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Industrial Relations and Labour Legislation

SEMESTER 2

POST GRADUATE DIPLOMA IN HUMAN RESOURCE MANAGEMENT

BLOCK 2



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PG DIPLOMA IN HUMAN RESOURCE MANAGEMENT

Industrial Relations and Labour Legislation

Block 2

DETAILED SYLLABUS

UNIT 9: Labour Legislation: An Introduction **Pages: 139-151**

Labour Legislation– Its Background, Labour Legislation in the Pre-Independence Period, Labour Legislation in the Post Independance Period, International Labour Organisation– its Structure, Objectives and Principles of ILO

UNIT 10: The Indian Factories Act, 1948 **Pages: 152-181**

Statutory Agencies and their Powers for Enforcement of the Act, Health, Safety and Welfare Provisions, Provisions Regarding Hazardous Work, Employment of Young Person and Penalties and Provisions

UNIT 11: The Industrial Disputes Act, 1947 (Part-A) **Pages: 182-202**

Objectives of the Act; Important definitions; Illegal Strikes and Lock-outs; Unfair Labour Practices

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UNIT 13: Workmen's Compensation Act, 1923 **Pages: 217-232**

Object and Scope of the Workmen's Compensation Act, 1923; Important Definitions; Disablement; Employer's Liability for Compensation; Employer's Liability when Contractor is Engaged; Commissioner; Compensation

UNIT 14: Employees' Provident Funds and Miscellaneous Provisions Act, 1952 **Pages: 233-245**

Scope and Applicability of the Act; Various Schemes Provided under the Act; Central Board and its Constitution, Functions and Powers; State Board and their Constitution; Duties and Powers of Inspectors Appointed under the Employee's Provident Funds and Misc Provisions Act, 1952; Constitution and Working Procedure of Employees' Provident Fund Appellate Tribunal

BLOCK INTRODUCTION

This is the second block of the course 'Industrial Relations and Labour Legislation'. The Block is divided into 6 units which are related to the differnt concepts of Industrial Relations and Labour Legislation.

This block comprises of the following six units:

The *ninth unit* introduces us to Labour Legislation– its Background, Labour Legislation in the Pre-Independence Period, Labour Legislation in the Post Independance Period, International Labour Organisation– its structure, Objectives and principles of ILO. The *tenth unit* gives us a broad idea on the concepts of Statutory agencies and their powers for enforcement of the Act, Health, Safety and Welfare Provisions, Provisions regarding Hazardous Work, Employment of young person and Penalties and Provisions. The *eleventh unit* gives us an idea on the Concept and Objectives of the act; Important definitions; Illegal Strikes and Lock-outs; Unfair Labour Practices. The *twelvlth unit* will help us in knowing the History of the law of industrial disputes; Authorities under the Act and their duties; Reference of disputes; Procedure and powers of authorities; Award and settlement. The *thirteenth unit* gives us a broad idea on Object and scope of the Workmen's Compensation Act, 1923; Important definitions; Disablement; Employer's liability for compensation; Employer's liability when contractor is engaged; Commissioner; Compensation. The *forteenth unit* will help us in understanding the Scope and Applicability of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; Various schemes provided under the Act; Central Board and its constitution, functions and powers; State Board and their constitution; Duties and Powers of Inspectors appointed under the Employee's Provident Funds and Misc Provisions Act, 1952; Constitution and working procedure of Employees' Provident Fund Appellate Tribunal.

The Block is devided into seven units:

UNIT 9: Labour Legislation: An Introduction

UNIT 10: The Indian Factories Act,1948

UNIT 11: The Industrial Disputes Act, 1947(Part A)

UNIT 12: The Industrial Disputes Act, 1947 (Part-B)

UNIT 13: Workmen's Compensation Act, 1923

UNIT 14: Employees' Provident Funds and Miscellaneous Provisions Act, 1952

Each unit of this 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. You in making your learning more active and efficient. And, at the end of each section, you will get “CHECK YOUR PROGRESS” questions. These have been designed to self-check your learning.

