

Industrial Relation & Labour Law

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Abbreviations

| | | |
|-------|---|-----------------------------------|
| ILO | - | International Labour Organisation |
| L.I.C | - | Life Insurance Corporation |
| TLV | - | Threshold Limit Values |

Chapter I

Industrial Disputes Act

Aim

The aim of this chapter is to:

- explain the main features of the Industrial Disputes Act
- define the important industrial terms
- explain the laws and provisions in industrial terms

Objectives

The objectives of this chapter are to:

- define industry, strike, lock out, workman, wages, lay-off, retrenchment
- enlist the different authorities under the Act
- explain Courts of Inquiry

Learning outcome

At the end of this chapter, you will be able to:

- understand the shortcomings of Industrial Disputes Act
- recognise Settlement of Disputes
- identify different laws

1.1 Introduction

The objective of the Industrial Disputes Act as mentioned in the Preamble of the Act is “to make provisions for the investigation and settlement of industrial disputes and for certain other purposes”. A balance should be achieved between the legitimate demands of labour for a fair return, the necessary obligations on the part of employers, and a harmony in the flow of production. This can best be accomplished if the disputes between the employer and the workmen are minimised and the inevitable disputes arising are settled properly and expediently. The Industrial Disputes Act therefore is an important legislation.

Importance of Industrial Disputes Act

The Industrial Disputes Act provides remedies for the workmen if a dispute arises regarding any of the service conditions. It also provides relief to a workman who is an unfortunate victim of any arbitrary and unjust disciplinary action taken by an employer. It defines the liabilities of the employer if the workman has to lose his job, not because of his choice, but due to an action taken by the employer to suit his interests. Thus, ample protection is provided to the workman in several respects.

The provisions of the Industrial Disputes Act as amended from time to time are certainly aimed towards securing social justice and a fair reaction between capital and labour. The constitutional mandates of fundamental rights have also played a major role in the implementation and interpretation of the Industrial Disputes Act.

The shortcomings in Industrial Disputes Act

The legislation prior to enacting of Industrial Disputes Act was the Trade Disputes Act, 1929. The major shortcomings of the Act were:

- the machinery for settlement of disputes was not made binding
- there was no machinery for settling of disputes voluntarily at a primary stage
- strikes and lockouts could not be prevented in certain circumstances
- there were no provision granting powers to the government to declare any industry as a public utility industry

Main features of the Industrial Disputes Act

Following are the main features of Industrial Dispute Act:

- Any industrial dispute may be referred to as the Industrial Tribunal
 - by an agreement between the parties
 - by the State Government
- Strikes and lockouts are prohibited
 - during the pendency of conciliation proceedings
 - during the pendency of settlements
 - during the pendency of awards
- In public interest or in an emergency, the government has the power to declare transport, coal, cotton textiles, foodstuff and iron and steel industries as public utility services.
- In situations of lay-off and retrenchment, the employer is obliged to pay compensation to the workmen.
- Compensation must be paid by the employer to the workmen in case the undertaking is closed or transferred.
- A systematic pattern of authorities like the Works Committee, Conciliation Officers, Board of Conciliation, Court of Inquiry, Labour Court, Tribunal and National Tribunal are provided for settlement and trial of industrial disputes.
- Unfair labour practices on part of the employees and employers are specified.
- Penalties are provided for violation of the provisions of the Act.

1.2 Important Definitions and their Explanations

Following are some of the important provisions mainly used in industrial terms.

1.2.1 Industry

“Any business, trade, undertaking, manufacture or profession of employers, includes any work, service, employment, handicrafts or industrial occupation or a vocation of workmen.” This definition was found to be insufficient as several employers could avoid liability by taking the defence that, they are strictly not within the definition. Ultimately a seven Judges bench of the Supreme Court of India exhaustively analysed the scope of this and laid down that a “triple test” be applied to decide whether a particular undertaking is “Industry” or not. The definition of “Industry” was amended in 1982 by a new comprehensive definition. This new definition covered all the points established as “triple test”.

Following is the amended definition:

“Industry means any systematic activity carried on by co-operation between an employer and his workmen.”

Such workmen are employed by employer directly or through any agency including a contractor for the production, supply or distribution of goods or services or to satisfy human wants or wishes.

Industry does NOT include

- Any agriculture operation except where agriculture operation is carried on in an integrated manner with any other activity and such other activity is the predominant one.
 - hospitals or dispensaries
 - educational, scientific, research or training institutions
- Institutions owned or managed by organisations entirely or substantially engaged in any charitable, social or philanthropic service.
 - khadi and village industries
- Any activity of the government relevant to the independent functions of the government including all the activities carried out by the departments of the central government dealing with defence research, atomic energy and space.
 - any domestic service
- Any activity being a profession practiced by an individual or an organisation of less than ten members.
- Any activity carried out by a cooperative, a club or any other similar organisation of individuals if the number of persons is less than ten.

The decision regarding a particular undertaking “being industry or not being industry” will be the entire discretion of the judges. The triple test advocated by the Supreme Court affirmed that there must be a systematic activity organised by cooperation between the employer and employee for the production and/or distribution of goods/services calculated to satisfy human wants and wishes.

The Honourable Judges also emphasised on following points:

- industry does not include religious or spiritual services or goods
- the venture may be in the private sector or public sector and there may not be any motive to earn profit

The above principles were fixed by the Supreme Court in the landmark case, Bangalore Water Supply V/S A. Rajappa (AIR 1978- Supreme Court 548).

1.2.2 Strike

Strike means a termination of work by a body of persons employed in any industry acting in combination or a concerted 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. Thus, the number of persons is not specified. The most important aspect about a strike is that it is a joint and common action taken with a common understanding and is a refusal to work

which is planned or designed together. There can be several types of strikes, like, go-slow strike, tools down strike, work to rule strike or general strike to refuse to work at all. The general strike is one where workmen normally do not enter the premises.

Provisions regarding strikes in public utility industries mentioned in section 22 are as follows:

- No person employed in a public utility service shall go on strike in violation of contract without giving notice of strike, provided:
 - within six weeks before striking
 - within fourteen days of giving such notice
 - before the expiry of the date of the strike specified in any such notice
 - during the pendency of any conciliation proceedings before a Conciliation officer
 - seven days after the conclusion of such proceedings

1.2.3 Lockout

Lockout means the temporary closing of a place of employment or the suspension of work or refusal by an employer to continue to employ any number of persons employed by him. Many times the strike and the lockout have a cause and effect relationship i.e., a strike is declared due to a lockout or a lockout is affected by the employer due to a strike. In a lockout, workers are not under the responsibility or obligation to come for work.

The statutory control of strikes and lockouts is divided into two categories.

- The strikes and lockouts in public utilities
- The strikes and lockouts in other industrial undertakings

A “Public utility service” is defined as:

- Any railway service or any transport service for the carriage of passengers or goods by air.
- Any service in connection with the working of any major port or dock.
- Any section of an industrial establishment on the working of which the safety of the establishment or the workmen employed therein depends.
- Any postal, telegraph or telephone service.
- Any industry which supplies power, light or water to the public.
- Any system of public conservancy or sanitation.

Provisions regarding lockouts in public utility industries mentioned in section 22 are as follows:

- No employer carrying on any public utility service shall lockout any of his workmen, without giving them notice of lockout as hereinafter provided:
 - within six weeks before locking out
 - within fourteen days of giving such notice
 - before the expiry of the date of lockout specified in any such notice
 - during the pendency of any conciliation proceedings before a Conciliation officer
 - seven days after the conclusion of such proceedings

Prohibition of strikes and lockouts

A strike in violation of contract by workmen and lockout by the employer is prohibited in the following cases:

- During the pendency of reunion proceedings before a Board of Conciliation and seven days after the conclusion of such proceedings.
- During the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings.

- During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings.
- During any period in which a settlement or award is in operation in respect of the matters covered by such settlement or award.

A strike may be called unjustified if it is due to any of the following reasons:

- the workers demands are exorbitant
- the motive behind the demands is not genuine
- unreasonable denial by workmen of the proposals given by the employer to solve issues and resistance to efforts for conciliation

1.2.4 Workman

Workman means any person (including an apprentice) employed in any industry to do any kind of work. It can be:

- manual
- unskilled
- skilled
- technical
- operational
- clerical
- supervisory work
- for hire or reward

From the various cases decided by the High Courts and the Supreme Court, the following categories were held to be workmen:

- dismissed or discharged workers
- retrenched workmen
- ex-employees
- gardeners employed by mill for looking after gardens of officers' bungalows within the mill's colony
- employees of municipality
- an employee doing occasionally supervisory work
- secretary employed to do stenographical work
- person merely signing salary bills of the staff
- development officer of L.I.C.

The following were declared not to be workmen:

- assistant editor of a newspaper
- teachers and research scholars
- a medical representative
- workers employed in non-statutory or non-recognised canteens
- an advocate engaged by a company on retainer ship basis
- priest in a temple
- car driver engaged by bank manager who gets car allowance from the bank

1.2.5 Wages

Wages means all remuneration capable of being expressed in terms of money which would be fulfilled if the terms of employment expressed or implied in certain form. Wages are payable to a workman in respect of his employment or for the work done in such employment which includes the following:

- Allowances (including dearness allowance) as the workman is for the time being entitled to the value of any house accommodation or of supply of light, water, medical attendance or amenity or of any service or of any concessional supply of food-grains or other articles
- Any travelling concession
- Any commission payable on the promotion of sales or business or both, but does not include any bonus, any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force
- Any gratuity payable on the termination of service

1.2.6 Lay-off

Lay-off means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason, to give employment to a workman whose name is on the muster rolls of his industrial establishment and who has not been retrenched.

Following are the situations in which the employee has lay off:

- If a workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed during normal working hours on any day and is not given employment by the employer within two hours it shall be deemed that he has been laid-off for that day.
- If the workman instead of being given employment at the commencement of any shift for any day is asked to present himself during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off for one half of that day.
- If the workman is not given any such employment even after so presenting himself in the second half of the shift, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.

Provisions about “Lay-off”

- Industrial establishments in which fifty to ninety nine workers are employed does not have to follow any preconditions before “laying-off” his workmen.
- The only condition is that the lay-off can be given only for the reasons mentioned in the lay-off and not for any other reasons e.g., financial difficulties of an employer cannot be the reason. Even if the definition has the words “any other connected reason”, it will be interpreted as being connected with the reasons mentioned earlier.
- The “lay-off” may appear as a right of a workman but it is equally an obligation of the employer during a certain period when he is unable to provide employment to his workmen for the time being due to reasons beyond his control but has expectations that the situation will revive.

Prohibition of lay-off (Section 25-M)

- No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment shall be laid off by his employer except with the prior permission of the government or such authority as may be specified by the government by notification in the Official Gazette
- Permission must be obtained on an application made for this purpose.
- Permission need not be obtained if lay-off is due to shortage of power, or due to natural calamity and in the case of a mine lay off is due also to fire, flood, excess of inflammable gas or explosion.
- Application made for permission for lay-off shall be made by the employer in the prescribed manner.
- Reasons for the intended lay off must be clearly mentioned in the application.

- A copy of such application shall be simultaneously served on the workmen.
- If the lay off is in a mine due to fire, flood, explosion or excess of inflammable gas, the employer must apply to the government within thirty days from the commencement of lay-off, to further continue the lay-off.
- When an application has been made by an employer to lay-off his workmen, the government inquires accordingly.
- A reasonable opportunity of being heard will be given to the employer, the workmen and other people interested in the lay off.
- The government or the appropriate authority will consider the genuineness and adequacy of the reasons for the lay-off, the interests of the workmen and all other relevant factors.
- Reasons for the grant or refusal shall be recorded in writing.
- A copy of such order shall be communicated to the employer and the workmen.
- If an application has been made to the government by an employer to lay-off his workmen or by an employer of a mine to continue the lay-off, and the government or the appropriate authority does not communicate within sixty days from the date on which such application was made, the order of granting or refusing to grant permission for lay-off, it will be presumed that the permission applied for has been granted.
- Any order of the government or the specified authority, either granting or refusing to grant permission for lay-off shall be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.
- However, the government or the specified authority may, either on its own, review any such order or may refer the matter for adjudication to a Tribunal. The employer or the workmen may also make an application for review. If the matter is referred to a Tribunal, it will pass an award within a period of thirty days.
- A lay-off will deemed to be illegal if:
 - No application has been made for permission to lay-off workmen.
 - No application has been made by an employer of a mine within thirty days of laying-off workmen.
 - Permission for lay-off has been refused, but still workers are laid off.
 - In any such lay-off which is deemed as illegal, workmen shall be entitled to all the legal benefits from the date on which they were laid-off as if they had not been laid-off.
 - If the government is satisfied that there are exceptional circumstances like accident in the establishment or death of the employer, then orders may be passed that the provisions about seeking permission to lay-off shall not apply to such establishment.

Right of compensation for workmen who are laid-off (Section 25 C)

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 either continuously or intermittently, following are the rights of compensation:

- He shall be paid by the employer for all the days during which he was laid-off, compensation which shall be equal to fifty percent of the total of basic wages and dearness allowance that would have been payable to him if he had not been laid-off.
- No compensation would be payable for the weekly holiday.
- 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.
- It shall be lawful for the employer to retrench the workman as per the provisions of this act 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 workmen for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.
- The provisions regarding compensation are applicable to all establishments either employing between fifty to ninety nine or more than one hundred workmen.

General principles regarding lay-off

- In establishments employing fifty to ninety-nine workmen, the employer can lay-off his workmen for specified reasons but in establishments, employing one hundred or more workmen, the employer must obtain permission from the government or specified authority by making an application before laying-off his workmen. In certain specified situations, application need not be made.
- Workmen laid-off are entitled to compensation at a fixed rate.
- The employer can offer alternate employment to workmen before laying-off.
- If workmen refuse to accept alternate employment without a valid reason, they are not entitled to receive compensation.
- Every workman who has put in certain minimum days of work in continuous service will only be entitled to claim compensation if laid off.
- Workmen will also not be entitled to receive compensation if the lay-off is due to strike or slowing down of production by workmen in another part of the establishment.
- The employer must maintain muster rolls of workmen in which entries are made regarding workmen presenting themselves for work at the appointed time during normal working hours.
- Workmen who are “badli” workmen (means who is employed in the place of another workman whose name is borne on the muster rolls of the establishment) or casual workmen are not entitled to receive lay-off compensation.

1.2.7 Retrenchment

Retrenchment means termination by the employer of the service of a workman for any reason whatsoever or a punishment inflicted by way of disciplinary action. Retrenchment does not include:

- Voluntary retirement of the workman
- Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation on that behalf
- Termination of the service of workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on the expiry of such contract or of such contract being terminated under a provision on that behalf contained therein.
- Termination of the service of a workman on the ground of continued ill health.

As retrenchment is associated with compensation to be payable to the workman by the employer, situations like voluntary retirement are excluded. Similarly termination of employment as a disciplinary action is also not included, as the object of retrenchment compensation is to compensate a workman on loss of his employment for no fault on his part and hence is payable to honest and dutiful workmen.

Conditions patterns to retrenchment of workmen (Sec.25-F)

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until:

- The workman has been given one month's 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 notice.
- The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.
- Notice in the prescribed manner is served to the government (or such authority as may be specified by the government by notification in the Official Gazette).

General principles of retrenchment

- Retrenchment compensation is payable to any retrenched workman if he has been in continuous service for one year (i.e., 240 days).
- The employer must give prior notice to the workmen or wages in lieu of notice as per the act.
- Illegality of or irregularity in the appointment cannot be the ground for not following the mandatory provisions regarding retrenchment.
- Retrenchment without complying with the provisions would be void ab-initio and would entitle the workman to seek a declaration for continuation in service with full back wages.
- The payment of retrenchment compensation does not affect the workman's other claims like gratuity.

1.2.8 Continuous Service (Sec.25 b)

A workman is said to be in continuous service for a period if he is in uninterrupted service for that period. Any interruption in the service on account of sickness or authorised leave or an accident or a legal strike or a lockout or a cessation of work which is not due to any fault on the part of the workman will not be considered. Where a workman is not in continuous service for a period of one year or six months, he shall be deemed to be in continuous service under an employer. For calculating the number of days on which a workman has actually worked under an employer, following days shall be included:

- The days on which the worker was laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 or under the Industrial Disputes Act or any other law applicable to the industrial establishment.
- The days on which the workman has been on leave with full wages earned in the previous year.
- The days on which the workman has been absent due to temporary disablement caused by accident arising out of and in the course of his employment.
- In the case of a female, she has been on maternity leave subject to a maximum of twelve weeks.

1.3 Differences in Industrial Terms

| Lock Out | Lay Off |
|---|---|
| Lock out is the refusal by an employer to continue to employ any number of persons employed by him because of closing of a place of employment or suspension of work. | Lay off is declared by the employer due to reason of shortage of coal, power or raw material or accumulation of stock or breakdown of machinery or for any other reason beyond his control which means that it is an unintentional act. |
| Lock out is the outcome of industrial dispute and continuous during the period of dispute. | Lay off is not concerned in any way with labour dispute. |

Table 1.1 Difference between lock out and lay-off

| Lock Out | Retrenchment |
|---|---|
| Lock out is the refusal by an employer to continue to employ any number of persons employed by him because of closing of a place of employment or suspension of work. | Business is continued and only some workmen are discharged. |
| Relation is temporarily suspended | No employment relation remains |
| The main object is to force the labour | Services of surplus workmen are to be dispensed |
| Outcome of the industrial dispute | In retrenchment there is no such dispute. |

Table 1.2 Difference between lock out and retrenchment

| Lock Out | Closure |
|---|---|
| Lock out is a weapon of coercion in the hands of the employer | Closure is generally for trade reasons. |
| Declared during industrial dispute | There may not be any such dispute. |
| It is closing of the place of business only and not the closing of business itself. | Not only the place of business but the business itself is closed. |

Table 1.3 Difference between lock out and closure

1.4 Settlement of Disputes

The Industrial Disputes Act has multi layered machinery for settlement of an industrial dispute and various authorities have been created under the Act. For obvious reasons the civil courts are barred from trying and deciding an industrial dispute. There are different modes as given below in which industrial disputes are sought to be settled.

- **Conciliation:** The concerned authority tries to bring about an agreeable settlement between the parties by hearing all sides. The solution is arrived at by consensus of the parties and the terms are signed in the form of a settlement agreement. The agreement then is binding on all the parties as per the agreed terms.
- **Arbitration:** When the disputes are not settled by conciliation, then it may be referred to arbitration. The arbitrator will be by choice of the contesting parties. The reference to arbitration may be voluntary or at the instance of the government.
- **Adjudication:** When the dispute is not settled by the above two modes, then it is tried and adjudicated by the judicial authorities i.e., the Labour court, the Tribunal or the National Tribunal.

1.5 The Authorities under the Act

Following are the different authorities under the act:

1.5.1 The Works Committee (Sec.3)

- In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate government may ask for general or special order from employer to constitute in the prescribed manner.
- Works Committee consists of representatives of employers and workmen engaged in the establishment. However, the number of representatives of workmen on the committee shall not be less than the number of representatives of the employer.
- The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union if any, registered under the Indian Trade Union Act 1926.
- It shall be the duty of the works committee to promote measures for securing and preserving amity and good relations between the employer and the workmen and, to that end, to comment upon matters of their common interest or concern and try to compose any material difference of opinion in respect of such matters.

Objectives of Works Committee

The objective is to secure industrial harmony and to promote good and friendly relations between the employer and the workmen. The job of the committee is only to smooth away tensions and frictions between the workmen and the management in routine and normal work. The committees have no authority to consider any changes in the conditions of service or to give any decision. Their purpose is to tackle any issue in the beginning stages only before it becomes really serious. They have to look after problems of the workmen and to seek an amicable settlement. The workmen's representatives on the committee are elected by members of the registered trade union and also by workmen who are not members of the registered trade union.

1.5.2 Conciliation Officers (Sec.4)

The appropriate government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes. A conciliation officer may be appointed for a specified area or for one or more specified industries in a specified area either permanently or for a limited period.

Procedure and powers of a conciliation officer (Sec.11)

- A conciliation officer may, for the purpose of inquiry into any existing or apprehended industrial dispute, enter the premises occupied by any industrial establishment to which the dispute relates, after giving reasonable notice.
- A conciliation officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed by him under the act.
- A conciliation officer shall be deemed to be a public servant.

Duties of conciliation officers (Sec.12)

- The conciliation officer, shall, for the purpose of bringing about a settlement without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all the things which he thinks are fit for the fair and amicable settlement for the dispute.
- If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of conciliation proceedings, then the conciliation officer shall send a report thereof to the appropriate government or to an officer authorised in this behalf by the appropriate government together with a memorandum of the settlement signed by the parties of the dispute.
- If no such settlement is arrived at the conciliation officer, he has to send appropriate report mentioning steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at.
- If on a consideration of the above report the appropriate government is satisfied that there is a case for reference to a board, labour court, tribunal or national tribunal it may make such reference. Where the appropriate government does not make such a reference it shall record and communicate to the parties concerned its reasons.
- The report of the conciliation officer shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate government, subject to the approval of the conciliation officer, the time for submission of the report may be extended by such period as may be agreed in the writing by all the parties to the dispute.
- A conciliation officer does not have the powers to decide the various points at issue between the opposing parties. All that he can do is try to persuade the parties to come to a fair and amicable settlement. Because conciliation proceedings are more or less administrative in nature and therefore the conciliation officer cannot give any decision.
- However if a settlement is arrived at during conciliation proceedings and is signed by the parties, it will be binding on them.
- The conciliation officer should not keep the matter with him for unreasonably long time and should send his report expeditiously.
- Even if the conciliation officer sends a report of failure, he can hold a fresh conciliation proceeding if he has further hopes.

