has been of three types:

(1) Agreement arrived at after voluntary direct negotiations between the parties concerned. Its implementation is purely voluntary;

(2) Agreements between the two parties, though voluntary in nature, are compulsory when registered as settlement before a conciliator; and

(3) Agreement which have legal status negotiated after successful discussion between the parties when the matter of dispute is under reference to industrial tribunal/courts.

Reasons for the Growth of Collective Bargaining:

The growth of collective bargaining in India may be attributed to the following factors:

(1) Statutory Provisions:

Which have laid down certain principles of negotiations, procedure for collective agreements and the character of representation of the negotiating parties?

(2) Voluntary Measures:

Such as tripartite conferences, joint consultative boards, and industrial committees at the industry level have provided an ingenious mechanism for the promotion of collective bargaining practices.

(3) Several Governments Measures:

Like schemes for workers' education, labour participation in management, the evolution of the code of Inter-union Harmony, the code of Efficiency and Welfare, the Code of Discipline, the formation of Joint Management Councils, Workers Committees and Shop Councils, and the formulations of grievances redressal procedure at the plant level— have encouraged the collective bargaining.

(4) Amendments to the Industrial Disputes Act:

The Amendments to the Industrial Disputes Act in 1964 provided for the termination of an award or a settlement only when a proper notice is given by the majority of workers. Agreements or settlements which are arrived at by a process of negotiation on conciliation cannot be terminated by a section of the workers.

(5) Industrial Truce Resolution:

The Industrial Truce Resolution of 1962 has also influenced the growth of collective bargaining. It provides that the management and the workers should strive for constructive cooperation in all

possible ways and throws responsibility on them to resolve their differences through mutual discussion, conciliation and voluntary arbitration peacefully.

Government Policy to Encourage Collective Bargaining:

Ever since independence, it has been the declared policy of the Central Government to encourage trade unions development and the settlement of differences in industry by mutual agreement.

Article 19 of the constitution guarantees for all citizens the right to form associations or unions, only by reserving to the state powers in the interest of public order to impose reasonable restrictions on the exercise of this right.

The Industrial policy Resolution of 1956 declared that, "in a socialist democracy labour is a partner in the common task of development", thus following out the resolution of the Lok Sabha of 1954 which set India on the path towards a "'socialistic pattern of society."

The Second Five Year Plan in 1956 was more specific and declared:

"For the development of an undertaking or an industry, industrial peace is indispensable; obviously, this can best be achieved by the parties themselves. Labour legislation and the enforcement machinery set up for its implementation can only provide a suitable framework in which employees and workers can function."

Has Government Discouraged Collective Bargaining?

It is obvious, that the declared policy of the government laid emphasis on the voluntary settlement of differences in industry. But industrial legislation since independence and government intervention to establish various standards of working conditions and machinery for compulsory arbitration of disputes have limited the scope of collective bargaining.

The areas that are covered by labour legislation are mainly physical working conditions and terms of employment, and to the extent that these are prescribed by law the scope of collective bargaining is limited.

The Industrial Employment (Standing Order) Act, 1948 makes compulsory the drawing up conditions of employment relating to methods of paying wages, hours of work, over time, shifts, holidays, termination of employment and disciplinary action, but not through joint negotiation. There is no statutory requirement that employer should discuss the draft standing orders with the union.

The Minimum Wages Act, also passed in 1948, has given statutory power to appropriate government to fix minimum wages in certain scheduled employments. The object of this legislation was to secure a minimum in those occupations or industries where the worker were not sufficiently organised to be able to negotiate reasonable wages for themselves.

If the government was committed to support the principle of collective bargaining, why no attempt was made to encourage it by legislation? The Trade Union Amendment Act, passed in 1947, did not in fact provide for the compulsory recognition by the employers of representative trade unions, but this act was never notified and so never came into force.

It is arguable that some legislative action to compel recognition of the more stable unions might have helped to create a better climate for encouragement of voluntary settlement in industry.

The attitude of the management and unions was commonly "Let the issue go to the tribunal", with the result that little real effort was made towards mutual settlement and conciliation officers found little response to their efforts at meditation. References to the adjudication piled up, the industrial tribunals were overwhelmed with cases, and lengthy delays and general frustration resulted.

From the above facts, it looks that the Government has discouraged the Development of Collective Bargaining in India. But the truth is that, the Government intention has never been to discourage it. In fact, the labour in India is not very well organised and it is not expected that it would be able to get its due share through collective bargaining.

Hence, the government has tried to protect in the interests of labour by passing the various acts such as the Factory Act of 1948. Employees State Insurance Act, 1948 and Minimum Wages Act. Hence, the cases involving industrial disputes should be to compulsory arbitration.

Khandubhai Desai, the then Labour Minister, stated in July 1956 that voluntary agreement to refer questions to arbitration was the best solution. But he added complete laissez-faire is out of date. Society cannot allow workers or management to follow the law of jungle. Therefore, as a last resort, the government has taken powers to refer disputes to adjudication.

It has, further, been argued that in a planned economy, the relations between the labour and management have also to be on planned basis.

They cannot be allowed to upset the production target just because one of the parties would not like to settle the disputes in fair manner.

Therefore, the Government of India under Industrial Disputes Act 1947 has created the following seven different authorities for the prevention and settlement of disputes:

1. Workers Committees.

2. Conciliation Officer.

3. Board of Conciliation.

4. Court of Enquiry.

5. Labour Courts.

6. Industrial Tribunals.

7. National Tribunals.

The important characteristic of the above machinery for the prevention and settlement of disputes is that, there is full scope for the settlement of dispute through collective bargaining and if it is not settled by Works Committees, Conciliation Officer, Board of Conciliation, only then, it is referred to Court of Enquiry and Labour Courts. The decision of the Labour Courts, Industrial Tribunal and National Tribunal is binding on both the parties.

Advantages of Collective Bargaining:

Perhaps the biggest advantage of this system is that, by reaching a formal agreement, both sides come to know exactly what to expect from each other and are aware of the rights they have. This can decrease the number of conflicts that happen later on. It also can make operations more efficient.

Employees who enter collective bargaining know they have some degree of protection from employer retaliation or being let go from the job. If the employer were dealing with just a handful of individuals, he might be able to afford to lose them. When he is dealing with the entire workforce, however, operations are at risk and he no longer can easily turn a deaf ear to what his employees are saying.

Even though employers might need to back down a little, this strategy gives them the benefit of being able to deal with just a small number of people at a time. This is very practical in larger companies where the employer might have dozens, hundreds or even thousands of workers on his payroll. Working with just a few representatives also can make the issues at hand seem more personal.

Agreements reached through these negotiations usually cover a period of at least a few years. People therefore have some consistency in their work environment and policies. This typically benefits the company's finance department because it knows that fewer items related to the budget might change.

On a broad scale, using this method well can result in more ethical way of doing business. It promotes ideas such as fairness and equality, for example. These concepts can spill over into other areas of a person's life, inspiring better general behavior towards others.

Disadvantages of Collective Bargaining:

A major drawback to using this type of negotiation system is that, even though everyone gets a say in what happens, ultimately, the majority rules, with only a few people determining what happens too many. This means that a large number of people, particularly in the general workforce, can be overshadowed and feel like their opinion doesn't really matter. In the worst case scenario, this can cause severe division and hostility in the group.

Secondly, it always requires at least two parties. Even though the system is supposed to pull both parties together, during the process of trying to reach an agreement, people can adopt us-versus-them mentality. When the negotiations are over, this way of looking at each other can be hard to set aside, and unity in the company can suffer.

Collective bargaining can also be costly, both in terms of time and money. Representatives have to discuss everything twice—once at the small representative meetings, and again when they relay information to the larger group. Paying outside arbitrators or other professionals quickly can run up a fairly big bill, and when someone else is brought in, things often get slower and more complex because even more people are involved.

Some people point out that these techniques have a tendency to restrict the power of employers. Employees often see this as a good thing, but from the company's perspective, it can make even basic processes difficult. It can make it a challenge to deal with individual workers, for example.

The goal of the system is always to reach a collaborative agreement, but sometimes tensions boil over. As a result, one or both parties might feel they have no choice but to muscle the other side into giving up. Workers might do this by going on strike, which hurts operations and cuts into profits. Businesses might do this by staging lockouts, which prevents members' of the workforce from doing their jobs and getting paid, negatively effecting income and overall quality of living.

Lastly, union dues are sometimes an issue. They reduce the amount of take-home pay a person has, because they usually are deducted right from his paycheck. When things are good in a company and people don't feel like they're getting anything from paying the dues, they usually become unhappier about the rates.

Meaning & Concept of grievance

Introduction and Definition of Grievance:

A grievance is any dissatisfaction or feeling of injustice having connection with one's employment situation which is brought to the attention of management. Speaking broadly, a grievance is any dissatisfaction that adversely affects organizational relations and productivity. To understand what a grievance is, it is necessary to distinguish between dissatisfaction, complaint, and grievance.

1. Dissatisfaction is anything that disturbs an employee, whether or not the unrest is expressed in words.

2. Complaint is a spoken or written dissatisfaction brought to the attention of the supervisor or the shop steward.

3. Grievance is a complaint that has been formally presented to a management representative or to a union official.

According to Michael Jucious, 'grievance is any discontent or dissatisfaction whether expressed or not, whether valid or not, arising out of anything connected with the company which an employee thinks, believes or even feels to be unfair, unjust or inequitable'.

In short, grievance is a state of dissatisfaction, expressed or unexpressed, written or unwritten, justified or unjustified, having connection with employment situation.

Features of Grievance:

1. A grievance refers to any form of discontent or dissatisfaction with any aspect of the organization.

2. The dissatisfaction must arise out of employment and not due to personal or family problems.

3. The discontent can arise out of real or imaginary reasons. When employees feel that injustice has been done to them, they have a grievance. The reason for such a feeling may be valid or invalid, legitimate or irrational, justifiable or ridiculous.

4. The discontent may be voiced or unvoiced, but it must find expression in some form. However, discontent per se is not a grievance. Initially, the employee may complain orally or in writing. If this is not looked into promptly, the employee feels a sense of lack of justice. Now, the discontent grows and takes the shape of a grievance.

5. Broadly speaking, thus, a grievance is traceable to be perceived as non-fulfillment of one's expectations from the organization.

Causes of Grievances:

Grievances may occur due to a number of reasons:

1. Economic:

Employees may demand for individual wage adjustments. They may feel that they are paid less when compared to others. For example, late bonus, payments, adjustments to overtime pay, perceived inequalities in treatment, claims for equal pay, and appeals against performance-related pay awards.

2. Work environment:

It may be undesirable or unsatisfactory conditions of work. For example, light, space, heat, or poor physical conditions of workplace, defective tools and equipment, poor quality of material, unfair rules, and lack of recognition.

3. Supervision:

It may be objections to the general methods of supervision related to the attitudes of the supervisor towards the employee such as perceived notions of bias, favouritism, nepotism, caste affiliations and regional feelings.

4. Organizational change:

Any change in the organizational policies can result in grievances. For example, the implementation of revised company policies or new working practices.

5. Employee relations:

Employees are unable to adjust with their colleagues, suffer from feelings of neglect and victimization and become an object of ridicule and humiliation, or other inter- employee disputes.

6. Miscellaneous:

These may be issues relating to certain violations in respect of promotions, safety methods, transfer, disciplinary rules, fines, granting leaves, medical facilities, etc.

Effects of Grievance:

Grievances, if not identified and redressed, may adversely affect workers, managers, and the organization.

The effects are the following:

1. On the production:

a. Low quality of production

b. Low productivity

c. Increase in the wastage of material, spoilage/leakage of machinery

d. Increase in the cost of production per unit

2. On the employees:

a. Increase in the rate of absenteeism and turnover

b. Reduction in the level of commitment, sincerity and punctuality

c. Increase in the incidence of accidents

d. Reduction in the level of employee morale.

3. On the managers:

a. Strained superior-subordinate relations.

b. Increase in the degree of supervision and control.

c. Increase in indiscipline cases

d. Increase in unrest and thereby machinery to maintain industrial peace

Need for a Formal Procedure to Handle Grievances:

A grievance handling system serves as an outlet for employee frustrations, discontents, and gripes like a pressure release value on a steam boiler. Employees do not have to keep their frustrations bottled up until eventually discontent causes explosion.

The existence of an effective grievance procedure reduces the need of arbitrary action by supervisors because supervisors know that the employees are able to protect such behavior and make protests to be heard by higher management. The very fact that employees have a right to be heard and are actually heard helps to improve morale. In view of all these, every organization should have a clear-cut procedure for grievance handling.

The five-step grievance handling procedure

1. Steps in Grievance Handling Procedure:

At any stage of the grievance machinery, the dispute must be handled by some members of the management. In grievance redressed, responsibility lies largely with the management. And, grievances should be settled promptly at the first stage itself. The following steps will provide a measure of guidance to the manager dealing with grievances.

i. Acknowledge Dissatisfaction:

Managerial/supervisory attitude to grievances is important. They should focus attention on grievances, not turn away from them. Ignorance is not bliss, it is the bane of industrial conflict. Condescending attitude on the part of supervisors and managers would aggravate the problem.

ii. Define the Problem:

Instead of trying to deal with a vague feeling of discontent, the problem should be defined properly. Sometime the wrong complaint is given. By effective listening, one can make sure that a true complaint is voiced.

iii. Get the Facts:

Facts should be separated from fiction. Though grievances result in hurt feelings, the effort should be to get the facts behind the feelings. There is need for a proper record of each grievance.

iv. Analyse and Decide:

Decisions on each of the grievances will have a precedent effect. While no time should be lost in dealing with them, it is no excuse to be slip-shod about it. Grievance settlements provide opportunities for managements to correct themselves, and thereby come closer to the employees.

Horse-trading in grievance redressed due to union pressures may temporarily bring union leadership closer to the management, but it will surely alienate the workforce away from the management.

v. Follow up:

Decisions taken must be followed up earnestly. They should be promptly communicated to the employee concerned. If a decision is favourable to the employee, his immediate boss should have the privilege of communicating the same.

Some of the common pitfalls that managements commit in grievance handling relate to:

(a) Stopping the search for facts too soon;

(b) Expressing a management opinion before gathering full facts;

(c) Failing to maintain proper records;

(d) Arbitrary exercise of executive discretion; and

(e) Settling wrong grievances.

2. Need for a Grievance Handling Procedure:

Grievance procedure is necessary for any organisation due to the following reasons:

(i) Most grievances seriously disturb the employees. This may affect their morale, productivity and their willingness to cooperate with the organisation. If an explosive situation develops, this can be promptly attended to if a grievance handling procedure is already in existence.

(ii) It is not possible that all the complaints of the employees would be settled by first- time supervisors, for these supervisors may not have had a proper training for the purpose, and they may lack authority. Moreover, there may be personality conflicts and other causes as well.

(iii) It serves as a check on the arbitrary actions of the management because supervisors know that employees are likely to see to it that their protest does reach the higher management.

(iv) It serves as an outlet for employee gripes, discontent and frustrations. It acts like a pressure valve on a steam boiler. The employees are entitled to legislative, executive and judicial protection and they get this protection from the grievance redreessal procedure, which also acts as a means of upward communication.

The top management becomes increasingly aware of employee problems, expectations and frustrations. It becomes sensitive to their needs, and cares for then well-being.

This is why the management, while formulating plans that might affect the employees for example, plant expansion or modification, the installation of labour-saving devices, etc., should take into consideration the impact that such plans might have on the employees.

(v) The management has complete authority to operate the business as it sees fit subject, of course, to its legal and moral obligations and the contracts it has entered into with its workers or their representative trade union. But if the trade union or the employees do not like the way the management functions, they can submit their grievance in accordance with the procedure laid down for that purpose.

A well-designed and a proper grievance procedure provide:

(i) A channel or avenue by which any aggrieved employee may present his grievance;

(ii) A procedure which ensures that there will be a systematic handling of every grievance;

(iii) A method by which an aggrieved employee can relieve his feelings of dissatisfaction with his job, working conditions, or with the management; and

(iv) A means of ensuring that there is some measure of promptness in the handling of the grievance.

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3. Key Features of a Good Grievance Handling Procedure:

(a) Fairness:

Fairness is needed not only to be just but also to keep the procedure viable, if employees develop the belief that the procedure is only a sham, then its value will be lost, and other means sought to deal with the grievances. This also involves following the principles of natural justice, as in the case of a disciplinary procedure.

(b) Facilities for Representation:

Representation, e.g., by a shop steward, can be of help to the individual employee who lacks the confidence or experience to take on the management single-handedly. However, there is also the risk that the presence of the representative produces a defensive management attitude, affected by a number of other issues on which the manager and shop steward may be at loggerheads.

(c) Procedural Steps:

Steps should be limited to three. There is no value in having more just because there are more levels in the management hierarchy. This will only lengthen the time taken to deal with matter and will soon bring the procedure into disrepute.

(d) Promptness:

Promptness is needed to avoid the bitterness and frustration that can come from delay. When an employee 'goes into procedure/ it is like pulling the communication cord in the train. The action is not taken lightly and it is in anticipation of a swift resolution. Furthermore, the manager whose decision is being questioned will have a difficult time until the matter is settled.

Essential Pre-requisites of a Grievance Handling Procedure:

Every organisation should have a systematic grievance procedure in order to redress the grievances effectively. As explained above, unattended grievances may culminate in the form of violent conflicts later on.

The grievance procedure, to be sound and effective should possess certain pre-requisites:

(a) Conformity with Statutory Provisions:

Due consideration must be given to the prevailing legislation while designing the grievance handling procedure.

(b) Unambiguity:

Every aspect of the grievance handling procedure should be clear and unambiguous. All employees should know whom to approach first when they have a grievance, whether the complaint should be written or oral, the maximum time in which the redressal is assured, etc. The redressing official should also know the limits within which he can take the required action.

(c) Simplicity:

The grievance handling procedure should be simple and short. If the procedure is complicated it may discourage employees and they may fail to make use of it in a proper manner.

(d) Promptness:

The grievance of the employee should be promptly handled and necessary action must be taken immediately. This is good for both the employee and management, because if the wrong doer is punished late, it may affect the morale of other employees as well.

(e) Training:

The supervisors and the union representatives should be properly trained in all aspects of grievance handling before hand or else it will complicate the problem.

(f) Follow up:

The Personnel Department should keep track of the effectiveness and the functioning of grievance handling procedure and make necessary changes to improve it from time to time.

UNIT 3rd

Meaning & causes of Industrial Conflicts

The **causes of industrial disputes** are many and varied. The major ones related to wages, union rivalry, political interference, unfair labour practices, multiplicity of labour laws, economic slowdown and others.

Industrial Dispute in India: Definition, Causes and Measures to Improve Industrial Relations!

According to Sec. 2 of the Industrial Dispute Act, 1947, "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" Industrial disputes are of symptoms of industrial unrest in the same way that boils are symptoms of a disordered body.

Whenever an industrial dispute occurs, both management and workers try to pressurize each other. The management may resort to lock-out and the workers may resort to strike, gherao, picketing, etc.

Strike:

Strike is a very powerful weapon used by a trade union to get its demands accepted. It means quitting work by a group of workers for the purpose of bringing pressure on their employer to accept their demands. According to Industrial Disputes Act, 1947, "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."

There are many types of strikes. A few of them are discussed below:

(i) Economic Strike:

Under this type of strike, members of the trade union stop work to enforce their economic demands such as wages, bonus, and other conditions of work.

(ii) Sympathetic Strike:

The members of a union collectively stop work to support or express their sympathy with the members of other unions who are on strike in the other undertakings.

(iii) General Strike:

It means a strike by members of all or most of the unions in a region or an industry. It may be a strike of all the workers in a particular region of industry to force demands common to all the workers. It may also be an extension of the sympathetic strike to express general protest by the workers.

(iv) Sit Down Strike:

When workers do not leave their place of work, but stop work, they are said to be on sit down or stay in strike. It is also known as tools down or pen down strike. The workers remain at their work-place and also keep their control over the work facilities.

(v) Slow Down Strike:

Employees remain on their jobs under this type of strike. They do not stop work, but restrict the rate of output in an organised manner. They adopt go- slow tactics to put pressure on the employers.

Lock-out:

Lock-out is declared by the employers to put pressure on their workers. It is an act on the part of the employers to close down the place of work until the workers agree to resume the work on the terms and conditions specified by the employers.

