GBA S3 03

Business and Labour Laws

SEMESTER - III

BACHELOR IN BUSINESS ADMINISTRATION

BLOCK - 2

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

Subject Experts

Prof. Nripendra Narayan Sarma, Maniram Dewan School of Management.,KKHSOU

Prof. Munindra Kakoti, V.C, ARGUCOM

Prof. Rinalini Pathak Kakati, Dept. of Business Administration, G.U.

Course Co-ordinators : Dr. Smritishikha Choudhury, Assistant Professor, Management, KKHSOU

Dr. Chayanika Senapati, Assistant Professor, Managemennt, KKHSOU

SLM Preparation Team

UNITS	CONTRIBUTORS
6	**Dr. Chayanika Senapati,** KKHSOU
7-8	**Nirmali Devi,** Ex Academic Consultant, KKHSOU
9, 11	**Nirmali Devi,** Ex. Academic Consultant, KKHSOU
10	**Dr. Arabinda Debnath,** Bineswar Brahma Engineering College, Kokrajhar

Editorial Team

Content : **Dr. Heera Barpujari**, Tezpur University

Language : **Prof. Robin Goswami**, Retd. Prof , Cotton College

Structure, Format & Graphics :

Dr. Chayanika Senapati, KKHSOU

Dr. Smriti Shikha Choudhury, KKHSOU

May , 2018

This Self Learning Material (SLM) of the Krishna Kanta Handiqui State Open University is made available under a Creative Commons Attribution-Non Commercial-Share Alike 4.0 License (international): http://creativecommons.org/licenses/by-nc-sa/4.0/

Printed and published by Registrar on behalf of Krishna Kanta Handiqui State Open University.

Headquarter : Patgaon, Rani Gate, Guwahati - 781017

City Office : Housefed Complex, Dispur, Guwahati-781006; Web: www.kkhsou.in

The University acknowledges with thanks the financial support provided by the Distance Education Bureau, UGC for the preparation of this study material.

BACHELOR IN BUSINESS ADMINISTRATION

BUSINESS AND LABOUR LAWS

BLOCK - 2

DETAILED SYLLABUS

UNIT 6. **The Indian Factories Act, 1948** **Pages : 133-163**

Definitions under the Act, Statutory agencies and their powers for enforcement of the Act, Health, Safety and Welfare

UNIT 7. **The Industrial Dispute Act (Part A)** **Pages : 164-185**

Objectives of the Act, Important Definitions, Illegal Strikes and Lock-outs and Unfair Labour Practices

UNIT 8. **The Industrial Dispute Act (Part B)** **Pages : 186-199**

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

UNIT 9. **Trade Union Act** **Pages : 200-215**

Concepts of Objectives of the Trade Unions Act, Important definitions, Registration of Trade Union, Rights and Liabilities of registered Trade Union and Penalties.

UNIT 10. **Payment of Wages Act,1936** **Pages : 216-230**

Definition of few important terms under the Payment of Wages Act. 1936 and its objects and application, Responsibility for payment of wages, Time of Payment of Wages, Deduction and its various kinds and Deductions claims for wrongful deductions.

BLOCK INTRODUCTION:

This is the *Second Block* of the course '***Business and Labour Laws***'. After completing this block, which consists of five units, you will be able to get a fair idea on the different concepts in Business and Labour Laws. This block comprises the following five units :

The sixth unit is about the Indian Factories Act, 1948.It explains Definitions under the Act, Health, Safety and Welfare Provisions,Provisions regarding Hazardous Work,Employment of young person and Penalties and Provisions

The seventh and eight unit is about the Industrial Dispute Act,1947.It explains 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, Objectives of the Act, Illegal Strikes and Lock-outs and Unfair Labour Practices

The nineth unit introduces us to the concepts of Objectives of the Trade Unions Act, Important definitions, Registration of Trade Union, Rights and Liabilities of registered Trade Union and Penalties.

The tenth unit gives us a broad overview of the Definition of few important terms under the Minimum Wages Act. 1948 and Object and scope of the Act, Definitions under the Act, Fixation and Revision of Wages, Safeguards in payment of Minimum Wages and Enforcement of the Act

The structure of Block 1 is as follows :

UNIT 6 : The Factories Act,1948

UNIT 7 : The Industrial Dispute Act (Part A)

UNIT 8 : The Industrial Dispute Act (Part B)

UNIT 9 : Trade Union Act,1926

UNIT 10 : Minimum Wages Act,1948

UNIT 6: THE INDIAN FACTORIES ACT, 1948

UNIT STRUCTURE

6.1 Learning Objectives

6.2 Introduction

6.3 Definitions under the Act

6.4 Statutory agencies and their powers for enforcement of the Act

6.5 Health, Safety and Welfare Provisions

6.6 Provisions regarding Hazardous Work

6.7 Employment of young person

6.8 Penalties and Provisions

6.9 Let Us Sum Up

6.10 Further Reading

6.11 Answers To Check Your Progress

6.12 Model Questions

6.1 LEARNING OBJECTIVES

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

- explain the different definitions under the Indian Factories Act,1948
- explain the inspecting staff
- explain health, safety and welfare provisions under the Act
- explain the provision in the Act regarding hazardous works
- discuss the issue of the employment of young person
- explain penalties provisions

6.2 INTRODUCTION

In this unit we are going to discuss about 'The Indian Factories Act', 1948. The Indian Factories Act, 1948 applies to the whole of India. It came into force on the 1st April, 1949. This Act was enacted to consolidate and amend the law regulating labour in factories. The Act was passed to make available, appropriate and beneficial provisions to

the Act to the workers in factories. It is codified with a view to regulating the working conditions in the factories and to provide them with the health, safety and welfare measures. In this unit, we are going to discuss the Indian Factories Act, 1948 along with the details about various definitions. We will also discuss the different provisions relating to health, safety and welfare of the factory workers. Through this unit, you will be able to learn about the provisions regarding hazardous work as well as the different provisions relating to the employment of young persons. You will also able to understand such matter as the inspecting staff, provisions relate to health, safety and welfare, provisions regarding hazardous work ,employment of young persons and penalties and provisions related to it.

