UG BA S6-04 (DSC/DSE)

Business and Labour Laws

SEMESTER - VI

BACHELOR IN BUSINESS ADMINISTRATION

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

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BACHELOR IN BUSINESS ADMINISTRATION

BUSINESS AND LABOUR LAWS

BLOCK - 1

DETAILED SYLLABUS

UNIT 1.	**Indian Contract Act, 1872** Essential conditions of a Valid Contract under Indian Contract Act, Offer and Acceptance; Consideration, Capacities of Parties to Contract, Performance of Contract, Discharge of Contract, Breach of Contract and Its Remedies, Indemnity and Guarantee, Bailment and Pledge, Contract of Agency	**Pages :**	**7-42**
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COURSE INTRODUCTION:

In the business world, the legal environment plays an important role. To monitor and control the functioning of the companies as well as to protect the consumers, law plays a vital role. In business world the legal environment plays an important role. The course “Business and Labour Laws” have been designed to give the learners the knowledge of the legal formalities that companies have to observe in their functioning. Different Acts included in this course will help the learners in understanding the various provisions of these Acts which are even useful in our daily life. The course consists of 15 units.

This course deals with the concepts of Indian Contract Act, Sales of Goods Act, Formation of a Company, Partner, Partnership Act, Consumer Protection Act. Further, it deals with Factories Act, Industrial Dispute Act, Trade Uninon Act, Payment of Wages Act, also it concentrates on some of the most important concepts of labour laws like Minimum Wages Act, Workmen Compensation Act, Emplyees Provident Fund and Miscellaneous Act, Payment Grauity Act and Arbitration and Conciliation Act.

Each unit of these blocks includes some along-side boxes to help you know some of the difficult, unseen terms. Some “EXERCISES” have been included to help you apply your own thoughts. You may find some boxes marked with: “LET US KNOW”. These boxes will provide you with some additional interesting and relevant information. Again, you will get “CHECK YOUR PROGRESS” questions. These have been designed to self-check your progress of study. It will be helpful for you if you solve the problems put in these boxes immediately after you go through the sections of the units and then match your answers with “ANSWERS TO CHECK YOUR PROGRESS” given at the end of each unit in making your learning more active and efficient.

UNIT 1: INDIAN CONTRACT ACT, 1872

UNIT STRUCTURE

1.1 Learning Objectives
1.2 Introduction
1.3 Meaning and Importance of Business Law
1.4 Essential conditions of a Valid Contract under Indian Contract Act, 1872
1.5 Offer and Acceptance
1.6 Consideration
1.7 Capacities of Parties to Contract
1.8 Performance of Contract
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1.10 Breach of Contract and Its Remedies
1.11 Indemnity and Guarantee
1.12 Bailment and Pledge
1.13 Contract of Agency
1.14 Let Us Sum Up
1.15 Further Reading
1.16 Answers To Check Your Progress
1.17 Model Questions

1.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the essential elements of valid contract under Indian Contract Act, 1872
- describe the capacities of parties to contract, performance of contract and discharge of contract
- discuss the breach of contract and its remedies, indemnity and guarantee
- explain the bailment and pledge, contract of agency.

1.2 INTRODUCTION

In this unit we are going to discuss about Indian Contract Act, 1872. The Indian Contract Act, 1872 deals with the different principles of contract. A contract creates different rights and

liabilities for the parties. This unit encompasses the different essential elements of a valid contract under the Indian Contract Act. It also discusses the different concepts which are related in the formation of an agreement and legally bind the parties entered into the contract like the capacities of parties to contract, performance of contract and discharge of contract. Through this unit, you will be able to know about breach of contract and its remedies, indemnity, guarantee, bailment, pledge and contract of agency.

1.3 MEANING AND IMPORTANCE OF BUSINESS LAW

Here we will discuss the essential conditions of a valid contract under Indian Contract Act, 1872. Under Section 2 (h) of the Indian Contract Act, 1872, the term 'contract' is defined as '*an agreement enforceable by law'*. The 'agreement' is defined under Section 2 (e) of the Act as "every promise and every set of promises forming consideration for each other is an agreement". On the other hand, a 'promise' is defined as "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise [Section 2 (b)].

According to Salmond- "A contract is an agreement creating and defining obligations between the parties.

"According to Sir William Anson- "A contract is an agreement enforceable by law made between two or more persons by whom rights are acquired by one or more to acts or forebearences on the part of the other or others."So, the two main elements of a contract are—

i) Agreement and,

ii) Its enforceability by law.

That is why, all contracts are agreements, but all agreements are not necessarily contracts. Example: X agrees to sell his house to Y for Rs. 5, 00,000/-. The agreement gives rise to an obligation on the part of X to deliver the house to Y and on the part of Y to pay Rs. 5, 00,000/- to X. This agreement is a contract.

1.4 ESSENTIAL CONDITIONS OF A VALID CONTRACT UNDER INDIAN CONTRACT ACT, 1872

In addition to agreement and enforceability of law, there are some other conditions provided by the Section 10 of the Indian Contract Act, 1872. According to Section 10 of the Act " All agreements are contracts if they are made by the free consent of parties, competent to

contract, for a lawful consideration and with a lawful object and not hereby expressly declared to be void". These conditions must be fulfilled in order to make a valid contract.

Now we will discuss these essential *conditions of a valid contract*.

Intention to create legal Relationship: - The parties should have sufficient intention to make a lawful relationship among them.

Lawful offer and acceptance: - To be a valid contract there must be offer and acceptance. The offeror is the party who makes the offer and the offeree is the party to whom the offer is made. These two parties should lawfully think of their offer. The offer made by the offeror must be accepted by the offeree to make a valid contract.

Capacity of the parties: - Capacity implies competence of the parties to enter into a contract. Under Section 11, it is laid down that every person is competent to contract if ,he (i) is of the age of majority (ii) is of sound mind and (iii) is not disqualified from contracting by any law to which he is a subject. Thus, a minor or a person of unsound mind or a person disqualified by any other law is incapable to enter into a contract.

Free consent: - Another essential element of a valid contract is the free consent of all parties to an agreement. Free consent means the parties agreed upon the same thing in the same sense. Consent is said to be free when it is not caused by coercion, fraud, misrepresentation, undue influence and mistake. The parties should offer a free consent to the agreement.

Lawful object and consideration: - Object of an agreement is its purposes. With unlawful object or consideration, an agreement can be enforced in the court. So, both the object and the consideration of an agreement should be lawful.

Not declared to be void: - The agreement should not be declared as void expressly otherwise, it would not be enforceable by law. According to various sections of the Contract Act 1872, the following *agreement are treated as void*-

i. Agreements made with the parties having no capacity to contract e.g. minor and person of unsound mind. (Section 11)
ii. Agreements which are made under mistake of fact. (Section 20)
iii. Agreements with unlawful consideration or object. (Section 23)
iv. An agreement, whose consideration or object is unlawful in part. (Section 24)
v. Agreement having no consideration. (Section 25)
vi. Agreement in restraints of marriage. (Section 26)
vii. Agreement in restraint of trade. (Section 27)
viii. Agreement in restraint of legal proceedings. (Section 28)
ix. Agreement, the meaning of which is uncertain. (Section 29)

x. Agreement by way of wager. (Section 30)

xi. Agreement to do impossible acts. (Section 56)

Certainty and Possibility of Performance of Contract: - To be a valid contract, it must be certain. Uncertain, vague or impossible to do something are called void under the Section 56.

Legal Formalities: - A contract should fulfill legal formalities. It means the contract must be in writing, attested or registered.

LET US KNOW

The Indian Contract Act, 1872 is an important part of business law. This Act came into force from 1st September 1872. The Indian Contract Act is applicable to the whole of India except the State of Jammu and Kashmir. The Act deals with mainly into two groups. Such as:

i) General principles of the law of contract which are included from Section1 to 75, and

ii) Some special contracts, which includes from Section 124 to 238.

CHECK YOUR PROGRESS

Q 1: Mention three essential conditions of a valid contract.

i) .....

.....

ii) .....

.....

iii) .....

.....

1.5 OFFER AND ACCEPTANCE

All contracts are made by the process of a lawful offer and acceptance. At the time of formation of an agreement, there should have a definite offer by one person to another as well as its unconditional acceptance by the person to whom the offer is made.Let us discuss the meaning and legal rules for a valid contract of an offer and acceptance.

OFFER:

Both the words proposal and offer are synonymous. So, they are used interchangeably.

According to Section 2 (a) of the Indian Contract Act, a proposal is defined as “When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”. Under Section 2 (c), it is mentioned that the person making the offer is known as the offeror, proposer or promisor and the person to whom the offer is made is called the offeree or proposee. An offer may be express or implied offer. An offer which is made by express words, spoken or written, called an express offer. Again an offer which is made by the conduct of the parties is called implied offer. On the other hand, offer may be specific or general. If an offer is made to a particular person, it is known as specific offer. If the offer is made to all the people or the world at large, it is called a general offer.

Example: i) M says to N, “Will you purchase my house for Rs.1, 00,000/- ?” M, in this case, is making a specific offer to N, as he signifies to N his willingness to sell his house to N for Rs.1, 00,000 with a view to obtaining N’s assent to purchase the house.

Legal Rules for a valid offer:

In order to make a valid offer, following rules must exist-

Legal Relation: - The offer should create a legal relation. A proposal will be a promise after it is made with a view to create legal obligation.

Certain and definite: - Vague and indefinite offer never come into existence. That is why, the terms and conditions of offer should be certain and definite. This type of offer can fix the rights and obligations among the parties to a contract.

Example: A offer to B to pay an amount of money if B marries the daughter of A. Here, the amount to be paid by A is not certain. Thus, it is not a valid offer.

Communication with offeree: - With a view to making a valid offer, the offeror should communicate the offer to the offeree. The offeree can not accept the offer without knowing it.

Example: “R” loses his horse and gives an advertisement offering a reward, if anybody can find the horse. “S” had found the horse, but “S” had not seen the advertisement. Then “S” would unable to claim the reward as because that there is no communication between “R” and “S” regarding the advertisement.

Assent of other party: - Offer must be made with a view to obtaining the assent of the other parties of the contract, so that it must be distinguished from mere expression of intention.

Conditional: - An offer may be conditional. In case of conditional offer, acceptance will be subject to fulfillment of the conditions. Of course, the offer against the public policy can not be enforced by the court of law.

Compliance: - To make a valid offer, it must not include any term of non-compliance where it will be assumed as amount to acceptance. Nobody can say that if the offer is not accepted within certain time, the offer would be deemed to have been accepted.

Lapse of an offer: - Under Section 6 (2) of the Indian Contract Act, the offer must be accepted by the offeree within the time laid down in the offer. No time is mentioned then it must be accepted within a reasonable time. The reasonable time will be considered depending upon the circumstances of each case.

An invitation to offer is not an offer: - To make a valid offer, it must be distinguished from an invitation. Because in "invitation to offer", no intention on the part of the person is found, who is sending the invitation to obtain the assent of the other person.

Example: Displaying goods in front of a shop along with its price list is called an invitation to offer.

Obtain acceptance: - The offer must be made with a view to obtaining acceptance of the offeree. It is laid down under Section 2 (a) that an offeror must make a proposal with the intention to get the acceptance.

No cross offer: - Identical or cross- offers do not make any contract. Where two parties formulate identical offer to each other by ignoring offer of each other, this offer is called cross offers. No contract can be made with these cross offer.

Example: "A" offers to "B" by writing a letter for selling a machine of "A" at Rs. 1, 00,000. In the same time, "B" also offers to "A" by writing a letter for selling a same type of machine at same price. So, due to cross offer, it will not be a contract.

ACCEPTANCE:

Now we will discuss the meaning and legal rules of a valid acceptance.

When a person to whom a proposal is made signifies his assent there to, then the proposal is said to be accepted. Thus, acceptance is the assent given to a proposal by the offeree to establish legal relations with the offeror. According to Section 2 (b) after accepting, an offer becomes a promise. In the word of Sir William Anson, acceptance means in general communicated acceptance. Acceptance may be of two types as express or implied.

Example: M offers to sell his car for Rs. 1, 50,000/- to N. N accepts the offer made by M and agrees to purchase the car at Rs. 1, 50,000 from "M". It is called acceptance.

Legal Rules of a valid acceptance: - Following legal rules are immensely important to make a valid acceptance.

Absolute and Unconditional: To make a valid acceptance, it must be unconditional as well

as unqualified. According to the Section 7 (1) an acceptance to be valid must be absolute and unqualified. It will be not a contract, if there is any difference between the terms and conditions of offer and the terms and conditions of acceptance.

Example: A offered to sell a plot of land at Rs. 5, 00,000 to B. B replied accepting the offer of A and enclosing Rs. 2, 00,000 and promises to pay the remaining Rs. 3, 00,000 by monthly payment of installments of Rs. 50,000 each. It is not an acceptance. Because, B accepted the offer of A subject to payment in installments, which was not in the offer.

Communication with offeror: - Acceptance must be communicated to the offeror. No contract can be formed if the offeree fails to communicate the acceptance to the offeror. So, an acceptor should show something as an indicator to accept the offer. Even after accepting, if acceptor fails to post the letter of acceptance then it will be not valid acceptance.

Example: X is a supplier, who sent draft agreement supply rice to Y for acceptance. Y accepts and put the draft in the drawer of his table for sending to X. But, the draft agreement remains in the drawer. So, it will not a contract as because Y does not communicate with X.

Time limitation: - Acceptance must be formed within a reasonable time limit. Generally, this time is given by the offeror. But, if there is no specific time given by the offeror, then it must be within a reasonable time. The reasonable time will depend on circumstances of the case.

Acceptance according to mode :- According to the Section 7 of the Indian Contract Act 1872, when the offeror prescribes a particular mode of acceptance, then the acceptor should follow that mode. Some usual and reasonable mode is essential to be made by the acceptor, where no mode of acceptance is prescribed by the proposer.

Example: “M” sends an offer to “N” by posting a letter of proposal. Where M does not mention about the mode of acceptance, then N should make the acceptance in the “usual and reasonable manner”. That usual manner may be posting a letter of acceptance within a reasonable time.

Aware of the proposal at the time of the offer: - The acceptor must be aware of the proposal at the time of the offer. Without knowing the existence of the offer if the acceptor conveys his acceptance, then it will be no contract.

Example: “A” sold his business to his manager “B”. But it is unknown to his customer “C”. If “C” sent an order to “A” for the supply of goods and B received and executed this order then C can refuse to pay the price. Because, contract is made between B and C.

Before the offer lapse or before the offer is revoked: - Acceptance must be given before the offer is revoked. It implies that acceptance must be made while the offer is in force, i.e.

before the offer is revoked or lapsed. If the offer lapse then there is nothing to accept.

Acceptance may not be implied from Silence: - In case of offeree remains silent and has nothing to show, then no contract can be formed. Mere silence made by offeree cannot be regarded as an acceptance of the proposal.

CHECK YOUR PROGRESS

Q 2: State the true or false for the following statements:

i) The person who makes an offer is called the offeree. (True\False)

ii) The offeree is not required to communicate his acceptance to the offer. (True\False)

iii) The terms of the offer must be certain and definite. (True\False)

iv) The acceptor must accept an offer according to the mode prescribed by the offeror. (True\False)

1.6 CONSIDERATION

The term 'consideration' means something accepted or agreed upon, as a return or equivalent for the promise made in contract. According to Pollock "Consideration is the price for which the promise for other is bought and the promise thus given for value is enforceable." Moreover, consideration is defined in the famous English case "Currie Vs Misa" as some right, interest, profit or benefit accruing to one party or some forbearance, detriments, loss or responsibility, given suffered or undertaken by the other. In the word of Justice Patterson, "Consideration means something which is of some value in the eye of law. It may be some benefit to the plaintiff or some detriment to the defendant."

Under Section 2 (d) of the Indian Contract Act, consideration is defined as "When at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise".

Consideration can be defined as the price paid by the promisee for the obligation created. Consideration can be used in the sense of "quid pro quo", which implies something in return. It is the price for which a promise is bought.

Example: M agrees to sell his house to N for Rs. 1, 00,000. In this case, for M's promise the consideration is Rs. 1, 00,000/- and for N's promise the consideration is the house.

Legal Rules of consideration:

To be a valid consideration following legal requirements should be fulfilled.

- ***At the desire of the promisor:*** According to this rule an act forms consideration for the promise, which must be done or promised to be done according to the desire of the promisor.

  Example: 'A' sees that B's house on fire and help in extinguishing it. 'B' did not ask for his help. 'A' cannot demand for the payment (consideration) of his service.

- ***Consideration must be real:*** From the legal point of view, the consideration must have some value. Consideration must not be illusory or non-existing goods.

- ***Public duty:*** In case of promise, which is already under the public duty, express promises to perform such duty will not a consideration.

  Example: X promise to Y for the construction of a particular road against the payment of Rs. 50,000/- to X, which has been already planned for construction by the PWD. So, there will be no consideration and hence no contract.

- ***Promise to stranger:*** In case of a promise, which is made to a stranger or unknown person to perform contract is enforceable because of the fact that the promisor undertakes a new obligation upon himself which can be enforced by the stranger.

  Example: X promise to Y to pay Rs. 1, 00,000, if Y marries Q. The fulfillment of Y's contract with Q was considered to support X's promise to Pay Rs. 1, 00,000/-.

- ***Consideration need not be adequate:*** Under Section 20 of the Indian Contract Act, 1872, an agreement to which the consent of the party is freely given is not void merely because the consideration is inadequate. But the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given.

  Example: "A" agrees to sell his motor car worth of Rs. 1, 00,000 for Rs 100. If A's consent to the agreement was freely given, then this agreement will be a contract notwithstanding the inadequacy of the consideration.

- ***Consideration must not be illegal, immoral or opposed to public policy:*** To make a contract valid, the consideration for the agreement must be lawful. Unlawful consideration makes the agreement void. In the following cases the consideration of an agreement is treated as unlawful:

  a. If it is forbidden by law.

  b. If it is of such nature that permission made to it would defeat the provision of any law.

c. If it is fraudulent.

d. If it involves or implies injury to the person or property of other.

e. If the court regards it as immoral or opposed to public policy.

Example: X promises to offer an opportunity of employment to Y in the public service and Y promises to pay Rs. 1, 00,000 to X. The agreement will be void. The consideration of Rs. 1, 00,000 is unlawful.

- ***Consideration may be past, present or future:*** According to the Indian Law, there may be three types of consideration, such as past, present and future. Consideration can be defined as, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstain from doing or promises to do or abstain from doing something. Here the words "has done or abstained from doing "means that the consideration is an act which has already been done at the desire of the promisor i.e. for the present promise the consideration already taken place. It is termed as past consideration.

  On the other hand, the words "do or abstain from doing "means the consideration is an act which a promisee or any other person does in present at the desire of the promisor. Here the promisor receives consideration simultaneously with his promise. It is termed as present promise.

  The words, "promises to do or to abstain from doing" means an act which a promisee or any other person promises to do at some future time. It is termed as future consideration.

- **Consideration may move from the promisor or from any other person: -** According to the Indian Law, consideration may move from the promise or any other person. It indicates that inspite of the consideration that moved from the third party, a person can sue on a contract.

  Example: - X has granted his property to his wife Y and directs her to pay an annual allowance to his brother Z. Y also entered into an agreement with promising to pay the allowance to Z. This can be enforced by X even though no part of consideration is received by X moved from Y.

- **Consideration must be of some value in the eye of law : -** Consideration should be more than what already promise. Consideration must be of some value in the eye of law.

  Example: - "A" promises to pay a sum of money to a police officer for investigation of a

crime will be without consideration because he is already bound to do so by law.

LET US KNOW

The general rule is that an agreement made without consideration is void. But, under Section 25, some exceptions to rule are mentioned. According to the Section 25, the following are the three cases in which contract are rated without consideration.

Under Section 25 (1), where an agreement is expressed in writing and registered under law for the time being in force for the registration of the documents and is made on account of natural love and affection between the parties standing in near relation to each other, such contract is enforceable without consideration.

Under Section 25 (2), a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor is enforceable even though there would be no consideration.

Under Section 25 (3), a promise made by a debtor to pay a time barred debt is enforceable that it is made in writing and is signed by the debtor or his agent generally or specifically authorised in that behalf. The promise may be to pay whole or a part of the debt.

ACTIVITY 1

A. X agrees to pay Y Rs. 10,000/- and in consideration for, Y agrees to unload 100 bags of sugar from a truck in 5 minutes. Is it a valid contract?

B. A writes to B, "As a doctor you treat my wife without charging, I promise to pay you Rs. 5000/-. "A" does not pay. Advise B.

C. A owes B Rs. 5000/- for the last 7 years and the payment in time barred. A signs a pronote for it. Is it a valid contract? If yes, give reason.

CHECK YOUR PROGRESS

Q 3: Fill in the blanks with appropriate words:

i. Consideration is the price for which the promise for other is bought and the promise is given for ……. is enforceable.

ii. All contracts are made by the process of a lawful offer and ……..…....

iii. Under section 2 (h) of the Indian Contract Act, 1872, the term 'contract' is defined as 'an …… enforceable by law'.

iv. Acceptance must be communicated to the ……..

1.7 CAPACITIES OF PARTIES TO CONTRACT

It is very essential to have sufficient capacity of the parties to make a contract valid. Section 10 of the Indian Contract Act, 1872, lay down that "all agreement are contracts if they are made by the free consent of the parties competent to contract." On the other hand, it is laid down under Section 11, of the Act that "every person is competent to contract who is of the age of majority according to the law of which he is subject, is of sound mind, and is not, disqualified from contracting by any law of which he is subject.

Therefore, following persons are treated as incompetent to contract.

1) Minor: - According to the Indian Majority Act, 1875, a minor is one who has not completed his or her 18 years of age. With a view to removing the controversy in the determining the age of majority, two approaches are provided by the law, such as -

i. In case of contract pertaining to ordinary mercantile transactions, the age of majority is to be determined by the law of place where the contract is made.

ii. In case of contracts relating to land, the age of majority is to be determined by the law of the place where the land is situated.

Minors are frequently exploited and ill treated. Further, their properties are often stolen. As per provision of the law the court is to guard against their lack of knowledge and experience.

2) Persons of unsound mind: - According to the Section 12 of the Indian Contract Act, 1872, a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon its interests.

The Section 12 of the Indian Contract Act, 1872 declares idiots, lunatics and drunkards are as persons of unsound mind. The Act clearly mentioned that in India a contract by a drunken person is absolutely void. Illustration (b) to Section 12 of the Act has very clearly stated that a sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract as form rational judgment as to its effect in his interests, cannot

contract when such deliriousness or drunkenness lasts.

Example: - A patient in a lunatic asylum who at intervals is of sound mind, may contract during those lucid intervals.

3) Persons disqualified by any law to which they are subject: - Some persons are absolutely or entirely disqualified from contracting by any law. Some are partially disqualified from contracting by law. Alien enemy, married women in England (before the Married Women's Property Act 1982), Crown in England, the President of India, the Governor of State and their agents, foreign state, diplomatic representative of foreign state are the examples of absolute disqualified person from contracting by law. Public authority (under Indian law), corporation, trade unions, a convict, bankrupt or insolvent, professional in capacity are the example of partially disqualified persons from contracting by law.

LET US KNOW

The case of necessaries supplied to a minor is covered by Section 68 of the Contract Act which provides as follows: "If a person incapable of entering into a contract or anyone whom he is legally sound to support is supplied by another person with necessaries suited to his condition to be reimbursed from the property of such incapable person.

CHECK YOUR PROGRESS

Q 4: Fill in the blanks with appropriate words:

i. Under section _____of the Indian Contract Act, 1872 it is laid down that all agreements are contracts if they are made by parties competent to contract.

ii. A minor is one who has not completed his or her _____ years of age.

iii. Under Section _____ of the Indian Contract Act. 1872, a person in said to be of sound mind if he is capable of understanding rational judgment.

iv. A person who is usually of unsound mind, but occasionally of sound mind may _____ a contract, when he is of sound mind.

1.8 PERFORMANCE OF CONTRACT

Regarding the performance of contract Section 37 of the Act states that the parties to a

contract must either (i) perform their respective promises or (ii) offer to perform the same; (iii) such performance is dispensed with or (iv) excused under the provisions of the Act or of any other law. There are mainly two ways of performing a contract such as–

i. Actual performance

ii. Attempted performance

When the party has done what he had undertaken to do, it is called actual performance. In actual performance, the party is to fulfill all his obligations under the contract. On the other hand, it is called attempted performance when the party offers to perform his obligation, but it is not accepted by the promisee. So, it is also called offer to performance or tender. Hence, a valid tender of performance is considered to be the performance of a promise.

Essentials of a valid tender of performance: - Under Section 38, a tender must have the following essentials to be valid:-

i) It must be unconditional

ii) It must be for the whole obligation. It must not be installments, if the contract requires in full.

iii) It must be by a person who is in a position and is willing to perform the promise.

iv) It must be at the proper time and place.

v) It must be in proper form.

vi) It must be made to a proper person i.e. to the promisee or his authorized agent.

vii) In case of the tender of goods the promise must be given a reasonable opportunity to inspect the goods.

viii) It may be made to one of the several joint promisees.

By whom contract must be performed:

A contract can be performed by the following persons: –

i) *Promisor himself:* Under Para 1 to Section 40, it is laid down that where it appears from the nature of the contract, the intention of the parties that any promise contained in it must be performed by the promisor himself or by his legal representatives or by any other competent person employed by him, then such promise must be performed by the promisor himself or by his legal representatives or by any other competent person employed by him.

Example: - X promises to sketch a site map of Y's house. X will have to perform this promise himself. Because it requires the skill of X.

ii) *Agent:* According to Para 2 of the Section 40, the promise may employ a competent

person such as agent to perform the promise, if the contract is not formed on personal condition.

iii) *Representations:* A contract which involves the use of personal skill or it is founded on personal considerations, comes to an end if the promisor dies. Of course in case of other contracts, the legal representatives of a deceased promisor are bound to perform it as provided in Para 2 of Section 37.

Example: M promises to sell his car for Rs. 1, 00,000/- to N after a week. But, M dies after 5 days of the contract. M's representative will be liable to sell the car to N and N will be liable to pay Rs. 1, 00,000/- to M's representative.

iv) *Third Person:* According to the Section 41, if a promisee accepts the performance of the promise by a third person he cannot afterwards enforce it against the promisor.

v) *Joint Promisors:* In case of joint promisors , a promise may compel one or more of the joint promisors in the absence of a contract to the contrary.

vi) *For whom contract is performed:* It is only the promisee for whom the contract is performed. Only the promisee can demand the performance of the promise under a contract.

Example: X promises Y to pay Z Rs. 10,000/-. X does not pay the sum to Z. Here Z cannot bind X for the payment. It is only promisee Y who can enforce the promise against the promisor X.

Of course, there are certain special cases, where a third party can enforce a promise though he is not a party to the contract e.g. in respect of trust, marriage settlement etc. In case of death of promisee, the representative appointed by him can ask for the performance of the promise under a contract.

Legal provisions regarding the time, place and manner of performance of a contract:

Various legal provisions are laid down under Section 46 to 50 regarding the time, place and manner of performance of a contract. So, as far as the time, place and manner of performance of a contract are concerned it must be agreed upon by the parties to the contract themselves. The legal provisions regarding these are given below –

1. Under Section 46, performance within a reasonable time: According to Section *46*, a promisor is to perform his promise within a reasonable time. On the other hand, reasonable time will depend upon the circumstance of the case, the usage of trade or on the intention of the parties entering into the contract.

Example: A has given an order of supplying of books in July which should be performed within

4 to 5 days of the month of July.

2. *Under Section 47, specified time and place for performance:* If the promise is to be performed on a certain day, the promisor may undertake to perform it without application of the promisor. According to the Section 47, "In such a case the promisor may perform the promise at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

3. *Under Section 48, performance on a certain day:* If the promise is to be performed on a certain day the promisor may undertake to perform it after the application by the promisee to that effect.

4. *Under Section 49, performance of promise when no place is fixed and without application:* If the promise is to be performed without application by the promisee and where no place is mentioned to be performed of the contract then it is the duty of the promisor to apply to the promisee to provide a reasonable place for the performance of the promise and to perform it at such place.

   Example: M takes to deliver 2,000 kilos of rice to N on a fixed day. M must apply to appoint a reasonable place for the purpose of receiving it and must deliver it to him at such place.

5) *Under Section 50, performance as prescribed by the promisee:* According to Section 50, the performance of any promise may be made in any manner or at any time, which the promisee prescribes.

   Example: T owes S Rs. 20,000/- to accept T's car value of Rs. 10,000/- in reduction of the debt. The delivery of the car will amount to a partly payment of the debt.

1.9 DISCHARGE OF CONTRACT

Discharge of contract implies termination of the contractual relationship between the parties. A contract is discharged if it ceases to operate and when the rights and obligations created by it come to an end. Sometimes, other rights and obligations may arise as a result of discharge of the contract. These are independent of the original contract.

MODE OF DISCHARGE OF CONTRACT:

Different modes of discharge of contract have been provided under different sections of the Act. These are discussed below.

A) Discharge by performance :-

Performance implies doing the obligation of the contract. Performance must be completed according to the real intentions of the agreement. Performance must be

done according to time and manner prescribed.

Performance of contract may be of two types. Such as –

1) *Actual performance:* - When all parties perform the respective promises, the contract is said to be discharged. Performance done by the parties must be according to time and terms of contract.

2) *Attempted performance:* - It is also called tender. Tender is not an actual performance. It is only an offer to perform the obligation by the promisor which may be refused by the promisee. In such a case tender is become equivalent to actual performance except in the case of tender of money.

B) By agreement on consent: - Agreement between the parties can find then to perform the contract. Because a contract is created by an agreement, hence in the same way, it can be discharged by an agreement. In this connection the rule of law is as follows. "Eodem modo qus and quide constituitor, eodem modo destruitur," the meaning of which is that a thing may be destroyed in the same manner, in which, it is constituted. The consent may be of the following types. Such as –

i) Express: Express consent may be given at the time of formation of the contract or subsequent to its formation.

ii) Implied : The contracts are also discharged by implied consent, different modes of discharged by implied consent are mention below – a) Novation b) Alteration e) Rescission d) Remission e) Accod and Satisfaction f) Waiver g) Merger.

C) By impossibility of performance: - A contract may be discharged if its performance becomes impossible. The rule of impossibility of performance is based on the following maxims. Such as i) the law does not recognize what is impossible and ii) what is impossible does not create an obligation. According to the Section 56 of the Act, all acts to do impossible acts are void.

There are two types of impossibility of performance such as –

i) Impossibility existing at the time of agreement.

ii) Impossibility arising subsequent to the formation of contract.

On the other hand, impossibility of performance existing at the time of performance of a contract may be either (a) known to the parties or b) not known to the parties.

Likewise impossibility arising subsequent to the formation of a contract or supervening impossibility may be –

a) By some event beyond the control of the parties or

b) By some act either of the promisor or of the promisee.

D) By lapse of time: According to the Limitation Act, 1963 a contract must be performed within a specified time. If it is not performed within this specific time limit and against which if no action is taken by the promisee in the Court of Law within specified time, then the promisee is deprived of his remedy at law. In such cases, the contract is discharged.

E) By operation of law: A contract can be discharged by the operation of law. The operation of law by which contract can be discharged are as following–

i) *By death:* - If the contracts depend on the personal skill or ability then such contract may be discharged on the death of the promisor.

ii) *By merger:* - Merger will take place when an inferior right accruing to the same party either under the same or another contract.

iii) *By insolvency:* - An insolvent is discharged from all liabilities incurred prior to his adjudication.

iv) *Unauthorized alteration of the terms of a contract:* - If one party makes any material alteration in the contract without the consent of the other party, then the other party can avoid the contract.

v) *Right and liabilities vesting in the same person:* - Where the right and liability become vested in the same person, the other parties are discharged.

1.10 BREACH OF CONTRACT AND ITS REMEDIES

All parties to a contract are expected to perform their promises. When one party refuses to perform his promise, then the breach of contract takes place. The other party or parties are called aggrieved or injured party or parties. There are various types of remedies for the injured parties. Such as–

i) Rescission of the contract.

ii) Claim for specific performance.

iii) Claim for injunction.

iv) Claim for quantum merit and

v) Claim for damages.

1) Rescission of the contract: - If there is breach of contract by one party, then the other parties may rescind the contract and thereby he is absolved from his all obligations under the contract.

Example: - M promises N to supply him a motor car on 1st January 2007, and N promises to pay for the motor car on 1st January 2007. N is absolved from paying its price.

2) **Claim for specific performance: -** In some specific cases if the damages are not adequate remedy, then the court can direct the party in breach for the specific performance of the contract. In such case, the promise is carried out as per terms and conditions of the contract.

Generally in the following cases, the *court grants specific performance*:

i) When the act agreed to be done is such that compensation in money for its non-performance of the act agreed to be done.

ii) When it is probable that compensation in money cannot be get for the non-performance of the act agreed to be done.

iii) When there is not any standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done.

On the other hand, *the court does not grant specific performance* in the following cases:

i) Damages are an adequate remedy.

ii) The contract is not certain.

iii) The contract is inequitable to either party.

iv) The contract is of revocable nature.

v) The contract is made by the trustee in breach of trust.

vi) The contract is of personal nature i.e. contract to marry.

vii) The contract made by a company ultra-vires of its memorandum of association.

viii) The court cannot supervise its carrying out.

3) **Claim for injunction: -** Injunction is an order passed by a competent court restraining a person from doing some act. Injunction can be defined as a mode of securing the specific performance of the negative terms of a contract. Negative terms of contract imply doing something, which a party has promised not to do. Injunction is an order which is granted by the court restraining the person to do what he had promised not to do.

The court may order injunction in the following cases –

i) if the contract is voidable.

ii) if the contract becomes void or

iii) on discovering the contract as void.

4) **Claim for quantum merit:-** The claim for quantum merit may be arise if a contract performed by one party has become discharged by breach of the other party. The

meaning of the phrase quantum merit is 'as much as earned'. The claim is not for the original contract that has been discharged or void, but on an implied promise by the other party to pay for what he has done.

Quantum merits are arised in the following circumstances.

a) If a contract is found to be void.

b) If something is done without any intention to do so gratuitously.

c) If one party abandons or refuses to perform the contract.

d) If a contract is divisible.

e) If a contract is performed badly.

5) Claim for damages: Damages are a monetary compensation awarded by the court to the injured party for the loss or injury suffered by him. As per contract, one party can claim damages if other party breach the contract. The main purpose of awarding the damages is to make good the loss suffered by him. It is known as doctrine of restitution. The Section 73 of the Indian Contract Act, 1872 deals with the compensation for loss or damages caused by a party for breach of contract. There are mainly four types of damages, such as-

i. Ordinary damages

ii. Special damages

iii. Vindictive or exemplar damages and

iv. Nominal damages.

CHECK YOUR PROGRESS

Q 5: Fill in the blanks with appropriate words:

i. Discharge of contract implies_____

ii. Express consent may be given at the time of _____ of the contract.

iii. All acts to do impossible acts are_____

iv. If there is breach of contract by one party, then the other party may_____ the contract.

1.11 INDEMNITY AND GUARANTEE

CONTRACT OF INDEMNITY:

According to the Section 124 of the Indian Contract Act, a 'Contract of Indemnity' is a

contract by which one party promises to save the other from the loss caused to him by the conduct of the promisor himself on or by the conduct of a third party. The person who promises to- pay the loss is called the 'Indemnified' or the 'Indemnity holder'. According to English Law, a contract of indemnity is a promise to save another from the loss caused as a result of a transaction entered into at the instance of the promisor.

Example: A and B go to C, a scooter dealer. B asks C to give A one new Bajaj Scooter and says that he (B) will pay the amount within a month. The contract between B and C is one of the indemnities.

Hence, the definition given by the Indian Contract Act, 1872 is not exhaustive and that is why Indian court accepts the English definition of 'Contracts of Indemnity.'

Rights of indemnity holder:

According to Section 125 of the Indian Contract Act, 1872 an indemnity holder can recover the following benefits from the indemnifier:

1. All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.
2. All costs which he may be compelled to pay in bringing or defending such suits.
3. All such sums, which he may have paid under the terms of compromise of any such suit. But such compromise should not be contrary to the orders of the indemnifier and must be prudent or authorized by him (indemnifier).

Rights of indemnifier:

It is to be mentioned that regarding the rights of indemnifier, the Indian Contract Act, 1872 does mention any thing. So, on the basis of English Law, the rights of the indemnifier can be stated that an indemnifier has the same rights, as a surety has, in case of the contracts of guarantee as provided under the Section 141.

CONTRACT OF GUARANTEE:

According to the Section 126 of the Indian Contract Act 1872, a contract of guarantee is a contract to perform the promise made or discharge liability incurred by a third person in case of his default. The contract of guarantee must satisfy all the essential elements of a valid contract except few differences. Such as i) surety himself must be benefited ii) principal debtor may be a minor and iii) the liability of the surety is conditional.

Parties to a contract of guarantee-

The following three parties are found in case of contract of guarantee:

i. The surety- The person who gives the guarantee.

ii. Principal debtor- The person in respect of whose default, the guarantee is given.

iii. Creditor- The person to whom the guarantee is given.

Example- "A" gives a loan of Rs. 1, 00,000 to "B". "C" promises to "A" that if "B" does not repay the loan, he will pay. This is a contract of guarantee. Here "B" is the principal debtor, "C" is the surety and "A" is the creditor.

Types of guarantee:

There are mainly two types of contracts of guarantee. Such as-

1. Specific guarantee- It implies a guarantee which is given for a specific transaction. So, liability of the surety extends only to a single transaction.
2. Continuing guarantee - It implies such type of guarantee which extends to a series of transactions. Continuing guarantee is not confined to a single transaction. So, the surety can fix up only a limit on his liability as to time or amount of guarantee.

Rights of the surety:

The rights of the surety can be categorized mainly into three heads. Such as:

i. Rights of the surety against the principal debtor- it includes the right to be subrogated and right to claim indemnity.

ii. Rights of the surety against creditor- It includes the benefit of every security which the creditor has against the debtor at the time when the contract of suretyship is entered.

iii. Rights against co-sureties- It includes a share of every collateral security which has been delivered to any of the sureties.

Discharge of surety:

A surety can be discharged from his liabilities by the following ways-

i. *By Revocation of contract:* A surety can be discharged by the revocation of the contract in any of the following cases.

a) By notice as per Section 130.

b) By death as per Section 131.

c) By novation as per Section 62.

ii. *By conduct of the creditors:* A surety can also be discharged by the conduct of the creditor in any of the following cases.

a) Guarantee obtains by misrepresentation as per Section 142.

b) Guarantee obtained by concealment as per Section 143.

c) Guarantee on contracts that creditor does not act until a co-surety joins as per Section 144.

d) Failure of consideration.

1.12 BAILMENT AND PLEDGE

Bailment and pledge are special class of contract. Chapter IX (Section 148 to 181) of the Indian Contract Act, 1872 deals with the contract of bailment and pledge.

The word bailment is derived from the French word “baillier” the meaning of which is “to deliver”. It implies any kind of handing over. According to Section 148, bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. There are two parties in the contract of bailment. They are bailor and bailee. The bailor is the person who delivers the goods and bailee is the person to whom they are delivered.

Examples:

1. M delivers a piece of cloth to N, a tailor to be stitched into a suit. There is a contract of bailment between M and N.
2. X lends two books to Y to be returned after the examination. It is a contract of bailment between X and Y.

Essential elements of bailment:

Following are the essential elements of bailment-

1) *Contract*- A bailment is usually created by an agreement between a bailor and a bailee except finder of goods.

2) *Delivery of Possession*- The contract of bailment necessarily involves a delivery of possession of goods by bailor to bailee. It requires temporary delivery of goods. Mere custody of goods without possession cannot make a bailment e.g. a domestic servant uses goods of his owner is not a bailment.

3) *Return of goods*- In bailment, the goods should be returned as soon as the purpose is fulfilled. It must be returned as per the direction of bailor.

4) *No transfer of ownership*- Incase of bailment ownership is not transferred. The bailor will be the actual owner of the goods bailment.

Duties and rights of bailor and bailee:

Duties of bailor:

Following are the duties of the bailor:

i. To disclose all known faults in the goods as per Section 150.

ii. It is duty of the bailor for those faults, which are unknown to him, where goods are bailed on hire as per Section 150.

iii. The bailor is to bear the extraordinary expenditure of bailment as per Section 158.

iv. The bailor is responsible to bear such types of loss, which arised due to his defective goods as per Section 164.

v. The bailor is to receive back the goods whenever it is returned by the bailee as per Section 165.

Duties of bailee-

Following are the duties of bailee-

i. It is the duty of the bailee to take reasonable care of the goods as per Section 151 to152.

ii. The bailee is to act in consistent with the terms of bailment and follow these strictly as per Section 153.

iii. The bailee is to use the goods of bailment according to terms and conditions of bailment as per Section 154.

iv. It is a duty of bailee not to mix his own goods with the goods of bailment as per Section 155 to157.

v. The bailee is to return the goods of bailment as soon as expiry of the specific period of time as per Section 160 to161.

vi. The bailee is to deliver the profit to the bailor, if any such profit is acquired from the goods of bailment as per Section 163.

vii. It is a duty to the bailor to hold the goods on behalf of the bailor as per Section 117.

Rights of bailee-

Following are the rights of bailee-

i. Right of compensation for defective goods as per Section 150.

ii. Right to claim for necessary extraordinary expenditure as per Section 158.

iii. Right in case of gratuitous bailment as per Section 158.

iv. Right to claim for compensation or loss because of the defective enrollment of the bailor as per Section 164.

v. Right to delivery of goods to any of the joint bailors as per Section 165.

vi. Right to delivery of good to bailor without title as per Section 166.

vii. Right to ask the court to decide the ownership of the goods of bailment, if the third party claims the ownership of the good as per Section 167.

viii. Right to bring an action against third party, if a third party wrongfully deprives the bailee

as per Section 180.

ix. Right of particular lien over the goods until his expenditure is paid as per Section 171.

Rights of bailor –

Following are the rights of bailor-

i. Right of compensation for loss caused by lack of reasonable care by the bailee as per Section 152.

ii. Right to terminate bailment for consistent use of goods by bailee as per Section 153.

iii. Right to claim damages in case of unauthorized use of goods bailed as per Section 154.

iv. Right against mixture of goods bailed as per Section 155.

v. Right to terminate the contract and take back the goods in case of gratuitous bailment as per Section 159.

vi. Right to get the goods returned as per Section 160.

vii. Right of compensation for non- return of goods as per Section 161.

viii. Right to get accretion to the goods as per Section 163.

ix. Right to enforce by suit all the liabilities of the bailee as his rights.

Contracts of pledge:

Pledge can be defined as a special kind of bailment. Pledge is a transfer of goods as a security for the payment of a debt or for the performance of a promise. According to Section 172 of the Indian Contract Act, 1872, pledge is the bailment of goods as security for the payment of a debt or performance of a promise. In case of the contract of pledge the bailor is called pledger or powner and the bailee is called pledgee or pawnee. The contract of pledge can be only of movable properties. Transfer of goods in pledge can be either actual or constructive. The pledger should have judicial right on the goods pledged.