1.5.3 Boards of Conciliation (Sec.5)

The appropriate government may, as occasion arises, by a notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute. A board shall consist of a chairman and two or four other members as the appropriate government thinks fit. The chairman shall be an independent person and the others shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party. If any party fails to make a recommendation within the prescribed time, the appropriate government shall appoint such persons as it thinks fit to represent that party. A board having the prescribed quorum may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number. A member of a board of conciliation may for the purpose of inquiring into any existing or apprehended industrial dispute after giving reasonable notice enter the premises occupied by any establishment to which the dispute relates. Every board shall have the same powers as vested in a civil court in respect of the following matters:

- enforcing the attendance of any person and examining him on oath
- compelling the production of documents and material objects
- issuing commissions for the examination of witnesses
- every inquiry by a board shall be deemed to be a judicial proceeding
- members of a board shall be deemed to be public servants

Duties of Board (Sec.13)

- Where a dispute has been referred to a board under this Act, it shall be the duty of the board to endeavour to bring about a settlement of the same and for this purpose; the board shall in the correct manner without delay investigate the dispute.
- If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the board shall send a report thereof to the appropriate government together with a memorandum of settlement signed by the parties to the dispute
- If no such settlement is arrived at, the board shall, send the appropriate report and steps taken by the board to the government.
- If, on the receipt of the above report in respect of a dispute relating to a public utility service, the appropriate government shall record and communicate to the parties concerned the reasons.
- The board shall submit its report within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate government.
- The appropriate government may from time to time extend the time for the submission of the report by further period but not exceeding two months in the aggregate.
- The time for the submission of the report may also be extended by such period as may be agreed in writing by all the parties to the dispute
- The report of a board shall be in writing and shall be signed by all the members
- Any member can give a dissenting opinion. The board of conciliation can follow a procedure which it thinks appropriate.

1.5.4 Courts of Inquiry (Sec.6)

The appropriate government as per the circumstance, by notification in the Official Gazette, constitutes a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute. A court consists of one independent person or of a number of independent persons which the appropriate government may think fit and where a court consists of two or more members, one of them shall be appointed as the chairman. A court having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number. If the appropriate government notifies the court that the services of the chairman have ceased to be available, the court shall not act until a new chairman has been appointed. A court shall inquire into the matters referred to it and report thereon to the appropriate government ordinarily within a period of six months from the commencement of its inquiry.

1.5.5 Labour Courts (Sec.7)

The appropriate government may by notification in the Official Gazette constitute one or more labour courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this act. A Labour Court shall consist of one person only who is appointed by the appropriate government.

A person shall not be qualified for appointment as the presiding officer of a labour court, unless:

- he is, or has been a Judge of a High court
- he has, for a period of not less than three years, been a District Judge or an additional District Judge
- he has held any judicial office in India for not less than seven years
- he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for less than five years

The Labour Court is the first Judicial Authority in the chain of authorities provided under the Industrial Disputes Act for the settlement of disputes. The matters within the jurisdiction of Labour Courts are incorporated in the Second Schedule which are as follows:

- the propriety or legality of an order passed by an employer under the standing orders
- discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed
- withdrawal of any customary concession or privilege
- illegality or otherwise of a strike or lock out
- all matters other than those in the Third Schedule (which are within the jurisdiction of the Industrial Tribunal)

1.5.6 Tribunals (Sec.7-A)

The appropriate government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter either specified in the Second Schedule or the Third Schedule and for performing functions which may be assigned to them under this Act. A Tribunal shall consist of one person only to be appointed by the appropriate government.

A person shall not be qualified for appointment as the Presiding Officer of a Tribunal, unless:

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

The appropriate government may, if it thinks fit, appoint two persons as assessors to advise the Tribunal in the proceedings before it. The Industrial Tribunal has power to adjudicate matters which are mentioned in the Second Schedule (matters which are under the jurisdiction of the Labour Court) and the matters mentioned in the Third schedule which are exclusively within the jurisdiction of the Tribunal. They are as follows:

- wages, including the period and mode of payment
- compensatory and other allowances
- hours of work and rest intervals
- leave with wages and holidays
- bonus, profit sharing, provident fund and gratuity
- shift working otherwise than in accordance with standing orders
- classification by grades
- rules of discipline
- rationalisation
- retrenchment of workmen and closure of establishment
- any other matter that may be prescribed

1.5.7 National Tribunals (Sec. 7-B)

The Central Government, may by a notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes, which, in the opinion of the central government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one state are likely to be interested in or affected by such dispute. A National Tribunal shall consist of one person only to be appointed by the central government. A person shall not be qualified for appointment as the Presiding Officer of the National Tribunal (unless he is or has been a Judge of a High Court). The central government may, if it thinks right, appoints two persons as assessors to advise the National Tribunal in the proceeding before it.

1.6 Procedure, Powers and Duties of Labour Court, Tribunal and National Tribunal (Sec.11)

A Labour Court, Tribunal and National Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates. Every Labour Court, Tribunal and National Tribunal shall have the same powers as are vested in a Civil Court when trying a suit in respect of the following matters:

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

Every inquiry or investigation by a Labour Court, Tribunal or National Tribunal shall be considered as a judicial proceeding to which sections 103 and 228 of the Indian Penal Code will be applicable. The Labour Court, Tribunal or the National Tribunal may if it thinks right, appoints one or more persons having special knowledge of the matter under consideration as assessors for advice. The presiding officers of the Labour Court, Tribunal and the National Tribunal shall be deemed to be public servants. The Labour Court, Industrial Tribunal and the National Tribunal are authorities who have to adjudicate the rights and liabilities of the contesting parties. They have to follow a legal procedure. No adjudication can be done without hearing a party against whom an order has to be passed. They are not only empowered to examine the legality of the order passed in a domestic inquire but can also consider the punishment awarded. The punishment can be reduced if it is excessive or harsh. This special power has been granted to the Labour Courts, Tribunals and National Tribunals by adding Sec-11-A by an amendment effected in 1971.

Powers of Labour Courts, Tribunals and National Tribunals

- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of adjudication proceedings, the Labour Court, Tribunal or the National Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on terms and conditions, if any, or give other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal.
- The Labour Court, Tribunal or National Tribunal shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. This section is applicable only when the dispute is about the discharge or dismissal of a workman. If the authority comes to the conclusion that the concerned order of discharge or dismissal is not legal, it can apply Sec.11-A on its own even if an application has not been made by the workman.
- Even if wide discretion has been conferred on the authorities under this section, the judicial trend in last several years has established the following principles – that orders under this section must be based on the promotion of two objectives i.e., security of employment and protection against wrongful dismissal or discharge, and harmony and peace in the industry.
- Normally reinstatement should be granted. But in exceptional cases where it is not possible to reinstate the workman, proper compensation should be awarded to the workman.
- Relevant factors to be considered before granting or not granting reinstatement would be:
 - the employer/workman may be in a strained relationship for a long time
 - the post held by the workman may be an important one which involves trust and confidence

- the past record of the employee may be relevant
- However no new evidence can be recorded or new material cannot be considered at the time of passing the order. The seriousness of the alleged misconduct can be evaluated and punishment can be altered accordingly. Not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal.

1.7 Miscellaneous

Notice of Change (Sec.9-A)

No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change without giving a notice in the prescribed manner of the nature of the change proposed to be effected, within twenty one days of giving such notice. No notice shall be requested for affecting any such change:

- where the change is affected in pursuance of any settlement or award
- where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (classification, control and appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (classification, control and appeal) Rules , the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate government in the Official Gazette apply

Thus, by the above provision the employer is restrained from making any change in certain conditions of service without giving intimation to workmen. The relevant conditions of service are as per the Schedule Four which is as follows:

- wages including the period and mode of payment
- contribution paid, or payable by the employer to any provident fund or pension fund or for the benefit for the workmen under any law for the time being in force
- compensatory and other allowances
- hours of work and rest intervals
- leave with wages and holidays
- Starting, alteration and discontinuance of shift working otherwise than in accordance with standing orders.
- classification by grades
- withdrawal of any customary concession or privilege or change in usage
- introduction of new rules of discipline or alteration of existing rules different from those provided in the standing orders
- rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen
- any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift which are not occasioned by circumstances over which the employer has no control

The purpose of this section is that no employer should make such a change in the service conditions which would affect the workmen prejudicially. Therefore, if an employer intends a change which would be benefiting the workmen, e.g. increase in the pay scales or to offer more facilities. Similarly if a choice is given to workmen to accept or not to accept the change, this section will not be applicable. The meaning of “alteration of conditions of service” would not mean wrongful discharge or termination of service as the term implies continuation of employer-employee relationship.

Summary

- The provisions of the Industrial Disputes Act as amended from time to time are certainly aimed towards securing social justice and a fair reaction between capital and Labour.
- A seven Judges bench of the Supreme Court of India exhaustively analysed the scope of industry and laid down that a “triple test” be applied to decide whether a particular undertaking is “Industry” or not.
- The definition of “Industry” was amended in 1982 by a new comprehensive definition. This new definition covered all the points established as “triple test”.
- Industry means any systematic activity carried on by co-operation between an employer and his workmen.
- There are three modes in which industrial disputes are sought to be settled. They are Conciliation, Arbitration and Adjudication.
- Strike means a termination of work by a body of persons employed in any industry acting in combination or a concerted 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.
- Lockout means the temporary closing of a place of employment or the suspension of work or refusal by an employer to continue to employ any number of persons employed by him.
- Workman means any person (including an apprentice) employed in any industry to do any kind of work.
- Retrenchment means termination by the employer of the service of a workman for any reason whatsoever or a punishment inflicted by way of disciplinary action.
- A workman is said to be in continuous service for a period if he is in uninterrupted service for that period.
- The authorities under the Act are, the Works Committee, Conciliation officers, Boards of conciliation, Courts of Inquiry, Labour courts, Tribunals and National tribunals.

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Self Assessment

1. New definition of industry was covered in _____.
 - a. triple test
 - b. works committee
 - c. tribunal
 - d. national tribunal

2. _____ is declared by the employer due to reason of shortage of coal, power or raw material or accumulation of stock or breakdown of machinery or for any other reason beyond his control.
 - a. Lock out
 - b. Retrenchment
 - c. Lay off
 - d. Closure

3. _____ is the first Judicial Authority in the chain of authorities provided under the Industrial Disputes Act for the settlement of disputes.
 - a. Tribunal
 - b. National tribunal
 - c. Labour court
 - d. Conciliation officer

4. The central government may, appoint two persons as assessors to advise the _____ in the proceeding before it.
 - a. national tribunal
 - b. employer
 - c. state government
 - d. tribunal

5. When the disputes are not settled by conciliation, then it may be referred to as _____.
 - a. adjudication
 - b. state government
 - c. arbitration
 - d. tribunal

6. The _____ has power to adjudicate matters which are mentioned in the second and third schedule which are exclusively within the jurisdiction of the tribunal.
 - a. employer
 - b. inspector
 - c. conciliation
 - d. industrial tribunal

7. A _____ shall be deemed to be a public servant.
 - a. conciliation officer
 - b. employer
 - c. workman
 - d. inspector

8. Which one of the following is the definition of Lockout?
- Refusal by an employer to continue to employ any number of persons employed by him because of closing of a place of employment or suspension of work.
 - Any systematic activity carried on by co-operation between an employer and his workmen.
 - Not only the place of business but the business itself is closed.
 - Declared by the employer due to reason of shortage of coal, power or raw material.
9. Lay off means _____.
- A termination of work by a body of persons employed in any industry acting in combination or a concerted 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.
 - The failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery.
 - The temporary closing of a place of employment or the suspension of work or refusal by an employer to continue to employ any number of persons employed by him.
 - Termination by the employer of the service of a workman for any reason whatsoever or a punishment inflicted by way of disciplinary action.

10. Match the following

| | |
|-----------------|---|
| 1. Wages | A. Any systematic activity carried on by co-operation between an employer and his workmen |
| 2. Industry | B. All remuneration capable of being expressed in terms of money which would fulfilled if the terms of employment express or implied in certain form |
| 3. Lockout | C. Termination by the employer of the service of a workman for any reason whatsoever or a punishment inflicted by way of disciplinary action |
| 4. Retrenchment | D. Temporary closing of a place of employment or the suspension of work or refusal by an employer to continue to employ any number of persons employed by him |

- 1-A, 2-B, 3-C, 4-D
- 1-B, 2-C, 3-D, 4-A
- 1-B, 2-A, 3-D, 4-C
- 1-D, 2-A, 3-B, 4-C

Chapter II

The Industrial Employment (Standing Orders) Act, 1946

Aim

The aim of this chapter is to:

- explain the meaning of standing orders
- describe payment of subsistence allowance
- explicate the penalties and procedure of standing order

Objectives

The objectives of this chapter are to:

- explain the interpretation of standing orders
- explicate the procedure of submission of standing orders
- describe the procedure of certification of standing orders

Learning outcome

At the end of this chapter, you will be able to:

- understand the submission of draft standing orders
- identify the duration and modification of standing orders
- identify some important definitions related to the Industrial Employment Act 1946

2.1 Introduction

The Industrial Employment Act was passed to define and standardise conditions of service of industrial employees. Before the passing of this Act, the conditions of service were never clear and were not precisely known to the workman. They were generally decided as per the wish and notion of the employer. As a result, the employer was in a position to exploit the workmen at his choice. Since nothing was laid down specifically, this gave rise to disputes between the employers and the workmen. As the strength of trade union movement gathered force, employees started demanding fair treatment and knowledge in their service conditions. The legislature had to intervene with an intention to put an end to the “hire and fire” attitude of the employers.

It is now a settled position that proper standing order specifying the service conditions have helped in a major way to minimise the disputes between the management and workers. As the conditions of employment are specifically laid down, there is much less scope for manipulation of disputes or even if disputes arise, they can be tackled with precision.

2.2 The Industrial Employment (Standing Orders) Act, 1946

This Act came into force on 23rd April 1946. The Act extends to the whole of India. The Act applies to every “industrial establishment” where in one hundred or more workmen are employed or were employed on any day of the preceding twelve months. The appropriate government may apply the provisions of this Act to any industrial establishment employing any number of persons less than one hundred. The government would give minimum two months notice of its intention to do so.

2.3 Some Important Definitions Related to the Industrial Employment Act, 1946

Following are some important definitions related to the Industrial Employment Act, 1946:

- Certifying officer means a Labour Commissioner or a Regional Labour Commissioner and includes any other officer appointed by the government by notification in the Official Gazette to perform all or any of the functions of a certifying officer.
- Employer means the owner of an industrial establishment to which the Act applies and includes:
 - In a factory, the person named as manager as per Sec.7 (F) (1) of factories Act.
 - In any industrial establishment under the control of any department of government, the authority appointed by the government in this behalf, or where no authority is appointed, the head of the department.
 - In any other industrial establishment, any person responsible to the owner for the super vision and control of the industrial establishment.
- Industrial establishment means:
 - An industrial establishment as defined in clause (2) of Section 2 of the Payment Of Wages Act 1936, or
 - A factory as defined in clause (m) of Section 2 of the Factories Act 1948, or
 - A railway as defined in clause (4) of Section 2 of the Indian Railways Act 1890, or
 - The establishment of a person who for the purpose of fulfilling a contract with the owner of any industrial establishment employs workmen.
- Standing orders means rules relating to matters set out in the schedule.
- Wages means all remuneration capable of being expressed in terms of money which would, if the terms of employment express or implied were fulfilled, be it payable to a workman in respect of his employment or work done in such employment and includes:
 - Allowances (including dearness allowance) as the workman is for the time being entitled to.
 - The value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles.
 - any travelling concession
 - Any commission payable on the promotion of sales or business or both.

Wages does not include:

- any bonus
- any contribution paid or payable by the employer to any pension fund
- provident fund or for the benefit of the workmen under any law for the time being in force
- any gratuity payable on the termination of his service

2.4 The Schedule

Following are the points provided in the Standing Orders related to the schedule:

- classification of workmen e.g. whether permanent, temporary, apprentices, probationers or badlis
- manner of intimating to workmen periods and hours of work, holidays, pay days and wage rates
- shift working
- attendance and late coming
- conditions of procedure in applying for and the authority which may grant leave and holidays
- requirement to enter premises by certain gates and liability to search
- closing and reopening of sections of the industrial establishments, temporary stoppages of work and their rights and liabilities of the employer and workmen arising there from
- termination of employment and the notice thereof to be given by employer and workmen
- suspension or dismissal for misconduct and acts or omissions which constitute misconduct
- means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants
- any other matter which may be prescribed

2.5 Submission of Draft Standing Orders (Sec.3)

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

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

The draft standing orders submitted shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong. A group of employers in similar industrial establishments may submit a joint draft of standing orders.

2.6 The Industrial Employment (Standing Orders) Act, 1946

There is no clarity on the issue whether standing orders can relate to matters not specified in the schedule. Similarly there cannot be different set of standing orders for different employees in the same establishment. It has also been held by the Supreme Court that in a given case departure from the model standing orders may be permitted if conformity is impracticable.

2.7 Conditions for Certification of Standing Orders (Sec.4)

The fairness or reasonableness of the standing orders would be decided after considering the interests of both the employer and the workmen. Standing Orders shall be Certifiable under this Act if:

- provision is made therein for every matter set out in the schedule which is applicable to the industrial establishment
- the standing orders are otherwise in conformity with the provisions of the Act

- it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders
- Some examples of fairness and reasonableness are as follows:
 - An employer challenged a standing order certified by the certifying officer which stated that the employer can stop the working of machines in any department in the event of incidents like fire, civil commotion, catastrophe which are beyond his control.
 - It was further stated that the employer would give two days notice if possible. And if such notice of two days of closure is not given, he would pay wages in lieu of such notice.
 - The employer's contention was that all such incidents are unexpected and sudden and so it was unreasonable to expect that two days notice could be given. The court accepted this contention and modified the concerned order to state that if the employer had not given two days notice even when it was not possible for him to do so, then he would pay two days wages.
 - The right of a trade union to be present during the inquiry upon a complaint relating to unfair treatment of a workman was held to be fair and reasonable.
 - Demand of a second show cause notice before removal was held unreasonable.
 - Employer's responsibility to give reasons even for discharge simplicities was held to be reasonable.
 - Violation of an agreed term as a part of settlement arrived as per industrial disputes act cannot be fair and reasonable.
 - Standing order which conferred power on an employer to dismiss an employee without holding any inquiry was held absolutely unreasonable.
 - Standing orders providing for misconduct outside the premises were held reasonable because even if an act of misconduct is committed outside the premises of the establishment, still it may have an effect on the discipline or morale of workmen.
 - Even if the workmen raise no objections to the proposed draft of standing orders, the Certifying Officer is nevertheless required to judge the fairness and reasonableness of the standing orders.

2.7.1 Certification of Standing Orders (Sec.5)

On receipt of the draft under Section.3, the certifying officer shall forward a copy of the same to the trade union, if any, of the workmen. Where there is no such trade union, it will be forwarded to the workmen in manner which may be prescribed, together with a notice requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice. After giving the employer and the trade union or such other representatives of the workmen an opportunity of being heard, the certifying officer shall decide whether or not any modification or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act and shall make an order accordingly.

The Certifying officer shall thereupon certify the draft standing orders after making any modifications as per his order and shall within seven days thereafter send copies of the certified standing orders to the employer and to the trade union or other prescribed representatives of the workmen. If there is more than one trade union, notice should be given to all the unions. But no individual workmen are entitled to the notices if they are members of any union. The certifying officer has the powers to modify the standing orders submitted by the employer, even if such modification amounts to withdrawal of benefits enjoyed by some workmen. When the certifying officer certifies the standing orders, there is a presumption that the certification was due after properly complying the provisions of the Act.

2.8 Appeals (Sec.6)

Any employer, workman, trade union or other prescribed representatives of the workmen, distressed by an order of Certifying Officer certifying the standing orders, may within thirty days from the day on which copies are sent, can appeal to the appellate authority. The appellate authority must hear all the parties before deciding the matter.

2.9 Standing Orders

Following are some important terms which play major role in the operations of standing orders:

Date of Operation of Standing Orders (Sec.7)

Standing orders shall, unless an appeal is preferred, come into operation on the expiry of thirty days from the date on which authenticated copies are sent, or where an appeal is preferred, on the expiry of seven days from the date on which the copies of the order of the appellate authority are sent.

Register of Standing Orders (Sec.8)

A copy of all standing orders as finally certified under the Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose and the certifying officer shall furnish a copy to any person applying therefore on payment of prescribed fee.

Posting of Standing Orders (Sec.9)

The text of standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of workmen enter the industrial establishment and in all departments where the workmen are employed. Thus, there is a mandatory obligation on the employer to communicate the text of the certified standing orders to the workmen properly. However, partial compliance with the above section has also been held as sufficient and even if the standing orders are only exhibited in English, it has been held to be sufficient compliance.