UNIT 9: LABOUR LEGISLATION: AN INTRODUCTION

UNIT STRUCTURE

9.1 Learning Objectives

9.2 Introduction

9.3 Labour Legislation– Its Background

9.4 Labour Legislation in the Pre-Independence Period

9.5 Labour Legislation in the Post-Independence Period

9.6 International Labour Organisation

- 9.6.1 Structure of ILO
- 9.6.2 Objectives of ILO
- 9.6.3 Principles of ILO

9.7 Let Us Sum Up

9.8 Answer to Check Your Progress

9.9 Further Reading

9.10 Model Questions

9.1 LEARNING OBJECTIVES

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

- explain the background and development of labour legislation
- describe the ILO and its structure, objectives and Principles.

9.2 INTRODUCTION

In this unit, we will discuss the genesis of labour organisation. During the twentieth century a new branch of jurisproduce known Industrial juris produce has developed in our country. The growth of industrial jurisproduce can significantly be noticed not only from increase in labour and industrial legislation but also from a large number of industrial law matters decided by the Supreme Court and High Courts. It effects directly a considerable population of our country consisting of industrialists, workmen and their families. The workers are affected by the different oppressive acts that they

preferred to quit their jobs. They demand for their regular payment of wages, weekly holidays etc. Thus, those who are affected indirectly constitute bulk of the country's population. This branch of law modified the traditional law relating to master and servant and cut down the old theory of leisure fair which was based upon the 'freedom of contract' in the larger interest of the society because that theory was found warming for the development of harmonious and amicable relations between the employers and employees. Through this unit you can understand the genesis of labour legislations along with the various aspects of labour legislations.

9.3 LABOUR LEGISLATIONS– ITS BACKGROUND

Industrial relations play a vital role in establishing and maintaining industrial democracy. The industrial relations have passed through several stages in India. Social, economic, and political are the various factors influenced industrial relations in India. Labour Statistics in India comes from the first national population census which was conducted in 1872 and it explains the number of gainfully employed. Until the Second World War, data related to employment of labour collected. The Royal Commission on Labour in 1931 pointed out the need for systematic collection of labour statistics and recommended the adoption of suitable legislation regarding the different conditions of industrial labour. The result was the enactment of Industrial Statistics Act in 1942. It helps in collection of statistics on matters relating to factories and certain specified areas of welfare and conditions of labour. Thus, different important Acts such as the Workmen's Compensation Act, 1923, the Trade Unions Act, 1926, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Employee's State Insurance Act, 1948, the Factories Act, 1948 etc made. The labour legislation modified the traditional law relating to master and servant and had cut down the old theory of Leisure fare. The workers and employers are two important pillars of our economy. Proper regulation of employer-employee relationship is a condition precedent for planned and purposeful development of society. Many changes took place. Individual contracts have been in many respects substituted by a standard form of statutory contract through legislation and

judicial interpretation. The traditional right of an employer to hire and fire his workmen at his will has been subjected to many restraints. Industrial Tribunals can by their award make a contract which is binding on both the parties creating new right and imposing new obligations arising out of the award. The right of labour participation in the management has been given legislative recognition to the utter despair of the capitalist. The Industrial society all over the world has been moving during the present century from contract to status and is a politico-socio-economic juristic state. Actually, industrialisation is the main factor that leads to this departure from the old theories of the law of contract and the law of master and servant. Those who control the industry have a natural tendency of multiplying their wealth and if this tendency is not controlled and checked properly the rich grows on richer and the poor becomes poorer day by day. The gap between the rich and the poor ultimately grows on to this extent that it develops into two distinct classes in any industrial society. The realization that the workmen could put a better fight if they get united was closely followed by a period of Industrial unrest leading to strikes and lockouts. In conditions so disturbed the world has witnesses the horrors of the two world wars resulting in spiral rise in the cost of living there has been consistent document from labour for in crease in wages - Democratic ideas have also growth simultaneously with the growth of industrialisation in our country. These democratic ideas have pleased for and have also helped in mass awakening and consciousness for greater power amongst the working class. Out of the struggle between workers, demanding for better share in the production and profit of the Industry and the employers' hesitation to part with it beyond a certain limit, have grown the recognition of certain principles which are coincided to be fundamental in almost all developed countries of the world. The concept of Industrial jurisprudence in our country developed only after independence. Until independence the charge in attitude of the Government and the benevolent labour legislation only aimed at amelioration of the conditions of labour and it could hardly be said to be a deal in social justice to the working class. The birth of industrial jurisprudence in our country may be ascribed to the constitution of India,