Example: X borrows a loan of Rs. 1, 00,000 from Y and X give his car as security. It is a valid pledge. In this case X is “pledger” and Y is the “pledgee”.

Duties and rights of Pawner and Pownee:

Like bailor and bailee, the powner and pownee have some duties as well as rights, which are discussed as follows:

Duties of powner:

1. To repay the debt or to make performance in time.
2. To inform the pownee about any default or risk of goods if any.
3. To repay the expenditure incurred by the pownee on the goods

pledged.

Duties of pownee:

1. To take reasonable care of the goods.
2. To act as per the terms and conditions of the pledge.
3. To avoid unauthorized use of the goods bailed.
4. Pownee should not mix the goods pledged with his own goods.
5. To return the goods to the powner as soon as receiving the payment of debt.
6. It is a duty of pownee to use the particular lien for the refund of the interest on debt.
7. To return the profit if any accrued from the goods pledged to the powner.
8. It is a duty of pownee not to conceal anything regarding decay, destruction or deterioration.

Right of the powner:

1. Right to withdraw the goods pledged as per Section 177.
2. Right to take back the goods pledged on payment of his debt.
3. Right to get the surplus in case of sale.

Right to pownee:

1. Right to retain goods for payment of the debt and for the performance of the promise as per Section 173.
2. Right to retain goods for any subsequent advances as per Section 174.
3. Right to receive any extraordinary expenses from the powner as per Section 175.
4. Right against the true owner if the powner's title to the goods is defective as per Section 178-A.
5. Pownee can exercise his right in case of default by Powner as per Section 176.
6. Right to redeem the debt in the manner and time at his choice as per Section 177.

1.13 CONTRACT OF AGENCY

Under section 182 of the Indian Contract Act 1872, an agent is defined as person employed to do any act for another or to represent another in dealing with the third person. The person for whom such act is done by the agent is known as the "principal person". So, contract of agency can define as a relation between two parties (one is agent and another is principal) created by an agreement express or implied. There is a legal maxim regarding agency, which is "Quit facit per alium facit per se". It implies that "He who does through another does by himself". The act of principal is done by the act of agent. Generally agents

are appointed with some instructions. The Section 226 states that "Contracts entered into through an agent and obligations arising from acts done by an agent may be enforced in the same manner and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person".

Example: A appoints B to purchase a car on behalf of him. In this case, A is the principal and B is the agent. On the other hand, the relationship between A and B is known as Agency.

Methods of creating Agency: The agency can be created in following ways:

1. *By express agreement:* By an express agreement, a contract of agency can be created. The express agreement may be oral or written.
2. *By implied agreement:* By an implied agreement, a contract of agency can be created under certain circumstances from the behaviour or conduct of the parties on the relationship between them. Agency by estoppel and agency of necessity are case of implied contract of agency.
3. *By estoppel or by holding out:* By estoppel or by holding out an agency can be created.
4. *Agency of necessity:* Without any express authority, sometimes circumstances force a person to act on behalf of another. This way agency of necessity can be created.
5. *By ratification:* It implies subsequent adoption and acceptance of an act, which was done originally without any instruction.

   Example: A buys a bag of rice for B. B did not appoint A as his agent and did not instruct him to buy the rice for him. B may accept the rice upon hearing of the transaction. If B does so, the act of B is ratified and A becomes his agent with retrospective effect.

Classification of Agents: Agents can be classified from two points of view, such as :

A. From the point of view of *the extent of authority*, which may be-

- **Special agent:** The person who is appointed to perform a particular act or to represent his principal for some particular transaction.
- **General agent:** The person who has authority to do all acts connected with a particular function.
- **Universal agent:** The person whose authority to act for the principal is unlimited.

B. From the point of view of *the nature of work performed by them*, which may be-

- **Factor:** The person who is entrusted with the possession of goods for the purpose of selling them.
- **Auctioneer:** The person who is appointed by a seller for the purpose of selling his goods by public auction.

- **Broker:** The person who is appointed to purchase or to sell goods for another.
- **Commission agent:** The person who is appointed for purchasing and selling goods or transacting business for other persons.
- **Del Credere agent:** The person, who guarantees his principal that the persons with whom he enters into contract on behalf of the principal, shall perform their obligation.

Duties of agent: Different duties of agent are as follows:

- To carry out the work undertaken according to the directions given by the principal.
- To carry out the work with reasonable care, skill and diligence.
- To render proper accounts to his principal.
- To communicate with the principal in case of difficulty.
- Not to deal on his own account.
- To pay sums received for the principal.
- To protect and preserve the interest of the principal in case of his death or insolvency.
- Not to use information obtained in the course of the agency against the principal.
- Not to make secret profit from agency.
- Not to set up an adverse title.
- Not to delegate authority.

Right of agent:

- Right of retainer
- Right to receive remuneration.
- Right of lien.
- Right of indemnification.
- Right of compensation.
- Right of stoppage in transit.

Duties of Principal:

- To indemnify the agent against the consequences of act done in good faith.
- To indemnify the agent against the consequences of all lawful acts.
- To indemnify the agent for injury caused by principal's neglect.
- To pay the agent the commission or other remuneration agreed.

Rights of principal:

- To recover damages by the agent.
- To obtain an account of secret profits and recover them and resist a claim for remuneration.

- To resist agent's claim for indemnify against liability incurred.

CHECK YOUR PROGRESS

Q 6: State true or false for the following statements:

i. The person who promises the loss is called indemnifier. (True / False)

ii. The contract of indemnity under Section 124 includes both express and implied promises. (True / False)

iii. There are mainly two parties in contract of guarantee. (True /False)

iv. In case of contract of guarantee creditor is the person to whom the guarantee is given. (True / False)

v. Continuing guarantee is given for a specific transaction. (True / False)

1.14 LET US SUM UP

In this unit we have discussed about the law of contract. Contract is an agreement enforceable by law. To become a valid contract an agreement must have the essential elements like,

a. Offer and acceptance,
b. Intention to create legal relationship,
c. Capacity of the parties,
d. Consideration,
e. Free consent,
f. Lawful object,
g. Not declared to be void,
h. Certainty and possibility of performance

The unit discusses all different aspects which are related to contract law like indemnity, guarantee, pledge, bailment etc.

1.15 FURTHER READING

1. K Sen, J K Mitra (2006);*Commercial and Industrial Law*; World Press
2. Maheshwari S K Maheshwari S N (2014); *Principles of Business Law*; Himalaya Publishing House, New Delhi

3. N D Kapoor (2017);*Elements of Mercantile Law*; Sultan Chand & Sons,India
4. Sharma M, Sareen V.K., Garg K.C. (2010); *Business Regulatory Framework*; Kalyani Publishers, India

✓1.16 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: i) There must be an offer and acceptance.
ii) The parties should be capable of entering into contract.
iii) There must be free consent of the parties.

Ans to Q No 2: i) False ii) False iii) True iv.) True

Ans to Q No 3: i) value ii) acceptance iii) agreement iv) offeror

Ans to Q No 4: i) 10, ii) 18, iii) 12, iv) make,

Ans to Q No 5: i) Termination, ii) Formulation, iii) Void, iv) Rescind

Ans to Q No 6: i) True, ii) False, iii) False, iv) True, v) False.

?1.17 MODEL QUESTIONS

Q 1: "An agreement enforceable by law is contract." Discuss the definition, bringing out clearly the essentials of a valid contract.

Q 2: Mention the legal rules of the following:
(i) Valid offer, (ii) Valid acceptance, (iii) Consideration

Q 3: "Tender is attempted performance" Comment.

Q 4: State by whom contract should be performed.

Q 5: Examine the various ways in which a contract may be discharged.

Q 6: Write short notes on:
(i) Breach of Contract, (ii) Indemnity, (iii) Guarantee, (iv) Bailment, (v) Pledge, (vi) Contract of agency.

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UNIT 2: SALES OF GOODS ACT, 1930

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Essential of Contract of Sales

2.4 Difference between Sale and Agreement to Sell

2.5 Condition and Warranty

2.6 Passing of Property in Goods

2.7 Transfer of Title by non- owners

2.8 Performance of Contract of Sale

2.9 Rights of Unpaid seller

2.10 Breach of Contract of Sale

2.11 Auction Sale

2.12 Let Us Sum Up

2.13 Further Reading

2.14 Answers To Check Your Progress

2.15 Model Questions

2.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the essentials of a contract of sale
- explain the meaning of conditions and warranties
- explain the passing of property in goods and transfer of title by non-owners
- describe about the performance of contract of sale and rights of unpaid seller
- explain the breach of contract of sale and auction sale

2.2 INTRODUCTION

In the previous unit the Indian Contract Act 1872, we have discussed the essential aspects of the Contract Act. In this unit, we will discuss various important matters of Sale of Goods Act, 1930. Contract for the sale of goods are subject to the general legal principles of the Contract Act, which are offer, acceptance, capacity of the parties, free consent,

consideration etc. Of course, the application of the principle of contract Act in the sale of goods is not inconsistent with the express provisions of the Sale of Goods Act (Section 4). The contract of sale includes both a sale and an agreement to sell.

2.3 ESSENTIALS OF CONTRACT OF SALE

In this section, we will discuss the essentials of a contract of sale. The following are the essentials of contract of sale-

1) **Movable Goods –**The sale of Goods act only relates to movable goods. Under Section 2 (7) of the Act, goods is defined as every kind of movable property except actionable claims and money. Things attached to the earth are not movable. But growing crops and grass which can easily be separated from the earth before sale are included in the definition of Goods.
2) **Two Parties: -** A sale of goods is a bilateral contract. To execute a sale, there must be buyer and seller. A person never can buy his own goods. Of course, a part owner may sell to another part owner. Likewise, a partner may sell goods to his firm or a firm may sell to a party.
3) **Consideration:** In order to make a valid contract of sale of goods, the consideration must be in term of money. An exchange of goods for goods cannot be defined as sale. But if the exchange is made partly for goods and partly for money then it can be regarded as sale. Mere nonexistence of consideration will treated, it as gift.
4) **Valid Contract:** To be a contract of sale, it must satisfy all the essentials of a valid contract such as valid offer, a valid acceptance, free consent of the parties, a valid and lawful consideration etc.
5) **Agreement to transfer the ownership:** By the contract of sale, the seller must agree to transfer his goods to buyer with or without physical possession of the goods.
6) **Method of formation of contract:** To make a contract of sale under section 5 (2) it must be in writing or by word of mouth or implied from the acts of the parties.
7) **Terms of Contract:** On the basis of time, place and mode of delivery of goods, the parties will agree upon any term. The terms include both essential and non-essential terms. The essential term implies the conditions and a non-essential term implies warranties. So in case of all contracts of sale, certain conditions and warranties are to be implied.

CHECK YOUR PROGRESS

Q 1: Mention two essentials of contract of sale.

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ii. .....

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2.4 DIFFERENCE BETWEEN SALE AND AGREEMENT TO SELL

Now let us discuss the difference between sale and an agreement to sale as under:

1. **Nature:** A sale is an executed contract. But, an agreement to sell is an executory contract. A sale is called an executed contract because of the fact that in sale, considerations and delivery of goods takes place simultaneously. On the other hand, an agreement to sale is called an executory contract because the consideration is given at a future date and goods are delivered to the buyer at a future date.
2. **Transfer of ownership:** In case of sale, the ownership of the goods is transferred to the buyer immediately. So, the buyer in case of sale becomes the owner of the goods. But, an agreement to sell becomes a sale only when the ownership of the goods is transferred to the buyer. The ownership of the goods is transferred to the buyer at some future date.
3. **Transfer of risk:** In case of sale, the buyer will have to bear the loss, even though the goods are in possession of the seller. Because, in case of sale the risk is associated with ownerships. But in case of an agreement to sell, the seller is to bear the risk of loss, even though the goods are in the possession of the buyer.
4. **Consequence of the breach:** In case of breach of an agreement to sell by the seller, the buyer can recover the damages from the seller. If the buyer fails to pay the consideration the seller can sue and recover for damages from the buyer. But incase of breach of the contract by the seller, the buyer can sue for the delivery of goods and sue for damages.

5. **Insolvency of the buyer:** In case of sale, if the buyer becomes an insolvent before paying the price, the seller shall have to deliver the goods to the Official Assignee or Receiver except where he has a lien over the goods. But in case of agreement to sell, the seller can refuse to deliver the goods to the Official Assignee or Receiver until he is paid the full price of the goods.
6. **Insolvency of the seller:** In case of sale, if the seller becomes insolvent, the buyer can recover the goods from the official receiver or assignee as the property of goods is with the buyer. But in case of agreement to sell, if the buyer can claim only a ratable dividend and not the goods, if the seller becomes insolvent and goods are taken from him by the receiver or Official Assignee, the buyers cannot recover the goods from the Receiver or Official Assignee as he is not the owner of the goods.
7. **General and particular property:** By the contract of sale, a right is created against the whole world. This means that the buyer has the right to use the parties to use the goods against others. But, by the agreement to sell, the buyer gets the rights over the goods only against the seller.
8. **Right of Re-Sale:** The seller cannot re-sell the goods in case of sale though the possession of goods sold remains with the seller. But, the hire purchaser cannot re-sell till the time he pays all the installment of hire.

2.5 CONDITION AND WARRANTY

At the time of selling of goods, the seller makes certain statements or representations with a view to induce the buyer to purchase the goods. These statements may form a part of contract of sale and the buyers rely upon them. These representations are called 'stipulation'. When these stipulations are become most important for the formation of a contract of sale is known as 'condition'. Again if these are lesser important for the formation of a contract of sale, is it known as 'warranty'.

According to Section 12 (2) of the Sale of Goods Act, a condition is a stipulation, essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. There are mainly three essentials of a condition, such as

I) Condition is essential to the main purpose of the contract.

II) The cause of non-fulfillment of condition is irreparable damage to the aggrieved party.

III) As a result of breach of a condition the aggrieved party will get the right to rescind the contract and recover the damages for breach of condition.

According to Section 12 (3) , a warranty has a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract repudiated.

Like condition, the warranty is to fulfill three essentials, such as-

I) Warranty is collateral to the main purpose of the contract.

II) The breach of warranty does not breach the main purpose of the contract and it causes damages to the aggrieved party.

III) The aggrieved party can only claim damages for breach of warranty.

Example: P went to Q ask to show a horse which could run at a speed of 35 m. p. h. Q pointed out at a particular horse and said that it will suit his purpose. P bought and discovered that the horse run at a speed of 20 m. p. h. Now, P may reject the horse as the representation made by Q which is the condition of sale is not fulfilled.

Distinguish between a condition and a warranty:-

i) **Essential of Contract:** Under section 12 (2) of the Sale of Goods Act 1930, a condition is defined as a stipulation which is essential to the main purpose of the contract.
On the other hand, warranty is defined under section 12 (3) as a stipulations that is collateral to the main purpose of the contract.

ii) **Effect on breach:** The breach of condition give rise to a right to treat the contract as repudiated. But the breach of warranty gives rise to the claim for damages but not to a right to reject the goods and treat the contract as repudiated.

iii) **Option of treatment:** In case of condition, a breach of condition can be treated as a breach of warranty as an option on the part of the aggrieved party. But, in case of breach of warranty no such option is essential to the aggrieved party. So the breach of warranty can not be treated as breach of condition.

The distinctions between condition and warranty can be easily understood from the example given below.

Example: P went to Q and asks to show a healthy horse which could run at a speed of 35 m. p. h. Q pointed out at a particular horse and said that it will suit his purpose. P bought and discovered that the horse run at a speed of 20 m. p. h. and weak. Now, P may reject the horse as the representation made by Q, which is the condition of sale is not fulfilled.

LET US KNOW

The Sale of Goods Act, 1930 deals with the law relating to sale of goods in India only. The Sale of Goods Act 1930 is mainly based on the English Sale of Goods Act 1893. Before the Sale of Goods Act 1930, the law relating to sale of goods was covered under the chapter VII of Indian Contract Act, 1872, the provision of which was found to be inadequate. Therefore, a strong need was felt to have an independent Sale of Goods Act and consequently a new Act called Sale of Goods Act, 1930 was passed. The present Act containing 66 sections came into force from 1st July 1930 which extends to whole of India except the State of Jammu and Kashmir.

CHECK YOUR PROGRESS

Q 2: Mention two differences between sale and agreement to sell.

i. .....

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ii. .....

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2.6 PASSING OF PROPERTY IN GOODS

A contract of sale can be performed by the two ways.

1. Property in goods or ownership of goods and
2. Possession of the goods.

A person may have possession of goods but he may not be the owner e.g. a servant, agent etc. On the other hand, a person may be the owner but may not have the possession of goods. In the contract of sale, when the ownership of goods is transferred to the buyer from the sellers, he becomes the owner of the goods.

As per general rule, the transfer of ownership depends on the intention of the parties to the contract. But sometimes the intention of the parties cannot be ascertained from the contract. In that case, the intention of the parties is ascertained on the basis of provisions laid down in sections 18 to 24 of the Sale of Goods Act. These provisions are discussed as under—

1. Incase of the unascertained goods (Section 18 and 23);
2. Incase of specific goods (Section 20 to 22) and
3. Incase of sale on approval (Section 24)

TRANSFER OF OWNERSHIP IN CASE OF UNASCERTAINED GOODS:

a) *Unascertained Goods:* Under Section 18 of the Sale of Goods Act, the unascertained goods are not transferred unless the goods are ascertained. Theses goods are not specifically identified at the time of contract of sale. It is identified and is set apart for the purpose of delivering to the buyer.

b) *The Intention of the parties:* Under Section 19 the transfer of ownership depends upon the intention of both the parties and ownership transfer from the seller to the buyer at the time fixed by the parties.

c) *Unascertained or future goods:* Under Section 23, in sale of unascertained or future goods, goods are passed to the buyer by description. When goods of that description in a deliverable state are unconditionally appropriated to the contract, then the property in goods passes to the buyer. It is to be done by the seller with the assent of the buyer or by the buyer with the assent of the seller.

Example: “A” agrees to sell “B” 200 kg of Rice out of a large quantity of A’s godown, whatever the price that is to be paid on the specific day under the contract. Otherwise the 100 kg of Rice that was separated from the godown of ‘A’ will not pass from A to B.

TRANSFER OF OWNERSHIP IN CASE OF SPECIFIC GOODS:

a) *Specific goods: -* Under Section 20, the goods are in deliverable state and the ownership transferred from the seller to the buyer at the time of making of contract of sale.

b) *When seller has something to do:-* Under Section 21 in case of sale of specific goods, if the goods are not in a deliverable state and the seller has to do something to put the goods in a deliverable state, the ownership does not passes until such thing is done and the buyer has to notice thereof.

c) *When goods are to be measured, tested:* Under Section 22, in case of a contract of sale of specific goods and the goods are in a deliverable state but, the seller has to weight, measure, test or perform some other act or thing with reference to the goods for

ascertaining the price, the ownership does not pass until such act or thing is done and the buyer has noticed thereof.

TRANSFER OF OWNERSHIP IN CASE OF SALE ON APPROVAL:

a) *Goods sent on approval:* - In case of sale on approval or sale on return, the buyer has an option to return the goods to the seller within a reasonable period of time. Thus, the ownership transferred to the buyer when he accepts the goods. If the buyer does not return the goods within the reasonable time, the seller can recover the price of the goods from the buyer.

In case of sale on approval, the ownership to the buyer is transferred in three ways:

- When the goods are accepted by the buyer, or
- When the buyer performs some acts which indicates implied acceptance of the buyer, or
- The buyer fails to return the goods within a reasonable time

Under Section 24, when goods are sold under a contract of sale or return or on approval, the sale is a conditional sale. As a result of significance of the buyer's approval, the goods will pass to the buyer.

b) *Reservation of Right of Disposal:* Under Section 25, reservation of the right of disposal is defined as any action made by the seller, where it is expressed that an intention on his part not to part with control over the goods until certain condition are fulfilled. Then, the property will be passed subject to fulfillment of these conditions.

Example: 'A' supplies 100 bags of Rice to 'B' by a trunk, where no reservation of the right of disposal was there. In this case, the rice will pass to B immediately after goods are handed over to the carrier.

2.7 TRANSFER OF TITLE BY NON-OWNERS

According to the general rule, "the seller cannot transfer to the buyer of goods a better title than he himself has." If the title of the seller is defective, then the buyer's title will also become defective. Under section 27, it is laid down that, "Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner the buyer acquires no better title to the goods than the seller had". The rule is expressed by the maxim "Nemo Det Quod Non Habet", which implies that no one can give what he has not got.

Of course, there are some exceptions to the above rule. So, though a person is not the owner of the goods, he may sell the goods and pass a better title than he himself has. Following are the exceptions to this rule.

1. **Sale by a mercantile agent:** If a mercantile agent is authorized by the owner of the goods sell on his behalf, then such sale shall be valid. In such cases, the buyer can acquire a good title of the goods. This exception will be implemented subject to fulfillment of the following conditions:-
   i. The person must be in possession of goods or documents of title to the goods in his capacity as a mercantile agent and with the consent of his owner.
   ii. The person must sell the goods while acting in the ordinary course of business.
   iii. The buyer must act in good faith without having any notice, at the time of contract that the mercantile agent has no authority to sell the goods.
2. **Transfer of title by Estoppels:** This exception is based on the principle of personal estoppels. Sometime, the real owner may lead the buyers by virtue of his conduct or words or by act to believe that the seller is the owner of the goods or has the authority to sell them. In such case, he may not thereafter deny the seller's authority to sell.
3. **Sale by a joint owner:** If there are several joint owners of goods, one of them if has sole possession of the goods by permission of the co-owners, then the property in goods is transferred to any person who buys them from such joint owner. In order to apply this exception following conditions must be fulfilled.
   i. One of the several owners must be in sole possession of the goods.
   ii. The joint owner must have permission of co-owners.
   iii. The buyer must purchase goods in good faith.
   iv. The buyer should not have notice regarding the matter that the seller has no authority to sell.

4) **Sale by person in possession under voidable contract: -** According to the Section 29 a person in possession of goods under a voidable contract which is not rescinded, can transfer a good title to the buyer. The buyer should purchase the goods in good faith and without notice of the seller's defective title.

5) **Sale by seller in possession after sale: -** Under Section 30 (1) it is laid down that where a person has sold goods but he continues in possession of goods or of the documents of title to the goods, he may sell them to a third person and if such person obtains delivery thereof in good faith and without notice of the previous sale, the person

can get a good title to them. In order to apply this exception, the seller must be in possession after sale of goods and there must be delivery or transfer of the goods or documents of title by the seller.

6) **Sale by buyer in possession after sale:-** Under Section 30 (2), it is laid down that where a buyer having bought or having agreed to buy goods, obtain with the consent of the seller the possession of the goods or documents of title to the goods can and resells the goods to a bonafide transfer. If at the time of this sale, buyer was not in possession, then this exception will not apply.

7) **Sale by an unpaid seller: -** If the unpaid seller has exercised right of lien or stoppage in transit, resells the goods, then the buyer acquires a good title as against the original buyer, even though the resale is not justified in the circumstances.

8) **Exception under other Acts: -** According to some Acts, a person although he is not the owner of the goods may sell the goods and pass a better title than he himself has. As for example-

   i) Under Section 169 of the Contract Act, a finder of the goods has the right to sell.

   ii) Under Section 176 of the Contract Act, a pawnee of goods has the right to sell the goods pawned subject to satisfying some conditions.

   iii) In certain cases, a special right of sale is given to officers of court, liquidators of the companies, receivers of insolvents estate; custom officers for duties remaining unpaid etc.

   iv) A person who takes a negotiable instrument in good faith and for value becomes the true owner even if he takes it from a thief or finder.

9) **Sale in market overt:** According to the English law, there is an exception of the rule that a person cannot make a valid sale of goods, which does not belong to him.

2.8 PERFORMANCE OF CONTRACT OF SALE

Under Section 2 (2) of the Sale of Goods Act, the term 'delivery' is defined as a voluntary transfer of possession from one person to another. According to Sir Frederick Pollock delivery is voluntary dispossession in favour of another. There are three modes of delivery, such as actual, symbolic and constructive delivery. Actual delivery is occurred in case of goods are delivered themselves physically to the buyer. Symbolic delivery is occurred where the goods are not physically delivered but delivered by indicating or giving a symbol, e.g. delivery of documents of title to the goods etc. Constructive delivery is occurred where the third person

acknowledge the holding the goods on behalf of the buyer, e.g. A sold to B 50 bags of tea where P hold begs which is a warehouse and it is ordered by A to P to do so.

Rules regarding delivery:

Various rules regarding and other matters relating to the performance of the contract of sale are provided under different sections, which are as below-

1. **Mode of Delivery:** Under Section 33, 'deliveries of goods' may be done by performance of anything which, the party's agreement shall be treated as delivery or the effect of the putting of goods in the possession of the buyer or of any person authorized to hold them on his behalf. Thus the delivery of goods may be either actual or symbolic or constructive.
2. **Delivery and payment are concurrent condition:** Under Section 32, payment of price and the delivery of the goods is a concurrent conditions unless otherwise agreed. If the buyer is not willing to pay the price, no delivery will be given or no need to pay the price by the buyer unless the seller is ready and willing to give delivery.

   Example: P agrees to supply goods to Q, where Q will have to pay on delivery. So, P, unless Q is ready, need not delivery the goods.
3. **Effect of party delivery:** Under Section 34, a part of delivery of goods sold may be equal to the delivery of the whole, if it is so intended and agreed. But, in case of the fact where the part is intended to serve the whole, then the delivery of that part does not equal to the delivery of the whole.

   Example: X has sold 100 kg of wheat to Y. The wheat are remaining in the godown of X. After selling, Y again sold 20 kg of wheat to Z and as per desire of X; Y sent this 20 kg of wheat to Z. This is a legal effect of delivery of the whole.
4. **Buyer to apply for delivery:** Under Section 35, the seller is not bound to deliver goods, unless agreed otherwise till the buyer applies for delivery.
5. **Place of Delivery:** Under Section 36 (i), at which place the delivery is to be made will be mentioned in the agreement between the parties. Apart from any such contract the goods will be delivered at the place at which they are sold.
6. **Time of Delivery:** Under Section 36 (2) and (4), of the Contract of Sale of Goods Act, where the seller is bound to send the goods to the buyer, but no time for sending them fixed, the seller is bound to send them within a reasonable time and at a reasonable hour.
7. **Manner of Delivery:** Under Section 36(3), at the time of sale, if the goods are in the possession of a third person then there is no delivery by the seller to buyer till such third

person acknowledges to the buyer that he holds the good on himself. The transfer of document of title of goods operates as delivery inspite of possession of goods by third party and this will not apply in such case.

8. **Expenses of delivery:** Under Section 36 (5) the buyer is to bear the expenses of or incidental to receive the delivery. But, any expense of putting the goods into a deliverable state is to bear by seller. If there is any agreement between the parties with respect to the cost of putting the goods in a deliverable state or of expenses incidental to putting into the deliverable state, then this agreement will determine the right of the parties.
9. **Delivery of wrong quantity:** Under Section 37, it is a duty of seller to comply with the order of the buyer regarding kind, quality and quantity of goods. Delivery should be according to the specification of order. In case of defective delivery, the buyer can reject the goods.
10. **Installments of deliveries: -** Under Section 38, the buyer is not bound to receive the goods of delivery by installments unless mentioned in the agreement. The performance of the contract can be split up with mutual consent. Where payment is made in installments in a contract, than failure of such payment of installment, breach the contract.
11. **Delivery of carrier:** Under Section 39, it is provided that if the seller is authorized to send the goods to the buyer, then the seller must take all safety measure to protect the goods. It is the duty of seller to contract with the carrier. In case of sending goods by sea route, the seller must inform the buyer to insure them against sea perils.
12. **Goods delivered at a distance place:** Under Section 40, in case of agreement, where seller agrees to deliver the goods at his own risk the buyer shall bear the loss of deterioration of the goods in transit.
13. **Examining the goods on delivery:** Under Section 41, if the buyer had not examined the goods, the seller will not deliver the goods until the buyer has avail the opportunity of examining the goods. The buyer must give a reasonable opportunity of examining the goods in order to determine whether they are as per contract otherwise the buyer may reject the goods.
14. **Acceptance complete on delivery:** Under Section 42, the buyer has to be deemed to have accepted the goods in case of the buyer intimates to the seller that he accepted that goods or goods was delivered to the buyer and he perform anything pertaining to them. More over, the buyer retains the goods beyond a reasonable time without intimation of rejection to the seller.

15. **Buyer not bound to return rejected goods:** Under Section 43, it is laid down that in case of goods delivered to the buyer and if the buyer refuses to accept the goods, then he may not return the goods to the seller. This intimation to seller is sufficient that he refuses to accept the goods. This rule will be applicable subject to the condition of contract between the parties.
16. **Liability of buyer for neglecting or refusing delivery of goods:** Under Section 44, for any loss occurred due to neglect of buyer or a reasonable charge for the care and custody of the goods, the buyer will be liable, where the seller is willing to deliver the goods and request the buyer to accept his delivery. It is further-provided by Section 44, that the seller can exercise the right mentioned above inspite of the neglect to refusal made by the buyer to receive the delivery and it will amounts to a repudiation of the contract.

LET US KNOW

A contract sale involves reciprocal promises, because, the seller promising to deliver the goods and the buyer to undertake to pay for the goods. The delivery of goods and payment of price are concurrent conditions, on the contrary, there are implied promises on the part of the seller to deliver goods without delay and an undertaking on the part of the buyer to accept the goods and pay the price. So, it is the duty of the seller to deliver the goods to the buyer. Of course, he cannot do so until the buyer applies for delivery.

ACTIVITY 1

1) M is an owner of a car. M has handed over his car to N, a mercantile agent, for sale at not less than Rs. 10,000/-. N sells it to O for Rs. 8,000/- and runs away with the money. M asks N to give him his car. Can M recover the car from O?

2) A is the godown-keeper of a gas company. The manager B of the gas agency issues the delivery orders to A for 100 cylinders in favour of “C”. C goes to A with the delivery order. A agrees to deliver 100 gas cylinders the next day. Can the gas agency stop A from delivering the gas cylinders to C?

CHECK YOUR PROGRESS

Q 3: State true or false for the following statements:

i) The risk of loss also passes with the ownership of the goods from the seller to the buyer. (True / False)

ii) The individuality of the thing to be delivered must be established before property in it can passes from seller to the buyer. (True / False)

iii) Delivery is a bilateral act. (True / False)

iv) Symbolic delivery is made where goods are small and light. (True / False)

Q 4: Fill in the blanks with appropriate words:

I. A contract of sale can be performed by the _____ ways.

II. Under section _____ reservation of the right of disposal is defined as any action made by the seller.

III. There are _____ types of modes of delivery

IV. In case of defective delivery the buyer _____ reject the goods.

2.9 RIGHTS OF UNPAID SELLER

The seller of goods is called unpaid seller, when the whole of the price has not been paid or tendered or where a bill of exchange or other negotiable instrument is received as a conditional payment. After all, the seller remains unpaid till the price or any portion of the price remain the unpaid.

The rights of an unpaid seller can be classified mainly into two categories. Such as-

I. Right of unpaid seller against the goods.

II. Right of unpaid seller against the buyer personally.

I. The right of unpaid seller against the goods: Inspite of passing the property in the goods to the buyer, the unpaid seller has the following rights against the goods.

a) ***Right of Lien:*** Lien implies such type of right, which can retain possession of goods and refuse to deliver them to the buyer till the price is paid. The unpaid seller can exercise his right of lien in three cases as mentioned below-

i) Where the goods are sold without any stipulation as to credit.

ii) Where the goods are sold on credit, but the term of credit has expired.

iii) Where the buyer becomes insolvent, but the time of credit is not expired.

If the buyers become insolvent, the lien exists inspite of goods is sold on credit and period of credit is not yet expired. In case of goods sold on credit, it is presumed that the buyer shall keep his credit good. So, before payment if the buyer becomes insolvent, the seller will be entitled to play this right and hold the goods as security for the price.

b) Right of stoppage of goods in Transit: The right of stoppage implies the right of stopping the goods while they are with a carrier for the purpose of transmission to the buyer. So right of stoppage can be defined as an extension of the right of lien as because it entitles the seller to retain the possession of the goods even the seller has parted with the possession. According to Section 50, unpaid sellers can exercise this right only on the following conditions.

i) When the buyer becomes insolvent.

ii) When the property has passed to the buyer.

iii) When the goods are in the course of transit.

Further, under Section 51, it is laid down that the right of stoppage in transit can be exercised only so long as the goods are in the course of transit. But, the right of stoppage cannot be exercised when the transit comes to an end. As per Section 51 the goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent takes delivery of them. On the other hand, the transit is deemed to be at an end in the following cases-

i) When the buyer takes the delivery after the goods have reached destination.

ii) When the buyer obtains delivery of goods before arrival of the goods at the appointed destination

iii) When the goods have arrived at the destination and the carrier acknowledges to the buyer that he holds the goods on his behalf.

iv) When the goods are arrived at their destination but the buyer requests the carrier, instead of taking delivery request the carrier to carry the goods to some further destination and if the carrier agrees to take them to the new destination.

v) When the carrier wrongly refuses to give delivery of the goods to the buyer.

c) Right of Resale: Besides the above two rights, the unpaid seller can also exercise the right of resale. Under Section 54, some circumstances are provided where the right of resale can be exercised. These are-

i) Goods must be of perishable in nature.

ii) The unpaid seller must exercise the right of lien and stoppage in transit.

iii) The seller must give a notice to the buyer regarding his intention to resale.

The seller can recover the loss of resale if any, from the defaulting buyer. The seller can keep a surplus on the resale with him. The unpaid seller has a right of withholding delivery of goods which are the subject matter of the contract. This right can be exercised by the unpaid seller even if the sale was on credit or in case of specific and unascertained goods.

II. Rights of unpaid seller against the buyer personally: The right of unpaid seller can be discussed as follows-

a) ***Suit for price:*** Under Section 55 in case of property of goods passing to the buyers and wrongfully the buyer neglects or refuses to pay for the goods, then the seller may sue for the price of the goods.

Under Section 55 (2), in case of the price of goods is payable by the buyers to the seller on a certain day irrespective of the delivery of goods and the buyer neglects or refuses to pay such price, then the seller can sue him for the price of goods, even though the ownership of the goods are not transferred to the buyer.

b) ***Suit for damages for non-acceptance:*** In case, where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. Under the provision laid down in the Section 73 of the Indian Contract Act, such damages are measured. These provision are given below-

i) In case of having available market for the goods in question, the difference between the contract price and the market price on the date of breach will be the measure of damages.

ii) In case of having no such availability of market, the measures will be the estimated loss suffered directly or indirectly resulting in the ordinary cause of events from such breach.

2.10 BREACH OF CONTRACT OF SALE

In case of contract of sale, where one party repudiates the contract by refusing to perform his obligation, then he is said to have committed a breach of the contract. As soon as party commits a breach of the contract; the other party becomes entitled to any one of the following remedies.

Remedies to seller:

In case of breach of contract of sale, the following remedies are available to the seller-

i) Suit for price.

ii) Suit for damages for non-acceptance of the goods

iii) Suit for interest.

iv) Suit for damages for repudiation of contract by the buyer before the due date.

Moreover, the seller has two more remedies, if a contract of sale is repudiated by the buyer before the due date of delivery.

i) The seller may treat the contract as subsisting and he can wait till the date of delivery.

ii) The seller may treat the contract as rescinded and he can sue for damages for the breach.

Remedies to buyer:-

In case of breach of the contract of sale by the seller, the buyer has the following remedies-

i) He can sue for damages for non-delivery of the goods.

ii) He can sue for specific performance.

iii) He can sue for breach of warranty.

iv) He can sue for damages for repudiation of contract by the seller before due date.

In case of breach of condition the buyer can reject the goods. Of course he cannot reject the goods under the following cases.-

i) Buyer waives the breach of condition and elects to treat it as a breach of warranty.

ii) If the contract is not reversible and the buyer has accepted the goods or part of the goods.

iii) The contract is for specific goods and the property has passed to the buyer.

On the other hand, in case of breach of warranty, the buyer can do any one of the following—

i) Set up against the seller the breach of warranty in diminution or extinction of the price, or

ii) Sue the seller for damages for breach of warranty (Section59)

In case of breach of warranty damages are measured by estimating loss arising directly and naturally from the breach.

2.11AUCTION SALE

Auction sale is a manner of sales, where property is auctioned usually to the highest bidder by public competition. The auctioneer is an agent of the seller. The auctioneers can auction his own property. In fact there is no need to express that he is selling, so contract is

formed between auctioneer and the buyer in case of sale by auction. Some liabilities are incurred by this contract. Of course, all of these liabilities are not for the seller. Under Section 64 certain rules are provided regarding auction sale. These are mentioned below-

i) Auction sale is – in lots and every lot is prima facie deemed to be the subject of a separate contract of sale.

ii) When the auctioneer announces its completion by the fall of the hammer or by other customary manner, then the sale by auction will be complete.

iii) It may be reserved as a right to bid expressly by or on behalf of the seller.

iv) The seller or other may bid at the auction on behalf of him if the right to bid is so reserved.

v) It will be not lawful, if sale is not notified to be subject to a right to bid on behalf of the seller for two cases. Firstly, for the seller to bid himself or to employ any person, to bid at such sale or secondly, for the auctioneer knowingly to take the bid from the seller or any other such person.

vi) It should be notified as a sale by auction subject to a reserved or upset price. A reserved price can be fixed by the seller to protect him against "knockout" agreement.

vii) In case of making use of pretended bidding to raise the price by the seller, the sale will be avoidable.

If the auctioneer sells goods then he must take impliedly the following obligations.

i) Auctioneer warrants his authority to sell.

ii) Auctioneer warrants that he does not know of any defect in his principal's title.

iii) Auctioneer gives the possession of the goods against the price paid into his hands.

CHECK YOUR PROGRESS

Q 5: Choose the correct option from the following:

I) Which of the following is not a characteristic of an unpaid seller-

a) He must sell goods on cash terms.

b) He must be unpaid either wholly or partly.

c) He must refuse to accept payment when tendered.

d) He must not refuse to accept payment when tendered.

II) Which of the following is the right of unpaid seller against the buyer personally?

a) Suit for price.

b) Right of lien.

c) Right of stoppage.

d) Right of Re-sale.

III) Which of the following are the rights of unpaid seller against the goods?

a) Suit for damages for non-acceptance.

b) Suit for special damages and interest.

c) Right of stoppage in transit.

d) Repudiation of contract.

2.12 LET US SUM UP

In this unit, we have discussed the following -

- According to the section 4 (3) of the Sale of Goods Act, 1930, in a contract of sale, the property in goods is transferred from the seller to the buyer. The essentials of a contract of sale are –
  - i) Movable Goods,
  - ii) Two parties
  - iii) Consideration etc.
- The contract of sale includes both a sale and an agreement to sell. A sale is an executed contract, but an agreement to sell is an executory contract. In sale, ownership of goods is transferred immediately to buyer but in an agreement to sell, the goods will remain with the seller till it becomes sale.
- Under section 12 (1), it is laid down that on the basis of essentiality, some stipulations are called conditions which are essential for main purpose and some are called warranties; which are collateral to the main purpose of the contract.
- A contract of sale can be performed by the two ways. One is transfer of possession where the goods are not transferred and another is transfer of ownership of goods, where ownership is transferred from seller to buyer.
- Under section 27, it is laid down that where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had.
- According to the section 2 (2), delivery is a voluntary transfer of possession from one person to another. There are three modes of delivery, such as actual, symbolic and

constructive delivery.

- Where the whole of the price has not been paid, the seller is called unpaid seller. There are two types of rights of unpaid seller, such as – i) Right of unpaid seller against the goods. ii) Right of unpaid seller against the buyer personally.
- In case of contract of sale, where one party repudiated the contract by refusing to perform his obligation, he is said to have committed a breach of the contract. As a result of breach of contact, both the seller and buyer are entitled to enjoy some remedies.
- Auction sale is a manner of sale, where property is sold by bids usually to the highest bidder by public competition.

2.13 FURTHER READING

1. Shukla M.C. (2010); *A Manual of Merchantile Law*; S Chand & Company, India
2. K.C.Garg,ý V Gupta,ý R.C.Chawla (2010);Company Law and Secretarial Practice; Kalyani Publishers, India
3. D Chandra Bose (2008); *Business Law*; Prentice Hall Learning, India
4. N D Kapoor (2017);Elements of Mercantile Law; Sultan Chand & Sons, India
5. Sharma Mukesh, Sareen V.K., Garg K.C. (2010); Business Regulatory Framework; Kalyani Publishers

2.14 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: i) There must be buyer and seller in a contract of sale.

ii) The contract of sale covers only movable goods.

Ans to Q No 2: i) In case of sale, ownership of goods is transferred from the seller to the buyer immediately and in case of agreement to sell, the ownership of goods is transferred from the seller to the buyer at a future date.

ii) A contract of sale is an executed sale. But an agreement to sale is an executor sale.

Ans to Q No 3: (i) True (ii) True (iii) True (iv) False

Ans to Q No 4: (i) Two (ii) 25 (iii) Three (iv) Can

Ans to Q No 5: (i) c (ii) a (iii) c

2.15 MODEL QUESTIONS

Q 1: What is a contract of sale? What are its essential elements?

Q 2: Distinguishes between sale and agreement to sell?

Q 3: Define a condition and a warranty. Distinguish between the condition and warranty?

Q 4: Explain the various rules regarding passing of property in sale of goods?

Q 5: Nemo Dat Quod Non Habet (No one can give who possesses not). Explain this rule. Also mention the exception to this rule?

Q 6: Define the term Delivery. Discuss the rules relating to delivery in the Sale of Goods Act.

Q 7: Who is an unpaid seller? What are the rights of an unpaid seller?

Q 8: Discuss the different remedies available to seller and buyer in case of breach of a contract of sale.

Q 9: What is an Auction sale? Discuss the rules regarding the Auction sale.

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UNIT 3: FORMATION OF A COMPANY

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Formation of a Company

3.4 Stages of formation of Company

3.5 Documents Required for Incorporation

3.6 Types of Company

3.7 Meaning and Kinds of Company Meetings

3.8 Meaning of Minute

3.9 Recording and Signing of Minutes

3.10 Role of Chairman

3.11 Postal Ballot

3.12 Resolution and its Different Kinds

3.13 Let Us Sum Up

3.14 Further Reading

3.15 Answers To Check Your Progress

3.16 Model Questions

3.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- define and explain the formation of a company
- describe the stages of formation of company
- discuss the documents required for incorporation of a company
- describe the certificate of incorporation and commencement of business
- discuss the meaning of a company meeting and its different kinds
- define the meaning of a Minute
- elaborate the recording and signing of minutes
- explain the role of the Chairman and know about Postal Ballot
- describe the resolution and its different kinds.

3.2 INTRODUCTION

In this unit, we are going to discuss about the formation of a company and company meetings. Here, you will able to know details about the documents required for incorporation of the formation of a company. This unit also encompasses the stages of formation of company.The unit discusses the certificate of incorporation and the certificate of commencement of business. Thus, you will able to understand through this unit, the basic concept of company, the essential document for formation of a company, stages, documents required for incorporation, certificate of incorporation and certificate of commencement of business.

And at the end of this unit you will be able to know about company meetings and recording of minutes and prospectus.