The Industrial Disputes Act, 1947 has defined lock-out as closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him. Lock-outs are declared to curb the activities of militant workers. Generally, lock-out is declared 25 a trial of strength between the management and its employees.

Gherao:

It is a Hindi word which means to surround. The term 'Gherao' denotes a collective action initiated by a group of workers under which members of the management of an industrial establishment are prohibited from leaving the business or residential premises by the workers who block their exit through human barricade.

A human barricade is created in the form of a ring or a circle at the centre of which the persons concerned virtually remain prisoners of the persons who resort to gherao. Gheraos are quite common in India these days. Gheraos are resorted to not only in industrial organisations, but also in educational and other institutions. The persons who are gheraoed are not allowed to more nor do any work.

Gheraos have been criticised legally and morally. Legally gheraos amount to imposing wrongful restraints on the freedom of some persons to move. That is why, courts have held it as an illegal action. Gheraos tend to inflict physical duress on the persons affected. They also create law and

order problem. Morally, to gherao a person to press him to agree to certain demands is unjustified because it amounts to getting consent under duress and pressure. A person who is gheraoed is subjected to humiliation.

Moreover, a person who has made a promise under gherao is justified in going back over the word after that. In short, as pointed out by a National Commission on Labour, gherao cannot be treated as a form of industrial protest because it involves physical coercion rather than economic pressure.

Picketing:

When workers are dissuaded from reporting for work by stationing certain men at the factory gates, such a step is known as picketing. If picketing does not involve any violence, it is perfectly legal. It is basically a method of drawing the attention of public towards the fact there is a dispute between the management and the workers.

Causes of Industrial Disputes:

We can classify the causes of industrial disputes into two broad groups:

(i) Economic causes, and

(ii) Non-economic causes.

Economic causes include:

(i) Wages,

(ii) Bonus,

(iii) Dearness allowance,

(iv) Conditions of work and employment,

(v) Working hours,

(vi) Leave and holidays with pay, and

(vii) Unjust dismissals or retrenchments.

Non-economic causes include:

(i) Recognition of trade unions,

(ii) Victimisation of workers,

(iii) Ill-treatment by supervisory staff,

(iv) Sympathetic strikes,

(v) Political causes, etc.

The percentage distribution of disputes by causes from 1973 onwards has been shown in Exhibit 2 reveals the following causes of industrial disputes:

1. Wages and Allowances:

Since the cost of living has generally showed an increasing trend, the workers have been fighting for higher wages to meet the rising cost of living and to increase their standard of living. 34.1% of the industrial disputes in 1973 were due to demand for higher wages and allowances. This percentage was 36.1% in 1974. During 1985, 22.5% of the disputes were due to wages and allowances. Wages and allowances accounted for 25.7% of disputes in 1986, 26.6% in 1992, 25.0% in 1996 and 20.2% in 2000.

2. Personnel and Retrenchment:

Personnel and retrenchment causes have also been important. During 1973, 24.3% of the industrial disputes were because of dismissals, retrenchment, etc. as compared to 29.3% in 1961. In 1979, personnel and retrenchment topped the list of causes of industrial disputes with 29.9%. The number of disputes because of personnel and retrenchment was 32.0% in 1971, 23.1% in 1985 and 19.8% in 1996. In 2000, about 12.1% of the disputes occurred due to dismissals, layoffs, retrenchments, etc.

3. Bonus:

Bonus has been an important factor in the industrial disputes, 10.3% of the industrial disputes in 1973 were because of bonus as compared to 6.9% in 1961. 13.8% and 15.2% of the disputes were due to bonus during 1976 and 1977 respectively. It is worth noting that during 1982 only 4.7% of the disputes were due to bonus as compared to 7.3% in 1985. This percentage was 4.2 in 1992, 3.6 in 1996 and 8.5 in 2000.

4. Indiscipline and Violence:

The number of disputes because of indiscipline and violence among the workers has been significant. During 1987, 15.7% of the disputes were because of indiscipline and violence as compared to only 5.7% in 1973. During 1985, 16.1% of industrial disputes were caused by indiscipline and violence and during 1996, about 21.6% of the industrial disputes arose due to indiscipline and violence in industrial undertaking. This shows that indiscipline and violence have continued to be a serious problem in industry during the past two decades.

5. Leave and Hours of Work:

Leave and hours of work have not been so important causes of industrial disputes. During 1973, 1.5% of the causes were because of leave and hours of work. Their percentage share in the industrial disputes was 2.2% in 1977, 1.8% in 1985, 2.2% in 1996 and 0.9% in 2000.

6. Miscellaneous Causes:

Miscellaneous causes include modernization of plant and introduction of computers and automatic machinery recognition of union political factors, etc. These factors have caused a significant number of industrial disputes in the country, 24.1% of the industrial disputes in 1973 were due to miscellaneous causes. They accounted for 19.5% of the industrial disputes in 1977, 29.2% in 1985, 27.8% in 1996 and 33.2% in 2000.

Miscellaneous causes of industrial disputes are as follows:

(a) Workers' resistance to rationalisation, introduction of new machinery and change of place of factory.

(b) Non-recognition of trade union.

(c) Rumours spread out by undesirable elements.

(d) Working conditions and working methods.

(e) Lack of proper communication.

(f) Behaviour of supervisors.

(g) Trade union rivalry etc.

Thus, industrial disputes do not arise only when workers are dissatisfied on economic grounds, they also arise over issues which are of non-economic nature. Instances may be quoted when strikes where successfully organised to protest against the management's decision to change the location of the plant from one state to another. Similarly, even causes like behaviour of supervisor and trade union rivalries may give rise to industrial disputes.

Measures to Improve Industrial Relations:

The following measures should be taken to achieve good industrial relations:

1. Progressive Management:

There should be progressive outlook of the management of each industrial enterprise. It should be conscious of its obligations and responsibilities to the owners of the business, the employees, the consumers and the nation. The management must recognise the rights of workers to organise unions to protect their economic and social interests.

The management should follow a proactive approach, i.e., it should anticipate problems and take timely steps to minimise these problems. Challenges must be anticipated before they arise otherwise reactive actions will compound them and cause more discontent among the workers.

2. Strong and Stable Union:

A strong and stable union in each industrial enterprise is essential for good industrial relations. The employers can easily ignore a weak union on the plea that it hardly represents the workers. The agreement with such a union will hardly be honoured by a large section of workforce. Therefore, there must be a strong and stable union in every enterprise to represent the majority of workers and negotiate with the management about the terms and conditions of service.

3.Atmosphere of Mutual Trust:

Both management and labour should help in the development of an atmosphere of mutual cooperation, confidence, and respect. Management should adopt a progressive outlook, and should recognise the right of workers.

Similarly, labour unions should persuade their members to work for the common objectives of the organisation. Both the management and the unions should have faith in collective bargaining and other peaceful methods of settling industrial disputes.

4. Mutual Accommodation:

The right of collective bargaining of the trade unions must be recognised by the employers. Collective bargaining is the cornerstone of industrial relations. In any organisation, there must be a great emphasis on mutual accommodation rather than conflict or uncompromising attitude. Conflicting attitude does not lead to amicable labour relations; it may foster union militancy as the union reacts by engaging in pressure tactics. The approach must be of mutual “give and take” rather the “take or leave”.

5. Sincere Implementation of Agreements:

The management should sincerely implement the settlements reached with the trade unions. The agreement between the management and the unions should be enforced both in letter and spirit.

6. Workers’ Participation in Management:

The participation of workers in the management of the industrial unit should be encouraged by making effective use of works committees, joint consultation and other methods. This will improve communication between managers and workers, increase productivity and lead to greater effectiveness.

7. Sound Personnel Policies:

Personnel policies should be formulated in consultation with the workers and their representatives if they are to be implemented effectively. The policies should be clearly stated so that there is no confusion in the mind of anybody. The implementation of the policies should be uniform throughout the organisation to ensure fair treatment to each worker.

8. Government's Role:

The Government should play an active role for promoting industrial peace. It should make law for the compulsory recognition of a representative union in each industrial unit. It should intervene to settle disputes if the management and the workers are unable to settle their disputes. This will restore industrial peace.

Machinery for resolving Industrial Disputes under Law

4 Industrial Dispute Settlement Machineries for Settling Industrial Disputes in India

This machinery has been provided under the Industrial Disputes Act, 1947. It, in fact, provides a legalistic way of setting the disputes. As said above, the goal of preventive machinery is to create an environment where the disputes do not arise at all.

This machinery comprises following organs:

1. Conciliation

2. Court of enquiry

3. Voluntary arbitration

4. Adjudication (Compulsory arbitration).

1. Conciliation:

Conciliation is the "practice by which the services of a neutral party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement of agreed solution."

The Industrial Disputes Act, 1947 provides for conciliation, and can be utilised either by appointing conciliation officers (permanently or for a limited period) or by constituting a board of conciliation. This conciliation machinery can take a note of a dispute or apprehend dispute either on its own or when approached by either party.

With a view to expediting conciliation proceeding, time-limits have been prescribed—14 days in the case of conciliation officers and two months in the case of a board of conciliation, settlement arrived at in the course of conciliation is binding for such period as may be agreed upon between the parties or for a period of 6 months and with continue to be binding until revoked by either party. The Act prohibits strike and lock-out during the pendency of conciliation proceedings before a Board and for seven days after the conclusion of such proceedings.

Conciliation Officer:

The law provides for the appointment of Conciliation Officer by the Government to conciliate between the parties to the industrial dispute. The Conciliation Officer is given the powers of a civil court, whereby he is authorised to call the witness the parties on oath. It should be remembered, however, whereas civil court cannot go beyond interpreting the laws, the conciliation officer can go behind the facts and make judgment which will be binding upon the parties.

On receiving information about a dispute, the conciliation officer should give formal intimation in writing to the parties concerned of his intention to commence conciliation proceedings from a specified date. He should then start doing all such things as he thinks fit for the purpose of persuading the parties to come to fair and amicable settlement of the dispute.

Conciliation is an art where the skill, tact, imagination and even personal influence of the conciliation officer affect his success. The Industrial Disputes Act, therefore, does not prescribe any procedure to the followed by him.

The conciliation officer is required to submit his report to the appropriate government along with the copy of the settlement arrived at in relation to the dispute or in case conciliation has failed, he has to send a detailed report giving out the reasons for failure of conciliation.

The report in either case must be submitted within 14 days of the commencement of conciliation proceedings or earlier. But the time for submission of the report may be extended by an agreement in writing of all the parties to the dispute subject to the approval of the conciliation officer.

If an agreement is reached (called the memorandum of settlement), it remains binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and continues to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the party or parties to the settlement.

Board of Conciliation:

In case Conciliation Officer fails to resolve the differences between the parties, the government has the discretion to appoint a Board of Conciliation. The Board is tripartite and ad hoc body. It consists of a chairman and two or four other members.

The chairman is to be an independent person and other members are nominated in equal number by the parties to the dispute. Conciliation proceedings before a Board are similar to those that take place before the Conciliation Officer. The Government has yet another option of referring the dispute to the Court of Inquiry instead of the Board of Conciliation.

The machinery of the Board is set in motion when a dispute is referred to it. In other words, the Board does not hold the conciliation proceedings of its own accord. On the dispute being referred to the Board, it is the duty of the Board to do all things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement. The Board must submit its report to the government within two months of the date on which the dispute was referred to it. This period can be further extended by the government by two months.

2. Court of Inquiry:

In case of the failure of the conciliation proceedings to settle a dispute, the government can appoint a Court of Inquiry to enquire into any matter connected with or relevant to industrial dispute. The court is expected to submit its report within six months. The court of enquiry may consist of one or more persons to be decided by the appropriate government.

The court of enquiry is required to submit its report within a period of six months from the commencement of enquiry. This report is subsequently published by the government within 30 days of its receipt. Unlike during the period of conciliation, workers' right to strike, employers' right to lockout, and employers' right to dismiss workmen, etc. remain unaffected during the proceedings in a court to enquiry.

A court of enquiry is different from a Board of Conciliation. The former aims at inquiring into and revealing the causes of an industrial dispute. On the other hand, the latter's basic objective is to promote the settlement of an industrial dispute. Thus, a court of enquiry is primarily fact-finding machinery.

3. Voluntary Arbitration:

On failure of conciliation proceedings, the conciliation officer many persuade the parties to refer the dispute to a voluntary arbitrator. Voluntary arbitration refers to getting the disputes settled through an independent person chosen by the parties involved mutually and voluntarily.

In other words, arbitration offers an opportunity for a solution of the dispute through an arbitrator jointly appointed by the parties to the dispute. The process of arbitration saves time and money of both the parties which is usually wasted in case of adjudication.

Voluntary arbitration became popular as a method a settling differences between workers and management with the advocacy of Mahatma Gandhi, who had applied it very successfully in the Textile industry of Ahmedabad. However, voluntary arbitration was lent legal identity only in 1956 when Industrial Disputes Act, 1947 was amended to include a provision relating to it.

The provision for voluntary arbitration was made because of the lengthy legal proceedings and formalities and resulting delays involved in adjudication. It may, however, be noted that arbitrator is not vested with any judicial powers.

He derives his powers to settle the dispute from the agreement that parties have made between themselves regarding the reference of dispute to the arbitrator. The arbitrator should submit his award to the government. The government will then publish it within 30 days of such submission. The award would become enforceable on the expiry of 30 days of its publication.

Voluntary arbitration is one of the democratic ways for setting industrial disputes. It is the best method for resolving industrial conflicts and is a close' supplement to collective bargaining. It not only provides a voluntary method of settling industrial disputes, but is also a quicker way of settling them.

4. Adjudication:

The ultimate remedy for the settlement of an industrial dispute is its reference to adjudication by labour court or tribunals when conciliation machinery fails to bring about a settlement. Adjudication consists of settling disputes through intervention by the third party appointed by the government. The law provides the adjudication to be conducted by the Labour Court, Industrial Tribunal of National Tribunal.

A dispute can be referred to adjudication if hot the employer and the recognised union agree to do so. A dispute can also be referred to adjudication by the Government even if there is no consent of the parties in which case it is called 'compulsory adjudication'. As mentioned above, the dispute can be referred to three types of tribunals depending on the nature and facts of dispute in questions.

These include:

(a) Labour courts,

(b) Industrial tribunals, and

(c) National tribunals.

The procedure, powers, and provisions regarding commencement of award and period of operation of award of these three bodies are similar. The first two bodies can be set up either by State or Central Government but the national tribunal can be constituted by the Central Government only, when it thinks that the adjudication of a dispute is of national importance. These three bodies are into hierarchical in nature. It is the Government's prerogative to refer a dispute to any of these bodies depending on the nature of dispute.

(a) Labour Court:

A labour court consists of one person only, who is normally a sitting or an ex-judge of a High Court. It may be constituted by the appropriate Government for adjudication of disputes which are mentioned in the second schedule of the Act.

The issues referred to a labour court may include:

(i)The propriety or legality of an order passed by an employer under the Standing Orders.

(ii) The application and interpretation of Standing Orders.

(iii) Discharge and dismissal of workmen and grant of relief to them.

(iv) Withdrawal of any statutory concession or privilege.

(v) Illegality or otherwise of any strike or lockout.

(vi) All matters not specified in the third schedule of Industrial Disputes Act, 1947. (It deals with the jurisdiction of Industrial Tribunals).

(b) Industrial Tribunal:

Like a labour court, an industrial tribunal is also a one-man body. The matters which fall within the jurisdiction of industrial tribunals are as mentioned in the second schedule or the third schedule of the Act. Obviously, industrial tribunals have wider jurisdiction than the labour courts.

Moreover an industrial tribunal, in addition to the presiding officer, can have two assessors to advise him in the proceedings; the appropriate Government is empowered to appoint the assessors.

The Industrial Tribunal may be referred the following issues:

1. Wages including the period and mode of payment.

2. Compensatory and other allowances.

3. Hours of work and rest intervals.

4. Leave with wages and holidays.

5. Bonus, profit sharing, provident fund and gratuity.

6. Shift working otherwise than in accordance with the standing orders.

7. Rule of discipline.

8. Rationalisation.

9. Retrenchment.

10. Any other matter that may be prescribed.

(c) National Tribunal:

The Central Government may constitute a national tribunal for adjudication of disputes as mentioned in the second and third schedules of the Act or any other matter not mentioned therein provided in its opinion the industrial dispute involves "questions of national importance" or "the industrial dispute is of such a nature that undertakings established in more than one state are likely to be affected by such a dispute".

The Central Government may appoint two assessors to assist the national tribunal. The award of the tribunal is to be submitted to the Central Government which has the power to modify or reject it if it considers it necessary in public interest.

It should be noted that every award of a Labour Court, Industrial Tribunal or National Tribunal must be published by the appropriate Government within 30 days from the date of its receipt. Unless declared otherwise by the appropriate government, every award shall come into force on the expiry of 30 days from the date of its publication and shall remain in operation for a period of one year thereafter.

Workers Participation in Management

Meaning of workers participation in management, concepts and objectives of workers participation in management

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

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

A clear and more comprehensive definition of WPM is given by the International Labour Organisation (ILO).

Characteristics:

The following are the main characteristics of WPM:

1. Participation implies practices which increase the scope for employees' share of influence in decision-making process with the assumption of responsibility.

2. Participation presupposes willing acceptance of responsibility by workers.

3. Workers participate in management not as individuals but as a group through their representatives.

4. Worker's participation in management differs from collective bargaining in the sense that while the former is based on mutual trust, information sharing and mutual problem solving; the latter is essentially based on power play, pressure tactics, and negotiations.

5. The basic rationale tor worker's participation in management is that workers invest their Iabour and their fates to their place of work. Thus, they contribute to the outcomes of organization. Hence, they have a legitimate right to share in decision-making activities of organisation.

Objectives:

The objectives of WPM are closely netted to the ration-able for WPM. Accordingly, the objectives of WPM vary from country to country depending on their levels of socio-economic development political philosophies, industrial relations scenes, and attitude of the working class.

To quote, the objective of WPM is to co-determine at the various levels of enterprises in Germany, assign the final to workers over all matters relating to an undertaking in Yugoslavia, promote good communication and understanding between labour and management on the issues of business administration and production in Japan, and enable work-force to influence the working of industries in China, for example.

In India the objective of the government in advocating for workers' participation in management, as stated in the Industrial Policy Resolution 1956, is a part of its overall endeavour to create a socialist society, wherein the sharing of a part of the managerial powers by workers is considered necessary.

Accordingly, the objectives of WPM in India are to:

1. Promote mutual understanding between management and workers, i.e., industrial harmony.

2. Establish and encourage good communication system at all levels.

3. Create and promote a sense of belongingness among workers.

4. Help handle resistance to change.

5. Induce a sense among workers to contribute their best for the cause of organisation.

6. Create a sense of commitment to decisions to which they were a party.

Levels of Participation:

Having known the objectives of WPM, the question then is to what extent workers can participate in decision-making process. In other words, it is important to know the extents/levels of co-determination in an organisation.

Viewed from this angle, Mehtras has suggested five levels of workers' participation ranging from the minimum to the maximum. Since these levels of workers' influence the process and quality of decision making in an organisation. We are therefore highlighting here these levels briefly ranking them from the minimum to the maximum level of participation.

Informative Participation:

This refers to management's information sharing with workers on such items those are concerned with workers. Balance Sheet, production, economic conditions of the plant etc., are the examples of such items. It is important to note that here workers have no right of close scrutiny of the information provided and management has its prerogative to make decisions on issues concerned with workers.

Consultative Participation:

In this type of participation, workers are consulted in those matters which relate to them. Here, the role of workers is restricted to give their views only. However the acceptance and non-acceptance of these views depends on management. Nonetheless, it provides an opportunity to the workers to express their views on matters involving their interest.

Associative Participation:

Here, the role of the workers' council is not just advisory unlike consultative participation. In a way, this is an advanced and improved form of consultative participation. Now, the management is under a moral obligation to acknowledge, accept and implement the unanimous decision of the council.

Administrative Participation:

In the administrative participation, decisions already taken are implemented by the workers. Compared to the former three levels of participation, the degree of sharing authority and responsibility by the workers is definitely more in this participation.