9.4 LABOUR LEGISLATION IN THE PRE-INDEPENDENCE PERIOD

During pre-independence period, workers were hired and fired as the principal of demand and supply governed industrial relations. The employer was in a commanding position, and the conditions of employment and wages were very poor. When these conditions continued despite the efforts of leaders, it paved the way for revolutionary movements. Even after the end of the first world war, the trade union movement had not emerged. There were hardly any laws to protect the interests of worker except the Employers and Workers (Disputes). Act 1860, which was used to settle wage disputes. After the first world war, the Industrial relations concept assumed a new dimension in the sense that workers now resorted to violence and employers to lockouts. There were numerous strikes and to violence and employers to lockouts. There were nummerous strickes and lockouts took place and it create disturbance during 1928-29.

As a result, the government enacted the Trade Disputes Act, 1929, to enhance the early settlement of industrial disputes. This was based on the British Industrial courts (BIC) Act, 1919. The Trade Disputes Act, 1929 differed from the BIC Act in that it did not provide for any standing machinery for the settlement of disputes. However, it was found that neither the Central Government nor the State Governments made adequate use of this law. In 1938, in order to meet the acute industrial unrest prevailing then the Bombay government enacted the Bombay Industrial Relations (BIR) Act, for that first time a permanent machinery, called the Industrial Court. It was established for settling disputes. This was replaced by the BIR Act, 1946, which was amended in 1948, 1949, 1953 and 1956. Soon after the second world war, India faced, many problems, such as rise in the cost of living, scarsity of essential commodities, high population growth rates, massive unemployment increasingly frudulent industrial relations situation etc.

9.5 LABOUR LEGISLATIONS IN THE POST-INDEPENDENCE PERIOD

After independence, one of the significant steps taken in the field of industrial relations was the enactment of the Industrial Disputes Act, 1947, which not only provides for the establishment of permanent machinery for the settlement of Industrial disputes but also makes these awards binding and legally enforceable. Besides the Industrial Disputes Act in December 1947, an Industrial Conference was held in India, where an appeal was made to labour and management in the form of an industrial True Resolution to maintain industrial harmonay.

After independence, the growth of labour legislations can be classified as follows–

1) 1947

a) Enactment of Industrial Disputes Act 1947 along with permanent machinery to Settle industrial disputes.

b) Industrial Trace Resolution was made. It made an appeal to labour and management to cooperate and maintain industrial pence (1947)

2) 1947-56

a) Indian Labour Conferrence (ILC) was formed in lines with similar body of ILO where representatives of government employees and workers met regularly and made recommendation of legislative measures. This is a Tripartite body.

b) A large number of legislative measures have been enacted by Indian Parliament mostly based on the recommendation from ILC as given above.

3) 1957-65

a) In 1957, the IR emphasis shifted from “legalism” to “Voluntarism”. In this period instead of attempting to enact more labour laws and legislation, the ILO wanted toward achieving voliontary agreement between labour and management. Examples are “Code of Discipline” JMC, etc.

b) Code of Discipline was introduced (1957)

c) Joint Management Councils (JMC)

d) Works committee

4) 1962-71

a) Political and social turmoil during this period created ripples in IR in India. Major events are chinese aggression (1962), death of Pandit Jawaharlal Nehru (1964), India Pakistan war (1965, 1971), split of Indian National Congress (1969).

b) National commission for labour (NCL) was appointed in 1966. It finalises its reccommendations by 1969. Some of the recommendations of NCL were processed by ILC and policy decisions taken viz recognition of bargaining agent, formation of Industrial Relations Commissions instead of Tribunals etc. However, subsequently, the Governments did not implement these recommendations.

5) 1972-76

a) Considerable Industrial unrest during this period.

b) National emergency was declared in June 1975 and fundamental rights were curbed.

c) ILC did not meet from 1972 to 1976.

d) Set up National Apex Body (NAB) and State Apex Body (SAB) instead of NLC, based on 20 point programme. NAB and SAB were bipartite bodies represending employees and employers.

6) 1977-80

a) Emergency was repealed in 1977 and Janata Government took over Central Government for the first time from Congress Party.

b) NLC was revived in 1977.

c) Period of reconciliation followed.

d) Draft L. R. Bill 1978 was prepared. This however, was not yet enacted.