3.3 FORMATION OF A COMPANY

Before formation of a company, there must be an idea originated in the mind of a person or persons to form a company and do the necessary steps to convert it into reality. Such persons are called as 'Promoter'.

The term 'promoter' is not define anywhere in the Companies Act. According to Palmer, "A person who originate a scheme for the formation of the company, has the Memorandum and Article prepared, executed and registered, and finds the first directors , settles the terms of preliminary contracts and prospectus (if any) , and make arrangements for advertising and circulating the prospectus and placing the capital, is a promoter."

An idea has to come to start a business and it should bring into existence. The promoter is a person who originates the idea to start a business and plan to bring it into reality. He has very wide powers relating to the formation of the company. He is neither a trustee nor an agent of the proposed company. The promoter stands in a fiduciary relationship towards the company.

Lord Justice Lindley, defines the company as,

"A company is voluntary association or an organization of many persons who contribute money or monies worth to a common stock and employee it in some trade or business and who share the profit or loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons, who contribute it or to whom it belongs, are members of the company. The proportion of capital to which each member is entitled, is his share. The shares are of fixed value and the whole capital of the company is

divided into equal number of shares. The shares are generally transferable although under certain special circumstances, the right to transfer may be restricted."

3.4 STAGES OF FORMATION OF COMPANY

A company is nothing but an association of persons incorporated under Companies Act, having legal separate existence from its members. A company is formed under three stages, as –

1. Promotion of a company
2. Registration, incorporation and Commencement of a company and
3. Raising of capital

1. Promotion of a company: An idea has to come in the mind of certain persons to form a company. These persons are called promoter. He takes all necessary steps to form the company. The promoter may be an individual, association of persons, partners etc who originate the scheme for formation of the company; get together the subscribers to the memorandum, gets the Memorandum and Article, prepared, executed and registered, finds the bankers, brokers and legal advisers, find the directors, settle the terms of preliminary contracts with vendors and agreement with underwriters and makes arrangement for preparation, advertisement and circulation of the prospectus and placement of the capital.

2. Registration, incorporation and commencement of a company: The following aspects have to decide before a company incorporate and commence its business:

a. **Types of company:** Any two or more persons required to start a private company and 7 members for a public company, associated for a lawful purpose, by subscribing their names to the memorandum of association in respect of registration, form an incorporated company, with or without limited liability.

b. **Application for availability of name of company:** The promoters choose at least five names apart from the main name of the company and make an application along with prescribed fee(presently Rs. 500) to the Registrar of Companies to ascertain the availability of the name. According to Section 20 of the Act, a company cannot be registered with the name which is undesirable in the opinion of Central Government or which is identical with or too nearly resembles the name of an existing company. The name of the company must end with the word "Limited" in the case of a public company and the words "Private Limited" in the case of a private company. The Registrar of Companies shall have to furnish the information

regarding the availability of name within seven days. In case the name is undesirable, the registrar may reject the same or ask for resubmission of the application with new name or calls for further information, ordinarily within three days of receipt of the application.

c. **Preparation of Memorandum and Article of Association:** Memorandum of Association is the constitution of the company which specifies the area of the company, within which it can act. It contains clauses like, name clause, object clause, capital clause, liability clause, subscription clause and registered office clause. Article of Association is another important document which contains rules and regulations relating to the internal management of a company.

d. **Vetting of Memorandum and Articles, Printing, Stamping and Singing of the same:** The draft of the Memorandum and Articles of Association should be prepared and typed. But before printing the Memorandum and Articles Association it is desirable to get the draft vetted by the Registrar. This helps in avoiding mistakes and unnecessary delay in registration of the Company. It should be signed separately by the subscribers. It should be stamped.

e. **Power of attorney:** With a view to fulfill the various formalities that are required for incorporation of a company, the promoters may appoint an attorney empowering him to carry out the instruction/ requirement stipulated by the Registrar. This requires execution of a Power of Attorney on a non-judicial stamp paper of a value prescribed in the respective State Stamp Laws.

f. **Additional Documents Required:**

   A. Consent of director: In case of public limited company having share capital, the director has to give written consent to act as director.

   B. Notice of the Registered office: The notice of location of the registered office in the memorandum and article of association is necessary.

   C. Particulars of directors: The persons who are to act as first directors may file their particulars to the Registrar at the time of registration.

g. **Statutory Declaration in e-Form No. 1:**

Statutory Declaration for completing of all legal formalities should be signed by an advocate of High Court or Supreme Court or attorney or Chartered Accountant or by a person named in the Article as a director, manager, or secretary of a company and filed with the Registrar. The Registrar may accept such a declaration as

sufficient evidence of such compliance.

h. **Payment of Registration Fees:** The fee prescribed for registration of company is required to be paid to the Registrar.

i. **Certificate of incorporation:** If all the documents mentioned above are complete and the Registrar of the Companies is satisfied that all requirements are complied with, the Registrar shall certify under his hand that the company is incorporated. The certificate of incorporation given by the Registrar and it is the conclusive evidence that all requirements of the Companies Act, 1956, have been complied with in respect of registration.

But, a public company cannot start its business until it gets certificate of commencement of business from Registrar of Companies. To get the certificate of commencement of business a public company has to pass through capital subscription state i.e. raise sufficient capital to commence its business. There are two ways of raising capitals i.e. from private source and from the public.

CHECK YOUR PROGRESS

Q 1: Mention any three aspects that have to decide before a company incorporate and commence its business?

i) .....

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ii) .....

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iii) .....

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3. **Raising of capital:** If a company raises capital from private source i.e. from director's members and their relations, it is required to file a statement in lieu of prospectus with the Registrar at least three days before the allotment of shares. Where the company wishes to invite public in subscription for its shares, it will have to issue a prospectus after filing a copy of it with the Registrar. On receiving the minimum subscription, the

company can allot shares and thus raise the required capital.

3.5 DOCUMENTS REQUIRED FOR INCORPORATION

There are certain necessary documents that have to file with the Registrar of companies for its incorporation:

1. **The Memorandum of Association:** It is a document that describes the object of the company for which it is form and it should be signed by all the persons necessary to form the company.
2. **The Article of Association:** It is the document which contains the rules and regulation of the company and should be signed by the all the persons necessary to form the company.
3. The agreement which the company propose to enter with any individual for appointment as company's managing director, or whole-time directors or manager: If the company is entered into an agreement with any individual for appointment as company's managing director, or whole-time directors or manager than copy of the same should be filed with the Registrar of the company.
4. The declaration that all the requirements of the Companies Act relating to the registration of the company have been compiled with:

   Such declaration must be signed by any one of the following person—

   a. A Chartered Accountant in the whole-time practice in India;
   b. A company secretary in whole-time practice in India;
   c. An advocate of the Supreme Court or High Court;
   d. An attorney or pleader entitled to appear before High Court;
   e. A person named in the article of association as a director, manager, or secretary of the company.
5. A written consent of such directors to act as director of the company:

   It should be signed by the director himself or by his agent authorized in writing.
6. A written undertaking by such directors to take and pay for their qualification shares if any:

   It should be signed by all directors.
7. A list of persons who have agreed to become the first directors of the company:

CHECK YOUR PROGRESS

Q 2: Mention any three necessary documents that have to file with the Registrar of companies for its incorporation?

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ii) .....

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iii) .....

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LET US KNOW

STATEMENT IN LIEU OF PROSPECTUS:

The statement in lieu prospectus contains similar particular as are required for a prospectus and should fulfil similar conditions as regards statements. It must be in the form set out in Schedule III. When a private company converts itself into a public company it must either issue a prospectus or file a statement in lieu of prospectus.

A certificate of incorporation is issued by the Registrar of company which certifies that the company is incorporated. A private company can start its business from the date of the certificate of incorporation. Thus, the legal effect of certificate of incorporation are stated as,

1. The company comes into existence having separate legal existence.
2. The company can start its business from the date of the certificate of incorporation.
3. The 'memorandum of association' and 'articles of association' binds upon the company as well as its members and it acquire perpetual succession.
4. The liabilities of the members become limited of company limited by shares.

Conclusiveness of the Certificate of Incorporation:

The certificate of Incorporation is conclusive evidence that all the requirements of the

Companies Act, 1956, complied with and it is conclusive that—

a. All the requirements of the Act have been complied with in respect of the registration.

b. The company is duly registered and,

c. That the company came into existence on the date mentioned in the certificate.

Thus, once a private company gets registered, it can begin its business.

3.6 TYPES OF COMPANY

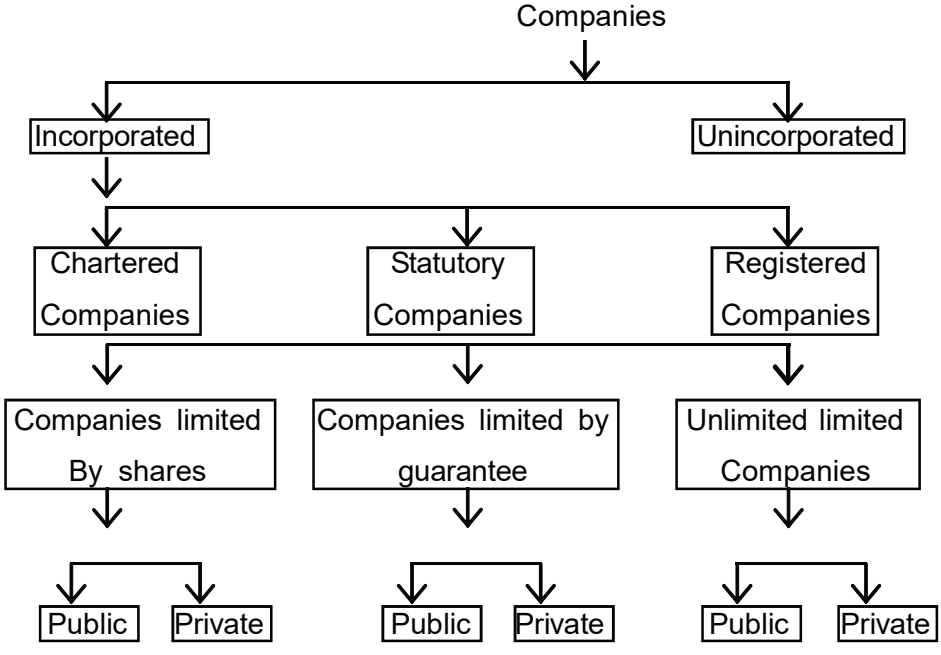
The word 'corporation' is derived from the Latin word 'corpus' which means anybody or any institution enjoying perpetual succession having own separate legal existence. It is divided into two parts:

a. A corporation sole;

b. Corporation aggregate.

A corporation sole means a single person constituted as a corporation in respect of some office or function, e.g., Governor, President etc; and corporation aggregate means a collection of individuals united into body having perpetual succession and an independent, e.g. trading and non-trading corporation.

The Companies Act, 1956, provides for a variety of companies which can be promoted and registered under the Act. The companies can be classified into the following categories, like:



A. Incorporated:

1. *Chartered Companies:* Chartered Companies formed under a special Royal Charter issued by the King or Queen. The Charter defined their powers and areas of operation.
2. *Statutory Companies:* Statutory Companies are formed under special Act like, RBI Act, LIC Act etc.
3. *Registered Companies:* Registered Companies are companies which are formed under the Companies Act, 1956. It may be-
   a. Companies limited by shares: A company that has the liability of its members limited by the memorandum to the amount, if, any unpaid on the shares respectively held by them is termed as a company limited by shares.
   b. Companies limited by guarantee: A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound up.
   c. Unlimited liability companies: In this type of company, the members are liable for the company's debts and their liability is unlimited.

A. Private Company: By virtue of section 3 (1)(iii), a private company means a company , which has a minimum paid-up capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and by its articles:
   (i) Restrict the right to transfer its shares, if any;
   (ii) Limits the number of its members to fifty not including –
      a. persons who, are in the employment of the company; and
      b. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continue to be the members after the employment ceased;
   (iii) Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; and
   (iv) Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

Here it must be borne in mind that invitation is not prohibited but invitation to the public other than the members is prohibited. A private company can issue any number of debentures to its members but, not to the public in general. Similarly, the number of members is limited to fifty and if two or more person holds one or more shares in a company jointly, it is treated as single member.

B. Public Company: By virtue of section 3 (1) (iv), a public company means a company which-

(i) is not a private company,

(ii) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital as may be prescribed;

(iii) is a private company which is a subsidiary of a company which is not a private company.

There should be 7 members to start a public company, which is registered under the Act. In case of public company, invitation to subscribe shares and debentures is not prohibited. It may be listed its shares and debentures to the stock exchange.

Every public company existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital of less than five lakh rupees, was required to, within a period of two years from such commencement; enhance its paid-up capital to five lakh rupees. Where a public company failed to do so, such company was deemed to be a defunct company within the meaning of Section 560.

3.7 MEANING AND KINDS OF COMPANY MEETINGS

Company has a separate identity from its members. A company being an artificial person can not act on its own .It is however, constituted by the shareholders and express its decisions in the form of resolution in the meeting. Thus, a meeting has been defined as, “coming together of two or more persons face to face so as to be in each others’ presence or company”.

A meeting is a gathering or assembling of a numbers of persons for transacting any lawful business. It should be conducted under prescribed rules and regulation of the Companies Act, 1956. The shareholders and directors can take their decisions by calling the meeting.

The meeting of a company may be classified, as-

1. Meeting of the members (shareholders):
   (i) Statutory Meeting
   (ii) Annual General Meeting
   (iii) Extraordinary General Meeting
   (iv) Class Meeting
2. Meetings of the debentureholders.
3. Meetings of the creditors.
4. Meetings of the Board of Directors.

1. Meeting of the members (shareholders):

(i) Statutory Meeting, (Section 165):

According to section 165, of Companies Act, 1956, every company limited by shares or guarantee and having share capital, shall, within a period of not less than one month, but not more than six months from the date which the company is entitled to business, has to hold a general meeting of the members of the company. The meeting shall be called 'statutory meeting'.

The statutory meeting is held only once in the life time of the company. The Board of Directors are required to prepare a report, called ' statutory report'. The statutory report should be sent to each member at least 21 days before the day on which the meeting is to be held. A notice is also sent for the meeting to the members.

There are certain legal provisions relating to the statutory meeting, like—

1. The Board of Director has to prepare the 'Statutory Report' at least 21 days before the day the meeting is to be held.
2. The statutory meeting should be held within a period of not less than one month, but not more than six months from the date on which the company is entitled to business.
3. Statutory Report should be sent to the members of the company containing the particulars like total number of shares allotted and the total amount received from the same, details of company's preliminary expenditures, particulars of company directors, managers, auditors ete.
4. The Statutory Report has to be certified by two directors. If the company has a managing director, then he has to certify the statutory report.

(ii) Annual General Meeting, Section166 (1):

As the term denotes, annual general meeting is the meeting under section 166(1) which has to be held annually. It is the meeting of the members through which they get the opportunity to express their views on the management of the company. Through this meeting, the shareholders can exercise control over the affairs of the company. The 'Annual General Meeting' is sometimes called '"Ordinary General Meeting" as it usually deals with the so-called 'Ordinary Business'. The main purpose to hold this meeting are, like;

a. To submit the annual account, balance sheet, director's report and auditor's report.
b. To declare the dividend.
c. Special business- any other business to be transacted will be deemed special business likes:

i. To increase share capital

ii. To alter Article of Association

d. To appoint auditors and fix their remuneration.

e. To elect directors are that liable to retire by rotation.

Every company is required to hold this meeting. But, there are certain legal provisions which have to be followed, relating to the annual general meeting as contained in sections 166 to 168. There are:

a. The annual general meeting must be held once in each year in addition to other meeting.

b. The first annual general meeting must be held within 18 months of the incorporation of the company. The Registrar of Companies may extend this time period up to 3 months for special reasons.

c. The members of the company have to get at least 21 days before the meeting is held.

d. The meeting must be held during the business hours and on a day which should not be a public holiday.

e. The meeting must be held either at the registered office or at some place within the city, town or village.

As mentioned earlier, every company is required to hold this meeting according to the provision of the Companies Act. If any company fails to hold the annual general meeting the consequences are as follows:

A) As mentioned above, the annual general meeting provides the opportunity to the members to express views on the management of the company. Any member can apply to the Central Government for the failure of the company to call the meeting. The Central Government may give direction to the company for calling the meeting.

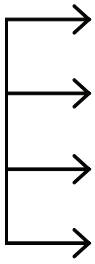
B) The company as well as every officer will become liable if they fail to held the meeting and shall be punishable with fine upto Rs. 50,000, and if the default continues , with a further fine of Rs. 2,500 for every day after the first day of default during which the default continues.

For example, 'ABC Private Ltd' was incorporated in February 2006. The first annual general meeting of the company was held in March 2007 and the next in July 2008.In this case, the company 'ABC Private Ltd' is not guilty of not holding the annual general meeting for the year 2006 or 2007. Because, the first annual general meeting was held within 18 months of incorporation of the company.

(iii) Extraordinary General Meeting:

A General meeting other than the statutory meeting and the annual general meeting is

called 'Extraordinary General Meeting' (Clause 47 of Table A, Schedule I).Due to some urgent or special business purpose, the extraordinary general meeting is held between two consecutive annual general meetings. Here, 'special business' means, all the business transacted at any meeting except in the annual general meeting. But, every 'Extraordinary General Meeting' has to be informed to the members through a notice accompanied by an 'Explanatory Statement', which explains the objective of the meeting. The 'Extraordinary General Meeting' can be convened by:



- the Board of Directors of its own accord.
- the directors on requisition.
- the requisitionists themselves.
- the Tribunal.

1. Extraordinary general meeting convened by Board of Directors:

   The Board of Directors under clause 48, table A, can call the extraordinary general meeting on its own whenever they like to call the meeting. However, they have to pass a resolution for convening such a meeting.

2. The directors on requisition:

   Under section 169, the extraordinary general meeting becomes necessary on the requisition of the members and the Directors are also become bound to call such a meeting.

3. Extraordinary general meeting convened by requisitionists:

   Some times, the Board of Directors fails to call the extraordinary general meeting though the members deposit a valid requisition. If the Board of Directors fails to call the extraordinary general meeting within 21 days from the deposit of valid requisition, a meeting may be called on a day not later than 45 days from the date of the deposit of the requisition, the meeting may be called by;

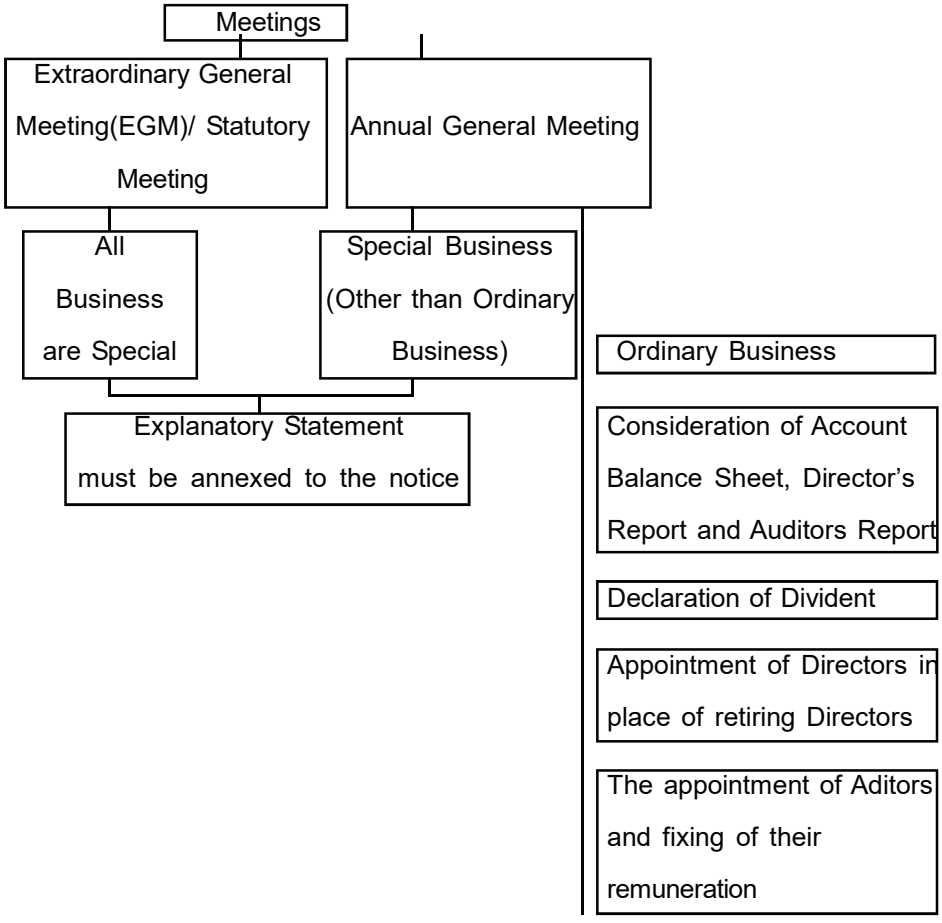
   a. the requisitionists themselves;
   b. the company having a share capital, by such of them as represent either a majority in value of the paid-up share capital held by all of them or not less than one tenth paid-up share capital of the company, whichever is less; or
   c. a company not having share capital , by such of the requisitionists as represent not less than one tenth of the voting power of the members of the company.

Under section 169(7), the meeting must be held within 3 months of the deposit of valid requisition.

4. Extraordinary general meeting convened by the Tribunal:

The tribunal under section 186 can call a meeting of the company. The tribunal may call the meeting either on its own motion or, on an application of any director, or, on an application of any member of the company entitled to vote at the meeting.

All Business at EGM are special business and Explanatory Statement must be annexed to the Notice:



(V) Class Meeting, Sections 106 and 107:

Class meeting are basically held for taking consent of a particular class of shareholders. Through this meeting, the rights and privileges of the shareholders can be altered, or conversion of one class to another can be done. If the article permits, the right of the different classes of the shareholders can be altered from the class of holder of that share, only when a resolution is passed in a separate meeting.

2. Meetings of the debentureholders:

Meeting of the debentureholders are held according to the debenture trust deed to protect the interest of the debentureholders. Such type of meeting is held at the time of reconstruction, amalgamation, or winding up. The essential rules and regulations of valid meeting are contained in the debenture trust deed, like—

a. Proper convening authority:

The meeting should be called by the proper authority. The proper authority in a company is the Board of Directors. Thus, if the Board of Directors makes default in calling the meeting, then the meeting can be called by the requisitionists or Company Law Board.

b. Notice:

Previous notice should be given to every member about the holding of the meeting.

c. Proxy:

Proxy is nothing but, an agent of the members authorized to give vote. Thus, proxy should be mentioned in the debenture trust deed.

d. Voting by Poll:

Voting by showing hand is a general method in ascertaining the wishes of the members. But, sometimes a poll may be demanded by the chairman or by the members.

e. Quorum:

According to the rule of the Companies Act, a minimum number of members should be present in the meeting. This is called the quorum for the meeting. For 'General Meeting 'of a company, the quorum is laid down in the article of association of the company. But for Board Meeting, it is 1/3rd of the total number of the members or two directors, which ever is higher.

f. Chairman of the Meeting:

There should be chairmen in the meeting. But, if no chairman is elected beforehand or the elected chairman can not come within 15 minutes of the fixed time, then any one director or a member can be elected as the chairman.

3. Meetings of the Creditors:

Sometimes it becomes necessary to make certain arrangement with the creditors by the company. Usually, this type of meeting is held for such purposes only.

4. Meetings of the Board of Directors:

As most of the power of the company is exercised by the directors of the company, it become necessary for then to interact frequently among them to review the management of company's affairs. Notice has to sent to every director about the meeting previously. The

notice has to clearly mention the time, date and place of the meeting. The meeting of the Board of Directors of the company should be held—

(i) at least once in every three months, and

(ii) at least four such meetings shall be held in every year.

CHECK YOUR PROGRESS

Q 3: What do you mean by "Extraordinary General Meeting"?

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3.8 MEANING OF MINUTE

A minute is nothing but a, written record of the proceedings of a meeting. Many important decisions are taken in the company general meeting and the Board meeting. Many new policies as well as existing policies are discussed in the meetings. It is necessary to record every decision taken in the meetings and a company has to keep a fair record of all the transactions and the resolutions arrived in a meeting in the form of 'minutes'. For this purpose, a book is maintained in every company and all the proceedings of each meeting should be recorded within 30 days.

Advantages of minute:

1. It is an official record of every meeting.
2. As it keeps the record of all the decisions taken in the previous meeting, it becomes an evidence of what new or prior decisions have been adopted or changed.
3. It helps the member who was absent in the previous meeting, in knowing the proceedings of that meeting and also enables him to review and understand the necessity of the meeting.
4. If the minutes are signed by the chairmen, it becomes a prima facie evidence of the proceedings of the meetings and the decisions recorded there are deemed valid.

MINUTES TO BE EVIDENCE

Minutes are constituted as the official records of all decisions, transactions, resolution made in a meeting. Care is always taken not to include any defamatory and detrimental

statements in the minute. The minute books of the general meeting are signed by the chairman and on his death or absence by, any director authorized by the Board. On the other hand, in case of the Board meeting or meeting of the committee of the Board, the Chairman of the said meeting or the Chairman of the next succeeding meeting has to sign it. Thus, each proceeding of the minute of all meetings is recorded. Under section 194, all the records of the minutes of the different meetings of the company may act as evidence. 6.5

CHECK YOUR PROGRESS

Q 4: Mention three advantages of a minute?

a. .....

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b. .....

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c. .....

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3.9 RECORDING AND SIGNING OF MINUTES

Every company is required to keep minutes of all meetings, such as—

a. All General Meetings;

b. Meeting of the Board of Directors;

c. Meeting of the Board of Directors.

But, there are certain legal obligations in maintaining the records in the form of minute:

1. All proceedings of each meeting should be recorded within 30 days from the conclusion of the meeting. [Section 193 (1)]
2. The minutes of each meeting must contains fair and correct records. [Section 193 (2)]
3. All the appointments and decisions made in the meeting must be included in the minutes.

[Section 193 (3)]

4. In case of the Board Meeting and Committee of Board Meeting, the minute must record, [Section 193 (4)]
   i) The name of the each director present in the meeting.
   ii) If any resolution is passed in the meeting, the names of the directors who dissent or do not concur with the resolution of the meeting must be recorded.
5. The chairman of the meeting has the right to exclude any matter of the meeting, if he thinks it necessary.
6. The minute books are maintained at the registered office of the company.
7. In case of a general meeting of the company, minute books should be signed by the Chairman and on his death or in his inability to be present in the meeting any director can be sign the minute as permitted by the Board of Directors.
8. The pages of the minute books must be consecutively numbered.
9. If the minute is maintained properly, it shall be presumed that the meeting was duly held.

Every recording of the meeting in the minute should be signed and the last page should be dated and signed properly:

a. In case of the minutes of the Board meeting or meeting of the committee of the Board, thereof, these are to be signed by the chairman of the said meeting or the chairman of the next succeeding meeting.
b. In case of the minutes of a general meeting, minutes are to be signed by the Chairman of the same meeting or on his death or inability, by any director duly authorized by the Board.

3.10 ROLE OF CHAIRMAN

The Chairman is the person who has been elected to conduct the proceeding of the meeting. If the Article of association does not permit to elect the Chairman, than he is elected under Section 175. In this regards, the Section 175 lays down,

(i) Unless the article of a company otherwise provides, the member personally present at the meeting shall elect one of them to be the Chairman.
(ii) If a poll is demanded on the election of the chairman, it shall be taken forthwith. The Chairman elected on a show of hands shall exercise all the power of the chairman.
(iii) If some other person is elected Chairman as a result of the poll, he shall be the Chairman for the rest of the meeting.

The Chairman is responsible for maintaining the proper rules and regulations and the decorum of the meeting. The chairman has to play a vital role in a company, like—

a. The chairman has to see that the meeting is properly convened and followed all the rules and regulations are followed in the meeting.

b. Sometimes the members raise their points in the meeting. The chairman has to interpret the rules regarding their points and the decision that is given by the chairman will be binding on the members.

c. He is responsible to observe whether all statutory rules, standing orders and regulations are followed in conducting the proceeding of the meeting.

d. He is also responsible for to giving opportunity to those who wish to speak and to express their views in the meeting.

e. The chairman has the duty on ruling over the points of order and all other emerging questions.

f. The minutes of the meeting should also be signed by the chairman. He has to check the records of the previous meeting whether they are properly entered, confirmed and duly signed.

g. The Chairman is also plays an important role in taking care that the sense of the meeting is properly ascertained with regard to any question before it. But, he can not adjourn the meeting or dispose it at his own choice.

h. The chairman has the right to cast vote as a member. But, he can cast vote in second time also if the rules expressly allow him to do.

i. He is to judiciously exercise his power of adjournment.

3.11 POSTAL BALLOT

The members of a company may be widely dispersed and it may be impossible for all to attend the meetings of the company. But, the company general meeting are required to be held during working hours. Thus, a listed company can pass resolution through postal ballot, where the members can give their consent easily. Under section 192 A (1), the central Government may also empowers certain companies for passing resolution through postal ballot.

In case of listed companies, notice has to sent to all the members along with draft resolution explaining the reasons of the meeting and requesting them to give their assent within 30 days from the date of posting the notice. But, this notice has to be sent only Under

Registered Post Acknowledgement Due or Under Certificate of Posting. In addition to that, an advertisement should be given in a leading English Newspaper and in any one vernacular Newspaper in the locality of the registered office. Thus, if the majority of the members have given their assent for passing the resolution, than it shall be deemed that the resolution has been duly passed at the general meeting.

3.12 RESOLUTION AND ITS DIFFERENT KINDS

Decisions are taken by the company by passing resolution. It is passed and prescribed by the majority of the members present at the meeting. It can be categorized into three types,

a. Ordinary Resolution

b. Special Resolution and

c. Resolution Requiring Special Notice

a. "Ordinary Resolution" means a resolution passed by the members of a company in general meeting by a simple majority of the votes cast in person or by proxy where proxies are allowed.

b. "Special Resolution" means a resolution passed by a majority of not less than 3/4 of the votes cast by those members of a company who, being entitled to do so, vote in person or by proxy where proxies are allowed at a general meeting of the company and, not being less than 21 days' notice of the meeting specifying the intention to propose the resolution as a special resolution.

c. “Resolution Requiring Special Notice” means under section 190 of the Companies Act, 1956, where by any provision in this Act or in the article, special notice is required of any resolution, notice of the intention to move the resolution shall be given to the company not less than fourteen days before the meeting at which it is moved or deemed to be served and day of the meeting.

Section 192 of the Companies Act states that a copy of each of the following resolutions or agreement must within 30 days after the passing be printed or type written submitted to the Registrar who shall record the same.

LET US KNOW

SPECIMEN OF NOTICE OF ANNUAL GENERAL MEETING:

PQR Ltd.

(Regd. Office)

Notice is hereby given that the 10th Annual General Meeting of the Company will be held at its Registered office at ……. At 2.00 P.M on …… the day of ……..2008 to transact the following business.

ORDINARY BUSINESS

1. To receive and adopt the Balance Sheet as at …….. and the Profit and Loss Account for the year ended ……. And the Directors' and the Auditor's Report thereon.
2. To declare dividend.
3. To appoint director in place of Shri P, who retire by rotation and being eligible offers himself for re-appointment

SPECIAL BUSINESS

4. To consider and, if thought fit, to pass with or without modification, the following resolution as a SPECIAL RESOLUTION:
   Resoled that clause 5 of the Memorandum of Association of the Company be and is hereby substituted by the following clause 5:
5. "The Authorised Share Capital of the Company is Rs. 90, 00,000 (Rupees ninety lakhs) divided into 30,000 (thirty thousand) Preference shares of Rs 100(Rupees one hundred) each and 6, 00,000 (six lakhs) Equity Shares of Rs. 10 (Rupees ten each)."

By order of the Board of Directors
for PQR Ltd.
Sd/-
COMPANY SECRETARY

Dated:
Place:

LET US KNOW

SPECIMEN MINUTES OF

ANNUAL GENERAL MEETING OF MEMBERS

PQR Ltd.

Minutes of the 10th Annual General Meeting of the Company held at its Registered Office on …, the date…….. at…..

Present: Mr. …… Chairman

Mr. …… Managing Director

Mr. …… Director

Mr. …… Director

Mr. …… Director

Mr. …… Director, and

……..(Number) members present in person, and

…… (Number) members represented by Proxies)

Also Present: Mr. …… Company Secretary

Mr …….. General Manager (Finance)

Mr……Auditor of the Company

1. CHAIRMAN

Pursuant to Article …… of the Article of Association, the Chairman of the Board of Directors being present took the chair.

2. QUORUM

After satisfying himself that there was adequate quorum, the chairman declared the meeting to be duly constituted and commenced the proceedings.

3. WELCOME

The Chairman welcomed the members for the company's Annual General Meeting.

4. REGISTER OF DIRECTORS' SHAREHOLDINGS

The Chairman informed the members that the Register of the Directors' Shareholdings maintained under Section 307 of the act was available at the meeting for inspection by any member till the conclusion of the meeting.

5. NOTICE OF THE MEETING

With the consent of the members, the Chairman said that the notice sent to members calling the Annual General Meeting along with the other documents had been taken as read.

6. CHAIRMAN'S SPEECH

The Chairman addressed the members.

7. REAPPOINTMENT OF MR ……..

The following motion was moved, by Mr. …… And seconded by Mr. ……

"That Mr. …….. who retires by rotation and who is eligible for

reappointment , be and is hereby appointed a director of the Company."

This was put to vote and declared by the Chairman to have been carried.

The meeting terminated with a vote of thanks to the Chair,

Dated. …… CHAIRMAN

3.13 LET US SUM UP

In this unit, we have discussed the following:

- Promoters are generally the persons who assume the primary responsibility of matters relating to promotion of a company.
- A company is formed under three stages, as promotion of a company, registration and incorporation of a company and commencement of business.
- The word 'corporation' is derived from the Latin word 'corpus' which means any body or institution enjoying perpetual succession having own separate legal existence.
- A public company can not start its business from the date of the certificate of incorporation. It will have to obtain a further document called as 'certificate to commencement of business'.
- A meeting can be defined as, "coming together of two or more persons face to face so as to be in each others' presence or company".
- The statutory meeting is held only once in the life time of the company.
- Annual general meeting is the meeting under section 166(1) which has to be held annually.
- Due to some urgent or special business purpose, the extraordinary general meeting is held between two consecutive annual general meetings.
- Class meetings are basically held for taking consent of a particular class of shareholders.
- Meetings of the debentureholders are held according to the debenture trust deed to protect the interest of the debentureholders.
- Chairman is the person who has been elected to conduct the proceeding of the meeting.
- Under section 194, all the record of minutes of the different meeting of the company acts as an evidence.

3.14 FURTHER READING

1. Arvind P Datar,S. Balasubramanian, Ramaiya (2013); *Guide to the Companies Act*; Lexis Nexis
2. A Singh (2016);*Company Law*; Eastern Book Co. (EBC)
3. Ghosh, P.K.& V. Balachandran (1989); *Company Law and Practice*, Sultan Chand & Sons, New Delhi
4. A.K. Majumdar & G.K. Kapoor (2012);Company Law and Practice; Taxmann Publications Private Limited

3.15 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Any three aspects that have to decide before a company incorporate and commence its business are—

i) Types of company,

ii) Application for availability of name of company and

iii) Preparation of Memorandum and Article of Association.

Ans to Q No 2: Any three necessary documents that have to file with the Registrar of companies for its incorporation are—

i) The Memorandum of Association

ii) The agreement which the company propose to enter with any individual for appointment as company's managing director, or whole-time directors or manager and

iii) A written consent of such directors to act as director of the company

Ans to Q No 3: All General meetings other than the statutory meeting and the annual general meeting are called 'Extraordinary General Meeting' (Clause 47 of Table A, Schedule I).

Ans to Q No 4: Three advantages of Minute are:

i. It is an official record of every meeting.

ii. As it keeps record of all decision taken in the prior meeting, it is become an evidence of what new or prior decisions have been adopted or changed.

iii. It helps the member who was absent in the prior meeting, to review and understand the necessity of the meeting.

3.16 MODEL QUESTIONS

Q 1: Define the company. What are the stages of formation of a company?

Q 2: Distinguish –

a. Private Company and Public Company

b. Corporation aggregate and corporation sole

Q 3: When a public limited company can commence its business?

Q 4: What are the various documents to be filled with the Registrar for incorporation of a company?

Q 5: "The 'certificate to commence business' is conclusive evidence in regards to start the businesses". Discuss.

Q 6: Define Meeting. What are the different type of meeting?

Q 7: Write short notes on

(a) Statutory Meeting

(b) Extraordinary meeting

(c) Minute

(d) Postal Ballot

(e) Role of chairman

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UNIT 4: THE INDIAN PARTNERSHIP ACT, 1932

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Basic Concept of Partnership

4.4 Advantages and Disadvantages of Partnership firm

4.4 Kinds and Deeds of Partnership

4.6 Kinds, Rights and Duties of Partners

4.7 Minor as a Partner

4.8 Registration and Dissolution of Partnership Firm

4.9 Let Us Sum Up

4.10 Further Reading

4.11 Answers To Check Your Progress

4.12 Model Questions

4.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the concept of Partnership
- explain the advantages and disadvantages of Partnership
- define various kinds and Deeds of Partnership
- describe rights and duties of Partners.
- explain Express and Implied Authority of Partners
- explain the Registration and Dissolution of Partnership firm

4.2 INTRODUCTION

In the previous unit we have discussed about formation of a company. In this unit we are going to discuss partnership of a firm and its various aspects such as concept, kinds, deed, registration and dissolution of partnership firm, right and duties of partners etc. Partnership is the most natural outgrowth of sole proprietorship. The growth and size of business necessitated demand for more funds. Hence, the ownership came to be shared and so also the control. Partnership is an association of person called partners, who pool their financial and managerial

talents to share profits in an agreed ratio.

In this unit we will discuss in more details about partnership business.

4.3 BASIC CONCEPTS OF PARTNERSHIP

Partnership:

Partnership, as a form of business organization, grew essentially out of the limitations of the sole proprietorship form of business organisation. In sole proprietorship, financial resources, managerial skills and risk-taking ability are usually limited and therefore, the need for an association of two or more persons arises. History reveals that the partnership organization was started with the enactment of the Partnership Act in 1907 in England. In India, the Act which governs the formation, management and control of various partnership firms in the country, is the Indian Partnership Act, 1932.

Most of the important provisions relating to partnership contracts are contained in the Indian Partnership Act, 1932. Section 3 of this Act states that the general principles (relating to the law of partnership) of the Indian Contract Act, 1872, shall apply in so far as they do not contradict the Partnership Act, 1932.

Section 4 of the Partnership Act, 1932,defines partnership as 'the relation between persons who have agreed to share the profits of a business carried on by all or by any of them acting for all'. All sections referred to in this unit hereafter belong to the Indian Partnership Act, 1932, unless mentioned otherwise.

Essential elements of Partnership:

There are four elements essential for a partnership to come into existence. These elements, also indicated in the aforesaid definition, are as follows:

(i) There must be atleast two persons. But the number of members should not exceed 10 in case of banking business and 20 in case of other business. If the number of members exceeds this maximum limit then that business cannot be termed as partnership business.

(ii) There must be a relationship arising out of an agreement between two or more persons to do a business. Further, the agreement must be a valid agreement and for a lawful object and persons between the persons competent to contract. This agreement contains details such as:

   a) the amount of capital contributed by each partner;

   b) profit or loss sharing ratio;

c) salary or commission payable to the partner, if any;

d) duration of business, if any ;

e) name and address of the partners and the firm;

f) duties and powers of each partner;

g) nature and place of business; and

h) any other terms and conditions to run the business.

(iii) The agreement must be to share the profits and losses of the business. People coming together for some social or philanthropic or religious purposes do not constitute 'partnership'.

(iv) The business must be carried on by all or any of them acting for all.

Mutual Agency:

Though sharing of profits is essential for a partnership, it is not a conclusive test to determine the validity of a partnership. The real test of partnership is 'mutual agency', i.e. whether a partner can bind the firm by his acts. In nearly all the cases, the question whether a person is or is not a partner depends upon whether the partners have the authority to act on behalf of each other. Partnership is, therefore, described as an extension of the 'Principle of Agency'.

According to Dr. William R. Spriegel, "Partnership has two or more members, each of whom is responsible for obligation of the partnership. Each of the partners may bind the others and the assets of partners may be taken for the debts of the partnership."

4.4 ADVANTAGES AND DISADVANTAGES OF PARTNERSHIP FIRM

- **Advantages of the Partnership Form of Business Organisation:**

a) **Easy to form -** Like sole proprietorship, the partnership business can be formed easily without any legal formalities. It is not necessary to get the firm registered. A simple agreement, either oral or in writing, is sufficient to create a partnership firm.

b) **Availability of large resources -** Since at least two partners join to form a partnership, it may be possible to pool more resources as compared to sole proprietorship. Creditworthiness of the firm is also higher because every partner is personally and jointly liable for the debts of the business.

c) **Better decisions -** Each of the partners is entitled to participate in the management of the business. Since all partners participate in decision-making, there is less scope for

wrong decisions.

d) **Flexibility in operations -** The partnership firm is a flexible organisation, since its partners can decide to change the size or nature of business or area of its operation at any time, provided the consent of the partners exists.

e) **Sharing of risks -** In a partnership firm all the partners share the business risks. The burden of every partner will be much less as compared to the burden of sole trader.

f) **Protection of interest of each partner -** All important matters connected with the business require the consent of all the partners. So the majority of partners cannot disregard the interest of the minority partners. In extreme cases a dissenting partner may withdraw himself from the business and can dissolve it.

g) **Easy Dissolution -** The partnership can be easily dissolved on insolvency, lunacy or death of a partner. If the partnership is at will, then any partner can get the firm dissolved by giving a notice to other partners. No legal formality is required at the time of dissolution.

- **Disadvantages of Partnership form of Business Organisation:**

a) **Unlimited Liability:** All the partners are jointly as well as separately liable for the debt of the firm to an unlimited extent. Unlimited liability discourages many people from becoming a partner in the firm.

b) **Uncertain Life:** The partnership firm has no legal entity separate from its partners. It comes to an end with the death, insolvency, incapacity or the retirement of any partner. Further, any dissenting member can also give notice at any time for dissolution of partnership.