Decisive Participation:

Here, the decisions are taken jointly by the management and the workers of an organisation. In fact, this is the ultimate level of workers' participation in management.

Workers Participation development in Management in Indian Industries

Workers' participation in Management in India was given importance only after Independence. Industrial Disputes Act,1947 was the first step in this direction, which recommended for the setting up of works committees. The joint management councils were established in 1950 which increased the labour participation in management. Since July 1975 the two-tier participation called shop councils at shop level and Joint councils were introduced. Workers'participation in Management Bill, 1990 was introduced in Parliament which provided scope for up liftment of workers.

Reasons for failure of Workers participation Movement in India:

1. Employers resist the participation of workers in decision-making. This is because they feel that workers are not competent enough to take decisions.
2. Workers' representatives who participate in management have to perform the dual roles of workers' spokesman and a co-manager. Very few representatives are competent enough to assume the two incompatible roles.
3. Generally Trade Unions' leaders who represent workers are also active members of various political parties. While participating in management they tend to give priority to political interests rather than the workers' cause.
4. Schemes of workers' participation have been initiated and sponsored by the Government.However, there has been a lack of interest and initiative on the part of both the trade unions and employers.
5. In India, labour laws regulate virtually all terms and conditions of employment at the workplace. Workers do not feel the urge to participate in management, having an innate feeling that they are born to serve and not to rule.
6. The focus has always been on participation at the higher levels, lower levels have never been allowed to participate much in the decision-making in the organizations.
7. The unwillingness of the employer to share powers with the workers' representatives, the disinterest of the workers and the perfunctory attitude of the government towards participation in management act as stumbling blocks in the way of promotion of participative management.

Measures for making Participation effective:

1. Employer should adopt a progressive outlook. They should consider the industry as a joint endeavor in which workers have an equal say. Workers should be provided and enlightened about the benefits of their participation in the management.
2. Employers and workers should agree on the objectives of the industry. They should recognize and respect the rights of each other.
3. Workers and their representatives should be provided education and training in the philosophy and process of participative management. Workers should be made aware of the benefits of participative management.
4. There should be effective communication between workers and management and effective consultation of workers by the management in decisions that have an impact on them.
5. Participation should be a continuous process. To begin with, participation should start at the operating level of management.
6. A mutual co-operation and commitment to participation must be developed by both management and labour.

Modern scholars are of the mind that the old adage "a worker is a worker, a manager is a manager; never the twain shall meet" should be replaced by "managers and workers are partners in the progress of business"

Forms of Workers Participation in Management in India

Forms of workers' participation in management

The various forms of workers' participation in management currently prevalent in the country are:

1. **Suggestion schemes:** Participation of workers can take place through suggestion scheme. Under this method workers are invited and encouraged to offer suggestions for improving the working of the enterprise. A suggestion box is installed and any worker can write his suggestions and drop them in the box. Periodically all the suggestions are scrutinized by the suggestion committee or suggestion screening committee. The committee is constituted by equal representation from the management and the workers. The committee screens various suggestions received from the workers. Good suggestions are accepted for implementation and suitable awards are given to the concerned workers. Suggestion schemes encourage workers' interest in the functioning of an enterprise.
2. **Works committee:** Under the Industrial Disputes Act, 1947, every establishment employing 100 or more workers is required to constitute a works committee. Such a committee consists of equal number of representatives from the employer and the employees. The main purpose of this committee is to provide measures for securing and preserving amity and good relations between the employer and the employees.
   Functions: Works committee deals with matters of day-to-day functioning at the shop floor level. Works committees are concerned with:
   - Conditions of work such as ventilation, lighting and sanitation.
   - Amenities such as drinking water,canteens, dining rooms, medical and health services.
   - Educational and recreational activities.
   - Safety measures, accident prevention mechanisms etc.
   - Works committees function actively in some organizations like Tata Steel, HLL, etc but the progress of Works Committees in many organizations has not been very satisfactory due to the following reasons:
   - Lack of competence and interest on the part of workers' representatives.
   - Employees consider it below their dignity and status to sit alongside blue-collar workers.
   - Lack of feedback on performance of Works Committee.
   - Undue delay and problems in implementation due to advisory nature of recommendations.
3. **Joint Management Councils:** Under this system Joint Management Councils are constituted at the plant level. These councils were setup as early as 1958. These councils consist of equal number of representatives of the employers and employees, not exceeding 12 at the plant level. The plant should employ at least500 workers. The council discusses various matters relating to the working of the industry. This council is entrusted with the responsibility of administering welfare measures, supervision of safety and health schemes, scheduling of working hours, rewards for suggestions etc.

Wages, bonus, personal problems of the workers are outside the scope of Joint management councils. The council is to take up issues related to accident prevention, management of canteens,water, meals, revision of work rules, absenteeism, indiscipline etc. the performance of Joint Management Councils have not been satisfactory due to the following reasons:

- Workers' representatives feel dissatisfied as the council's functions are concerned with only the welfare activities.
- Trade unions fear that these councils will weaken their strength as workers come under the direct influence of these councils.

4. **Work directors:** Under this method, one or two representatives of workers are nominated or elected to the Board of Directors. This is the full-fledged and highest form of workers' participation in management. The basic idea behind this method is that the representation of workers at the top-level would usher Industrial Democracy, congenial employee-employer relations and safeguard the workers' interests. The Government of India introduced this scheme in several public sector enterprises such as Hindustan Antibiotics, Hindustan Organic Chemicals Ltd etc. However the scheme of appointment of such a director from among the employees failed miserably and the scheme was subsequently dropped.
5. **Co-partnership:** Co-partnership involves employees' participation in the share capital of a company in which they are employed. By virtue of their being shareholders, they have the right to participate in the management of the company. Shares of the company can be acquired by workers making cash payment or by way of stock options scheme. The basic objective of stock options is not to pass on control in the hands of employees but providing better financial incentives for industrial productivity. But in developed countries, WPM through co-partnership is limited.
6. **Joint Councils:** The joint councils are constituted for the whole unit, in every Industrial Unit employing 500 or more workers; there should be a Joint Council for the whole unit. Only such persons who are actually engaged in the unit shall be the members of Joint Council. A joint council shall meet at least once in a quarter. The chief executive of the unit shall be the chairperson of the joint council. The vice-chairman of the joint council will be nominated by the worker members of the council. The decisions of the Joint Council shall be based on the consensus and not on the basis of voting.

In 1977 the above scheme was extended to the PSUs like commercial and service sector organizations employing 100 or more persons. The organizations include hotels, hospitals, railway and road transport, post and telegraph offices, state electricity boards.

7. **Shop councils:** Government of India on the 30th of October 1975 announced a new scheme in WPM. In every Industrial establishment employing 500 or more workmen, the employer shall constitute a shop council. Shop council represents each department or a shop in a unit. Each shop council consists of an equal number of representatives from both employer and employees. The employers' representatives will be nominated by the management and must consist of persons within the establishment. The workers' representatives will be from among the workers of the department or shop concerned. The total number of employees may not exceed 12.

Functions of Shop Councils:

1. Assist management in achieving monthly production targets.
2. Improve production and efficiency, including elimination of wastage of man power.
3. Study absenteeism in the shop or department and recommend steps to reduce it.
4. Suggest health, safety and welfare measures to be adopted for smooth functioning of staff.
5. Look after physical conditions of working such as lighting, ventilation, noise and dust.
6. Ensure proper flow of adequate two way communication between management and workers.

UNIT 4th

Overview and aspects covered by Factories Act

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

Objective of Factories Act ,1948

The main objectives of the Indian Factories Act, 1948 are to regulate the working conditions in factories, to regulate health, safety welfare, and annual leave and enact special provision in respect of young persons, women and children who work in the factories.

1. Working Hours:

According to the provision of working hours of adults, no adult worker shall be required or allowed to work in a factory for more than 48 hours in a week. There should be a weekly holiday.

2.Health:

For protecting the health of workers, the Act lays down that every factory shall be kept clean and all necessary precautions shall be taken in this regard. The factories should have proper drainage system, adequate lighting, ventilation, temperature etc.

Adequate arrangements for drinking water should be made. Sufficient latrine and urinals should be provided at convenient places. These should be easily accessible to workers and must be kept cleaned.

3. Safety:

In order to provide safety to the workers, the Act provides that the machinery should be fenced, no young person shall work at any dangerous machine, in confined spaces, there should be provision for manholes of adequate size so that in case of emergency the workers can escape.

4. Welfare:

For the welfare of the workers, the Act provides that in every factory adequate and suitable facilities for washing should be provided and maintained for the use of workers.

Facilities for storing and drying clothing, facilities for sitting, first-aid appliances, shelters, rest rooms' and lunch rooms, crèches, should be there.

5. Penalties:-

The provisions of The Factories Act, 1948, or any rules made under the Act, or any order given in writing under the Act is violated, it is treated as an offence. The following penalties can be imposed:-

(a) Imprisonment for a term which may extend to one year;
(b) Fine which may extend to one lakh rupees; or
(c) Both fine and imprisonment.

If a worker misuses an appliance related to welfare, safety and health of workers, or in relation to discharge of his duties, he can be imposed a penalty of Rs. 500/-.

Applicability of Factories Act, 1948

The Act is applicable to any factory whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on; but this does not include a mine, or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place.

Importance of Factories Act, 1948
The Factories Act, 1948 is a beneficial legislation. The aim and object of the Act is essentially to safeguard the interests of workers, stop their exploitation and take care of their safety, hygiene and welfare at their places of work. It casts various obligations, duties and responsibilities on the occupier of a factory and also on the factory manager. Amendments to the Act and court decisions have further extended the nature and scope of the concept of occupier, especially vis-a-vis hazardous processes in factories.

Definitions
1. Who is an Occupier?
According to section 2(n) "occupier" of a factory means the person, who has ultimate control over the affairs of the factory,

Provided that-
(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, any one of the directors, shall be deemed to be the occupier:

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier:

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire,

(1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under-

(a) section 6, section 7, section 7A, section 7B, section 11 or section 12;

(b) section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;

(e) section 18, section 19, section 42, section 46, section 47 or section 49, in relation to the workers employed on such repair or maintenance;

(2) the owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44 or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to-

(a) the workers employed directly by him or by or through any agency; and

(b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

ION Exchange India Ltd. V.Deputy Chief Inspector of factories, Salem (1996).It was held that owner can nominate any person tobe in ultimate control over the affairs of a factory. If no one else has been nominated to be in ultimate control over the affairs of the company, Director of a company or any partner of partnership is deemed to be the occupier.

2. What is a factory?

According to section 2(m) "factory" means any premises including the precincts thereof-

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

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, - but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952) or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place;

Explanation I--- For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;

Explanation II.---For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;

3. Who is a Worker?

According to section 2(l) ”worker" means a person employed directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union;

4. What is a Manufacturing Process?

According to section 2(k) "manufacturing process" means any process for-
(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or

(ii) Pumping oil, water, sewage, or any other substance; or

(iii) Generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding; or

(v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) Preserving or storing any article in cold storage;

5. What is hazardous process?

According to section 2(cb) "hazardous process" means any process or activity in relation to an industry specified in the 'First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would-

(i) cause material impairment to the health of the persons engaged in or connected therewith, or (ii) result in the pollution of the general environment:- Provided that the State Government may, by

notification in the official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule;

Duties of Occupier

The Duties of Occupier have been clearly mentioned in the following sections of Factories Act, 1948: -

1. Notice by Occupier (Section 7)

The occupier shall, send to the Chief Inspector a written notice in respect of all establishments which come within the scope of the Act for the first time, before a factory engaged in a manufacturing process which is ordinarily carried on for less than one hundred and eighty working days in the year resumes working, whenever a new manager is appointed. During any period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

2. General Duties of the Occupier(Section7A)

To ensure the health, safety and welfare of all workers while they are at work in the factory.

To provide and maintain the plant and systems of work in the factory that are safe and without risk to health of the workers.

To provide arrangements in the factory for ensuring safety and absence of risk to health in connection with the use, handling, storage and transport of articles and substances

To provide such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work.

To maintain all places of work in the factory in a condition that is safe and without risks to health and to provide and maintain such means of access to, and egress from, such places as are safe and without such risks.

To provide, maintain or monitor such working environment in the factory for the workers that is safe, without risk to health and adequate as regards facilities and arrangements for their welfare at work.

To prepare a written statement of his general policy with respect to the health and safety of the workers at work and the organization and arrangements in force for carrying out that policy.

3. Appointment of Safety officers. (Section 40-B)

It shall be the duty of the of the Occupier to Appoint a Safety officer in a factory:-

(i) Wherein one thousand or more workers are ordinarily employed, or

(ii) Wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, if so required by the State Government by notification in the official Gazette.

4. Compulsory Disclosure of Information by the Occupier. (Section 41-B)
Compulsory disclosure of information by the occupier -

The occupier of every factory involving a hazardous process shall disclose in the manner prescribed to the Chief Inspector and the local authority.

The occupier shall, at the time of registering the factory involving a hazardous process, lay down a detailed policy with respect to the health and safety of the workers employed therein and intimates such policy to the Chief Inspector and the local authority.

Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place.

The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them in the manner prescribed among the workers and the general public living in the vicinity.

5. Specific Responsibility of the occupier in relation to Hazardous Process. (Section 41-C)
Every occupier of a factory involving any hazardous process shall-

maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory

appoint persons who possess qualifications and experience in handling hazardous substances

Provide for medical examination of every worker.

6. Worker's Participation in safety management. (Section 41-G)
The occupier shall, in every factory where a hazardous process takes place, or where hazardous

substances are used or handled, set up a Safety Committee consisting of equal number of representatives of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf.

7. Right of Workers to be warned about imminent dangers. (Section 41-H)
It shall be the duty of such occupier, agent, manager or the person in charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the nearest Inspector.

8. Facilities for sitting and Canteens. (Section 42 to 49)
It is the duty of occupier to provide welfare facilities like Lunch rooms, Canteen, Crèche, Washing facilities, first-aid appliances etc. to all workers and to appoint a welfare officer.

9. Annual Leave with Wage.(Section 79)
For the purpose of ensuring the continuity of work, the occupier or manager of the factory, in agreement with the Works Committee of the factory constituted under section 3 of the Industrial Disputes Act, 1947 (14 of 1947), or a similar Committee constituted under any other Act or if there is no such Works Committee or a similar Committee in the factory, in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing whereby the grant of leave allowable under this section may be regulated.

10. Safety and Occupational Health Survey. (Section 91-A)
The occupier or manager of the factory or any other person who for the time being purports to be in charge of the factory, undertake safety and occupational health surveys, and such occupier or manager or other person shall afford all facilities for such every, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.

Duties of Factory Manager
The Duties of Factory Manager are mentioned in the following Sections of Factory Act, 1948: -

1. Right of Workers to be warned about imminent danger. (Section 41-H)
It shall be the duty of such occupier, agent, manager or the person in charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger in the factory where the worker is engaged in any hazardous process and send a report forthwith of the action taken to the nearest Inspector.

2. Notice of periods of work for adults. (Section 61)
The manager of the factory shall display correctly and maintained in every factory in accordance with

the provisions of sub-section (2) of section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work, fix the periods during which each relay of the group may be required to work, classify them into groups according to the nature of their work indicating the number of workers in each group, shall draw up a scheme of shifts where under the periods during which any relay of the group may be required to work.

3. Register of Adult Workers. (Section 62)

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

In **State of Maharashtra v. Sampat Lal Mensukh Bothra** (1992),it was held that the obligation to maintain registers is imposed on the manager and

4. Annual Leave with Wage. (Section 79)

For the purpose of ensuring the continuity of work, the occupier or manager of the factory, in agreement with the Works Committee of the factory constituted under section 3 of the Industrial Disputes Act, 1947 (14 of 1947), or a similar Committee constituted under any other Act or if there is no such Works Committee or a similar Committee in the factory, in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing whereby the grant of leave allowable under this section may be regulated.

5. Notice of Certain Dangerous Occurrences. (Section 88A)

Notice of certain dangerous occurrences. —Where in a factory any dangerous occurrence of such nature as may be prescribed occurs, whether causing any bodily injury or disability or not, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

6. Notice of Certain Disease. (Section 89)

Where any worker in a factory contracts any disease specified in 1[the Third Schedule], the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

7. Safety and Occupational Health Survey. (Section 91-A)

The occupier or manager of the factory or any other person who for the time being purports to be in charge of the factory, undertake safety and occupational health surveys, and such occupier or manager or other person shall afford all facilities for such every, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.

8. Notice of Certain Accidents. (Section 88)

Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more

immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed to the Chief Inspector.

General Procedure As To Filing of Cases In Case of Factory Accidents
Whenever an accident takes place in a factory the Occupier or Factory Manager shall inform the Chief Inspector within a period of forty eight hours or so (Section 88) and shall send Form No. 22 containing all the information regarding the said accident to Labour Department, Industrial Health And Safety, which shall inquire into the matter by factory inspector who shall inspect the accident spot, take the witness of the victims, then he shall issue a show cause notice to the Occupier and Factory Manager to reason out the causes of the mis happening. If the Factory Inspector is not satisfied with the reply given by the factory management he shall institute a case against the Occupier and Factory Manager before Judicial Magistrate First Class, Labour Court (Section 105).Then in case if the party to the disputes are not satisfied with the judgement they shall refer the case to the High Court or and to the Supreme Court respectively.

Penalties under factory act, 1948

Section 92. General penalty for offences. -
Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier or manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, and if the contravention is continued after conviction, with as further fine which may extend to one thousand rupees for each day on which the contravention is so continued.

Provided that where contravention of any of the provisions of Chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty-five thousand rupees in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.

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

General Manager, Wheel & A. P, Bangalore v. State of Karnataka (1996) .It was held in this case that the requirement of obtaining sanction to prosecute is mandatory and taking cognizance of an offence in

the absence of sanction cannot be allowed to stand and has to be quashed.

Provincial Government v. Ganpat, AIR 1943 Nag 243.It was held in this case where the occupier or the manager of the factory admits the guilt under Section 92 of the Act, but alleges the clerk of the Factory to be the actual offender, the onus of establishing the innocence is on such occupier or the manager as the case maybe.

Section 94. Enhanced penalty after previous conviction. -
(1) If any person who has been convicted of any offence punishable under section 92 is again found guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine, which shall not be less than ten thousand rupees but which may extend to two lakh rupees or with both;

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than ten thousand rupees:

Provided further that where contravention of any of the provisions of Chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than thirty-five thousand rupees in the case of an accident causing death and ten thousand rupees in the case of an accident causing serious bodily injury.

(2) For the purpose of sub-section (1), no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted.

Section 95. Penalty for obstructing inspector. -
Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any register or other documents kept in his custody in pursuance of this Act or of any rules made there under, or conceals or prevents any workers, in a factory from appearing before, or being examined by, an inspector, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

Section 96A. Penalty for contravention of the provisions of sections 41B, 41C and 41H.-
(1) Whoever fails to comply with or contravenes any of the provisions of sections 41B, 41C or 41H or the rules made there under, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues, after the conviction for the first such failure or contravention.

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

Section 97. offences by workers. -
(1) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred rupees.

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

Exemptions of occupier or manager from liability in certain cases

Section 101. Exemption of occupier or manager from liability in certain cases.- Where the occupier or manager of a factory is charged with an offence punishable under this Act he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court -

(a) that he has used due diligence to enforce the execution of this Act, and
(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he was the occupier or manager of the factory, and the occupier or manager, as the case may be, shall be, discharged from any liability under this Act in respect of such offence:

Provided that in seeking to prove as aforesaid, the occupier or manager of the factory, as the case may be, may be examined on oath, and his evidence and that of any witness whom he calls in his support, shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor:

Provided further that, if the person charged as the actual offender by the occupier or manager, cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall

proceed to hear the charge against the occupier or manager and shall, if the offence be proved, convict the occupier or manager.

Changes brought about by the Factory Act,1948

The following changes were made by the factories Act, 1948: -
The definition of the term "Factory" was widened to cover all industrial establishments employing ten or more workers where power was used and 20 or more workers in all other cases.

The distinction between seasonal and non-seasonal factories was abolished.

Under the Act of 1934 the State Governments had power to extend the application of the Act to establishments where more than 10 Workers were employed. Under the Act of 1948, the State Government may extend the provisions of this Act to any establishment irrespective of the number of the workers employed therein and irrespective of the number of the workers employed on therein and irrespective of the fact that manufacturing work is carried by power or otherwise. The only exception is an establishment where the work is done solely by the members of a family.