6.3 DEFINITIONS UNDER THE ACT

Section 2 of the Act contains definitions of the terms used in the Act.

(a) **"Adult"** means a person who has completed his eighteenth year of age [Section 2 (a)];

(b) **"Adolescent"** means a person who has completed his fifteen year of age but has not completed his eighteenth year [Section 2 (b)];

(bb) **"Calendar year"** means the period of twelve months beginning with the first day of January in any year [Section 2 (d)];

(c) **"Child"** means a person who has not completed his fifteenth year of age [Section 2 (c)];

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

(i) result in the material impairment to the health of the persons engaged in or connected therewith,

Or,

(ii) result in the pollution of the general environment;

Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule;

(d) **"Young person"** means a person who is either a child or an adolescent [Section 2 (d)];

(h) **"Prime mover"** means any engine, motor or other appliance which generates or otherwise provides power [Section 2 (h)];

(i) **"Transmission machinery"** means any shaft, wheel drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance[Section 2 (i)];

(j) **"Machinery"** includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied[Section 2 (j)];

(k) **"Manufacturing process"** means any process for –

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

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

(iii) generating, transforming or transmitting power; or

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

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

(vi) preserving or storing any article in cold storage(Section 2 (k) as amended in 1976)

(l) **"Worker"** means a person employed, directly or by or through

any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the union (Section 2 (1) as amended in 1976);

Thus, the essential elements of a worker are:

1. There should be an 'employed person'.
2. Employment should be direct or through some agency.
3. Employment should be in any manufacturing process etc.
4. Employment may be for remuneration or not
5. Any member of the armed force of the Union is excluded from the definition of worker.
6. Whether all employees are workers or not, as the term employee is not defined in the Act. All persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act.

(m) **"Factory"** is defined in section 2(m) of the Act, which includes any premises including the precincts thereof –

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

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

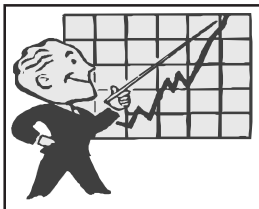
But, it does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place;

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

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

Thus, the essential elements of a factory are:

1. There must be premises.
2. There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises,
3. There must be ten or more workers who are or were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. On the other hand, the required number of workers working should be twenty or more where the manufacturing process is carried on without the aid of power.



CHECK YOUR PROGRESS

Q1. Define the term 'Factory'.

.....

.....

.....

.....

6.4 STATUTORY AGENCIES AND THEIR POWERS FOR ENFORCEMENT OF THE ACT

The main responsibility for administration of the Act lies on the State Government. The State Government carries out the administration of the Act through:

i. The inspecting staff
ii. Certifying surgeons
iii. Welfare Officer
iv. Safety Officer

i. The inspecting staff:

The State Government is empowered to make appointment for the post of Inspector and Chief Inspector. Appointment is made by the State Government by notification in the Official Gazette. Under Section 8(i) lays down that a person may be appointed as an Inspector who possesses the prescribed qualifications. But, under Section 8(4) lays down the general provision that every District Magistrate shall be Inspector for his District. Sub-section (5) of Section 8, lays down that the State Government may, also, by notification in the Official Gazette, appoint such public servants as it thinks fit to be Additional Inspectors for all or any of the purposes of this Act , within such local limit as it may assign to them respectively.

Chief Inspector, Additional Inspectors, Joint Chief Inspector, Deputy Chief Inspector and Inspector and any other officer appointed under Section 8(7) to be public servant within the meaning of Indian Penal Code,1860.

According to Section 9, subject to any rules made in this behalf, and within the local limits for which he is appointed—

(a) enter, with such assistants, being persons in the service of the Government, or any local or other public authority, as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;

(b) make examination of the premises, plant, machinery, article or substance;

(c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;

(d) require the production of any prescribed register or any other document relating to the factory;

(e) seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;

(f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause(b);

(g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;

(h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;

(i) exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this section to answer any question or give any evidence rendering to incriminate himself.

Thus, besides the powers enumerated in Section 9 of the Act, the Inspector may discharge other duties and functions as required under the different provisions of the Act.

ii.) Certifying surgeons:

Under Section 10 (1) of the Act the State Government is empowered to appoint qualified medical practitioners as certifying surgeons. He has to discharge his duties as assigned by the State Government.

No person shall be appointed to be, or authorized to exercise the powers of, a certifying surgeon

a. who is or becomes the occupier of a factory, or

b. who is or becomes directly or indirectly interested therein or in any process or business carried on therein, or in any patent or machinery connected therewith ,or

c. who is otherwise in the employment of the factory.

According to the Section 10 (4) the certifying surgeon shall carry out such duties as may be prescribed in connection with-

(a) the examination and certification of young person under this Act;

(b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;

(c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where—

(i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;

(ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new

substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

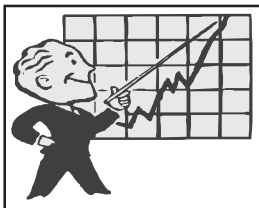
(iii) young persons are, or are about to be, employed in any work.

iii.) Welfare Officer:

The factory wherein 500 or more workers are ordinarily employed, the occupier has to appoint welfare officer. His duties, qualification etc are prescribed by the State Government (Section 49).

iv.) Safety Officer:

In the factory or manufacturing unit wherein 1000 or more workers are ordinarily employed and which involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed the occupier has to appoint safety officer. His duties, qualification etc are prescribed by the State Government (Section 40-B).