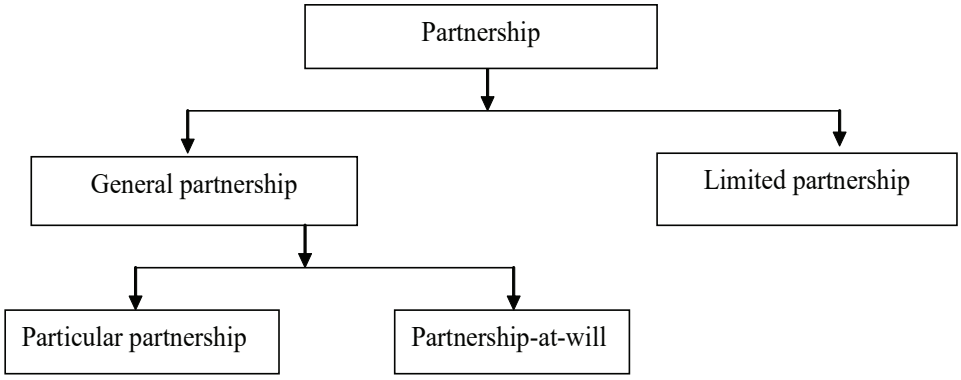
c) **Danger of Implied Agency:** The acts of partners legally bind the business and every other partner in the normal course of business. Thus, the other partners may have to lose his personal assets for the mistake of the other partners.

d) **Limited resources:** The resources of the firm are limited because of the limited number of persons that can join the firm. It may not be possible to start a very large business in partnership form.

e) **No transferability of share:** A partner cannot transfer his interest in the firm to an outsider without the consent of the other partners. This makes investment in a partnership firm non-liquid, fixed and less attractive.

4.5 KINDS AND DEEDS OF PARTNERSHIP

Different kinds of partnership may be explained as follows.



1. General or Unlimited Partnership

It is a kind of partnership in which the liability of all the partners is unlimited i.e., each partner is liable for any debt taken on by the business. If the assets of the firm are not sufficient to satisfy the claims of the creditors of the firm, the private assets of the partners can be attached to meet such claims.

All the partners can take part in the working of the business. In India, only this kind of partnership exists.

General partnership, on the basis of the duration of existence of the firm can be classified into two types:

a. Partnership–at–will [Section 7].

Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, such a partnership is called “partnership at will”. The life of such a partnership continues as long as the partners are willing to continue it as such. Any partner can dissolve a firm by giving a notice in writing to the effect that he wants to withdraw from the firm

b. Particular Partnership [Section 8].

It is a partnership which is formed for a particular period of time or for the completion of a specified venture. Such a firm is dissolved immediately on the completion of the particular period or purpose, as the case may be.

2. Limited Partnership

It is a kind of partnership in which the liability of some of the members is limited only to the extent of their individual share in the capital of the firm. A limited partnership consists of two types of partners: general partner and limited partner. Each of the general partners has unlimited liability for the debts of the partnership, but the limited partner's liability to the debts

of the partnership is limited to the contribution each has made to the partnership.This kind of partnership is very common in Europe and U.S.A.

3. Partnership Deed

A partnership firm can be formed through an agreement among two or more persons. The contract/agreement that forms the basis of the relationship between the partners specifies the terms and conditions that bind the partners into the relationship. This agreement may be written or oral. But it is desirable to have the partnership agreement in writing to avoid any misunderstanding among the partners. The partnership agreement, also known as Partnership Deed or Articles of Partnership, is a document which is signed by all the partners and which contains all the matters determining and governing the mutual rights, duties and liabilities of the partners in the conduct and management of the affairs of the partnership firm.

Some of the contents of the Partnership Deed are outlined below:

a) Name of the firm.
b) Date of agreement and principal place of business.
c) Names and addresses of all the partners.
d) Nature of business proposed to be carried on by the firm.
e) Duration of the partnership, if any.
f) Amount of capital contributed by each partner.
g) Amount of withdrawal of each partner.
h) Ratio of distribution of profits and losses among the partners.
i) Salary/Commission payable to partners.
j) Interest on capital and interest on drawings.
k) Rights, duties and obligations of partners
l) Procedure for admission or retirement of partners.
m) Method of revaluation of assets or liabilities on admission, retirement or death of a partner
n) Manner of dissolving the firm and the mode of settlement of accounts on such dissolution.
o) Maintenance of books of accounts and their audit.
p) Loans and advances to the firm by the partners and the rate of interest payable on them.
q) Mode of valuation of goodwill on admission, retirement or death of a partner.
r) Procedure for settlement of disputes among partners by arbitration.
s) Operation of bank account

The above items are not the final list of clauses. Any clause mutually agreed to by the partners can be included in the agreement. If the deed is silent on any point, then the provisions

of Partnership Act of 1932, will apply. Further, the contents of a partnership deed can be altered only with the consent of all the partners.

CHECK YOUR PROGRESS

Q 1: Fill in the blanks with appropriate words:

i. Section _____ of the Partnership Act 1932 defines the term partnership.

ii. The real test of partnership is _____

iii. The partnership firm has no _____ entity separate from its partners.

iv. The partnership agreement also known as partnership _____ or _____ of partnership.

v. _____ partnership is very common in Europe and U.S.A.

4. 'Partners', 'Firm' and 'Firm name'

'Partnership' is the relationship between persons who have agreed to share the profits of business carried on by all or any to them acting for all.

Persons who have entered into partnership with one another are individually known as 'partners' and collectively 'a firm', and the name under which their business is carried on is called the 'firm name'[Section 4].

4.6 KINDS, RIGHTS AND DUTIES OF PARTNERS

There are different kinds of partners as mentioned below:

a. Active Partner

A partner who takes active part in the management of the partnership firm is known as active or working or managing or general partner. His liability is unlimited.

b. Sleeping Partner or Dormant Partner

The partners who contribute capital to the firm's business, share profits and losses of the firm but do not participate in the day-to-day functioning and management of the business are called sleeping or dormant or financing partners. A sleeping partner can retire from the firm without giving any public notice to this effect.

c. Nominal or Ostensible Partner

These partners only allow the firm to use their name as a partner. They do not invest any capital or share profits and they also do not take part in the conduct of the business of the firm. However, they remain liable to third parties for the acts of the firm.

d. Partner in Profit Only

He is a partner who shares the profits of the firm but is not liable for the losses. Usually he has no voice in the management of the firm. But his liability to third parties is unlimited.

e. Partner by Estoppel

If a person falsely represents himself as a partner of any firm or behaves in a way that somebody can have an impression that such person is a partner and on the basis of this impression transacts with that firm, then that person is held liable to the third party. The person who falsely represents himself as a partner is known as partner by estoppel. He cannot later on deny that he is not a partner.

f. Partner by Holding out

When a person who is not really a partner in a business, is described as a partner to others, then he must at once deny it when he comes to know about it. If he keeps quiet, then he is liable to other persons who do business with that partnership firm, believing that he is also a partner. Such a person is called partner by holding out.

g. Sub-Partner

When a partner enters into an agreement with a third party to share his (partner) interest in the property and profit of the firm, the third party is called a sub-partner. Such a sub-partner has no rights against the firm, nor is he liable for the debts of the firm.

h. Minor as a Partner

Legally, a minor (i.e., a person who has not completed 18 years of age) cannot become a partner because he is incapable of entering into a contract. He may, however, be admitted to the benefits of partnership with the consent of all partners, under certain conditions. A minor can only share the profit of the business. In case of loss, his liability is limited only to the extent of his share in the profits and property of the firm.

6. Rights & duties of a partner

In case the partnership deed does not specify the rights and duties of partners, the provisions of Partnership Act 1932 will apply.

i. Rights of Partners

a) To take part in the conduct and management of the business.

b) To express opinion on any matter related to the firm and to be consulted in the important decisions of the firm.

c) To inspect and take copy of books of account and records of the firm.

d) To be entitled to an equal share in the profits of the firm unless otherwise agreed by the partners.

e) To receive interest on loans and advances at the rate stipulated, and where no rate is agreed upon, at 6% per annum. A partner cannot claim interest on capital unless there is an agreement to pay it.

f) To be indemnified by the firm in respect of expenses incurred and losses sustained by him in the ordinary conduct of the firm's business.

g) To use the assets of the firm for its business.

h) To prevent the introduction of a new partner into the firm without his consent.

i) To continue in the partnership and not be expelled from it.

j) To retire from the firm, by giving notice where the partnership is at will

k) To act in an emergency for protecting the firm against loss.

l) To dissolve the partnership with the consent of all the partners, except when the partnership is at will.

ii. Duties of Partners

a) To act diligently and honestly in the discharge of his duties to the maximum advantage of all partners.

b) To act in a loyal and faithful manner towards the other partners.

c) To render the firm full information of all things affecting the firm, any partner, or his legal representative.

d) To maintain and render true and correct accounts relating to the firm's business.

e) To act within the scope of the authority entrusted to him.

f) To share the losses of the firm equally unless otherwise agreed.

g) To indemnify the firm for any loss caused to it by his wilful negligence in the conduct of the business of the firm.

h) To not make any secret profit by way of commission on purchases or sales effected on behalf of the firm

i) To use the firm's property, including goodwill, only for the firm's business and interest.

j) To not engage himself in a business which is likely to compete with the business of the firm.

k) To not transfer or assign his interest in the firm to any third party without the consent of the other partners.

4.7 MINOR AS A PARTNER

As a minor has no contractual capacity, he cannot become a partner in a partnership firm. At best, he can be admitted into the benefits of the partnership with the consent of the other partners. However, there must be at least two major partners before a minor can be admitted into the benefits of a partnership. The position of a minor partner may be studied under the following two heads:

a. Position before attaining majority

a) He has a right to share the property and profits of the firm as may have been agreed upon.

b) He has a right to have access to and inspect and take a copy of the accounts of the firm.

c) His liability is limited only to the extent of his share in the profits and property of the firm.

b. Position after attaining majority

On attaining majority the minor partner has to decide within six months by giving notice whether he shall continue in the firm or not. If he fails to give such notice, he is deemed to have become a partner. If he decides to or is deemed to be a partner, he becomes personally liable to the firm from the date, on which he was admitted as minor partner. If he decides not to continue as a partner, he is not liable for the debts of the firm after the date of notice.

8. Partner's Express and Implied Authority

The authority of a partner means the capacity of a partner to bind the firm by his act. The authority may be express or implied.

a) Partners' express authority

Where the authority to a partner is expressly conferred by an agreement, it is called express authority. The firm is liable for all the acts of such partners done within such authority.

b) Implied Authority of a Partner

Where there is no partnership agreement or where the agreement is silent, "the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm".[Sec.19(1)]. This authority of a partner to bind the firm by his acts is called 'implied authority'. A partner has implied authority for various acts such as buying, selling and pledging the goods of the firm, receiving payment of the debts due to the firm and issuing receipts for them, borrowing and repaying loans for the firm, engaging servants for the partnership business etc.

However, a partner has no implied authority in certain cases such as: to open a bank account on behalf of the firm in his own name, to withdraw a suit or proceeding filed on behalf of the firm, to acquire immovable property on behalf of the firm, to enter into partnership on

behalf of the firm etc.

4.8 REGISTRATION AND DISSOLUTION OF PARTNERSHIP FIRM

Registration of a partnersheep :

Registration of a partnership firm in India is not compulsory. The Indian Partnership Act, 1932, provides that if the partners so desire, they may register their firms with the Registrar of Firms of the state. A partnership firm can be registered at any time by filing a statement in the prescribed form. The form should be duly signed by all the partners and sent to the Registrar of Firms along with the prescribed fee. The statement should contain the necessary details such as name of the firm, principal place of its business, name and address of each partner, date of admission of each partner, date of commencement of business of the firm and duration of the firm. On receipt of the statement and the fees, the Registrar makes an entry in the Register of Firms and then issues a certificate known as the Certificate of Registration. The firm is thereupon considered to be registered. Any change in the above particulars must be communicated to the Registrar of Firms within a reasonable period of time so that necessary alteration may be made in the Register of Firms.

Registration of partnership in case of a partnership firm is merely a reliable evidence of the existence of the firm. Non-registration in no way invalidates the transactions of the firm. However, an unregistered firm is denied certain rights, some of which are mentioned below:

a) A partner of an unregistered firm cannot file any case against the firm or against any other partner for enforcing his contractual rights under the partnership agreement or under the Act.

b) An unregistered firm cannot sue a partner(s) of the firm.

c) An unregistered firm cannot file a suit against third parties to enforce its claims exceeding rupees one hundred, but a third party can file a suit against the firm to claim their rights.

Dissolution of a partnership firm :

Dissolution of a partnership firm is different from dissolution of a partnership. When one partner dies, retires or becomes insolvent, but the remaining partners continue to carry on the business of the firm, the partnership ends but the firm is not dissolved. Dissolution of the firm takes place when there is dissolution of partnership between all the partners of a firm. Thus, dissolution is of two types:

a) Dissolution of partnership

b) Dissolution of firm

a) Dissolution of partnership: Dissolution of partnership means the termination of the original partnership agreement. The business can continue after such dissolution. Dissolution of partnership takes place (even when there is no dissolution of the firm) under the following circumstances:

(i) Completion of the adventure/expiry of the term of partnership

(ii) Death of a partner

(iii) Insolvency of a partner

(iv) Retirement of a partner

In all the above cases, the remaining partners may continue the firm in pursuance of an agreement to that effect. If they do not continue, then the dissolution of the firm takes place automatically.

b) Dissolution of firm: The dissolution of firm implies:

- The termination of the contractual relationship between all the partners, and
- The end of the partnership business

On dissolution of the firm, the assets of the firm are realised and the creditors are paid off. The business cannot be continued after dissolution of the partnership firm. Dissolution of firm may take place in any of the following circumstances or ways:

1. Dissolution by Agreement (Sec.40)

A partnership is created and dissolved by an agreement. A firm may be dissolved by an agreement either with the consent of all partners or in accordance with the contract among the partners. This is also known as voluntary dissolution.

2. Compulsory dissolution (Sec 41)

A firm is compulsorily dissolved in different ways as:

(i) When all the partners except one become insolvent

(ii) When all the partners become insolvent

(iii) When the business carried on by the firm becomes illegal

(iv) Where the number of partners exceeds twenty in case of ordinary business or ten in case of banking business.

3. Dissolution on the happening of certain contingencies (Sec 42)

Subject to contract between the partners, a firm is dissolved on the happening of the following contingencies:

(i) Death of a partner.

(ii) Expiry of the term of duration of the firm, if the partnership is for a fixed period.

(iii) Completion of the venture for which the firm was constituted.

(iv) Adjudication of a partner as an insolvent.

4. Dissolution by notice of partnership-at-will (Sec 43)

Where the partnership is at will, the firm may be dissolved at any time, by any partner by giving a notice in writing to all the other partners of his intention to dissolve the firm.

5. Dissolution through Court (Sec 44)

Any partner may bring a suit in a court of law to get the partnership dissolved on any of the following grounds:

(i) **Partner's Insanity:** If any partner becomes insane, the court may order dissolution

(ii) **Permanent Incapacity:** When a partner, other than the partner suing, becomes permanently incapable of doing business, the court may order dissolution.

(iii) **Persistent Breach of Agreement:** If a partner willfully and persistently violates the agreement relating to the management of the firm, and the other partner(s) finds it impossible to do business in partnership with him, then the other partner(s) can move to the court for dissolution of the firm.

(iv) **Misconduct of a Partner:** If any partner is guilty of misconduct (misuse of money, moral misconduct etc.) that is likely to adversely affect the business of the firm, then any other partner can file a suit for dissolution of the firm.

(v) **Transfer of Share:** When a partner transfers his share in the business to a third party without the consent of other partners, then the other partners can move the court for dissolution.

(vi) **Continuous Loss:** When the business of the firm cannot be carried on except at a loss, the court order for dissolution.

(vii) **Just and equitable grounds:** When the court feels that it is just and equitable, it may order for dissolution of the firm.

CHECK YOUR PROGRESS

Q 2: Fill in the blanks:

1. Partnership is described as an extension of the _____.
2. A partner who shares the profits of the firm but is not liable for the losses is called a _____

3. The maximum number of members in non-banking firm is _____
4. A _____ partner can retire from the firm without giving any public notice to this effect.
5. A firm is compulsorily dissolved when the business carried on by the firm becomes _____

4.9 LET US SUM UP

- Partnership is 'the relation between persons who have agreed to share the profits pf a business carried on by all or by any of them acting for all'.
- Four elements are essential for a partnership to come into existence: association of two or more persons, contractual relationship, sharing of profits, and existence of business.
- The real test of partnership is 'mutual agency', i.e. whether a partner can bind the firm by his acts.
- The different kinds of partnership include general partnership and limited partnership. General partnership may be a particular partnership or partnership-at-will.
- The Partnership Deed which forms the basis of the relationship between the partners specifies the terms and conditions that bind the partners into the relationship.
- There are different kinds of partners such as: active partner, sleeping partner, nominal partner, partner in profit only, partner by estoppel, partner by holding out etc.
- In case the partnership deed does not specify the rights and duties of partners, the provisions of Partnership Act 1932 will apply.
- Since a minor has no contractual capacity, he cannot become a partner in a partnership firm but he can be admitted into the benefits of the partnership with the consent of the other partners. In case of loss. his liability is limited only to the extent of his share in the profits and property of the firm
- The authority of a partner means the capacity of a partner to bind the firm by his act. The authority may be express or implied. A partner has implied authority for various acts such as buying, selling and pledging the goods of the firm, receiving payment of the debts due to the firm and issuing receipts for them etc.
- Registration of a partnership firm in India is not compulsory. However, an unregistered firm is denied certain rights.

- Dissolution is of two types: a) Dissolution of partnership b) Dissolution of firm
- Dissolution of partnership means the termination of the original partnership agreement and the business can continue after such dissolution. The dissolution of firm implies the termination of the contractual relationship between all the partners, and the end of the partnership business.

4.10 FURTHER READING

1. A.K Sen & J Kumar (2010);*Commercial Law Including Company Law*; The World Press Private Limited
2. Maheshwari S. K. & Maheshwari S. N. (2011);*Business Law*;Himalaya Publishing House, India
3. Sharma M, Sareen V.K., Garg K.C. (2010); *Business Regulatory Framework*; Kalyani Publishers, India

4.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: (i) 4, (ii) Mutual Agency, (iii) Legal, (iv) deed or article,
(v) Limited

Ans to Q No 2: (1) Principle of Agency, (2) Partners in Profit Only
(3) 20 (4) sleeping (5) illegal

4.12 MODEL QUESTIONS

Q 1: What do you mean by partnership? What are the four essential elements of a partnership?

Q 2: Explain the different kinds of partnership.

Q 3: What are various kinds of partners? State the rights and duties of partners.

Q 4: What is a partnership deed? What are the contents of a partnership deed?

Q 5: What are the circumstances for the compulsory dissolution of a firm?

*** ***** ***

UNIT 5: CONSUMER PROTECTION ACT, 1986

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 Definitions under the Act

5.4 Redressal Agencies under the Act

5.5 Powers of Redressal Agencies

5.6 Procedure of Filing a Complaint

5.7 Consumer Protection Councils

5.8 Penalties under the Act

5.9 Let Us Sum Up

5.10 Further Reading

5.11 Answers To Check Your Progress

5.12 Model Questions

5.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- discuss the various terms used in the Act
- discuss about the consumer disputes redressal agencies and their powers
- explain the procedure of filing a complaint with consumer disputes redressal agencies
- describe the objectives of establishing consumer protection councils
- explain the provisions of penalties under the Act

5.2 INTRODUCTION

In business, consumers occupy a very important place. The producers produce goods on the basis of tastes, likings, preferences etc. of the consumers. Consumer is the central point around which business activities revolves. Inspite of great importance of consumers they may be the victims of immoral businessmen. An important aspect is that there is lack of knowledge on the part of consumers and they are not organized as opposed to the sellers who are well informed and organized. To protect the consumers from unscrupulous

businessmen and to provide easy remedy for their complaints, the Consumer Protection Act was passed in the year 1986. The Act extends to the whole of India except the State of Jammu and Kashmir. After completion of this unit you will be able to understand some important definitions under this Act as well as the various provisions under which consumers are given wide legal power to resolve their complaints. We will also discuss the various consumer forums created under this Act as redressal agencies for consumer grievances along with the procedure of filing a complaint in consumer forums, consumer protection councils, penalties for not complying with the orders of forums etc.

5.3 DEFINITIONS UNDER THE ACT

The Act has been passed to protect the interests of consumers and to establish the consumer councils and other authorities to settle the consumers' disputes and other related matters. Before discussing the provisions of this Act, it is better to have an idea about the different terms used in this Act like, consumer, consumer dispute etc. In this section, we will discuss some of the definitions as given by this Act which is essential to interpret the provisions of the Act. Let us begin with the definition of 'consumer'.

Consumer

According to Section 2 (1) (d) of the Act 'consumer' means any person who

i. *Buys any goods for a consideration, which has been paid or promised or partly paid and partly promised. It also includes*
   a) *User of such goods who is using the goods with permission of the buyer or*
   b) *Person who has obtained goods under any system of deferred payment. Person who has obtained goods for resale or for commercial purposes is not covered under this section.*

ii. *Hires or avails any services for a consideration, which has been paid or promised or partly paid and partly promised. It also includes*
   a) *Beneficiary of services who has availed the services with approval of the person who has hired the services*
   b) *A person who has hired or availed services under any system of deferred payment.*

An important aspect of this definition is that those persons who buy goods for commercial purposes are not considered as 'consumer' under this Act. But if a person buys goods for self- employment that will not be treated as commercial purpose and therefore, that person will be considered as 'consumer' under this Act. Therefore, a 'consumer' under this Act will

include person-

- who buys any goods for personal use or avails services for consideration;
- who uses such goods or services with the permission of the buyer;
- who obtains goods or avail services on deferred payment basis;
- who obtains goods for self- employment.

Consumer Dispute

According to Section 2 (1)(e) of the Act, 'Consumer Dispute' means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

If the person agrees to the complaint, there is no consumer dispute.

Complainant

According to Section 2 (1) (b) complainant means

i. a consumer; or

ii. any voluntary consumer association registered under the Companies Act or under any other law for the time being in force; or

iii. the Central Government or any State Government, who or which makes a complaint

iv. one or more consumers, where there are numerous consumers having the same interest.

v. in case of death of a consumer, his legal heirs or representative, who or which makes a complaint.

From the definition of 'complainant' it is clear that an individual consumer as well as consumer associations can make a complaint.

Defect

According to Section 2 (1) (f) of the Act, 'defect' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

Deficiency

According to Section 2 (1) (g) of the Act, 'deficiency' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard that is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Services

Section 2 (O) of the Act defines 'services' as

"Service of any description, which is made available to potential users and includes any provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying a news or other information, but does not include rendering of any service free of charge or under a contract of personal service."

Goods

'Goods' under this Act has the same meaning as per the Sale of Goods Act, 1930, which we have discussed in unit 2 (Sale of Goods Act, 1930).

CHECK YOUR PROGRESS

Q 1: State whether the following statements aretrue or false-

i. A person who uses the goods with the permission of the buyer is not a consumer as per the Consumer Protection Act.

ii. A person who buys goods for commercial purpose is a consumer as per The Consumer Protection Act.

iii. A voluntary consumer association can not file a complaint.

iv. Consumer disputes can not arise in case of goods obtained or services availed on deferred payment basis.

5.4 REDRESSAL AGENCIES UNDER THE ACT

In the above section, you have come across certain definitions of the Act. It has already been mentioned that this particular Act has been passed to protect the consumers and for that purpose certain agencies will be established under the Act. In this section, we will discuss the redressal of agencies.

The Act provides for the establishment of three consumer forums at three levels i.e.

- District Forum at district level
- State Consumer Disputes Redressal Commission at state level
- National Commission at the national level.

Let us first discuss district forum-

- **District Forum**

A District Forum will be established in each district and the responsibility of establishing district forums lies with the respective State Governments.

Jurisdiction of District Forum

The district forum has jurisdiction to decide consumer disputes where the value of goods and services and the compensation claimed does not exceed Rs. 20 lakhs.

Composition of District Forum

According to the provisions of the Act, each district forum shall consist of–

- a President, who has been or is qualified to be a district judge; and
- two other members, one of whom must be a woman. The members shall be of not less than 35 years of age ; possess a bachelor degree from a recognized university and persons of ability, integrity and standing having knowledge or experience of problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

The salary and other terms and conditions of the job of the members are prescribed by the State Government.

Tenure of the members

All the members of district forum shall be in office for 5 years or up to the age of 65 years, whichever is earlier. Any member can resign his office by addressing the letter to State Government.

- State Consumer Disputes Redressal Commission

The State Consumer Disputes Redressal Commission or State Commission is established by the State Governments in the respective states by notification [section 9(b)].

Jurisdiction of State Commission

The State Commission has original jurisdiction to decide consumer disputes where the value of goods and services and the compensation claimed exceed Rs. 20 lakhs but does not exceed Rs. 1 crore.

The Commission has appellate jurisdiction against the orders of the district forums within the state.

Revisional jurisdiction empowers the Commission to call for records and pass appropriate orders in any consumer dispute that is pending or has been decided by district forum, if the State Commission is of the view that district forum is exercising jurisdiction not vested in it or not exercising the jurisdiction.

Composition of the State Commission

According to the provisions of the Act, each State Commission shall consist of –

- a President, who has been or is qualified to be a judge of High Court; and

- two other members, one of whom must be a woman [section 10(1)]. The members shall be persons of ability, integrity and standing having knowledge or experience of problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

The salary and other terms and conditions of the job of the members are prescribed by the State Government.

Tenure of the members

All the members of State Commission shall be in office for 5 years or up to the age of 67 years, whichever is earlier. Any member can resign his office by addressing the letter to the State Government [section 16(3)].

- National Commission

The Central Government has established a National Commission at national level to redress consumer disputes [section 9(c)].

Jurisdiction of National Commission

The National Commission has original jurisdiction to decide consumer disputes where the value of goods and services and the compensation claimed exceed Rs. 1 crore.

The National Commission has appellate jurisdiction against the original orders of any State Commission.

The National Commission has revisional jurisdiction to call for records and pass appropriate orders in any consumer dispute that is pending or has been decided by any State Commission, if the National Commission is of the view that the State Commission is exercising jurisdiction not vested in it or not exercising the jurisdiction.

Composition of the National Commission

According to the provisions the Act, the National Commission shall consist of –

- a President, who has been or is qualified to be a judge of Supreme Court; and
- four other members, one of whom must be a woman. The members shall be not less than 35 years of age, posses a bachelor's degree from a recognized university and persons of ability, integrity and standing having knowledge or experience of problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. Provided that not more than fifty percent of the member shall be from amongst the persons having a judicial background (section 20).

The salary and other terms and conditions of the job of the members are prescribed by the Central Government.

Tenure of the members

All the members of the National Commission shall be in office for 5 years or up to the age of 70 years, whichever is earlier [section 20(2)]. Any member can resign his office by addressing the letter to the Central Government.

Appeal against original orders of National Commission can be made with Supreme Court.

CHECK YOUR PROGRESS

Q 2: State whether the following statements are true or false-

i. A member of National Commission can hold office for a period of 5 years or up to the age of 60, whichever is earlier.

ii. District Forums are established by State Government.

iii. State Commissions are established by Central Government.

iv. National Commission is composed of one president and three members.

v. District Forums can decide consumer disputes where the value of goods and services and compensation claimed does not exceed Rs.1 crore.

5.5 POWERS OF REDRESSAL AGENCIES

Let us discuss the powers of the redressal agencies under the Act. You are aware that District Forum, State Commission and National Commission are the consumer disputes redressal agencies under the Act.

- These redressal agencies have the powers of civil court like,
  - summoning and enforcing attendance of witnesses and examining the witness on oath;
  - discovery and production of any document or other material as evidence;
  - receiving evidence on affidavits;
  - requisitioning report of test or analysis from concerned laboratory;
  - issuing commission for examination of witnesses;
  - any other matter that may be prescribed by Central or State Government by rules.
- The redressal agencies have the power to require a person to produce before them

books of account, documents or commodities.

- The agencies can authorize a person to seize books of account, documents or commodities required for purposes of the Act.
- The agencies have no power to declare any statutory order as illegal.

5.6 PROCEDURE OF FILING A COMPLAINT

Here, we will go through the procedure of filing a complaint in the consumer forums. A complaint can be filed by a complainant. We have already come across the definition of 'complainant'. The complainant can file the complaint within two years from the date on which the cause of the dispute arose. However, the consumer forums i.e. District Forum, State Commission or National Commission can accept any complaint even after such period, if sufficient cause exists for such delay.

On receipt of a complaint, the District Forum/ State Commission/ National Commission sent a copy of the complaint to the opposite party. The opposite party is asked to give his reply within 30 days, which can further be extended by another 15 days.

If the nature of defect in goods is such that it can not be properly determined without laboratory testing, the redressal agency will sent the defected goods to the appropriate laboratory.

If no laboratory testing is required in respect of the complaint, then the redressal agency will decide the case on the basis of the evidence submitted by the complainant and the opposite party.

If the complaint is made to the District Forum i.e. when the value of goods and services and the compensation claimed does not exceed Rs. 20 lakhs and if any of the party to the complaint is not satisfied with the order given by the Forum, then the aggrieved party can make an appeal within 30 days against such order to the State Commission. However, the State Commission can extend the period if sufficient cause exist for not filing the appeal within 30 days. The order made by the State Commission in respect of the appeal is final and no further appeal can be made against the order of the State Commission to the National Commission.

If a complaint is directly filed with the State Commission i.e. where the value of goods and services and the compensation claimed exceed Rs. 20 lakhs but does not exceed Rs. 1 crore, then an appeal against the order of the State Commission can be made to the National Commission. In such cases, the order of the National Commission is final and no further

appeal can be made.

If a complaint is directly made to the National Commission i.e. where the value of goods and services and the compensation claimed exceed Rs. 1 crore, then an appeal against the order of the National Commission can be made to the Supreme Court.

LET US KNOW

In filing a complaint, the complainant can personally file the complaint or it can be sent by post. The complaint must contain names and addresses of the complainant and the opposite party, facts relating to complaint, documents in support of such complaint and compensation being claimed. The complainant is not required to pay any fee.
If the opposite party fails to give a written reply, he can make an oral representation of his case.

CHECK YOUR PROGRESS

Q 3: Mention two powers of State Commission.

i. .....

.....

.....

ii. .....

.....

.....

Q 4: Select the correct answer:

i) The maximum age limit of a member of the district forum is-

a. 65 years b. 67 years c. 70 years d. 75 years

ii) National Commission can complaint claiming-

a. upto Rs. 20 lakh c. upto Rs 1 crore

b. upto Rs 50 lakh d. exceeding Rs. 1 crore

iii) The maximum age limit of a member of National Commission is-

a. 65 years b. 70 years c. 75 years d. 80 years

iv) The number of Dispute Redressal agencies under the

Consumer Protection Act is-

a. 2 b. 3 c. 4 d. 6

5.7 CONSUMER PROTECTION COUNCILS

Establishment of consumer protection councils is another important provision of the Consumer Protection Act. The consumer protection councils are in addition to the consumer disputes redressal agencies. The Act provides for the formation of Central Consumer Protection Council at National level and State Consumer Protection Councils in each state. The Councils are advisory in nature.

The principal object of the Councils is to protect the rights of the consumers like,

- Right of protection against marketing of hazardous goods;
- Right to be informed about quality, quantity, potency, purity, standard and price of goods or services;
- Right to access to variety of goods and services at competitive rates;
- Right to be heard in appropriate forums; etc.

5.8 PENALTIES UNDER THE ACT

The consumer disputes redressal agencies decides the consumer disputes on the basis of the evidences brought by the complainant as well as the opposite party. Under the provisions of the Act, the consumer disputes redressal agencies can impose penalties on the trader, if found guilty. At the same time the Act provides for imposing penalties on the complainant, if the complaint is found to be frivolous.

If the trader against whom an order has been passed by the consumer forum and if he fails to comply with such order, he shall be punishable with imprisonment for a term not less than one month but not more than three years and/ or with fine of minimum Rs. 2, 000 and maximum up to Rs. 10, 000 or with both (section 27). If an order imposing penalty is made by State Commission or National Commission, no appeal can be made against such order.

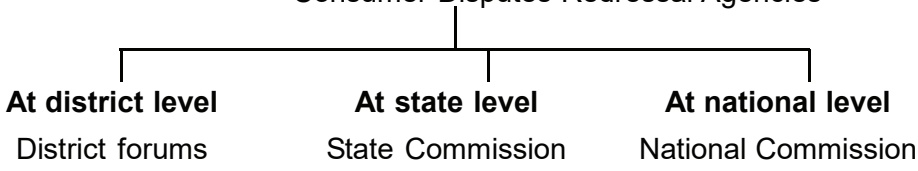
5.9 LET US SUM UP

In this unit we have discussed the following aspects –

- According to the provisions of the Act the 'consumer' is the person who buys goods or services for consideration or under deferred payment basis as well as the person who

uses such goods or services with the permission of the buyer.

- A person who buys goods for commercial purpose is not a consumer under the Act.
- The Act provides for the formation of the following forums for settling consumer disputes-



- An individual consumer or any registered consumer association can file a complaint with such agencies.
- The redressal agencies pass the necessary order after following the procedure prescribed by the Act for the settlement of the consumer disputes.
- The redressal agencies have the powers of civil court.
- Besides the consumer disputes redressal agencies, the Act provides for the establishment of Consumer Protection Councils at central and state levels. These councils are advisory in nature.
- The Act provides for penalties for the immoral trader as well as for the complainant if any false complaint is made.

5.10 FURTHER READING

1. V S Datey (2001); Students' Guide to Economic Laws; Taxmann
2. The consumer protection Act, 1986(Bare Act)

5.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: (i) False (ii) False (iii) False

Ans to Q No 2: False.

i. True ii. False iii. False iv. False.

Ans to Q No 3: i.The State Commission can authorize a person to seize books of account, documents or commodities required for purposes of the Act;

iii. The State Commission can summon and enforce the attendance of witnesses and examine the witnesses on oath.

Ans to Q No 4: i) a. ii) d. iii) b. iv) b.

5.12 MODEL QUESTIONS

Q 1: What are the consumers disputes redressal agencies under the Act? Discuss the jurisdiction of district forums.

Q 2: Discuss the powers of State Commission.

Q 3: Discuss the procedure of filing a complaint in district forum.

Q 4: Write short notes-

i. National Commission

ii. Consumer under Consumer Protection Act

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UNIT 6: THE INDIAN FACTORIES ACT, 1948

UNIT STRUCTURE

6.1 Learning Objectives

6.2 Introduction

6.3 Definitions under the Act

6.4 Statutory agencies and their powers for enforcement of the Act

6.5 Health, Safety and Welfare Provisions

6.6 Provisions regarding Hazardous Work

6.7 Employment of young person

6.8 Penalties and Provisions

6.9 Let Us Sum Up

6.10 Further Reading

6.11 Answers To Check Your Progress

6.12 Model Questions

6.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the different definitions under the Indian Factories Act,1948
- explain the inspecting staff
- explain health, safety and welfare provisions under the Act
- explain the provision in the Act regarding hazardous works
- discuss the issue of the employment of young person
- explain penalties provisions

6.2 INTRODUCTION

In this unit we are going to discuss about 'The Indian Factories Act', 1948. The Indian Factories Act, 1948 applies to the whole of India. It came into force on the 1st April, 1949. This Act was enacted to consolidate and amend the law regulating labour in factories. The Act was passed to make available, appropriate and beneficial provisions to the Act to the workers in factories. It is codified with a view to regulating the working conditions in the factories and to provide them with the health, safety and welfare

measures. In this unit, we are going to discuss the Indian Factories Act, 1948 along with the details about various definitions. We will also discuss the different provisions relating to health, safety and welfare of the factory workers. Through this unit, you will be able to learn about the provisions regarding hazardous work as well as the different provisions relating to the employment of young persons. You will also able to understand such matter as the inspecting staff, provisions relate to health, safety and welfare, provisions regarding hazardous work ,employment of young persons and penalties and provisions related to it.

6.3 DEFINITIONS UNDER THE ACT

Section 2 of the Act contains definitions of the terms used in the Act.

(a) **"Adult"** means a person who has completed his eighteenth year of age [Section 2 (a)];

(b) **"Adolescent"** means a person who has completed his fifteen year of age but has not completed his eighteenth year [Section 2 (b)];

(bb) **"Calendar year"** means the period of twelve months beginning with the first day of January in any year [Section 2 (d)];

(c) **"Child"** means a person who has not completed his fifteenth year of age [Section 2 (c)];

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

(i) result in the material impairment to the health of the persons engaged in or connected therewith,

Or,

(ii) result in the pollution of the general environment;

Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule;

(d) **"Young person"** means a person who is either a child or an adolescent [Section 2 (d)];

(h) **"Prime mover"** means any engine, motor or other appliance which generates or otherwise provides power [Section 2 (h)];

(i) **"Transmission machinery"** means any shaft, wheel drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance[Section 2 (i)];

(j) **"Machinery"** includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied[Section 2 (j)];

(k) **"Manufacturing process"** means any process for –

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

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

(iii) generating, transforming or transmitting power; or

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

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

(vi) preserving or storing any article in cold storage(Section 2 (k) as amended in 1976)

(l) **"Worker"** means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the union (Section 2 (1) as amended in 1976);

Thus, the essential elements of a worker are:

1. There should be an 'employed person'.
2. Employment should be direct or through some agency.
3. Employment should be in any manufacturing process etc.
4. Employment may be for remuneration or not
5. Any member of the armed force of the Union is excluded from the definition of worker.
6. Whether all employees are workers or not, as the term employee is not defined in the Act. All persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act.

(m) **"Factory"** is defined in section 2(m) of the Act, which includes any premises including the precincts thereof –

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

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

But, it does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place;

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

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

Thus, the essential elements of a factory are:

1. There must be premises.

2. There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises,

3. There must be ten or more workers who are or were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. On the other hand, the required number of workers working should be twenty or more where the manufacturing process is carried on without the aid of power.

CHECK YOUR PROGRESS

Q1. Define the term 'Factory'.

.....

.....

6.4 STATUTORY AGENCIES AND THEIR POWERS FOR ENFORCEMENT OF THE ACT

The main responsibility for administration of the Act lies on the State Government. The State Government carries out the administration of the Act through:

i. The inspecting staff
ii. Certifying surgeons
iii. Welfare Officer
iv. Safety Officer

i. The inspecting staff:

The State Government is empowered to make appointment for the post of Inspector and Chief Inspector. Appointment is made by the State Government by notification in the Official Gazette. Under Section 8(i) lays down that a person may be appointed as an Inspector who possesses the prescribed qualifications. But, under Section 8(4) lays down the general provision that every District Magistrate shall be Inspector for his District. Sub-section (5) of Section 8, lays down that the State Government may, also, by notification in the Official Gazette, appoint such public servants as it thinks fit to be Additional Inspectors for all or any of the purposes of this Act , within such local limit as it may assign to them respectively.

Chief Inspector, Additional Inspectors, Joint Chief Inspector, Deputy Chief Inspector and

Inspector and any other officer appointed under Section 8(7) to be public servant within the meaning of Indian Penal Code,1860.

According to Section 9, subject to any rules made in this behalf, and within the local limits for which he is appointed—

(a) enter, with such assistants, being persons in the service of the Government, or any local or other public authority, as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;

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

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

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

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

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

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

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

(i) exercise such other powers as may be prescribed:

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

Thus, besides the powers enumerated in Section 9 of the Act, the Inspector may discharge other duties and functions as required under the different provisions of the Act.

ii.) Certifying surgeons:

Under Section 10 (1) of the Act the State Government is empowered to appoint qualified medical practitioners as certifying surgeons. He has to discharge his duties as assigned by the State Government.

No person shall be appointed to be, or authorized to exercise the powers of, a certifying surgeon

a. who is or becomes the occupier of a factory, or

b. who is or becomes directly or indirectly interested therein or in any process or business carried on therein, or in any patent or machinery connected therewith ,or

c. who is otherwise in the employment of the factory.

According to the Section 10 (4) the certifying surgeon shall carry out such duties as may be prescribed in connection with-

(a) the examination and certification of young person under this Act;

(b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;

(c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where—

(i) 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;

(ii) 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;

(iii) young persons are, or are about to be, employed in any work.

iii.) Welfare Officer:

The factory wherein 500 or more workers are ordinarily employed, the occupier has to appoint welfare officer. His duties, qualification etc are prescribed by the State Government (Section 49).

iv.) Safety Officer:

In the factory or manufacturing unit wherein 1000 or more workers are ordinarily employed and which involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed the occupier has to appoint safety officer. His duties, qualification etc are prescribed by the State Government (Section 40-B).

CHECK YOUR PROGRESS

Q2. Fill in the blanks:

1. The factory where …….. or more workers are employed , the occupier has to appoint welfare officer.
2. The factory where …….. or more workers are employed, the occupier has to appoint safety officer.

6.5 HEALTH, SAFETY AND WELFARE PROVISIONS

The Act makes detailed provisions in regard to various matters relating to health, safety and welfare provisions.

A. HEALTH

Chapter III of Section 11 to 20 of the Factories Act, 1948, deals with the provisions relating to the health of the workers in a factory.

1. Cleanliness (Sec. 11):

Every factory shall be kept clean and free from dirt. There should be effective drainage system that the floor of the manufacturing process should not remain wet and accumulation of dirt is easily getting removed through it. Use of disinfectants, detergents, painting and whitewashing shall be resorted to.

2. Disposal of wastes and effluents (Sec.12):

There should be such arrangement in the factory that the wastes and effluents easily disposed off.

3. Ventilation and Temperature:

(1) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom

(a) Adequate ventilation and the circulation of fresh air, and

(b) Workers therein reasonable conditions of comfort and prevention from injury to health.

(2) Process producing high temperature to be separated—

The walls and roofs shall be made and designed with such material that such temperature shall not be exceeded but kept as low as practicable. Beside this, where the nature of the work carried on in the factory involves production of excessively high temperatures, adequate measures as are necessary shall be taken to protect the workers.

4. Dust and Fume (Sect. 14):

In a factory, by reason of the manufacturing process carried on, there may be given off any dust or fume. Its inhalation by and anybody accumulation in any workroom is injurious or offensive to the workers employed therein. So, in order to prevent this the point of origin of the dust, fume or other impurity, shall be enclosed as far as possible. On the other hand, 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 therefrom as they are likely to be injurious to workers employed in the room.

5. Artificial humidification (Sec. 15):

In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules,-

(a) prescribing standards of humidification;

(b) regulating the methods used for artificially increasing the humidity of the air;

(c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;

(d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms; 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. But if the water that used is not 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 specified date.

6. Overcrowding (Sec. 16):

The overcrowding affects the workmen not only in the discharge of duties but also their health. The working space should be 14.2 cubic meters of space per worker in every workroom.

7. Lighting (Sec. 17):

The Factories Act makes following provisions in this respect,

(a) There shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both, in every part of the factory.

(b) In every factory all glazed windows and skylights be used and workrooms shall be kept clean on both the inner and outer surface.

(c) 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;

(d) The State Government prescribes standards of sufficient and suitable lighting for factories or for any class of description of factories or for any manufacturing process.

8. Drinking water (Sec. 18):

The provisions in this respect under the Factories Act, are;

(a) Arrangements shall be made to provide and maintain sufficient supply of wholesome drinking water.

(b) Provision shall be made for cooling drinking water during hot weather by effective means and for distribution thereof in every factory wherein more than two hundred and fifty workers are ordinarily employed.

(c) Examine as prescribed by the authorities of the supply and distribution of drinking water in factories.

9. Latrine and Urinal (Sec. 19):

The Factories Act makes following provisions in this respect,

1.(a) sufficient latrine and urinal accommodation of prescribed types shall be provided and conveniently situated to make them accessible to workers at all times while they are at the factory;

(b) separate enclosed accommodation shall be provided for male and female workers and there should be adequately lighted and ventilated;

(d) they shall be maintained in a clean and sanitary condition at all times;

(e) sweepers shall be employed whose primary duty would be to keep latrines, urinals and washing places clean.