Chapter III of the Act of 1934 was split into three parts, dealing with health, safety and welfare of workers. The Act specifies very clearly the minimum requirements under three heads stated above.

The basic provisions of the old Act relating to Health,

safety, and welfare are extended to all work places irrespective of the number of workers employed, except premises where processes are carried on by the occupier with the sole aid of his family.

The minimum age for the admission of children to employment has been raised from 12 to 14 years and the minimum permissible daily hours of work of children were reduced from five to four and a half hour.

Provisions are made for the licensing and registration of factories and the prior scrutiny by the Factories Inspectorate of the Plans and specifications of factory buildings.

Employment of Children and women between 7 p.m. and 6 a.m. is prohibited. For overtime work the workers are entitled to twice their normal rate of wages.

The State Government are empowered to make rules requiring the association of the workers in the management of arrangements for the welfare of the workers.

State Government is obliged to see that all the factories are registered and take a licensing for working, which should be periodically renewed. Prior approval of the State Government has been made necessary for every New The installation of a Factory or for the extension of an existing factory. Besides mines, the new Act also excludes railway running sheds from the definition of Factories.

Changes made in Factories Act, 1948in 2016
The Factories (Amendment) Bill, 2016

The Factories Act 1948was an Act of Parliament passed in the United Kingdom by the Labour government of Clement Attlee. It was passed with the intention of safeguarding the health of workers

and adopted by India.

The Factories (Amendment) Bill, 2016 was introduced in Lok Sabha on August 10, 2016 by the Minister for Labour and Employment, Mr. Bandaru Dattatreya. The Bill amends the Factories Act, 1948. The Act regulates the safety, health and welfare of factory workers. The Bill amends provisions related to overtime hours of work.

Key Amendments

(Section 2) Power to make rules on various matters: The Act permits the state government to prescribe rules on a range of matters, including double employment, details of adult workers to be included in the factory's register, conditions related to exemptions to certain workers, etc.The Bill gives such rule making powers to the central government as well.

Powers to make rules for exemptions to workers:Under the Act, the state government may make rules to (i) define persons who hold management or confidential positions; and (ii) exempt certain types of adult workers (e.g. those engaged for urgent repairs) from fixed working hours, periods of rest, etc. The Bill gives such rule making powers to both, the central and state governments.

Under the Act, such rules will not apply for more than five years. The Bill modifies this provision to state that the five-year limitation will not apply to rules made after the enactment of this Bill.

(Section 64) Overtime hours of work in a quarter: The Act permits the state government to make rules related to the regulation of overtime hours of work. However, the total number of hours of overtime must not exceed 50 hours for a quarter. The Bill raises this limit to 100 hours. Rules in this regard may be prescribed by the central government as well.

(Section 65) Overtime hours if factory has higher workload: The Act enables the state government to permit adult workers in a factory to work overtime hours if the factory has an exceptional work load. Further the total number of hours of overtime work in a quarter must not exceed 75. The Bill permits the central or state government to raise this limit to 115

Overtime in public interest: The Bill introduces a provision which permits the central or state government to extend the 115-hour limit to 125 hours. It may do so because of (i) excessive work load in the factory and (ii) public interest

MEASURES TO BE TAKEN BY FACTORIES FOR HEALTH, SAFETY AND WELFARE OF WORKERS

A. HEALTH

There are various measures under Factories Act 1948 which are taken by factories for health, safety and welfare of their workers. Such measures are provided under Chapters III, IV and V of the Act which are as follows:

Chapter III of the Act deals with the following aspects.

(i) Section 11 ensures the cleanliness in the factory. It must be seen that a factory is kept clean and it is free from effluvia arising from any drain, privy or other nuisance. The Act has laid down following provisions in this respect :

1. All the accumulated dirt and refuse on floors, staircases and passages in the factory shall be removed daily by sweeping or by any other effective method. Suitable arrangements should also be made for the disposal of such dirt or refuse.
2. Once in every week, the floor should be thoroughly cleaned by washing with disinfectant or by some other effective method [Section 11(1)(b)].
3. Effective method of drainage shall be made and maintained for removing water, to the extent possible, which may collect on the floor due to some manufacturing process.
4. To ensure that interior walls and roofs, etc. are kept clean, it is laid down that: (i) white wash or color wash should be carried at least once in every period of 14 months; (ii) where surface has been painted or varnished, repair or revanish should be carried out once in every five years, if washable then once in every period of six months; (iii) where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
5. All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years.
6. The dates on which such processes are carried out shall be entered in the prescribed register. If the State Government finds that a particular factory cannot comply with the above requirements due to its nature of manufacturing process, it may exempt the factory from the compliance of these provisions and suggest some alternative method for keeping the factory clean. [Section 11(2)]

(ii) Disposal of waste and effluents

Every occupier of a factory shall make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on in the factory so as to render them innocuous and for their disposal. Such arrangements should be in accordance with the rules, if any, laid down by the State Government. If the State Government has not laid down any rules in this respect, arrangements made by the occupier should be approved by the prescribed authority if required by the State Government. (Section 12)

(iii) Ventilation and temperature

Section 13 provides that every factory should make suitable and effective provisions for securing and maintaining :-

1. adequate ventilation by the circulation of fresh air; and
2. such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to health. What is reasonable temperature depends upon the circumstances of each case. The State Government has been

empowered to lay down the standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof. It may direct that proper measuring instruments at such places and in such position as may be specified shall be provided and prescribed records shall be maintained.

Measures to reduce excessively high temperature: To prevent excessive heating of any workroom following measures shall be adopted:

1. Walls and roofs shall be of such materials and so designed that reasonable temperature does not exceed but kept as low as possible.
2. Where the nature of work carried on in the factory generates excessively high temperature, following measures should be adopted to protect the workers:
   (a) by separating such process from the workroom; or
   (b) insulating the hot parts; or
   (c) adopting any other effective method which will protect the workers.
3. The Chief Inspector is empowered to direct any factory to adopt such methods which will reduce the excessively high temperature. In this regard, he can specify the measures which in his opinion should be adopted. (Section 13)

(iv) Dust and fume

There are certain manufacturing processes like chemical, textile or jute, etc., which generates lot of dust, fume or other impurities. It is injurious to the health of workers employed in such manufacturing process. Following measures should be adopted in this respect:

- Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc., in the work-rooms.
- Wherever necessary, an exhaust appliances should be fitted, as far as possible, to the point of origin of dust fumes or other impurities. Such point shall also be enclosed as far as possible.
- In stationery internal combustion engine and exhaust should be connected into the open air.
- In cases of other internal combustion engine, effective measures should be taken to prevent the accumulation of fumes there from. (Section 14) It may be pointed that the evidence of actual injury to health is not necessary. If the dust or fume by reason of manufacturing process is given off in such quantity that it is injurious or offensive to the health of the workers employed therein, the offence is committed under this Section. Lastly the offence committed is a continuing offence. If it is an offence on a particular date is does not cease to be an offence on the next day and so on until the deficiency is rectified.

(v) Artificial humidification

Humidity means the presence of moisture in the air. In certain industries like cotton, textile, cigarette, etc., higher degree of humidity is required for carrying out the manufacturing process. For this purpose, humidity of the air is artificially increased. This increase or decrease in humidity adversely affects the health of workers.

Section 15(1) empowers the State Government to make rules (i) prescribing the standards of humidification, (ii) regulating methods to be adopted for artificially increasing the humidity of the air, (iii) directing prescribed tests for determining the humidity of the air to be correctly carried out, and recorded, and (iv) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the work-room.
Section 15(2) lays down that water used for artificial humidification should be either purified before use or obtained from a public supply or other source of drinking water. Where the water is not purified as stated above. Section 15(3) empowers the Inspector to order, in writing, the manager of the factory to carry out specified measures, before a specified date, for purification of the water.

(vi) Overcrowding

Overcrowding in the work-room not only affect the workers in their efficient discharge of duties but their health also. Section 16 has been enacted with a view to provide sufficient air space to the workers.
(1) Section 16(1) prohibits the overcrowding in the work-rooms to the extent it is injurious to the health of the workers.
(2) Apart from this general prohibition Section 16(2) lays down minimum working space for each worker as 14.2 cubic meters of space per worker in every workroom. For calculating the work area, the space more than 4.2 meters above the level of the floor, will not be taken into consideration.

Posting of notice: Section 16(3) empowers the Chief Inspector who may direct in writing the display of a notice in the work-room, specifying the maximum number of workers which can be employed in that room. According to Section 108, notice should be in English and in a language understood by the majority of the workers. It should be displayed at some conspicuous and convenient place at or near, the entrance. It should be maintained in clean and legible conditions.
Exemptions : The chief Inspector may by order in writing, exempt any work-room from the provisions of this section, subject to such conditions as he may think fit to impose, if he is satisfied that non-compliance of such provision will have no adverse effect on the health of the workers employed in such work-room.

(vii) Lighting

Section 17 of the Factories Act makes following provisions in this respect:

- every factory must provide and maintain sufficient and suitable lighting, natural, artificial or both, in every part of the factory where workers are working or passing;
- all the glazed windows and sky lights should be kept clean on both sides;
- effective provisions should be made for the prevention of glare from a source of light or by reflection from a smooth or polished surface;

- formation of shadows to such an extent causing eye-strain or the risk of accident to any worker, should be prevented; and
- the state government is empowered to lay down standard of sufficient and suitable lighting for factories for any class or description of factories or for any manufacturing process.

(viii) Drinking water

Section 18 makes following provisions with regard to drinking water.

- every factory should make effective arrangements for sufficient supply of drinking water for all workers in the factory;
- water should be wholesome, i.e., free from impurities;
- water should be supplied at suitable points convenient for all workers;
- no such points should be situated within six meters of any washing place, urinals, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination, unless otherwise approved in writing by the Chief Inspector;
- all such points should be legible marked Drinking Water in a language understood by majority of the workers;
- in case where more than 250 workers are ordinarily employed, effective arrangements should be made for cooling drinking water during hot weather. In such cases, arrangements should also be made for the distribution of water to the workers; and
- the State Government is empowered to make rules for the compliance of above stated provisions and for the examination, by prescribed authorities, of the supply and distribution of drinking water in factories.
- Latrines and urinals
  Every factory shall make suitable arrangement for the provision of latrines and urinals for the workers. These points as stated below, are subject to the provisions of Section 19 and the rules laid down by the State Government in this behalf.

(8) the State Government is empowered to make rules in respect of following:

- prescribing the number of latrines and urinals to be provided to proportion to the number of male and female workers ordinarily employed in the factory.
- any additional matters in respect of sanitation in factories;
- responsibility of the workers in these matters.

B. SAFETY

Chapter IV of the Act contains provisions relating to safety. These are discussed below:

(i) Fencing of machinery

Fencing of machinery in use or in motion is obligatory under Section 21. This Section requires that following types of machinery or their parts, while in use or in motion, shall be securely fenced by safeguards of substantial construction and shall be constantly

maintained and kept in position, while the parts of machinery they are fencing are in motion or in use. Such types of machinery or their parts are:

1. every moving parts of a prime-mover and flywheel connected to a prime-mover. It is immaterial whether the prime-mover or fly-wheel is in the engine house or not;
2. head-race and tail-race of water wheel and water turbine;
3. any part of stock-bar which projects beyond the head stock of a lathe;
4. every part of an electric generator, a motor or rotary converter or transmission machinery unless they are in the safe position;
5. every dangerous part of any other machinery unless they are in safe position.

(ii) Safety measures in case of work on or near machinery in motion

Section 22 lays down the procedure for carrying out examination of any part while it is in motion or as a result of such examination to carry out the operations mentioned under clause (i) or (ii) of the proviso to Section 21(1). Such examination or operation shall be carried out only by specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of appointment and while he is so engaged.

No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime-mover or any transmission machinery while the prime-mover or transmission machinery is in motion or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication and adjustment thereof would expose the woman or the young person to risk of injury from any moving part either of that machine or of any adjacent machinery [Section 22(2)].

(iii) Employment of young persons on dangerous machines

Section 23 provides that no young person shall be required or allowed to work at any machine to which this section applies unless he has been fully instructed as to dangers arising in connection with the machine and the precautions to be observed and (a) has received sufficient training in work at the machine, or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(iv) Striking gear and devices for cutting off power

Section 24 provides that in every factory suitable striking gears or other efficient mechanical appliances shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery and such gear or appliances shall be so constructed, placed and maintained as to prevent

the belt from creeping back on the fast pulley. Further, driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

Suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room in every factory. It is also provided that when a device which can inadvertently shift from 'off' to 'on position in a factory', cutoff power arrangements shall be provided for locking the devices on safe position to prevent accidental start of the transmission machinery or other machines to which the device is fitted.

(v) Self-acting machines

Section 25 provides further safeguard for workers from being injured by self-acting machines. It provides that no traverse part of self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty five centimeters from any fixed structure which is not part of the machines.

However, Chief Inspector may permit the continued use of a machine installed before the commencement of this Act, which does not comply with the requirement of this section, on such conditions for ensuring safety, as he may think fit to impose.

(vi) Casing of new machinery

Section 26 provides further safeguards for casing of new machinery of dangerous nature. In all machinery driven by power and installed in any factory

(a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger;

(b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion, shall be completely encased unless it is so situated as to be so safe as it would be if it were completely encased.

The section places statutory obligation on all persons who sell or let on hire or as agent of seller or hire to comply with the section and in default shall be liable to punishment with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs. 500 or with both.

(vii) Prohibition of employment of woman and children near cotton openers

According to Section 27, no child or woman shall be employed in any part of factory for pressing cotton in which a cotton opener is at work. However, if the feed-end of a cotton

opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of partition where the feed-end is situated.

(viii) Hoists and lifts

Section 28 provides that in every factory:

(i) Every hoist and lift shall be of good mechanical construction, sound material and adequate strength. It shall be properly maintained and thoroughly examined by a competent person at least once in every period of six months and a register shall be kept containing the prescribed particulars of every such examination,

(ii) Every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part,

(iii) The maximum safe working load shall be marked on every hoist or lift and no load greater, than such load shall be marked on every hoist or lift and no load greater than such load shall be carried thereon,

(iv)The cage of every hoist and lift shall be fitted with a gate on each side from which access is afforded to a landing,

(v) Such gates of the hoist and lift shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(ix) Lifting machines, chains, ropes and lifting tackles

In terms of Section 29, in any factory the following provisions shall be complied with respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:

(a) all parts including the working gear, whether fixed or movable, shall be
(i) of good construction, sound material and adequate strength and free from defects;
(ii) properly maintained;
(iii) thoroughly examined – by a competent person at least once in every period of 12 months or at such intervals as Chief Inspector may specify in writing and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine or no chain, rope or lifting tackle, shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register and

where it is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain, rope or lifting tackle in use shall be displayed in prominent positions on that premises;

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

(x) Safety measures in case of use of revolving machinery

Section 30 of the Act prescribes for permanently affixing or placing a notice in every factory in which process of grinding is carried on. Such notice shall indicate maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon such shaft or spindle necessary to secure such safe working peripheral-speed. Speed indicated in the notice shall not be exceeded and effective measures in this regard shall be taken.

(xi) Pressure plant

Section 31 provides for taking effective measures to ensure that safe working pressure of any plant and machinery, used in manufacturing process operated at pressure above atmospheric pressure, does not exceed the limits. The State Government may make rules to regulate such pressures or working and may also exempt any part of any plant or machinery from the compliance of this section.

(xii) Floor, stairs and means of access

Section 32 provides that in every factory

(a) all floors, steps, stairs passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstruction and substances likely to cause persons to slip and where it is necessary to ensure safety, steps, stairs passages and gangways shall be provided with substantial handrails,

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

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

(xiii) Pits, openings in floors etc.

Section 33 requires that in every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction, or contents is or may be source of danger shall be either securely covered or securely fence. The State Government may exempt any factory from the compliance of the provisions of this Section subject to such conditions as it may prescribe.

(xiv) Excessive weights

Section 34 provides that no person shall be employed in any factory to lift, carry or make any load so heavy as to be likely to cause him injury. The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

(xv) Protection of eyes

Section 35 requires the State Government to make rules and require for providing the effective screens or suitable goggles for the protection of persons employed on or in immediate vicinity of any such manufacturing process carried on in any factory which involves (i) risk of injury to the eyes from particles or fragments thrown off in the course of the process or; (ii) risk to the eyes by reason of exposure to excessive light.

(xvi) Precautions against dangerous fumes, gases etc.

Section 36 provides (1) that no person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flu or other confined space in any factory in which any gas, fume, vapor or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.
(2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), until all practicable measures have been taken to remove any gas, fume, vapor or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapor and unless:
(a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapor or dust; or
(b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person outside the confined space.

(xvii) Precautions regarding the use of portable electric light

Section 36A of the Act provides that in any factory (1) no portable electric light or any other electric appliance of voltage exceeding 24 volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flu or other confined space unless adequate safety devices are provided; and (2) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flu or other confined space unless adequate safety devices are provided, no lamp or light other than that of flame proof construction shall be permitted to be used therein.

(xviii) Explosive or inflammable dust gas, etc.

Sub-section (1) of section 37 of the Act provides that in every factory where any manufacturing process produces dust, gas, fume or vapor of such character and to such extent to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by (a) effective enclosure of the plant or machinery used in the process (b) removal or prevention of the accumulation of such dust, gas fume or vapor, and (c) exclusion or effective enclosure of all possible sources of ignition.

(xix) Precautions in case of fire

Section 38 provides that in every factory all practicable measures shall be taken to outbreak of fire and its spread, both internally and externally and to provide and maintain (a) safe means of escape for all persons in the event of fire, and (b) the necessary equipment and facilities for extinguishing fire. Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the outline to be followed in such case.

(xx) Power to require specification of defective parts or test to stability

Section 39 states that when the inspector feels that the conditions in the factory are dangerous to human life or safety he may serve on the occupier or manager or both notice in writing requiring him before the specified date to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, machinery or plant can be used with safety or to carry out such test in such a manner as may be specified in the order and to inform the inspector of the results thereof.

(xxi) Safety of buildings or machinery

Section 40 provides that the inspectors in case of dangerous conditions of building or any part of ways, machinery or plant requires the manager or occupier or both to take such measures which in his opinion should be adopted and require them to be carried out before a specified date. In case the danger to human life is immediate and imminent from such usage of building, ways of machinery he may order prohibiting the use of the same unless it is repaired or altered.

(xxii) Maintenance of buildings

Section 40-A provides that if it appears to the inspector that any building or part of it is in such a state of disrepair which may lead to conditions detrimental to the health and welfare of workers he may serve on the manager or occupier or both, an order in writing specifying the measures to be carried out before a specified date.

(xxiii) Safety officers

Section 40-B provides that in every factory (i) where 1,000 or more workers are ordinarily employed or (ii) where the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein, the occupier shall employ such number of safety officers as may be specified in the notification with such duties and qualifications and conditions of service as may be prescribed by State Government.

(xxiv) Power to make rules to supplement this Chapter.

This is vested in the State Government under Section 41 for such devices and measures to secure the safety of the workers employed in the factory.

INDUSTRIAL DISPUTE ACT, 1947

This Act applies to workers carrying out manual, unskilled, technical, operational or supervisory work and does not apply to workers earning more than Rs.1,600 per month carrying out managerial work. In addition, the worker must have had continuous service of at least one year.

It provides for the conciliation and adjudication of industrial disputes by Conciliation Officers, a Board of Conciliation, Courts of Inquiry, Labour Courts, Industrial Tribunals and a National Industrial Tribunal. Each has a different jurisdiction or purpose, except for Conciliation Officers, whose jurisdiction is more general. 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. Industrial disputes include cases of unfair dismissal.

1. AUTHORITIES UNDER THIS ACT FOR ADJUDICATION OF INDUSTIAL DISPUTES

a) Works Committee

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 State 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. Any employer to whom an order made under sub-section (1) of section 3 relates shall forthwith proceed to constitute a Works Committee in the manner prescribed in this part. The duty of the Works Committee is 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.

b) Conciliation officers

A conciliation officer is appointed by the Government, who are charged with the duty of mediating in and promoting the settlement of industrial disputes. 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.

c) Boards of Conciliation, Courts of Inquiry, Labour Courts, Tribunals, National Tribunals

A Board of Conciliation, Labour Courts, Tribunals, and National Tribunals are constituted by the Government for promoting the settlement/ adjudication of an industrial dispute.