7) Post 1980's

a) Militancy of trade Unionism showed its ugly head in 1980-81 where series of murder and assault of labour leaders (President of HMS) and CEO's (MD of Bombay Tyres) took place.

b) More than 70,000 unresolved industrial disputes were lying with Government and high rate of price rise and unemployment added to the causes of industrial unrest.

c) To combat the situation Government enacted Essential Services Maintenance Act (ESMA) in 1981.



LET US KNOW

Since Independence till 1954, the period when V. V. Giri was the labour Minister, all official pronouncements emphasised that labour should become self-reliant. An equally forceful new had been to prefer reliance upon the Government. This cross current of approach to the labour policy gave mark to anew approach known as Tripartism.



CHEEK YOUR PROGRESS

Q.1: Fill up the blanks:

i) The Employers and Workers (Disputes) Act, 1860 which was used to settle ..... disputes.

ii) The Government enacted the trade disputes Act in the year .....

iii) Trade Disputes Act was based on the ..... Industrial Court Act, 1919.

iv) In the year 1938, in order to meet the acute industrial unrest prevailing then the Bombay Govt. Enacted the ....., Act.

v) Essential Services Maintenanc Act, (ESMA) was enacted in the year .....

9.6 INTERNATIONAL LABOUR ORGANISATION

The International Labour Organisation was set up on April 19, 1919 as a result of the peace conference convened at the end of World War I at Versailles. The ILO is an international organisation, a new social experimental

institution trying to make the world conscious that world peace may be affected by the unjust conditions of its working population. The unique feature of the ILO is that the representation of management, labour and government participate in its proceedings. When in the year 1946 the United Nations Organisation came into being, the ILO become the first specialist agency of the organisation. ILO is like other intergovernmental agencies such as the FAO or WHO working for the universal cause but deffering from them in one aspect, namely in its tripartite structure. Representation at all the proceedings of ILO is given to workers and employers besides governmental agencies.

9.6.1 Structure of ILO

Organisational structure of ILO consists of 3 bodies or subsystems. Such as–

a) An International Labour Conference
b) A Governing body and
c) An International Labour office

a) An International Labour Conference: It is the Apex level body of ILO, which makes policies, rules and regulations. The conference comprises of three groups representing governments, employers and workers in the ratio of 2 : 1 : 1. Conference sessions are held at a frequency not less than once in a year. The Government delegates to the ILC are mostly ministers, diplomats or officials subjects to government instructions. Under the constitutions of the ILO employere and workers delegates are nominated by the Governments in agreement with the relevant industrial organisations.

Following are the functions of ILC–

i) Formulate International Labour standards
ii) Fixes amount of contribution by member-states.
iii) Pass budgets and expenditure.
iv) Amendments of constitution by $^{2}/_{3}$ majority.
v) Studies labour problems submitted by Director General and discuss and finds solution.

vi) Appoint committee on 'as required basis' to study problems indepth.

vii) Develop policies and procedure.

viii) Select members to Governing body once in every three years.

ix) Elects its own President.

x) Seek advisory opinion from international committee of justice.

xi) Confirms the powers, functions and procedures of regional conferences.

b) The Governing Body: The Governing Body is another principal bodies of the ILO. The Governing Body is a non-political, non-legislative, tripartite body. With the help of the International Labour office, it carries out the decisions of the conferences. It consists of 56 members of which 28 represent government contingent, 10 are appointed by the members of the States of Chief Industrial Importance and the balance are delegates of other governments.

Following are the functions of Governing body–

i) Co ordinate work between ILC and International Labour office.

ii) Prepare agenda for each ILC.

iii) Appoint Director General of the office.

iv) Scrutinise the budget.

v) Follow up with the member states in regard to implementation of recommendation made by ILC.

vi) Fixes date, schedule, and agenda for Regional Conferences.

c) An International Labour Office: This is the third major body in the ILO System. It functions as the Secretariat of the ILO in Geneva. The Directors General of the ILO is the Chief Executive of this office. Director General is appointed by Governing Body. He also acts as Secretary General of ILC. He is appointed for 10 years and his Term may be extended by the Governing Body. Following are the functions of this office–

i) To prepare documents on the items of the agenda of the conference.
ii) To assist governments in framing legislation on the basis of the decisions of the ILC.
iii) To carry out its function in connection with the observance
iv) To bring but publications dealing with Industrial labour problems of international interest.
v) To collect and distribute information of international labour and social problems.