(2) But in factory wherein more than two hundred and fifty workers are ordinarily employed-

(a) all latrine and urinal accommodation shall be of prescribed sanitary types;

(b) the floors and internal walls, up to a height of ninety centimeter, the sanitary blocks shall be laid in glazed tiles or a smooth polished impervious surface;

(c) latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

(3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the number of male and female workers ordinarily employed therein.

10. Spittoons (Sec. 20):

There shall be provided sufficient number of spittoons in convenient places and they shall be maintained in a 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.

CHECK YOUR PROGRESS

Q3. Mention five provisions related to safety under the Factories Act, 1948?

i) .....

ii) .....

iii) .....

iv) .....

v) .....

B. SAFETY

Chapter IV of the Factories Act, 1948, deals with the provisions relating to the safety of the workers in a factory.

1. Fencing of machinery (Sec. 21):

According to Section 21 of Factories Act, 1948, in every factory, the dangerous parts of all machineries should be securely fenced. The section provides for fencing the following

machineries while they are in use—

(i) 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;

(ii) the headrace and tailrace of every water-wheel and water turbine;

(iii) any part of a stock-bar which projects beyond the head stock of a lathe; and

(iv) the following should be securely fenced—

(a) every part of an electric generator, a motor or rotary convertor;

(b) every part of transmission machinery; and

(c) every dangerous part of any other machinery,

2. Work on or near machinery in motion (Sec. 22):

in any factory it becomes necessary to examine any part of machinery, while the machinery is in motion, or, lubrication or other adjusting operation; or , any mounting or shipping of belts 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 in this behalf and who has been furnished with a certificate of his appointment, and while he is so engaged,--

(a) such worker shall not handle a belt at a moving pulley unless20

(i) the belt is not more than fifteen centimeters in width;

(ii) the belt joint is either laced or flush with the belt;

(iii) the belt, including the joint and the pulley rim, are in good condition;

(iv) there is reasonable clearance between the pulley and any fixed plant or structure;

(v) secure foothold and, where necessary, secure handhold, are provided for the operator.

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 adjust any part of any machine if the cleaning, lubrication 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.

3. Employment of young persons on dangerous machines (Sec.23):

Section 23 provides that young person shall be required or allowed to work at any machine to which he has been fully instructed as to the dangers arising in connection

with the machine and the precautions to be observed and-

(a) has received sufficient training in work at the machine, or

(b) is under adequate supervision by a person who has a through knowledge and experience of the machine.

4. Striking gear and devices for cutting off power (Sec. 24):

Section 24 provides that suitable striking gear or other efficient mechanical appliance shall be 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. Further driving belts, when not in use, shall not be allowed to rest or ride upon shafting in motion. Besides these, in every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room.

5. Self-acting machines (Sec. 25):

Section 25 provides safeguard for workers from being injured by self-acting machine. This section provides that 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 from any fixed structure which is not part of the machine.

6. Prohibition of employment of women and children near cotton-openers (Sec. 27):

In any part of a factory where a cotton-opener is at work for pressing cotton, no woman or child shall be employed. Provided that the Inspector may in any particular case specify in writing that the women and children may be employed on the side of the partition where the feed-end is situated.

7. Hoists and lifts (Sec. 28):

Every hoist and lift shall be of good mechanical construction, sound material and adequate strength, properly maintained ,protected by an enclosure fitted with gates, and shall be thoroughly examined by a competent person .

8. Lifting machines, chains, ropes and lifting tackles (Sec. 29):

Every lifting machine and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials, 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. It should be properly maintained.

9. Protection of eyes (Sec. 35):

Prescribed process should be taken which involves risk of injury to the eyes from particles or fragments thrown off in the course of the process, or risk to the eyes by reason of exposure to excessive light. Effective screens or suitable goggles shall be provided for the protection of persons employed.

10. Precautions against dangerous fumes, gases, etc (Sec. 36):

No person shall be 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.

C. WELFARE

There are many welfare provisions mentioned under the Act—

1. Washing facilities (Sec. 42):

In every factory adequate washing facilities should be provided for both male and female workers. They should be conveniently accessible and kept clean. The State Government prescribes standards for adequate and suitable facilities for washing.

2. Facilities for storing and drying clothing (Sec. 43):

There should be suitable places for keeping the clothing not worn during working hours and for the drying of the wet clothing.

3. Facilities for sitting (Sec. 43):

In every factory suitable arrangements for sitting as well as standing shall be provided and maintained for all workers for rest which they may require in course of their work.

4. First-aid appliances (Sec. 45):

There should be readily accessible during all working hours the first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed . Each first-aid box or cupboard shall be kept in the charge of a separate responsible person

6. Canteens (Sec. 46):

In a factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided. Besides the foodstuffs to be served therein,

the construction, accommodation, furniture and other equipment of the canteen should be of good standards. The shelters or rest rooms or lunch rooms to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

7. Creches (Sec. 48):

Wherein more than thirty women workers are ordinarily employed in a factory, there shall be provided and maintained a suitable room or rooms for the use of the children under the age of six years of such women. The rooms should be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

8. Welfare officers (Sec. 49):

Wherein five hundred or more workers are ordinarily employed in a factory the occupier shall employ such number of welfare officers as may be prescribed by the State Government.

CHECK YOUR PROGRESS

Q4. Mention five provisions related to welfare under the Factories Act, 1948?

i) .....

ii) .....

iii) .....

iv) .....

v) .....

6.6 PROVISIONS REGARDING HAZARDOUS WORK

A. Constitution of Site Appraisal Committees (Sec. 41 A):

1. Granting permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory The State Government may constitute a Site Appraisal Committee and advise to take application. The Site Appraisal Committee shall consist of—

(a) the Chief Inspector of the State who shall be its Chairman;

(b) a representative of the Central Board for the Prevention and Control of Water

Pollution appointed by the Central Government under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) a representative of the Central Board for the Prevention and Control of Air Pollution referred to in section 3 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(d) a representative of the State Board appointed under section 4 of the Water (Prevention and Control of Pollution) Act, 1974; (6 of 1974).

(e) a representative of the State Board for the Prevention and Control of Air Pollution referred to in section 5 of the Air (Prevention and Control of Pollution) Act,1981 (14 of 1981);

(f) a representative of the Department of Environment in the State;

(g) a representative of the Meteorological Department of the Government of India;

(h) an expert in the field of occupational health; and

(i) a representative of the Town Planning Department of the State Government,

(j) not more than five other members who may be co-opted by the State Government who shall be–

  (i) a scientist having specialized knowledge of the hazardous process which will be involved in the factory,

  (ii) a representative of the local authority within whose jurisdiction the factory is to be established, and

  (iii) not more than three other persons as deemed fit by the State Government.

(2) Within a period of ninety days of the receipt the Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government in the prescribed form.

(3) If a factory is owned or controlled by the Central Government or by a corporation or by a 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.

(4) The Site Appraisal Committee shall have the power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process. Besides this, if the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further

approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and the Air (Prevention and Control of Pollution) A Act 1981 (14 of 1981).

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

(1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information (information like the quantity, specifications and other characteristics of wastes) 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 situate and the general public in the vicinity. The occupier shall lay down a detailed policy at the time of registering the factory involving a hazardous process with respect to the health and safety of the workers employed therein.

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

(3) The occupier of a factory, which proposes to engage in a hazardous process, must inform the Chief Inspector regarding the nature and details of such process. The occupier must inform the Chief Inspector within a period of 30 days before the commencement of such process.

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

Specific responsibility of the occupier in relation to hazardous processes. Every occupier of a factory involving any hazardous process shall—

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

(b) 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 manner prescribed:

Provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector shall be final;

(c) provide for medical examination of every worker--

(a) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and

(b) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months, in such manner as may be prescribed.

D. Power of Central Government to appoint Inquiry Committee (Sec. 41 D):

On the occurrence of an extraordinary situation involving a factory engaged in a hazardous process the Central Government may appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory. The

Committee consists of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its member shall be such as may be determined by the Central Government according. The recommendations of the Committee shall be advisory in nature.

E. Emergency standards (Sec. 41E):

(1) 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 the enforcement of suitable standards in respect of such hazardous processes.

(2) The emergency standards laid down under sub-section shall, until they are incorporated in the rules made under this, be enforceable and have the same effect as if they had been incorporated in the rules made under this Act.

F. Permissible limits of exposure of chemical and toxic sub-stances (Sec. 41E):

(1) The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any

factory shall be of the value indicated in the Second Schedule.

(2) The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialized institutions or experts in the field, by notification in the Official Gazette, make suitable changes in the said Schedule.

G. Workers' participation in safety management (Sec. 41 G):

Safety Committee set up consisting of equal number of representatives of workers and management to promote cooperation between the workers and the management in maintained for proper safety and health at work where hazardous substances used or process takes place.

H. Right of workers to warn about imminent danger (Sec. 41 H):

Under section 41H, the workers engaged in a hazardous process in a factory have the rights to warn against any imminent danger to their lives and health due to an accident in the form of a notice to be sent directly or through their representatives to the occupier, agent or manager or any other person who is incharge of the factory. It shall be the duty of the person who is the incharge of the factory or the process to take immediate remedial whom he is satisfied as to the existence of the danger. It is required to send a report of whom taken to the nearest incharge whether he is satisfied or not about the possibility of the accident.

6.7 EMPLOYMENT OF YOUNG PERSON

There are many provisions in the Act for the employment of young person—

a. Prohibition of employment of young children (Sec. 67): No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

b. Non-adult workers to carry tokens (Sec. 68): A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless he carries a certificate of fitness and a token given in reference to such certificate.

c. Certificates of fitness (Sec. 68):

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

his fitness for work in a factory.

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

(a) a certificate of fitness to work in a factory as a child, if he has completed his fourteenth year, or if he has attained the prescribed physical standards and he is fit for such work;

(b) a certificate of fitness to work in a factory as an adult, if he completed his fifteenth year, and is fit for a full day's work in a factory:

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

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

(a) shall be valid only for a period of twelve months from the date thereof;

(b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.

(4) A certifying surgeon shall revoke any such certificate granted or renewed.

(5) 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.

d. Effect of certificate of fitness granted to adolescent (Sec. 70):

(1) An adolescent having certificate of fitness and token to work in a factory shall be deemed to be an adult for all the purposes of Chapters VI and VIII:

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

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

(i) No any female adolescent is allowed to work between 10 P.M. and 5 A.M.;

(ii) grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.

e. Working hours for children (Sec. 71):

(1) No child shall be employed or permitted to work, in any factory for more than four and a half hours in any day;

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

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

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

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

f. Notice of periods of work for children (Sec. 72):

Under 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 has to display.

(2) The periods shown in the notice required by sub-section (1) shall be fixed.

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

g. Register of child workers (Sec. 73):

A register of child workers should be maintained and to be made available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing-

(a) the name of each child worker in the factory,

(b) the nature of his work,

(c) the group, if any, in which he is included,

(d) where his group works on shifts, the relay to which he is allotted, and

(e) the number of his certificate of fitness granted under section 69.

h. Power to require medical examination (Sec. 75):

Where an Inspector is of the opinion--

(a) that any person working in a factory without a certificate of fitness is a young person, or

(b) that a young person working in a factory with a certificate of fitness is no longer

fit to work in the capacity stated therein,--

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

CHECK YOUR PROGRESS

Q5. Mention five provisions related to employment of young persons under the Factories Act, 1948?

i) .....

ii) .....

iii) .....

iv) .....

v) .....

6.8 PENALTIES AND PROVISIONS

A. General penalty for offences: According 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 thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to 2 years or with fine which may extend to two lakh rupees or with both.

But if any of the provisions of Chapter IV or any rule made thereunder section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty five thousand in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.

B. Liability of the owner of premises in certain circumstances:

i) If 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, fencing of machinery and plant etc.

The Chief Inspector shall have the power to issue orders to the owner of the premises in respect of the carrying out the provisions related to it.

ii) Again, 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-

(a) Chapter III, except sections 14 and 15;

(b) Chapter IV, except sections 22, 23, 27, 34, 35 and 36

iii) If any person who has been convicted of any offence punishable under section 92 is again guilty of an offence he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine which shall not be less than ten thousand rupees but which may extend to two lakh rupees or with both:

iv) If any person who wilfully obstructs—

a. an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any registers, or other documents in his custody kept in pursuance of this Act ,or of any rules made thereunder,

b. 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.

v) 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.

vi) Any person who fails to comply with or contravenes any of the provisions of sections 41B, 41C or 41H or the rules made thereunder, shall, in respect of such failure or conntravention, be punishable with imprisonment for a term which may extend to seven year and with fine which may extend to two lakh rupees. But if it still 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. On the other hand, if it 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.

C. Offences by workers:

(1) Under section 111, if any worker employed in a factory contravenes any provision of this Act he shall be punishable with fine which may extend to five hundred rupees unless it is proved that he failed to take all reasonable measures for its prevention. For using false certificate of fitness, their shall be imprisonment which may extend to two month or with fine which may extend to one thousand rupees or with both.

(2) The parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from wages where the child works in a factory on any day on which he has already been working in another factory,, 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.

(D) Limitation of prosecutions:

No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence comes to the knowledge of an Inspector.

6.9 LET US SUM UP

- The Indian Factories Act, 1948 has been enacted with an object to protect the workers and for that purpose different provisions are imposed on the owner and the occupier of the factories.
- The Indian Factories Act, 1948 has been enacted and these are entered many new provisions which protect the workers employed in a factory against industrial and occupational hazards.
- The Indian Factories Act, 1948 defines 'Factory' as a premises where manufacturing process is being carried out by ten or more workers who are or were working in such a premises on any day of the last 12 months where the said manufacturing

process is carried on with the aid of power. On the other hand, the required number of workers working should be twenty or more where the manufacturing process is carried on without the aid of power.

- The State Governments carry out the administration of the Act through Inspecting Staff, Certifying Surgeons, Welfare Officers and Safety Officers.
- There are many provisions stipulated in the Act which have to be taken by the factories for health, safety, welfare provisions of the workers. Apart from these some provisions are also taken relating to working hours of child, young persons and female workers.
- Many penalty provisions are also entered in the Act which can be imposed on the owner and the occupier of the factories if any provisions contravene this Act or any rules made thereunder.

6.10FURTHER READING

1. The Indian Factories act , 1948(Bare Act)
2. P. L. Malik (2017); *P. L. Malik's Industrial Law*; Eastern Book Company

6.11 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q.1: Under section 2 (m) of the Factories Act, 1948 ,"factory" means any premises, whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on.

Or,

Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

Ans. to Q.2:

i) 500

ii) 1000

Ans. to Q.3: Five provisions related to safety under the Factories Act, 1948 are,

i) Fencing of machinery

ii) Work on or near machinery in motion

iii) Employment of young persons on dangerous machines

iv) Protection of eyes

v) Precautions against dangerous fumes, gases, etc

Ans. to Q.4: Five provisions related to welfare under the Factories Act, 1948 are,

I) Washing facilities

ii) Facilities for storing and drying clothing

iii) Facilities for sitting

iv) First-aid appliances

v) Canteens

Ans. to Q.5: Five provisions related to employment of young persons under the Factories Act, 1948 are,

i) Prohibition of employment of young children

ii) Non-adult workers to carry tokens

iii) Certificates of fitness

iv) Working hours for children

v) Notice of periods of work for children

6.12 MODEL QUESTIONS

1. Explain the following terms under the Indian Factories Act, 1948:

   i) Hazardous process ii) Worker

   iii) Factory iv) Manufacturing process

2. Explain the provisions of the Indian Factories Act, 1948 ensuring the health and welfare of the workers in a factory.

3. Explain the provisions of the Indian Factories Act, 1948 ensuring the safety of the workers in a factory.

4. What are the provisions in the Act for employment of young person?

5. What are the provisions regarding hazardous work under the Indian Factories Act, 1948?

6. Who is a certifying surgeon? What are his duties?

7. "The State Government carries out the administration of the Indian Factories Act, 1948 ".

   State how different statutory agencies administer the different functions under the Act.

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UNIT 7: THE INDUSTRIAL DISPUTES ACT, 1947 (PART-A)

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Objectives of the Act

7.4 Important Definitions

7.5 Illegal Strikes and Lock-outs

7.6 Unfair Labour Practices

7.7 Let Us Sum Up

7.8 Further Reading

7.9 Answers To Check Your Progress

7.10 Model Questions

7.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the objectives and scope the Industrial Disputes Act, 1947
- define the different definitions
- explain Strikes, Lock-outs, Lay off ,Retrenchment, Transfer and Closing down of undertakings
- explain the meaning of Unfair Labour Practices

7.2 INTRODUCTION

The first Act regarding the dealing with industrial dispute was the Employees' and Workman's Disputes Act, 1860 which later replaced by Trade Dispute Act, 1929 as it weighed much on the workers. But later this Act also fails to create favorable atmosphere in the industry and settlement the disputes. After Second World War, the necessity of speedy redress of the industrial disputes was given much stress. Thus it gives the result of the Industrial Disputes Act, 1947. In this unit, we are going to discuss about Industrial Disputes Act, 1947 and details about its objectives and scope .This unit also encompasses the different important definitions under the Act. You will also get about the different

meaning of strikes, lock-outs, lay off, retrenchment, transfer and closing down of undertakings.The unit also, discusses about the meaning of Unfair Labour Practices. Thus, you will able to explain the basic object of passing of this Act and different prohibition when the strikes, lock-out set are become illegal.

7.3 OBJECTIVES OF THE ACT

The Industrial Disputes Act, 1947 extends to the whole of India whether it is private or Government undertaking. The Act amended from time to time. The basic objectives of the Act are to ensure fair terms to the workman and prevent disputes between employers and employees so that production of the industry does not effect.

In the case of Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, AIR 1958 S.C. 353, the Supreme Court laid down the following objectives of the Act:

i. Promotion of measures of securing and preserving amity and good relations between the employers and workmen.

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

iii. Prevention of illegal strikes and lock outs.

iv. Promotion of collective bargaining.

Thus, it is important that all the indifferences should be settle and decided with such care that neither party get undue leverage.

LET US KNOW

The Industrial Disputes Act, 1947 is a central act which came into operation on 1st April 1947. This Act received the asset of the President on 31.8.1982. The latest amendment to the Act was made in 1984.

CHECK YOUR PROGRESS

Q1. Mention one objective of the Industrial Disputes Act, 1947.

7.4 IMPORTANT DEFINITIONS

Some important definitions are given below—

Industry:

Section2 (j) under the Industrial Disputes Act, 1947 define the term 'industry'. It means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,-

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

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

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948;

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

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

Explanation :- For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries; or

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

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

(5) khadi or village industries; or

(6) any activity of the Government related to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defense research, atomic energy

and space; or

(7) any domestic service; or

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

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

Now let us see whether the following activities would fall under industry or not:

1. *Municipalities:* If a municipality discharges many functions some pertaining to industry and other are non industry, the predominant function of the department shall be the criterion for the purpose of the Act. Some industry falls under like, Tax, Public Conveyance, Lighting, Health, Market, Public Garden etc.
2. *Hospitals and Charitable institutions:* Absence of profit motive or gainful objective is irrelevant for "industry:" be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. The charitable institutions fall into three categories:
   a. Those that yield profit but the profits are not use for their own, rather use for other purposes i.e. the profit that earned is siphoned off for altruistic purposes.
   b. Those that make no profit but hire the services of employees as in any other business.
   c. Those that are oriented on a human mission fulfilled by men who work not because they are paid wages but share the passion and job derive satisfaction.

Here the first two are industries but not the third.

3. *Clubs:* Without destroying the non-employee character of the definition of 'industry', and hire a minimal matters of marginal employees, clubs can be said as industry.
4. *Universities:* As regards institution, if the triple tests of the definition of 'industry' done i.e. systematic activity, cooperation between employer and employee and production of goods and services were to be applied, a university, a college, a

research institute or teaching institute will be 'industry'.

5. *Professional firm:* Professional firm like lawyers, doctors etc follow the personal character of the relationship between a doctor or a lawyer with his professional assistant may be of such a kind that requires complete confidence and harmony in the productive activity in which they may be cooperating; and as they have the character of the test of having direct relation between capital and labour in the production of goods or in rendering of service or that cooperation between employer and employees in carrying the service, professional firm can be 'industry'.

6. *Voluntary services:* If for a certain pious mission, many employees' provide free service for a nominal cost or on the master and servant relationship, then the institute is not an industry.

LET US KNOW

The Supreme Court in the decision of the Bangalore Water Supply and Sewerage Board V. A. Rajappa and others had while interpretining the definitation of industry as contained in the Act, observed that Government might restructure the definitation by suitable legislative measures.

CHECK YOUR PROGRESS

Q2. Mention whether the following activities would fall under industry or not under Industrial Disputes Act, 1947.

a. Voluntary services, b. Municipalities

a) .....
.....

b) .....
.....

Industrial Disputes: "Industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person [Section 2(k)].

Thus the above definition can be analysed as:

a. **Existence of a disputes or difference:** An industrial dispute exists only when the

same has been raised by the workmen with the employer. Unless there is a demand by the workmen and that demand is not complied with by management, there can not be any Industrial dispute within the meaning of Section 2(k).

b. **Parties to the disputes:** Industrial dispute mean that the dispute must affect a large groups of workmen and employers ranged on opposite sides. Thus, there should be community of interest in the disputes. The disputes can be raised by workmen themselves or their union or federation on their behalf. A dispute may initially be an individual dispute. But the workmen may make that dispute as their own that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workmen. All workmen need not to join the dispute. It may have been raised by a minority group of workmen.

c. **Subject matter of dispute:** The disputes should relate to the employment, non-employment, or conditions of work of the workmen. It is a wider term which refers the amenities to be provided to the workmen and the conditions under which they will be required to work. The matters are like safety, health and welfare of workers.

d. **Dispute in an 'industry':** The difference or the dispute must relate to an 'industry' as defined under Section2 (j) of Industrial Disputes Act, 1947. No industrial dispute can exist without an industry.

Workman: According to the section 2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes:

a) any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or

b) whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

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

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

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

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per month or

(v) who, exercising, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

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

Essentials of strike:

(I) Strike can be take place only when there is a cessation of work or refusal to work by the workmen acting in combination or a concerted refusal.

(II) A concerted refusal under a common understanding of any number of persons to continue to work or to accept employment will amount to a strike.

(III) The striking workmen must be employed in an 'industry'.

(IV) Even when workmen cease to work, the relationship of employer and employee is deemed to continue and it may in a state of belligerent suspension.

Lock-out: "Lock-out" means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him [Section 2 (l)].

Essentials of lock-out:

(i) There is temporary closing of a place of employment or the suspension of work.

(ii) There is an element of demands for which the place of employment is locked –out or closed;

(iii) There is an intention to re-employ the workers if they accept the demands.

Lay-off: "Lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of to give employment to a workman whose name is borne on the master rolls of his industrial establishment and who has not been retrenched, for the following reasons,

a. shortage of coal, power or raw materials or

b. the accumulation of stocks or

c. the breakdown of machinery or

d. natural calamity or

e. for any other connected reason [Section 2 (kkk)].

Explanation to section 2 (kkk) provides that every workman whose name is borne on the master rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

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

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

Difference between lock out and lay off:

The concept of 'lock-out' is essentially different from the concept of 'lay-off'. The points of distinction between 'lay-off' and 'lock-out' may be broadly stated as follows:

1. 'Lay-off' generally occurs in continuous business, whereas 'lock-out' is closure of business for the time-being.
2. In the case of 'lay-off' owning to the reasons specified in Section 2(kk). Here, the employer is unable to give employment to one or more workmen, whereas in 'lock-out' the employer deliberately closes the business and locks out the whole body of workmen for reasons which have no relevance to the causes specified in Section 2 (kkk).
3. 'Lock-out' is resorted to by the employer as a weapon of collective bargaining and also ordinarily involves an element of malice or ill-will while 'lay-off' is actuated by the exigencies of the business.
4. The provisions applicable to the payment of 'lay-off' compensation cannot be applied to the case of 'lock-out.'

But there are some resemblances also:

1. both 'lay-off' and 'lock-out' are temporary in nature and both arise out of and exist during an emergency though the nature of emergencies in each case is different.
2. both in 'lay-off' and 'lock-out', the relationship of employment is only suspended and

is not severed.

3. 'lay-off' resorted to in contravention of the provisions of Section 25-M is illegal and punishable under Section 25Q, while 'lock-out' declared in contravention of the provisions of Section 10(3), 10A (4A), 22 or 23 is illegal and punishable under Section 26 of Industrial Disputes Act, 1947. The rule regarding the second half of the suit was omitted in West Bengal by an amendment of the Industrial Dispute Act in 1974.

Retrenchment: According to section 2(o o) retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

(a) voluntary retirement of the workman; or

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

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

(c) termination of the service of a workman on the ground of continued ill-health[Section 2(o o)].

Essentials of Retrenchment:

(i) There should be termination of the service of the workmen.

(ii) The termination should be by the employer.

(iii) The termination is not the result of punishment inflicted by way of disciplinary action.

(iv) The definition excludes termination of service on the specified grounds or instances mentioned in it.

Settlement: "Settlement" means a settlement arrived,

a. at in the course of conciliation proceeding and

b. includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding, where, such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate

Government and the conciliation officer [Section 2(p)].

Appropriate Government:

"Appropriate Government" means -

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning [a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956] or the Employees State Insurance Corporation established under Section 3 of the Employees State Insurance Act, 1948, or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5a and Section 5b, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporations Act, 1956, or [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962, or the Agricultural Refinance and Development Corporation established under Section 3 of the Agricultural Refinance and Development Corporation Act 1963, or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 or the Food Corporation of India established under Section 3 or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporation Act, 1961, or [the Airports Authority of India Act, 1994 (33 of 1994) or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 or the Export Credit and Guarantee Corporation Limited for the Industrial Reconstruction Corporation of India Limited, or [an air transport service, or a banking or an insurance company], [a mine, an oil-field], [a Cantonment Board], or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government [Section 2(a)].

Public Utility Service:

"Public utility service" means-

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

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

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

(iii) any postal, telegraph or telephone service;

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

(v) any system of public conservancy or sanitation:

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

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension [Section 2(n)].

7.5 ILLEGAL STRIKES AND LOCK-OUTS

The justification of strikes depends on the fairness and reasonableness of demands made by workmen. It is not merely because they have all legitimate options open for getting their demands fulfilled. Thus, the legality of strike is determined with reference to the legal provisions enumerated in the Act. Sections 10 (3), 10A (4A), 22 and 23 of the Act deals with strikes and lock-outs. Section 22 and 23 of the Act deals with restriction on the commencement and Sections 10 (3), 10A (4A) prohibits the continuance of strikes and lock-outs.

A. General prohibition of strikes and lock-outs –

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

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

(b) during the pendency of proceedings before a Labour Court, Tribunal or National

Tribunal and two months after the conclusion of such proceeding.

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

(c) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award (Section 23).

The basic purposes of these provisions are to ensure a peaceful atmosphere during the pendency any proceeding before Labour Court, Tribunal, National Tribunal or Arbitrator.

B. Prohibition of strikes and lockouts—

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

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

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

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

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

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

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

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

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

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

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

(4) The notice of strike referred to in sub-section (1) shall be given by such number

of persons to such person or persons and in such a manner as may be prescribed.

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

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

C. Illegal strikes and lock-outs –

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

(i) it is commenced or declared in contravention of Section 22 or Section 23, or

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

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

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

7.6 UNFAIR LABOUR PRACTICES

It means any of the practises specified in the Fifth schedule [Section 2(ra]. Under Section 25T, no employer or workman or a Trade Union whether registered under the Trade Unions Act, 1926 or not shall commit any unfair labour practices. Section 25U provides that any person who commits any such acts shall be punishable for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. The **fifth schedule under section 2(ra)** of unfair labour practices includes:

I) On the part of employers and trade unions of employers

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say-
   (a) threatening workmen with discharge or dismissal, if they join a trade union,
   (b) threatening a lock-out or closure, if a trade union is organized,
   (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.
2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say,
   (a) an employer taking an active interest in organizing a trade union of his workmen; and
   (b) an employer showing partiality or granting favour to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.
3. To establish employer-sponsored trade unions of the workmen.
4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say- Taj discharging or punishing a workman, because he urged other workmen to join or organize a trade union,
   (b) discharging or dismissing a workmen for taking part in any strike (not being strike which is deemed to be an illegal strike under this Act),
   (c) changing seniority rating of workmen because of trade union activities,
   (d) refusing to promote workmen to higher posts on account of their trade union activities,
   (e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union.
   (f) discharging office-bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen-

(a) by way of victimization;

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

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

(d) for patently false reasons;

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

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

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

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
7. To transfer a workman mala fide from one place to another, under the guise of following manageent policy.
8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.
9. To show favoritism or partiality to one 'set' of workers regardless of merit.
10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
12. To recruit workmen during a strike which, is not an illegal strike.
13. Failure to implement award, settlement or agreement.
14. To indulge in acts of force or violence.
15. To refuse to bargain collectively, in good faith with the recognized trade unions.
16. Proposing or continuing a lock-out deemed to be illegal under this Act.

//.) On the part of workmen and trade unions of workmen.

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.
2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that it is to say-

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

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

3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of a bargaining representative.
5. To state, encourage or instigate such forms of coercive actions as wilful 'go-slow', squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in willful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats or intimidation against any workman with a view to prevent him from attending work.

LET US KNOW

When an employer of a public utility service receivesnotice of strike or gives notice of a lock-out, he must within five days report to the appropriate Government or the authority appointed by such Government for this purpose. [Section 22(6)]

CHECK YOUR PROGRESS

Q3. Fill in the blanks with appropriate words:

i) Industrial Dispute is defined under section …….. .....

ii) Workmen in defined under section……

iii) Strike is defined under section ……..

iv) Lock out is defined under section …….

7.7 LET US SUM UP

In this unit, we have discussed the following :

- The Industrial Disputes Act, 1947 applies to all industries.
- The main objective of the Industrial Disputes Act, 1947 are,
  a) promotion of measures of securing and preserving amity and good relations between the employers and workmen
  b) Investigation and settlement of industrial disputes.
- Section 22 and 23 of the Act deals with restriction on the commencement and Sections 10 (3), 10A (4A) prohibits the continuance of strikes and lock-outs.
- The unfair labour practises specified in the Fifth schedule [Section 2(r a)] of the Industrial Disputes Act, 1947.

7.8 FURTHER READING

1. Workmen's Compensation Act , 1923(Bare Act)
2. P. L. Malik (2017);P. L. Malik's Industrial Law; Eastern Book Company, India
3. N.D. Kapoor (2011);Handbook of Industrial Law ; Sultan Chand & Sons, India

7.9ANSWERS TO CHECK YOUR PROGRESS

Ans to Q1: The main objective of Industrial Disputes Act, 1947 is,

i.) Promotion of measures of securing and preserving amity and good relations between the employers and workmen.

Ans to Q2: a. Voluntary services: If for a certain pious mission, many employees' free service or supply free service for a nominal cost or on the master and servant relationship, then the institute is not an industry.

b. Municipalities: Municipality discharges many functions. Some pertaining to industry and other are non industry. The predominant function of the department shall be the criterion for the purpose of the Act. Some industry falls under like, Tax, Public Conveyance, Lighting, Health, Market, Public Garden etc.

Ans to Q3: i) 2 (k) ii) 2(s) iii) 2 (q) iv) 2 (i)

⑦7.10 MODEL QUESTIONS

Q.1: What are the objectives of the Industrial Disputes Act, 1947?

Q.2: Define the terms:

a. Industrial Disputes

b. Industry

c. Workmen

d. Public utility service

Q.3: Mention a few unfair labour practices on the part of employers and on the part of workmen?

Q.4: Distinguish between:

a. 'Lay-off' and 'Lock-out'

b. Strikes and Lockouts

Q.5: Discuss the provisions relating to illegal strikes and lockouts.

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UNIT 8: THE INDUSTRIAL DISPUTES ACT, 1947 (PART-B)

UNIT STRUCTURE

8.1 Learning Objectives
8.2 Introduction
8.3 History of the law of Industrial Disputes
8.4 Authorities under the Act and their Duties
8.5 Reference of Disputes
8.6 Procedure and Powers of Authorities
8.7 Award and Settlement
8.8 Let Us Sum Up
8.9 Further Reading
8.10 Answers To Check Your Progress
8.11 Model Questions

8.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the history and importance of the Industrial Disputes Act, 1947
- explain about different authorities under the Act and their duties
- discuss about reference of disputes
- explain the procedure and powers of authorities
- describe about award and settlement

8.2 INTRODUCTION

The main purpose of the Industrial Disputes Act, 1947 is to ensure fair terms between employers and employees, workmen and workmen as well as workmen and employers. It helps not only in preventing disputes between employers and employees but also help in finding the measures to settle such disputes so that the production of the organization is not hampered. In this unit, we are going to discuss the Industrial Disputes Act, 1947 and its importance. This unit encompasses the different authorities and their duties in the settlement of disputes. It also discuss about the reference of disputes. Through this unit, you will be able to know about the different award given by the different authorities

under the Act. Thus, you will able to understand through this unit, the procedures of settlement of the disputes as well as the duties of different authorities as well as the way of reference of disputes.

8.3 HISTORY OF THE LAW OF INDUSTRIAL DISPUTES

The World War I (1914-1919) brought a new awakening among the working class people who were dominated by the employers regarding the terms and conditions of service and wages. The workers resorted to strikes to fulfill their demands and the employers retaliated by declaring lockouts. During the period 1928-29 the numerous strikes and lock-outs forced the Government to enact the Trade Disputes Act, 1929.

The Trade Dispute Act, 1929 was introduced for the settlement of industrial disputes. This Trade Union Act gave the trade unions a legal status. The main object of the Act was to make provision for the establishment of Courts of Enquiry and Boards of Conciliation with a view to investigating and settling trade disputes. But, this Act failed to create favorable atmosphere in the industry and settle the disputes. The main defect of the Act was that no provision was has been made to render the proceedings institutable under the Act while restraint had been imposed on the right of strike and lock-out in the public utility services. But, later this defect was overcome by empowering under Rule 81-A, of the Defense of Indian Rules to refer industrial disputes to adjudicator for settlement during the Second World War (1938-1945). The rule provide speedy remedies for industrial disputes by compulsory reference of disputes to conciliation or adjudication, by making the awards of adjudicators legally binding on the parties, by prohibiting strikes and lock-outs during the pendency of conciliation or arbitration proceeding.

With the termination of the Second World War, Rule 81-A was about to lapse on 1st October, 1946, but it was kept alive by recourse to Government's Emergency Powers. The main provision was retained in the Industrial Disputes Act, 1947.

CHECK YOUR PROGRESS

Q1. What was the main defect of the Trade Dispute Act, 1929?

8.4 AUTHORITIES UNDER THE ACT AND THEIR DUTIES

The Industrial Dispute Act, 1947 makes provision for the investigation and settlement of disputes that may hamper the peace of the industry. It ensures harmony and cordial

relationship between the employers and employees. The Act provides self-contained code to compel the parties to resort to industrial arbitration for the resolution of disputes. It also provides statutory norms besides helping in the maintaining of cordial relation among the employers and employees ,reflecting socio-economic justice.

The act provides for the following authorities for Investigation and Settlement of industrial disputes:

(i) Works Committee
(ii) Conciliation Officer
(iii) Boards of Conciliation
(iv) Court of Inquiry
(v) Labour Court
(vi) Labour Tribunals
(vii) National Tribunals

Let us discuss these authorities in detail:

WORKS COMMITTEE (Section 3):

The works committee is a committee consisting of representatives of employers and workmen (section3). The works committee is a forum for explaining the difficulties of all the parties.The main objective of the works committee is to solve the problems arising in the day-to-day working of a concern and to secure industrial harmony. The function of the working committee is to ascertain the grievances of the employees and to arrive at some agreement. The committee is formed by general or special order by the appropriate Government in an industrial establishment in which 100 or more workmen are employed or have been employed on any day in the preceding 12 months. It consists of the representatives of employers and workmen engaged in the establishment.

It shall be the duty of the working committee to promote measures for securing and preserving amity and good relations between the employers and workmen and, to that end, to comment upon matters of their common interest or concern and to endeavour to compose any material difference of opinion in respect of such matters and decision of the works committees are not binding.

CONCILIATION OFFICER (Section 4):

For promoting and settlement of industrial disputes the appropriate Government may by notification in the Official Gazette, appoint such number of conciliation officer as it thinks fit. The main objective of appointing conciliation officer is to create congenial atmosphere

within the industry and reconcile the disputes of the workers and the employers. He may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

The duty of the conciliation officer is not judicial but administrative. He has to hold conciliation proceedings, investigate the disputes and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair settlement of the disputes. The conciliation officer is entitled to enter an establishment to which the dispute relates, after reasonable notice and also to call for and inspect any document which he consider relevant. He has to send a report and memorandum of settlement to appropriate Government. The report by the conciliation officer has to be submitted within 14 days of the commencement of the conciliation proceeding or shorter period as may be prescribed by the appropriate Government. The conciliation officer has the power to enter the premises as well can call for and inspect documents.

BOARDS OF CONCILIATION (Section 5):

The appropriate Government may by notification in the Official Gazette, constitute a Board of Conciliation for the settlement of industrial disputes. The Board shall consist of a chairman and 2 or 4 other members in equal numbers representing the parties to the disputes as the appropriate Government thinks fit. The Chairman shall be an independent person. A person is “independent” for the purpose of appointment to a Board, Court or Tribunal if he is uncommitted with the dispute or with any industry directly affected by such dispute. He may be a shareholder of a company connected with or likely to be affected by such disputes. But in such a case he must disclose to the Government the nature and intent of his share [Section 2(i)]. Where the appropriate Government is of the opinion that any industrial disputes exist in an industry, it may refer by order in writing to the Board of Conciliation for settling industrial disputes.

The Board of Conciliation has to bring about a settlement of the dispute. He has to send a report and memorandum of settlement to appropriate Government. He has to send a full report to the Appropriate Government setting for the steps taken by the Board in case no settlement is arrived at. The Board of Conciliation has to communicate the reasons to the parties if no further reference is made. The Board has to submit its report within 2 months of the date on which the dispute was referred to it within the period what the appropriate Government may think fit. The report of the Board shall be in writing and shall be signed by all the members of the Board.

COURT OF INQUIRY (Section 6):

The appropriate Government may by notification in the Official Gazette, constitute a court of inquiry into any matter appearing to be connected with or relevant to settlement of industrial disputes having an independent person or of such independent persons as the appropriate Government may think fit. The court consists of two or more members one of whom shall be appointed by the Chairman. Within a period of 6 months, the court has to send a report thereon to the appropriate Government from the commencement of its any inquiry. This period is not mandatory and it may be extend.

It has the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908, in the following matters—

a. enforcing the attendance of any person and examining him on oath,

b. compelling the production of documents and material objects,

c. issuing commissions for the examination of witnesses,

d. in respect of such other matters as may be prescribed.

The report of the Court must be signed by all the members. A member can submit a note of dissent. The Report together with the dissenting note must be published by the appropriate Government within 30 days from its report. A court of enquiry has no power to improve any settlement upon the parties.

LABOUR COURT (Section 7):

The appropriate Government may by notification in the Official Gazette, constitute one or more labour court for adjudication of industrial disputes relating to any matters specified in the Second Schedule. A labour court consists of one person only to be appointed by the appropriate Government.

The main function of the labour court is to hold its proceedings expeditiously and submit its award as the proceeding concludes.

A person shall be presiding officer of a labour court unless—

a. he is or has been, a Judge of the High court,

b. he has for a period of not less than three years, been a District Judge or an Additional District Judge or

c. he has held any judicial office in India for not less than seven years; or

d. he has been the presiding officer of a Labour Court constituted under any provincial

Act or State Act for not less than five years.

e. He must be an " independent " person and must not have attained the age of 65 years.

LABOUR TRIBUNALS (Section 7- A):

The appropriate Government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for adjudication of industrial disputes. A Tribunal shall consist of one person to be appointed by the appropriate Government. The Appropriate Government may appoint two persons as assessors to advise the Tribunel. The person shall be not qualified unless—

a. he is, a Judge of the High court,

b. he has for a period of not less than three years, been a District Judge or an Additional District Judge.

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

The functions of the Tribunals are very much like those of a body discharging judicial functions, although it is not a Court. Its power is different from that of a Civil Court. The proceedings before an Industrial Tribunal are quasi-judicial in nature with all the attributes of a Court of Justice. The Government is empowered under Section 7-A of the Act to constitute for a limited time which comes to an end automatically on the expiry of the said period for any particular case. The duties of Industrial Tribunal are identical with the duties of Labour Court, i.e. on reference of any industrial disputes; the Tribunal shall hold its proceedings expeditiously and submit its award to the appropriate Government.

NATIONAL TRIBUNALS (Section 7 B)

The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes. National Industrial Tribunals are involve only incase of the questions of national importance or if they are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such industrial disputes. It consists of one person only to be appointed by the Central Government.The person shall not be qualified for appointment as the presiding officer unless he is, or has been, a Judge of a High Court. Beside these, the Central Government may, if it thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceedings before it.

CHECK YOUR PROGRESS

Q2. Mention the authorities for Investigation and Settlement of industrial disputes underthe Industrial Dispute Act, 1947?

i.) .....

ii) .....

iii) .....

iv) .....

v) .....

vi) .....

vii) .....

vii) .....

8.5 REFERENCE OF DISPUTES

Any industrial disputes should have to referred by the Appropriate Government under section 10 for adjudication, to the Conciliation Board, Labour Court, Court of Inquiry or Industrial Tribunal or National Tribunal.

A. Reference of disputes to various Authorities:

A matter is referred to the Conciliation Board for promoting the settlement of the disputes. The Conciliation Board is to promote settlement and not to adjudicate.

But if the purpose of reference of the matter is investigatory instead of conciliatory or adjudicatory, it should be referred to Court of Inquiry. Again, if the matter is related to the Second Schedule or Third Schedule, it is referred to the Labour court. On the other hand, any matter of the industrial disputes which may relate to the Second Schedule or Third Schedule may refer to the Industrial Tribunal.

Where the disputes relate to a public utility service and a notice of the same is given, it becomes mandatory of the Appropriate Government or the Central Government to refer the matter for adjudication. But the power of the Appropriate Government to make a reference is discretionary and it is open to judicial review.

B. Reference of disputes to National Tribunal involving question of importance, etc:

When industrial disputes are of national importance or they are likely to be affect the

industrial establishments situated in more than one State then they are referred to the National Tribunal by the Appropriate Government for adjudication. Again if any matter referred to National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before Labour Court or Tribunal becomes invalid. On the other hand, it is not lawful to refer any matters which are under adjudication before the National Tribunal to Labour Court or Tribunal.

C. Reference on application of parities:

If a person individually or jointly applies any matter in a prescribed manner to the Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal for adjudication and the Appropriate Government on being satisfied on the same specifies such time limit as it these proper to submit the award.

D. Time limit for submission of awards:

Section 10 (2A) of the Act specifies the time period for submitting award by the Appropriate Government, when any reference is made to the Labour Court, Industrial Tribunal or National Tribunal for adjudication.

VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION:

The settlement of industrial disputes may be done through voluntary reference under section 10-A.

i) When an industrial dispute is not referred to Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal for adjudication, the employer and the workmen through a written agreement forward the matter for arbitration specifying the names of the arbitrator.

ii) The arbitration agreement should be made in prescribed form and should be signed by the parties.

iii) Within one month from the receipt of the arbitration agreement which should be forwarded to Appropriate Government and the Conciliation Officer, a copy of the same has to be published in the Official Gazette.

iv) The arbitrator or arbitrators shall have to investigate the disputes and submit to the Appropriate Government the award.

v) The award should be signed by the arbitrator or the arbitrators.

vi) The strike or lock-out in connection with the disputes should be prohibited by an

order of the Appropriate Government.

8.6 PROCEDURE AND POWERS OF AUTHORITIES

Section 11 provides that every Conciliation Officer or member of a Board or Court or Presiding Officer of a Labour Court, Industrial Tribunal or National Tribunal after giving notice can enter the premises occupied by any establishment to which the disputes relate and follow such procedure as the arbitrator or other authority concerned may think fit. They have the same power as are vested in the Civil Court under the Code of Civil Procedure, 1908 while trying a suit in matters like,

a. enforcing the attendance of any person and examining him on oath,

b. compelling the production of documents and material objects,

c. issuing commissions for the examination of witnesses,

d. in respect of other such other matters as may be prescribed.

An assessor or assessors may be appointed by the Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal for advice having special knowledge on that matter. The Conciliation Officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect the documents. The Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal has the full power to determine to what extent, by whom and subject to what conditions costs are to be paid.

Thus, it is seen that section 11 (1) has given wide power to the Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal in the settlement of industrial disputes.

8.7 AWARD AND SETTLEMENT

Award means an interim or a final determination of any industrial disputes or of any question relating thereto by any Labour Court, Tribunal or National Tribunal and includes an arbitration award made under section 10A Section 2 (b).The report of the Board of Conciliation or the Court of Inquiry shall be in writing and shall be signed by all the members and the award of a Labour Court and Industrial Tribunal shall be in writing and shall be signed by the Presiding Officer. Section 21 requires certain matters to be kept confidential and it is further provided by the section that certain matters are not disclosed without the written consent of the secretary of the trade union or firm or company in

question as the case may be of any information obtained by Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal. An award usually is enforceable on the expiry of 30 days from the date of its publication except when the Appropriate Government declares that the award given by the Labour Court and Industrial Tribunal shall not be enforceable on the expiry of 30 days from the date of its publication. Again, it may not be enforceable on the expiry of 30 days from the date of its publication, if the Central Government get the opinion regarding the award given by the National Tribunal. In such case, the Appropriate Government or the Central Government may within 90 days from the date of publication of the award under section 17 make an order rejecting or modifying the award. But, if it appears that the award given by the Industrial Tribunal is fair and just, it is authorised to issue direction that the award takes effect retrospectively.

Persons on whom settlements and awards are binding (Section 18):

1. Settlement and awards are binding on all the parties under the agreement arrived at between the employers and workers in the course of conciliation proceedings.
2. An arbitration award is binding on the concerned parties of the agreement who referred the disputes to arbitration.
3. An arbitration award or settlement award or award of Labour Court, and Industrial Tribunal or National Tribunal is binding on—
    a. All the parties to the disputes,
    b. On all other parties who are summoned to appear in the proceeding as parties to the disputes, unless the Board, Arbitrator, Labour Court, Industrial Tribunal or National Tribunal in the settlement of industrial disputes as the case may be, records the opinion that they were so summoned without proper cause.
    c. Where a party referred to Clause (a) and Clause (b) is an employer, his heirs, successors assigned in respect of the establishment to which the dispute relates.
    d. But if the parties referred to in Clause (a) or Clause (b) is of workmen, all person who were employed in the establishment or part of the establishment, as the case may be, to which the disputes relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

A settlement arrived at in the course of conciliation proceedings before a Conciliation

Officer shall come into operation on such date as is agreed upon by the parties to the disputes and on the date on which the memorandum of the settlement is signed by the parties to the disputes when no date is agreed. But, if a person breaches any term of any settlement or award which is binding on him he shall be punishable with imprisonment for a term which may extend to 6 months or with fine or both.

8.8 LET US SUM UP

In this unit, we have discussed the following issues:

- The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of disputes through Conciliation Officer or member of a Board or Court or Presiding Officer of a Labour Court, Industrial Tribunal or National Tribunal.
- Any industrial disputes may be referred by the Appropriate Government under section 10 for adjudication, to the Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal.
- The settlement of industrial disputes may be done through voluntary reference under section 10-A
- The conciliation officer or a member of a Board or Court or the Presiding Officer of a Labour Court, Industrial Tribunal or National Tribunal has the same power as are vested in the Civil Court under the Code of Civil Procedure, 1908.

8.9 FURTHER READING

1. Workmen's Compensation Act , 1923(Bare Act)
2. P. L. Malik (2017);P. L. Malik's Industrial Law; Eastern Book Company, India
3. N.D. Kapoor (2011);Handbook of Industrial Law ; Sultan Chand & Sons, India

8.10 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q.1: The main defect of the Trade Dispute Act, 1929 was that no provision has been made to render the proceedings institutable under the Act while restraints have been imposed on the right of strike and lock-out in the public utility services

Ans to Q.2: The authorities for Investigation and Settlement of industrial disputes under the

Industrial Dispute Act, 1947 are—

i) Works Committee
ii) Conciliation Officer
iii) Boards of Conciliation
iv) Court of Inquiry
v) Labour Court
vi) Labour Tribunals
vii) National Tribunals

8.11 MODEL QUESTIONS

Q1. What authorities have been set up under the Industrial Dispute Act, 1947 for investigation and settlement of industrial disputes?

Q2. Write short notes on—

a. Works Committee
b. Conciliation Officer
c. Boards of Conciliation
d. Court of Inquiry
e. Labour Court
f. Labour Tribunals
g. National Tribunals

Q3. Under what circumstances does an award made under the Industrial Dispute Act, 1947 commence to be enforceable?

Q4. Discuss the provisions of Industrial Dispute Act, 1947 relating to the voluntary reference of disputes to arbitration.

Q5. Mention the persons on whom settlements and awards are binding under the Industrial Dispute Act, 1947.

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UNIT 9: THE TRADE UNIONS ACT, 1926

UNIT STRUCTURE

9.1 Learning Objectives

9.2 Introduction

9.3 Objectives of the Trade Unions Act

9.4 Important definitions

9.5 Registration of Trade Union

9.6 Rights and Liabilities of registered Trade Union

9.7 Penalties

9.8 Let Us Sum Up

9.9 Further Reading

9.10 Answers To Check Your Progress

9.11 Model Questions

9.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- discuss the Registration of Trade Union
- explain the Rights and Liabilities of registered Trade Union
- explain Penalties

9.2 INTRODUCTION

In this unit we are going to discuss about trade union. The trade union is an association of workers. It is the union which protects the rights of the worker. A trade union is neither instrumentality nor an agency of State. It may be registered under the Registrar of Trade Union and thus the registered trade union can avail different rights and privileges. Similarly registered Trade Union obligated by different liabilities also. After going through this unit learners can be able to explain the registration of trade union along with the objectives of the Trade Unions Act, 1926. More over, you can also know about different rights and liabilities of registered Trade Union along with the different penalty provisions under The Trade Unions Act, 1926.

9.3 OBJECTIVES OF THE TRADE UNIONS ACT

According to Sidney and Webb, trade union is a continuous association of wage earner for the purpose of maintaining and improving the conditions of their working lives. The origin of The Trade Unions Act, 1926 is beginning for the labour unrest dating back to 1877. The setting up of large scale industries creates exploitative tendencies in the mind of the employers which increase the demand for protecting the rights of the workers. The passing of The Trade Unions Act, 1926 is the result of formal recognition to the workers' right to organize. The main objectives of the Act are,

1. To promote both individual and collective welfare.
2. To secure the payment of salaries, wages, allowances etc of the workers.
3. To secure the employment of the workers.
4. To protect the working condition of the workers.
5. To secure the opportunities related to the promotion of the workers.
6. To enlarge the training opportunities.
7. To assist in collective bargaining to protect the interest of the workers.
8. To help the workers in introducing themselves in participatory movement in the different discussion of the management of the organization.
9. To help in providing the educational, recreational and cultural facilities.
10. To identify the different roles and responsibilities of the workers in the industry.

LET US KNOW

The origin of trade unionism in India can be traced back to the year 1890 when for the first time an association of mill workers was formed for the redressal of grievances of the Bombay mill workers.

CHECK YOUR PROGRESS

Q1. Mention five objectives of The Trade Unions Act, 1926.

i) .....

ii) .....

iii) .....

iv) .....

v) .....

9.4 IMPORTANT DEFINITIONS

Under section 2 different terms which are used in The Trade Unions Act, 1926, are

discussed as follows :

In this Act **"Appropriate Government"** means in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, State Government and, unless there is anything repugnant in the subject or context—

(a) **"Executive"** means the body, by whatever name called to which the management of the affairs of a Trade Union is entrusted;

(d) **"Registered office"** means that office of a Trade Union which is registered under this Act as the Head office thereof.

(e) **"Registered Trade Union"** means a Trade Union registered under this Act;

(f) **"Registrar"** means:

(i) A Registrar of Trade Unions appointed by the appropriate Government under section 3, and includes an additional or Deputy Registrar of Trade Unions; and

(ii) In relation to any Trade Union, the Registrar appointed for the State in which the head or registered office, as the case may be, of the Trade Union is situated;

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

Thus, trade dispute can be defined as, any disputes that arises in between,

i. employers and workmen

ii. workmen and workmen

iii. employers and employers, in connection of employment or non-employment or the terms of employment or the conditions of labour, of any person.

(h) **"Trade Union"** means combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation of two or more Trade Unions;

Provided that this Act shall not affect -

(i) Any agreement between partners to their own business;

(ii) Any agreement between an employer and those employed by him as to such employment; or

(iii) Any agreement in consideration of the sales of the goodwill of a business or of instruction in any profession, trade or handicraft.

CHECK YOUR PROGRESS

Q2. Define Trade Dispute under The Trade Unions Act, 1926.

i) .....

9.5 REGISTRATION OF TRADE UNION

Under Section 3, the Appropriate Government shall appoint a person to be the Registrar of Trade Unions for each State. The appropriate Government may appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit.

Mode of registration (Section 4):-

(1) Any seven or more members of a Trade Union may be subscribing their names to the rules of the Trade Union complying with the provisions of this Act with respect to registration, apply for its registration.

(2) Where an application has been made for the registration of a Trade Union shall not be deemed to have become invalid, merely by reason of the fact that, at any time—

- after the date of the application,
- but before the registration of the Trade Union ,some of the applications,
- but not exceeding half of the total number of the persons who made the application, have ceased to be members of the Trade Union or
- have notice in writing to the Registrar dissociating themselves from the application under sub-section (1).

Application for registration (Section 5): -

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

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

application;

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

(c) The title, names, ages, addresses and occupations of the Trade Union.

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

Provisions to be contained in the rules of Trade Union (Section 6):-

Every registered trade union is required to have written rules dealing with certain matters specified in Schedule II of the Central Trade Union Regulation, 1938. The executive should be constituted in accordance with the provisions of this Act to form a Trade Union, and the rules thereof provided for following matters, namely:-

(a) The name of the Trade Union;

(b) The whole of the object for which the Trade Union has been established;

(c) The whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purpose, to which such funds are lawfully applicable under this Act;

(d) The maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof;

(e) The admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as required under Section 22 to form the executive of the Trade Union;

(ee) The payment of a subscription by members of the Trade Union which shall be not less than—

i. One percent per annum for rural workers;

ii. Three rupee per annum for workers in other unorganized sector; and

iii. Twelve rupees per annum for workers in any other case;

(f) The conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on members;

(g) The manner in which the member shall be amended, varied or rescinded;

(h) The manner in which the members of the executive and the other of the Trade Union shall be appointed and removed;

(i) The safe custody of the funds of the Trade Union, and annual audit, in such a manner as may be prescribed, of the account books by; and members of the Trade Union; and

(j) The manner in which the Trade Union may be dissolved.

Registration (Section 8):-

The Registrar, on being satisfied that the Union has complied with all the requirements of this Act, shall register the Trade Union by entering in a register to be maintained in such form as may be prescribed. An application for registration cannot be rejected on the ground that it is an attempt to revive an old, already unlawful, union under a new name. The workmen of an industrial establishment can form as many unions as they like.

Certificate of Registration (Section 9):-

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

Cancellation of Registration (Section 10): -

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

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

(b) If the Registrar is satisfied that the certificate has been obtained by—

  i. fraud or mistake,

  ii. the Trade Union has ceased to exist, or

  iii. willfully and after notice from the Registrar contravened any provision of this Act ,or

  iv. allowing any rule to continue in force which is inconsistent with any such provision,

  v. rescinding any rule providing for any matter, provision for which is required by Section 6:

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

Appeal (Section 11): -

(1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may appeal –

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

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

(2) The Appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration.

(3) For the purpose of an appeal under sub-section (1) an Appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows when trying a suit under the Code of Civil Procedure, 1908.

(4) The person aggrieved shall have a right of appeal to the High Court and the High Court shall, for the purpose of such appeal, have all the powers of an Appellate Court under sub-sections (2) and (3) and the provisions of that sub-section shall apply accordingly

Incorporation of registered Trade Unions (Section 13): -

Every registered Trade Union shall be a body corporate by the name under which it is registered .It has perpetual succession and a common seal. It also has the power to acquire and hold both movable and immovable property and contract, and shall, by the said name sues and be sued.

9.6 RIGHTS AND LIABILITIES OF REGISTERED TRADE UNION

The following are the rights and liabilities of registered trade union:

1. **Body Corporate (Section 13):** Trade Union shall be registered as a body corporate by the name under which it is registered .It has all features of a body corporate like perpetual succession, common seal etc. It can acquire and hold both movable and immovable property. It can be sued under its own name.

2. **Objects on which general funds may be spent (Section 15):**

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

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

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

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

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

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

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

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

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

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

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

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

3. Constitution of a separate fund for political purposes (Section16):-

(1) A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for

the promotion of the civic and political interest of its members, in furtherance of any of the objects specified in sub-section (2).

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

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

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

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

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

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

(3) No member shall be compelled to contribute to the fund constituted under sub-section (2), and a member who does not contribute to the said fund shall not be excluded from any benefits of the Trade Union, or placed in any respect either directly or indirectly under any disability at any disadvantage as compared with other members of the Trade Union (except in relation to the control of management of the said fund) by reason of his contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to the Trade Union.

Criminal conspiracy in trade disputes (Section 17):-

Unless the agreement is an agreement to commit an offence as under section 15, no officers or members of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code.

Immunity from civil suit in certain cases (Section 18):-

No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office-bearer or member thereof in respect of any act done or for a trade dispute, to which a member of the trade union is a party.

These protection is available on the ground that such act induces some other person to break a contract of employment or that it is in interference with the trade business or employment of some other person or with the right of some other person to dispose of

his capital or of his labour as he wills.

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

Enforceability of agreements (Section 19):-

An agreement between the members of a registered Trade Union shall not be void or violable merely by reason of the fact that any of the objects of the agreement is in restraint of trade. Provided that nothing in this section shall enable any Civil Court to entertain any legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any member of a Trade Union shall not sell their goods, transact business, work, employ or be employed.

Disqualification of office bearers of Trade Union (Section 21A):-

(1) A person shall be disqualified for being chosen as, and for being a member of the executive or any other office-bearer or registered Trade Union if-
   (i) He has not attained the age of eighteen years;
   (ii) He has been convicted by a Court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

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

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

9.7 PENALTIES

A. Failure to submit returns (Section 31): Section 31 of The Trade Union Act, 1926 states about the penalties on failure to submit returns by registered Trade Union. It contains,

(1) If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every (office-bearer) or other person bound by the rules of the Trade Union to give or send the same .

Again, if there is no such or person, every member of the executive of the Trade Union, shall be punishable with fine which may extend to five rupees and in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues and provided that the aggregate fine shall not exceed fifty rupees.

(2) Any person who willfully makes, or causes to be made, any false entry in, or any omission from the general statement required by section 28, or in or form any copy of rules or of alterations of rules sent to the Registrar under that Section, shall be punishable with fine which may extend to five hundred rupees.

B. Supplying false information regarding Trade Union (Section 32):

Any person with intent to deceive, gives to any member of a registered Trade Union or to any document purporting or applying to become a member of such Trade Union, any document purporting to be a copy of the rules of the Trade Union or of any alterations to the same which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force.

On the other hand, any person who, with the like intent gives a copy of any rules of an unregistered Trade Union to any person on the pretence that such rules are the rules of a registered Trade Union, shall be punishable with fine which may extend to two hundred rupees.

C. Cognizance of offence (Section 33):

(1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) No court shall take cognizance of any offence under this Act unless complaint thereof has been made by or with the previous section 32, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.

9.8 LET US SUM UP

- Trade dispute can be defined as, any disputes that arises in between, employers and workmen, workmen and workmen or employers and employers, in connection of employment or non-employment or the terms of employment or the conditions of labour, of any person.
- Any seven or more members of a Trade Union may be subscribing their names to the rules of the Trade Union complying with the provisions of this Act with respect to registration, apply for its registration.
- Unless the agreement is an agreement to commit an offence as under section 15, no officers or members of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code.

9.9 FURTHER READING

1. The Trade Unions Act ,1926; (Bare Act)
2. P. L. Malik (2017);P. L. Malik's Industrial Law; Eastern Book Company
3. N.D. Kapoor (2011);Handbook of Industrial Law ; Sultan Chand & Sons

9.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No.1: The five objectives of The Trade Unions Act, 1926 are:

i. To promote both individual and collective welfare.
ii. To secures the payment of salaries, wages, allowances etc of the workers.
iii. To secures the employment of the workers.
iv. To protects the working condition of the workers.
v. To secure the opportunities related to the promotion of the workers.

Ans to Q. No.2: "Trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment, or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade

dispute arises.

9.11 MODEL QUESTIONS

1. How trade unions are registered under the Trade Union Act, 1926?
2. Define the terms:
   a. Trade Dispute b. Registrar
   c. Trade Union d. Registered Trade Union
3. State briefly how certificate of registration are issued under the Trade Union Act, 1926?
4. What are the objectives of Trade Union Act, 1926?
5. What are the different provisions to be contained in the rules of Trade Union under Section 6?
6. When the certificate of registration of a Trade Union may be withdrawn or cancelled?
7. When does an appeal lie from the orders of Registrar of Trade Unions?
8. What are the disqualifications of office bearers of Trade Union Section 21A?
9. What are the objectives on which general funds may be spent under section 15 of Trade Union Act, 1926?
10. Why Constitution of a separate fund for political purposes under section16 of Trade Union Act, 1926 is formed?
11. What are the different rights and liabilities of registered trade union under Trade Union Act, 1926?

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UNIT 10: MINIMUM WAGES ACT, 1948

UNIT STRUCTURE

10.1 Learning Objectives

10.2 Introduction

10.3 Object and scope of the Act

10.4 Definitions under the Act

10.5 Fixation and Revision of Wages (Sec 3 to 5)

10.6 Safeguards in payment of Minimum Wages (Sec 11 to 18)

10.7 Enforcement of the Act (Sec 18 to 20)

10.8 Let Us Sum Up

10.9 Further Reading

10.10 Answers To Check Your Progress

10.11 Model Questions

Schedule Part I & Part II

10.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the scope and the objects of “Minimum Wages Act, 1948”
- describe the different definition under the Act
- discuss the different provisions of fixation and revision of wages
- outline the different provisions to safeguard in payment of minimum wages
- discuss the different provisions of enforcement of the Act

10.2 INTRODUCTION

In this unit we are going to discuss on “Minimum wages Act 1948”.According to the Act, it enables the Central and State Government to fix minimum rates of wages payable to employees in a selected number of ‘sweated’ industries. There are certain provisions under the Act. You will get a fair idea on the important provisions of the Act while going through this unit.

10.3 OBJECT AND SCOPE OF THE ACT

The main objective of this Act, is fixing a minimum rate of wages in number of industries where the labours are not organized and sweated labours are most dominant.
The Act aims at preventing the exploitation of workers or labours in some industries, for which, the appropriate Government is empowered to take steps to prescribe minimum rates of wages in certain employment.

The Minimum Wages Fixing Machinery convention was held at Geneva in the year 1928 by ILO with reference to remuneration of workers in those industries where the, level of wages was substantially low and the labour was vulnerable to exploitation, being not well organised and having less effective bargaining power.

This Act may be called the Minimum Wages Act 1948.The Act enables the Central and State Government to fix minimum rates of wages payable to employees in selected number of 'sweated' industries. The Act extends to the whole of India.

10.4 DEFINITIONS UNDER THE ACT

Following are some of the definitions and sections under the Act:

1. **Adolescent [2. (a)]:** "adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year.
2. **Adult [2. (aa)]:** "adult" means a person who has completed his eighteenth year of age.
3. **Appropriate government [2. (b)]:** "appropriate government" means:
   (i) in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration or in relation to a mine oil field or major port or any corporation established by a Central Act the Central Government and
   (ii) in relation to any other scheduled employment of the State Government;
4. **Child [2. (bb)]:** "child" means a person who has not completed his fourteenth year of age.
5. **Competent authority [2. (c)]:** "competent authority" means the authority appointed by the appropriate government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification.

6. **Cost of living index number [2. (d)]:** "cost of living index number" in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employee in such employment.
7. **Employer [2. (e)]:** "employer" means any person who employs whether directly or through another person or whether on behalf of himself or any other person one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act and includes except in sub-section (3) of section 26:
   i. in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person named under clause (f) of sub-section (1) of section 7 of the Factories Act 1948 (63 of 1948) as manager of the factory;
   ii. in any scheduled employment under the control of any government in India in respect of which minimum rates of wages have been fixed under this Act the person or authority appointed by such government for the supervision and control of employees or where no person or authority is so appointed as the head of the department;
   iii. in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the persons appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;
   iv. in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages;
8. **Prescribed [Sec.2 (f)]:** "prescribed" means prescribed by rules made under this Act.
9. **Schedule employment [Sec.2 (f)]:** "schedule employment" means an employment specified in the Schedule or any process or branch of work forming part of such employment
10. **Wages [Sec.2(h)] :** "wages" means all remuneration capable of being expressed

in terms of money which would if the terms of be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include:

i. the value of:
   a) any house accommodation supply of light, water, medical attendance or
   b) any other amenity or any service excluded by general or special order of the appropriate government;

ii. any contribution paid by the employer to any personal fund or provident fund or under any scheme of social insurance;

iii. any traveling allowance or the value of any traveling concession;

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

v. any gratuity payable on discharge;

11. Employee [Sec.2 (i)]: "employee" means any person who is employed for hire or reward to do any work skilled or unskilled manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up cleaned washed altered ornamented finished repaired adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate government; but does not include any member of the Armed Forces of the Union.

CHECK YOUR PROGRESS

Q1. Fill in the blanks with appropriate words:

a.The Minimum Wages Fixing Machinery convention was held at …… in the year……. by ILO

b. “adolescent" means a person who has completed his ……of age but has not completed his eighteenth year

c. "child" means a person who has not completed his …….. year of age.

d. "……." means prescribed by rules made under this Act.

e. "wages" means all remuneration capable of being expressed in terms of ……..

10.5 FIXATION AND REVISION OF WAGES (Sec 3 to Sec 5)

The fixation and revision of wages falls under the Sec 3, Sec 4 and sec 5. Sec 3 deals with, the appropriate government fix the minimum wages that is payable to the employees in any scheduled employment. The sec 4 describes on the contents of minimum wages. Sec 5 is about the procedure for fixing and revising the minimum rates of wages.
Minimum number of Employees. The appropriate government can for bear from fixing minimum rate of wages of any scheduled employment in which there are less than 1,000 employees in the organization. But if the appropriate government find after an inquiry that there are more than 1,000 employees in any scheduled employment, it shall fix the minimum rate of wages payable as soon as after the finding.

1. **Fixing of minimum rates of wages (Sec. 3):** Under sec 3, the appropriate Government fix the minimum rate of wages .The appropriate government-
   a. shall fix the minimum rate of wages payable to the employees employed in the employment specified in Part I or part II of the schedule(the schedule is reproduced at the end of the unit) and in an employment to either by notification in official Gazette.
   b. the employees employed in the employment specified in Part II of the schedule, fix the minimum rate of wage for apart of the state or for any specified class, instead of fixing the minimum rate of wages for the whole state.
   c. shall review the minimum rate of wages so fixed and revise the same , at such intervals not exceeding 5 years.

Minimum rates: The Appropriate Government may fix:

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

time rate");

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

Different minimum rates: The different minimum rates of wages may be fixed for-

a. different scheduled employments;

b. different classes of work in the scheduled employment;

c. adults, adolescents, children and apprentice;

2. **Minimum Rate of Wages (Sec 4):** The appropriate governments fix or revise minimum rate of wages may consists of-

a. a basic rate of wages and special allowance

b. a basic rate of wages with or with the cost of living allowance

c. an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions

3. **Procedure for fixing and revising minimum wages (Sec 5):** There are two separate modes of procedure for fixing and revising minimum wages under sec 5. The main object of both the procedures is to enable the government to reach a balanced conclusion with regard to fixation of a minimum wage. The two modes are as follows:

a. Mode one: *Appointment of Committee:* The appropriate government should appoint as many committees or sub-committees as to hold necessary inquires for fixation of minimum rates of wages.

b. Mode two: *Publication of proposals in the official gazette:* The appropriate government shall by notification in the official Gazette, publish its proposals for the information of the person who is likely to be affected by the fixation of minimum rates of wages.

10.6 SAFEGUARDS IN PAYMENTS OF MINIMUM WAGES (Sec 11 to 18)

To safeguards the payments of minimum wages falls under the sec 11 to sec 18. The sections are as follows:

1. **Wages in kind (sec 11):** The minimum wages under the Act shall be paid in cash.

But where it has been custom to pay wages wholly or partly in kind, the appropriate Government may, by notification in the official Gazette, authorize the payment of minimum wages either partly or wholly in kind.

The cash value of wages in kind and of concessions in respect of supplies of any essential commodities at concessional rates shall be estimated in the prescribed manner.

2. **Payment of minimum rate of wages (Sec 12):** In respect of any scheduled employment where minimum wages have been fixed, the employer shall pay each and every employee wages at a rate not less than the minimum rate of wages fixed for that class of employees. The wages shall be paid without any deductions except as prescribed.
3. **Fixing hours for a normal working day, etc (Sec 13):** In respect of any scheduled employment where minimum wages have been fixed, the appropriate government may:
   a. fix the numbers of hour of work which is the normal working day inclusive of one or more intervals;
   b. provide a day of rest in every period of 7 days and for payment of remuneration in respect of such day of rest;
   c. provide for payment for work on a day of rest at a rate not less than the overtime rate.
4. **Rates of overtime (sec 14):** Where employee, whose minimum rate of wages is fixed under this Act, by the hour, by the day or by any longer wage-period as prescribed, works overtime, the employer shall pay him for every hour or for part of an hour so worked in excess, wages at the rates fixed for overtime work under the Act or under any law of the appropriate Government in force, whichever is higher.

LET US KNOW

The provisions of the minimum Wages Act, 1948 shall not prejudice the operation of the provision of sec .59 of the Factories Act, 1948 in any case where those provisions are applicable. Sec .59 of the Factories Act, 1948 provides that, where a worker works in factory for more than 9 hours in any day or for more than 48 hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his

ordinary rate of wages.

5. **Wages of worker who works for less than the normal working day (Sec 15):** Sometime it may happen that, any employee whose minimum rate of wages has been fixed by the day may work on any day on which he has employed the period less than the required number of hours constituting a normal working day. In that case he is entitled to receive wages for the work done by him on that day if he had worked on a full normal working day except:

   (i) if his failure of work is caused by his unwillingness to work and not by omission of the employer to provide him with work;

   (ii) in such other cases and circumstances as may be prescribed.

6. **Wages for 2 or more classes of work (Sec. 16):** Where an employee does 2 or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

7. **Minimum time rate wages for piece work (Sec. 17):** Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under the Act, the employer shall pay such employee wages at not less than the minimum time rate.

8. **Maintenance of registers and records (Sec 18):** In an organization who falls under this Act shall maintain registers and records giving the detail information of the employees, the work performed by them, the wages paid to them and such other particulars and in such form as may be prescribed.

10.7 ENFORCEMENT OF THE ACT (Sec 19 TO Sec 20)

The Appropriate Government can appoint by notification in the Official Gazette an inspector (section 19). The inspector within his local limit can

a) enter at all reasonable hours, with such assistant (if any) or any local or other public authority ,as think fit any premises or place of premises where employees are employed or for the purpose of examining any register, record of wages or

notices required to be kept;

b) examine any person he find in such premises or depending on any reasonable causes believe is an employee or an employee who given out his work from therein;

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

d) seize or takes copies of the register, record of wages or notices in respect of any offence under the Act.

e) exercise such other powers as may be prescribed.

Within the meaning of section 175 and 176 under Indian Penal Code, any document or information given by the inspector shall be deemed to be legally bound. The inspector shall be deemed to be a public servant within the meaning of Indian Penal Code.

The employee can claims for minimum wages (under section 20):

1. The Appropriate Government may by notification in the Official Gazette, appoint –

   a. any Commissioner for Workmen's Compensation, or

   b. any officer of the Central Government exercising functions as a Labour Commissioner for any region,

   c. any officer of the State Government not below the rank of the Labour Commissioner or, any other officer.

   Such person should have an experience as a judge of a Civil Court or as a stipendiary Magistrate to hear or decide any claims arising out of the payment of less than the minimum rates of wages.

2. Again for any claims of the employees under section 3, the employees himself or any legal practitioner or any official of a registered trade union or inspector can apply to such Authority and the application shall present to them within six month from the date on which the minimum wages became payable.

3. After the necessary enquiry, the Authority shall hear the applicant and the employer and give them opportunity of being heard. If the wages is paid of less than the minimum rates of wages, than the Authority may asked to the employer to pay exceed the actual amount which has to pay in addition with compensation not exceeding ten times the amount of such excess for such act.

   In any other case, if the payment become due than the employee will get together with the payment of such compensation as the Authority may think fit not exceeding ten rupees.

4. If under this section the Authority hearing any claim and found that it was either malicious or vexatious, it may direct penalty not exceeding fifty rupees to the employer by the person presenting the application.

5. Under this section if any amount is directed to be paid than as if it were a fine imposed by the Authority as a Magistrate or if he is not Magistrate than to such person whom the Authority makes application in this behalf as if were a fine imposed by such Magistrate.

6. Every direction is final under this section.

7. Every Authority appointed shall have all powers of a Civil Court under the Code of Civil Procedure, 1908.

CHECK YOUR PROGRESS

Q2. Fill in the blanks:

a.Under Section _____the appropriate government fix the minimum rate of Wages.

b. The two modes of procedure of fixing and reusing minimum wage are _____ and _____ .

c. Wages in kind falls under Section _____ .

d. Section 18 is about maintenancs of _____.

10.8 LET US SUM UP

In this unit, we have discussed about Minimum Wages Act, 1948.

The main objective of the Minimum Wages Act 1948, is fixing a minimum rate of wages in number of industries where the labours are not organized and sweated labours are most dominant. The appropriate government after an inquiry if find that there are more than 1,000 employees are working under any scheduled employment, it shall fix the minimum rate of wages payable as soon as after such finding. The fixation and revision of wages falls under the Sec 3, Sec 4 and sec 5. The appropriate governments fix or revise minimum rate of wages which may consists of – i. basic rate of wages and special allowance; ii. basic rate of wages with or with the cost of living allowance; iii. an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions.

10.9 FURTHER READING

1. Pillai R.S.N. and V.Bagavathi (2007);*Business Law*; S Chand & Company, India
2. C B Mamoria (2016);*Dynamics of Industrial Relations*; Himalaya Publishing House, India
3. A.K Sen & J Kumar (2010);*Commercial Law Including Company Law*; The World Press Private Limited

10.10ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No.1:

a. Geneva, 1928
b. fourteenth year
c. fourteenth
d. "Prescribed"
e. money

Ans to Q. No.2:

a. 3
b. Appointment of Committee and Publication of proposals in

official gagette.

c. 11

d. Registers and records

? 10.11 MODEL QUESTIONS

1. Write short notes on:
   a. Wages
   b. Employer
   c. Employee
2. Who fix the minimum rate of wages under the Minimum Wages Act 1948?
3. State the procedure for fixing and revising minimum wages.
4. What authorities can be appointed to hear and decide the claims and arising under the Minimum Wages Act 1948?

*** ***** ***

THE SCHEDULE

PART I

1. Employment in any woolen carpet making or shawl weaving establishment.
2. Employment in any rice mill, flour mill or *dal* mill.
3. Employment in any tobacoo (including *bidi* making) manufactory.
4. Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
5. Employment in any oil mill.
6. Employment under any local authority.

7. Employment on the construction or maintenance of roads or in building operations.

8. Employment in stone-breaking or stone-crushing.

Stone-breaking or stone-crushing as a scheduled employment means breaking or crushing of stones as incidental to the mining operation and in mines [*Madhya Pradesh Mineral Industry Assn.* v. *Regional Labour Commr.*, (1960) 1 L.L.J. 563]. Thus in matters of employmen' in stone-breaking or stone-crushing in relation to a mine, the appropriate Government is the Central Government, whereas in matters of employment in stone-breaking or stone-crushing otherwise than in relation to a mine, the appropriate Government is the State Government [*Bisra Lime Stone Co. Ltd.* v. *Central Labour Inspector*, A.I.R. (1969) Ori. 11].

9. Employment in any lac manufactory.
10. Employment in any mica works.
11. Employment in public motor transport.
12. Employment in tanneries and leather manufactory.
13. Employment in gypsum mines.
14. Employment in barytes mines.
15. Employment in bauxite mines.
16. Employment in manganese mines.
17. Employment in the maintenance of buildings and employment in the construction and maintenance of runways.
18. Employment in china clay mines.
19. Employment in kyanite mines.
20. Employment in copper mines.
21. Employment in clay mines covered under the Mines Act, 1952.
22. Employment in mangnesite mines covered under the Mines Act, 1952.
23. Employment in white clay mines.
24. Employment in stone mines.
25. Employment in steatite (including the mines producing soapstone and talc).
26. Employment in ochre mines.
27. Employment in asbestos mines.
28. Employment in fire clay mines.
29. Employment in chromite mines.
30. Employment in quartizite mines.
31. Employment in quartz mines.
32. Employment in silica mines.
33. Employment in graphite mines.
34. Employment in felspar mines.
35. Employment in laterite mines.
36. Employment in dolomite mines.
37. Employment in redoxide mines.
38. Employment in wolfram mines.
39. Employment in iron ore mines.
40. Employment in granite mines.
41. Employment in rock phosphate mines.
42. Employment in hematite mines.
43. Employment in loading and unloading in —

(*i*) railways, goods sheds,
(*ii*) docks and ports.

44. Employment in marble and calcite mines.

PART II

Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultiva- tion, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry, and any practice performed by a farmer or on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations and the preparations for market and delivery to storage or to market or to carriage for transportation to market of farm produce).

UNIT 11: WORKMEN'S COMPENSATION ACT, 1923

UNIT STRUCTURE

11.1 Learning Objectives

11.2 Introduction

11.3 Object and scope of the act

11.4 Important definitions

11.5 Disablement

11.6 Employer's liability for compensation

11.7 Employer's liability when contractor is engaged

11.8 Commissioner

11.9 Compensation

11.10 Let Us Sum Up

11.11 Further Reading

11.12 Answers To Check Your Progress

11.13 Model Questions

11.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the object and scope of Workmen's Compensation Act, 1923
- define the different definitions
- describe employer's liability for compensation
- explain the employer's liability when contractor is engaged
- explain commissioner & compensation

11.2 INTRODUCTION

The passing of the Workmen's Compensation Act, 1923 was the first step towards social security of the workmen. Its main purpose was to give financial protection to the workmen. In this unit, we are going to discuss about Workmen's Compensation Act, 1923 and details about its object and scope .This unit also encompass the different definitions. Through this unit, you will be able to know about the employer's liability for compensation and penalties related to it. The unit discusses about the meaning of compensation and

the basic object of passing of this Act and different principles of workmen's compensation stipulated under the Act.

11.3 OBJECT AND SCOPE OF THE ACT

The Workmen's Compensation Act, 1923 extends to the whole of India. It came into force on the first day of July, 1924. It is social security legislation. The Workmen's Compensation Act, 1923 imposes statutory liability upon an employer to discharge his moral obligation towards employees when they suffer from any physical disabilities or diseases, during the course of employment in hazardous working conditions. The aim of the Act is to provide quick and cheaper disposal of disputes relating to the compensation which is not possible in comparison in case of proceedings of civil law. The Act also helps the dependants to get relieved from the hardship, rising from accident.

CHECK YOUR PROGRESS

Q1. Mention one objective of the Workmen's Compensation Act, 1923.

i).....

.....

.....

11.4 IMPORTANT DEFINITIONS

Some important definitions are given below—

(a) Section 2 (1) (b) of the Act define, **"Commissioner"** as a Commissioner for Workmen's Compensation appointed under section 20;

(b) **"Compensation"** [section 2 (1) (c)] means compensation as provided for by this Act;

(c) Section 2(1) (d) of the Act defines, **"dependent"** means any of the following relatives of a deceased workman, namely :-

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

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

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

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the workman is alive.

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

(d) **"Employer"** [section 2 (1) (e)] includes:

i) any body of persons whether incorporated or not ,

ii) any managing agent of an employer ,

iii) legal representative of a deceased employer,

iv) any workman whose services are temporarily lent or let on hire to another person, by the person with whom the workman has entered into a contract of service or apprenticeship; means such other person while the workman is working for him.

A contractor falls within the above definition of the employer.

(e) **"Managing agent"** means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

(f) **"Minor"** means a person who has not attained the age of 18 years;

(g) **"Prescribed"** means prescribed by rules made under this Act;

(h) **"Qualified medical practitioner"** means any person registered under any Central

Act, Provincial Act, or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

(i) **"Seaman"** means any person forming part of the crew of any ship, but does not include the master of the ship;

(j) **"Wages"** includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

(k) **"Workman"** has been defined under section 2 (1) (n) as follows:

1. Workman means any person (other than a person whose employment is of a casual in nature and who is employed otherwise than for the purposes of the employer's trade or business) who is–

   (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

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

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

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

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

   (ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces

of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

(3) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons :

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.

CHECK YOUR PROGRESS

Q2.Define the term wage under the Workmen's Compensation Act, 1923.

.....

.....

11.5 DISABLEMENT

The Act does not define the word disablement. But it defines the partial and total disablement.

(i) **"Partial disablement"** means,

a. where the disablement is of a temporary in nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and

b. where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:

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

In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the workman's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity is not only the employment in which he was engaged at the time of accident but in all other employment.

(ii) **"Total disablement"** means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

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

11.6 EMPLOYER'S LIABILITY FOR COMPENSATION

Under the Section 3 of the Act provides the liability of the employer, in case of occupational diseases or personal injuries or the prescribed manner in which compensation has pay to the workmen.

a. *In case of occupational diseases:*

i. Where a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein, as an occupational diseases peculiar to that employment , it is deemed to be injury by accident out of and in the course of such employment ,

ii. Such employment period should be continuously doing for six months under the same employer as specified in the Part B of Schedule III.

iii. Contract any such diseases to a workman, whilst he is in service of one or more employers (not necessarily the same employer) in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify.

iv. If it is proved:

a. Contract any such occupational diseases to a workman, whilst he is in service

of one or more employers in any employment specified in Part C of Schedule III and that occupational diseases is peculiar in nature to that employment during a continuous period which is less than the period specified under this sub section for that employment;

b. That the disease has arisen out of and in the course of the employment.

v. The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply In the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

vi. Except as mentioned above, no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

b. *In case of Personal Injuries:*

i. **Personal injuries:** Here the injury means physical or bodily injury caused by an accident which may include nervous shock or break-down or mental strain.

ii. **Accident:** The word 'accident' has not been defined in the Act. But in common expression, it means a mishap or an untoward event which is not expected or designed.

iii. **Arising out of employment and in the course of employment:**

a. **Arising out of employment:** The injury should arise out of employment i.e. the cause should be a proximate cause not a remote cause.

In the case of **Mackenzie v. I.M. Issak**, it was observed that the word arising out of employment means that injury which is resulted from the risk incidental to the duties of the service which unless engaged in the duty owing to the master , it is reasonable to believe that the workman would not otherwise have suffered. There must be a casual relationship between the accident and the employment.

b. **Arising in the course of employment:** The workman, at the time of accident

must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.

iv. *Theory of notional extension of employment:* The injury should be caused by an accident which must have arisen in the course of employment i.e. the accident must take place at a time and the place when he was doing his master's job.

v. *When employer is not liable:*

A. When the injury does not result of disablement for a period exceeding 3 days.

B. When the injury not resulting in death or permanent total disability is due to any of the following:

a. the workman was at the time of accident, under the influence of drink or drugs,

b. the workman wilfully disobeyed an order expressly framed for the purpose of securing safety of workers,

c. the workman wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of workman.

iv. Suit for damages in a court barred: Under Section 3(5), a workman has to institute in a Civil Court, a suit for damages against the employer or any other person to entitle compensation under the Workmen's Compensation Act, 1923.

CHECK YOUR PROGRESS

Q3. Mention reasons when employer is not liable to pay compensation under the Workmen's Compensation Act, 1923.

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.....

11.7 EMPLOYER'S LIABILITY WHEN CONTRACTOR IS ENGAGED

Section 12 of the act covers the employer's liability when contractor is engaged for the purpose of doing any work in respect of employer's trade or business. Such contractor has to execute the work with the help of workman engaged by him. But the employers will liable for the payment of compensation only in the following circumstances:

a. The contractor is engaged to do a work which is part of the trade or business of

the employer.

b. The workmen were engaged in the course of or for the purpose of his trade or business.

c. The accident occurred in or about the premises on which the employer has under taken or undertakes to execute the work.

This provision, however does not prevent a workman from recovering compensation from the contractor instead of the employer. Here, the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

11.8 COMMISSIONER

Section 19(1) lays down the jurisdiction of a commissioner to entertain a claim in respect of payment of compensation to workman. The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workman's Compensation for such area as may be specified in the notification. The Commissioner has the following jurisdiction over following matters:

a. Liability of any person to pay compensation.

b. The person injured is or is not a workman.

c. The nature and extent of disablement.

d. The amount or duration of compensation.

According to Section 19 (2), no Civil Court, shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decide or dealt with by a Commissioner or to enforce any liability incurred under this Act.

All claims shall be made subject to the provision of the Act to the Commissioner. But, such applications other than the applications made by dependant or dependants can only be submitted when the parties have failed to settle the matter by agreement.

The Commissioner shall have for the following powers—

a. taking evidence on oath;

b. enforcing the attendance of witness;

c. compelling the production of documents and material objects.

According to the Section 26, all costs incidental to any proceedings before a Commissioner shall subject to rules under this Act .