2. **SETTING UP OF GRIEVANCE SETTLEMENT AUTHORITIES**

1. a) 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.

1. b) Where an industrial dispute connected with an individual workman arises in an establishment referred above, a workman or any trade union of workmen of which such workman is a member, refer such dispute for settlement to the Grievance Settlement Authority provided for by the employer.

1. c) No reference shall be made to Boards, courts or Tribunals 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.

3. **VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION.**

1. a) 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.

1. b) 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.

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

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

1. e) Where an industrial dispute has been referred to arbitration and a notification has been issued, the State 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.

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

4. **REFERENCE OF DISPUTES TO BOARDS, COURTS OR TRIBUNALS.**

1. Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute to a Board for promoting a settlement thereof or refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry.

1. For any matter specified in the Second Schedule the State Government may refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, to a Labour Court for adjudication or where it relates to any matter specified in the Second Schedule or the Third Schedule the State Government may refer the dispute or any matter appearing to be connected with, or relevant to, the dispute 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 State Government may, if it so thinks fit, make the reference to a Labour Court.

1. 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 by order in writing, refer the dispute to a National Tribunal for adjudication.

1. 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 State Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

1. Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal the State 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. **PAYMENT OF FULL WAGES TO WORKMAN PENDING PROCEEDINGS IN HIGHER COURTS.**

Where in any case a Labour-Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court :

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any

such period or part thereof, the Court shall order that no wages shall be payable under this provision for such period or part, as the case may be.

6. **PERIOD OF OPERATION OF SETTLEMENTS AND AWARDS.**

1. A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

1. Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

1. An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A:

Provided that the State Government may reduce the said period and fix such period as it thinks fit :

Provided further that the State Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit, so however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

1. Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal, for decision whether the period of

operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be, on such reference shall be final.

1. Nothing contained in (c) above shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

1. Notwithstanding the expiry of the period of operation stated in (c) above, the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

1. No notice given as stated in (b) & (f) above shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.

7. **STRIKES AND LOCKOUTS.**

1. **A) GENERAL PROHIBITION OF STRIKES AND LOCKOUTS.**

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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–

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

1. during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;

1. during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings; or

1. 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.

1. **B) ILLEGAL STRIKES AND LOCK-OUTS.**

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

(i) it is commenced or declared in contravention of conditions specified in 7 above; or

(ii) it is continued in contravention of an order made by the state Government after reference of Industrial disputes to the Board, Labour Court, Tribunal or National Tribunal under section 10 or after the reference under section 10A for arbitration;

(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 Labour 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 as specified in sub clause (ii) above.

(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.

1. **C) PENALTY FOR ILLEGAL STRIKES AND LOCK-OUTS.**

(1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

8. LAY-OFF OF WORKMEN

1. A) PROHIBITION OF LAY-OFF

(1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster-rolls of an industrial establishment in which not less than one hundred workmen were employed on an, average per working day for the preceding twelve months, shall be laid-off by his employer except with the prior permission of the State Government or such authority as may be specified by the State Government by notification in the Official Gazette, obtained on an application made in this behalf unless such lay-off is due to shortage of power or to natural calamity.

(2) 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 lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made the State Government or the specified authority, after making such enquiry 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 lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, 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.

(4) Where an application for permission under sub-section (1) has been made 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.

(5) An order of the State Government or the specified authority granting or refusing to grant permission shall be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

Provided the State Government or the specified authority 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 or refer the matter, or, as the case may be, cause it to be referred, to a Tribunal for adjudication. 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 is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

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

Explanation : For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

1. B) RIGHT OF WORKMEN LAID OFF FOR COMPENSATION

Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off :

Provided that if during any period of twelve months, a workman is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off

after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer:

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained (as specified below) for retrenchment at any time after the expiry of the first forty-five days of the lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.

1. C) WORKMEN NOT ENTITLED TO COMPENSATION IN CERTAIN CASES

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No compensation shall be paid to a workman who has been laid off –

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;

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

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

1. D) EMPLOYER TO MAINTAIN MUSTER ROLLS OF WORKMEN

Notwithstanding that workmen in any industrial establishment have been laid off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.

9. **RETRENCHMENT OF WORKMEN**

1. A) CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN

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(1) No workman employed in any industrial establishment in which not less than one hundred workmen were employed on an, average per working day for the preceding twelve months, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until, –

1. 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 in lieu of such notice, wages for the period of the notice; and

1. the prior permission of the State Government or such authority as may be specified by that Government by notification in the Official Gazette has been obtained on an application made in this behalf.

(2) 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.

(3) Where an application for permission under sub-section (1) has been made, the State Government or the specified authority, after making such enquiry 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.

(4) Where an application for permission has been made under sub-section (1) and the State 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.

(5) An order of the State Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6) below, be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority 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 or refer the matter or, as the case may be, cause it to be referred, 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.

(7) Where no application for permission under sub-section (1) above is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) 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 establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) above shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) above or where permission for retrenchment is deemed to be granted under sub-section (4) above, every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, 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.

1. B) PROCEDURE FOR 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.

1. C) RE-EMPLOYMENT OF RETRENCHED WORKMEN

Where any workmen are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

10. **PROHIBITION OF UNFAIR LABOUR PRACTICE.**

No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice.

Following activities are unfair labour practices.

1. 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 organise, 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: –

1. threatening workmen with discharge or dismissal, if they join a trade union;
2. threatening a lock-out or closure, if a trade union is organised; and
3. granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.

2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say: –

1. an employer taking an active interest in organising a trade, union of his workmen; and
2. an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised 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 :-

1. discharging or punishing a workman, because he urged other workmen to join or organise a trade union;

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

1. changing seniority rating of workmen because of trade union activities;

1. refusing to promote workmen to higher posts on account of their trade union activities;

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

1. Discharging office bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen –

1. by way of victimisation;

1. not in good faith, but in the colourable exercise of the employer's rights;

1. by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

1. for patently false reasons;

1. on untrue or trumpet up allegations of absence without leave;

1. in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

1. For misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of 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 workmen 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 recognised trade unions.

16. Proposing or continuing a lockout deemed to be illegal under this Act.

1. <u>On the part of workmen and trade unions of workmen</u>

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-organisation or to join a trade union or refrain from joining any trade union, that is to say –

1. 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;

1. 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 recognised union to refuse to bargain collectively in good faith with the employer.

4. To indulge in coercive activities against certification of 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 residences of the employers or the managerial staff members.

7. To incite or indulge in willful 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.

11. **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.

12. **OFFENCE BY COMPANIES, ETC**

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

Very Important Question

Industrial Dispute Settlement Machineries for Settling Industrial Disputes in India

Some of the major industrial dispute settlement machinery are as follows:

This machinery has been provided under the Industrial Disputes Act, 1947. It, in fact, provides a legalistic way of setting the disputes. As said above, the goal of preventive machinery is to create an environment where the disputes do not arise at all.

Even then if any differences arise, the judicial machinery has been provided to settle them lest they should result into work stoppages. In this sense, the nature of this machinery is curative for it aims at curing the aliments.

This machinery comprises following organs:

1. Conciliation

2. Court of enquiry

3. Voluntary arbitration

4. Adjudication (Compulsory arbitration).

1. Conciliation:

Conciliation, is a form of mediation. Mediation is the act of making active effort to bring two conflicting parties to compromise. Mediation, however, differs from conciliation in that whereas conciliator plays only a passive and indirect role, and the scope of his functions is provided under the law, the mediator takes active part and the scope of his activities are not subject to any statutory provisions.

Conciliation is the "practice by which the services of a neutral party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement of agreed solution."

The Industrial Disputes Act, 1947 provides for conciliation, and can be utilised either by appointing conciliation officers (permanently or for a limited period) or by constituting a board of conciliation. This conciliation machinery can take a note of a dispute or apprehend dispute either on its own or when approached by either party.

With a view to expediting conciliation proceeding, time-limits have been prescribed—14 days in the case of conciliation officers and two months in the case of a board of conciliation, settlement arrived at in the course of conciliation is binding for such period

as may be agreed upon between the parties or for a period of 6 months and with continue to be binding until revoked by either party. The Act prohibits strike and lock-out during the pendency of conciliation proceedings before a Board and for seven days after the conclusion of such proceedings.

Conciliation Officer:

The law provides for the appointment of Conciliation Officer by the Government to conciliate between the parties to the industrial dispute. The Conciliation Officer is given the powers of a civil court, whereby he is authorised to call the witness the parties on oath. It should be remembered; however, whereas civil court cannot go beyond interpreting the laws, the conciliation officer can go behind the facts and make judgment which will be binding upon the parties.

On receiving information about a dispute, the conciliation officer should give formal intimation in writing to the parties concerned of his intention to commence conciliation proceedings from a specified date. He should then start doing all such things as he thinks fit for the purpose of persuading the parties to come to fair and amicable settlement of the dispute.

Conciliation is an art where the skill, tact, imagination and even personal influence of the conciliation officer affect his success. The Industrial Disputes Act, therefore, does not prescribe any procedure to the followed by him.

The conciliation officer is required to submit his report to the appropriate government along with the copy of the settlement arrived at in relation to the dispute or in case conciliation has failed, he has to send a detailed report giving out the reasons for failure of conciliation.

The report in either case must be submitted within 14 days of the commencement of conciliation proceedings or earlier. But the time for submission of the report may be extended by an agreement in writing of all the parties to the dispute subject to the approval of the conciliation officer.

If an agreement is reached (called the memorandum of settlement), it remains binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and continues to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the party or parties to the settlement.

Board of Conciliation:

In case Conciliation Officer fails to resolve the differences between the parties, the government has the discretion to appoint a Board of Conciliation. The Board is tripartite and ad hoc body. It consists of a chairman and two or four other members.

The chairman is to be an independent person and other members are nominated in equal number by the parties to the dispute. Conciliation proceedings before a Board are similar to those that take place before the Conciliation Officer. The Government has yet another option of referring the dispute to the Court of Inquiry instead of the Board of Conciliation.

The machinery of the Board is set in motion when a dispute is referred to it. In other words, the Board does not hold the conciliation proceedings of its own accord. On the dispute being referred to the Board, it is the duty of the Board to do all things as it

thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement. The Board must submit its report to the government within two months of the date on which the dispute was referred to it. This period can be further extended by the government by two months.

2. Court of Inquiry:

In case of the failure of the conciliation proceedings to settle a dispute, the government can appoint a Court of Inquiry to enquire into any matter connected with or relevant to industrial dispute. The court is expected to submit its report within six months. The court of enquiry may consist of one or more persons to be decided by the appropriate government.

The court of enquiry is required to submit its report within a period of six months from the commencement of enquiry. This report is subsequently published by the government within 30 days of its receipt. Unlike during the period of conciliation, workers' right to strike, employers' right to lockout, and employers' right to dismiss workmen, etc. remain unaffected during the proceedings in a court to enquiry.

A court of enquiry is different from a Board of Conciliation. The former aims at inquiring into and revealing the causes of an industrial dispute. On the other hand, the latter's basic objective is to promote the settlement of an industrial dispute. Thus, a court of enquiry is primarily fact-finding machinery.

3. Voluntary Arbitration:

On failure of conciliation proceedings, the conciliation officer many persuade the parties to refer the dispute to a voluntary arbitrator. Voluntary arbitration refers to getting the

disputes settled through an independent person chosen by the parties involved mutually and voluntarily.

In other words, arbitration offers an opportunity for a solution of the dispute through an arbitrator jointly appointed by the parties to the dispute. The process of arbitration saves time and money of both the parties which is usually wasted in case of adjudication.

Voluntary arbitration became popular as a method a settling differences between workers and management with the advocacy of Mahatma Gandhi, who had applied it very successfully in the Textile industry of Ahmedabad. However, voluntary arbitration was lent legal identity only in 1956 when Industrial Disputes Act, 1947 was amended to include a provision relating to it.

The provision for voluntary arbitration was made because of the lengthy legal proceedings and formalities and resulting delays involved in adjudication. It may, however, be noted that arbitrator is not vested with any judicial powers.

He derives his powers to settle the dispute from the agreement that parties have made between themselves regarding the reference of dispute to the arbitrator. The arbitrator should submit his award to the government. The government will then publish it within 30 days of such submission. The award would become enforceable on the expiry of 30 days of its publication.

Voluntary arbitration is one of the democratic ways for setting industrial disputes. It is the best method for resolving industrial conflicts and is a close' supplement to collective bargaining. It not only provides a voluntary method of settling industrial disputes, but is also a quicker way of settling them.

It is based on the notion of self-government in industrial relations. Furthermore, it helps to curtail the protracted proceedings attendant on adjudication, connotes a healthy attitude and a developed outlook; assists in strengthening the trade union movement and contributes for building up sound and cordial industrial relations.

4. Adjudication:

The ultimate remedy for the settlement of an industrial dispute is its reference to adjudication by labour court or tribunals when conciliation machinery fails to bring about a settlement. Adjudication consists of settling disputes through intervention by the third party appointed by the government. The law provides the adjudication to be conducted by the Labour Court, Industrial Tribunal of National Tribunal.

A dispute can be referred to adjudication if hot the employer and the recognised union agree to do so. A dispute can also be referred to adjudication by the Government even if there is no consent of the parties in which case it is called 'compulsory adjudication'. As mentioned above, the dispute can be referred to three types of tribunals depending on the nature and facts of dispute in questions.

These include:

(a) Labour courts,

(b) Industrial tribunals, and

ADVERTISEMENTS:

(c) National tribunals.

The procedure, powers, and provisions regarding commencement of award and period of operation of award of these three bodies are similar. The first two bodies can be set up either by State or Central Government but the national tribunal can be constituted by the Central Government only, when it thinks that the adjudication of a dispute is of national importance. These three bodies are into hierarchical in nature. It is the Government's prerogative to refer a dispute to any of these bodies depending on the nature of dispute.

(a) Labour Court:

A labour court consists of one person only, who is normally a sitting or an ex-judge of a High Court. It may be constituted by the appropriate Government for adjudication of disputes which are mentioned in the second schedule of the Act.

The issues referred to a labour court may include:

(i)The propriety or legality of an order passed by an employer under the Standing Orders.

(ii) The application and interpretation of Standing Orders.

(iii) Discharge and dismissal of workmen and grant of relief to them.

(iv) Withdrawal of any statutory concession or privilege.

(v) Illegality or otherwise of any strike or lockout.

(vi) All matters not specified in the third schedule of Industrial Disputes Act, 1947. (It deals with the jurisdiction of Industrial Tribunals).

(b) Industrial Tribunal:

Like a labour court, an industrial tribunal is also a one-man body. The matters which fall within the jurisdiction of industrial tribunals are as mentioned in the second schedule or the third schedule of the Act. Obviously, industrial tribunals have wider jurisdiction than the labour courts.

Moreover an industrial tribunal, in addition to the presiding officer, can have two assessors to advise him in the proceedings; the appropriate Government is empowered to appoint the assessors.

The Industrial Tribunal may be referred the following issues:

1. Wages including the period and mode of payment.

2. Compensatory and other allowances.

3. Hours of work and rest intervals.

4. Leave with wages and holidays.

5. Bonus, profit sharing, provident fund and gratuity.

6. Shift working otherwise than in accordance with the standing orders.

7. Rule of discipline.

8. Rationalisation.

9. Retrenchment.

10. Any other matter that may be prescribed.

(c) National Tribunal:

The Central Government may constitute a national tribunal for adjudication of disputes as mentioned in the second and third schedules of the Act or any other matter not mentioned therein provided in its opinion the industrial dispute involves "questions of national importance" or "the industrial dispute is of such a nature that undertakings established in more than one state are likely to be affected by such a dispute".

The Central Government may appoint two assessors to assist the national tribunal. The award of the tribunal is to be submitted to the Central Government which has the power to modify or reject it if it considers it necessary in public interest.

It should be noted that every award of a Labour Court, Industrial Tribunal or National Tribunal must be published by the appropriate Government within 30 days from the date of its receipt. Unless declared otherwise by the appropriate government, every award shall come into force on the expiry of 30 days from the date of its publication and shall remain in operation for a period of one year thereafter.

Payment of Bonus Act

The payment of Bonus Act, 1965 aims to regulate the amount of bonus to be paid to the persons employed in establishments based on its profit and productivity. The act is applicable to the whole of India for all establishments which had twenty or more persons employed on any day during the year. In this article, we examine the various aspects of Payment of Bonus Act in detail. To know more about Payments of Wages Act.

Objectives of the Act

The objectives of the Bonus Act (Payment of bonus Act) are as follows:

- To impose a legal responsibility upon the employer of every establishment covered by the Act to pay the bonus to employees.
- To designate the minimum and maximum percentage of bonus.
- To prescribe the formula for calculating bonus.
- To provide redressal mechanism.

Applicability of the Act

The Payment of Bonus Act implements to the establishments which fall under any of the below listed:

- It applies to any factory or establishment which had twenty or more workers employed on any day during the year.
- The act does not apply to the non-profit making organisations.
- It is not applicable to establishments such as LIC, hospitals which are excluded under Section 32.
- It is not applicable to establishments where employees have signed an agreement with the employer.
- It is not applicable to establishments exempted by the appropriate government like sick units.

Departments, Undertakings and Branches

According to the Bonus Act, any different departments or undertakings or branches of an establishment of whether located in the same place or at different areas should be considered as parts of the similar establishment for computation of bonus under the Act.

A separate balance sheet regarding profit and loss of the establishment in the year had to be prepared and maintained concerning such department or undertaking, or branch should be treated as a separate establishment for computation of bonus for the year.

Eligibility for Bonus

Any employee is eligible for availing bonus if the following conditions are satisfied:

- The employee receiving salary or wages up to Rs.21,000 per month
- The employee engaged in any work whether skilled, unskilled, managerial, supervisory etc.
- The employee who have worked not less than 30 working days in the same year.

Disqualification of Bonus

The employees cannot avail the bonus if any action taken by the management in case of dishonesty, theft, sabotage of any property of establishment, violent behaviour while on the duty within premises of the establishment.

Number of Working Days

An employee will be considered "working" in a year if the following conditions are satisfied:

- The employee who is under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, the Industrial Disputes Act, 1947 or any other law applicable to the establishment.
- The employee during employment has taken leave with salary.
- The employee who has been absent due to temporary disablement caused by accident during the work.
- The employee has been on maternity leave with salary in the accounting year.

Payment of Minimum and Maximum Bonus

- The minimum bonus will be 8.33% of the salary during the year, or
    - 100 rupees will be given in case of employees above 15 years and sixty rupees in the case of employees below 15 years, whichever is higher.
- The maximum bonus is 20% of the salary during the accounting year.

Timeline for Payment of Bonus

The payment of bonus should be paid in cash within eight months from the end of the accounting year or within a month from the date of enforcement of the act.

Computation of Bonus

As per the Section 4 and Section 7 together with the Schedule 1 and two deal with the calculation of gross profit and available surplus out of which 67% in case of companies and 60% in other cases would be allocable surplus.

To compute the available surplus the sums, so deductible from the gross profits are:

- All direct taxes under Section 7
- The sums which are particularised in the schedule
- The allowance for investment or development in which the employer is allowed to deduct from his income under the Income Tax Act.

Available Surplus = Gross Profit – (deduct) the following :

- Depreciation is allowable in Section 32 of the Income-tax Act.
- Development Allowance.

Inspectors under Section 20

Section 20 enables the relevant government to appoint Inspectors for this Act after notification in the official gazette.

Powers of inspectors:

- Making an employer to furnish information.
- Able to visit any establishment at any reasonable time.
- Able to order certain production documents and examine the same.
- Able to take extracts from the records
- To examine the employers, his agent or servant or any other person found in charge of the establishment.
- To execute such other powers as may be prescribed under the rules.

Duties of the Employer

The following duties to be carried out by the employer:

- To estimate and pay the annual bonus as required under the Act.

To maintain the following registers:

- The register should show the computation of allocating surplus in respective Form.
- The register should be maintained with the payment of the bonus to the employees.
- The records should be maintained before inspection and such other information should be stored.