Duration and Modification of Standing Orders (Sec.10)

- Standing orders finally certified under this Act shall not be liable to modification until the expiry of six months from the date on which the standing orders or the last modification came into operation except on an agreement between the employer and the workmen or a trade union or other representative body of the workmen.
- Subject to the above section, an employer or workmen or a trade union or other representative body of workmen may apply to the certifying officer to have the standing orders modified.
- Such application shall be accompanied by five copies of the modifications proposed to be made.
- If such modifications are proposed to be made by agreement between the employer and the workmen, a certified copy of that agreement shall be filed along with the application.
- The provisions regarding certification of first standing orders shall apply to any such modification.
- Standing orders cannot be changed after certification or after modification within a period of six months but both parties can consent to an amendment within six months.
- After the aforesaid period of six months, standing orders can be modified.
- Even at the time of any modification, the test of fairness and reasonableness has to be applied by the certifying officer.
- It is not necessary that existence of any new circumstances is necessary for seeking modification.
- The Supreme Court has laid down that an application for modification would ordinarily be made:
 - when there is a change of circumstances
 - where experience of the working of the standing orders last certified results in inconvenience or hardship
 - where some fact was not realized at the time of certification
 - where the applicant is of the opinion that the modification will be beneficial

2.10 Payment of Subsistence Allowance (Sec.10-A)

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

- at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension for the first ninety days of suspension.
- at the rate of seventy five percent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against workman is not directly attributable to the conduct of workman.

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

If provisions relating to payment of subsistence allowance under any law for the time being in force in any state are more beneficial than the above provisions, the provisions of such other law shall be applicable to the payment of subsistence allowance.

Section 11

Every certifying officer and appellate authority shall have the powers of a Civil Court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the discovery and production of documents.

Section 12

“No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified shall be admitted in any court.” No employer can enter into any agreement with a workman which is inconsistent with the standing orders of the company.

Sec.12-A: Temporary application of standing orders

During the period commencing from the applicability of the Act to an industrial establishment and ending on the date when certified standing orders come into operation in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment. The purpose of this section is that there should not be a vacant period when no standing orders are applicable to an establishment as the due procedure for certification may take some time. Therefore, during such period, the model standing orders will be deemed to be applicable.

Sec.13: Penalties and Procedure

- An employer who fails to submit draft standing orders as required by Sec.3, who modifies his standing orders otherwise than in accordance with Sec.10 shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing offence with a further fine which may extend to two hundred rupees every day after the first during which the offence continues.
- An employer who does any act in contravention of the standing orders finally certifies under this Act for his industrial employment shall be punishable with fine which may extend to one hundred rupees.
- And in the case of continuing offence with a further fine which may extend to twenty five rupees for every day after the first during which the offence continues.
- No prosecution for an offence punishable under this section shall be instituted except with the sanction of the appropriate government.
- No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of second class shall try any offence under this section.

2.11 Interpretation of Standing Orders (Sec.13-A)

If any question arises as to the application or interpretation of a standing order certifies under this Act, any employer or workman or a trade union or other representative body of the workmen may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act and specified for the disposal of such proceedings by the appropriate government by notification in the Official Gazette and the Labour Court to which the question is so referred, shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

It is sometimes possible that the exact meaning of the standing order would need proper interpretation. Therefore, the right of seeking interpretation has been conferred under this Act. Even an ex-workman can make application under this section. Any such clarification regarding interpretation is more required in the case of penal provisions of the standing orders. This power of interpreting the standing orders is exclusively given to the Labour Court only.

2.12 Power to Exempt (Sec.14)

The appropriate government may by notification in the Official Gazette, exempt conditionally or unconditionally any industrial establishment or class of industrial establishments from all or any provisions of this Act.

Summary

- The Act came into force on 23 rd April 1946.
- The Act extends to whole of India and it applies to every “industrial establishment” where in one hundred or more workmen are employed or were employed on any day of the preceding twelve months.
- “Standing orders” means rules relating to matters set out in the schedule.
- Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in this industrial establishment.
- If there is more than one trade union, notice should give to all the unions but no individual workmen are entitled to the notices if they are members of any union.

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Self Assessment

1. _____ means rules relating to matters set out in the schedule.
 - a. Industrial establishment
 - b. Standing orders
 - c. Wages
 - d. Schedule

2. The Industrial Employment (Standing Orders) Act 1946 came into force on _____.
 - a. 23rd April 1946
 - b. 22nd June 1949
 - c. 23rd April 1949
 - d. 22nd June 1946

3. An employer or workmen may apply to the _____ to have the standing orders modified.
 - a. certifying officer
 - b. government
 - c. union
 - d. labour court

4. Which of the following conditions for Certification of Standing Orders are correct?
 - a. Provision is made therein for every matter set out in the schedule which is applicable to the industrial establishment.
 - b. The standing orders are otherwise are not in conformity with the provisions of the Act.
 - c. It shall be the function of the government adjudicate upon the fairness or reasonableness of the provisions of any standing orders.
 - d. It shall be the function of national tribunal.

5. Which among the following is one of the fair provisions of standing orders?
 - a. Demand of a second show cause notice before removal was held reasonable.
 - b. Violation of an agreed term as a part of settlement arrived as per Industrial Disputes Act can be fair and reasonable.
 - c. Standing order which conferred power on an employer to dismiss an employee without holding any inquiry was held absolutely unreasonable.
 - d. Standing orders comes under the power of inspector.

6. "Standing orders" means _____.
 - a. provisions relating to payment of subsistence allowance
 - b. rules relating to matters set out in the schedule
 - c. demand of a second show cause notice
 - d. rules set by an inspector to maintain discipline in a factory

7. The employer has to submit five copies of the draft for adoption in this industrial establishment to the _____.
- Government
 - Certifying Officer
 - Tribunal
 - National tribunal
8. Standing orders shall, unless an appeal is preferred, come into operation on the expiry of _____ from the date on which authenticated copies thereof are sent.
- sixty days
 - fifteen days
 - thirty days
 - forty five days
9. If any dispute arises regarding the subsistence allowance payable to a workman, the workman or the employer concerned may refer the dispute to the _____ within the local limits.
- state government
 - police station
 - inspector
 - labour court
10. Standing orders finally certified under this Act shall not be liable to modification until the expiry of _____ from the date on which the standing orders or the last modification came into operation except on an agreement between the employer and the workmen or a trade union or other representative body of the workmen.
- six months
 - seven days
 - four weeks
 - one year

Chapter III

The Maternity Benefit Act, 1961

Aim

The aim of this chapter is to:

- enlist various maternity benefits available under the Maternity Benefit Act
- explain some additional maternity privileges
- explicate the appointment of inspectors under Sec.14

Objectives

The objectives of this chapter are to:

- enlist main features of the Act
- elucidate certain definitions related to maternity benefit act
- explain the right to payment of maternity benefit

Learning outcome

At the end of this chapter, you will be able to:

- explain the Maternity Benefit Act
- identify the benefits and other privileges of this Act
- understand about appointment of inspectors under Sec.14

3.1 Introduction

International attention on maternity protection first came to be focused when the first Maternity Protection Conference was convened by the International Labour Organisation (ILO) in 1919. Detailed deliberation was done on matters relating to maternity leave, economic benefits during absence from work, leave for bringing up children and non termination of service during pregnancy and immediately after delivery. Resolution was passed to confirm the decisions.

In the sixtieth session of ILO held in 1975 the following points were again emphasised:

- extension of maternity protection to new categories of women workers
- extension of the period of statutory maternity leave
- higher rates of maternity benefits
- more effective protection against dismissal during pregnancy and after detention
- provision of nursing breaks for mothers
- more adequate attention to the safety and health of women during pregnancy

Before independence the Mines Maternity Benefit Act was passed which was applicable to only women working in mines. In 1948 provision for maternity benefit was made under the Employees State Insurance Act and in 1951 such provisions were made in the Plantations Labour Act. There was also some state legislation about this. However there was no uniformity in all these statutes regarding rates, periods of benefit and the necessary conditions for a woman to be qualified to claim benefit.

The Maternity Benefit Act 1961 was passed to remove the disparity relating to maternity benefits in various other Acts. The Act is intended to achieve the object of according social justice to women workers during the period of their pregnancy and for some period after the child birth. The Act extends to the whole of India. It applies to every establishment which is:

- a factory
- a mine
- a plantation

Every establishment wherein persons are employed for exhibition of equestrian, acrobatic and other performances Every shop and establishment as per the Shops and Establishments Act in which ten or more persons are employed or were employed on any day in the preceding twelve months. The state government is empowered to extend the operations of this Act to any other establishments, industries or otherwise with the approval of the central government.

The Act does not apply to establishments to which the Employees State Insurance Act applies. But by an amendment made in 1976 the Maternity Benefit Act has been made applicable to women employees who work in an establishment to which the Employees State Insurance Act is applicable but who are not eligible to claim benefit of that Act due to their higher wages.

3.2 Main Features of the Act

Following are the main features of the Act:

- The Act prohibits the working of a pregnant woman for a specified period after delivery it also entitles a pregnant woman to certain privileges before her delivery.
- The Act provides for maternity leave and payment of certain monetary benefits to be paid to women workers during the period when they are out of employment due to their pregnancy and childbirth.
- The Act prohibits the employer from terminating the services of a woman worker during the period of her absence due to pregnancy except for gross misconduct.
- The Act also grants monetary benefits and leave in case of medical termination of pregnancy, miscarriage and tubectomy operation.
- The Act prescribes penalties for employers who contravene the provisions of the Act.

The Maternity Benefit Act applies to:

- Every establishment which is a factory, mine or plantation, including any such establishment belonging to government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances.
- Every shop and establishments within the meaning of Shops and Establishments Act in which ten or more persons are employed or were employed on any day of the preceding twelve months.
- The state government can extend the provisions of this Act to any other establishment.
- The Act is not applicable to any factory or establishment to which the Employees State Insurance Act applies.

3.3 Some Definitions

Maternity benefit: An Act to regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.

Medical termination of pregnancy: This means the termination of pregnancy permissible under the provisions of the Medical Termination of Pregnancy Act 1971.

Miscarriage: Means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty sixth week of pregnancy but does not include any miscarriage the causing of which is punishable under the Indian Penal Code.

Wages: Here wages means all remuneration paid or payable in cash to a workman, if the terms of employment, express or implied were fulfilled. Wages include:

- cash allowances (including dearness allowance and house rent allowance)
- incentive bonus
- the money value of the confessional supply of food grains and other articles.

But wages do not include:

- any bonus other than incentive bonus
- overtime earnings and any deduction or payment made on account of fines
- any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any other law.
- any gratuity payable on termination of service

3.4 Important Sections Related to Maternity Benefit Act

Below are some important sections related to this Act:

Section 4: Prohibition of or work by, woman prohibited during certain period

- The employer is prohibited from knowingly employing any woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.
- No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. Thus, the working of a woman during this period of six weeks is absolutely prohibited.
- Similarly, if a pregnant woman makes a request to her employer, she will not be required by the employer to do any work of the following nature during the period of one month immediately preceding the period of six weeks before the date of her expected delivery and during the said period of six weeks during which the pregnant woman does not avail of the leave of absence.
 - Any work which is of laborious nature
 - Any work which involves long hours of standing
 - Any work which in any way is likely to interfere with her pregnancy or the normal development of the foetus or is likely to cause her miscarriage or otherwise, adversely affects her health.

The above provisions mean that the pregnant woman can work before her delivery if she does not wish to avail of leave. But at the same time can ask for work of a lighter nature and the employer is bound to give her such work.

Section 5: Right to payment of maternity benefit

Every woman shall be entitled to and her employer shall be liable for the payment of:

- Maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for any period immediately following that day.
- The “average daily wage” means the average of the woman’s wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the day from which she absents herself on account of maternity, the minimum rate of wages fixed or revised under the Minimum Wages Act, 1948 or ten rupees a day, whichever is higher.
- No woman shall be entitled to maternity benefit unless she has actually worked in the establishment of the employer from whom she claims maternity benefit for a minimum period of eighty days in the twelve months immediately preceding the day of her expected delivery.
- For the purpose of calculating the days on which a woman has actually worked in the establishment, the days on which she has been laid off or was a holiday declared under law to be a holiday with wage during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.
- The maximum period for which a woman is entitled to maternity benefit shall be twelve weeks that is to say six weeks up to and including the day of her expected delivery and six weeks immediately following that day.
- If however the woman dies during that period then the maternity benefit will be paid only for the days up to and including the day of her death. If a woman dies during her delivery or during the period of six weeks immediately following the day of delivery and leaves behind the child and the child survives, the employer shall be liable for the maternity benefit for the extra period of six weeks immediately following the day of delivery.
- But, if the child also dies during the said period, then the maternity benefit will be payable for the days up to and including the day of death of the child. Every woman who is employed in a factory or establishment to which the provisions of Employees State Insurance Act apply and if her wages (excluding remuneration for overtime work) for a month exceed the amount specified in that Act, and the woman fulfils the conditions of eligibility under this Act, she will be entitled to payment of maternity benefit under this Act.

Section 6: Notice of claim for maternity benefit and payment

- Any woman employed in any establishment, must give notice in writing to the employer stating that her maternity benefit and other amount to which she may be entitled may be paid to her or to any other person as nominated by her. The woman shall also give an undertaking that she will not work in any establishment during the period for which she receives maternity benefit.
- In case of a pregnant woman, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. Any woman who has not given the notice when she was pregnant may give the notice as soon as possible after delivery.
- On receipt of the notice, the employer shall permit such woman to absent herself from the establishment until the expiry of six weeks after the date of her delivery.
- The amount of maternity benefit for the period, preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of prescribed proof that the woman is pregnant and the amount for the subsequent period shall be paid by the employer within forty eight hours of production of proof that the woman has delivered a child.
- Even if a woman fails to give notice as stated above, it shall not disentitle her to get maternity benefit if she is otherwise entitled to receive it. In case the employer refuses to pay the benefit for want of notice, the inspector may either on an application made to him by the woman or on his own, order the employer to pay such benefits within a specified period.

Section 7: Payment of maternity benefit in case of death of a woman

If a woman entitled to maternity benefit dies before receiving such benefit, or the woman dies and the child survives, the employer shall pay such benefit or amount to the person nominated by the woman in her notice. In case no person is nominated, the amount shall be paid to the legal representative of the woman.

Section 8: Payment of medical bonus

Every woman entitled to maternity benefit shall also be entitled to receive from her employer a medical bonus of rupees Two Hundred Fifty if no prenatal confinement and postnatal care is provided for by the employer free of charge.

Section 9: Leave for miscarriage or medical termination

In case of a miscarriage or a medical termination of pregnancy a woman shall, on production of prescribed proof be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of miscarriage or medical termination of pregnancy. This leave can be claimed even if the woman has not worked for the minimum number of days.

Section 9-A: Leave with wages for tubectomy operation

In case of tubectomy operation, a woman shall on the production of prescribed proof, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of the tubectomy operation.

Section 10: Other leaves

A woman suffering from illness arising out of pregnancy, delivery, premature birth of a child, miscarriage, medical termination of pregnancy or tubectomy operation, shall on production of prescribed proof be entitled to additional leave for a maximum period of one month with wages at the rate of maternity benefit.

3.5 Other Privileges

Section 11: Nursing breaks

Every woman who delivered a child and returns to duty after such delivery, shall in addition to the interval of rest allowed to her in the course of daily work, two breaks of prescribed duration for nursing until the child attains the age of fifteen months.

Section 12: No dismissal during absence of pregnancy

When a woman absents herself from work in accordance with provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that notice will expire during her absence or to vary to her disadvantage any of her conditions of service. Even if a woman is discharged or dismissed at any time during her pregnancy and the woman would have been entitled to maternity benefit or medical bonus if she was not so discharged or dismissed shall not deprive her maternity benefit or medical bonus.

But if the dismissal is for any prescribed gross misconduct, the employer may by an order in writing deprive the woman of the maternity benefit or medical bonus or both. If any woman is deprived of her maternity benefit or medical bonus or both she may, within sixty days from the date on which the order of such deprivation is communicated to her file an appeal and decision of the appellate authority shall be final.

Section 13: If a woman is assigned work of a light nature as per her request or she takes breaks allowed to her for nursing the child, then no deduction from her wages shall be made only for these reasons.

3.6 Appointment of Inspectors (Sec.14)

The appropriate Government may, by notification in the Official Gazette, appoint officers for the purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their function under this Act.

Powers and duties of Inspectors

An Inspector may, subject to such restrictions or conditions as may be prescribed, implement all or any of the following powers:

- An inspector enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where women are employed or work is given to them in an establishment, for the purposes or examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspection.
- Examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.
- Require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notices received form them under this act.
- Take copies of any registers and records or notices or any portions.

Inspectors to be public servants

Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code 45 of 1860.

Power of Inspector to direct payments to be made

- Any woman claiming that maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld, may make a complaint to the inspector.
- The Inspector may, of his own motion or on receipt of a complaint referred to above subsection, make an enquiry or cause an inquiry to be made and if satisfied that payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders
- Any person distressed by the decision of the Inspector as per above sub-section may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.
- The decision of the prescribed authority where an appeal has been preferred to it as per above sub-section or of the Inspector where no such appeal has been preferred, shall be final.
- Any amount payable under these sections shall be recoverable as an arrear of lane revenue.

Forfeiture of maternity benefit

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorised absence, he shall forfeit her claim to the maternity benefit for such period.

Summary

- In 1948 provision for maternity benefit was made under the Employees State Insurance Act and in 1951 such provisions were made in the Plantations Labour Act.
- The Maternity Benefit Act 1961 was passed to remove the disparity relating to maternity benefits in various other Acts.
- The Act prohibits the working of a pregnant woman for a specified period after delivery and entitles a pregnant woman to certain privileges before her delivery.
- The Act provides for maternity leave and payment of certain monetary benefits to be paid to women workers during the period when they are out of employment due to their pregnancy and childbirth.
- The Act prohibits the employer from terminating the services of a woman worker during the period of her absence due to pregnancy except for gross misconduct. The Act also grants monetary benefits and leave in case of medical termination of pregnancy, miscarriage, and tubectomy operation. The Act prescribes penalties for employers who contravene the provisions of the Act.
- The maximum period for which a woman is entitled to maternity benefit shall be twelve weeks that is to say six weeks up to and including the day of her expected delivery and six weeks immediately following that day.
- If a woman entitled to maternity benefit dies before receiving such benefit, or the woman dies and the child survives, the employer shall pay such benefit or amount to the person nominated by the woman in her notice. In case no person is nominated, the amount shall be paid to the legal representative of the woman.
- Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code 45 of 1860.
- If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorized absence, he shall forfeit her claim to the maternity benefit for such period.

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Self Assessment

1. Before independence the _____ was passed which was applicable to only women working in mines.
 - a. Mines Maternity Benefit Act
 - b. Employees State Insurance Act
 - c. Maternity Benefit Act
 - d. Plantations Labour Act

2. _____ means all remuneration paid or payable in cash to a workman.
 - a. Benefit
 - b. Wages
 - c. Payment
 - d. Bonus

3. The maximum period for which a woman is entitled to maternity benefit shall be _____.
 - a. 6 weeks
 - b. 9 weeks
 - c. 12 weeks
 - d. 18 weeks

4. Provision for maternity benefit was made under the _____.
 - a. Medical Termination of Pregnancy Act
 - b. Mines Maternity Benefit Act
 - c. Employees State Insurance Act
 - d. Plantations Labour Act

5. First Maternity Protection Conference was convened by the _____.
 - a. International Labour Organisation
 - b. Medical Termination of Pregnancy Act
 - c. Mines Maternity Benefit Organisation
 - d. Maternity Benefit Act

6. Wages include which of the following?
 - a. Cash allowances
 - b. Incentive bonus
 - c. The money value of the confessional supply of food grains and other articles
 - d. Travel allowances

7. If a woman dies during her delivery or during the period of six weeks immediately following the day of delivery and leaves behind the child and the child survives,
 - a. the employer shall be liable for the maternity benefit for the extra period of six weeks immediately following the day of delivery
 - b. Employer shall pay such benefit or amount to the person nominated by the woman in her notice
 - c. The amount shall be paid to the legal representative of the woman
 - d. The employer is not responsible to pay any benefits

8. The provisions of Maternity Benefit Act states that
 - a. pregnant woman can work before her delivery if she does not wish to avail of leave
 - b. pregnant woman has to work whatever is given by employer
 - c. employer is not bound to give her work as per her health
 - d. pregnant woman has to join within one week after her delivery

9. Pregnant woman is bound to work which includes
 - a. any work which is of laborious nature
 - b. any work which involves long hours of standing
 - c. any work which in any way is likely to interfere with her pregnancy
 - d. her health and fitness

10. The Act provides for maternity leave and payment of certain monetary benefits to be paid to women workers during which of the following situations
 - a. if the woman dies during the delivery time
 - b. before their maternity leave starts
 - c. when they are out of employment due to their pregnancy and childbirth
 - d. once they join again the work after the delivery

Chapter IV

Factories Act, 1948

Aim

The aim of this chapter is to:

- define the meaning of factory
- explain the provisions of Factories Act to ensure safety of workers
- explain the provisions regarding welfare of workers

Objectives

The objectives of this chapter are to:

- define occupier and his duties
- explain inspecting staff and officers under this Act
- enlist the provisions of Factories Act regarding “hazardous process”

Learning outcome

At the end of this chapter, you will be able to:

- understand approval, licensing and registration of factories
- identify general penalty for offences
- define penalties and procedure

4.1 Introduction

The first Factories Act was enacted in India in 1881 and was amended several times. Thereafter Factories Act 1934 was passed after considering the recommendations of the Royal Commission on Labor. But even this Act revealed a number of defects and weaknesses. Therefore, the Factories Act 1948 was passed which is still continuing. However, there have been some amendments to this Act.