CHECK YOUR PROGRESS

Q4. Mention three jurisdiction of Commissioner in payment of compensation to workman under the Workmen's Compensation Act, 1923.

i) .....

ii) .....

iii) .....

11.9 COMPENSATION

The word 'compensation' has been defined under section 2(1) (c) of the Workmen's Compensation Act, 1923. Amount of compensation can be decided by—

a. Schedule II contains a list of persons engaged in different employments/ operations specified therein who are covered by the definition of workman and they are entitled to pay compensation.

b. Schedule III contains a list of occupational diseases which if contracted while in employment entitles a workman to compensation such as disease caused by lead, mercury etc.

c. Schedule IV lays down the relevant factors related to age of the workman at the time of death, injury or accident by which wages are multiplied to arrive at compensation.

d. Section 4A of the Act provides that compensation under section 4 shall be paid as soon as it falls due.

e. The amount of compensation can be calculated deemed to be payable for a month , as—

   i. The monthly wages of the workman i.e. 1/12th of total wages which have been fallen due, for payment to him by the employer in the last 12 months of that period, only when workman is continuing work not less than 12 months immediately preceding the accident.

   ii. If the service of the workman was less than one month, the monthly wages of the workman shall be the average monthly amount which will be earned by the workman during the year i.e. 12 months immediately preceding the accident.

   iii. If it is not possible to calculate the monthly wages under clause (b), the monthly wage shall be the 30 times the total wages earned in respect of the

last continuous period of service, divided by the number of days comprising such period.

f. Any half monthly payment payable to the workman under this act, either under an agreement between the parties or under the order of the Commissioner, accompanied by the certificate of qualified medical practitioner.

g. The half monthly payment received by agreement between the parties or on application of either party to the Commissioner, the compensation has to pay to the workman for not less than 6 months or, lump sum as determined by the Commissioner and agreed by the two parties.

h. No compensation has to be paid in respect of a workman whose injury has resulted in death and no payment of lump sum compensation to a woman or person under a legal disability except by deposit with the Commissioner.

i. The compensation money shall bear the first charge on the asset transferred by the employer.

11.10 LET US SUM UP

In this unit, we have discussed the following:

- The Workmen's Compensation Act, 1923 is one of the important social security legislation
- The Act provide quick and cheaper mode of disposal of disputes.
- Partial disablement may be temporary or permanent disablement.
- Total disablement means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.
- Amount of compensation is payable in the event of a workman meeting with an accident resulting into temporary or permanent disabilities or disease as stated in Schedule II and III in terms of Section 4 of the Act , read with schedule IV.

11.11 FURTHER READING

1. The Minimum Wages Act 1948; (Bare Act)
2. P. L. Malik (2017);*P. L. Malik's Industrial Law*; Eastern Book Company, India
3. N.D. Kapoor (2011);Handbook of Industrial Law ; Sultan Chand & Sons, India

11.12 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No.1: The object of the Workmen's Compensation Act, 1923 is to provide quick and cheaper disposal of disputes relating to the compensation which is not possible under the proceeding of civil law.

Ans to Q. No.2: The definition of "Wages" under the Workmen's Compensation Act, 1923 includes, any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.

Ans to Q. No.3: The reasons when employer is not liable to pay compensation under the Workmen's Compensation Act, 1923 are—

i. When the injury does not result of disablement for a period exceeding 3 days.

ii. When the injury not resulting in death or permanent total disability is due to any of the following:

   a. the workman was at the time of accident, under the influence of drink or drugs,

   b. the workman wilfully disobeyed an order expressly framed for the purpose of securing safety of workers,

   c. the workman wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of workman.

Ans to Q. No.4: Three jurisdiction of Commissioner in payment of compensation to workman under the Workmen's Compensation Act, 1923 are—

a. Liability of any person to pay compensation.

b. The person injured is or is not a workman.

c. The nature and extent of disablement.

d. The amount or duration of compensation.

11.13 MODEL QUESTIONS

1. Explain the following terms under the Workmen's Compensation Act, 1923:

   i. Dependant

   ii. Disablement

   iii. Wages

2. Define an 'accident'. When it is said to arise out of and in the course of an employment?

3. Explain employer's liability to pay compensation to an employee?

4. Is the principal employer liable to pay compensation to a workman engaged through contractor sustaining injuries while on duty?

5. To what extent is the compensation payable to a workman for personal injury sustained by him while on duty leading to—

   i. his permanent total disablement

   ii. his death under the Workmen's Compensation Act, 1923.

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UNIT 12: THE ARBITRATION AND CONCILIATION

UNIT STRUCTURE

12.1 Learning Objectives

12.2 Introduction

12.3 Meaning of Arbitration and its Types

12.4 Arbitration Agreement and elements of a valid arbitration agreement

12.5 Arbitration and Appointment of Arbitrator

12.6 Powers and Duties of Arbitrator

12.7 Conciliation and Conciliation Proceedings

12.8 Role of Conciliator and Sequential pattern of Conciliation

12.9 Kinds of Conciliation

12.10 Drafting of Agreement

12.11 Suggestions for improving the Conciliation Machinery

12.12 Let Us Sum Up

12.13 Further Reading

12.14 Answers To Check Your Progress

12.15 Model Questions

12.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- define Arbitration and its Types
- explain the Arbitration agreement and its essentials
- describe the meaning, appointment, Powers and Duties of Arbitration
- define conciliation and its proceedings
- describe the role of conciliator
- explain the kinds of conciliation, drafting of its agreement and suggestions for improving the conciliation machinery.

12.2 INTRODUCTION

In the previous unit, we have discussed about workmen's compensation Act, 1923. In the present unit, an attempt is being taken to discuss the various important aspects of

arbitration and conciliation. Arbitration is a process where a dispute is submitted to an impartial outsider for taking a decision. On the other hand, conciliation is the most important method for prevention and settlement of Industrial disputes through third party intervention. Arbitration is to be distinguished from conciliation not only by the fact that its decision is binding on the parties but also by its different approach and spirit. Arbitration is more judicial in character than conciliation. After completion of this unit, the students will able to understand in detail the concept and process of Arbitration and Conciliation.

12.3 MEANING OF ARBITRATION AND ITS TYPES

The meaning of arbitration is securing an award on a conflict issued by reference to a third party. Under the process of arbitration, a dispute is submitted to an impartial outsider who makes a decision which is usually binding on both parties. In the process of arbitration, there is hearing and determination of a cause between parties in controversy by a person or persons chosen by the parties or appointed under statutory authority. The purpose of arbitration is adjudication, that is why there is no chance for compromise in awards. In the word of Kurt Brenn, the objective of arbitration is not compromise but adjudicating though parties are at liberty to compromise. A wise arbitrator will certainly promote such agreement but as a rule there is no place for compromise in the awards. In time of issuing decision, the arbitrator should take in to consideration the fact that the decision must be based upon some sound principle of natural justice, it must be workable, and it must be based upon a 'Split the difference' approach.

In order to clear the concept of arbitration we should know the difference between arbitration and conciliation as well as the difference between arbitration and mediation.

Arbitration can be distinguished from conciliation on the basis of that its decision is binding on the parties and its different approach and spirit. The main objectives of arbitration is adjudication and so there is no place for compromise in awards though the parties are long as it brings about an agreement between the contending parties, an arbitrator enforces his own point of view on the contending parties and the opinions of the disputants are not given any predominance. Moreover, arbitration produce justice and fair approach to a dispute. So, it is more judicial in character than conciliation.

Difference between arbitration and mediation is that arbitration is a judicial process, but mediation has a legislative tint. The award of the arbitrator rests on equity and justice.

There is no chance of compromise in arbitration but, in case of mediation compromise is the main essence. The award of arbitration is mandatory but in case of mediation, it is not so. Arbitration may sometime terminate the dispute, which is not happened in mediator. Arbitration is best suited to settlement of contractual rights, but mediation is suited to the adjustment of disputes.

Types of Arbitration : There are two types of arbitration. One is voluntary and another is compulsory. Below we discuss these two types of arbitration.

Voluntary Arbitration : In case of voluntary arbitration the two contending parties unable to compose their difference by themselves or with the help of the mediator or conciliator, agree to submit the conflict / dispute between them to be resolved by an impartial authority, where they are ready to accept the decision of that authority. In case of voluntary arbitration before the dispute is referred for adjudication, the parties can and do themselves refer voluntarily the dispute to arbitration.

To be voluntary arbitration, following elements are essentials –

(i) Voluntary submission of disputes to an arbitrator.

(ii) Subsequent attendance of witness and investigations.

(iii) Enforcement of an award may not be necessary and binding because there is no compulsion. The award may be favorable or unfavorable.

(iv) Voluntary arbitration may be specially needed for disputes arising under agreements.

Compulsory Arbitration : In case of compulsory arbitration parties are required to arbitrate without any willingness on their part. If one of the parties thinks aggrieved by an Act of the other, then, that particular party can apply to the appropriate govt. to refer the dispute to an adjudication machinery. This type of dispute is called as compulsory arbitration. In case of the following condition, the parties under compulsory artitration are forced to arbitration by the state–

(i) If the parties fail to arrive at a settlement by voluntary method.

(ii) If there is a national emergency which requires that wheels of production should not be obstructed by frequent work-stoppages.

(iii) If the country is passing through grave economic crisis.

(iv) If there is a grave public dissatisfaction with the existing industrial relations.

(v) If Industries of Strategic importance are involved.

(vi) If the parties are ill balanced, where the unions are weak ill-organised and powerless and the means of production are in the hands of the capitalists.

(vii) If the public interest and the working conditions are desired to be sabeguarded and regulated by the state.

12.4 ARBITRATION AGREEMENT AND ELEMENTS OF A VALID ARBITRATION AGREEMENT

Under section 2 (a) of the Arbitration Act 1940 an arbitration agreement is defined as a written agreement to submit present or future differences to arbitration. Whether an arbitrator is named therein or not. Arbitration agreement or arbitration clause in an agreement is sometimes called submission. An Arbitration agreement is also called as 'reference'. In the word of Halsbury, 'It is an agreement made by two or more parties between whom some difference has arise or may thereafter arise whereby they appoint another person to adjudicate upon such dispute and agree to be bound by his decision. The characteristics of arbitration is that it is a private tribunal chosen by the parties. The person, who is appointed to settle the differences or disputes is called an 'arbitrator', the proceeding before him are known as an 'arbitration' and his decision is known as 'award'.

Essentials of a Valid Arbitration agreement :

For a valid Arbitration agreement, following essentials elements are required :-

1) **Written :** The arbitration agreement should be in written form of course, in the written arbitration agreement, there is no need of signatures of the parties. In the written agreement, the terms of arbitration should be minimum. The main purpose of the written arbitration agreement is to establish that the parties agreed to the settlement of disputes by arbitration.

2) **Present or Future Dispute :** Without the existence of dispute, the arbitration is meaningless. Arbitration pre-supposes the existence or the possible existence of a dispute. In this connection, dispute implies assertion of a right by one party and denial of that right by the other party.

3) **Essential of a valid contract :** To be a valid arbitration agreement, it should fulfil all the essential elements of a valid contract. Such as, offer and acceptance, face consent, legal relationship, complaint to control, lawful consideration, lawful object, not declared without valid contract, arbitration clause is not binding.

12.5 ARBITRATION AND OF ARBITRATOR APPOINTMENT

Arbitrator can be defined as a person who is appointed by mutual consent of the contending parties for investigation and settlement of difference in dispute submitted to him. Any person may become an Arbitrator. The person should be of sound mind and have capacity to understand and settle the differences or disputes for which he is appointed. Even, one of the parties to the dispute may be appointed as arbitrator, if other party has no complain. On the other hand, each party can nominate one or more arbitrators. Where all persons shall jointly act as arbitrators. In case of more than two arbitrator are appointed, the decision of the majority arbitrator will be final, if there is no such contrary from agreement, If the arbitrators are not agree then-dispute shall be referred to a third party, who is known as an Umpire. The decision given by the Umpire will be final.

Appointment of Arbitrator :

Arbitrator can be appointed by the following ways.

1) **Appointment by the parties :** The arbitrator or arbitrators may be selected by the mutual consent of the parties. According to section 2 (a) it is not compulsory to mention the name of arbitrator in the agreement. Parties can appoint any person or body of persons of their choice as a arbitrator (s). Even the parties can appoint a new arbitrator, if any appointed arbitrator neglects or refuses or is incapable of acting as a arbitrator.

2) **Appointment by third party :** Under section 4 of the Arbitration Act 1940, an arbitrator can be appointed by the third party or parties. It is laid under the section 4 that 'The parties loan arbitration agreement may agree that any reference there under shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or a holder for the time being of any office or appointment.'

3) **Power to party to appoint New or Sole arbitrator :** Under section 9 of the Arbitration Act 1940, it is laid down that 'where an arbitrator agreement provides that reference shall of two arbitrators, one to be appointed by each party. Then, unless different intention is expressed in the agreement :-

   (a) if either of the appointed arbitrators neglects or refuses to act or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place.

   (b) if one party fails to appoint an arbitrator either originally or by way of substitution as aforesaid for fifteen clear days after the service by the other party of a notice in writing to make the appointment, such other party having appointed his arbitrator before giving the notice, the party who has appointed the arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.

4) **Power to court to appointment arbitrator or Umpire :** Under section 8, a court is empowered to appoint an arbitrator or umpire in the following cases –

   (a) If an arbitration agreement provides that the reference shall be made to one or more arbitrator to be appointed by the consent of the parties, but all the parties do not, after differences have arisen, concur in the appointment or appointments.

   (b) If any appointed arbitrator or Umpire neglects to act or refuses to act or is incapable of acting or dies and the arbitration agreement does not provide such a vacancy to keep it vacant and parties do not fill it.

   (c) If the parties or the arbitrators are required to appointment umpire and do not appoint him.

12.6 POWER AND DUTIES OF ARBITRATOR

Under section 13 of the Arbitration Act 1940, following power are entrusted to the Arbitrator.

(i) To administer oath to the parties and witness appearing.

(ii) To state a special case for the opinion of the court on any question of law involved or state the award. Wholly or in part in the form if a special case of such question for the opinion.

(iii) To make the award conditional or in the alternative.

(iv) To correct an award any clerical mistake or user arising from any accidental slip or omission.

(v) To administer any party to the arbitration such interrogatories as may in the opinion of the arbitrators or impose be necessary.

(vi) To award interest upto the date of award.

(vii) To determine by and to whom the costs of reference and the award shall be paid.

(viii) When an award of money is given the arbitrator can fix the instalment thereof and their amount and time.

(ix) To make interim award to be followed by a final award.

(x) To order for the specific performance of the contract.

Following are the duties of Arbitrator :

(i) Primary duty of arbitrator is to act judicially as because an arbitration is a method of settling a dispute between the parties in a quasi-judicial manner.

(ii) The duty of arbitrator is more than a judge because of the fact that the award of arbitrator is final.

(iii) Another important duty of arbitrator is to give faith hearing to the parties. Moreover, the arbitrator should give reasonable time and opportunity to parties to put up their respective claims.

(iv) The duty of arbitrator is to decide the dispute in accordance with the law. The arbitrator should conduct the proceeding in accordance with the principle of natural justice.

(v) One of the important duties of arbitrator is to hear or receive evidence from both sides. It is not his duty to bear or receive evidence from one party in the absence of the other party without giving the other party affected by such evidence, the opportunity of answering it.

(vi) Except ministerial character, the arbitrator should perform all functions personally.

(vii) It is urgent of arbitrator to sign the award. Moreover he should make it available to the parties and file it in the court within reasonable time.

LET US KNOW

(i) The objectives of arbitration is not is not compromise but adjudication, though parties are at liberty to comprise. A wise arbitrator will certainly promote such agreements, but as a rule there is no place for compromise in the awards. Thus, the basic difference between the settlement approach and the quasi-judicial approach must be appreciated.

(ii) The judicial approach emphasises that arbitration should not be confused with conciliation and mediation.

(iii) The non-judicial approach emphasises that the arbitrator cannot isolate himself from the reality of the need of a wearable solution.

CHECK YOUR PROGRESS

Q.1: Fill in the blanks.

(i) The meaning of arbitration is securing an ——— on a conflict issued by reference to a third party.

(ii) Arbitration is a ——— process.

(iii) There is no chance of ——————— of the Arbitration Act 1940, an arbitrator can be appointed by the third parties.

(v) Under section 8, a ——— is empowered to appoint an arbitrator.

12.7 CONCILIATION AND CONCILIATION PROCEEDINGS

Conciliation is a method for prevention and settlement of Industrial disputes through third party intervention. Conciliation reconcile the views of disputants to bring them to an agreement. Under the conciliation method, services of a neutral third party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution. Conciliation is a rational and orderly process of discussion of differences between the parties to a dispute under the guidance of a conciliator. In the process of conciliation, representatives of workers and the employers are brought together before a third person or a group of persons to persuade them to arrive at an agreement by mutual discussion. It is a peace-

making process in Industrial relations. It is a speedy settlement of disputes without resort to strikes or lock-outs. Because, conciliation assists the parties towards a mutually acceptable compromise or solution by virtue of his reasoning and persuasion. The conciliation process is characterised by its flexibility, informality and simplicity. So, sometimes conciliation is an art, the conciliator is a solitary artist recongnising at most a few guiding stars and depending mainly on his personal power of divination.

Conciliation Proceedings :

In order to clear concept of conciliation proceedings, it is better to know about the conciliation machinery as well as the conciliation officers.

Under the Industrial Disputes Act 1947, conciliation officer can be appointed by the Central Government and the State Government by notification in the official gazette. The conciliation officer is entrusted the duty of mediating in and promoting the settlement of Industrial disputes. According to the section 4, the conciliation officer can be permanently appointed or for a limited period. The number of conciliation officers is determined by the appropriate government depending upon the volume of work and the number of Industrial disputes. Moreover, conciliation officer may be appointed only for a certain area or Industry or may be appointed for limited period or permanently.

It is gratifying to mention that if an industrial dispute exists or is approached in public utility service, the conciliation officer must hold conciliation proceedings in the prescribed manner. Of course, in case of other industries, the power of conciliator is discretionary, so he may or may not hold such proceedings. Under section 12(2) it is laid down regarding the conciliator that 'he may do all such thing as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the disputes.' In case of a settlement arrived at in the course of conciliation proceedings, the conciliation officer is to send a report along with a memorandum of settlement signed by the parties to the dispute to the appropriate government. If no settlement is reached at, then the conciliation officer is to send immediately a full report setting forth the steps taken by him. He is also required to mention the probable reasons for failure to the appropriate government. The conciliation officer is to submit the report within 14 days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. A conciliation proceeding is commenced on the date on which a notice of

strike or lock-out is received by the conciliation officer. In other cases, conciliation proceeding is commenced from the date in which the conciliation officer holds proceedings. A conciliation proceeding is not concluded and is deemed to be pending until any of the conditions mentioned below is fulfilled :-

(i) Where a settlement is arrived at, a memorandum of the settlement is signed by the parties to the disputes.

(ii) Where no settlement is arrived at the report of conciliation officer is received by the appropriate Government and

(iii) A reference is made to the Court, Labour court, Tribunal or National Tribunal, during the pendency of the conciliation proceedings.

The Board of conciliation is constituted as an adhoc body by an appropriate government. The main purpose of the Board of conciliation is to mediate and to induce the parties to come to a fair and amicable settlement of course, the appropriate Government has no power to constitute a Board for the purpose of refesseing criminal proceedings.

The enquiry or investigation conducted by a Board of conciliation is treated as judicial proceedings.

Under section 18 of the Industrial Disputes Act 1947, a distinction is laid down between an agreement arrived at between the employers and the working in the course of conciliation proceedings and without recourse to conciliation. Under section 22 and 23 certain statutory restrictions have been placed on strikes / lockouts in all Industrial Establishments during the pendency of any conciliation proceedings before a conciliation officer or a conciliation Board and 7 days after the conclusion of such proceedings.

12.8 ROLE OF CONCILIATOR AND SEQUENTIAL PATTERN OF CONCILIATION

Conciliator plays a vital role in solving Industrial dispute. Regarding the role of conciliator, I.L.O. publication lays down as follow.

'The conciliator induces the parties to a course of action. His intervention in the dispute creates for the parties a salvation different from the direct confrontation they had before.

The conciliator establishes for the parties a need re-examine their positions in this new solvation and to consider possible alternatives or options.'

Below we discuss some important roles to be played by the conciliator:-

(1) As a discussion Leader : By play the role of conciliator as a discussion leader, reduces irrationality and antagonism between the parties. Conciliator guides the parties towards a problem solving approach to their dispute.

(2) As a Safety Valve : The conciliator also plays his role as a safety valve placing himself in the position of alternative target when he feels that the parties are in an aggressive mode.

(3) As a communication link : The conciliator performs his functions as a communication link between the parties. He provides a thorough explanation and interprets the intention of the party.

(4) As an Innovator : The conciliator can play his role by supplying new information and new thoughts. Thereby he can help the parties by providing various views of issues, possible alternative solution and an entirely new approach.

(5) As a Sounding Board : The conciliator may indicate the parties which of their own arguments, defences and support cannot stand under a rational searching enquiring.

(6) As a Protector : The conciliator can also provide protection to the parties for making their ready for collective bargaining position by exploring alternative solution during separate meetings.

(7) As a Fail-Safe Device : The conciliator also plays his role by assisting a party which has overstated its position to the extent of bluff or exaggeration of its reaction to some more on the part of the other.

(8) As a Stimulator : The conciliator can crystalise changes of opinion in time of discussion by intervening at the appropriate moment and giving such ideas a concrete form.

(9) As an Adviser : The conciliator also plays his role as an adviser by removing misunderstandings regarding their opinion, intentions and capabilities.

(10) As a Promoter of Collective Bargaining : The conciliator helps in promoting

collective Bargaining. Thereby the conciliator helps and guide the parties in the development of their relationship.

12.9 KINDS OF CONCILIATION

There are mainly two kinds of conciliation. Such as :

(i) Voluntary Conciliation.

(ii) Compulsory Conciliation.

(1) Voluntary Conciliation : Under voluntary conciliation, the disputes are referred to the conciliation officer or the Board of conciliation by both parties under their own free will who agree to have their disputes settled by an outsider, but they may or may not accept the decision.

The ILO (International Labour Organisation) Recommendation No. 92 concerning voluntary conciliation (and Arbitration) 1951 as follows.

1. Voluntary conciliation machinery appropriate to national conditions should be made to assist in the prevention and settlement of Industrial disputes between employers and workers.
2. Where voluntary conciliation machinery is constituted on a joint basis it should include equal representation of employers and workers.
3. (i) The procedure should be free of charge and expeditions, such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to the minimum.

   (ii) Provision should be made to enable the procedure to be set in million either on the initiative of any of the parties to the dispute or ex-officer by the voluntary conciliation authority.
4. If the dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from stick and lock outs while conciliation is in progress.
5. All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing regarded as equivalent to agreement concluded in the usual manner.

2. **Compulsory Conciliation :** In case of compulsory conciliation, the disputes are referred to the Board of conciliation. In case of compulsory conciliation, the procedure is made compulsory by provisions requiring the parties' attendance at conciliation proceedings or empowering the conciliation authority to compel their attendance at such proceeding as well as by the prohibition of strikes and lock-outs without prior resort to conciliation. The compulsory conciliation conserve a useful purpose even if the parties attitude make the possibility of a voluntary settlement very unlikely, especially in developing countries where management and trade unions may as yet have relatively little experience of collective labour relations. There is a less chance that the parties would agree even to meet each other for direct negotiation. Moreover, the management may refuse to recognise and have any dealings with the trade union. In this situation, the compulsory attendance of the parties at a conciliation meeting will help them make each other's acquaintance and to become used to joint discussions. Compulsory conciliation also serves a means of educating, training and guiding the parties with regard to the nature and conduct of bilateral negotiations.

12.10 DRAFTING OF AGREEMENT

The conciliator is to take some actions in time of his efforts to settle a dispute comes to an end. In this time, he is to wind up his handling of the case. The conciliator can prepare a final report. He should participates in the drafting of any agreement reached. Moreover, the conciliator is to assist the parties in intuiting further proceedings of his conciliation has not been completely successful.

The fact of settlement of a dispute is reflected in an agreement. The conciliator is to sign to an agreement reached in time of conciliation proceedings. He is to submit the report to the government and to the concerned parties in due time, in which the following should be indicated.

(i) Various steps adopted by the conciliator to determine the facts and circumstances pertaining to the dispute.

(ii) Steps taken to bring about the settlement.

(iii) Complete statement of facts and circumstances.

(iv) Reasons for which the settlement could not be reached.

The conciliator is not ultimate authorised person to give recommendation. So, he never can pass any order directing a party to act in a particular manner without jurisdiction.

Only on the basis of this report, the government of the country can refer the dispute to a labour court or the Tribunal or may refuse to refer it.

In case of formulating policy as well as for the study of remedial measures in industrial Relation, the Report of conciliation is treated as a great source of Information. This report is an intregal part of the history of the relations between the parties. The information of the report will help for conciliation in a further dispute between the same parties.

12.11 SUGGESTION FOR IMPROVING THE CONCILIATION MACHINERY

Following are the suggestions for improving the Conciliation Machinery–

(1) In order to make the conciliation machinery success, it should be free from the clutches of any political or administrative interference.

(2) Adequate staff and more powers to them should be entrusted to the conciliation machinery, which helps to arrive at a conclusion.

(3) In order to remove negative conceptions of the parties, their mutual images should be improved, so that their mutual images never work like a self fulfilling prophecy for the failure of conciliation.

(4) The conciliation machinery should not be treated by the parties as a mere joy and pride. With the help of conciliator the parties should inculcate a sense of commitment toward the resolution of dispute.

(5) Conciliation should be introduced in all kinds of Industries.

(6) It is better to assess the work load of the machinery of conciliation periodically. Moreover, necessary staff should be appointed.

(7) The conciliation officers should be scientifically selected and appointed having proper qualifications, Moreover, they should be entrusted adequate status, official powers.

LET US KNOW

1. To make conciliation more effective, the National Commission on Labour has recommended that conciliation machinery should be part of the Industrial Relations Commission, which will make it free from other influences.

2. There is no doubt that a large number of Industrial Disputes are settled by conciliation in India. Vast majority of disputes for which bipartite solutions are not feasible come to conciliation and the conciliation officers succeed in bringing about a settlement in over 80% of the cases.

CHECK YOUR PROGRESS

Q.2: State true or false :

(i) Conciliation is a method for prevention and settlement of Industrial disputes through third party intervention. (True / False)

(ii) Conciliation is a Speedy settlement of disputes with resort to strikes or lockout. (True / False)

(iii) Conciliation is not flexible and simple. (True / False)

(iv) The Board of conciliation is constituted as an adhoc body. (True / False)

(v) The conciliator helps in promoting collective Bargaining. (True / False)

ACTIVITY

I. Prepare a list of roles to be played by the conciliator in Solving Industrial Dispute.

II.Under what circumstances the Voluntary Conciliation is recommended?

12.12 LET US SUM UP

In this unit, we have discussed about Arbitration and Conciliation Act.

Arbitration is a process under which a dispute is submitted to an impartial outsider who makes a decision which is usually binding on both parties. There are two types of arbitration. One is Voluntary and another is compulsory arbitration. Various essentials of a valid Arbitration agreement are (i) Written (ii) Present or Future Dispute (iii) Essentials of a valid contract.

Arbitrator is a person appointed by mutual consent of the contending parties for investigation and settlement of a difference or dispute submitted to him. Arbitrator may be appointed by (i) by the parties, (ii) by third party, (iii) new or sole Arbitrator is appointed by party (iv) by court.

Different powers of Arbitrator are (i) to administer oath to the parties, (ii) state opinion to the court (iii) make and correct an award etc. Different duties of Arbitrator are (i) to act. judicially (ii) to give fair hearing (iii) to decide the dispute as per law (iv) to hear or receive evidence from both sides. (v) to sign the award.

Conciliation is a method for prevention and settlement of Industrial disputes through third party intervention. In case of Industrial dispute in public utility service the conciliation officer must hold conciliation proceedings in prescribed manner.

The roles of conciliator are (i) as a discussion leader (ii) as a safety valve (iii) as a communication link (iv) as an Innovator (v) as a sounding board, (vi) as a protector (vii) as a fail safe device (viii) as a simulator (ix) as an adviser (x) as a promoter of collective Bargaining.

There are two types of conciliation. One is voluntary conciliation and another as compulsory conciliation. The conciliator can prepare a final report. He should participate in the drafting of any agreement reached. The fact of settlement of a dispute is reflected in an agreement. Conciliator is to sign an agreement reached in time of conciliation and also he should submit the report to the government and to the concerned parties.

In order to improve the conciliation machinery it should be free from the clutches of any political or administrative interference. Moreover, adequate staff and more power should be entrusted to them. Mutual image of the parties should be improved for successful conciliation machinery.

12.13 FURTHER READING

1. The Workmen's Compensation Act, 1923; (Bare Act).
2. P. L. Malik (2017);*P. L. Malik's Industrial Law*; Eastern Book Company, India
3. N.D. Kapoor (2011);*Handbook of Industrial Law* ; Sultan Chand & Sons, India

12.14 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q.No.1:

(i) award (ii) judicial

(iii) compromise (iv) 4

(v) court (vi) activity

Ans to Q.No.2:

(i) True (ii) False

(iii) False (iv) True

(v) True

12.15 MODEL QUESTIONS

1. Define Arbitration. What are its different types.
2. What is arbitration agreement? Mention the elements of a valid arbitration agreement.
3. Define Arbitrator. How does he appoint? Also mention his powers and duties.
4. What is conciliation? What are the roles of conciliator?
5. What are the different kinds of conciliation?
6. Write short notes on
   (a) Conciliation Proceeding
   (b) Drafling of Agreement.
7. Give some suggestions for improving the conciliation machinery.

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UNIT 13: EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

UNIT STRUCTURE

13.1 Learning Objectives

13.2 Introduction

13.3 Scope and Applicability of the Act

13.4 Various schemes provided under the Act

13.5 Central Board and its Constitution, Functions and Powers

13.6 State Board and their Constitution

13.7 Duties and Powers of Inspectors appointed under the Employee's Provident Funds and Misc Provisions Act, 1952

13.8 Constitution and working procedure of Employees' Provident Fund Appellate Tribunal

13.9 Let Us Sum Up

13.10 Further Reading

13.11 Answers To Check Your Progress

13.12 Model Questions

13.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- discuss the scope and applicability of the Act
- explain various schemes provided under the Employee's Provident Funds and Miscellaneous Provisions Act 1952
- describe the constitution and powers of the Central Board under the Act
- discuss about the constitution of Executive Committee and State Boards under Employee's Provident Funds and Misc Provision Act
- explain the duties and powers of Inspector appointed under the Act
- describe the provisions regarding the question of contribution by the employees and employer under the Act

- explain the constitution and working procedure of employee's Providentdent Fund Appellate Tribunal describe the various penalties provided under the Employee's Provident Funds Misc.Provision Act

13.2 INTRODUCTION

The Employee's Provident Fund (EPF) and Miscellaneous Provisions Act 1952 was introduced for the benefits of the employees working in the factories and their family members. So, in this unit, we are going to discuss the concept of EPF. EPF means the provident fund established under the EPF scheme framed under Section 5 of this Act providing for all or any matters specified in Schedule II. Section 5 of the Act authorised the Central Government to frame employees' provident fund scheme for the establishment of provident fund under this Act. The Central Government by notification in the Official Gazette shall have to issue such a notice before framing any such scheme. The Scheme shall apply to all employees or any class of employees of an establishment as Specified. After framing the scheme, as soon as possible a fund shall be established in accordance with the provisions of this Act and the Scheme as such.

13.3 SCOPE AND APPLICABILITY OF THE ACT

The scope of the Act can be understood from its applicability. This Act is applied in the following establishments except the exemptions contained in Section 16 of the Act.

i) The Act applies to every establishment which is a factory engaged in any industry specified in schedule I and in which 20 or more persons are employed.

ii) Any establishment which employs 20 or more persons or class of such establishments which the central Government may, by notification in the Official Gazette specify in this behalf.

iii) After giving not less than 2 months notice of its intention the Central Government apply the provisions of this Act to any establishment with less than 20 persons in the employment as provided under Section 1(3).

iv) Not with standing anything mentioned above as in sub section (1) of Section 16 (Certain establishment statutorily exempt from the applicability of the Act) where it appears to the Central Provident Fund Commissioner, where as an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment, have agreed that the provisions of this

Act would be made applicable to the establishment. He may apply the provision of this Act to the establishment on and from the date of such agreement or from any subsequent date specified in such agreement under Section 1(4) and Section 3.

v) An establishment to which this Act applies must continue to be governed by this Act, even if the number of persons employed therein falls, so at below any time under section 1(5).

vi) Under Section 4, the Central Government by a notification in the official Gazette add any other industry to schedule I and it will apply to any establishment engaged in such industry.

13.4 VARIOUS SCHEMES PROVIDED UNDER THE ACT

With a view to providing various benefits of the employees working in the factories and their family members, following schemes are introduced-

i) The Employees' Provident Fund Scheme.

ii) The Employees' Pension Scheme.

iii) Employees' Deposit linked Insurance Scheme.

i) The Employees' Provident Fund Scheme :-

Under Section 5 of Act, the Central Government is authorised to frame employees' provident Fund Scheme for the establishment of provident fund under this Act. Section 5 of the Act also provides that-

i) As per Section 5 (1-A), the fund shall vest in and be administered by the Central Government Board contituted section under 5-4.

ii) Subject to the provisions of this Act, a scheme formed under Section 5(1) may provided all or any of the matters specified in Schedule II, and

iii) A scheme formed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such dates as may be specified in this behalf in the scheme. In order to frame this scheme, the power of the Central Government is neither unrestricted nor unguided. For the guidance of the Central Government various provisions are laid down under this Act. Under Section 5(1), following two distinct powers are conferred on the Central Government.

i) To frame a scheme and

ii) To specify to which factories and establishments the scheme shall apply.

Above two powers can be exercised only through one notification. Further, the factories and establishments to which the scheme shall apply may be specified in the scheme itself.

ii) The Employees' Pension Scheme :-

Under Section 6-4 of the Act, the Central Government may frame a scheme of Employees' Pension Scheme by notification in the Official Gazette for the purpose of providing for superannuation pension, refiring pension or permanent total disablement pension to the employees of any establishment or class of establishment to which this Act applies and for widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees. Regarding the funding of the scheme, it is to be mentioned that the contribution from the employer should not exceeding 8 $^1/_3$ % of the basic wages, dearness allowance and retaining allowance.

iii) Employees' Deposit -Linked Insurances Scheme :-

According to the Section 6 of the EPF Act 1952 as amended in 1976, it is provided that the Central Government may form a scheme to be called the Employees' Deposit linked Insurance Scheme for the purpose of providing life insurances benefits to the employees of any establishment or class of establishment to which this Act applies.

After framing of the insurance scheme, there shall be establish Deposit Linked Insurance Fund into which it shall be paid by employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than 1% of the aggregate basic wages, dearness allowance and retaining allowance.

After due appropriation made by Parliament by law, the Central Government shall contribute to the Insurance Fund in relation to each employee, of any establishment to which this Act applies, an amount representing one-half of the contribution which an employer is required to make as above.

The employer shall pay into the Insurance Fund such further sums of money, not exceeding $^1/_4$ of the contribution which he is required to make under sub-section (2), as the Central Government may, from time to time, determine to meet all the expenses in connection with the administration of the insurance scheme other than expenses towards the cost of any benefit provided by or under that schemes.

The Insurance Fund shall vest in the Central Board and be administrated by it in such

manner as may be specific in the insurance scheme. All or any of the matters specified in the schedule IV may be provided by this insurance scheme.

13.5 CENTRAL BOARD AND ITS CONSTITUTION, FUNCTIONS AND POWERS

According to the Section 5-A of the Act the Central Government may constitute bared of trustees, which is called "The Central Board". The main purpose of this board for administering the employees' Provident Fund in the territories to which this Act has been extended.

The Central Board is constituted by the following persons-

i) One Chairman and one Vice Chairman appointed by the Central Government under section 5-A (a).

ii) The Central Provident Fund Commissioner, ex-officer under Section 5-A (4a).

iii) Not more than five persons to be appointed by the Central Government from its officials under section 5-A (b).

iv) Not more than fifteen person representing Government of such States as the Central Government may specify, to be appointed by the Central Government under Section 5-A (c).

v) Ten persons representing employers or the establishment to which the scheme applies to be appointed by the Central Government consulting with the organization recognised by the Central Government under section 5-A (d).

vi) Ten persons representing employees, in the establishment in which the scheme applies, appointed by the Central Government consulting with the organizations of employees recognized by the Central Government under section 5-A (e).

According to the section 5-c, the Central Board is a corporate body under the name specified in the notification and the board has perpetual succession and a common seal.

Functions of the Central Board:-

Under various Section, different functions are provided to be performed by the Central Board, which are as follows-

i) The terms and the conditions subject to which a member of the Central Board may be appointed shall be such as may be provided for in the scheme.

ii) The time, place and procedure of the meeting of the Central Board shall be such as may be provided for in the scheme.

iii) Under Section 6-A and 6-B, it shall administer the fund, in such manner as may be specified in the Scheme.

iv) It shall perform such other functions as it may be required to perform by or under any provisions of the scheme.

v) According to Section 5-A (5), the Board shall maintain proper accounts of its income and expenditure in such form and in such manner as the Central Government may specify in the scheme after consultation with the controller and Auditor General of India.

vi) According to Section 5-A (6) the accounts of the Board shall be audited by the Controller and Auditor General of India.

vii) According to sub-section 7, the controller and Auditor General of India shall have some rights and privilege and authority in connection with such audit and shall have right to demand the production of books, accounts connected vouchers, documents and papers and inspect any officers of the Central Board.

viii) According to Sub- Section (8) the audit report shall be forwarded to the Central Government along with the comments of the Controller and Auditor General.

ix) According to Section 5-A (9), it shall be the duty of the Central Board to submit also to the Central Government an annual report of its works and activities, which shall be placed before the parliament along with the audit report.

Powers of the Central Board :

Following are the powers of the Central Board

i) To hold and conduct the meetings at the time and place as specified.

ii) To administer the fund as per provisions contained in section 6-A and 6-B.

iii) To perform all the functions, interested to it under the Act.

iv) To appoint and constitute State Board under Section 5-B.

v) To appoint the Central Provident Fund. Commissioner and other officers as per power entrusted to it under section 5-D.

vi) To delegate its powers to the Executive Committee, State Boards or other officers under Section 5-E.

LET US KNOW

Under Section 6-B Central Government shall after due appropriation made by Parliament by law in this behalf pay such further sums as may be determined by it into the family Pension Fund to meet all the expenses in connection with the administration of the Family Pension Scheme other than the expense in connection with the administration of the scheme after that the expense towards the cost of any benefits provided by or under the said scheme.

CHECK YOUR PROGRESS

Q.1: Fill in the blanks.

i) The employees' Pension Scheme may not provide for ..... Pension.

ii) Chairman and Vice-Chairman of the Central Board of P.F. are appointed by .....

iii) The account of the Central Board of PF are audited by the .....

13.6 STATE BOARDS AND THEIR CONSTITUTION

According to Section 5-B of the Act State Boards can be constituted as follow-

i) The Central Government may, by a notification in the Official Gazette, constituent a State Board of Trustees for any state after consultation with the Government of that state in such manner as may be provided in the scheme.

ii) It shall exercise powers and perform such duties as the Central Government may assign to it from time to time.

iii) The members to the State Board shall be appointed on such terms and conditions as may be laid down in the scheme.

iv) The time, place and procedure of the meetings of a State Board shall be such as may be provided under the scheme.

In this connection, other rules are as follows-

i) The State Boards with the approval of the State Government concerned may appoint such staff, as it may consider necessary.

ii) The method of recruitment, allowance discipline and other conditions of services shall be such as may be specific by the Central Government.

iii) Salaries and allowances of these officers shall be paid out of the fund.

iv) Method of recruitment, salary and allowances, discipline and other conditions of

service of the officers and employers shall be as that the State Government notify.

13.7 DUTIES AND POWERS OF INSPECTOR APPOINTED UNDER THE EMPLOYEE'S PROVIDENT FUNDS AND MISC. PROVISIONS ACT 1952

According to section 13 inspector shall be appointed by the Appropriate Government by giving notification in the Official Gazette for the purpose of the Act or of any scheme. Under section 13 (i) the Appropriate Government is empowered to define the jurisdiction of inspectors.

Following are the duties of the inspectors :

i) To inqurie about the correctness of any information furnished in connection with this Act or with any scheme, or

ii) To ascertain whether any provision of the Act or of any scheme, have been complied with in respect of an establishment to which the scheme or the insurance scheme applies, or

iii) To ascertain whether the provisions of the Act or any scheme are applicable to any establishment in which the scheme has not been applied, or

iv) To determine whether the conditions subject to which exception was granted under section 17 are being complied with by the employer in relation to an exempted establishment.

Powers of the Inspectors :-

Under Section 13 of the Act, following powers are entrusted to the inspectors -

i) Require the employer or any contractor from whom any amount is recoverable to furnish such information as he may consider necessary.

ii) At any reasonable time and with necessary assistance, enter and search any establishment or any premises connected therewith.

iii) Require anyone found incharge of an establishment to produce before time for examination of any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment.

iv) Examine, in respect of any matter relevant for his purpose, the employer or the contractor from whom any amount is recoverable, his agent or servant or any other

person found incharge of the establishment or whom the inspector has reasonable cause to believe to be or to have been, an employee in an establishment.

v) Make copies of or extract from any book, register or other document maintained by an establishment and where he has reason to believe that any offence under the Act has been committed seize with such assistance as he may think, such book, register as other documents as he may consider relevant.

vi) Exercise such other process as the scheme may provide. The inspector has also been conferred with line above powers for the purpose of enquiring into the correctness or as containing of any information in connection with the employees version scheme.

13.8 CONSTITUTION AND WORKING PROCEDURE OF EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL

Under the section 7-D of the EPF and Miscellaneous Provisions Act 1952, the Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employee's Provident Funds. Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by this Act and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal. A Tribunal shall consist of one person only to be appointed by the Central Government. A person shall not be qualified for appointment as the Presiding officer of a Tribunal unless he is or has been or is qualified to be a judge of a high court.

Under the section 7-E the term of office of the Presiding Officer of a Tribunal shall hold will be for five years from the date on which he enters upon his office or until the attains the age of sixty two years, whichever is earlier.

Under the section 7-F, the Presiding Officer may, by notice in writing under his hand addressed to the Central Government, resign his office. Provided that the Presiding Officer shall unless he is permitted by the Central Government to relinquish his office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earlier.

Under the section 7-M, if , for any reason, a vacancy occurs in the office of the Presiding Officer the Central Government shall appoint another person in accordance with the provisions of this Act, to fill the vacancy and the proceedings may be continued before a Tribunal from the stage at which the vacancy is filled.

Salary and allowance and other terms and conditions of services of Presiding Officer :- Under section 7-G, the salary and allowance payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Presiding Officer shall of be such as may be prescribed provided that neither the salary and allowances nor the other terms and conditions service of the Presiding Officer shall be varied to his disadvantage after his appointment.