Rights of Employers

The following rights to be claimed out by the employers:

- Right to notice any disputes relating to application or interpretation of any provision of the Act, to the Labour Court or Labour Tribunal.
- Right to make a valid deduction from the bonus due to an employee, such as festival bonus paid and financial loss created by the misbehaviour of the workers.
- Right to take the bonus of an employee, who has been dismissed from service for misbehaviour, violent behaviour, fraud, misappropriation or sabotage of any property of the establishment.

Rights of Employees

The following rights to be claimed out by the employees:

- Right to claim bonus due under the Act and to request an application to the Government for the redemption of bonus amount which is unpaid, within one year of its being due.
- Right to notice any dispute to the Labour Court/Tribunal.
    - Employees who are not eligible for the Payment of Bonus Act, cannot raise a dispute about the bonus under the Industrial Disputes Act.
- Right to seek clarification and obtain information, on any item in the accounts of the establishment.

Offences and Penalties

In case of violation of the provisions under the Act or rules, then the penalty is imprisonment for six months or may impose fine of Rs.1000 or both.

In case of failure to comply with the directions or requisitions made, then the penalty is imprisonment for six months or may impose fine of Rs.1000 or both.

In case of offences by companies, firms, body corporate or association of individuals, its director, partner or a principal or officer responsible for the conduct of its business, should be deemed to be guilty of that offence, unless the person concerned proves that the crime was committed out of his knowledge or that he exercised all due diligence.

Employee Provident Fund ACT guidelines

Employee Provident Fund is the fund the purpose of which is to provide **employees** with the lump sum payments at the time of exit from their place of employment. This is different from pension fund, which have elements of both lump sum as well as monthly pension payments. Employees save fraction of their salary every month under EPF scheme.

It is a very good platform for saving the portion of salary that can help employees in the event of emergency or upon retirement Every employer with over 20 employees is required by law to register with EPFO.

2. What is UAN (Universal Account Number)?

UAN has been introduced by Employees Provident Fund Organization (EPFO). UAN number is not to be confused by EPF number.

UAN number allows a member to view his or her EPF accounts with current and former employers.

With a single number, a member can initiate the process of closing old accounts and transferring balances. UAN number needs to be activated.

UAN Number and Member ID or PF Account Number these two details are mandatory for UAN activation

Following is the process for activating the UAN number:

1. Visit the EPFO website and click on “Activate UAN”, after reading all the instructions, click on “I have read and understood the instruction”.

2. Once the above steps are done, member will be asked to enter the details like, UAN number, Mobile Number, PF account number etc. and once all the details have been uploaded, click on “Get PIN”.

3. In order to complete the activation process, member needs to enter the PIN received on registered mobile number.

4. On completion of the activation, the member will be prompted to create a login user id and password for accessing the UAN services offered by the portal.

3. Who deducts EPF?

Contribution to EPF is done by both employees and employer.

Employer deducts, employees share of EPF contribution and along with his share of contribution, deposits the amount in the PF account of employees.

4. Contribution towards EPF?

The contribution paid by the employer is 12% of basic wages plus dearness allowance plus retaining allowance. An equal contribution is payable by the employee also.

Present rate of contribution towards EPF is as follows:

Employee contribute – 12 %* towards EPF.

Employer Contribute – 8.33 % * towards "**Employees' Pension Scheme"**

(subject to maximum of INR 1,250 *(refer note 5 for details),* 3.67%* towards **"Employees Provident Fund",**0.5%* towards **EDLI** and 0.5%* towards **administrative charges.**

*% is calculated of Basic Pay + Dearness Allowance + Retaining Allowance

Note:

*1. Incase, an organization is covered under the EPFO and does not have a separate group insurance **for** its employees, the employer needs **to** monthly **contribute** 5% of the employee's basic salary + dearness allowance + retaining allowance (capped at Rs 15000) **to EDLI** scheme as insurance premium.*

2. Provisions of EPF covers every establishment in which 20 or more persons are employed and certain organizations are covered, subject to certain conditions and exemptions even if they employ less than 20 persons each.

3. In the case of establishments which employ less than 20 employees or meet certain other conditions, as per the EPFO rules, the contribution rate for both employee and the employer is limited to 10 percent.

4. The employee can voluntarily pay higher contribution above the statutory rate of 12 percent of basic pay. This is called contribution towards Voluntary Provident Fund (VPF) which is accounted for separately. This VPF also earns tax-free interest. However, the employer does not have to match such voluntary contribution.

5. 33% will be diverted to **Employees' Pension Scheme,** but it is calculated on Rs 15,000. So, for every employee with basic pay equal to Rs 15,000 or more, the diversion is Rs 1,250 each month into EPS. If the basic pay is less than Rs 15000 then 8.33% of that full amount will go into EPS. The balance will be retained in the EPF scheme.

6. New EPF members enrolled on or after September 1, 2014, and having a basic salary of more than INR 15,000 per month at the time of joining, **will not** become members of the EPS.

Accordingly, the entire contribution of 24% (from the employee and employer) will go to the provident fund account of the employee.

5. When can we withdraw the EPF amount?

EPF can be completely withdrawn in case if employee retires or remains unemployed for 2 months or more.

Note:

1. Its needed to mention that fact that the individual is unemployed for more than 2 months, the same has to be certified by gazetted officer.

2. Decision taken at the 222nd central board of trustees meeting of EPFO in June 2018, it was decided that subscribers of Employees Provident Fund Organization (EPFO) who resign from their service can now withdraw 75% of their total provident fund kitty after one month from the date of cessation of service to meet their monthly financial commitments.

3. One is also allowed to withdraw the EPS amount if the service period has been less than 10 years and not later on. Once this milestone is crossed, the employee compulsorily gets pension benefits after retirement.

4. Following are different scenarios when and how much amount can be withdrawn from EPF

S.no	Reasons for withdrawal	Limitations on withdrawal	No. of years of service	Other conditions
1	Marriage	Up to 50% of employee's share of contribution to EPF	7 years	For the marriage of self, son/daughter, brother/sister
2	Education	Up to 50% of employee's share of contribution to EPF	7 years	For the education of either himself or his children after class 10
3	Purchase of land / purchase or construction of a house	For land – up to 24 times of monthly wages plus Dearness allowance For house – up to 36 times of monthly wages plus Dearness allowance	5 years	The asset i.e. land or the house should be in the name of the employee or spouse or Jointly.
4	Home loan repayment	Up to a maximum of 90 %, from both employee's contribution and employer contribution in Employee Provident Fund.	10 years	• The property should be registered in the name of the employee or spouse or jointly • Withdrawal permitted subject to furnishing of requisite documents as called for by the EPFO relating to the housing loan availed • The accumulation in the member's PF account (or together with the spouse), including the interest, has to be more than INR 20,000.
5	Renovation of house	Up to 12 times of the monthly wages	5 years	The property should be registered in the name of the employee or spouse or jointly.

6. How to online transfer the EPF amount from one employer to another?

Steps that you must follow while applying for online EPF transfer:

Step 1: Go to the EPFO website – **epfindia.gov.in**

Step 2: Click on online claims member account transfer

Step 3: Enter your login details

Step 4: Go to online services tab click on "One Member – One EPF Account (Transfer Request)

Step 5: Fill in details of previous epf accounts (which are to be transferred)

Step 6: Authenticate OTP and Submit

Note:

1. For attestation you can either select "Previous Employer option" or "Current Employer option".

2. It is preferable to select "Current Employer Option", since communication would be hassle free.

7. How to Link Old member ID / EPF Account with UAN?

With the introduction of the **UAN (Universal Account Number),** it is possible to consolidate multiple accounts into one single account for each EPFO member.

Requirements to link EPF accounts with UAN number:

1. You need UAN Number

2. EPF account number to be linked with UAN Number

3. KYC Details – Bank Account Number, IFSC Code, Aadhaar number, PAN card number.

4. UAN should be activated, otherwise it would take 3 days post activation to access the services.

Process to be followed:

1. Visit EPFO Portal

2. Go to "Our Services" tab to access "for employee services"

3. Click on 'One Employee – One EPF Account'

4. Fill required details and generate OTP, which is delivered on your registered mobile number linked with UAN

5. Provide Old EPF ID, accept the declaration and submit the request.

8. Income Tax on EPF withdrawal

Contribution towards EPF account provides employees, tax relief under section 80C *(only employees share of contribution)*

How-ever EPF withdrawal is taxable under certain circumstances and exempt under certain circumstances.

Refer table below to detailed understanding:

S.No	Scenario	Taxability
1	If amount withdrawn is less than INR 50,000 before completion of 5 years of continuous service	No TDS will be deducted, however individual will have to show that as income while calculating the taxable income for that FY.
2	If amount withdrawn is greater than INR 50,000 before completion of 5 years of continuous service	TDS @ 10% if PAN is furnished. No TDS in case form 15G/15H is furnished.
3	Withdrawal of EPF after 5 years of continuous service	No TDS will be deducted, Further, the individual need not offer the same in the return of income as such withdrawal is exempt from tax
4	Transfer of PF from one account to another upon a change of job	No TDS. Further, the individual need not offer the same in return of income as it is not taxable.
5	If withdrawal is done before completion of 5 continuous years of service due to any of following reasons: a) employment is terminated due to employee's ill health b) The business of the employer is discontinued c) the reasons for withdrawal are beyond the employee's control	No TDS. Further, the individual need not offer the same in the return of income as such withdrawal is exempt from tax

9. Process for withdrawal of EPF

EPF withdrawal can be done:

1. Either by following manual process

2. Or by filing online application

Manual Process

Withdrawal of EPF has become simpler and less time consuming if you have aadhaar number with you.

Following will make you understand the process for withdrawal of EPF with and without aadhaar.

Withdrawal of Provident Fund using Aadhaar card number:

You can submit a composite claim form (Aadhaar) *https://www. epfindia.gov.in /site_docs /PDFs/ Downloads_ PDFs/Form _CCF_aadhar.pdf* directly to the concerned EPFO office without attestation of claim by the employers. The payment of PF balance will be sent to your bank account, so attach a cancelled cheque along with the form.

Withdrawal of Provident Fund via Non – Aadhaar Card Number:

if you don't have an Aadhaar, but have the PF number, use this form – Composite Claim Form (Non- Aadhaar). *https:// www. epfindia.gov.in/ site_docs/PDFs/Downloads_PDFs/Form_CCF_nonaadhar.pdf*

You will have to furnish Permanent Account Number (PAN) if the total service period is less than five years and also attach two copies of Form 15G/15H, if applicable. In case the Universal Account Number (UAN) is not available, you can mention only the PF account number.

Online Application

EPFO has recently come up with online facility of withdrawal of EPF, the pre-requisite to apply for withdrawal of EPF online through EPF portal is that your UAN should be activated and UAN should be linked with Aadhaar, PAN and bank details along with the IFSC code

Following Steps needs to be followed:

1. Visit EPFO portal and select services for employee from "Our Service" portal. Fill in all the login details.

2. Then, click on the tab 'Manage' and select KYC to check whether your KYC details such as Aadhaar, PAN and bank details are correct and verified or not.

3. After the KYC details are verified, go to the tab Online Services' and select the option 'Claim' from the drop-down menu.

4. The 'Claim' screen will display the member details, KYC details and other service details. Click on the tab 'Proceed for Online Claim' to submit your claim form.

5. In the claim form, select the claim you require i.e. **full EPF Settlement, EPF Part withdrawal (loan/advance) or pension withdrawal**

ESI (Employees' State Insurance)

Employees' State Insurance (abbreviated as **ESI**) is a self-financing social security and health insurance scheme for Indian workers. The fund is managed by the Employees' State Insurance Corporation (ESIC) according to rules and regulations stipulated in the **ESI Ac**

ESIC and its applicability

E.S.I.C. latest update: E.S.I.C. contribution rates are reduced W.E.F. 13th June 2019!

Employees' State Insurance Corporation ("ESIC") is a statutory corporate body set up under the ESI Act 1948, which is responsible for the administration of ESI Scheme. The ESI scheme is a self-financed comprehensive social security scheme devised to protect the employees covered under the scheme against financial distress arising out of events of sickness, disablement or death due to employment injuries.

The ESIC has its headquarters at New Delhi besides 23 regional offices, 26 sub-regional offices in the states and over 800 local offices throughout the country to support the implementation of ESI scheme. In addition, the Medical Benefit Council, a specialized body that advises the ESIC on the administration of Medical benefit is functioning.

- Composition of ESIC
- Applicability of the ESI scheme
- Features of the scheme

Composition of ESIC

The ESIC generally consists of the following members as explained below.

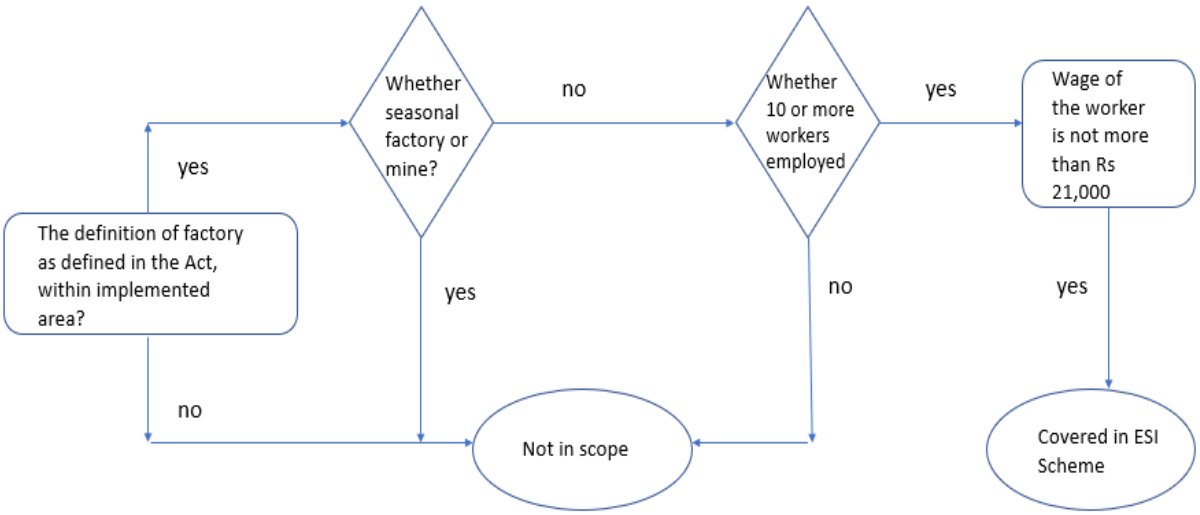
ESIC Composition

- The Director General of ESIC, *ex officio*
- Chairman appointed by the central government
- Vice-president appointed by the CG
- Not more than 5 persons nominated by the CG
- 1person representing each state appointed by the CG
- 1 Person nominated by CG representing UTs
- 10 persons representing employers nominated by CG
- 10 persons representing employees nominated by CG
- 2 persons representing the medical profession nominated by CG
- 3 members of the parliament (2 from Lok Sabha and 1 from Rajya Sabha)

Applicability of the ESI scheme

The ESI scheme is applicable to all factories and other establishments as defined in the Act with 10 or more persons employed in such establishment and the beneficiaries' monthly wage does not exceed Rs 21,000 are covered under the scheme. Whether the employer has employed 10 or more employees, all employees employed by the employer, agnostic of the salary are reckoned.

The applicability of the scheme is explained through a flow chart below:



Note :

The scheme under the act also supports restaurants, motor road transports, newspaper establishments and undertakings, movies and purview theatres, hotels, shops.

The threshold for coverage of establishment is 20 employees in Maharastra and Chandigarh.

Features of the scheme

Complete medical care and attention are provided by the scheme to the employee registered under the ESI Act, 1948 at the time of his incapacity, restoration of his health and working capacity. During absenteeism from work due to illness, maternity or factories accidents which result in loss of wages complete financial assistance is provided to the employees to compensate for the wage loss. The scheme provides medical care to family members also. As on 31 March 2017, 2.93 crore employees are covered under this scheme with the total number of beneficiaries summing up to 12.40 crores. Broadly, the benefits under this scheme are categorized under two categories, 1) cash benefits (which includes sickness, maternity, disablement (temporary and permanent), funeral expenses, rehabilitation allowance, vocational rehabilitation and medical bonus) and, 2) non-cash benefits through medical care.

The scheme is self-financing and being contributory in nature. The funds under the ESI scheme are primarily built out of the contribution from the employees and employers payable monthly at a fixed percentage of wages paid. Currently, the employee contribution rate is 1.00% of the wages and that of employers is 4.00% of the wages paid. For newly implemented areas, the contribution rate is 1% and 3% respectively for employee and employer for the first 24 months. The employer makes the contribution form its own share in favor of those employees whose daily average wage is Rs 137 as these employees are exempted from own contribution The employer is required to pay his contribution and deduct employees' contribution from wages and deposit the same with ESIC within 15 days from the last day of the calendar month in which the contribution fall due. The payment can either be done online or through designated and authorized public sector banks.

ESIC contribution rates (Reduced w.e.f. 01/07/2019)		
Particulars	Current Rate	Reduced Rate
Employer Share	4.75%	3.25%
Employee Share	1.75%	0.75%
Total	**6.50%**	**4.00%**

Payment of Gratuity Act, 1972

The **Payment of Gratuity Act**, 1972 (the **Gratuity Act**) is applicable to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments with ten or more employees. ... **Gratuity** is fully **paid** by the employer, and no part comes from an employee's salary.

The Applicability and Calculation of Gratuity in India

Gratuity is a lump sum that a company pays when an employee leaves an organization, and is one of the many retirement benefits offered by a company to an employee.

In India, gratuity rules and requirements are set out under the Payment of Gratuity Act, 1972. An employer may also choose to pay gratuity outside of that which is required by this Act.

The Payment of Gratuity (Amendment) Act, 2018 enables the government to raise the limit of tax-free gratuity. The change can be made through an executive order by the prime minister.

On February 1, 2019, India's interim budget hiked the tax-free gratuity limit from Rs 20 lakh The government had doubled the tax free gratuity to Rs 20 lakh (US$27,904) in March, 2018.

In this article, we discuss India's gratuity rules in terms of:

- Applicability;
- Calculation;
- Tax exemption;
- Payment; and
- Forfeiture.

Applicability

The Payment of Gratuity Act, 1972 (the Gratuity Act) is applicable to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments with ten or more employees. The full official text of the Gratuity Act can be found here. Gratuity is fully paid by the employer, and no part comes from an employee's salary.

To be eligible for gratuity under the Gratuity Act, an employee needs to have at least five full years of service with the current employer, except in the event that an employee passes away or is rendered disabled due to accident or illness, in which case gratuity must be paid.

Gratuity is paid when an employee:

- Is eligible for superannuation;
- Retires;
- Resigns; or
- Passes away or is rendered disabled due to accident or illness (if an employee passes away, gratuity will be paid to the employee's nominee).

Gratuity Calculation Formula

Gratuity in India is calculated using the formula:

Gratuity = Last Drawn Salary × 15/26 × No. of Years of Service

Notes:

- The ratio 15/26 represents 15 days out of 26 working days in a month.
- Last drawn salary = Basic Salary + Dearness Allowance.
- Years of Service are rounded down to the nearest full year. For example, if the employee has a total service of 20 years, 10 months and 25 days, 21 years will be factored into the calculation.

Tax Exemption

Gratuity received under the Gratuity Act is exempt from taxation to the extent that it does not exceed 15 days' salary for every completed year of service calculated on the last drawn salary (subject to a maximum of US$41,856 or Rs 30 lakh).

Any other gratuity is exempt to the extent that it does not exceed one half-month salary for each year of completed service calculated on the basis of average salary for 10 immediately preceding months. The upper limit of US$41,856 applies to the aggregate of gratuity received from one or more employers in the same or different years.

India's income tax department has put out a taxable gratuity calculator, which can be accessed here.

Payment

The employer shall arrange to pay the amount of gratuity within 30 days from the date it is billed to the person to whom the gratuity is allocated.

If the amount of gratuity payable under the section is not paid by the employer within the period specified, he will have to pay simple interest on it from the date on which the gratuity becomes payable at the rate not exceeding the rate stipulated by the federal government.

Gratuity should be paid in cash, or if so desired by the payee, by demand draft or bank check to the eligible employee, nominee, or legal heir.