CHECK YOUR PROGRESS

Q2. Fill in the blanks:

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.

6.5 HEALTH, SAFETY AND WELFARE PROVISIONS

The Act makes detailed provisions in regard to various matters relating to health, safety and welfare provisions.

A. HEALTH

Chapter III of Section 11 to 20 of the Factories Act, 1948, deals with the provisions relating to the health of the workers in a factory.

1. Cleanliness (Sec. 11):

Every factory shall be kept clean and free from dirt. There should be effective drainage system that the floor of the manufacturing

process should not remain wet and accumulation of dirt is easily getting removed through it. Use of disinfectants, detergents, painting and whitewashing shall be resorted to.

2. Disposal of wastes and effluents (Sec.12):

There should be such arrangement in the factory that the wastes and effluents easily disposed off.

3. Ventilation and Temperature:

(1) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom

(a) Adequate ventilation and the circulation of fresh air, and

(b) Workers therein reasonable conditions of comfort and prevention from injury to health.

(2) Process producing high temperature to be separated— The walls and roofs shall be made and designed with such material that such temperature shall not be exceeded but kept as low as practicable. Beside this, where the nature of the work carried on in the factory involves production of excessively high temperatures, adequate measures as are necessary shall be taken to protect the workers.

4. Dust and Fume (Sect. 14):

In a factory, by reason of the manufacturing process carried on, there may be given off any dust or fume. Its inhalation by and anybody accumulation in any workroom is injurious or offensive to the workers employed therein. So, in order to prevent this the point of origin of the dust, fume or other impurity, shall be enclosed as far as possible. On the other hand, in any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless, effective measures have been taken to prevent such accumulation of fumes therefrom as they are likely to be injurious to workers employed in the room.

5. Artificial humidification (Sec. 15):

In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules,-

(a) prescribing standards of humidification;

(b) regulating the methods used for artificially increasing the humidity of the air;

(c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;

(d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms; the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used. But if the water that used is not purified, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before specified date.

6. Overcrowding (Sec. 16):

The overcrowding affects the workmen not only in the discharge of duties but also their health. The working space should be 14.2 cubic meters of space per worker in every workroom.

7. Lighting (Sec. 17):

The Factories Act makes following provisions in this respect,

(a) There shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both, in every part of the factory.

(b) In every factory all glazed windows and skylights be used and workrooms shall be kept clean on both the inner and outer surface.

(c) In every factory effective provision shall, so far as is practicable, be made for the prevention of glare, either directly from a source of light or by reflection from a smooth or polished surface;

(d) The State Government prescribes standards of sufficient and suitable lighting for factories or for any class of description of factories or for any manufacturing process.

8. Drinking water (Sec. 18):

The provisions in this respect under the Factories Act, are;

(a) Arrangements shall be made to provide and maintain sufficient supply of wholesome drinking water.

(b) Provision shall be made for cooling drinking water during hot weather by effective means and for distribution thereof in every factory wherein more than two hundred and fifty workers are ordinarily employed.

(c) Examine as prescribed by the authorities of the supply and distribution of drinking water in factories.

9. Latrine and Urinal (Sec. 19):

The Factories Act makes following provisions in this respect,

1.(a) sufficient latrine and urinal accommodation of prescribed types shall be provided and conveniently situated to make them accessible to workers at all times while they are at the factory;

(b) separate enclosed accommodation shall be provided for male and female workers and there should be adequately lighted and ventilated;

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

(e) sweepers shall be employed whose primary duty would be to keep latrines, urinals and washing places clean.

(2) But in factory wherein more than two hundred and fifty workers are ordinarily employed-

(a) all latrine and urinal accommodation shall be of prescribed sanitary types;

(b) the floors and internal walls, up to a height of ninety centimeter, the sanitary blocks shall be laid in glazed tiles or a smooth polished impervious surface;

(c) latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

(3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the number of male and female workers ordinarily employed therein.

10. Spittoons (Sec. 20):

There shall be provided sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition. The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory.



CHECK YOUR PROGRESS

Q3. Mention five provisions related to safety under the Factories Act, 1948?

i) .....

ii) .....

iii) .....

iv) .....

v) .....

B. SAFETY

Chapter IV of the Factories Act, 1948, deals with the provisions relating to the safety of the workers in a factory.

1. Fencing of machinery (Sec. 21):

According to Section 21 of Factories Act, 1948, in every factory, the dangerous parts of all machineries should be securely fenced. The section provides for fencing the following machineries while they are in use—

(i) every moving part of a prime mover and every flywheel connected to a prime mover whether the prime mover or flywheel is in the engine house or not;

(ii) the headrace and tailrace of every water-wheel and water turbine;

(iii) any part of a stock-bar which projects beyond the head stock of a lathe; and

(iv) the following should be securely fenced—

(a) every part of an electric generator, a motor or rotary convertor;

(b) every part of transmission machinery; and

(c) every dangerous part of any other machinery,

2. Work on or near machinery in motion (Sec. 22):

in any factory it becomes necessary to examine any part of machinery, while the machinery is in motion, or, lubrication or other adjusting operation; or , any mounting or shipping of belts or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of his appointment, and while he is so engaged,--

(a) such worker shall not handle a belt at a moving pulley unless20

(i) the belt is not more than fifteen centimeters in width;

(ii) the belt joint is either laced or flush with the belt;

(iii) the belt, including the joint and the pulley rim, are in good condition;

(iv) there is reasonable clearance between the pulley and any fixed plant or structure;

(v) secure foothold and, where necessary, secure handhold, are provided for the operator.