Regarding staff of Tribunal, under section 7-H, it is laid down that the Central Government shall determine the nature and categories of the officers and other employees required to assist a Tribunal in discharge of its functions and other employees as it may think fit. The officers and other employees of a Tribunal shall discharge their function under general superintendent of the Presiding Officer.

The salaries and allowances and other conditions of services of the officers and other employees of a Tribunal shall be such as may be prescribed.

ACTIVITY

1. Mention few rules regarding the constitution of State Board under the EPF Mis. Pro. Act 1952.

CHECK YOUR PROGRESS

Q.2. Fill in the blanks :

i) State Board is constructed under Section_____

ii) Inspector is appointed under Section _____

iii) Section _____ is empowered to define the jurisdiction of Inspector.

iv) Under Section 13, _____ of inspector's are laid down.

v) The term of office of the Presiding Officer of a Tribunal shall

be for _____ years.

13.9 LET US SUM UP

In this unit we have discussed about Employees Provident Fund. The E P F and Misc. Prov. Act 1952 was introduced for the benefit of the employees working in the factories and their family members.

The Act applies to every establishment which is factory engaged in any industry in schedule I and in which 20 or more persons are employed or such establishment which the Central Government may by notification in the Official Gazette specify in this behalf.

There are various schemes under the Act for providing various benefits to the employees. Such as -

i) The Employee's provident fund scheme.

ii) The Employees' Pension scheme.

iii) Employees' Deposit Linked Insurance scheme.

A Central Board may be constituted under section 5-A of the Act by the Central Government. The main purpose of this board for administering, the Employees' Provident Fund in the territories to which this act has been extended. The Central Board shall perform such functions as it may be required to perform by or under any provisions of the scheme. The Central Board is empowered to hold and locate the meetings at the time and place as specified and it can administer his fund as per provisions contained in section 6-A and 6-B. Moreover, the board is to perform all the functions entrusted to it under the Act.

On the other hand, under the section 5-B of the Act, State Boards can be constituent by the Central Government for any state after consultation with the Government of that state in such a manner as may be provided in the scheme.

Under section 13, inspector shall be appointed by the Appropriate Government notification in the Official Gazette for the purpose of this Act or of any scheme under section 13 (i) the Appropriate Government is empowered to define the jurisdiction of inspectors. The duty of inspectors is to enquire about the correctness of any information furnished in connection with this Act or with any scheme.

Under section 13 of the Act, different powers are entrusted to the inspectors.

13.10 FURTHER READING

1. C B Mamoria(2016);Dynamics of Industrial Relations; Himalaya Publishing House
2. A Monappa,ý R Nambudiri,ý P Selvaraj (2012);*Industrial Relations and Labour Laws*; Tata McGraw Hill Education Private Limited
3. PPS Gonga (2007); *A Textbook Of Business And Industrial Laws*; S Chand, India

13.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q.No.1:

i) Third party, ii) Central Govt.

iii) Comptroller and Auditor General of India

Ans to Q.No.2:

i) True ii) 13

iii) Government iv) Power v) 5

13.12 MODEL QUESTIONS

1. Discuss the scope and applicability of the E P F and Misc. Prov. Act 1952.
2. Discuss various schemes provided under the EPF and Misc. Prov. Act 1952.
3. Discuss the constitution of the Central Board and State Board and its functions and powers.
4. Explain the different power of inspectors appointed under the EPF and Misc. Prov. Act 1952.
5. Discuss the constitution and working procedure of E.P.F. Appellate Tribunal.

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UNIT 14: THE PAYMENT OF GRATUITY ACT, 1972

UNIT STRUCTURE

14.1 Learning Objectives

14.2 Introduction

14.3 Objective and Scope of the Payment of Gratuity Act, 1972

14.4 Provisions of the payment of Gratuity Act, 1972

14.5 Procedure of determination and payment of gratuity

14.6 Dispute regarding the amount of gratuity

14.7 Appointment and Power of Inspector under the Payment of Gratuity Act

14.8 Controlling Authority and its Power

14.9 Let Us Sum Up

14.10 Further Reading

14.11 Answers To Check Your Progress

14.12 Model Questions

14.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- describe the objective and scope of the payment of gratuity act
- explain the provision and procedure of determination and payment of gratuity under the payment of gratuity act
- explain the dispute and penal provision of payment of gratuity act
- discuss the controlling authority and its power.

14.2 INTRODUCTION

In the previous unit (unit 13) we have discussed the Employees Provident Fund and Miscellaneous Provision Act, 1952 and its important provisions. In this unit, we will discuss the Payment of Gratuity Act, 1972. The meaning of gratuity is a sort of retiring benefit to the workmen who have rendered long and unblemished service to the employer.

The Payment of Gratuity Act 1972 was passed as Act No : 30 of 1972 and received the assent of the President of India on August 21,1972. It was enforced with effect from

September 16, 1972. This Act extends to the whole of India. Of course so far as this act relates to plantation or port, it shall not extend to the State of Jamu and Kashmir. In this unit, we will deal with scope, objectives and various important provisions of the payment of Gratuity Act, 1972.

14.3 OBJECTIVE AND SCOPE OF THE PAYMENT OF GRATUITY ACT, 1972

The main objective of this Act is to provide for a Scheme for the payment of Gratuity to employees engaged in factories, mines, oil fields plantations, ports, railway companies, shops or other establishments and for matter related there of.

The objective of the Payment of Gratuity Act, 1972 are mentioned below-

i) To provide for a Scheme for the payment of Gratuity to employees.

ii) To provide for matters connected with or incidental to the Scheme for payment of Gratuity.

iii) To provide retiring benefits to employees who have rendered continuous services to his employer and thereby contributed to his prosperity.

iv) To define the principles of payment of gratuity according to the prescribed formula.

v) To provide machinery for the employment of liability for payment of gratuity.

Scope and Application of the Act :

Under the Section 1 (3) of the Payment of Gratuity Act, 1972, this act can be applied to -

i) every factory, mine, oil-field, plantation, port and railway company

ii) every shop or establishment within the meaning of any law for the time being in force in relation to shop and establishments in a state in which ten or more persons are employed, or were employed, on any day of the proceeding twelve months.

iii) Such other establishment, or class of establishment in which ten or more employees are employed, or were employed on any day of the proceeding twelve months, as the Central Government may, by notification specify in this behalf.

According to the Section 1(3-A), a shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten. Out of the above provisions it can be understood that the Act is wide enough to bring within its scope the whole organised sector of industry as well as commerce. Of cource,

this Act cannot be applied to

i) apprentices and

ii) as per Section 2 (e), persons who hold civil posts under central Government or a State Government and are governed by any other Act or rules providing for the payment of gratuity. Under Section 5 of this Act, the central Government is empowered to exempt any shop or establishment covered by this Act from the provisions of the Act, if its employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits provided under this Act.

14.4 PROVISIONS OF THE PAYMENT OF GRATUITY ACT, 1972

There are many legal provisions of the Payment of Gratuity Act 1972. We are below discussing some important provisions of the Act as follows:

i) Provisions relating to the payment of gratuity :-

Under sections 4 and 7 of the Act , different provisions relating to the payment of gratuity are given according to Section 4(1), the gratuity shall be payable to an employee on the termination of his employement after he has rendered continuous service for not less than 5 years.

The gratuity is payable to an employee on his termination in the following cases-

a) On his superannuation, or

b) On his retirement or resignation

c) On his death or disablement due to accident or disease.

Under Section 7(1) a person who is eligible for payment of gratuity under this Act or any person authorised in writing, to act on his behalf shall send a written application to the employer within such time and in such form as may be prescribed , for payment of such gratuity. Under section 7(2) as soon as gratuity becomes payable, the employer shall, whether an application referred to in the Sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity determined. Under section 7(3) the employer shall arrange to pay the amount of gratuity within thirty days from the date it became payable to the person to whom the gratuity is payable. Section 7(3-A) states, if the amount of gratuity payable under Sub-Section (3) is not paid by the employer within the period Specified in Sub-Section (3), the employer shall pay, from the date on which the gratuity become payable to the date on which it is paid,

simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may by notification Specify.

ii) Provision regarding reduction and forfeiture of gratuity:-

Under Section 4(6) of the Act, following provisions regarding reduction and forfeiture of gratuity are laid down as follows-

i) According to section 4(6) (a), the gratuity payable to an employee, whose services have been terminated for any act due to wilful omission, or negligence causing any damage or loss to or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

ii) According to Section 4(6) (b), the gratuity payable to an employee may be wholly or partially forfeited-

a) If the services of such an employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part.

b) If the services of such an employee have been terminated for any act which constitutes an involving moral turpitude provided that such offence is committed by him in the course of his employement.

iii) Provision regarding recovery of gratuity:-

Regarding the recovery of the amount of gratuity procedure has been laid down under section 8 of the Act as follows -

a) If the amount of gratuity is not paid by the employer within the prescribed time, the person has then right to apply to the controlling authority for the recovery the gratuity.

b) The controlling authority will issue a certificate for the amount to the collector Then, the collector shall recover the amount to the person.

iv) Provision of Compulsory Insurance :-

Under Section 4(A), following provision are laid down regarding the compulsory Insurance-

a) The amendment Act of 1987 of Payment of Gratuity Act provides for compulsory insurance of employer's liability to pay gratuity under the Act.

b) This new section also provides for compulsory registration of all the establishments covered under the Act with the controlling authority appointed by the Government.

c) This Sections empowers the Central Government to make rules for prescribing the insurers other than the LIC and the manner in which the employer shall get the insurance cover.

d) Where an employer fails to make any payment by way of premium to the insurer or by way of contribution to an approved gratuity fund referred to above, he shall be liable to the amount of gratuity due under this Act.

e) Whoever contravenes the above provisions shall be punishable with a fine which may extend to Rs 10,000 and if it continues, a further fine extending to Rs.1,000 per day till the offence continues.

v) Provisions regarding Nomination :-

According to Section 6,each employee who has completed one year of service shall make nomination for the purpose of payment of gratuity in case of his death. Different legal provisions regarding nomination are given below-

1) Time of Nomination :- Under Section 6(1) each employee who has completed one year of service, shall make within 80 days of completion of one year of service a nomination.

2) No of Nominees:- Under Section 6(2) an employee may in his nomination distribute the amount of gratuity payable to him under this Act amongst more than one nominee or may nominate one person only for whole amount of gratuity. According to Section 6(3) if an employee has a family at the time of making nomination, then the nomination shall be made in favour of one or more members of his family. According Section 6(4) if at the time of making a nomination the employee has no family member then the nomination may be made in favour of any persons or persons.

3) Modification :- Under Section 6(5), nomination may be modified by an employee at any time after giving to his employer a written notice in such form and in such a manner as may be prescribed.

4) Death of Nominee :- As per Section 6 (6) if the nominee dies before the employee, the interest of the nominee shall revert to the employee, who will have to make a fresh nomination.

5) Safe Custody of Nomination :- Under Section 6 (7), every nomination, a fresh nomination or alternation of nomination, as the case may be shall be sent by the employee to his employer who will Keep the Same in his custody.

vi) Provisions of Inspectors :-

The Payment of Gratuity (Amendment) Act 1984 has added two new sections. They are Section 7-A and Section 7-B to the original Act dealing with the appointment of Inspectors and their power.

Appointment of Inspectors :- Under the Section 7-A, the government may, by notification, appoint as many inspectors as it deems fit.

Power of Inspectors : Under the Section 7-B inspectors have the power to ask an employer to furnish necessary information. Moreover, inspectors have the power to enter and inspect any place in any factory, mine etc. and to examine the employer and the employees. Inspectors can make copies or take extracts from register or record etc.

vii) Provisions regarding penalties :

According to Section 9 (1) any person who knowingly makes any false statement for avoiding any payment to be made by him under this act shall be punishable with imprisonment upto six months or with fine upto Rs.10,000 or with both. Under section 9(2), an employer who contravenes or makes default in complying with, any of the provisions of the Act, or rule, order made thereunder shall be punishable with imprisonment for a period which may extend to one year or with fine which may extend to one thousand rupees or both.

iii) Provisions regarding appropriate Government's powers to make rules:-

Under Section 15 the appropriate Government may make rules for carrying out the provisions of the Act. Every rule made by the Central Government under this Act shall be laid before each house of parliament while it is in session for a total period of thirty days which may be comprised in one sessions or in two or more successive sessions.

LET US KNOW

Appropriate Government under this Act means

(i) In relations to an establishment :

(a) belonging to, or under the control of the Central Governments,

(b) having branches in more then one State,

(c) of a factory belonging to, or under the control of the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government

(ii) any others case, the State Government [Section 2(a)]

14.5 PROCEDURE OF DETERMINATION AND PAYMENT OF GRATUITY

Procedure of Determination of Gratuity is laid down under section 7 of the Act, which are mentioned below-

i) **Filing of Application :** According to Section 7(1) a person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to this employer within such time and in such form, as may be prescribed, for payment of such gratuity.

ii) **Determination of Gratuity :** As soon as under 7(2) gratuity becomes payable, the employer shall whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determines.

iii) **Payment within thirty Days :-** According to Section 7(3), the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

iv) **Interest on gratuity :-** According to Section -7 (3-A), if the amount of gratuity payable under the Sub-Section (3) is not paid by the employer within the period specified in Sub-Section (3), the employer shall pay, from the date on which the gratuity become payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the central government from time to time for repayment of long-term deposits, as that Govt. may by notification specify. The interest will not be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on the ground.

Payment of Gratuity :

It is a statutory duty of all employers to pay gratuity to their employees. Regarding the Payment of Gratuity, legal payment of Gratuity, legal provisions are laid down under Section 4 and 7 of the Act as follows-

i) According to Section 4(1), the gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service of not less than five years.

ii) According to Section 4(1), it is further mentioned that in the case of death of an employee gratuity payable to him shall be paid to his nominee or if no nomination has been made, to his heirs and where any such nominee or heir is a minor, the share of such minor shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

iii) According to the section 7(1) any person who is eligible for payment of gratuity under this Act. shall send a written application to the employer for the payment of such gratuity.

iv) Under the Section 7(2) (3) (3A), it is laid down that it is the duty of employer to pay gratuity to an eligible employee.

LET US KNOW

As gratuity is paid for meritorious service of the employee throughout the employment rendered by him with the employers, so if he is guilty of misconduct or wilful omission or negligence, causing damage to the property of the employer, under clause (a) of Section 4 he cannot be deprived altogether of the benefit of gratuity under the Act. The proper remedy is such that he should be paid his dues of gratuity after deducting the amount of loss caused to the employer by his conduct.

CHECK YOUR PROGRESS

Q1. Choose the correct answer :

i) The Payment of Gratuity Act 1972 does not apply to

a) Apprentices

b) Persons holding civil posts and governed by any other Act.

c) Both a) & b)

d) None of the above

ii) Gratuity will be payable to an employee

a) On his Superannuation

b) On his retirement or resignation.

c) On his death or permanent disablement.

d) Any of the above cases.

iii) Under the Payment of Gratuity Act 1972 gratuity to an employee

is payable on his termination only if he has rendered continuous service for not less than-

a) 3 years b) 5 years c) 7 years d) 10 years

iv) The Payment of Gratuity Act 1972 extends to the -

a) Whole of India

b) All states except union territories.

c) States notified by government from time to time

d) Jammu and Kashmir and Union territories.

14.6 DISPUTE REGARDING THE AMOUNT OF GRATUITY

Under Section 7(4) (a), it is laid down that if there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of or in relation to an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as granted to be payable by him as gratuity.

According to 7(4), where there is a dispute with regard to any matter or matters specified in clause (a) the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

According to Section 7(4) (c), the Controlling authority shall after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard determine the matter or matters in dispute and if as a result of such inquiry any amount is formed to be payable to the employer, the controlling authority shall direct the employer to pay such amount or as the case may be such amount as reduced by the amount already deposited by the employer.

Section 7(4) (d) states that the controlling authority shall pay the amount deposited, including the excess amount if any, deposited by the employer to the person entitled thereto.

According to Section 7 (4) (e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made -

i) To the applicant where he is the employee or

ii) Where the applicant is not the employee, to the nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

14.7 APPOINTMENT AND POWER OF INSPECTOR UNDER THE PAYMENT OF GRATUITY ACT

Section 7-A of the Payment of Gratuity (Amendment) Act 1984 deals with the appointment of inspectors, which are as follow-

i) The appropriate government may, by notification, appoint as many inspectors as it feels fit for the purpose of the Act.

ii) The appropriate government may by general or special order, define the area to which the authority of an inspector so appointed shall extend. Where two or more inspectors are appointed for the same area, it may also define by such order, the distribution or allocation of work to be performed by them under the Act.

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

Powers of Inspectors under the Payment of Gratuity Act

Under Section 7-B the Payment of Gratuity Act 1972, powers of Inspectors are laid down as follows-

1) An Inspector may, for the purpose of ascertaining whether any of the provisions of the Act or the conditions, if any, of any exemptions granted thereunder, have been complied with, exercise all or any of the following powers, such as-

   a) Require an employer to furnish such information as he may consider necessary.

   b) Enter and inspect, at all reasonable hours, with such assistants (if any) being persons in the service of the Government of local or an public authority, as he thinks fit, any premises of or place in any factory, mine, oil field, plantation, port, railway, company, shop or other establishment to which the Act applies, for the purpose of examining any register, record or notice or other document required to be kept or exhibited in relation to the employment of any person for the payment of gratuity to the employees, and require the production thereof for inspection.

   c) Examine with respect to any matter relevant to any of the purpose aforesaid the employer or any person whom he finds in such premises or place and

who, he has reasonable course to believe, is an employee employed therein.

d) Make copies of or take extracts from, any register, record, notice or other document, as he may consider relevant and where he has reason to believe that any offence under the Act has been committed by an employer, Search, and seize, with such assistance as he may think fit, such register, record, notice or other document as he may consider relevant in respect of that offence.

e) Exercise such other powers as may be prescribed.

2) Any person required to produce any register record, notice or other document or to give any information by an inspector under Sub- Section (1) shall be deemed to be legally bound to do so within the meaning of Section 175 and 176 of Indian Penal Code.

14.8 CONTROLLING AUTHORITY AND ITS POWER

According to Section 2(d), Controlling Authority means any authority appointed by the appropriate Government under Section 3. The appropriate Government may, by notification in the Official Gazette, appoint any officer to be a controlling authority who shall be responsible for the administration of the Act. Different controlling authorities may be appointed for different areas.

Powers of Controlling Authority :-

Controlling Authority is empowered by the Act as follows-

i) **Power to decide Dispute in relation to Gratuity :** According to Section 7(4), the controlling Authority can exercise its power on the following aspects-

a) The amount of Gratuity payable to an employee or

b) The admissibility of any claim of or

c) In relation to an employee for payment of Gratuity or

d) As to person entitled to receive the gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as Gratuity.

2) To Conduct Inquiry : According to the Section 7(5) in deciding the dispute, the Controlling authority can conduct an enquiry by giving the parties to the dispute, an opportunity of being heard. The controlling authority for the purpose of controlling an enquiry as to matters given above, shall have the same powers as are vested to

a covert, while trying a suit under the Code of Civil Procedure, 1908. It shall have the following powers in this regard, such as-

a) enforcing the attendance of any person or examining him on oath.

b) requiring the discovery and production of documents

c) receiving evidence on affidavits and

d) insuring commission for the examination of witness.

According to Section 7(6), the inquiry shall be a judicial proceeding within the meaning of Section 193 and 228 and for the Section 196 of the IPC.

3) Direction to pay Gratuity : Under Section 7(4) (d) in deciding the dispute, if the controlling authority finds that any amount is payable to the employee by the employer it can direct the employer to pay the difference to the employee.

4) To pay the amount deposited : The Controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employee to person entitled thereto.

5) To give other Directions : The controlling authority, in the application, may direct the employer to do as directed. If the employer -

a) refuses to accept a nomination or to entertain an application for payment of gratuity.

b) issues a notice specifying the amount of gratuity less than what the claimant considers to be payable, or rejecting eligibility to payment of gratuity.

c) fails to issue notice within 15 days the payment of gratuity. (Rule 9)

LET US KNOW

The term “employer” is defined in Section 2(f) of the Act and for the purpose of this Act, it is defined separately in relation to government owned and non-governments owned establishment, factory, mine, oilfield, plantation part, railway company or shop. The term family is defined in Section 2(h) of the Act and for the purposes of this Act, it is defined separately in case of a male employee and female employee.

ACTIVITY

i) Mention four powers of controlling authority to decide dispute in relation to Gratuity.

ii) Mention few powers of Inspectors under the payment of gratuity Act.

6) Power to pay to the applicant : After a deposit is made under the clause above, the controlling authority shall pay the amount of deposit:-

a) To the applicant where he is the employee, or

b) To the nominee, guardian or heir if the applicant is not the employee, and if the controlling authority is satisfied that there is no dispute as to the right of the applicant.

CHECK YOUR PROGRESS

Q.2. Mention any two Powers of Controlling Authority.

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14.9 LET US SUM UP

Gratuity is a sort of retiring benefit to the workmen who have rendered long and unblemished service to the employer. The main object of this Act is to provide for a scheme for the payment of Gratuity to employees engaged in different prescribed establishments. Different provisions of the Act covers payment of gratuity, reduction and forfeiture of gratuity, recovery of gratuity, compulsory insurance, nomination, inspectors and his power, appropriate Government power. Moreover under Section 7(4) (a) dispute regarding gratuity, under section 7 Procedure of Determination of Gratuity and under Section 4 and 7 Payment of Gratuity are provided.

14.10 FURTHER READING

1. C B Mamoria(2016);Dynamics of Industrial Relations; Himalaya Publishing House
2. A Monappa,ý R Nambudiri,ý P Selvaraj (2012);*Industrial Relations and Labour Laws*; Tata McGraw Hill Education Private Limited
3. PPS Gonga (2007); *A Textbook Of Business And Industrial Laws*; S Chand, India

14.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q.No.1:

i) (c), ii) (d), iii) (b), iv) (a)

Ans to Q.No.2:

(a) To conduct enquiry.

(b) To pay the amount deposited.

? 14.12 MODEL QUESTIONS

1. Explain the objects and scope of the Payment of Gratuity Act.
2. Discuss the various provisions relating of the Payment of Gratuity Act.
3. Explain clearly the procedure of determination and payment of Gratuity under the Payment of Gratuity Act.
4. Write Short note on :-
   i) Controlling Authority
   ii) Power of Inspectors
   iii) Dispute regarding the amount of gratuity.

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UNIT 15: THE PAYMENT OF WAGES ACT, 1936

UNIT STRUCTURE

15.1 Learning Objectives

15.2 Introduction

15.3 Definition of Wages

15.4 Few important terms under the Payment of Wages Act. and its objects and application

15.5 Responsibility for payment of wages

15.6 Time of Payment of Wages

15.7 Deduction and its various kinds

15.8 Deductions claims for wrongful deductions

15.9 Let Us Sum Up

15.10 Further Reading

15.11 Answers To Check Your Progress

15.12 Model Questions

15.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the meaning and various important terms under the Payment of Wages Act. 1936
- describe regarding the Responsibilities for Payment of Wages
- know the rules with regard to the time of Payment of wages
- define the meaning of deduction and its various kind along with claims for wrongful deduction.

15.2 INTRODUCTION

In the previous unit, we have discussed the Payment of Gratuity Act, 1972. In this unit an attempt is being taken to discuss the Payment of Wages Act. 1936, and its objects, application and other important aspects. The payment of wages Act. 1936 has recently been amended in 2005 by the Payment of wages (Amendment) Act 2005. The wage structure of an Industrial enterprise is built on the premise that each job has its own price

depending on the skill and training. Moreover, it depends on commensurate responsibility, which is determined by systematic Job evaluation method or by 'going rate' in the particular market area. By the payment of wages Act 1936, the payment system, rate, deduction, etc. important aspects of wages of certain classes of employed persons are regulated. Through this unit, students can understand all about the important legal matters of the Payment of wages Act. 1936.

15.3 DEFINITION OF WAGES

Under section 2 (vi) of the Payment of wages Act. 1936, the term wages is defined as all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.

In order to understand the concept of wage, it is better to know the following items, which are included in wages. Such as–

(i) Any remuneration payable under any award or settlement between the parties or order of a court.

(ii) Any remuneration to which the person employed is entitled in respect of overtime work on holidays or any leave period.

(iii) Any additional remuneration payable under the terms of employment, whether called a bonus or by any other name.

(iv) Any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument.

(v) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

Following are not included in wages

(i) 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.

(ii) The value of any house accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the compilation of wages by a general or a special order of the State Government.

(iii) Any contribution paid by the employer to any pension or provident fund and the interest that may have accrued thereof.

(iv) Any travelling allowance or the value of any travelling concession.

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

(vi) Any gratuity payable on the termination of employment in cases other than this specified in sub clause (d).

15.4 FEW IMPORTANT TERMS UNDER THE PAYMENT OF WAGES ACT AND ITS OBJECTS AND APPLICATION

(i) Appropriate Government : According to section 2 (i) of the Act, the appropriate Government is the central Government in relation to railways, air transport service, mines and oil fields. On the other hand, in relation to all other cases, the appropriate government is the State Government.

(ii) Employed person : According to section 2 (i)(a) the employed person includes the legal representative of a deceased employed person.

(iii) Employer : According to section 2(i) (b) employer includes the legal representative of a deceased employer.

(iv) Factory : According to section 2 (i)(c) of the Act. Factory means is defined in section 2(m) of the factories Act 1948 and includes any place to which the provisions of that Act have been applied under section 85 (1) thereof.

v) Industrial or other Establishment :

According to section 2(ii), Industrial or other establishment means any

(a) Tram way services or motor transport engaged in carrying passengers, goods or both by road for here or record.

(b) Air transport service other than such service belonging to or exclusively employed in the military, navy or air force of the Union or Civil Aviation Department of the Government of India.

(c) Dock, What of Jetty.

(d) Inland Vessel, mechanically propelled.

(e) Mine, quarry or oil field.

(f) Plantation.

(g) Workshop or other establishment in which articles are produced, adopted or manufactured with a view to their use, transport or sale.

(h) Establishment in which any work relating to the construction, development and

maintenance of buildings, roads, bridge or canals or of water relating to the generation, transportation, and distribution of electricity or any other form of power is being carried on.

(vi) **Mine :** The term 'mine' is defined in section 2 (ii) (a) of the Act and for the purpose of this Act it has the same meaning as assigned to it in section 2(1)(i) of the Mines Act 1952.

(vii) **Plantation :** The term plantation is defined in section 2 (iii) of the Act for the purpose of this Act it has the same meaning as assigned to it in section 2(f) of the plantation labour Act. 1951

(viii) **Railway Administration :** The term Railway Administration is defined in section 2 (v) of the Act and for the purposes of this Act it has the same meaning as assigned to it in section 2(32) of the Railways Act 1989.

Objectives and Application of the Act :

In the Preamble of the Payment of Wages Act 1936, the objectives are provided as to regulate the payment of wages of certain classes of employed persons. In this connection, the expression "Certain classes of employed persons' is important for the Act as the act applies to employed persons drawing on an average wages less than Rs. 6,500/- per month (section 1 (6). With a view to achieving these objectives as well as ensuring the payment of wages to the persons covered by the Act. various provisions have been made in the Act.

Regarding application of the Payment of Wages Act 1936, section 1(4) provides that in the first instance, the Act applies to the payment of wages to the following–

(a) Persons employed in any factory.

(b) Persons employed (otherwise than in a factory upon any railway by a railway administration either directly or through a subcontractor) by a person fulfilling a contract with a railway administration.

(c) Persons employed in an Industrial or other establishment as specified in section 2(ii) (a) to 2(ii) (g).

(d) Any class of persons employed in any establishment or class of establishment specified by the appropriate government according to section 5.

The State Government may after giving three months notice, by notification in the Gazette, extend the provisions of the Act or any of them to the payment of wages of any class of persons employed in any Industrial Establishment or class on group of Industrial

Establishments. In many states, the Act has been extended to various industries e.g. Shops and Establishments, Omnibus service (in Assam, Maharashra, West Bengal), tramways (in Tamil Nadu) etc.

LET US KNOW

The Payment of wages Act of 1936, was initially made applicable to people drawing less than Rs. 200 a month. In 1967, the limit was raised to Rs. 400 a month. On 13th November 1975, the President of India issued an Ordinance amending the Act to cover workers getting up to Rs 1000 a month. In 1976, the ordinance was replaced by an Act, which was passed on 11th February. The effect of the Act was that nothing in this Act applied to wages payment in respect of a wage period, over such wage period, average Rs. 100 a month or more. This limit was raised from Rs. 1000 to Rs 1600 by the payment of wages (Amendment) Act 1982.

(ii) The Act of 1976 provided for the Payment of Wages in cash, by cheque or by crediting the wages to the bank account of a worker after obtaining his written authorisation.

(iii) It also permitted authorised deduction from wages for contribution to the Prime Minister's National Relief fund or such other funds as the central Government may specify by notification in the official Gazette.

CHECK YOUR PROGRESS

Q1. Match the following :

(A) Appropriate Government	– (i) Section 2 (ii)a
(b) Employed Person	– (II) Section 2 (i)b
(c) Employer	– (III) Section 2 (ii)
(d) Factory	– (IV) Section 2 (i)c
(e) Industrial or other Establishment	– (v) Section 2 (i)
(f) Mine	– (VI) Section 2 (i)a
(g) Plantation	– (VII) Section 2 (v)
(h) Railway Administration	– (VIII) Section 2 (iv)

ACTIVITY

(i) Prepare a list of items, which are not included in Wages.

(ii) Prepare or list of items which are included in Wages.

15.5 RESPONSIBILITY FOR PAYMENT OF WAGES

Regarding responsibility for payment of wages, under section 3 of the Act, it is stated that the employer is responsible for the payment of wages. In the case of persons employed (otherwise than by a contractor) the following persons are also responsible for the payment of wages.

(i) The person named as manager in a factory.

(ii) In Industrial establishments the person, if any, who is responsible to the employer for the supervision and control of the establishment.

(iii) Upon railways the person nominated by the railway administration in this behalf for the local area concerned.

(iv) In case of persons employed in the case of contractor, a person designated by such contractor who is directly under his charge, shall be responsible for the payment of wages to the employed persons.

(v) In case of persons employed in any other case, a person designated by the employer as a person responsible for complying with the provisions of this Act, shall be responsible for payment of wages to the employed persons.

According to section 3(2) of the Act. it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractors or the person designated by the employer fails to make such payments.

The ascended section 3 have removed the doubts regarding responsibility for payment of wages in case the contractor or the person designated by the employer fails to make the payment. Now it has been specifically made clear that in case of such failure on the part of the contractor or designated person, it shall be the responsibility of the employer himself to make the payment of wages.

15.6 TIME OF PAYMENT OF WAGES

Regarding the time of payment of wages, the section 5 of the Act. provides the following rules.

(i) According to section 5(1) (a), if the number of persons employed upon or in any railway factory or industrial or other establishment is less than 1000, wages shall be paid before the expiry of the seventh day after the last day of the wage period.

(ii) According to Section 5(1)(b), the wages of every person employed upon to in any other railway, factory or Industrial or other establishment shall be paid before the expiry of the tenth day of the lst day of wage period in respect of which the wages are payable further it is provided under the section 5(1) (b), that in the case of persons employed on a dock, Wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded so the case may be, shall be paid before the expiry of the seventh day of such completion.

(iii) According to section 5(2), in case of the termination of the employment of an employee, the wages earned by such employee shall be paid before the expiry of the second working day from the day on which his employment is terminated. However, where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated. In such a case, the second day may or may not be the working day.

(iv) According to section 5(4) all payment of wages shall be made on a working day. However as discussed above, in case of termination of employment due to closure of establishment, the wages shall be paid before the expiry of second day from the day of termination even if it is not the working days.

(v) According to section 5(3), the appropriate government may exempt the persons responsible for payment of wage from the operation of the above provisions relating to the time of payment in the followings relating to the time of payment in the following cases – (a) where wages are payable persons employed upon any railway otherwise than in a factory or (b) where wages all payable to persons employed as daily rated workers in public works Department of the Central or State Government of course, in this case no exemption order shall be made except in consultation with the central Government.

LET US KNOW

I. Under section 6, all wages shall be paid in current coin or currency notes or in both of course, the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

II. By an amendment in Maharashtra it was provided that in the case of a bonus which exceeds one fourth of the annual earning of the employee the excess may be paid by cheque invested.

CHECK YOUR PROGRESS

Q2. Fill in the blanks :

I. Under section ———— of the Act, it is stated that the employer is responsible for the payment of wages.

II. Under section ———— of the Act, the rules of payment of wages are provided.

III. According to section 5(1) (a), if the number of persons employed upon or in any railway factory or Industrial or other establishment is less than ——— wages shall be paid before the expiry of seventh day after the last day of the wage period.

IV. Under section ———— the provision of wages in case of termination is provided.

v. According to section ———— all payment of wages shall be made on a working day.

15.7 DEDUCTION AND ITS VARIOUS KINDS

According to section 7, the wages of an employed person shall be paid to him without deductions of any kind except those which are authorised by this Act. As per the Act, the following deduction are permitted.

A. **Fines :** According to the clause (a) of section 7 (2), deductions by way of fine of the wages of an employed person shall be made only in accordance with the provisions of the Act. Below, we briefly discuss the provisions regarding imposition and deduction of fine from the wages of an employed person.

(i) **Approval of the Acts and Omissions :** According to section 8 (2), fines shall be imposed only in respect of such acts or omissions which have been specified by notice with the approval of the State Government or of the prescribed authority.

(ii) **Display of Notice :** The notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (other wise than a factory) in the prescribed place.

(iii) **Opportunity to show cause :** No fine shall be imposed on any employed person until he has been provided with an opportunity of showing the cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines under the Act.

(iv) **Amount of fine :** The total amount of fine which may be imposed in any wage period on any employed person, shall not exceed 3 percent (previously half anna per rupee) of the wages payable to him in respect of that wage period.

(v) **Age Limit for fine :** No fine shall be imposed on any employed person, who is under the age of fifteen years.

(vi) **Not Recoverable in Installments and after under delay :** Fine imposed on any employed person cannot be recovered in installments, nor it can be recovered after the expiry of 60 days from the day on which it was imposed.

(vii) **Day of Imposition of fine :** Every fine shall be deemed to have been imposed of the day of the act or omission in respect of which it was imposed.

(viii) **Register of fines :** All fines and their realisation shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 of the Act. in such form as may be prescribed.

(ix) **Use of fines :** All fines so realised shall be used only in such purposes which are beneficial to the persons employed in the factory as establishment as are approved by the prescribed authority.

(x) **Penalty for Breach :** The breach of the provision of section 8 is punishable with fine which may extend to Rs. 500/- except in the case of (2) and (9) where the penalty shall extend to Rs. 200.

B. Deductions for absence from Duty : Clause (b) of the section 7 (2) authorises deductions for absence from duty section 9 of the Act states as under :

(1) Deductions may be made only on account of the absence of employed person

from the place or places where, by the terms of employment he is required to work.

(2) Such absence may be for the whole or any part of the period during which he is so required to work and

(3) An employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses to carry out his work in pursuance of stay-in-strike or for any other cause which is not reasonable under the circumstances.

C. Deductions for damage or loss : Clause (c) of section 7 (2) authorises deductions for damages to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, where such damage or loss caused to the employer by the neglect of the employed person.

Regarding deductions for damages or loss following provisions are laid down under the Act:

1. Clause (0) of the section 7 (2) permits deductions for recovery or losses sustained by a railway administration on account of any rebate or refunds, incorrectly granted to the employed person where such loss is directly attributable to his neglect or default.
2. Section 10 (1) provides that any deduction for damages or loss shall not exceed the amount of damage or loss caused to the employer by the neglect or default of the employed person.
3. According to section 10 (1-A) deduction for damage or loss shall not be made until the employed person is given an opportunity of showing cause against the deductions.
4. Any such deduction may be made only in accordance with such procedures as may be prescribed for the purpose.
5. According to section 10 (2) all such deduction and all realisation thereof shall be recorded in a register to be kept by the person responsible for the payment of wages in such form as may be prescribed.
6. Penalty for breach of the above provisions of section 10 shall be punishable with fine which may extend to Rs. 500/-

D. Deductions for Services Rendered : According to section 11. under clause (d) and (e) of section 7 (2) deduction shall not be made from the wages of an employed person unless the house accommodation, amenity or service having been supplied

by the employer, has been accepted by him as a term of his employment or otherwise. This deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and the deductions shall further be subject to such conditions as the State Government may impose. Any contravention of the provision in this regard shall be punishable with fine which may enlind upto Rs. 500/-

E. **Deduction from Loan advances and overpayment of wages :** Deductions are permitted for recovery of advances or overpayment. According to section 12, it is provided that recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of advances which are given for the travelling expenses. Moreover, it is also provided under section 12 that recovery of advances of wages not already earned shall be subject to any rules made by the State Government regulating the extent to which such advances may be given and the installments by which they may be recovered under section (1-A) deductions for recovery of loans granted for house construction etc. shall be subject to any rules made by the State Government regulating the extent to which such rules may be given and the installments by which they may be recovered.

F. **Other :** In addition to above items, following are also deducted from wages –

(i) Income Tax.

(ii) Orders of court.

(iii) Provident Fund.

(iv) Cooperative Societies and Insurance Schemes.

(v) Deduction as per written authorisation of employed person.

15.8 DEDUCTIONS CLAIMS FOR WRONGFUL DEDUCTIONS

Section 15 deals with the claims arising out of wrong deductions from wages.

Under section 15(1) of the Act, the State Government is empowered to appoint the authority to hear and decide all claims arising under the Act. The appointment shall be made by a notification in the official Gazette. The authority appointed under section 15(1) can decide only the claims arising out of deductions or delay made in payment of wages and all other matters incidental there to and also the refused wages. The authority has

jurisdiction to decide disputes regarding the quantum of wages payable to employed persons also. An application in respect of the following claims can be made to the above authority.

(i) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person. or

(ii) Where contrary to the provisions of this Act any payment of wages has been delayed.

Application can be made by any of the following –

(i) Employed person himself or

(ii) Any legal practitioner authorised in writing to act on his behalf or

(iii) Any official of a Registered Trade Unions authorised in writing to act on his behalf or

(iv) Any Inspector under the Act or

(v) Any other person acting with the permission of authority appointed to hear such claims under section 15 (1).

Under section 15 (3), the procedure is laid down to be followed by the Authority entertaining an application.

(i) The authority shall hear the applicant and the employer and other persons responsible for payment of wages under section 3. Thus, after giving them an opportunity of being heard and after such further inquiry as may be necessary, the authority may direct the refund to the employed person, of the amount deducted or the payment of the delayed wages.

(ii) The authority may also direct the payment of such compensation as it thinks fit but not exceeding times the amount of wages deducted and in case of delay, not exceeding Rs. 25.

(iii) In case where the amount deducted the wages delayed are paid before the disposal of the application, the authority can direct the payment of compensation as it may think fit but not exceeding Rs. 25.

(iv) It may also impose upon the employer or the other person may other penalty for delay or deduction under this Act.

(v) The direction of this provision does not prejudice any other penalty to which the employer or any other person is liable.

LET US KNOW

(i) Section 15(4) lays down, if the authority having the application is satisfied that the application was either malicious or vexations, the authority
may direct the applicant to pay a penalty exceeding Rs. 50 to the employer.

(ii) As per provision of Section 16(2), a single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified under section 15(3) of the Act.

CHECK YOUR PROGRESS

Q3. State True or False

(i) According to the clause (9) of section 7(2) deduction by way of fine out of the wages of an employed person shall be made only in accordance with the provisions of the Act. (True / False)

(ii) According to section 7(2), fine shall be imposed only in respect of such acts or omissions which have been specified by notice with the approval of the State Government. (True / False)

(iii) The total amount of fine shall not exceed 3% of the wages payable to him. (True / False)

(iv) Clause (c) of section 8(2) authorises deductions for damages to or loss of goods. (True / False)

(v) Section 15 deals with the claims using out of wrong deductions from wages. (True / False)

ACTIVITY

i) Twelve employees jointly absent themselves for five days without due notice and without reasonable cause. Can their wages be deducted?

(ii) An employer intends to deduct Rs. 500/- for payment to the co-operative society and Rs. 200 for damages to the goods of the employer from the wages of the employed person. The employed person draws monthly ways of Rs. 900. State with reason whether the employer can validly make these deductions.

15.9 LET US SUM UP

Wages implies all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. According to section 2 (i), the appropriate Govt. is the Central Govt. in relation to railway, air transport service, mines and oil field. In relation to all other cases, the appropriate Govt. is the State Govt. According to section 2(i) (a) the employed person includes the legal representative of a deceased employed persons. The main objectives of the Act are to regulate the payment of wages of certain classes of employed person. Under section 3 of the Act, it is stated that the employer is responsible for the payment of wages. Regarding the time of payment of wages the section 5 of the Act provides that if the number of persons employed upon or in any railway factory or industrial or other establishment is less than 1000 wages shall be paid before the expiry of the seventh day after the last day of the wage period. According to section 7, the wages of an employed person shall be paid to him without deductions of any kind except those which are authorised by this Act. As per the Act, fines, deduction for absence from duly, deduction for damage or loss, deduction for service rendered deduction from Loan, advances and overpayment of wages, income tax. orders of court, provident fund, cooperative societies and insurance schemes, etc deductions are permitted.

15.10 FURTHER READING

1. C B Mamoria(2016);Dynamics of Industrial Relations; Himalaya Publishing House
2. A Monappa,ý R Nambudiri,ý P Selvaraj (2012);*Industrial Relations and Labour Laws*; Tata McGraw Hill Education Private Limited
3. PPS Gonga (2007); *A Textbook Of Business And Industrial Laws*; S Chand, India

15.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q.No.1:

A (v) B (vi) C (ii) D (iv)

E (iii) F (i) G (viii) H (vii)

Ans to Q.No.2:

Q1. (I) 3 (II) 5 (III) 1000 (IV) 5(2) (V) 5(4)

Ans to Q.No.3:

Q1. (I) True (II) False (III) True (IV) False (V) True

? 15.12 MODEL QUESTIONS

1. Define Wages. Explain the objectives and application of the Payment wages Act 1936.
2. Discuss the provisions regarding the responsibility for payment of wages under the Payment of Wages Act 1936.
3. What are the various provisions relating to the time of payment of wages under the Payment of Wages Act 1936.
4. Discuss various permitted reduction from wages under the Act.

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REFERENCES (FOR ALL UNITS)

1. A Monappa,ý R Nambudiri,ý P Selvaraj (2012);*Industrial Relations and Labour Laws*; Tata McGraw Hill Education Private Limited
2. C B Mamoria(2016);Dynamics of Industrial Relations; Himalaya Publishing House
3. N.D. Kapoor (2011);Handbook of Industrial Law ; Sultan Chand & Sons, India
4. P. L. Malik (2017);*P. L. Malik's Industrial Law*; Eastern Book Company, India
5. PPS Gonga (2007); *A Textbook Of Business And Industrial Laws*; S Chand, India
6. The Minimum Wages Act 1948; (Bare Act)
7. The Workmen's Compensation Act, 1923; (Bare Act).