Important features of the Factories Act 1948 are:

- The Act applies to the whole of India except the state of Jammu and Kashmir.
- The definition of the term “factory” has been widened to cover all industrial establishments employing ten or more workers where power is used and twenty or more workers in other cases.
- There is no distinction between seasonal and non seasonal factories.
- The State government may extend the provisions of this Act to any establishment irrespective of the number of workers employed and irrespective of the fact whether manufacturing work is carried on by power or otherwise.
- There are specific separate provisions for health, safety and welfare of workers which are applicable to all work places irrespective of the number of workers employed.
- Provisions are made for licensing and registration and the prior scrutiny by the Factories Inspectorate of the plans and specifications of factory buildings.
- Special provisions are made for protection of women and children of workmen.
- Special restrictions and provisions are made for factories where hazardous process is carried out.

4.2 Factory and Manufacturing Process

A factory is defined as any premises including the area thereof:

- Wherein ten or more workers are working or were working on any day of the prior twelve months and in any part of which a manufacturing process is being carried on with the help of power or is ordinarily carried on. Or
- Wherein twenty or more workers are working or were working on any day of the prior twelve months and in any part of which a manufacturing process is being carried on without the help of power or is ordinarily carried on but does not include a mine subject to the operations of the Mines Act 1952 or a mobile unit belonging to the armed forces of the Union, a railway running shed or hotel, restaurant or eating place. Thus, a place will be held as a factory where a “manufacturing process” is carried either with power or without power.

The definition of manufacturing process is as follows:

Manufacturing process means any process for

- 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 use, sale, transport, delivery or disposal, or
- pumping oil, water, sewage or any other substance, or
- generating, transforming or transmitting power, or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding, or
- constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels, or
- preserving or storing any article in cold storage

The following processes were held to be “manufacturing process”:

- Bide making
- The process of transforming and transmitting electrical energy
- Salt manufactured from sea water by applying different processes

- Conversion of raw films into finished product
- Moistening, stripping and packing of tobacco leaves
- Ginning and pressing cotton
- Pasteurisation of milk
- Collecting ghee from different sources and then heating and pouring into tins
- Work of composing in a printing press
- Repairing of watches, clocks, etc.
- Publication department of a factory
- Making bread in a bakery and cutting it into slices
- Washing and cleaning of fish for being sent to cold storage
- Making bodies for buses and trucks

The following were held not to be manufacturing processes:

- Production of articles carried on in industrial schools for the purpose of demonstration and instruction to students.
- Receiving of news from various sources on a teleprompter of a newspaper office
- Preliminary packing of raw materials for delivery to the factory
- Laundry department of a hospital
- Dry cleaning

4.3 Approval, Licensing and Registration of Factories

The state government may make rules requiring following points under (Sec.6):

- The submission of plans of any class or description of factories to the Chief Inspector or the State Government.
- The previous permission in writing of the state government or the chief inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories.
- The submission of plans and specification for the purpose of considering the application for such permission.
- Prescribing the nature of such plans and specification and by whom they shall be certified.
- The registration and licensing of factories or any class or description of factories and prescribing fees payable for such registration and licensing and for the renewal of licenses.
- No license shall be granted or renewed unless the notice by occupier is given as per Sec. (7).

After an application for permission accompanied by the plans and specifications are sent to the state government or the chief inspector by registered post and no order is communicated to the applicant within three months from the date on which it is so sent, the permission shall be deemed to have been granted.

If the state government or the chief inspector refuses to grant permission to the site, construction or extension of a factory or to registration and licensing of a factory, the applicant may file an appeal within thirty days of such refusal to the state government.

This section lays down a statutory duty on the licensing authority to consider the application for registration and issue of license. The licensing authority must satisfy itself about the compliance of requirement of the Act and rules and the authority is bound to issue the license applied for.

4.4 Occupier and His Duties

The “Occupier” is the principal person in a factory and there are mandatory duties and responsibilities imposed on him as per the Factories Act.

Definition of “occupier” (Sec.2 n)

Occupier of a factory means the person who has the ultimate control over the affairs of a factory.

- In case of a firm or other association of individuals, any one of the individual partners or members shall be deemed to be the occupier.
- In case of a company, any one of the directors shall be deemed to be the occupier.
- In case of a factory owned or controlled by the Central Government or the 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.
- The owner may not necessarily be the occupier. The real test is when a person enjoys ultimate control over the affairs of the factory.

Notice by occupier : (Sec.7)

The occupier shall inform at least fifteen days before he begins to occupy or use any premises as factory. The Chief Inspector should send a written notice containing the name and situation of the factory.

Factories Act 1948 contains the following:

- The name and address of the occupier.
- The name and address of the owner of the premises or building (including the area thereof).
- The address to which communications relating to the factory may be sent.
- The nature of the manufacturing process carried on in the factory during the last twelve months in case of factories in existence on the date of commencement of the Act.
- To be carried on in the factory during the next twelve months in the case of all factories.
- The total horse rated power installed or to be installed in the factory.
- The name of the manager of the factory.
- The number of workers likely to be employed in the factory.
- The average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of commencement of this Act.

In respect of all establishments which come within the scope of this Act for the first time, the occupier shall send a written notice to the Chief Inspector containing all the particulars in sub sec.(1) within thirty days from the date of commencement of this Act. 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, the occupier shall send a written notice to the Chief

Inspector containing the particulars specified in the subsections at least thirty days before the date of commencement of work. Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and a copy of it to the chief inspector within seven days from the date on which such person takes over charge. If during any period for which no person has been designated as manager of the factory or during which the person designated does not manage the factory any person acting as a manager or if no such person is found the occupier himself shall be deemed to be the manager for the purposes of this Act.

4.5 Inspecting Staff and Officers Under this Act

The different inspecting staff and officers under this Act are:

Inspectors (Sec.8)

The State Government, may, by notification in the Official Gazette, appoint Inspectors and may assign local limits to them. The state government may appoint any person as chief inspector who will exercise the powers of inspector throughout the state. The state government may also appoint Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors to assist the Chief Inspector who will also exercise the powers of an inspector throughout the state. Every District Magistrate shall be an Inspector for his district. The State Government may also appoint public officers who will be additional Inspectors within the limits assigned to them. All the above mentioned Inspectors and public officer appointed shall be deemed to be public servants within the meaning of Indian Penal Code.

Powers of Inspectors (Sec.9)

An Inspector has the following powers within the local limits for which he is appointed:

- He may enter any place which is used or which he has reason to believe is used as a factory. He may be accompanied by such assistants who are in the service of the government or any local or other public authority or with expert as he thinks fit.
- Make examination of the premises, plant, machinery, articles or substance.
- Inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry.
- Require the production of any register or any other document relating to the factory.
- seize or take copies of any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act which he has reason to believe has been committed.
- Direct the occupier that any premises or part thereof, or any thing lying therein shall be left undisturbed (either generally or particularly) for so long as necessary for the purpose of any examination of the premises, plant, machinery, articles or substance.
- Take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination.
- If he finds any article or substance in any premises – being an article or substance which appears to him as having caused or likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test. He can take possession of any such article or substance or a part thereof and detain it for so long as is necessary for such examination.

It has been held by the Supreme Court in *D.C.G.Mills Co v/s Chief Commissioner, Delhi*, that “ the Inspectors appointed should not simply carry out the duties under the Act, but are expected to give proper advice and guidance so that there may be due compliance with the provisions of the Act.”

Certifying surgeons (Sec.10)

- The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as may be assigned to them.
- A certifying surgeon may with the approval of the State Government authorize any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose.
- No person shall be appointed to be, or authorized to exercise the powers of a certifying surgeon or having been so appointed or authorized, continue to exercise such powers who is or becomes the occupier of a factory or is or becomes directly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory. The state government may exempt by an order in writing any person or class of persons from the provisions of the above section.

- The Certifying Surgeon shall carry out duties which may be prescribed in connection with :
 - The examination and certification of young persons under this Act.
 - The examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed.
 - the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where
 - Cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on or other conditions of work prevailing therein.
 - By reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process.
 - Young persons are, or are about to be employed in any work which is likely to cause injury to their health.

4.6 Provisions Regarding Hazardous Process

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, by products, wastes or effluents thereof would, cause material impairment to the health of the persons engaged in or connected therewith result in the pollution of general environment. 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 First Schedule. Industries specified in the First Schedule are:

- Ferrous Metallurgical Industries
 - Integrated iron and steel
 - Ferro alloys
 - Special steels
- Non ferrous Metallurgical Industries
- Ferrous and non ferrous foundries
- Coal industries
- Power generating industries
- Pulp and paper industries
- Fertilizer industries
- Cement industries
- Petroleum industries
- Petrol chemical industries
- Drugs and pharmaceutical industries
- Distilleries and breweries
- Rubber industries
- Paints and pigment industries
- Leather tanning industries
- Electro plating industries
- Chemical industries
- Insecticides, pesticides and fungicide industries
- Synthetic resin and plastics
- Man made fiber industry
- Manufacture and repair of electrical accumulators

- Glass and ceramics
- Grinding or glazing of metals
- Asbestos industries
- Extraction of oils and fats from vegetable and animal sources
- Manufacturing processes and operations involving carbon disulphide
- Manufacture and handling of benzene and substances containing benzene
- Dyes and dyestuffs
- Highly inflammable liquids and gases

Constitution of the Site Appraisal Committee (Sec.41A)

The State Government may appoint a Site Appraisal Committee for the purpose of advice for consideration of applications for grant of permission for the initial location of a factory involving a hazardous process for the expansion of any such factory. The committee will consist of:

- The Chief Inspector of the State who shall be the chairman
- A representative of the Central Board for the Prevention and Control of Water Pollution
- A representative of the Central Board for the Prevention and Control of Air Pollution
- A representative of the State Board appointed under the Water (Prevention and Control of Pollution) Act
- A representative of the State Board appointed under the Air (Prevention and Control of Pollution) Act
- A representative of the Department of Environment in the state
- A representative of the Meteorological Department of the Government of India
- An expert in the field of occupational health
- A representative of the Town Planning Department of the State Government
- Not more than five other members who may be co-opted by the state government who shall be:
 - a scientist having specialized knowledge of the hazardous process which will be involved in the factory
 - a representative of the local authority within whose jurisdiction the factory is to be established
 - three other persons as considered fit by the state government

The Site Appraisal Committee shall examine the application for the establishment of factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt of the application. Where any process relates to a factory owned or controlled by the Central Government or to a corporation or company owned or controlled by the central government, the State Government shall co-opt in the Site Appraisal Committee, a representative nominated by the Central Government as a member of that committee. The Site Appraisal Committee shall have the power to call for any information from the person making the application for the establishment or expansion of the factory involving a hazardous process. Where an approval has been granted to an application for establishment or expansion of a factory involving a hazardous process, it shall not be necessary to obtain further approvals from the Central Board or State Board established under the Water (Prevention and Control of Pollution) Act and the Air (Prevention and Control of Pollution) Act.

Compulsory disclosure of information by the Occupier (Sec.41B)

- The occupier of every factory involving a hazardous process, shall disclose in the prescribed manner all information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situated and the general public in the vicinity.
- 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 intimate such policy to the Chief Inspector and the local authority and there after at prescribed intervals inform the Chief Inspector and the local authority of any change made in the said policy.

- Such information furnished shall include accurate information about the quantity, specifications and other characteristics of wastes and the manner of their disposal.
- Every occupier, shall with the approval of the Chief Inspector draw up an onsite emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and the general public living in the area of the factory, the safety measures required to be taken in the event of an accident taking place.
- Every occupier of a factory shall, if such factory is already engaged in a hazardous process within thirty days and if such factory proposes to engage in hazardous process within thirty days before the commencement of such process, inform the chief inspector the nature and details of the process in the prescribed form.
- If any occupier does not comply with the above requirement, he shall be subject to penalties under this Act and the license of the factory shall also be liable to be cancelled.
- 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 publicize them in the prescribed manner among the workers and the general public living in the vicinity.

Specific responsibility of the occupier in relation to hazardous process (Sec.41C)

Every occupier of a factory involving any hazardous process shall

- Maintain accurate and up-to-date health records or medical records of the workers of the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed.
- Appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the prescribed manner.
- Provide for medical examination of every worker before such worker is assigned to a job involving the handling of or working with a hazardous substance, and while continuing in such job and after he has ceased to work in such job, at intervals not exceeding twelve months, in the prescribed manner.

Power of Central Government to appoint inquiry committee

- The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an inquiry committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure or neglect in the adoption of any measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to such failure or neglect and for the prevention and recurrence of such extraordinary situations in future in such factory or elsewhere.
- The Committee appointed under sub-section (1) shall consist of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation.
- The recommendations of the Committee shall be advisory in nature.

Emergency standards

- Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any institution specialized in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.
- The emergency standards laid down under sub-section (1) shall, until they are incorporated in the rules made under this Act, be enforceable and have the same effect as if they had been incorporated in the rules made under this Act.

Permissible limits of exposure of chemical and toxic substances

- The maximum permissible threshold limits of exposure of chemicals and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule.
- The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialised institutions or experts in the field, by notification in the Official Gazette, make suitable changes in the said Schedule.

Workers participation in safety management

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 cooperation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf provided that the State Government may, by order in writing and for reasons to be recorded exempt the occupier of any factory or class of factories from setting up such Committee. The composition of the Safety Committee, the tenure of office of its members and their right and duties shall be such as may be prescribed.

Right of workers to warn about imminent danger

- Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.
- 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.
- If the occupier, agent, manager or the person in-charge referred to in above is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

4.7 Health and Cleanliness

- Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance.
- Accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner.
- The floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method.
- Where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained.
- All inside walls and partitions, all ceilings or tops of rooms, sides and tops of passages and staircases shall painted or varnished, be repainted or revarnished at least once in every period of five years.
- Where they are painted with washable water paint, be repainted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months.
- Where they are painted or varnished or where they have smooth impervious surfaces be cleaned at least once in every period of fourteen months by such method as may be prescribed
- In any other case, be kept white washed or colour washed, and the white washing or colour washing shall be carried out at least once in every period of fourteen months;
- All doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years.
- The dates on which the processes required are carried out shall be entered in the prescribed register.

- If, in view of the nature of the operations carried on (in a factory or class or description of factories or any part of a factory or class or description of factories), it is not possible for the occupier to comply with all or any of the provisions of above sub-section, the (State) Government may by order exempt such factory or class or description of factories (or part) from any of the provisions of that sub-section and specify alternative methods for keeping the factory in a clean state.

Disposal of wastes and effluents

Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal. The (State) Government may make rules prescribing the arrangements to be made in above sub-section or requiring that the arrangements made in accordance with the same sub section shall be approved by such authority as may be prescribed.

Ventilation and temperature

- Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom adequate ventilation by the circulation of fresh air, and such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health; and in particular walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable.
- Where the nature of the work carried on in the factory involves, or is likely to involve the production of excessively high temperatures, such adequate measures shall be taken to protect the workers there from, by separating the process which produces such temperatures from the workroom, by insulating the hot parts or by other effective means.
- The (State) Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof and direct that proper measuring instruments, at such places and in such position as may be specified, shall be provided and such records, as may be prescribed shall be maintained.
- If it appears to the Chief Inspector that excessively high temperatures in any factory can be reduced by the adoption of suitable measures, he may, without prejudice to the rules made under sub-section (2), serve on the occupier, an order in writing specifying the measures which, in his opinion, should be adopted, and requiring them to be carried out before a specified date.

Dust and fume

In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible. In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes there from as are likely to be injurious to workers employed in the room.

Artificial humidification

In respect of all factories in which the humidity of the air is artificially increased, the (State) Government may make rules such as:

- Prescribing standards of humidification.
- Regulating the methods used for artificially increasing the humidity of the air.
- Directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded.
- Prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.
- In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

- If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before the specified date.

Overcrowding

- No room in any factory shall be overcrowded to an extent, which will be injurious to the health of the workers employed therein.
- Without prejudice to the generality of sub-section, there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least 9.9 cubic meters and of a factory built after the commencement of this Act at least 14.2 cubic meters of space for every worker employed therein, and for the purposes of this sub-section, no account shall be taken of any space which is more than 4.2 meters above the level of the floor of the room.
- If the chief inspector, by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.
- The chief inspector may by order in writing exempt, subject to conditions, if any, as he may think fit to impose, any workroom from the provisions of this section; if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

Lighting

- In every part of a factory, where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.
- In every factory, all glazed windows and skylights used for the lighting of the workrooms shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made under sub-section (3) of section 13 will allow free from obstruction.
- In every factory, effective provision shall, so far as is practicable, be made for the prevention of glare, either directly from a source of light or by reflection from a smooth or polished surface.
- The formation of shadows to such an extent as to cause eyestrain or the risk of accident to any worker.
- The (State) Government may prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process.

Drinking water

- In every factory, effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed, therein a sufficient supply of wholesome drinking water.
- All such points shall be legibly marked “drinking water” in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within six meters of any washing place, urinal, latrine, spittoon, open drain carrying sewage or effluent or any other source of contamination unless a shorter distance is approved in writing by the chief inspector.
- In every factory wherein more than two hundred and fifty workers are ordinarily employed, provision shall be made for cooling drinking water during hot weather by effective means and for distribution thereof.
- In respect of all factories or any class or description of factories the State Government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for examination by prescribed authorities of the supply and distribution of drinking water in factories.

Latrines and urinals

In every factory following necessities has to be taken care of:

- Sufficient latrine and urinal accommodation of prescribed types shall be provided. conveniently situated and accessible to workers at all times while they are at the factory.

- Separate enclosed accommodation shall be provided for male and female workers.
- Such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the chief inspector, communicate with any workroom except through an intervening open space or ventilated passage.
- All such accommodation shall be maintained in clean and sanitary condition at all times.
- Sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.
- In every factory wherein more than two hundred and fifty workers are ordinarily employed.
- All latrine and urinal accommodation shall be of prescribed sanitary types.
- The floors and internal walls, up to a height of 90 centimeters, of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface.
- Without prejudice to the provisions of clauses (d) and (e) of subsection (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once every seven days with suitable detergents or disinfectants or with both.
- The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

Spittoons

- In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in clean and hygienic condition.
- The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.
- No person shall spit within the premises of a factory except in the spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.
- Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.

4.8 Safety

Following are the concern points which have to be taken care of regarding fencing of machinery;

- Every moving part of a prime mover and every flywheel connected to a prime mover, whether the prime mover or flywheel is in the engine house or not.
- The headrace and tailrace of every water-wheel and water turbine.
- Any part of a stock-bar which projects beyond the head stock of a lathe.
- Unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely, every part of an electric generator, a motor or rotary converter.
- Every part of transmission machinery.
- Every dangerous part of any other machinery shall be securely fenced by safeguards of substantial construction which shall be constantly maintained and kept in position while the parts of machinery they are fencing are in motion or in use provided for the purpose of determining whether any part of machinery is in such position or is of such construction as to be safe as aforesaid shall not be taken of any occasion when it is necessary to make an examination of any part of the machinery aforesaid while it is in motion or, as a result of such examination, to carry out lubrication or other adjusting operation which it is necessary to be carried out while that part of the machinery is in motion

- In the case of any part of a transmission machinery used in such process as may be prescribed (being a process of a continuous nature the carrying on of which shall be, or is likely to be, substantially interfered with by the stoppage of that part of the machinery). It is necessary to make an examination of such part of the machinery while it is in motion, or as a result of such examination, to carry out any mounting or shipping of belts or lubrication or other adjusting operation while the machinery is in motion. And such examination or operation is made or carried out in accordance with the provisions of sub-section (1) of section 22.
- The State Government may, by rules prescribe such further precautions as it may consider necessary in respect of any particular machinery or part thereof, or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the provisions of this section.

Work on or near machinery in motion

Where in any factory it becomes necessary to examine any part of machinery referred to in section 21, while the machinery is in motion, or as a result of such examination to carry out

- In a case referred to in clause (1) of the proviso to sub-section (1) of section 21, lubrication or other adjusting operation.
- In a case referred to in clause (2) of the proviso aforesaid, any mounting or shipping of belts or lubrication or other adjusting operation, while the machinery is in motion, such examination or operation shall be made or carried out only by a 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 on this behalf and who has been furnished with a certificate of this appointment, and while he is so engaged.
- Such worker shall not handle a belt at a moving pulley unless
 - the belt is not more than fifteen centimetres in width
 - the pulley is normally for the purpose of drive and not merely a fly-wheel or balance wheel (in which case a belt is not permissible)
 - the belt joint is either laced or flush with the belt
 - the belt, including the joint and the pulley rim, are in good repair
 - there is reasonable clearance between the pulley and any fixed plant or structure
 - secure foothold and, where necessary, secure handhold, are provided for the operator
 - any ladder in use for carrying out any examination or operation aforesaid is securely fenced or lashed or is firmly held by a second person.
- Without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel or pinion, and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.
- No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.
- The State Government may, by notification in the Official Gazette, prohibit any specified factory or class or description of factories, the cleaning, lubrication or adjusting by any person of specified parts of machinery when those parts are in motion.

Employment of young persons on dangerous machines

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 the dangers arising in connection with the machine and the precautions to be observed and has received sufficient training in work at the machine, or is under adequate supervision by a person who has a thorough knowledge and experience of the machine. Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

Striking gear and devices for cutting off power

In every factory following actions has to be taken:

- Suitable striking gear or other efficient mechanical appliance 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 to the fast pulley
- Driving belts when not in use shall not be allowed to rest or ride upon shafting in motion
- In every factory, suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom: Provided in respect of factories in operation before the commencement of this Act, the provisions of this sub-section shall apply only to workrooms in which electricity is used as power.
- When a device, which can inadvertently shift from “off” to “on” position, is provided in a factory to cut off power, arrangements shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted.