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

3. Employment of young persons on dangerous machines (Sec.23):

Section 23 provides that young person shall be required or allowed to work at any machine to which he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and-

(a) has received sufficient training in work at the machine, or

(b) is under adequate supervision by a person who has a through knowledge and experience of the machine.

4. Striking gear and devices for cutting off power (Sec. 24):

Section 24 provides that suitable striking gear or other efficient mechanical appliance shall be maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on to the fast pulley. Further driving belts, when not in use, shall not be allowed to rest or ride upon shafting in motion. Besides these, in every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room.

5. Self-acting machines (Sec. 25):

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

6. Prohibition of employment of women and children near cotton-openers (Sec. 27):

In any part of a factory where a cotton-opener is at work for pressing cotton, no woman or child shall be employed. Provided that the Inspector may in any particular case specify in writing that the women and children may be employed on the side of the partition where the feed-end is situated.

7. Hoists and lifts (Sec. 28):

Every hoist and lift shall be of good mechanical construction, sound material and adequate strength, properly maintained ,protected by an enclosure fitted with gates, and shall be thoroughly examined by a competent person .

8. Lifting machines, chains, ropes and lifting tackles (Sec. 29):

Every lifting machine and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials, all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be of good construction, sound material and adequate strength and free from defects. It should be properly maintained.

9. Protection of eyes (Sec. 35):

Prescribed process should be taken which involves risk of injury to the eyes from particles or fragments thrown off in the course of the process, or risk to the eyes by reason of exposure to excessive light. Effective screens or suitable goggles shall be provided for the protection of persons employed.

10. Precautions against dangerous fumes, gases, etc (Sec. 36):

No person shall be allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present.

C. WELFARE

There are many welfare provisions mentioned under the Act—

1. Washing facilities (Sec. 42):

In every factory adequate washing facilities should be provided for both male and female workers. They should be conveniently accessible and kept clean. The State Government prescribes standards for adequate and suitable facilities for washing.

2. Facilities for storing and drying clothing (Sec. 43):

There should be suitable places for keeping the clothing not worn during working hours and for the drying of the wet clothing.

3. Facilities for sitting (Sec. 43):

In every factory suitable arrangements for sitting as well as standing shall be provided and maintained for all workers for rest which they may require in course of their work.

4. First-aid appliances (Sec. 45):

There should be readily accessible during all working hours the first-aid

boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed . Each first-aid box or cupboard shall be kept in the charge of a separate responsible person

6. Canteens (Sec. 46):

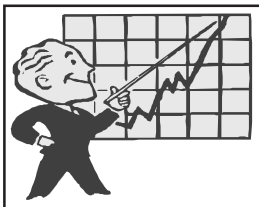
In a factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided. Besides the foodstuffs to be served therein, the construction, accommodation, furniture and other equipment of the canteen should be of good standards. The shelters or rest rooms or lunch rooms to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

7. Creches (Sec. 48):

Wherein more than thirty women workers are ordinarily employed in a factory, there shall be provided and maintained a suitable room or rooms for the use of the children under the age of six years of such women. The rooms should be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

8. Welfare officers (Sec. 49):

Wherein five hundred or more workers are ordinarily employed in a factory the occupier shall employ such number of welfare officers as may be prescribed by the State Government.



CHECK YOUR PROGRESS

Q4. Mention five provisions related to welfare under the Factories Act, 1948?

i) .....

ii) .....

iii) .....

iv) .....

v) .....

6.6 PROVISIONS REGARDING HAZARDOUS WORK

A. Constitution of Site Appraisal Committees (Sec. 41 A):

1. Granting permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory The State Government may constitute a Site Appraisal Committee and advise to take application. The Site Appraisal Committee shall consist of—

(a) the Chief Inspector of the State who shall be its Chairman;

(b) a representative of the Central Board for the Prevention and Control of Water Pollution appointed by the Central Government under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) a representative of the Central Board for the Prevention and Control of Air Pollution referred to in section 3 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(d) a representative of the State Board appointed under section 4 of the Water (Prevention and Control of Pollution) Act, 1974; (6 of 1974).

(e) a representative of the State Board for the Prevention and Control of Air Pollution referred to in section 5 of the Air (Prevention and Control of Pollution) Act,1981 (14 of 1981);

(f) a representative of the Department of Environment in the State;

(g) a representative of the Meteorological Department of the Government of India;

(h) an expert in the field of occupational health; and

(i) a representative of the Town Planning Department of the State Government,

(j) not more than five other members who may be co-opted by the State Government who shall be–

(i) a scientist having specialized knowledge of the hazardous process which will be involved in the factory,

(ii) a representative of the local authority within whose jurisdiction the factory is to be established, and

(iii) not more than three other persons as deemed fit by the State Government.

(2) Within a period of ninety days of the receipt the Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government in the prescribed form.

(3) If a factory is owned or controlled by the Central Government or by a corporation or by a company owned or controlled by the Central Government, the State Government shall co-opt in the Site Appraisal Committee a representative nominated by the Central Government as a member of that Committee.

(4) The Site Appraisal Committee shall have the power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process. Besides this, if the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and the Air (Prevention and Control of Pollution) A Act 1981 (14 of 1981).

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

(1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information (information like the quantity, specifications and other characteristics of wastes) regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the

factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situate and the general public in the vicinity. The occupier shall lay down a detailed policy at the time of registering the factory involving a hazardous process with respect to the health and safety of the workers employed therein.

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

(3) The occupier of a factory, which proposes to engage in a hazardous process, must inform the Chief Inspector regarding the nature and details of such process. The occupier must inform the Chief Inspector within a period of 30 days before the commencement of such process.