Forfeiture

The gratuity payable to an employee shall be wholly forfeited if:

- The service of such employee has been terminated for his or her lawless or disorderly conduct or any other act of violence on his or her part; or

- The service of such employee is terminated for any act which constitutes an offense involving moral turpitude, provided that such offense is committed by him or her in the course of his or her employment.

In order to forfeit gratuity of an employee, there must be a termination order containing charges as established to the effect that the employee was guilty of any of the aforesaid misconducts. In one case, it has been held that in the absence of a termination order containing any of the above allegations, the gratuity of an employee cannot be forfeited.

Payment of Wages Act

Rules for Payment of Wages (Section 3-6)

The Payment of Wages Act, 1936, defines several rules to regulate the payment of wages to certain classes of employed persons in India. In this article, we will focus on the rules for payment of wages act which is specified under sections 3 to 6.

Rules for Payment of Wages

The four sections which detail the rules for payment of wages under the Payment of Wages Act, 1936 are:

1. Responsibility for payment of wages – Section 3
2. Fixation of wage periods – Section 4
3. Time of payment of wages – Section 5
4. Wages to be paid in currency notes or currency coins – Section 6

Let's look at each of these sections in detail.

Section 3 – Responsibility for Payment of Wages

(1) Every employer is responsible for the payment of all wages to all the employees that he employs. In any other case, if the employer names a person, or if there is a person responsible to the employer or is nominated, then such a person is responsible for the payment of wages.

(2) Notwithstanding anything contained in sub-section (1), the employer is responsible to make the payment of all wages which the Act requires him to make. In fact, if the contractor or the person that the employer designates to make the payment fails to do so, then the responsibility lies with the employer.

Section 4 – Fixation of Wage Periods

(1) The person responsible for the payment of wages under Section 3 must fix periods in respect of which he shall make the payment of wages. This period is called the wage period.

(2) A wage period will not exceed one month under any circumstance

Section 5 – Time of Payment of Wages

(1) Every person employed upon or in:

a. Any railway, factory or industrial or other establishments upon or in which the total number of employed persons is less than one thousand, must receive his wages before the expiry of the seventh day from the last day of the wage period for which the wages are payable.

b. Any other railway, factory or industrial or other establishments, must receive his wages before the expiry of the tenth day from the last day of the wage period for which the wages are payable.

(2) If the employer terminates the employment of a person, then he must ensure that the terminated employee receives his wages before the expiry of the second working day from the date of termination of employment.

(3) The Appropriate Government can exempt to such an extent and also subject to such conditions in the order the person responsible for the payment of wages to employed persons.

(4) The employer or the person responsible for paying wages must ensure that the wages are paid on a working day.

Section 6 – Payment of wages in currency notes or currency coins

The employer or the person responsible for making the payment of wages must pay in currency coins or currency notes or in both. Further, he cannot pay in kind.

Also, the employer can pay the wages via a cheque or a direct deposit to the bank account of the employee after taking a written authorization from him.

Payment of Wages Act Section 8: Fines

According to the Payment of Wages Act, 1936, an employer can deduct fines from the wages of an employee. Section 8 offers rules and regulations governing fines under the Act. In this article, we will look at all the rules pertaining to the levying of a fine in detail.

Section 8 of Payment of Wages Act – Fines

The rules and regulations pertaining to deducting fines from the wages of an employee are as follows:

Sub-section (1)

The employer cannot impose any fine on any employed person save in respect of such acts and omissions on his part as the employer with the previous approval of the State Government or the prescribed authority night have specified via a notice under sub-section (2).

Sub-section (2)

The employer must ascertain that he exhibits the notice which specifies all such acts and omissions in the prescribed manner.

Further, he must exhibit this notice on the premises in which the employees work. Also, in the case of railway employees who work in places other than the factors, the employer must display the notice at the prescribed place or places.

Sub-section (3)

The employer cannot impose a fine on any employed person until he gives the employed person an opportunity of showing cause against the fine. Also, if the procedure prescribed for the imposition of fine changes, then the employer must give the employed person an opportunity in accordance with it.

Sub-section (4)

Even if an employed person is liable for a fine, the employer cannot impose a fine of more than three percent (3%) of the wages payable to him during any one wage period.

Sub-section (5)

If the employed person is under fifteen years of age, then the employer cannot impose fines on him.

Sub-section (6)

The employer cannot recover the fine imposed on any employed person through installments or after the expiry of ninety (90) days from the date on which he has imposed the fine.

Sub-section (7)

Fines are deemed to have been imposed on the day the employed person commits the act or omission in respect of which the fines were imposed.

Sub-section (8)

According to Section 3 of the Act, a person is deemed responsible for the payment of wages. Further, the same person is also responsible to record all fines and realizations in a register in the prescribed format.

Also, any realization is applied only for purposes beneficial to persons employed in the factory or establishment. These realizations also require approval from the prescribed authority.

Explanation: Let's say that there are several railways, factory or industrial or other establishments under the same management. In such cases, the person responsible for the payment of wages must credit all realizations to a common fund. This fund is maintained for all the staff under the same management. Also, the fund is applied only to such purposes as the prescribed authority approves.

Deductions from Wages

Section 7 of the Payment of Wages Act, 1936, outlines the deductions from wages permitted under the Act. An employer cannot make deductions of any kind except those specified under the Act. In this article, we will take a look at these rules pertaining to deductions from wages.

Section 7 – Deductions from Wages

Notwithstanding the provisions of the Railways Act, 1989 (24 of 1989), an employer must pay the wages of an employed person without deductions of any kind except those specified under the Payment of Wages Act, 1936. A deduction can be made only in the following manner.

1. Fines (explained in Section 8)

2. Absence from duty (explained in Section 9)

3. Damage to or loss of goods expressly entrusted in the employed person (explained in Section 10)

4. House-accommodation or other amenities or services that the employer provides (explained in Section 11).

It is important to note that the term ‘services‘ does not imply the supply of tools and also the raw materials required for fulfilling the job.

5. Recovery of Advances (explained in Section 12)

a. The recovery of loans made from any fund constituted for labor welfare

b. Also, the recovery of loans granted for house-building or other purposes

Additionally,

- The income tax that the employed person is liable to pay
- Any deduction under the order of the court or any other competent authority
- Provident fund – subscription and also the repayment of advances
- Payments that the employee makes to cooperative societies
- Payment of premium of the life insurance policy to the Life Insurance Corporation of India, of the employed person. Further, this requires written authorization from the person employed.
- Payment of the contribution of the employed person towards any fund that the employer or the trade union constitutes. This also requires written authorization from the person employed.
- Payment of the fees for the membership of any trade union registered under the Trade Union Act, 1926. Also, this requires written authorization from the person employed as well.
- The payment of insurance premium on Fidelity Guarantee Bonds
- Recovery of losses which the railway administration sustains on account of the employed person accepting counterfeit coins or mutilated or forged currency notes.
- If the railway administration sustains losses due to the employed person failing to invoice or bill or collect or account for the appropriate charges, then the losses are recovered as deductions.
- Recovery of losses which the railway administration sustains on account of the employed person incorrectly granting any rebates or refunds
- A contribution that the employed person makes to the Prime Minister’s National Relief Fund or any similar Fund which is notified in the Official Gazette. Further, this needs written authorization from the person employed.

- A contribution to an insurance scheme that the Central Government may make for its employees

Limit on Deductions

As per Section 7(3) of the Payment of Wages Act, 1936, the total amount of deductions cannot exceed:

1. 75 percent of the wages when the deductions are wholly or partly for payments to cooperative societies.
2. 50 percent of the wages in every other case

Minimum wages ACT, 1948

Minimum Wages Act

OBJECT AND SCOPE OF THE LEGISLATION

The Minimum Wages Act was passed in 1948 and it came into force on 15th March, 1948. The National Commission on Labour has described the passing of the Act as landmark in the history of labour legislation in the country. The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in *Unichoyi* v. *State of Kerala* (A.I.R. 1962 SC 12), as follows:
"What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour".
According to its preamble the Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as 'Scheduled Employments'. The Act extends to whole of India.

IMPORTANT DEFINITIONS

Appropriate Government **[Section 2(b)]**
"Appropriate Government" means –

(i) in relation to any scheduled employment carried on by or under the authority of the Central or a railway administration, or in relation to a mine, oilfield or major part or any corporation established by a Central Act, the Central Government, and

(ii) in relation to any other scheduled employment, the State Government.

Employee **[Section 2(i)]**
"Employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an outworker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale purpose of the trade or business of that other person where the processs is to be carried out either in the home of the out-worker or in some other premises, net being premises under the control and management of that person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of Armed Forces of the Union.

Employer **[Section 2(e)*]***
"Employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except, in sub-section (3) of Section 26 –

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person of authority is so appointed, the Head of the Department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the Chief Executive Officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner of the supervision and control of the employees or for the payment of wages.

The definitions of "employees" and "employer" are quite wide. Person who engages workers through another like a contractor would also be an employer (1998 LLJ I Bom. 629). It was held in *Nathu Ram Shukla* v. *State of Madhya Pradesh* A.I.R. 1960 M.P. 174 that if minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer with the meaning of the Act. Similarly, in case of *Loknath Nathu Lal* v. *State of Madhya Pradesh* A.I.R. 1960 M.P. 181 an out-worker who prepared goods at his residence, and then supplied them to his employer was held as employee for the purpose of this Act.

Scheduled employment **[Section 2(g)]**

"Scheduled employment" means an employment specified in the Schedule or any process or branch of work forming part of such employment.

Note: The schedule is divided into two parts namely, Part I and Part II. When originally enacted Part I of Schedule had 12 entries. Part II relates to employment in agriculture. It was realised that it would be necessary to fix minimum wages in many more employments to be identified in course of time. Accordingly, powers were given to appropriate Government to add employments to the Schedule by following the procedure laid down in Section 21 of the Act. As a result, the State Government and Central Government have made several additions to the Schedule and it differs from State to State.

Wages **[Section 2(h)]**

"Wages" means all remunerations capable of being expressed in terms of money, which would, if the terms of the contract of employment, express of 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;

(b) any other amenity or any service excluded by general or social order of the appropriate Government;

(ii) contribution by the employer to any Pension Fund or Provides 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;

(v) any gratuity payable on discharge.

FIXATION OF MINIMUM RATES OF WAGES [Section 3(1)(a)]

Section 3 lays down that the 'appropriate Government' shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part ii of the Schedule, and in an employment added to either part by notification under Section 27. In case of the employments

specified in Part II of the Schedule, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether. In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities: [*Basti Ram* v. *State of A.P.* A.I.R. 1969, (A.P.) 227].
Notwithstanding the provisions of Section 3(1)(a), the "appropriate Government" may not fix minimum rates of wages in respect of any scheduled employment in which less than 1000 employees in the whole State are engaged. But when it comes to its knowledge after a finding that this number has increased to 1,000 or more in such employment, it shall fix minimum wage rate.

REVISION OF MINIMUM WAGES
According to Section 3(1)(b), the 'appropriate Government' may review at such intervals as it may thing fit, such intervals not exceeding five years, and revise the minimum rate of wages, if necessary. This means that minimum wages can be revised earlier than five years also.

MANNER OF FIXATION/REVISION OF MINIMUM WAGES
According to Section 3(2), the 'appropriate Government' may fix minimum rate of wages for:

(a) time work, known as a Minimum Time Rate;

(b) piece work, known as a Minimum Piece Rate;

(c) a "Guaranteed Time Rate" for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and

(d) a "Over Time Rate" i.e. 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 employee.

Section 3(3) provides that different minimum rates of wages may be fixed for –

(i) different scheduled employments;

(ii) different classes of work in the same scheduled employments;

(iii) adults, adolescents, children and apprentices;

(iv) different localities

Further, 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 large wage periods as may be prescribed;

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

However, where wage period has been fixed in accordance with the Payment of Wages Act, 1986 vide Section 4 thereof, minimum wages shall be fixed in accordance therewith [Section 3(3)].

MINIMUM RATE OF WAGES (Section 4)
According to Section 4 of the Act, any minimum rate of wages fixed or revised by the appropriate Government 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 worker (hereinafter referred to as the cost of living allowance); or

(ii) a basic rate of wages or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates where so authorized; 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 essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such directions specified or given by the appropriate Government.

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES (Section 5)
In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

First Method **[Section 5(1)(a)]**
This method is known as the 'Committee Method'. The appropriate Government may 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. After considering the advise of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages.

The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

Note: It was held in *Edward Mills Co.* v. *State of Ajmer* (1955) A.I.R. SC, that Committee appointed under
Section 5 is only an advisory body and that Government is not bound to accept its recommendations. As regards composition of the Committee, Section 9 of the Act lays down that it shall consist of persons to be nominated by the appropriate Government representing employers and employee in the scheduled employment, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman of the Committee by the appropriate Government.

Second Method **[Section 5(1)(b)]**
The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall 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 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification.

However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect. [1996 II LLJ 267 Kar.].

ADVISORY BOARD
The advisory board is constituted under Section 7 of the Act by the appropriate Government for the purpose of co-ordinating the work of committees and sub-committees appointed under Section 5 of the Act and advising the appropriate Government generally in the matter of fixing and revising of minimum rates of wages. According to Section 9 of the Act, the advisory board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman by the appropriate Government.

It is not necessary that the Board shall consist of representatives of any particular industry or of each and everyscheduled employment; *B.Y. Kashatriya* v. *S.A.T. Bidi Kamgar Union* A.I.R. (1963) S.C. 806. An independent person in the context of Section 9 means a person who is neither an employer nor an employee in the employment for which the minimum wages are to be fixed. In the case of *State of Rajasthan* v. *Hari Ram Nathwani*, (1975) SCC 356, it was held that the mere fact that a person happens to be a Government servant will not divert him of the character of the independent person.

CENTRAL ADVISORY BOARD
Section 8 of the Act provides that the Central Government shall appoint a Central Advisory Board for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages

Act and for coordinating work of the advisory boards. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government.

MINIMUM WAGE – WHETHER TO BE PAID IN CASH OR KIND

Section 11 of the Act provides that minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government, on being satisfied, may approve and authorize such payments. Such Government can also authorize for supply of essential commodities at concessional rates. Where payment is to be made in kind, the cash value of the wages in kind or in the shape of essential commodities on concessions shall be estimated in the prescribed manner.

PAYMENT OF MINIMUM WAGES IS OBLIGATORY ON EMPLOYER (Section 12)

Payment of less than the minimum rates of wages notified by the appropriate Government is an offence. Section 12 clearly lays down that the employer shall pay to every employee engaged in a scheduled employment under him such wages at a rate not less than the minimum rate of wages fixed by the appropriate Government under Section 5 for that class of employment without deduction except as may be authorized, within such time and subject to such conditions, as may be prescribed.

FIXING HOURS FOR A NORMAL WORKING DAY (Section 13)

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, by virtue of Section 13 the appropriate Government may –

(a) Fix the number 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 day of rest;

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

The above stated provision shall apply to following classes of employees 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 any work which could not be carried on except at times dependent on the irregular action of natural forces.

For the purpose of clause (c) employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on ground that the daily hours of the employee, or if these be no daily hours of duty as such for the employee, the hours of duty, normally includes period of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

There is correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on basis of standard normal working hours, namely 48 hours a week; *Benode Bihari Shah* v. *State of W.B.* 1976 Lab I.C. 523 (Cal).

PAYMENT OF OVERTIME (Section 14)

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act by the hours, the day or by such longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under this Act or under any other law of the appropriate Government for the time being in force whichever is higher. Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages. (1998 LLJ I SC 815).

WAGES OF A WORKER WHO WORKS LESS THAN NORMAL WORKING DAY (Section 15)

Where the rate of wages has been fixed under the Act by the day for an employee and if he works on any day on which he employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day.

Provided that he shall not receive wages for full normal working day –

(i) If his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work, and

(ii) Such other cases and circumstances as may be prescribed.

MINIMUM TIME – RATE WAGES FOR PIECE WORK (Section 17)

Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid in terms of Section 17 of the Act at minimum time rate.

MAINTENANCE OF REGISTERS AND RECORDS (Section 18)

Apart from the payment of the minimum wages, the employer is required under Section 18 to maintain registers and records giving such particulars of employees under his employment, the work performed by them, the receipts given by them and such other particulars as may be prescribed. Every employee is required also to exhibit notices, in the prescribed form containing particulars in the place of work. He is also required to maintain wage books or wage-slips as may be prescribed by the appropriate Government and the entries made therein will have to be authenticated by the employer or his agent in the manner prescribed by the appropriate Government.

AUTHORITY AND CLAIMS (Section 20-21)

Under Section 20(1) of the Act, the appropriate Government, may appoint any of the following as an authority to hear and decide for any specified area any claims arising out of payment of less than the minimum rate of wages or in respect of the payment of remuneration for the days of rest or of wages at the rate of overtime work:

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

(b) Any officer of the Central Government exercising functions as Labour Commissioner for any region; or

(c) Any officer of the State Government not below the rank of Labour Commissioner; or

(d) Any other officer with experience as a Judge of a Civil Court or as the Stipendiary Magistrate.

The authority so appointed shall have jurisdiction to hear and decide claim arising out of payment of less than the minimum rates of wages or in respect of the payment remuneration for days of rest or for work done on such days or for payment of overtime.

The provisions of Section 20(1) are attracted only if there exists a disputed between the employer and the employee as to the rates of wages. Where no such dispute exists between the employer and employees and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off days is due to an employee or not, the appropriate remedy is provided by the Payment of Wages Act, 1936.

OFFENCES AND PENALTIES

Section 22 of the Act provides that 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 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.

While 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.

It is further stipulated under Section 22A of the Act that 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.

COMPLIANCES UNDER THE ACT

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The Establishment is covered by the definition "Scheduled Employment" with effect from…….
2. The Government revised the minimum wages once/twice/ thrice during the financial year under reference and the Establishment has paid to all its employees minimum wages in accordance with the rates at respective point of time and at the respective rates specified in notification under Section 5 of the MWA.
3. The Establishment has issued wage slips to all its employees in respect of each of the wage period……..
4. Where the services of any employee were terminated for any reason whatsoever, the wages were paid within two working days from the date of such termination.
5. The Establishment did not make any unauthorized deduction from the wages of any of its employees. Further, the deductions if any, made were within the limits of fifty percent (or seventy five percent in case of cooperatives) of wages earned by such employees during the period under reference.
6. Where the Establishment was constrained to impose any fine or deduct wages on account of damages caused by any employee, the latter was given an opportunity of being heard in the presence of a neutral person and was also communicated the amount of fine imposed or deduction made from the wages.
7. The Establishment has eight working hours per day, inclusive of half an hour of interval.
8. All claims under Section 20 of the MWA were paid within the time limit specified in the Order.

The Industrial Relations Code, 2019

Highlights of the Bill

- The Code provides for the recognition of trade unions, notice periods for strikes and lock-outs, standing orders, and resolution of industrial disputes. It subsumes and replaces three labour laws: the Industrial Disputes Act, 1947; the Trade Unions Act, 1926; and the Industrial Employment (Standing Orders) Act, 1946.

- Trade unions that have a membership of at least 10% of the workers or 100 workers will be registered. The union with 75% of workers in an establishment will be the sole negotiating union. Otherwise, a negotiating council of unions will be formed.

- An employee cannot go on strike unless he gives notice for a strike within six weeks before striking, and within 14 days of giving such notice. Similar provisions exist for lock-out of workers.

- Industrial establishments with 100 workers must prepare standing orders on matters listed in a Schedule and have them certified.

- Factories, mines or plantations in which 100 or more workers are employed are required to take prior permission of the central or state government before laying off or retrenching their workers.

- The Code provides for the constitution of Industrial Tribunals for the settlement of industrial disputes. Each Industrial Tribunal will consist of a Judicial member and an Administrative member.

Key Issues and Analysis

- The Code prohibits strikes or lock-outs in any establishment unless a prior notice of 14 days is provided. Similar provisions existed in the Industrial Disputes Act, 1947 for public utility services (such as, railways and airlines). The Code expands these provisions to apply to all industrial establishments. This may impact the ability of workers to strike and employers to lock-out.