Self-acting machines

No traversing part of a 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 centimetres from any fixed structure which is not part of the machine. Provided that the chief inspector may permit the continued use of a machine installed before the commencement of this Act, which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

Casing of new machinery

- In all machinery driven by power and installed in any factory after the commencement of this Act, every set screw, bolt or key on any revolving shaft, spindle, wheel, or pinion shall be sunk, encased, or otherwise effectively guarded as to prevent danger.
- 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 safe as it would be if it were completely encased.
- Whoever sells, or lets on hire, or as agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of subsection (1) or any rules made under sub-section (3), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.
- The State Government may make rules specifying further safeguards to be provided in respect of any other dangerous part of any particular machine or class or description of machines.

Prohibition of employment of women and children near cotton-openers

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work provided 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 the partition where the feed-end is situated.

Hoists and lifts

- In every factory every hoist and lift shall be maintained in following ways:
 - Of good mechanical construction, sound material and adequate strength.
 - Properly maintained and shall be thoroughly examined by a competent person at least once every period of six months and a register shall be kept containing the prescribed particulars of every such examination.
 - 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.
 - The maximum safe working load shall be plainly marked on every hoist or lift; and no load greater than such load shall be carried thereon.

- The cage of every hoist or lift, used for carrying persons, shall be fitted with a gate on each side from which access is afforded to a landing.
- Every gate referred in above clauses 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.
- The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely:
 - Where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight; and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load.
 - Efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains, or attachments.
 - An efficient automatic device shall be provided and maintained to prevent the cage from over-running.
- The Chief Inspector may permit the continued use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of sub-section
 - Upon such conditions for ensuring safety as he may think fit to impose.
 - The State Government may, if in respect of any class or description of hoists or lifts, it is of opinion that it would be unreasonable to enforce any requirement of sub-sections (1) and (2) by order direct that such requirement shall not apply to such class or description of hoist or lift.
 - For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.

Lifting machines, chains, ropes and lifting tackles

In any factory, the following provisions shall be complied with respect to 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 material:

- All parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be of good construction, sound material and adequate strength and free from defects. Properly maintained; and thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing and a register shall be kept containing the prescribed particulars of every such examination.
- No lifting machine and 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 this 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 the premises.
- 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 six meters of that place.
- The State Government may make rules in respect of any lifting machine or any chain, rope, or lifting tackle used in factories prescribing further requirements to be complied with in addition to those set out in this section. Providing for exemption from compliance with all or any of the requirements of this section, where in its opinion, such compliance is unnecessary or impracticable.
- For the purposes of this section a lifting machine or a chain, rope, or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined. In this section, "Lifting machine" means a crane, crab, winch, toggle, pulley block, gin wheel, transporters, or runway. "Lifting tackle" means any chain sling, rope sling, hook, shackle, swivel, coupling, socket, clamp, tray or similar appliance, whether fixed or movable, used in connection with the raising or lowering of persons, or loads by use of lifting machines.

Revolving machinery

In every factory, in which the process of grinding is carried on, there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed. The speeds indicated in notices under sub-section (1) shall not be exceeded. Effective measures shall be taken in every factory to ensure that the safe working peripheral speed of every of every revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliances driven by power is not exceeded.

Pressure plant

If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded. The State Government may make rules providing for the examination and testing of any plant or machinery such as is referred to in subsection (1) and prescribing such other safety measures in relation thereto as may in its opinion is necessary in any factory or class or description of factories. The State Government may, by rules, exempt, subject to such conditions as may be specified therein, any part of any plant or machinery referred to in sub-section (1) from the provisions of this section.

Floors, stairs, and means of access

In every factory

- all floors, steps, stairs, passages, and gangways shall be of sound construction and properly maintained and shall be kept free from obstructions 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.
- there shall, so far as is reasonable practicable, be provided and maintained safe means of access to every place at which any person is at any time required to work.
- when a person has to work at a high places 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.

Pits, sumps, openings in floors, etc

- In every factory every fixed vessel, sump, tank, pit, or opening in the ground or in a floor which, by reason of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.
- The State Government may, by order in writing, exempt, subject to such conditions as may be prescribed, any factory or class or description of factories in respect of any vessel, sump, tank, pit or opening from compliance with the provisions of this section.

Excessive weights

- No person shall be employed in any factory to lift, carry, or move 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.

Protection of eyes

In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves the following:

- risk of injury to the eyes from particles or fragments thrown off in the course of the process
- risk to the eyes by reason of exposure to excessive light, the State Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of the process

Precautions against dangerous fumes, gases, etc.

- No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour, 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.
- 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, vapour 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, vapour or dust.
- Unless a certificate in writing has been given by a competent person, based on a test carried out by him that the space is reasonably free from dangerous gas, fume, vapour or dust.
- 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.

Precautions regarding the use of portable electric light in any factory

- No portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided.
- If any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flue or other confined space, no lamp or light other than that of flame-proof construction shall be permitted to be used therein.

Precautions against explosive or inflammable dust, gas, etc

- There has to be effective enclosure of the plant or machinery used in the process, removal or prevention of the accumulation of such dust, gas, fume, or vapour and exclusion or effective enclosure of all possible sources of ignition.
- Where in any factory, the plant or machinery used in a process such as is referred to in above sub-section is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measures shall be taken to restrict the spread and effects of the explosion by the provision in the plant or machinery of chokes, baffles, vents, or other effective appliances.
- Where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely:
 - Before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part of any such pipe shall be effectively stopped by a stop-valve or other means.
 - Before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to atmospheric pressure.
 - Where any such fastening as aforesaid has been loosened or removed effective measures shall be taken to prevent any explosive or inflammable gas or vapor from entering the part or pipe until the fastening has been secured, or as the case may be, securely replaced.

Provided that the provisions of this sub-section shall not apply in the case of plant or machinery installed in the open air no plant, tank, or vessel which contains or has contained any explosive or inflammable substance shall be subjected in any factory to any welding, brazing, soldering, or cutting operation, which involves the application of heat unless adequate measures have been taken to remove such substance and any fumes arising there from or to render such substance and fumes non-explosive or non-inflammable, and no such substance shall be allowed to enter such plant, tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance. The State Government may by rules exempt, subject to such conditions as any is prescribed, any factory or class or description of factories from compliance with all or any of the provisions of this section.

Precautions in case of fire

In every factory, all practicable measure shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain:

- safe means of escape for all persons in the event of a fire
- the necessary equipment and facilities for extinguishing fire
- Effective measures shall be taken to ensure that in every factory, all workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such cases.
- The State government may make rules, in respect of any factory, or class, or description of factories, requiring the measures to be adopted to give effect to the provisions of above sub-sections.
- Notwithstanding anything contained in above sub-sections, if the Chief Inspector, having regard to the nature of the work carried on in any factory, the construction of such factory, special risk to life or safety, or any other circumstances, is of the opinion that the measures provided in the factory, whether as prescribed or not, for the purposes of above mentioned sub-section, are inadequate, he may, by order in writing, require that such additional measures as he may consider reasonable and necessary, be provided in the factory before such date as is specified in the order.

Power to require specifications of defective parts or tests of stability

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing requiring him before a specified date

- to furnish such drawings, specifications, and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or
- to carry out such tests in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

Safety of buildings and machinery

- If it appears to the inspector that any building or part of a building or any part of the ways, machinery, or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve an occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.
- If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery, or plant in a factory involves imminent danger to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

Maintenance of buildings

If it appears to the inspector that any building or part of a building in a factory is in a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be taken and requiring the same to be carried out before such date as is specified in the order.

Safety officers

In every factory wherein one thousand or more workers are ordinarily employed or 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, the occupier shall, if so, required by the State Government, by notification in the Official Gazette, employ such number of safety officers as may be specified in that notification. The duties, qualifications and conditions of service of safety officer shall be such as may be prescribed by the State Government.

Power to make rules to supplement this chapter

The State Government may make rules requiring the provision in any factory or in any class or description of factories of such further devices and measures for securing the safety of persons employed therein as it may deem necessary.

Welfare

- Washing facilities

In every factory following facilities has to be provided:

- Adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein.
- Separate and adequately screened facilities shall be provided for the use of male and female workers.
- Such facilities shall be conveniently accessible and shall be kept clean.
- The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

- Facilities for storing and drying clothing

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

- Facilities for sitting

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

- First-aid appliances

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

- Canteens

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

- Without prejudice to the generality of the foregoing power, such rules may provide for the date by which such canteen shall be provided.
 - The standards in respect of construction, accommodation, furniture and other equipment of the canteen.
 - The foodstuffs to be served therein and the charges which may be made therefore.
 - The constitution of a managing committee for the canteen and representation of the workers in the management of the canteen.
 - The items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer.
- **Shelters, rest rooms and lunch rooms**
 In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers provided:
 - that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section
 - that where a lunch room exists no worker shall eat any food in the work room.
 - The shelters or rest rooms or lunch rooms to be provided in above subsection shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.
 - The State Government may prescribe the standards in respect of construction, accommodation, furniture and other equipment of shelters, rest rooms and lunch rooms to be provided under this section. By notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.
- **Crèches**
 - In every factory, wherein more than thirty women workers are ordinarily employed, there shall be a suitable room or rooms for the use of children under the age of six years of such women.
 - Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, maintained in a clean and sanitary condition, and be under the charge of women trained in the care of children and infants.
 - The State Government may make rules prescribing the location and the standards in respect of construction, accommodation, furniture, and other equipment of rooms to be provided under this section requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provisions of facilities for washing and changing their clothing.
 - The provision of free milk or refreshment or both for such children.
 - Requiring that facilities shall be given in any factory for the mothers of such children to feed them at necessary intervals.

Welfare officers

In every factory, wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed. The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

4.9 Employment of Young Persons

Prohibition of employment of young children

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

Non-adult workers to carry tokens

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory; and such child or adolescent carries, which he is at work a token giving a reference to such certificate.

Certificate of fitness

- A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.
- The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew:
 - A certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and he is fit for such work.
 - A certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year, and is fit for a full day's work in a factory provided unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.
- A certificate of fitness granted or renewed under sub-section (2):
 - Shall be valid only for a period of twelve months from the date thereof.
 - May be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.
 - A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.
 - Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.
 - Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.
 - Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

Effect of certificate of fitness granted to adolescent

- An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 69, and who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult.
- No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult shall be required or allowed to work in any factory except between 6 a.m. and 7 p.m. provided the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories vary the limits laid down in this sub-section so, however, that no such section shall authorize the employment of any female adolescent between 10 p.m. and 5 a.m. grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.
- An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause (b) shall, notwithstanding his age, be deemed to be a child for all purposes of this Act.

Working hours for children

No child shall be employed or permitted to work in any factory in following situations:

- For more than four and a half hours in any day
- During the night
- For the purpose of this sub-section "night" shall mean a period of at least twelve consecutive hours, which shall include the interval between 10 p.m. and 6 a.m.

- The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each, and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.
- The provisions of section 52 shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.
- No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.
- No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.

Notice of periods of work for children

- There shall be displayed and correctly maintained in every factory in which children are employed, in accordance with the provisions of subsection (2) of section 108, a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.
- The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of section 71.
- The provisions of sub-sections (8), (9), and (10) of section 61 shall apply also to the notice required by sub-section (1) of this section.

Register of child workers

- The manager of every factory, in which children are employed, shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory showing:
 - the name of each child worker in the factory
 - the nature of his work
 - the group, of any, in which he is included
 - where his group works on shifts, the relay to which he is allotted
 - the number of his certificate of fitness granted under section 69
- No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.
- The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Hours of work to correspond with notice and register

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

Power to require medical examination

Inspector has the power to give his opinion that any person working in a factory without a certificate of fitness is a young person, or that young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve, on the manager of the factory, a notice requiring that such person or young person, as the case may be, shall be examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.

Power to make rules

The State Government may make the following rules:

- Prescribing the forms of certificates of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificates and fixing the fees, this may be charged for such certificates and renewals thereof and such duplicates.
- Prescribing the physical standards to be attained by the children and adolescents working in factories.
- Regulating the procedure of certifying surgeons.
- Specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees, which may be charged for such duties and the persons by whom they shall be payable.

4.10 Penalties and Procedure

Detail of various penalties and procedures are described below.

4.10.1 General Penalty for Offences

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term, which may extend to two years or with fine which may extend to one lac rupees or with both, and if the contravention is continued after conviction with a 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 the provisions of chapter 4 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. In this section, "serious bodily injury" means an injury which involves or in all probability will involve the permanent loss of the use of or permanent injury to any limb or the permanent loss of or injury to sight or hearing or the fracture of any bone, but shall not include the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.

Liability of owner of premises in certain circumstances

- Where in any premises, separate buildings are leased to different occupiers for use as separate factories; the owner of the premises shall be responsible for the provisions and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting, and sanitation.
- The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of sub-section (1).
- Where in any premises, independent or self-contained floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of:
 - Latrines, urinals, and washing facilities in so far as the maintenance of the common supply of water for these purposes is concerned.
 - Fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an occupier.
 - Safe means of access to the floors or flats and maintenance and cleanliness of staircases and common passages.
 - Precautions in case of fire.
 - Maintenance of hoists and lifts; and
 - Maintenance of any other common facilities provided in the premises.
- The chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub-section (3).

- The provisions of sub-section (3), relating to the liability of the owner, shall apply where in any premises independent rooms with common latrines, urinals, and washing facilities are leased to different occupiers for use as separate factories. Provided that the owner shall be responsible also for complying with the requirements relating to the provisions and maintenance of latrines, urinals, and washing facilities.
- The chief Inspector shall have, subject to the control of the State Government, the power to issue orders to the owner of the premises referred to in sub-section (5) in respect of carrying out of the provisions of section 46 or section 48.
- Where in any premises portions of a room or a shed are leased to different occupiers for use as separate factories; the owner of the premises shall be liable for any contravention of the provisions of health, except on dust and fume, artificial humidification and safety.
- The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub-section (7).
- In respect of sub-sections (5) and (7), while computing for the purposes of any of the provisions of this Act the total number of workers employed, the whole of the premises shall be deemed to be a single factory.

Enhanced penalty after previous conviction

If any person, who has been convicted of any offence punishable under section 92, is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term, which may extend to three years or with fine, which shall not be less than ten thousand rupees, but which may extend to two lac rupees or with both provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine less than ten thousand rupees.

Provided further that where contravention of any of the provisions of safety 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. For the purposes 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.

Penalty for obstructing inspector

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

Penalty for wrongfully disclosing results of analysis

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

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

- Whoever fails to comply with or contravenes any of the provisions of section 41B, 41C and 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 lac 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.
- 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.

Offences by workers

- Subject to the provisions of section 111, if any worker, employed in a factory contravenes any provisions of this Act or any rules or orders made there under, imposing any duty or liability on workers, he shall be punishable with fine, which may extend to five hundred rupees.
- Where a worker is convicted of an offence punishable under sub-section (1) the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

Penalty for using false certificate of fitness

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

Penalty for permitting double employment of child

If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person, having custody of or control over him or obtaining any direct benefit from his wages shall be punishable with fine, which may extend to one thousand rupees unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian, or person.

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 that he has used due diligence to enforce the execution of this Act and that the said other person committed the offence in question without his knowledge, consent or responsibility, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory, 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.

Power of court to make orders

Where the occupier or manager of a factory is convicted of an offence punishable under this Act the court may, in addition to awarding any punishment, by order in writing require him, within a period specified in the order (which the Court may, if it thinks fit and on application in such behalf, from time to time extend) to take such measures as may be so specified for remedying the matters in respect of which the offence was committed. Where an order is made under sub-section (1), the occupier or manager of the factory, as the case may be, shall not be liable under this act in respect of the continuation of the offence during the period or extended period, if any, allowed by the Court, but if, on the expiry of such period or extended period, as the case may be, the order of the Court has not been fully complied with, the occupier or manager, as the case may be, shall be deemed to have committed a further offence, and may be sentenced therefore by the court to undergo imprisonment for a term which may extend to six months or to pay a fine which may extend to one hundred rupees for everyday after such expiry on which the order has not been complied with, or both to undergo such imprisonment and to pay such fine, as aforesaid.

Presumption as to employment

If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made there under to have been at the time employed in the factory.

Onus as to age

When any act or omission would, if a person were under a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court prima facie under such age, the burden shall be on the accused to prove that such person is not under such age. A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made there under, be admissible as evidence of the age of that worker.

Onus of proving limits of what is practicable, etc

In any proceeding for an offence for the contravention of any provision of this Act or rules made there under consisting of a failure to comply with a duty or requirement to do something, it shall be for the person who is alleged to have failed to comply with such duty or requirement to prove that it was not reasonably practicable, or as the case may be, all practicable measures were taken to satisfy the duty or requirement.

Cognizance of offences

No Court shall take cognizance of any offence under this Act except on complaint by or with the previous sanction in writing of an Inspector. No Court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.

Limitation of prosecutions

No Court shall take cognizance of any offence punishable under the Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

For the purposes of this section

In the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues. Where for the performance of any act, time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation shall be computed from the date, on which the time so granted or extended expired.

Jurisdiction of a court for entertaining proceedings, etc., for offence

For the purposes of conferring jurisdiction on any court in relation to an offence under this Act or the rules made there under in connection with the operation of any plant, the place where the plant is for the time being situate shall be deemed to be the place where such offence has been committed.

4.11 Working Hours of Adults

Weekly hours (Sec.51)

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week. But this does not prohibit requiring an employee working 42 hours a week to work forty-eight hours after a departmental transfer and he cannot claim overtime wages for these additional six hours.

Weekly holidays (Sec.52)

No adult worker shall be required or allowed to work in a factory on the first day of the week (i.e. Sunday), unless

- He has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and the manager of the factory has before Sunday or on the substituted day, whichever is earlier
- Delivered a notice at the office of the Inspector of his intention to require the worker to work on Sunday and of the day which is to be substituted, and

- Displayed a notice to that effect in the factory. But no substitution can be made, which will result in any worker working more than ten days consecutively without a holiday for a whole day.
- Such a notice given may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory at least one day before Sunday or holiday to be cancelled.
- Where a worker works on a Sunday and had a holiday on one of the three days immediately before it, the Sunday shall be included in the preceding week for the purpose of calculating his weekly hours.
- The importance of the above section is that if any worker is required to work on a Sunday, he must get a substitute holiday. Similarly whenever workers are required or permitted to work on a weekly holiday the specific permission of the Chief Inspector of factories in respect of each and every worker, who is required to work on such a day, should be obtained.

Compensatory holidays (Sec.53)

If any factory is exempted by an order from the provisions of sec.52 (i.e. requirement of giving notice) and any worker is deprived of any of the weekly holidays, he shall be allowed within the month, in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

Daily hours (Sec.54)

No adult worker shall be required or allowed to work in a factory for more than nine hours on any day. The daily maximum hours may be exceeded with the previous approval of the Chief Inspector if required to facilitate change of shifts.

Intervals for rest (Sec.55)

The periods of work of adult workers, in a factory each day, shall be so fixed that no period shall exceed five hours and no worker shall work for more than five hours before he has had an interval for rest of at least an hour. The Chief Inspector or the State Government may exempt any factory by a written order from the above. But the total number of hours worked by a worker without an interval cannot exceed six hours.

Spread over (Sec.56)

The period of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, shall not spread over more than ten and half hours on any day. But the Chief Inspector may for reasons to be specified in writing increase the spread over up to twelve hours. Though the above provisions are normally applicable, exemption may be granted by the State Government under the provisions of section 64 for the workers who are:

- engaged on urgent repairs
- engaged in work in the nature of preparatory or complementary work which must be necessarily carried on
- engaged in work, which is necessarily so intermittent that the intervals during, which they do not work while on duty ordinarily amount to more than the intervals for rest
- engaged in any work which must be carried on continuously for technical reasons
- engaged in making or supplying articles of prime necessity which must be made or supplied every day
- engaged in manufacturing process, which is carried on, except in fixed seasons
- engaged in manufacturing process, which cannot be carried out except at times dependent on the irregular action of natural forces
- engaged in engine rooms or boiler houses or in attending to power plant or transmission machinery
- engaged in the printing of newspapers, who are held up due to breakdown of machinery
- engaged in the loading or unloading of railway wagons, lorries, or trucks
- engaged in any work, which is notified by the State Government as work of national importance

However, due to exemption, the following limits shall not be exceeded regarding working hours:

- The total number of hours of work on any day shall not exceed ten.
- The spread over including rest hours shall not exceed twelve hours in any day.

- The total number of hours of work in a week including overtime shall not exceed sixty.
- In any one quarter (periods of 3 months beginning on 1st January, 1st April, 1st July or 1st October), hours of overtime work shall not exceed fifty.

4.12 Annual Leave with Wages

Every worker, who has worked for a period of 240 days or more in a factory during a calendar year, shall be allowed during the subsequent calendar year leave with wages for number of days calculated at the rate of if an adult, one day for every twenty days of work performed by him during the previous calendar year and if a child, one day for every fifteen days of work performed by him during the previous calendar year.