9.6.2 Objectives of ILO

The main objective of ILO is improvement of labour conditions. Objectives of ILO are contained in the following three documents. Such as–

i) Preamble to its constitution
ii) Article 427 of Peace Treaty of Versailles– 1919.
iii) Philadelphia Declaration of 1944

In the Preamble to its constitution supplemented by Article 427 of the peace treaty of versailles, 1919. The basic objectives of ILO are as follows–

i) Provide social justice to workers.
ii) Avoid injustice, depreciation and exploitation of labour.
iii) Build up good working condition to the labour.
iv) World peace is possible when the above three conditions are met.

The objective of ILO was also revised in Philadelphia conference in 1944. As a result of which following 10 objectives of ILO were developed.

i) Full employment and raising living standard of workers.
ii) Employ workers on jobs for which they have adequate skill and satisfaction to work.
iii) Provide training and development facilities to achieve the above objective.

iv) Provide a fair share of profit as compensation sufficient for minimum living wage and give protection.

v) Recognise "collective bargaiering" not only as a right of workers but also as a means of improving productive efficiency in a spirit of cooperation between management and employees.

vi) Extend social security and medical cover.

vii) Protect life and health and medical cover.

viii) Child welfare and maternity protection.

ix) Provide adequate metrition, housing and recreation facilities.

x) Provide quality education and vocational opportunity.

9.6.3 Principles of ILO

The Philadelphia conference held in 1944 has laid down the following principles for ILO:

1) Labour is not a commodity.
2) Freedom of expression and association are essential.
3) Poverty is a threat to prosperity.
4) Fight was against want by joint efforts by Government, management and workers together on equal states and with democratic traditions.



LET US KNOW

The constitution of the ILO provides simple rules of procedures regarding admission of a state to the membership of the ILO. It provides that all those states, who were members of the ILO on 1st November, 1945 and any original member of the UN can become member of the ILO by accepting the obligations of its constitution. Other states can also become members of the ILO by a vote concurred by $^{2}/_{3}$ of the delegates attending the sension including $^{2}/_{3}$ of the government delegates present and voting.



CHECK YOUR PROGRESS

Q.2: Match the both sides:

i)	Establishment of ILO	i)	1946 (iii)
ii)	Peace Conference at the end of World War I	ii)	3 (iv)
iii)	United Nation Organisation	iii)	Governing body (v)
iv)	Nos. of bodies of ILO	iv)	April 19, 1919 (i)
v)	Non-political Tripatite	v)	At Versailles (ii)



9.7 LET US SUM UP

The labour legislation modified the traditional law relating to master and servant and had cut down the old theory of Laissez faire based upon the "freedom of control" in the larger interest of the society because that theory was found wanting for the development of harmonious and amicable relations between the employers and employees. During pre-independence period workers were hired and fired as the principles of demand and supply governed industrial relations. The Government of India enacted the Trade Disputes Act 1929 to enhance the early settlement of industrial disputes. After independence one of the significant steps taken in the field of Industrial Disputes Act, 1947, which not only provides for the establishment of permanent machinery for the settlement of industrial disputes but also makes awards which are binding and legally enforceable. After independence, growth of labour legislations was made as result of enactment of several labour legislations.



9.8 FURTHER READING

1) Mirsra, S. N. *Labour & Industrial Laws*.

2) Monappa, Arun. *Industrial relations*.

3) *Personnel Management and Industrial Relations*. Nair, N. G. and Nair, Latha.



9.9 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: i) Wage; ii) 1929; iii) British; iv) Bombay Industrial Relation; v) 1981

Ans. to Q. No. 2: i) – iv); ii) – v); iii) – i); iv) – ii); v) – iii)



9.10 MODEL QUESTIONS

Q.1: Briefly write about the background of labour legislation.

Q.2: Discuss the growth of labour legislation pre-independence as well as post independence of India.

Q.3: Explain the structure of International Labour Organisation.

Q.4: What are the various objectives of ILO.

Q.5: Mention the principle of ILO.