- The Code permits the government to defer, reject or modify awards passed by Industrial Tribunals and the National Industrial Tribunal. A similar provision in the Industrial Disputes Act, 1947 was struck down by the Madras High Court in 2011, as it violated the principle of separation of powers by allowing the government to change the decision of a Tribunal through executive action.

- The Code requires the employer of establishments with at least 100 workers to obtain permission from the appropriate government prior to the retrenchment of a worker. The government may increase or decrease this threshold through a notification. The question is whether the power to determine such a threshold should be specified by Parliament or whether it should be delegated to the government.

PART A: HIGHLIGHTS OF THE BILL

Context

In India, labour falls under the Concurrent List of the Constitution. Therefore, both Parliament and state legislatures can make laws regulating labour. Currently, there are over 100 state and 40 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security and wages.[1] The Second National Commission on Labour (2002) found existing legislation to be complex, with archaic provisions and inconsistent definitions. To improve ease of compliance and ensure uniformity in labour laws, the National Commission recommended that existing labour laws should be consolidated into broader groups

such as (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions.[2]

With regard to a law on industrial relations, the Commission recommended the consolidation of existing labour laws into two laws; one which would apply to establishments employing 20 or more workers, and another law which would apply to establishments employing 19 or lesser employees. The law applicable to establishments with 20 or more workers would: (i) apply uniformly to all such establishments regardless of the nature of activity, (ii) seek to reduce government intervention in employer-worker relations by encouraging collective negotiation between trade unions and management, and (iii) recognize negotiating agents to represent the concerns of workers in labour disputes. The other law would contain less stringent provisions on industrial relations, social security, health and safety, and wages (to reduce the compliance burden on small scale industries).

In this context, the Industrial Relations Code, 2019 was introduced in Lok Sabha by the Minister of Labour and Employment, Mr. Santosh Kumar Gangwar, on November 28, 2019. It was referred to the Standing Committee on Labour on December 23, 2019.

Key Features

The Bill applies to all establishments except those engaged in charitable and philanthropic work, domestic work, sovereign functions of the state and any notified activity. It provides for the recognition of trade unions, notice periods for strikes and lock-outs, standing orders, and resolution of industrial disputes. It replaces the Industrial Disputes Act, 1947; the Trade Unions Act, 1926; and the Industrial Employment (Standing Orders) Act, 1946.

Trade Unions

- **Registration:** Seven or more members of a trade union can apply to register it. Trade unions that have a membership of at least 10% of the workers or 100 workers, whichever is less, will be registered. The overall membership cannot go below seven workers. Only one-third of the total number of office bearers of the union or five office bearers, whichever is lower, can be from outside the industry with which the union is connected.

- **Recognition:** The central or state government may recognise a trade union or a federation of trade unions as Central or State Trade Unions respectively.

- **Negotiating union and council:** The trade union with at least 75% of the workers as members will be considered the sole negotiating union, for the purpose of negotiating with the employer of the establishment. In case no union has at least 75% of the workers as members, a negotiating council shall be formed consisting of representatives of unions that have at least 10% of the workers as members. One representative shall be included for each 10% of the total workers on the rolls as members.

Strikes and lock-outs

- In all industrial establishments, an employee cannot go on strike: (i) unless he gives notice for a strike within 60 days before striking, and (ii) within 14 days of giving such notice. Similar notice provisions exist for lock-out of workers. Lock-out refers to the following actions by an employer: (i) temporary closure of an establishment, (ii) suspension of work, or (iii) refusal to continue employing workers.

Lay-off and retrenchment

- **Lay-off and retrenchment:** The Code defines lay-off as the inability of an employer, due to shortage of coal, or power, or breakdown of machinery, from giving employment to a worker. Retrenchment refers to the termination of service of a workman for any reason other than disciplinary action. It does not include retirement, non-renewal of contract, or completion of tenure of fixed term employment.

- Establishments in which at least 50 workers are employed, are required to give to every worker who has completed at least one year of continuous service: (i) 50% of basic wages and dearness allowance if he is laid off, and (ii) one month's notice (or equivalent wages) and 15 days' wages for every year of continuous service for such period to a worker who has been retrenched.

- Further, if the establishment has at least 100 workers, prior permission of the central or state government must be obtained before lay-off or retrenchment. In case of retrenchment, the notice requirement is extended to three months (or equivalent wages). The central or state government can modify this threshold by notification.

- The provisions on lay-offs only apply to factories, mines or plantations. The provisions on retrenchment apply to all establishments.

- **Worker re-skilling fund:** The fund will be set up by the appropriate government. It will consist of contributions from employers equal to 15 days (or as specified by the central government) of the last drawn wages of every retrenched worker. Contributions from other sources may be prescribed by the appropriate government. Funds must be utilised within 45 days of retrenchment as may be prescribed.

Dispute Resolution

- **Bi-partite Fora:** The appropriate government may require employers in establishments with 100 or more workers to constitute a Works Committee. The Committee will help resolve conflicts between workers and employers. It will be composed of representatives of workers and employers. The number of representatives of workers cannot be less than the number of representatives of employers. Further, every establishment with 20 or more workers must constitute a Grievance Redressal Committee. The Committee will resolve disputes related to grievances of individual workers on non-employment, terms of employment or conditions of service. It will consist of equal representatives of the employer and workers up to a maximum of ten workers.

- **Arbitration:** The Code allows for industrial disputes to be referred to arbitration by the employer and workers if both parties agree to do so. Industrial disputes refer to disputes between: (i) employers and employers, (ii) employers and workers, or (iii) workers and workers, on the employment or non-employment, terms of employment, conditions of labour, or disputes between an employer and worker on discharge, dismissal, or retrenchment of the worker.

- **Resolution of industrial disputes:** The central or state governments may appoint conciliation officers to mediate and promote settlement of industrial disputes. These officers will investigate the dispute and hold conciliation proceedings to arrive at a fair and amicable settlement of the dispute. If no settlement is arrived at, then either party to the dispute can make an application to an Industrial Tribunal.

- **Industrial Tribunals:** Industrial Tribunals may be set up for settling industrial disputes. An Industrial Tribunal will consist of two members: (i) a Judicial Member, who is a High Court Judge or has served as a District Judge or an Additional District Judge for a minimum of three years; and (ii) an Administrative Member, who has over 20 years of experience in the fields of economics, business, law, and labour relations.

- The central government may also constitute National Industrial Tribunals for settlement of industrial disputes which: (i) involve questions of national importance, or (ii) could impact industrial establishments situated in more than one state. Members of the National Tribunal will include: (i) a Judicial Member, who has been a High Court Judge, and (ii) an Administrative Member, who has been a Secretary in the central government.

- The award of the Tribunal will be enforceable within 30 days. However, the government may decide to defer the enforcement of an award in certain cases on public grounds (affecting national economy or social justice).

Standing Orders

- **Standing orders:** All industrial establishments with 100 workers or more must prepare standing orders on matters listed in a Schedule to the Code. The central government will prepare model standing orders on such matters, based on which industrial establishments are required to prepare their standing orders. These matters relate to: (i) classification of workers, (ii) manner of informing workers about work hours, holidays, paydays, and wage rates, (iii) termination of employment, and (iv) grievance redressal mechanisms for workers.

- **Notice of change:** Employers who propose changes in the conditions of service are required to give a notice to the workers. The conditions of service for which a notice is required to be given are listed in a Schedule to the Code and include wages, contribution, and leave.
- **Unfair labour practices:** The Code prohibits employers, workers, and trade unions from committing unfair labour practices listed in a Schedule to the Code. These include: (i)

restricting workers from forming trade unions, (ii) establishing employer-sponsored trade unions, and (iii) coercing workers to join trade unions.

Offences and Penalties

- The Code specifies various offences. If an employer employing 100 or more workers does not take prior permission from the appropriate government for lay-off, retrenchment and closure, he may be punished with a fine between one lakh rupees and ten lakh rupees. Further, an illegal strike may be punished with a fine between one thousand rupees and ten thousand rupees, or with imprisonment up to one month, or with both. Similarly, an illegal lock-out by an employer may be punished with a fine between fifty thousand rupees and one lakh rupees, or imprisonment for one month, or both. For the violation of provisions where the offence is not specified, the penalty may be a fine up to one lakh rupees.

- The Code allows for compounding (settling) of offences not punishable with imprisonment, subject to certain conditions. Compounding may be allowed for a sum of 50% of the maximum fine provided for the offence.

PART B: KEY ISSUES AND ANALYSIS

Strikes and lock-outs may become difficult for all establishments

The Code requires all persons to give a prior notice of 14 days before a strike or lock-out. This notice is valid for a maximum of 60 days. The Code also prohibits strikes and lock-outs: (i) during and up to seven days after a conciliation proceeding, and (ii) during and up to sixty days after proceedings before a tribunal. This may impact the ability of workers to strike and employers to lock-out workers.

The Code requires prior notice before a strike or a lock-out, which has to be shared with the conciliation officer within two days. Conciliation proceedings will start immediately and strikes or lock-outs will be prohibited during this period. If the conciliation is not successful and there is an application to a Tribunal by either party, the period of prohibition on strikes or lock-outs will be further extended. This time could extend the beyond the 60-day validity of the notice. Therefore, these provisions may impact the ability of a strike or lock-out on the appointed date given in the notice.

The Industrial Disputes Act, 1947 contains similar provisions for public utility services. A public utility service includes railways, airlines, and establishments that provide water, electricity, and telephone service. However, the National Commission on Labour (2002) had justified the rationale of treating such industries differently, considering their impact on the lives of a vast majority of people.[2] The rationale for extending the provisions on notice to all establishments is unclear.

Power to government to modify or reject tribunal awards

The Code provides for the constitution of Industrial Tribunals and a National Industrial Tribunal to decide disputes under the Code. It states that the awards passed by a Tribunal will be enforceable on the expiry of 30 days. However, the government can defer the enforcement of the award in certain circumstances on public grounds affecting national economy or social justice. These circumstances are when: (i) the central or state government is a party to the dispute in appeal, or (ii) the award has been given by a National Tribunal. The appropriate government can also make an order rejecting or modifying the award. The notification and the order will be tabled in the legislature. The question is whether such a provision would violate the principle of separation of powers between the executive and the judiciary, since it empowers the government to change the decision of the tribunal through executive action. Further, it raises the question of whether there is a conflict of interest, as the government may modify an award made by the Tribunal in a dispute in which it is a party.

The Industrial Disputes Act, 1947 had similar provisions. In 2011, the Madras High Court (affirming a 1997 Andhra Pradesh High Court judgment) struck down these provisions on constitutional grounds and held that the power to the executive to decline enforcing an award or to modify it, allows the executive to sit in appeal over the decision of the Tribunal, and therefore violates the separation of powers between the executive and the judiciary, which forms a part of the basic structure of the Constitution. This provision has been replicated in the Code. Therefore, it may violate the principle of separation of powers between the executive and the judiciary.

Threshold for provision on retrenchment left to delegated legislation

The Code defines retrenchment as the termination of employment of a permanent worker, except for certain reasons such as retirement of the worker. The Industrial Disputes Act, 1947 requires the employer of factories, mines and plantations with at least 100 workers to obtain permission from the appropriate government prior to the retrenchment of a worker. The Code retains this provision. However, it allows the central or state government to change the threshold (in either direction) for this provision through a notification. Under the 1947 Act, this power could only be exercised through amendment of the Act by the Parliament or state legislature. Any upward revision in the threshold by the state legislature additionally needed the assent of the President of India (since labour is a subject under the Concurrent List of the Constitution). The question is whether the power to determine such a threshold should be retained by the legislature or whether it should be delegated to the government.

Provisions on fixed term employment

The Code introduces provisions on fixed term employment. Fixed term employment refers to workers employed for a fixed duration based on a contract signed between the worker and the employer. Provisions for fixed term employment were introduced for central sphere establishments in 2018. We discuss below the pros and cons of introducing fixed term employment.

Fixed term employment may allow employers the flexibility to hire workers for a fixed duration and for work that may not be permanent in nature. Further, fixed term contracts are negotiated

directly between the employer and employee and reduce the role of a middleman such as an agency or contractor. They may also benefit the worker since the Code entitles fixed term employees to the same benefits (such as medical insurance and pension) and conditions of work as are available to permanent employees. This could help improve the conditions of temporary workers in comparison with contract workers who may not be provided with such benefits.

However, unequal bargaining powers between the worker and employer could affect the rights of such workers since the power to renew such contracts lies with the employer. This may result in job insecurity for the employee and may deter him from raising issues about unfair work practices, such as extended work hours, or denial of wages or leaves. Further, the Code does not restrict the type of work in which fixed term workers may be hired. Therefore, they may be hired for roles offered to permanent workmen. In contrast, under the Contract Labour (Regulation and Abolition) Act, 1970 the government may prohibit employment of contract labour in some cases including where: (i) the work is of a perennial nature, or (ii) the work performed by contract workers is necessary for the business carried out by the establishment, or (iii) the same work is carried out by regular workmen in the establishment. Note that the 2nd National Labour Commission (2002) had recommended that no worker should be kept continuously as a casual or temporary worker against a permanent job for more than two years.[2]

The ILO (2016) noted that several countries restrict use of fixed term contracts by: (i) limiting renewal of employment contracts (e.g., Vietnam, Brazil and China allow two successive fixed term contracts), (ii) limiting the duration of contract (e.g., Philippines and Botswana limit it up to a year), or (iii) limiting the proportion of fixed term workers in the overall workforce (e.g., Italy limits fixed term and agency workers to 20%).[6]

Table 1 below compares the provisions of fixed term employment, permanent employment and contract labour.

Table 1: Comparison between fixed term employment, permanent employment and contract labour

Feature	Fixe Term Employee	Permanent Employee	Contract Labour
Type of employment	▪ Employment under written contract. No contractor or agency is involved. ▪ On the payroll of the establishment.	▪ Employment directly under a written contract. ▪ On the payroll of the establishment.	▪ Engaged in an establishment through a contractor or agency. ▪ Not on the payroll of the establishment.
Term	▪ Stipulated fixed term. ▪ Employment lapses on completion of term, unless renewed. No notice is required to be	▪ Employed on a permanent basis ▪ Notice has to be given for termination of	▪ Based on terms negotiated with the contractor.

	given for retrenchment.	employment.	
Nature of work	▪ Not specified.	▪ Hired for routine work.	▪ Employment may be prohibited in certain cases, e.g., if similar work is carried out by regular workmen.

Sources: Contract Labour Act, 1970; Industrial Disputes Act, 1947; Notification GSR 976(E), Ministry of Labour and Employment, October 7, 2016, Notification GSR 235(E), Ministry of Labour and Employment, March 16, 2018; 2019 Code; PRS.

Certain terms not defined in the Code

The Code defines a 'worker' as any person who work for hire or reward. It excludes persons employed in a managerial or administrative capacity, or in a supervisory capacity with wages exceeding Rs 15,000. However, it does not define the terms 'manager' or 'supervisor' in this context. These terms are also used in the remaining three labour Codes, i.e., the Occupational Safety, Health and Working Conditions Code 2019 (OSH Code), the Code on Wages, 2019 and the Industrial Relations Code, 2019. The Standing Committee which examined the OSH Code recommended that the terms 'supervisor' and 'manager' be clearly defined in the Code as it determines the categories of persons who would be excluded from the definition of 'workers'.

Further, the Code uses the term 'contractor' while defining certain terms. For example, 'employer' is defined to include a contractor. However, the Code does not define the term 'contractor'. Note that the remaining three Codes define the term to include persons who deliver work using contract labour, or supply manpower through contract labour. Similarly, the Code defines the term "industrial establishment" to mean an establishment in which industry is carried on. However, it does not define the term 'establishment'. The remaining three Codes define the term to refer to any place where an industry, trade, business, manufacture or occupation is carried on.

Annexure: Comparison of the Code with the laws being subsumed

Table 1 compares the provisions of the Code with the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947.

Table 1: Comparison of existing laws with the Code

Provision	Current laws	Industrial Relations Code, 2019
Definitions	▪ **Industrial Disputes Act, 1947 (IDA):** 'Strike' refers to the stoppage of work by persons employed in any industry acting	▪ Retains the definition for 'strike' but also includes casual leave on a given day by 50% or more workers as a strike.

Provision	Current laws	Industrial Relations Code, 2019
	jointly, or a refusal to continue to work or accept employment. ▪ 'Industry' means any business, trade, undertaking, manufacture or calling of employers, and includes any service, employment or industrial occupation of workers. ▪ 'Retrenchment' is the termination of service of a worker for any reason other than disciplinary action. It does not include certain grounds, such as retirement, or termination due to ill-health. ▪ 'Workman' refers to any person (including an apprentice) employed in any industry to do work for hire or reward. Excludes certain categories of workers including persons in a managerial or advisory role, or persons employed in a supervisory role earning wages of more than Rs 10,000 per month. ▪ 'Wages' refers to monetary remuneration including; (i) dearness allowance, (ii) value of house accommodation, and (iii) travel concession. Excludes bonus, gratuity, and contributions for benefits.	▪ Defines "Industry" as any systematic activity for the production, supply or distribution of goods and services. The definition excludes: (i) sovereign functions of the government, (ii) domestic services, (iii) charitable services, and (iv) other notified activities. ▪ Retains the definition of 'retrenchment' but termination due to ill-health is not considered retrenchment. ▪ Retains the definition of 'worker' but excludes apprentices. Also changes the wage ceiling of supervisory workers from Rs 10,000 per month to Rs 15,000 per month. ▪ 'Wages' refers to any remunerations including; (i) basic pay, (ii) dearness allowance, and (iii) retaining allowance. Bonus, conveyance allowance, and overtime pay, etc. not included. ▪ Definition of 'fixed term employment' introduced. It refers to workers hired for a fixed period who enjoy the same entitlements and benefits as are available to permanent workers.
Registration of Trade Unions	▪ **Trade Unions Act, 1926:** A union will be registered only if at least 10% of all the workers or 100 workers, whichever is less, are members of the Union on the date of the application.	▪ Same criteria and conditions continue to apply for trade unions.
Negotiating Union/Council	▪ No provision.	▪ Trade Union with at least 75% of the workers as members will be the sole *negotiating union.* In case no Union has at least 75% of workers as members, a

Provision	Current laws	Industrial Relations Code, 2019
		negotiating council will be formed consisting of representatives of Unions that have at least 10% of workers as members. For every 10% of total workers as members, one representative will be included.
Strikes and lock-outs	▪ **IDA**: For *public service utilities*, strikes or lock-outs cannot be conducted unless a notice of 14 days is provided. The notice is valid for a maximum of six weeks.	▪ The same provisions on strikes and lock-outs have been extended to *all establishments.* The validity period of the notice has been amended from six weeks to 60 days.
Lay-off, retrenchment	▪ **IDA**: Factories, mines or plantations in which 100 or more workers are employed are required to take permission of the central or state government before laying off or retrenching workers.	▪ Same provision retained but the appropriate government may change this limit (of 100) by notification.
Worker re-skilling fund	▪ No provision.	▪ The fund will consist of contributions from employers equal to the 15 days' wages of every retrenched worker, and contributions from other sources prescribed by the appropriate government. It shall be utilized as prescribed, within 45 days of retrenchment.
Model standing orders	▪ **Standing Orders Act, 1946:** Applies to establishments employing 100 or more workers. The appropriate government may specify model standing orders. Employers will submit draft standing orders to the certifying officer based on the model orders.	▪ Applies to establishments employing 100 or more workers. Central government will draft model standing orders. Employers must consult the trade unions or negotiating union/council before submitting the orders to the certifying officer.
Bodies dealing with Industrial	▪ **IDA:** Provides for Courts of Enquiry, Labour Courts, Industrial Tribunals and National Industrial	▪ Provides for Industrial Tribunals and National Industrial Tribunals. Industrial Tribunals to consist of

Provision	Current laws	Industrial Relations Code, 2019
Disputes	Tribunals. Tribunals to consist of judicial member. ▪ Only the appropriate government can make a reference to a Labour Court or Tribunal, and the central government to the National Tribunal.	a judicial member and an Administrative member. ▪ Either party to a dispute can approach the Tribunal. However, only the central government can make a reference to the National Industrial Tribunal.

Sources: The Trade Unions Act, 1926; the Industrial Employment (Standing Orders) Act, 1946; The Industrial Disputes Act, 1947; The Industrial Relations Code, 2019; PRS.

References

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