The other rules relating to annual leave are as under:

- The leave admissible under the above rule is exclusive of all holidays whether occurring during or at either end of period of leave.
- The calculating the period of 240 days, the days of lay off, maternity leave to females not exceeding twelve weeks and the leave earned in the previous year shall not be included in this period.
- A worker, whose service commences otherwise than on the first day of January, shall be entitled to leave with wages if he has worked for two third of the total number of days in the remainder of the calendar year.
- If a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he, his heirs, or nominee as the case may be, shall be entitled to wages in the lieu of the quantum of leave, to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death, even if he had not worked for the required period for eligibility to leave.
 - Such payments shall be made.
 - Where the worker is discharged or dismissed or quits employment, before the expiry of the second working day from the date of dismissal, discharge, or quitting.
 - Where the worker is superannuated or dies while in service, before the expiry of two months from the date of superannuation or death.
 - In calculating leave, fraction of leave of half a day or more shall be treated as one full days leave and fraction of less than half a day shall be omitted.
- If a worker does not take leave in any one whole year allowed to him, such leave shall be added to the leave allowed to him in the succeeding calendar year. But following terms are applicable,
 - the total number of days of leave that may be carried forward to succeeding year shall not exceed thirty in the case of an adult or forty in the case of a child
 - A worker who has applied for leave with wages but has not been given such leave in accordance with any scheme laid down shall be entitled to carry forward the leave refused without any limit.
 - For the purpose of ensuring the continuity of work, the occupier or manager of the factory in agreement with the Works Committee if the factory or a similar committee may lodge with the Chief Inspector a scheme in writing whereas the grant of leave may be regulated.
 - Such a scheme shall be displayed at some conspicuous and convenient places in the factory and shall be in force for twelve months and may be renewed thereafter with or without modification for a further period of twelve months.
 - A worker in a public utility service in writing to the manager at least fifteen days before the date on which the worker wishes his leave to begin.
 - If the leave is required to cover a period of illness, the worker shall be granted the leave even if the application is not made within the specified time.
 - If employment of a worker who is entitled to leave is terminated by the occupier before he has taken the leave to which he is entitled or the leave for which he had applied is not granted to him and the worker quits the employment before taking the leave, the occupier of the factory shall pay him the amount payable in respect of leave not taken. The wages for the leave period shall be paid at a rate equal to the daily average of his total full time earnings for the day of which he worked actually during the month immediately preceding his leave.

Summary

- The first Factories Act was enacted in India in 1881 and was amended several times. Thereafter Factories Act 1934 was passed after considering the recommendations of the Royal Commission on Labour. But even this Act also revealed number of defects and weaknesses. Therefore the Factories Act 1948 was passed which is still continuing.
- After an application for permission accompanied by the plans and specifications are sent to the state government or the chief inspector by registered post and no order is communicated to the applicant within three months from the date on which it is so sent, the permission shall be deemed to have been granted.
- The state government may appoint any person as chief inspector who will exercise the powers of inspector throughout the state. Every District Magistrate shall be an Inspector for his district.
- Central Government has got the power to appoint Inquiry Committee.
- In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes there from as are likely to be injurious to workers employed in the room.
- In every factory, effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed, therein a sufficient supply of wholesome drinking water.
- Every part of a factory, where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.
- No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work.
- 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 a source of danger, shall be either securely covered or securely fenced.
- Where in any factory, any manufacturing process produces dust, gas, fume, or vapor of such character and to such extent as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion.

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Self Assessment

1. The Factories Act applies to the whole of India except the state of _____.
 - a. Jammu and Kashmir
 - b. Maharashtra
 - c. Punjab
 - d. Arunachal

2. The _____ is the principal person in a factory.
 - a. union head
 - b. occupier
 - c. employer
 - d. worker

3. _____ has got the power to appoint Inquiry Committee.
 - a. Government
 - b. Inspector
 - c. Central Government
 - d. State government

4. No woman or child shall be employed in any part of a factory for cotton pressing in which a _____ is at work.
 - a. prime mover
 - b. transmission machinery
 - c. cotton opener
 - d. manufacturing process

5. _____ can make examination of the premises, plant, machinery, articles or substance.
 - a. Occupier
 - b. Employer
 - c. Inspector
 - d. Government

6. Manufacturing process means any process
 - a. which includes making, sale, transport or delivery
 - b. which does not include pumping oil, water or any other substance
 - c. which does not include generating power
 - d. which does not include transforming or transmitting power

7. Any worker shall not handle a belt at a moving pulley unless
 - a. the belt is not more than fifty centimetres in width
 - b. the pulley is not for the purpose of drive
 - c. the belt joint should not either laced or flush with the belt
 - d. the belt, including the joint and the pulley rim, are in good repair

8. No child shall be employed or permitted to work in any factory in following situations:
 - a. for more than six and a half hours in any day
 - b. during the day
 - c. the period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each
 - d. for more than five hours in a day

9. In every factory wherein more than thirty women workers are ordinarily employed, there shall be provided and maintained a suitable room for _____
 - a. canteen
 - b. artificial humidification
 - c. crèches
 - d. washing facilities

10. If a worker does not take leave in any one whole year allowed to him,
 - a. such leave shall be added to the leave allowed to him in the succeeding calendar year
 - b. such leave should not be added to the leave allowed to him in the succeeding calendar year
 - c. he will not get any wages for the leave period
 - d. such leave gets lapsed

Chapter V

The Child Labour (Protection and Regulation) Act, 1986

Aim

The aim of this chapter is to:

- explain the influence of international conventions
- explicate the meaning of “child” according to Indian constitution
- describe the child labour prohibited occupations

Objectives

The objectives of this chapter are to:

- explain Indian Constitutions and the Child
- explicate the Child Labour (Prohibition and Regulation) Act, 1986
- describe the provisions of penalties under various clauses

Learning outcome

At the end of this chapter, you will be able to:

- identify few principles regarding child labour
- describe the child labour technical advisory committee
- understand the health and safety section

5.1 Introduction

The international conventions, which have influenced the present Act, are:

- The Universal Declaration of Human Rights (1948).
- The Declaration of the Rights of the Child.
- International Convention of the Rights of a Child.

Some of the principles emphasized in the above conventions are:

- The child by reason of its physical and mental immaturity needs special safeguards and care; and so needs protection.
- All children shall enjoy and shall be entitled to rights set forth in these principles without any discrimination.
- Special protection and facilities for proper and integrated development of human personality be ensured.
- A child shall be entitled from its birth to name and nationality.
- A child shall not be admitted to employment before he attains appropriate age.
- A child shall not be engaged in any employment which would prejudice his health or education or interfere with his physical, mental and moral development.
- A child shall be protected from economic exploitation and from hazardous works, drug use, trafficking, sexual exploitation and abuse.
- Children shall have the right to freedom of expression, thought and religion.
- The best interest of the child shall be the paramount consideration.

5.2 Indian Constitutions and the Child

Framers of the Indian Constitution were influenced by the concepts of human rights; and human rights were embodied in the Indian Constitution. There is a duty cast on the state to direct its policies towards security that, tender ages of children are not abused and that they are not forced by economic necessity to accept vocations unsuited to their age or strength. The State is also to provide free and compulsory education for all children up to the age of fourteen years. Article 24 of the Constitution prohibits employment of children below fourteen years in hazardous employments.

5.3 The Child Labour (Prohibition and Regulation) Act, 1986

The Act applies to the whole of India. This Act repealed the earlier Employment of children Act 1938. The Act applies to all establishments and workshops wherein any industrial process is carried on.

Some important definitions:

- Child: means a person who has not completed his 14th year of age.
- Establishment: includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant eating-house, theatre, or other place of public amusement, or entertainment.
- Workshop: means any premises wherein any industrial process is carried on.

5.4 Prohibition of Employment of Children in Certain Occupations (Sec.3)

No child shall be employed or permitted to work in any of the occupations in part A of the schedule or in any workshop, wherein any of the processes specified in part B of the schedule is carried on. But this section will not be applicable to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from the Government. The occupier of an establishment or workshop means the person who has the ultimate control over the affairs of the establishment or workshop. Family in relation to an occupier means the individual (the wife or husband) and their children, brother, or sister of such individual.

5.5 The Schedule

Part - A

Occupations where child labour is prohibited are as follows:

- Transport of passengers, goods, or mails by railway
- Cinder picking, cleaning an ash pit or building operation in the railway premises.
- Work in catering establishments at a railway station; involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving trains.
- Work relating to the construction of a railway station or with any other work, which is done in close proximity to the railway lines.
- A port authority within the limits of any port.
- Work relating to selling of crackers and fireworks in shops with temporary licenses.
- Abattoirs and slaughterhouses.
- Automobile workshops and garages.
- Foundries.
- Handling of toxic or inflammable substances or explosives.
- Handloom and power loom industry.
- Mines (underground and underwater) and collieries.
- Plastic units and fibreglass workshop.

Part - B

Following are the processes where child labour is prohibited:

- Bidi making
- Carpet weaving
- Cement manufacturing
- Cloth printing, dyeing and weaving
- Manufacture of matches, explosives and fire works
- Mica cutting and splitting.
- Shellac manufacture
- Soap manufacture
- Tanning
- Wool cleaning
- Building and construction industry
- Manufacture of slate pencils
- Manufacture of agate products
- Manufacturing processes using lead, mercury, manganese, chromium
- Hazardous processes as defined in the Factories Act
- Printing as defined in the Factories Act
- Cashew and cashew nut decaling and processing
- Soldering process in electronic industries
- Agarbatti manufacturing
- Automobile repairs
- Brick kilns and roof tiles units
- Cotton ginning and processing and production of hosiery goods

- Detergent manufacturing
- Fabrication workshop
- Gem cutting and polishing
- Handling of chromites and manganese ores
- Jute textile manufacture and coir making
- Lime kilns and manufacture of lime
- Lock making
- Manufacturing processes having exposure to lead
- Manufacture of cement pipes, cement products
- Manufacturing of glass, glassware including bangles, fluorescent tubes, bulbs
- Manufacture of dyes and dye stuff
- Manufacturing of burning coal
- Manufacturing of sports goods involving exposure to synthetic materials, chemical and lather.
- Molding and processing of fiber glass and plastic
- Oil expelling and refinery
- Paper making
- Potteries and ceramic industry
- Polishing, molding, cutting, welding and manufacture of brass goods
- Processes in agriculture where tractors, threshing and harvesting machines are used
- Saw mill
- Sericulture processing
- Leather and leather products
- Stone breaking and stone crushing
- Tobacco processing
- Tyre making, repairing and re-treading
- Utensils making
- Zari making

5.6 Child Labour Technical Advisory Committee

The Central Government may constitute an advisory committee by notification in the Official Gazette. This committee will be called the Child Labour Advisory Committee and will advise the Central Government for the purpose of addition of occupations and processes to the schedule. The committee shall consist of a Chairman and other members not exceeding ten as may be appointed by the Central Government. The committee may if it deems necessary, constitute one or more sub committees and may appoint any person to such committee for the consideration of any particular matter or for general purposes.

5.7 Regulation of Conditions of Work for Children (Sec.6)

The provisions of this part shall apply to an establishment or class of establishments, in which none of the occupations or processes referred to in part A or part B of the schedule.

Hours and periods of work (Sec.7)

- No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment.
- The period of work on each day shall be fixed in such a way that no period shall exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour.

- The period of work of a child shall be so arranged that inclusive of the rest interval, it shall not be spread over for more than six hours including the time spent in waiting for work on any day.
- No child shall be permitted or required to work between 7.00 p.m. and 8.00 a.m.
- No child shall be required or permitted to work overtime.
- No child shall be required or permitted to work in any establishment on any day, on which he has already been working in another establishment.

Weekly holidays (Sec.8)

Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the Occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Notice to Inspector (Sec.9)

Every occupier in relation to an establishment, in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall within a period of thirty days from such commencement send to the Inspector within whose local limits the establishment is situated, a written notice containing detailed information regarding the nature of occupation or process carried on in the establishment.

Every occupier of an establishment, who permits or employs any child after the commencement of this Act, shall within a period of thirty days from the date of such employment send to the Inspector within whose local limits the establishment is situated, a written notice containing particulars as are mentioned in sub-section (1). However, sections 7, 8, and 9 will not be applicable to any establishment where any process is carried on by the occupier with the help of his family or to any school established by, or receiving assistance or recognition from the Government.

Disputes as to age (Sec.10)

If any question arises between an Inspector and an occupier as to the age of any child, who is employed or permitted to work by him in an establishment, and there is no certificate as to the age of such child granted by the prescribed medical authority, then the question shall be referred by the Inspector for decision to the prescribed medical authority.

Maintenance of register (Sec.11)

Every occupier shall maintain a register in respect of children employed or permitted to work in any establishment. The register shall be available for inspection by the inspector at all times during working hours or when work is being carried on in any such establishment. The register shall show the following particulars:

- the name and date of birth of every child employed or permitted to work
- hours and periods of work of any such child and the intervals of rest to which he is entitled
- the nature of work of any such child
- other prescribed particulars

Display of notice containing abstract of sec.3 and sec.14 (Sec.12)

Every railway administration, every port authority, and every occupier shall cause to be displayed in a noticeable and accessible place at every railway station or within the limits of port or at the place of work, a notice in the local language and in English containing the abstracts of section 3 regarding prohibition of employment of children and of section 14 regarding penalties for employing or permitting to work a child in contravention of the provisions of section 3.

Health and safety (Sec.13)

The Government may make rules by notification in the Official Gazette for the health and safety of children employed or permitted to work in any establishment or class of establishments. The said rules may provide for all or any of the following matters:

- cleanliness in the place of work and its freedom from nuisance

- disposal of wastes and effluents
- ventilation and temperature

5.8 Penalties (Sec.14)

Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term, which shall not be less than three months, but which may extend to one year or with fine, which shall not be less than ten thousand rupees, but which may extend to twenty thousand rupees or with both.

Whoever having been convicted of an offence under section 3, commits a similar offence afterwards, shall be punishable with imprisonment for a term, which shall not be less than six months, but which may extend to two years.

Whoever:

- fails to give a notice as required by section 9 about employment of children
- fails to maintain a register as required by section 11 or makes any false entry in any such register
- fails to display a notice containing an abstract of section 3 regarding prohibition of employment of children
- fails to comply with or contravenes any other provisions of this Act or the rules, shall be punishable with simple imprisonment, which may extend to one month or with fine which may extend to ten thousand rupees or with both.

Summary

- Framers of the Indian Constitution were influenced by the concepts of human rights; and human rights were embodied in the Indian Constitution.
- Child means a person who has not completed his 14th year of age.
- The Central Government may constitute an advisory committee by notification in the Official Gazette. This committee will be called the Child Labour Advisory Committee and will advise the Central Government for the purpose of addition of occupations and processes to the schedule.
- The period of work on each day shall be so fixed that no period shall exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour.
- Every child employed in an establishment shall be allowed in each week, a holiday of one whole day.
- If any question arises between an Inspector and an occupier as to the age of any child, who is employed or permitted to work by him in an establishment, and there is no certificate as to the age of such child granted by the prescribed medical authority, then the question shall be referred by the Inspector for decision to the prescribed medical authority.
- The Government may make rules by notification in the Official Gazette for the health and safety of children employed or permitted to work in any establishment or class of establishments.
- Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term, which shall not be less than three months, but which may extend to one year or with fine, which shall not be less than ten thousand rupees, but which may extend to twenty thousand rupees or with both.

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Self Assessment

1. The period of work of a child shall not be spread over for more than _____ hours including the time spent in waiting for work on any day.
 - a. six
 - b. eight
 - c. four
 - d. ten

2. The Government may make rules by notification in the Official Gazette for the _____ of children employed.
 - a. salary
 - b. leave
 - c. health and safety
 - d. education

3. _____ advises the Central Government for the purpose of addition of occupations and processes to the schedule.
 - a. The Child Labour Advisory Committee
 - b. Child Labour Technical Advisory Committee
 - c. The Child Labour (Prohibition and Regulation) Act 1986
 - d. State government

4. Child means a person who has not completed his ____ year of age.
 - a. 16th
 - b. 13th
 - c. 18th
 - d. 14th

5. Every child employed in an establishment shall be allowed in _____, a holiday of one whole day.
 - a. each month
 - b. each week
 - c. every 15 days
 - d. every three months

6. Some of the principles emphasized in the international conventions are:
 - a. a child shall be entitled from its birth to name and nationality
 - b. a child shall not be admitted to employment before he attains appropriate age
 - c. a child shall be protected from economic exploitation and from hazardous works
 - d. a child can work after age 10

7. Which of the following is the punishment, if anyone employs a child for work?
 - a. Imprisonment for 3 months to 1 year
 - b. Fine of 10 thousand rupees to 20 thousand rupees
 - c. Imprisonment for 3 months to 1 year
 - d. Fine of 500 rupees

8. Which of the following are the occupations where child labour is prohibited?
- Automobile workshops and garages
 - Handloom and power loom industry
 - Plastic units and fibreglass workshop
 - Medical authority
9. _____ means any premises wherein any industrial process is carried on.
- Industry
 - Workshop
 - Shop
 - Factory
10. _____ includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant eating-house, theatre or other place of public amusement, or entertainment.
- Industry
 - Shop
 - Establishment
 - Factory

Chapter VI

The Workman's Compensation Act, 1923

Aim

The aim of this chapter is to:

- define the Workman's Compensations Act, 1923
- explain the conditions when an employer is liable to pay compensation
- enlist types of disabilities and their meanings

Objectives

The objectives of this chapter are to:

- define disablement
- explain national extension of employer's premises
- explicate amount of compensation

Learning outcome

At the end of this chapter, you will be able to:

- understand the alternative remedy
- identify notice and claims of accident
- define penalties

6.1 Introduction

The Workman's Compensation Act is a social legislation enacted for adequate protection to workmen. The Act was passed in 1923 and was enforced on the 1st of July 1924. It has been amended a number of times since then to suit the changing times and conditions of workmen.

The reason for passing the Act mainly was that the growing complexity of industries and the increasing use of heavy machinery, there was consequent danger to the workmen, who were not in financial situation to bear the expenses of any medical treatment; and it was thought advisable that workmen should be protected as far as possible from hardships arising from accidents. The Act applies to the whole of India.

The main features of the Act are:

- Payment of compensation has been made obligatory on all employers whose employees are entitled to claim benefit under this Act.
- The workman or his dependants can claim compensation if the injury has been caused by accident arising out of and in the course of employment. If the accident does not result in death then the accident must not be due to the workman being under the influence of drinks or drugs at the time of the accident; or the accident is not caused due to the disobedience of the workman of rules or disregard of safety devices.
- The amount of compensation payable depends in case of death on the average monthly wages of the deceased workman and in the case of an injured workman both on the average monthly wages and the nature of disablement.

6.2 Some Important Definitions Related to The Workman's Compensation Act

Wages

Wages include any privilege or benefit, which is capable of being estimated in money, other than travelling allowance or a contribution paid by the employer towards any pension or provident fund. The following privileges and benefits are included in the wages:

- free accommodation
- maternity benefit payable to a woman
- dearness allowance
- overtime pay
- benefits in the form of food or clothing
- gratuity payable to a workman on retirement
- bonus earned on the date of accident
- value of any other concession, benefit or privileges capable of being estimated in money

Workman

Following are the conditions to become a workman:

- a railway servant as defined in clause 34 of section (2) of the railways act 1989
- a master, seaman, or other member of the crew of a ship
- a captain or other member of the crew of an aircraft
- a person recruited as driver, helper, mechanic, cleaner, or in any other capacity in connection with a motor vehicle
- a person recruited for work abroad by a company
- any person who is employed in the capacities mentioned in schedule 2

6.3 Workman's Compensation

As per Section (3) the liability of the employer to pay compensation is dependent upon the following four conditions:

- Personal injury must have been caused to a workman.
- Such injury must have been caused by an accident.
- The accident must have arisen out of and in the course of employment.
- The injury must have resulted either in death of the workman or his total or partial disablement for a period exceeding three days.

The employer shall not be liable to pay compensation in the following cases:

- If the injury did not result in total or partial disablement for a period exceeding three days.
- If the injury has not resulted in death or permanent total disablement the employer can appeal:
 - that at the time of the accident the workman was under the influence of drinks or drugs
 - that the workman wilfully disobeyed an order expressly given or a rule expressly framed for the purpose of security safety of the workmen
 - The workman wilfully removed or disregarded safety devices specifically provided for safety

Compensation is also paid to workman in case of injuries resulting from certain occupational diseases listed in schedule 3. For some occupational diseases no specified period of employment is necessary. But for some diseases the workman must be in continuous employment of the same employer for a period of six months.

6.4 Disablements

Partial disablement: Partial disablement is of two kinds:

- Temporary or partial disablement: If the earning capacity of the workman is reduced in relation to the employment, in which he had been at the time of the accident resulting in such disablement, it is temporary partial disablement.
- Permanent partial disablement: If the injury caused by the accident results in the reduction of the earning capacity in respect of employment, which the workman was capable of undertaking at the time of the accident, it is permanent partial disablement.

Total disablement: When a workman is incapacitated of doing any work, which he was capable of performing at the time of the accident resulting in such disablement, it is total disablement.

For claiming compensation there must be injury due to an accident arising out of and in the course of employment. The expression "accident" has not been defined in the Act. But it means an unexpected event, which is not anticipated. Such accident must have taken place out of and in the course of employment.

6.5 Notional Extension of Employer's Premises

Normally no person's employment begins until he has reached the place of work and the employment will not continue after the person has left the place of his employment. Travelling to and from is not generally considered to be in the course of employment. But there may be reasonable extension in both the time and place and a workman may be regarded as being in the course of employment even though he has not reached or had left his employer's premises. It has been recognised several times in judicial decisions that the area of a workman's employment is not necessarily limited to the actual place where he does his work. If in going to or coming from his work he has to use an access which is part of his employers premises, or which he is entitled to traverse because he is going to or coming from his work, he is held to be on his master's business while he is using that access. And the employer may be liable for injuries caused to a workman during this time. This principle is called the notional extension of employer's premises.

6.6 Wilful Disobedience of Orders or Safety Devices

If the employer disowns any claim for compensation, the employee has to show not only disobedience of rules and safety devices, but must also show that such disobedience was wilful and the order given was express and clear. Simple disobedience is not sufficient because it may be due to several other reasons like forgetfulness or the result of an impulsive action. The reason of wilful disobedience is not available in the case of death of the workman, but only in cases of injury not resulting into death.