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UNIT 10: THE INDIAN FACTORIES ACT, 1948

UNIT STRUCTURE

10.1 Learning Objectives

10.2 Introduction

10.3 Definitions Under the Act

10.4 Statutory Agencies and Their Powers for Enforcement of the Act

10.5 Health, Safety and Welfare Provisions

10.6 Provisions Regarding Hazardous Work

10.7 Employment of Young Person

10.8 Penalties and Provisions

10.9 Let Us Sum Up

10.10 Further Reading

10.11 Answers to Check Your Progress

10.12 Model Questions

10.1 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.

10.2 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.

10.3 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

Q.1: Define the term 'Factory'.

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.....

10.4 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

Q.2: Fill in the blanks:

i) The factory where ..... or more workers are employed, the occupier has to appoint welfare officer.

ii) The factory where ..... or more workers are employed, the occupier has to appoint safety officer.

10.5 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;

c) they shall be maintained in a clean and sanitary condition at all times;

d) 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

Q.3: 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 unless 20–

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
5) **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.
6) **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.
7) **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

Q.4: Mention five provisions related to welfare under the Factories Act, 1948?

i) .....

ii) .....

iii) .....

iv) .....

v) .....

10.6 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 substances (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.

10.7 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):

1) 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

Q.5: Mention five provisions related to employment of young persons under the Factories Act, 1948?

i) .....

ii) .....

iii) .....

iv) .....

v) .....

10.8 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.



10.9 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.



10.10 FURTHER READING

1) Kapoor, N. D. (2011). *Handbook of Industrial Law*. India: Sultan Chand & Sons.
2) Malik, P. L. (2017). *Industrial Law*. India: Eastern Book Company.
3) *The Indian Factories Act, 1948*; (Bare Act).



10.11 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 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.

Ans. to Q. No. 2: i) 500; ii) 1000

Ans. to Q. No. 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. NO. 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. No. 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



10.12 MODEL QUESTIONS

Q.1: Explain the following terms under the Indian Factories Act, 1948:
i) Hazardous process ii) Worker
iii) Factory iv) Manufacturing process

Q.2: Explain the provisions of the Indian Factories Act, 1948 ensuring the health and welfare of the workers in a factory.

Q.3: Explain the provisions of the Indian Factories Act, 1948 ensuring the safety of the workers in a factory.

Q.4: What are the provisions in the Act for employment of young person?

Q.5: What are the provisions regarding hazardous work under the Indian Factories Act, 1948?

Q.6: Who is a certifying surgeon? What are his duties?

Q.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 11: THE INDUSTRIAL DISPUTES ACT, 1947 (PART-A)

UNIT STRUCTURE

11.1 Learning Objectives

11.2 Introduction

11.3 Objectives of the Act

11.4 Important Definitions

11.5 Illegal Strikes and Lock-outs

11.6 Unfair Labour Practices

11.7 Let Us Sum Up

11.8 Further Reading

11.9 Answers to Check Your Progress

11.10 Model Questions

11.1 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.

11.2 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.

11.3 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

Q.1: Mention one objective of the Industrial Disputes Act, 1947.

.....

i) .....

.....

11.4 IMPORTANT DEFINITIONS

Some important definitions are given below—

Industry: Section 2(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

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

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

   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(oo)].

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)].

11.5 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.

ba) 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.

11.6 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–

a) 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),
b) changing seniority rating of workmen because of trade union activities,
c) refusing to promote workmen to higher posts on account of their trade union activities,
d) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union.
e) 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 per-manent 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.

II) 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 receives notice 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

Q.3: 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 .....



11.7 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(ra)] of the Industrial Disputes Act, 1947.



11.8 FURTHER READING

1) Kapoor, N. D. (2011). *Handbook of Industrial Law*. India: Sultan Chand & Sons.
2) Malik, P. L. (2017). *Industrial Law*. India: Eastern Book Company.
3) *The Indian Factories Act, 1948*. (Bare Act).



11.9 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: 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 Q. No. 2: 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 Q. No. 3: i) 2(k), ii) 2(s), iii) 2(q), iv) 2 (i)



11.10 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 12: THE INDUSTRIAL DISPUTES ACT, 1947 (PART-B)

UNIT STRUCTURE

12.1 Learning Objectives

12.2 Introduction

12.3 History of the Law of Industrial Disputes

12.4 Authorities under the Act and their Duties

12.5 Reference of Disputes

12.6 Procedure and Powers of Authorities

12.7 Award and Settlement

12.8 Let Us Sum Up

12.9 Further Reading

12.10 Answers to Check Your Progress

12.12 Model Questions

12.1 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.