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

Specific responsibility of the occupier in relation to hazardous processes. Every occupier of a factory involving any hazardous process shall—

(a) maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed;

(b) appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed:

Provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector shall be final;

(c) provide for medical examination of every worker--

(a) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and

(b) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months, in such manner as may be prescribed.

D. Power of Central Government to appoint Inquiry Committee (Sec. 41 D):

On the occurrence of an extraordinary situation involving a factory engaged in a hazardous process the Central Government may appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory. The

Committee consists of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its member shall be such as may be determined by the Central Government according. The recommendations of the Committee shall be advisory in nature.

E. Emergency standards (Sec. 41E):

(1) Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate, it may direct the Director- General of Factory Advice Service and Labour Institutes or any institution specialized in matters relating to standards of safety in hazardous processes, to lay down emergency standards for the enforcement of suitable standards in respect of such hazardous processes.

(2) The emergency standards laid down under sub-section shall, until they are incorporated in the rules made under this, be enforceable and have the same effect as if they had been incorporated in the rules made under this Act.

F. Permissible limits of exposure of chemical and toxic sub-stances (Sec. 41E):

(1) The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether

hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule.

(2) The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialized institutions or experts in the field, by notification in the Official Gazette, make suitable changes in the said Schedule.

G. Workers' participation in safety management (Sec. 41 G): Safety Committee set up consisting of equal number of representatives of workers and management to promote cooperation between the workers and the management in maintained for proper safety and health at work where hazardous substances used or process takes place.

H. Right of workers to warn about imminent danger (Sec. 41 H): Under section 41H, the workers engaged in a hazardous process in a factory have the rights to warn against any imminent danger to their lives and health due to an accident in the form of a notice to be sent directly or through their representatives to the occupier, agent or manager or any other person who is incharge of the factory. It shall be the duty of the person who is the incharge of the factory or the process to take immediate remedial whom he is satisfied as to the existence of the danger. It is required to send a report of whom taken to the nearest incharge whether he is satisfied or not about the possibility of the accident.

6.7 EMPLOYMENT OF YOUNG PERSON

There are many provisions in the Act for the employment of young person—

a. **Prohibition of employment of young children (Sec. 67):** No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

b. **Non-adult workers to carry tokens (Sec. 68):** A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless he carries a certificate of fitness and a token given in reference to such certificate.

c. Certificates of fitness (Sec. 68):

(1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory certify that such person will be employed therein who is certified to be fit for work in a factory. The certifying surgeon also on the application of the manager of the factory in which any young person wishes to work, examine a such person and ascertain his fitness for work in a factory.

(2) The certifying surgeon, after examination, may issue to such a young person, in the prescribed form, or may renew--

(a) a certificate of fitness to work in a factory as a child, if he has completed his fourteenth year, or if he has attained the prescribed physical standards and he is fit for such work;

(b) a certificate of fitness to work in a factory as an adult, if he completed his fifteenth year, and is fit for a full day's work in a factory:

The certifying surgeon should have personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed. He shall not grant or renew a certificate under this sub-section until he has examined such place.

(3) A certificate of fitness granted or renewed under sub-section (2)-

(a) shall be valid only for a period of twelve months from the date thereof;

(b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.

(4) A certifying surgeon shall revoke any such certificate granted or renewed.

(5) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

d. Effect of certificate of fitness granted to adolescent (Sec. 70):

(1) An adolescent having certificate of fitness and token to work in a factory shall be deemed to be an adult for all the purposes of Chapters VI and VIII:

No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M: Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories,—

(i) No any female adolescent is allowed to work between 10 P.M. and 5 A.M.;

(ii) grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.

e. Working hours for children (Sec. 71):

(1) No child shall be employed or permitted to work, in any factory for more than four and a half hours in any day;

(2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

(3) The provisions of section 52 shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.

(4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

(5) No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.

f. Notice of periods of work for children (Sec. 72):

Under section 108, a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work has to display.

(2) The periods shown in the notice required by sub-section (1) shall be fixed.

(3) The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by sub-section (1) of this section.

g. Register of child workers (Sec. 73):

A register of child workers should be maintained and to be made available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing-

(a) the name of each child worker in the factory,

(b) the nature of his work,

(c) the group, if any, in which he is included,

(d) where his group works on shifts, the relay to which he is allotted, and

(e) the number of his certificate of fitness granted under section 69.

h. Power to require medical examination (Sec. 75):

Where an Inspector is of the opinion--

(a) that any person working in a factory without a certificate of fitness is a young person, or

(b) that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein,--

he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.



CHECK YOUR PROGRESS

Q5. Mention five provisions related to employment of young persons under the Factories Act, 1948?

i) .....

ii) .....

iii) .....

iv) .....

v) .....

6.8 PENALTIES AND PROVISIONS

A. General penalty for offences: According to the provisions of section 93 if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to 2 years or with fine which may extend to two lakh rupees or with both.

But if any of the provisions of Chapter IV or any rule made thereunder section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty five thousand in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.

B. Liability of the owner of premises in certain circumstances:

i) If in any premises, independent or self-contained, floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of latrines, urinals and washing facilities, fencing of machinery and plant etc.