6.7 Alternative Remedy

A workman's claim for compensation shall not be maintainable in respect of any injury if the workman has already instituted civil proceedings for damages against the employer or any other person. Similarly a workman cannot introduce any suit in any court of law in the following circumstances:

- if the workman has made a claim to compensation before the Commissioner for workmen's compensation
- if the amount of compensation has been settled by an agreement between the workman and the employer

Thus, there is a bar on the recovery by the workman of the compensation twice for the same injury.

6.8 Amount of Compensation

The amount of compensation shall be as follows:

- Where death results from the injury: An amount equal to fifty percent of the monthly wages of the deceased workman multiplied by the relevant factor.
- Where permanent total disablement results from the injury: An amount equal to sixty percent of the monthly wages of the injured workman multiplied by the relevant factor.
- Where permanent partial disablement results from the injury: Depending on the injuries specified in part 2 of schedule 1.
- Where temporary disablements whether total or partial results from the injury: A half monthly payment of the sum equivalent to twenty five percent of monthly wages of the workman to be paid as per Sec. (2).

Compensation will be paid when it becomes due. If there is a dispute regarding amount of compensation claimed by a workman, but no dispute about the liability, the employer shall either provisionally pay the amount acceptable to him to the workman or deposit the amount with the Commissioner. The workman may accept the amount paid by the employer and may make further claim for the additional amount. Where any employer commits default in paying the compensation due within one month from the date it fell due, the Commissioner shall:

- direct that the employer may in addition to the amount of arrears, pay simple interest at the rate of twelve percent per annum or at a higher rate
- if in the opinion of the Commissioner, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest pay a further sum not exceeding fifty percent of such amount as a penalty for the delay

Such order for payment of penalty shall not be passed without giving a reasonable opportunity to the employer to show because why it should not be passed.

6.9 Distribution of Compensation

Whenever a workman dies as a result of the injury, the compensation is distributed between his dependents. The dependants are divided into three classes. However, there is no privileged right amongst the various dependants to maintain the claim application. Dependants belonging to any category may claim simultaneously.

- First category includes a widow, a minor legitimate, or an adopted son, an unmarried legitimate or adopted daughter, and widowed mother. They are deemed to be dependent on the workman. (A legitimate child means children born of a legally valid marriage and an adopted child means children whose adoption is legally valid.)

- In the second category of dependants are included a son and a daughter, if
 - they are completely dependent on the earnings of the workman at the time of his death
 - they must be in poor health
 - they must have attained the age of eighteen years
- In the third category the following dependants are included provided they are completely or in part dependant on the earnings of the workman at the time of his death. They are:
 - a widower
 - a parent other than a widowed mother
 - a minor illegitimate son
 - an unmarried illegitimate daughter
 - a married minor daughter or a widowed minor daughter
 - a minor brother, or an unmarried sister, or a widowed minor sister
 - a widowed daughter in law
 - a minor child of a predeceased son
 - a minor child of a predeceased daughter where the other parent of the child is not alive
 - a paternal grandparent if no parent of workman is alive

The payment of compensation is not to be directly made to the dependants, but through the Commissioner for Workmen's Compensation. An employer can make any advance payment equivalent to three months wages to any dependant of a deceased workman. And such amount will be deducted at the time of making a final compensation. The Commissioner may call upon each of the dependants to present in front of him on a specified date for determining the distribution of the compensation. The compensation deposited in respect of the deceased workman shall be apportioned among the dependants in such proportion as the Commissioner thinks fit. The Commissioner may even allot the entire amount to any one dependant. Where any lump sum deposited with the Commissioner is payable to any woman or a person under legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman or such person during his disability in a manner directed by the Commissioner. Such order may be varied by the Commissioner.

6.10 Notice and Claims of the Accident

A workman, who is injured by an accident, must give a notice of it in writing as soon as practicable after the occurrence of the accident. The notice must contain:

- the name and address of the injured workman
- the date of the accident
- the cause of the injury

The notice has to be served upon the employer or upon any person who is responsible to the employer for the management of the trade or business where the injured workman was employed. It may be delivered to the person concerned by hand or sent by registered post.

The State Government has been empowered to direct any prescribed class of employers to maintain at their premises a notice book in the prescribed form. This book should be readily accessible to any person on behalf of the injured workman and an entry in this book would be considered a sufficient notice of the accident to the employer. Any claim for compensation must be made within two years of the occurrence of the accident or in case of death, within two years from the date of death. The objective of giving such a notice is to enable the employer to check the fact of the accident having occurred to the workman in the course of his employment and also to enable the employer to take necessary steps to moderate the consequences of the accident.

6.11 Medical Examination

A workman, who is injured and has given notice of an accident to the employer, shall submit himself for medical examination by the employer. Any such offer made by the employer must be free of charge and made within three days of service of notice to the employer.

If a workman refuses to submit himself for examination by a qualified medical practitioner as required either by the employer or the commissioner, his right to compensation shall be suspended for the period of refusal or obstruction. The workman will be entitled to full compensation only if he can show that he was prevented due to some sufficient cause from submitting himself for medical examination. If such refusal on the part of the workman leads to aggravation of the injury, he would be entitled to compensation for only such disablement, which would have resulted if the injury was properly treated.

If the workman voluntarily leaves without having been so examined the vicinity of the place, in which he was employed his right to compensation is suspended until he returns and offers himself for examination. The examination has to take place within seventy-two hours after the workman has offered himself for medical examination. Where a workman whose right to compensation has been suspended, dies without having submitted himself for medical examination as required, the Commissioner may, if he thinks fit, direct the payment of the compensation to the dependants of the deceased workman. If the workman refuses to follow the instructions of the medical examiner and his injury gets aggravated, he would get compensation only for that injury, which would have been, had he followed the instructions.

A female workman can be examined by a male medical practitioner only in the presence of some other woman unless the female workman agrees. A female workman can insist on an examination by a female medical practitioner but in that case she has to deposit a sum sufficient for expenses of an examination by female medical practitioner.

A workman, who is receiving half monthly payments, shall be required to submit to medical examination at his or her residence. The purpose of medical examination is to prevent a dishonest worker having an opportunity of concealing the nature of his injury from any impartial observer. If the injured workman is employed through a contractor, the employer is entitled to be indemnified by the contractor for any compensation paid by the employer. But before the principal can be made liable, it must be shown that the contractor was entitled to expect such workman to do work at his orders and that he was entitled to dismiss such workman.

The workman shall be at liberty to claim compensation from the principal for whose trade or business he was employed for by the contractor. The question as to the right to indemnity and also amount of indemnity shall if there is no agreement between the parties regarding this, be settled by the Commissioner.

Contracting Out

Any contract if it purports to remove or reduce the liability of any person to pay compensation or whereby a workman is made to surrender his right of compensation from the employer for personal injury arising out of or in the course of employment shall be unacceptable and invalid.

6.12 Penalties

The employer shall be liable and punishable with fine up to five thousand rupees in the presence of following lapses:

- Failure to maintain a notice book, which he is required to maintain.
- Failure to send to the Commissioner a statement regarding fatal accidents.
- Failure to send a report about fatal accidents resulting in death or serious bodily injuries.
- Failure to make a return about number of injuries and compensation paid in the previous year.

6.13 Commissioners

Any Commissioner for workmen's compensation for an area concerned shall have the power to decide and settle all questions as to the liability of any person to pay compensation. If there is no agreement between the parties to arrive at a conclusion in respect of any claim to compensation, the

Commissioner has the jurisdiction to decide:

- the question as to whether a person injured is a workman
- the liability of any person to pay compensation
- the amount and duration of compensation
- the nature or extent of disablement

A civil court has no jurisdiction to try suits for damages in respect of any injury, which is required to be settled by the Commissioner.

Appointment of Commissioners

The State Government may, by notification in the Official Gazette, appoint any person to be Commissioner for workmen's Compensation for such areas as may be specified in the notification. Every Commissioner is deemed to be a public servant within the meaning of Indian Penal Code. Where any matter under this Act is to be done by the Commissioner, the same shall be done by the Commissioner of the area, in which the accident took place and injury caused.

6.14 Appearance of Parties

Any appearance, application required to be made by any person, may be made on behalf of such person by:

- a legal practitioner or by an official of insurance company
- a registered trade union
- an inspector appointed under the Factories Act
- an officer appointed under the Mines Act
- any other officer specified by the State Government and who is authorised in writing by the injured person
- any person authorised with the permission of the Commissioner

The Commissioner shall make a brief note of the substance of the evidence of every witness appeal shall lie to the High Court from the orders of the Commissioner.

Summary

- The Act was passed in 1923 and was enforced on the 1st of July 1924.
- Payment of compensation has been made obligatory on all employers whose employees are entitled to claim benefit under this Act.
- Compensation is also paid to workman in case of injuries resulting from certain occupational diseases listed in schedule 3.
- If the employer disowns any claim for compensation, the employer has to show not only disobedience of rules and safety devices, but must also show that such disobedience was wilful and the order given was express and clear.
- The payment of compensation is not to be directly made to the dependants, but through the Commissioner for Workmen's Compensation.
- A workman, who is injured and has given notice of an accident to the employer, shall submit himself for medical examination by the employer.
- Employer shall be liable and punishable if he/she fails to provide compensation.
- The State Government may, by notification in the Official Gazette, appoint any person to be Commissioner for workmen's Compensation for such areas as may be specified in the notification. Every Commissioner is deemed to be a public servant within the meaning of Indian Penal Code.

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Self Assessment

1. The Workman's Compensation Act was enforced on the _____.
 - a. 1st of July 1924
 - b. 15th of July 1924
 - c. 1st of July 1942
 - d. 15th of July 1942

2. The Act applies to the whole of _____.
 - a. Maharashtra
 - b. Jammu and Kashmir
 - c. India
 - d. Karnataka

3. _____ shall be liable and punishable if he/she fails to provide compensation.
 - a. Workman
 - b. Employer
 - c. State government
 - d. Commissioner

4. _____ includes any privilege or benefit, which is capable of being estimated in money.
 - a. Salary
 - b. Pension
 - c. Allowance
 - d. Wages

5. _____ to and from is not generally considered to be in the course of employment.
 - a. Working
 - b. Travelling
 - c. Paying compensation
 - d. Salary

6. Which out of the following is one of the types of disablements?
 - a. Partial disablement
 - b. Temporary or partial disablement
 - c. Permanent partial disablement
 - d. Permanent disablement

7. The dependants of the workman are divided into _____ categories.
 - a. Five
 - b. Two
 - c. Three
 - d. Four

8. _____ may, by notification in the Official Gazette, appoint any person to be Commissioner for workmen's Compensation.
- Employer
 - The State Government
 - Inspector
 - Commissioner
9. The _____ shall make a brief note of the substance of the evidence of every witness.
- State Government
 - Inspector
 - Commissioner
 - Employer
10. A workman, who is injured and has given notice of an accident to the employer, shall submit himself for _____ by the employer.
- interview
 - inquiry
 - exam
 - medical examination

Chapter VII

The Payment of Wages Act, 1936

Aim

The aim of this chapter is to:

- define the meaning of authorised deductions and the situations
- enlist the types of fines and deductions
- explain enforcement of the law in factories

Objectives

The objectives of this chapter are to:

- explain main features of the payment of wages act 1936
- define wages
- explicate time of payment of wages

Learning outcome

At the end of this chapter, you will be able to:

- define payment of wages and deductions
- determine enforcement of the Act
- understand the Payment of Wages Act, 1936

7.1 Introduction

The Payment of Wages Act was enacted to protect the workmen from insensitive attitude of the employers. There was no uniform practice for payment of wages or for deduction from the wages on any ground. The workmen also had no knowledge about acts and omissions, for which fines could be imposed by the employer. Therefore as per the recommendations of the Royal Commission for Labour in India, the Act was passed. It has been amended from time to time.

7.2 Main Features

The Act is applicable all over India. Following are the conditions where it is applicable:

- persons employed in any factory
- persons employed in any railway by railway administration either directly or through a contractor
- persons employed in an industrial or other establishment which is defined as follows:
 - tramway service or motor transport engaged in carrying passengers, goods or both by road for hire or reward
 - air transport service, other than such service belonging to, or exclusively employed in the military, naval or air force of the Union or Civil Aviation Department of the Government of India
 - dock, wharf or jetty
 - inland vessel, mechanically propelled
 - mine, quarry or oil field
 - plantation
- workshop or other establishment, in which articles are produced, adopted or manufactured with a view to their use, transport or sale
- establishment, in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals
- establishments related to operations connected with navigation, irrigation, or supply of water or relating to generation, transmission and distribution of electricity

The application of the Act is now extended to cover persons whose average wages are below Rs. 1600 per month.

7.3 Wages

Wages means all remuneration (it can be salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed, which would, if the terms of employment, express or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. Wages includes:

- any remuneration payable under any award or settlement between the parties or order of a Court
- any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period
- any additional remuneration payable under the terms of employment
- any sum, which by reason of the termination of employment of the person employed, is payable under any law, contract, or instrument, which provides for the payment of such sum whether with or without deductions
- any sum to which the person employed is entitled under any scheme framed under any law

Wages do not include:

- any bonus, which does not form part of the remuneration payable under the terms of employment, or which is not payable under any award or settlement between the parties or order of a Court
- the value of any house accommodation or of the supply of light, water, medical attendance, or other amenity
- any contribution paid by the employer to any pension or provident fund and the interest, which may have accrued thereon

- any travelling allowance or the value of any travelling concession
- any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment
- any gratuity payable on the termination of employment

7.4 Payment of Wages and Deductions from Wages

Every employer shall be primarily responsible for the payment of wages to any person employed by him. The person responsible for payment of wages shall fix wage periods in respect of which wages shall be payable. But such wage period cannot exceed one month.

7.4.1 Payment of Wages

If the number of persons employed upon in any railway, factory, industrial, or other establishment is less than 1000 persons, wages shall be paid before the expiry of the seventh day after the last day of the wage period. In any other case, wages shall be paid before the expiry of the tenth day of the last day of the wage period.

In the case of persons employed on a dock, wharf, or jetty, or in a mine, balance of wages due on the completion of the final tonnage account of the ship or wagons loaded or unloaded shall be paid before the expiry of the seventh day of such completion.

In case of the termination of employment of an employee, the wages earned by him shall be paid before the expiry of the second working day from the day, on which employment is terminated. All payments of wages shall be made on a working day. All wages shall be paid in current coins or currency notes or both. Payment of wages in kind is not permitted. But, the employer can, after obtaining the written authorization of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

7.4.2 Deductions from Wages

The wages of an employed person shall be paid to him by the employer without deductions of any kind except the deductions authorised by the Payment of Wages Act. Every payment made by the employed person to the employer is treated as a deduction from wages. The permissible deductions are as follows:

- Fines
 - Fines can be imposed on any employed person in respect of such acts and omissions on his part, which are approved by the Central Government. A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises, in which employment is carried on or in the case of persons employed upon a railway at the prescribed place.
 - No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine. Fine shall be imposed as per prescribed procedure.
 - The total amount of fine, which may be imposed in any wage period on any employed person, shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage period.
 - No fine shall be imposed on any employed person, who is under the age of fifteen years.
 - No fine imposed on any employed person shall be recovered from by instalments or after the expiry of sixty days from the day, on which it was imposed.
 - Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
 - All fines and all realisations of fines shall be recorded in a register to be kept by the persons responsible for payment of wages.

All such realisations of fines shall be applied only to beneficial purposes for the persons employed in the establishment.

- Absence from duty
 - Deductions can be made only on the account of the absence of an employed person from place or places where by the terms of employment he is required to work. Such absence may be for the whole or any part of the period during which he is required to work. The amount of deduction must bear to his wages the same proportion as his absence bears to the total period within the wage period.
 - An employed person shall be deemed to be absent from the place where he is required to work, although present in such place, he refuses to carry out his work in pursuance of stay in strike or for any other unreasonable cause.
 - If ten or more workers, acting in concert, absent themselves without due notice as required by their contract of employment and without reasonable cause, the deductions for their absence from duty may include the amount not exceeding their wages for eight days as may by any such terms be due to the employer in lieu of notice.

- Deductions for damages or loss
 - Deductions for loss of damage to goods expressly entrusted to the employed person for custody or for loss of money, for which he is required to account where damage or loss is directly attributable to his neglect or default.
 - A deduction for such damages or loss shall not exceed the amount of damage or loss caused to the employer by the neglect or defaults of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against such deduction.
 - All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages.
 - House Accommodation: Deductions for house accommodation supplied by the employer or by the Government.

- Deduction for services rendered: Any deduction from the wages of an employed person can be made only if such amenity or service has been accepted by him as a term of employment. Such deduction shall not exceed the amount equivalent to the value of the amenity or service.

- Recovery of advances: Deductions for recovery of whatever nature (including advances for travelling allowance or conveyance allowance) and the interest due in respect thereof can be made.

- Recovery of loans from any fund: Deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with rules approved by the State Government.

- Income tax: Deductions of income tax payable by the employed person.

- Order of court: Deductions required to be made by order of a court or other authority competent to make such order.

- Payments to provident fund: Deductions from subscriptions to and for repayment of advances from any provident fund, to which the Provident Fund Act applies.

- Deductions for contributions to the National defence fund: Any defence saving scheme approved by the State Government may be made from the wages of an employed person provided such deduction is authorised in writing, either by the employed person or by the President/Secretary of the Trade Union.

- Life insurance policy: Deductions can be made with the written authorisation of the person employed for the payment of any premium on his life insurance policy to the Life Insurance Corporation of India or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme.

- Deductions for the welfare for the employer: Deductions made with the written authorisation of employed person for the payment of his contribution to any fund constituted by the employer for the welfare of the employed persons or the members of their families and approved by the State Government.
- Membership of Trade Unions Act: Deductions made with the written authorisation of the employed person for the payment of fees payable by him for the membership of any trade union registered under the Trade Unions Act.
- Deductions for recovery of losses by a railway administration:
 - Deductions for recovery of losses continuous by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes.
 - Deductions for recovery of losses sustained by railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for appropriate charges due to the administration.
- Deductions for any fund notified by Central Government: Deductions made with the written authorisation of the employed person for contribution to the Prime Minister's Relief Fund or to any such fund notified by the Central Government in the Official Gazette. Total amount of deductions should not exceed 75% of wages of the employed person in any wage period if whole or parts of the deduction are meant for payment to cooperative societies. In other cases it should not exceed 50%. Law does not allow an employer to make any type of deduction out of the wages of a worker except those authorised by this Act.

7.5 Claims

Claims arising out of deductions from wages or delay in payment of wages & penalty for wicketed claims will be heard and decided by the Labour officer cum Conciliation Officer as the authority declared by the state Government for their specified area. Employees of the same unpaid group may file joint application for realisation of the dues & compensation. Application for claims out of deductions from wages or delay in payment of wages and penalty for mean or vexatious claims shall be made in duplicate in FORM-A, FORM-B or FORM-C individual, group or an inspector respectively.

Enforcement of the Act

Following are the required purpose of enforcing the provisions of this Act:

- The inspector of factories will act as the Inspector for the purposes of this Act, in respect of all the factories within the local limits assigned to him.
- The State Government may appoint Inspectors for the persons employed upon a railway.
- The Inspector has several powers to enter and search premises, to supervise the payment of wages, require by a written order the production of registers and records, to take copies of such registers or to seize them.
- Every employer shall accord all reasonable facilities to the Inspector for exercising his powers.
- The Government will appoint an Authority to hear claims under the Act.
- Any contract, agreement, whether made before or after commencement of the Act whereby an employed person relinquishes his rights conferred by this Act shall be null and cancelled.

Summary

- As per the recommendations of the Royal Commission for Labour in India, the Act was passed. It has been amended from time to time.
- If the number of persons employed upon in any railway, factory, industrial, or other establishment is less than 1000 persons, wages shall be paid before the expiry of the seventh day after the last day of the wage period.
- Wages means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money, or capable of being so expressed, however, there are some exclusions to this.
- Every employer shall be primarily responsible for the payment of wages to any person employed by him.
- In case of the termination of employment of an employee, the wages earned by him shall be paid before the expiry of the second working day from the day, on which employment is terminated.
- The wages of an employed person shall be paid to him by the employer without deductions of any kind except the deductions (like fines, absence from duty, deductions for damages or loss, house accommodation, deduction for services rendered, recovery of advances, etc.) authorised by the Payment of Wages Act.