12.2 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.

12.3 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

Q.1: What was the main defect of the Trade Dispute Act, 1929?

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12.4 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:

i) WORKS COMMITTEE (Section 3): The works committee is a committee consisting of representatives of employers and workmen (section 3). 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.

ii) **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.

iii) **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.

iv) **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.

v) **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.

vi) **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.

vii) 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

Q.2: Mention the authorities for Investigation and Settlement of industrial disputes under the Industrial Dispute Act, 1947?

i) ..... ii) .....

iii) ..... iv) .....

v) ..... vi) .....

vii) ..... viii) .....

12.5 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.

12.6 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.

12.7 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.



12.8 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.



12.9 FURTHER READING

1) Kapoor, N. D. (2011). *Handbook of Industrial Law*. India: Sultan Chand & Sons.
2) Malik, P. L. (2017). *Industrial Law*. India: Eastern Book Company.
3) *The Indian Factories Act, 1948*. (Bare Act).



12.10 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 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. No. 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



12.11 MODEL QUESTIONS

Q.1: What authorities have been set up under the Industrial Dispute Act, 1947 for investigation and settlement of industrial disputes?

Q.2: 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

Q.3: Under what circumstances does an award made under the Industrial Dispute Act, 1947 commence to be enforceable?

Q.4: Discuss the provisions of Industrial Dispute Act, 1947 relating to the voluntary reference of disputes to arbitration.

Q.5: Mention the persons on whom settlements and awards are binding under the Industrial Dispute Act, 1947.

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UNIT 13: WORKMEN'S COMPENSATION ACT, 1923

UNIT STRUCTURE

13.1 Learning Objectives

13.2 Introduction

13.3 Object and Scope of the Act

13.4 Important Definitions

13.5 Disablement

13.6 Employer's Liability for Compensation

13.7 Employer's Liability when Contractor is Engaged

13.8 Commissioner

13.9 Compensation

13.10 Let Us Sum Up

13.11 Further Reading

13.12 Answers to Check Your Progress

13.13 Model Questions

13.1 LEARNING OBJECTIVES

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

- discuss 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
- discuss commissioner & compensation.

13.2 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.

13.3 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

Q.1: Mention one objective of the Workmen's Compensation Act, 1923.

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13.4 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

Q.2: Define the term wage under the Workmen's Compensation Act, 1923.

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13.5 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.

13.6 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

Q.3: Mention reasons when employer is not liable to pay compensation under the Workmen's Compensation Act, 1923.

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13.7 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.

13.8 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

Q.4: Mention three jurisdiction of Commissioner in payment of compensation to workman under the Workmen's Compensation Act, 1923.

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13.9 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.



13.10 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.



13.11 FURTHER READING

1) Kapoor, N. D. (2011). *Handbook of Industrial Law*. India: Sultan Chand & Sons.
2) Malik, P. L. (2017). *Industrial Law*. India: Eastern Book Company.
3) *The Indian Factories Act, 1948*. (Bare Act).



13.12 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.



13.13 MODEL QUESTIONS

Q.1: Explain the following terms under the Workmen's Compensation Act, 1923:

i) Dependant ii) Disablement iii) Wages

Q.2: Define an 'accident'. When it is said to arise out of and in the course of an employment?

Q.3: Explain employer's liability to pay compensation to an employee?

Q.4: Is the principal employer liable to pay compensation to a workman engaged through contractor sustaining injuries while on duty?

Q.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 14: EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT 1952

UNIT STRUCTURE

14.1 Learning Objectives

14.2 Introduction

14.3 Scope and Applicability of the Act

14.4 Various schemes provided under the Act

14.5 Central Board and its Constitution, Functions and Powers

14.6 State Boards and their Constitution

14.7 Duties and Powers of Inspectors appointed under the Employee's Provident Funds and Misc Provisions Act, 1952

14.8 Constitution and working procedure of Employees' Provident Fund Appellate Tribunal

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:

- 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.

14.2 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.

14.3 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.