The Chief Inspector shall have the power to issue orders to the owner of the premises in respect of the carrying out the provisions related to it.

ii) Again, in any premises portions of a room or a shed are leased to different occupiers for use as separate factories, the owner of the premises shall be liable for any contravention of the provisions of-

(a) Chapter III, except sections 14 and 15;

(b) Chapter IV, except sections 22, 23, 27, 34, 35 and 36

iii) If any person who has been convicted of any offence punishable under section 92 is again guilty of an offence he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine which shall not be less than ten thousand rupees but which may extend to two lakh rupees or with both:

iv) If any person who wilfully obstructs—

a. an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any registers, or other documents in his custody kept in pursuance of this Act ,or of any rules made thereunder,

b. or conceals or prevents any worker in a factory from appearing before, or being examined by, an Inspector; shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

v) Prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under section 91, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

vi) Any person who fails to comply with or contravenes any of the provisions of sections 41B, 41C or 41H or the rules made thereunder, shall, in respect of such failure or conntravention, be

punishable with imprisonment for a term which may extend to seven year and with fine which may extend to two lakh rupees. But if it still continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. On the other hand, if it continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.

C. Offences by workers:

(1) Under section 111, if any worker employed in a factory contravenes any provision of this Act he shall be punishable with fine which may extend to five hundred rupees unless it is proved that he failed to take all reasonable measures for its prevention. For using false certificate of fitness, their shall be imprisonment which may extend to two month or with fine which may extend to one thousand rupees or with both.

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

(D) Limitation of prosecutions:

No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence comes to the knowledge of an Inspector.



6.9 LET US SUM UP

- The Indian Factories Act, 1948 has been enacted with an object to protect the workers and for that purpose different provisions are imposed on the owner and the occupier of the factories.
- The Indian Factories Act, 1948 has been enacted and these are entered many new provisions which protect the workers employed in a factory against industrial and occupational hazards.
- The Indian Factories Act, 1948 defines 'Factory' as a premises where manufacturing process is being carried out by ten or more workers who are or were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. On the other hand, the required number of workers working should be twenty or more where the manufacturing process is carried on without the aid of power.
- The State Governments carry out the administration of the Act through Inspecting Staff, Certifying Surgeons, Welfare Officers and Safety Officers.
- There are many provisions stipulated in the Act which have to be taken by the factories for health, safety, welfare provisions of the workers. Apart from these some provisions are also taken relating to working hours of child, young persons and female workers.
- Many penalty provisions are also entered in the Act which can be imposed on the owner and the occupier of the factories if any provisions contravene this Act or any rules made thereunder.



6.10 FURTHER READING

1. The Indian Factories act , 1948(Bare Act)
2. P. L. Malik (2017); *P. L. Malik's Industrial Law*; Eastern Book Company

6.11 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q.1: Under section 2 (m) of the Factories Act, 1948 ,"factory" means any premises, whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on.

Or,

Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

Ans. to Q.2:

i) 500

ii) 1000

Ans. to Q.3: Five provisions related to safety under the Factories Act, 1948 are,

i) Fencing of machinery

ii) Work on or near machinery in motion

iii) Employment of young persons on dangerous machines

iv) Protection of eyes

v) Precautions against dangerous fumes, gases, etc

Ans. to Q.4: Five provisions related to welfare under the Factories Act, 1948 are,

I) Washing facilities

ii) Facilities for storing and drying clothing

iii) Facilities for sitting

iv) First-aid appliances

v) Canteens

Ans. to Q.5: Five provisions related to employment of young persons under the Factories Act, 1948 are,

i) Prohibition of employment of young children

ii) Non-adult workers to carry tokens

iii) Certificates of fitness

iv) Working hours for children

v) Notice of periods of work for children



6.12 MODEL QUESTIONS

1. Explain the following terms under the Indian Factories Act, 1948:

   i) Hazardous process ii) Worker

   iii) Factory iv) Manufacturing process

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

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

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

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

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

7. “The State Government carries out the administration of the Indian Factories Act, 1948 “.

   State how different statutory agencies administer the different functions under the Act.

*** ***** ***

UNIT 7: THE INDUSTRIAL DISPUTES ACT, 1947 (PART-A)

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Objectives of the Act

7.4 Important Definitions

7.5 Illegal Strikes and Lock-outs

7.6 Unfair Labour Practices

7.7 Let Us Sum Up

7.8 Further Reading

7.9 Answers To Check Your Progress

7.10 Model Questions

7.1 LEARNING OBJECTIVES

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

- explain the objectives and scope the Industrial Disputes Act, 1947
- define the different definitions
- explain Strikes, Lock-outs, Lay off ,Retrenchment, Transfer and Closing down of undertakings
- explain the meaning of Unfair Labour Practices

7.2 INTRODUCTION

The first Act regarding the dealing with industrial dispute was the Employees' and Workman's Disputes Act, 1860 which later replaced by Trade Dispute Act, 1929 as it weighed much on the workers. But later this Act also fails to create favorable atmosphere in the industry and settlement the disputes. After Second World War, the necessity of speedy redress of the industrial disputes was given much stress. Thus it gives the result of the Industrial Disputes Act, 1947. In this unit, we are going

to discuss about Industrial Disputes Act, 1947 and details about its objectives and scope .This unit also encompasses the different important definitions under the Act. You will also get about the different meaning of strikes, lock-outs, lay off, retrenchment, transfer and closing down of undertakings.The unit also, discusses about the meaning of Unfair Labour Practices. Thus, you will able to explain the basic object of passing of this Act and different prohibition when the strikes, lock-out set are become illegal.

7.3 OBJECTIVES OF THE ACT

The Industrial Disputes Act, 1947 extends to the whole of India whether it is private or Government undertaking. The Act amended from time to time. The basic objectives of the Act are to ensure fair terms to the workman and prevent disputes between employers and employees so that production of the industry does not effect.

In the case of Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, AIR 1958 S.C. 353, the Supreme Court laid down the following objectives of the Act:

i. Promotion of measures of securing and preserving amity and good relations between the employers and workmen.

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

iii. Prevention of illegal strikes and lock outs.

iv. Promotion of collective bargaining.