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Self Assessment

1. _____ includes any additional remuneration payable under the terms of employment.
 - a. Wages
 - b. Salary
 - c. Compensation
 - d. Pension

2. If the number of persons employed upon in any railway, factory, industrial, or other establishment is less than _____ persons, wages shall be paid before the expiry of the seventh day after the last day of the wage period.
 - a. 100
 - b. 500
 - c. 1000
 - d. 50

3. Every _____ shall be primarily responsible for the payment of wages to any person employed by him.
 - a. Employee
 - b. Commissioner
 - c. Inspector
 - d. Employer

4. Wages does not include any _____ payable on the termination of employment.
 - a. Salary
 - b. Gratuity
 - c. Remuneration
 - d. Compensation

5. No fine shall be imposed on any employed person, who is under the age of _____ years.
 - a. eighteen
 - b. twenty one
 - c. fourteen
 - d. fifteen

6. Total amount of deductions should not exceed _____ of wages of the employed person in any wage period if whole or parts of the deduction are meant for payment to cooperative societies.
 - a. 50%
 - b. 75%
 - c. 80%
 - d. 100%

7. The wages of an employed person shall be paid to him by the employer without deductions of any kind except the deductions authorised by the _____.
 - a. Payment of Wages Act
 - b. State Government
 - c. Commissioner
 - d. State Government

8. The Payment of Wages Act was enacted to protect the _____ from insensitive attitude of the employers.
- Employer
 - Industry
 - Workmen
 - union
9. The application of the Act is now extended to cover persons whose average wages are below _____ per month.
- Rs.50,000
 - Rs.20,000
 - Rs.1,600
 - Rs.1,000
10. Every employer shall accord all reasonable facilities to the _____ for exercising his powers.
- Employee
 - Inspector
 - Workman
 - public

Chapter VIII

Minimum Wages Act, 1948

Aim

The aim of this chapter is to:

- define wages, employee, fair wage
- explain the procedure for fixing and revising the minimum wages
- enlist types of claims and penalties provided

Objectives

The objectives of this chapter are to:

- define application of the act
- explicate fixation and revision of minimum wages
- explain the maintenance of registers and records

Learning outcome

At the end of this chapter, you will be able to:

- define fixing hours of work
- describe inspectors and their powers
- understand penalties for offences

8.1 Introduction

This Act was passed for the welfare of laborers and to secure the welfare of workers in a competitive market by providing for a minimum limit of wages in certain employments. The Act provides for the fixation by the Central Government of minimum wages for employments, which are enumerated in Schedule of the Act. The employments mentioned in the schedule are those where sweated labor is most prevalent or where there is a big chance of exploitation of labor. In a developing country like India, which faces the problem of unemployment on a very large scale it is not unlikely that labor may offer to work even on very inadequate wages. The policy of the Act is, therefore, to prevent exploitation of labor by offering low wages. The Act contemplates that minimum wage rates must ensure not only the mere physical need of the worker, which might keep him just above starvation but must be more which will preserve his efficiency.

8.2 Application of the Act

Following are the industries to which the Act applies to:

- employment in any woolen carpet making or shawl-weaving establishment
- employment in any rice mill, flour mill, or dal mill, or oil mill
- employment in any tobacco (including bidi making) factory
- employment in any local authority
- employment in stone breaking or stone crushing
- employment in any lac manufactory or mica works
- employment in public motor transport
- employment in tanneries and leather manufactory
- employment in several mines
- employment in laying of underground cables, electric lines, water supply lines, and sewerage pipe line
- employment in agriculture i.e., any form of farming, dairy farming, raising of live stock, bees, or poultry and also any other practices performed by a farmer, which are incidental to farming

8.3 Some Important Definitions

Wages

Wages includes all remuneration capable of being expressed in terms of money, which would if the terms of the contract of employment express or implied were fulfilled be payable to a person employed and includes house rent allowance. Wages does not include the value of following terms:

- any house accommodation, supply of light, water, medical attendance
- any contribution paid by the employer to any provident fund or pension fund or under any scheme of social insurance
- any other amenity or service excluded by order of the government
- any travelling allowance or the value of any travelling concession
- any sum paid to the person for special expenses given to him due to the nature of employment
- any gratuity payable on discharge

Employee

Employee is the person who is :

- employed for hire or reward
- to do any skilled or unskilled work
- manual or clerical
- in a scheduled employment
- in respect of which minimum wages have been fixed and includes an outworker

- to whom articles or materials are given out by another person.
- To be made up, cleaned, washed, altered, ornamented, finished or repaired.
 - The process may be carried out in the premises of person giving the work or in the house of out worker or in any other premises.

Fair wage

These are linked to the earning capacity of the workman and the work load. It is also connected with the employer's capacity to bear the financial burden.

Living wage

A living wage should enable the male earner to provide for himself and his family not merely the bare essential of food, clothing, and shelter but a measure of economical comfort including education of children, protection against ill health, requirements of essential social needs and a measure of insurance against old age. Fair wage is a mean between the minimum wage and living wage.

8.4 Fixation and Revision of Minimum Wages

Minimum wages states that any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3. It may consist of following points:

- A basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers.
- A basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where authorised.
- An all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.
- The Government shall fix the minimum wage rates payable to employees employed in the specified employments. In respect of employments the Government may not fix same minimum wages for the whole state but may fix rates for different parts of the state or for different employments.
- The minimum rate of wages, which is fixed shall be revised and reviewed at an interval of not more than 5 years.
- If the number of employees in the whole state in that particular employment is less than 1000, minimum wages need not be fixed.
- If the Government gets the knowledge that the number of employees has raised to 1000, then minimum wages will be fixed.
- Following are some terms mostly used in describing about minimum wages:
 - Minimum time rate: i.e., minimum rate of wages for timework
 - Minimum piece rate: i.e., minimum rate of wages for piecework
 - Guaranteed time rate: i.e., minimum rate of remuneration in case of employees employed in piecework
 - Minimum overtime rate
- The Government May fix different minimum rates of wages for the following:
 - different scheduled employments
 - different class of work in the same scheduled employment
 - adults, adolescents, children, and apprentices
 - different localities
- Minimum wage rates may be fixed by:
 - the hour
 - the day
 - by the month

- The any wage period is fixed under the payment of Wages Act; minimum wages shall be fixed in accordance therewith. The minimum rates of wages so fixed and so revised shall not apply to employees during pending proceedings before any Tribunal under the Industrial Disputes Act, or before any other authority or during the operation of any award.
- The minimum rate of wages fixed or revised by the Government may consist of :
 - a special allowance, which will be adjusted as per the cost of living index
 - a basic rate of wages with or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities
 - an all-inclusive rate, which will consist of a basic rate, the cost of living allowance and the cash value of concessions
 - the cost of living allowance and the cash value of concessions shall be computed at intervals
- The following considerations are not relevant in fixing of wages:
 - the fact that an employer may find it difficult to carry out his business if he pays minimum wages
 - the final capacity of the employer
 - the fact of the company having incurred losses during the previous years
 - employer's difficulty in importing raw materials

8.5 Procedure for Fixing and Revising Minimum Wages

The Government shall:

- appoint committees or sub committees to hold inquiries and for advice in respect of fixation or revision of wages
- publish its proposals by notification in the Official Gazette for information of people, and representations will be invited
- after considering the advice of the Committees or after considering the representations, the Government shall fix or revise the minimum wages in respect of each scheduled employment. But the Government is not bound to accept the recommendation of the Committee
- similarly any irregularity in the constitution of the committee or a procedure adopted by it cannot affect the validity of the notification issued by the Government
- the Government shall appoint an Advisory Board for co-coordinating the work of committees or for taking the advice regarding fixing or revising minimum wages
- minimum wages shall be paid in cash. But where it is customary, the Government may authorize payment in kind
- payment of minimum wages must be made at the fixed rate without any deduction (except as authorised under the payment Of Wages Act)

8.6 Fixing Hours of Work

In scheduled employments where minimum wages have been fixed, the Government may execute in following ways:

- Fix the number of hours of work for a normal working day with rest intervals.
- Fix the day of rest in every period of seven days (with remuneration).
- Provide for work on a day of rest at overtime rate.

However, the above conditions may not be strictly applied in following situations:

- Employees engaged on urgent work or in any unforeseen or unpreventable emergency.
- Employees engaged in preparatory work.
- Employees whose employment is essentially intermittent.
- Employees engaged in work, which could not be carried on except at times dependent on the irregular action of natural forces.

- If any employee works on any day for excess hours, he will be paid overtime wages as per rate fixed under this Act.
- If any employee works for less than the requisite number of hours on any day, he shall be entitled to receive wages for a full working day.
- He will not be entitled to such full wages if the failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him work.

8.7 Maintenance of Registers and Records

Every employer must maintain register and records giving particulars of employees employed by him, the work performed by them, the wages paid to them and the receipts given by them.

8.8 Inspectors and Their Powers

Inspectors are appointed and have been given several powers. The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and define the local limits within which they shall exercise their functions. Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed. They are as follows:

- Enter, at all reasonable hours, with assistants (if any), being persons in the service of the Government or any local or other public authority, as he thinks fit any premises or place where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, for the purpose of examining any register, record of wages or notices required to be kept or exhibited by or under this Act or rules made there under, and require the production thereof for inspection.
- Examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee employed therein or an employee to whom work is given out therein.
- Require any person giving out-work and any out-workers, to give any information, which is in his power to give, with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work.
- Seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this act which he has reason to believe has been committed by an employer.
- Exercise such other powers as may be prescribed.
- Every inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).
- Any person required to produce any document or thing or to give any information by an Inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860).

8.9 Penalties for Offences

Following are the situations in which an employer is liable to penalties for offences:

- Pays to any employee less than the minimum rate of wages fixed or less than the amount due.
- Makes any employee to work for more number of hours of work than fixed hours, he shall be punishable with the imprisonment up to six months or fine up to Rs. 500 or both.

8.10 Claims Under the Act

- The Government will appoint an authority to hear claims under the Act regarding:
 - payment of less than the minimum wages
 - payment of remuneration for days of rest
 - payment of overtime wages
- Application for claims should be presented within 6 months from the date on which the amount becomes payable.

- The Authority shall hear the applicant and the employer and may give directions about payment. If the Authority is satisfied that the application was hateful or vexatious, it may impose a penalty of amount up to Rs. 50 on that person.
- The following can be appointed as authority:
 - Any commissioner for Workmen's Compensation
 - Labor commissioner
 - Any officer with the experience of a judge of a Civil Court
 - Every such authority will have the powers of a Civil Court

Summary

- The Act provides for the fixation by the Central Government of minimum wages for employments, which are enumerated in Schedule of the Act.
- A living wage should enable the male earner to provide for himself and his family not merely the bare essential of food, clothing, and shelter but a measure of economical comfort including education of children, protection against ill health, requirements of essential social needs and a measure of insurance against old age.
- The any wage period is fixed under the payment Of Wages Act; minimum wages shall be fixed in accordance therewith.
- The Government shall appoint an Advisory Board for co-coordinating the work of committees or for taking the advice regarding fixing or revising minimum wages.
- The Government will appoint an authority to hear claims under the Act.
- The Authority shall hear the applicant and the employer and may give directions about payment. If the Authority is satisfied that the application was malicious or vexatious, it may impose a penalty of amount up to Rs. 50 on that person.
- If any employee works on any day for excess hours, he will be paid overtime wages as per rate fixed under this Act.
- Government may impose fine or the employer may be punished if not complying with the act.

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Self Assessment

1. The minimum wages Act provides for the fixation by the _____ of minimum wages for employments, which are enumerated in Schedule of the Act.
 - a. Central Government
 - b. State Government
 - c. Labor court
 - d. National tribunal

2. The any wage period is fixed under the payment of _____.
 - a. minimum wages
 - b. wages act
 - c. advisory board
 - d. living wage

3. The Government shall appoint an/ a _____ for co-coordinating the work of committees or for taking the advice regarding fixing or revising minimum wages.
 - a. labor court
 - b. wages act
 - c. advisory board
 - d. inspector

4. The _____ will appoint an authority to hear claims under the Act.
 - a. employer
 - b. inspector
 - c. advisory board
 - d. government

5. If any employee works on any day for excess hours, he will be paid _____ as per rate fixed under this Act.
 - a. overtime wages
 - b. minimum wages
 - c. extra wages
 - d. bonus

6. If the Authority is satisfied that the application was hateful or vexatious, it may impose a penalty of amount up to _____ on that person.
 - a. Rs. 100
 - b. Rs. 500
 - c. Rs. 50
 - d. Daily wage

7. If any employee works for less than the requisite number of hours on any day, he shall be entitled to receive wages for a _____.
 - a. full working day
 - b. half working day
 - c. minimum wages
 - d. over time

8. The Government will appoint an authority to hear claims under the Act regarding _____.
 - a. dispute between employer and employee
 - b. payment of overtime wages
 - c. deciding penalty for employee
 - d. deciding penalty for employer

9. _____ can examine any person whom he finds in any such premises or place and who is an employee employed therein.
 - a. Employer
 - b. Advisory committee
 - c. Government
 - d. Inspector

10. Every employer must maintain _____ giving particulars of employees employed by him.
 - a. register and records
 - b. leaves and wages
 - c. timing and disciplining
 - d. charge sheet and records

Case Study I

Why is Ventilation Important in Factories?

Ventilation is related to the safety of workers. The planners of operations must take into consideration the working environment as the prime factor for which effective ventilation system must be put in place. This not alone keeps workers healthy but also improves productivity and preempts any accidents.

Ventilation differs from air-conditioning. The air conditioning, conditions the air by heating or cooling it or by using such other process. The ventilation merely supplies fresh air to the plant or removes vitiated air there from without in any way conditioning it. Moreover, control of temperature and humidity are the main parameters in air-conditioning making comfortable working conditions in an enclosed area. The capacity to achieve required temperature or humidity is limited in ventilation.

Types of ventilation

Two types of ventilation are distinguished, depending on the purpose they serve. These are:

- General ventilation, also known as dilution ventilation
- Local exhaust ventilation

General ventilation

General ventilation for comfort control is essential because, in certain plants, a lot of heat is liberated from structures, processes, lighting and people. These are called heat gains, which should be offset by ventilation to keep the inside temperature at the desired level. A ventilation plant is sized to supply outside air so as to offset these heat gains, and the air supplied is distributed uniformly inside the factory. The outside air picks up the heat as it passes through the hot interior and helps to maintain a relatively lower temperature. However, it may be noted that in any well ventilated environment, the temperature is inevitably higher than the outside temperature; the degree of difference is beside the point. This is the essential feature of general ventilation. General ventilation for comfort control is modified where a few workers are scattered over a relatively large area. Ventilation of the type described above would, therefore, be impracticable and wasteful. In such cases, local-area or spot-cooling ventilation is resorted to. This method involves directing high velocity air streams at that worker. Comfort is enhanced by the increased effects of convection and evaporative cooling. The effectiveness of this method depends on the temperature at which air is supplied and the velocity at which it is streamed at the worker.

General ventilation is introduced to serve one of the two following purposes,

- To keep the working conditions at acceptable comfort levels
- To keep contaminants in the air within safe limits

General ventilation to keep contaminants within safe limits or dilution ventilation:

It has already been pointed out that air contaminants are health hazards and that the purpose of any ventilation is to eliminate them completely or to hold their concentration down to safe limits, which are referred to as Threshold Limit Values (TLV). In dilution ventilation, attempts are made to flush the entire environment with ventilation of air; the airflow rate is calculated so as to restrict the pollutant concentration to permissible limits. Dilution ventilation is advantageously used to control vapor from such organic (or industrial) solvents as benzene and carbon disulphide because they are relatively less toxic, and their generation rates are not too high. Dilution ventilation may also be used when the evolution of contaminants is reasonably uniform and is not confined to a few scattered locations. When the contaminants are highly toxic and the evolution rates are high, the ventilation or dilution flow rates, which are required to keep their concentrations within safe limits, become extremely so large that, dilution ventilation becomes uneconomical. In such situations local exhaust ventilation is best suited.

Local exhaust ventilation

Local exhaust ventilation is a system for preventing the pollution of factory air by withdrawing the contaminant at its source into a duct system for discharge to the building exterior (or air cleaner) In order to achieve this the process generating the contaminant is surrounded, as completely and effectively as possible by enclosures called

hoods, booths which capture and convey exhaust air stream to an exhaust duct system. Local exhaust ventilation is resorted to, in plating tanks, cleaning stations, laboratory hoods, wood-working machinery and metal processes like buffing, polishing and grinding.

Though both the systems aim at pollutant control, there are differences between dilution ventilation and local exhaust ventilation. In dilution ventilation, contaminants are kept permissible limits; but they inevitably become a part of the environment. In the local exhaust ventilation, the contaminant is prevented from diffusing into the environment; it is captured at source and conveyed from the factory interior into the atmosphere. Local exhaust ventilation is more effective than dilution ventilation in controlling contaminants.

Proper and right ventilation not only prevent health hazards of personnel on shop floors but also considered by workmen as a good welfare measure or working atmosphere leading to one of the contributing factors for harmonious management worker relations.

Questions

1. Explain how ventilation is different than air-conditioning.

Answer

The air conditioning, conditions the air by heating or cooling it or by using such other process. The ventilation merely supplies fresh air to the plant or removes vitiated air there from without in any way conditioning it. Also control of temperature and humidity are the main parameters in air-conditioning making comfortable working conditions in an enclosed area. The capacity to achieve required temperature or humidity is limited in ventilation.

2. Describe spot-cooling ventilation.

Answer

Spot-cooling ventilation involves directing high velocity air streams at the worker. Comfort is enhanced by the increased effects of convection and evaporative cooling. The effectiveness of this method depends on the temperature at which air is supplied and the velocity at which it is streamed at the worker.

3. How dilution ventilation becomes uneconomical?

Answer

When the contaminants are highly toxic and the evolution rates are high, the ventilation or dilution flow rates, which are required to keep their concentrations within safe limits, become extremely large and thus dilution ventilation becomes uneconomical.

4. How local exhaust ventilation system works?

Answer

Local exhaust ventilation system prevents the pollution of factory air by withdrawing the contaminant at its source into a duct system for discharge to the building exterior or air cleaner.

Case Study II

Child Labour in Production of Cotton Seeds on Bhiloda Plots of Gujarat

Bhiloda is clearly the major stakeholder and chief beneficiary in cotton seed production. It therefore also needs to be held responsible for occurrence of child labour in the industry. Bhiloda has reacted in various ways to evidence of child labour in the industry. It has refused to acknowledge responsibility for occurrence of child labour on farms of Indian seed companies sub licensed by it. For its own farms, it has undertaken an anti child labour program that it claims has reduced child labour. This study was mounted to check the efficacy of this second claim.

The study sought to observe 50 cottonseed farms where production was undertaken by Bhiloda to find out if indeed child labour has been eradicated on Bhiloda farms. The study shows that there is extensive child labour on cottonseed plots of Bhiloda. If we consider children between the age group of 6 to 18 years, then child labour comprises of 52 percent of the total labour force. Of these, 28 percent are in the age group of less than 14 years while 24 percent are in the age group of 15-18 years. Every plot had a child labour if the children are defined to be below 18 year. If we define children to be between 6-14 years, then 74 percent farms had children working on the farms.

The experiences during the study indicate that the production machinery has become very sensitive to entry of outsiders to cottonseed farms. At the slightest suspicion, the outsiders can be obstructed and harassed. The concern machinery employed by Bhiloda to detect and remove child labour is ineffective. The local inspectors have clear understanding that they must not be too enthusiastic about their task. The incentive offered by the Company has not proved effective to prevent child labour. Often it does not reach farmers and is instead pocketed by the middlemen agents. The strategy adopted by the company to shift seed production to tribal areas has reduced child migration. But child labour persists. Majority of the children working on seed farms were tribal. Children working on the farms were enrolled in schools. However they were found working on seed farms during school hours.

Prayas Center for Labour Research & Action and Dakshini Rajasthan Majdoor Union (DRMU) has been working for the last five years to eradicate child labour in production of cotton seeds in North Gujarat. DRMU has documented child labour and taken steps to stop trafficking of children.

Questions

1. How can Bhiloda claim that they have reduced child labor?
2. How the study proves Bhiloda's claim wrong?
3. Describe the percentage of child labor on Bhiloda farm.
4. Explain how documentation could help in prohibiting child labor.

Case Study III

Dispute Between Management and Workers

The Jamnagar plant of BMS had peaceful labor relations for the first few years after it was set up in July 1995. The management entered into labor contracts with individual laborers, which covered the basic wage structure and detailed parameters specifying the work conditions for workers. In October 2001, the workers at BMS's Jamnagar plant started demanding that the management increase their wages proportionate with the company's growth in the market.

The management and the workers traded allegations and counter allegations on what the root cause of the dispute was. They blamed each other for the situation that ultimately took an dreadful turn on March 2002. The management held the workers responsible for indiscipline and for slowing down production, while the workers insisted that there had been no indiscipline on their part and that the management was bringing up this issue only to prevent the formation of a trade union at BMS. Some analysts charged that the incident was fallout of the long-term domination and malpractices at the Jamnagar factory by the BMS management. They assumed that BMS's management had violated certain laws relating to the welfare of workers. It was reported that a worker had supposedly been kicked by a manager on the shop floor in August 2001. The services of three other workers who had come to his rescue were purportedly terminated.

Several factors can lead to a conflict between the workers and the management of any company, and as such, companies should be prepared to trace the root cause of the problem and solve it. Industry experts opined that with proper understanding of the industrial laws and causes of disputes, the management and the workers of any company could avoid incidents such as the one at BMS.

Questions

1. What exactly caused the relation between management and workers?
2. On which points, were the management and workers blaming each other?
3. As per an analyst, what was the root cause of this misunderstanding?
4. Suggest your views to avoid such type of misunderstandings.

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Self Assessment Answers

Chapter I

1. a
2. c
3. c
4. a
5. c
6. d
7. a
8. a
9. b
10. c

Chapter II

1. b
2. a
3. a
4. a
5. c
6. b
7. b
8. c
9. d
10. a

Chapter III

1. a
2. b
3. c
4. c
5. a
6. d
7. a
8. a
9. d
10. c

Chapter IV

1. a
2. b
3. c
4. c
5. c
6. a
7. d
8. c
9. c
10. a

Chapter V

1. a
2. c
3. a
4. d
5. b
6. a
7. c
8. d
9. b
10. c

Chapter VI

1. a
2. c
3. b
4. d
5. b
6. a
7. c
8. b
9. c
10. d

Chapter VII

1. a
2. c
3. d
4. b
5. d
6. b
7. a
8. c
9. c
10. c

Chapter VIII

1. a
2. b
3. c
4. d
5. a
6. c
7. a
8. b
9. d
10. a