14.4 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–

a) As per Section 5(1-A), the fund shall vest in and be administered by the Central Government Board contituted section under 5-4.

b) 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

c) 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.

14.5 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 .....

14.6 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.

14.7 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.

14.8 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 success or 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 14.1

Mention few rules regarding the constitution of State Board under the EPF Mis. Pro. Act 1952.

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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.



14.9 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.



14.10 FURTHER READING

1) Gogna, P. P. S. (2010). *A Text Book of Business and Industrial Laws*. India: S. Chand & Company.
2) Monappa, Arun (1985). *Industrial Relations*. India: McGraw Hill Education.
3) Srivastava, S. C. (2012). *Industrial Relation and Labour Law*. (6th Edition). New Delhi: Vikas Publishing House.



14.11 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



14.12 MODEL QUESTIONS

Q.1: Discuss the scope and applicability of the E P F and Misc. Prov. Act 1952.

Q.2: Discuss various schemes provided under the EPF and Misc. Prov. Act 1952.

Q.3: Discuss the constitution of the Central Board and State Board and its functions and powers.

Q.4: Explain the different power of inspectors appointed under the EPF and Misc. Prov. Act 1952.

Q.5: Discuss the constitution and working procedure of E.P.F. Appellate Tribunal.

*** ***** ***



REFERENCES

1) Gogna, P. P. S. (2010). *A Text Book of Business and Industrial Laws*. India: S. Chand & Company.
2) Kapoor, N. D. (2011). *Handbook of Industrial Law*. India: Sultan Chand & Sons.
3) Kumar, H. L. (2016). *Labour Problems and Remedies*. (13th Edition). India: Universal Law Publishing.
4) Malik, P. L. (2017). *Industrial Law*. India: Eastern Book Company.
5) Misra, S. N. (2013). *Labour and Industrial Law*. India: Central Law Publications.
6) Monappa, A. (2012). *Industrial Relations and Labour Laws*. (2nd Edition). India: McGraw-Hill Education.
7) Monappa, Arun (1985). *Industrial Relations*. India: McGraw Hill Education.
8) Padhi, P. K. (2012). *Labour and Industrial Laws*. (2nd Edition). New Delhi: PHI Learning Pvt. Ltd.
9) Ratnam, C. S. V. (2013). *Industrial Relations*. New Delhi: Oxford University Press.
10) Srivastava, S. C. (2014). *Industrial Relations and Labour Laws*. (6th Revised Edition). India: Vikash Publishing House.
11) *The Indian Factories Act, 1948*. (Bare Act).

Name of the Paper: .....
Course Code: .....

Centre for Internal Quality Assurance (CIQA)
Krishna Kanta Handiqui State Open University
City Office: Housefed Complex, Guwahati-781006

Learner's Feedback on Course

Dear Learner,

Regarding the course as mentioned above, we would like to know your opinions and comments so as to improve the quality of self learning materials in future. Please respond to the following statements by ticking the number you feel most reflect your opinion. After completion of the additional comments, please detach the page and send/mail the same to us at the address given below.

The Director, Centre for Internal Quality Assurance, KKHandiqui State Open University
Housefed Complex, Dispur, Guwahati-781006
(E-mail id: ciqa@kkhsou.in)

1) Approximately how many hours did you spend for studying the units in the course? ☐☐☐

2) Please give your opinions (by ✓ mark) to the following items based on your reading of the block:

Sl. No.	Statements	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I)	The SLMs of the course fulfil the learning objectives set out in the beginning of each unit					
II)	The units of the SLM could satisfy my academic needs and expectations					
III)	The Unit writers have excellent knowledge about the course contents					
IV)	Language and contents of the units were presented at a level which I could readily understand					
V)	Ample opportunity for participation in the activities provided in the units					
VI)	Used enough Illustrations (Diagrams, tables etc.) for conceptual clarity					
VII)	Quality of content is engaging, relevant, and up-to-date					
VIII)	The self check questions are very helpful					
IX)	The Possible/model questions and the answers to check my progress have benefited me a lot					

Additional Comments: *(Please feel free to provide your open comments)*

1) Which aspects of the SLM, according to you, worked well?

   .....

   .....

2) What sort of changes/improvements do you feel KKHSOU could implement to improve the overall quality of the SLM?

   .....

   .....

Thank you for taking the time to complete this form.