Thus, it is important that all the indifferences should be settle and decided with such care that neither party get undue leverage.



LET US KNOW

The Industrial Disputes Act, 1947 is a central act which came into operation on 1st April 1947. This Act received the asset of the President on 31.8.1982. The latest amendment to the Act was made in 1984.



CHECK YOUR PROGRESS

Q1. Mention one objective of the Industrial Disputes Act, 1947.

i. .....

.....

.....

.....

7.4 IMPORTANT DEFINITIONS

Some important definitions are given below—

Industry:

Section2 (j) under the Industrial Disputes Act, 1947 define the term 'industry'. It means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,-

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

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

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948;

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

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

Explanation :- For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries; or

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

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

(5) khadi or village industries; or

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

(7) any domestic service; or

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

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

Now let us see whether the following activities would fall under industry or not:

1. *Municipalities:* If a municipality discharges many functions some pertaining to industry and other are non industry, the predominant function of the department shall be the criterion for the purpose of the Act. Some industry falls under like, Tax, Public Conveyance, Lighting, Health, Market, Public Garden etc.
2. *Hospitals and Charitable institutions:* Absence of profit motive or gainful objective is irrelevant for "industry:" be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. The charitable institutions fall into three categories:
    a. Those that yield profit but the profits are not use for their own, rather use for other purposes i.e. the profit that earned is siphoned off for altruistic purposes.
    b. Those that make no profit but hire the services of employees as in any other business.
    c. Those that are oriented on a human mission fulfilled by men who work not because they are paid wages but share the passion and job derive satisfaction.

Here the first two are industries but not the third.

3. *Clubs:* Without destroying the non-employee character of the definition of 'industry', and hire a minimal matters of marginal employees, clubs can be said as industry.
4. *Universities:* As regards institution, if the triple tests of the definition of 'industry' done i.e. systematic activity, cooperation between employer and employee and production of goods and services were to be applied, a university, a college, a research institute or teaching institute will be 'industry'.
5. *Professional firm:* Professional firm like lawyers, doctors etc follow

the personal character of the relationship between a doctor or a lawyer with his professional assistant may be of such a kind that requires complete confidence and harmony in the productive activity in which they may be cooperating; and as they have the character of the test of having direct relation between capital and labour in the production of goods or in rendering of service or that cooperation between employer and employees in carrying the service, professional firm can be 'industry'.

6. *Voluntary services:* If for a certain pious mission, many employees' provide free service for a nominal cost or on the master and servant relationship, then the institute is not an industry.



LET US KNOW

The Supreme Court in the decision of the Bangalore Water Supply and Sewerage Board V. A. Rajappa and others had while interpretining the definitation of industry as contained in the Act, observed that Government might restructure the definitation by suitable legislative measures.



CHECK YOUR PROGRESS

Q2. Mention whether the following activities would fall under industry or not under Industrial Disputes Act, 1947.

a. Voluntary services, b. Municipalities

a) .....

.....

b) .....

.....

Industrial Disputes: "Industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person [Section 2(k)].

Thus the above definition can be analysed as:

a. **Existence of a disputes or difference:** An industrial dispute exists only when the same has been raised by the workmen with the employer. Unless there is a demand by the workmen and that demand is not complied with by management, there can not be any Industrial dispute within the meaning of Section 2(k).

b. **Parties to the disputes:** Industrial dispute mean that the dispute must affect a large groups of workmen and employers ranged on opposite sides. Thus, there should be community of interest in the disputes. The disputes can be raised by workmen themselves or their union or federation on their behalf. A dispute may initially be an individual dispute. But the workmen may make that dispute as their own that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workmen. All workmen need not to join the dispute. It may have been raised by a minority group of workmen.

c. **Subject matter of dispute:** The disputes should relate to the employment, non-employment, or conditions of work of the workmen. It is a wider term which refers the amenities to be provided to the workmen and the conditions under which they will be required to work. The matters are like safety, health and welfare of workers.

d. **Dispute in an 'industry':** The difference or the dispute must relate to an 'industry' as defined under Section2 (j) of Industrial Disputes Act, 1947. No industrial dispute can exist without an industry.

Workman: According to the section 2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes:

a) any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or

b) whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

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

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

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

   (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per month or

   (v) who, exercising, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

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

Essentials of strike:

(I) Strike can be take place only when there is a cessation of work or refusal to work by the workmen acting in combination or a concerted refusal.

(II) A concerted refusal under a common understanding of any number of persons to continue to work or to accept employment will amount to a strike.

(III) The striking workmen must be employed in an ‘industry’.

(IV) Even when workmen cease to work, the relationship of employer and employee is deemed to continue and it may in a state of belligerent suspension.

Lock-out: "Lock-out" means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him [Section 2 (l)].

Essentials of lock-out:

(i) There is temporary closing of a place of employment or the suspension of work.

(ii) There is an element of demands for which the place of employment is locked –out or closed;

(iii) There is an intention to re-employ the workers if they accept the demands.

Lay-off: "Lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of to give employment to a workman whose name is borne on the master rolls of his industrial establishment and who has not been retrenched, for the following reasons,

a. shortage of coal, power or raw materials or

b. the accumulation of stocks or

c. the breakdown of machinery or

d. natural calamity or

e. for any other connected reason [Section 2 (kkk)].

Explanation to section 2 (kkk) provides that every workman whose name is borne on the master rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

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

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

Difference between lock out and lay off:

The concept of 'lock-out' is essentially different from the concept of 'lay-off'. The points of distinction between 'lay-off' and 'lock-out' may be broadly stated as follows:

1. 'Lay-off' generally occurs in continuous business, whereas 'lock-out' is closure of business for the time-being.
2. In the case of 'lay-off' owning to the reasons specified in Section 2(kk). Here, the employer is unable to give employment to one or more workmen, whereas in 'lock-out' the employer deliberately closes the business and locks out the whole body of workmen for reasons which have no relevance to the causes specified in Section 2 (kkk).
3. 'Lock-out' is resorted to by the employer as a weapon of collective bargaining and also ordinarily involves an element of malice or ill-will while 'lay-off' is actuated by the exigencies of the business.
4. The provisions applicable to the payment of 'lay-off' compensation cannot be applied to the case of 'lock-out.'

But there are some resemblances also:

1. both 'lay-off' and 'lock-out' are temporary in nature and both arise out of and exist during an emergency though the nature of emergencies in each case is different.
2. both in 'lay-off' and 'lock-out', the relationship of employment is only suspended and is not severed.
3. 'lay-off' resorted to in contravention of the provisions of Section 25-M is illegal and punishable under Section 25Q, while 'lock-out' declared in contravention of the provisions of Section 10(3), 10A (4A), 22 or 23 is illegal and punishable under Section 26 of Industrial Disputes Act, 1947. The rule regarding the second half of the suit was omitted in West Bengal by an amendment of the Industrial Dispute Act in 1974.

Retrenchment: According to section 2(o o) retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

(a) voluntary retirement of the workman; or

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

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

(c) termination of the service of a workman on the ground of continued ill-health[Section 2(o o)].

Essentials of Retrenchment:

(i) There should be termination of the service of the workmen.

(ii) The termination should be by the employer.

(iii) The termination is not the result of punishment inflicted by way of disciplinary action.

(iv) The definition excludes termination of service on the specified grounds or instances mentioned in it.

Settlement: "Settlement" means a settlement arrived,

a. at in the course of conciliation proceeding and

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

Appropriate Government:

"Appropriate Government" means -

(i) in relation to any industrial dispute concerning any industry carried

on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning [a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956] or the Employees State Insurance Corporation established under Section 3 of the Employees State Insurance Act, 1948, or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5a and Section 5b, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporations Act, 1956, or [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962, or the Agricultural Refinance and Development Corporation established under Section 3 of the Agricultural Refinance and Development Corporation Act 1963, or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 or the Food Corporation of India established under Section 3 or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporation Act, 1961, or [the Airports Authority of India Act, 1994 (33 of 1994) or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 or the Export Credit and Guarantee Corporation Limited for the Industrial Reconstruction Corporation of India Limited, or [an air transport service, or a

banking or an insurance company], [a mine, an oil-field], [a Cantonment Board], or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government [Section 2(a)].

Public Utility Service:

"Public utility service" means-

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

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

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

(iii) any postal, telegraph or telephone service;

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

(v) any system of public conservancy or sanitation:

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

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension [Section 2(n)].

7.5 ILLEGAL STRIKES AND LOCK-OUTS

The justification of strikes depends on the fairness and reasonableness of demands made by workmen. It is not merely because they have all legitimate options open for getting their demands fulfilled. Thus, the legality of strike is determined with reference to the legal provisions enumerated in the Act. Sections 10 (3), 10A (4A), 22 and 23 of the Act deals with

strikes and lock-outs. Section 22 and 23 of the Act deals with restriction on the commencement and Sections 10 (3), 10A (4A) prohibits the continuance of strikes and lock-outs.

A. General prohibition of strikes and lock-outs –

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

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

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

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

(c) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award (Section 23).

The basic purposes of these provisions are to ensure a peaceful atmosphere during the pendency any proceeding before Labour Court, Tribunal, National Tribunal or Arbitrator.

B. Prohibition of strikes and lockouts—

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

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

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

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

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

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

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

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

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

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

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

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such a manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such a manner as may be prescribed.

(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day.

C. Illegal strikes and lock-outs –

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

(i) it is commenced or declared in contravention of Section 22 or Section 23, or

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

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

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

7.6 UNFAIR LABOUR PRACTICES

It means any of the practises specified in the Fifth schedule [Section 2(ra]. Under Section 25T, no employer or workman or a Trade Union whether registered under the Trade Unions Act, 1926 or not shall commit any unfair labour practices. Section 25U provides that any person who commits any such acts shall be punishable for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

The **fifth schedule under section 2(ra)** of unfair labour practices includes:

I) On the part of employers and trade unions of employers

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of

collective bargaining or other mutual aid or protection, that is to say-

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

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

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

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

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

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

3. To establish employer-sponsored trade unions of the workmen.

4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say- Taj discharging or punishing a workman, because he urged other workmen to join or organize a trade union,

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

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

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

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

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

5. To discharge or dismiss workmen-
   (a) by way of victimization;
   (b) not in good faith, but in the colorable exercise of the employer's rights;
   (c) by falsely implicating a workman in criminal case on false evidence or on concocted evidence;
   (d) for patently false reasons;
   (e) on untrue or trumped up allegations of absence without leave;
   (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
   (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.
6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
7. To transfer a workman mala fide from one place to another, under the guise of following manageent policy.
8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.
9. To show favoritism or partiality to one 'set' of workers regardless of merit.
10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of 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.

//.) 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

Q3. Fill in the blanks with appropriate words:

i) Industrial Dispute is defined under section ……..

ii) Workmen in defined under section……

iii) Strike is defined under section ……..

iv) Lock out is defined under section …….



7.7 LET US SUM UP

In this unit, we have discussed the following :

- The Industrial Disputes Act, 1947 applies to all industries.
- The main objective of the Industrial Disputes Act, 1947 are,
  a) promotion of measures of securing and preserving amity and good relations between the employers and workmen
  b) Investigation and settlement of industrial disputes.
- Section 22 and 23 of the Act deals with restriction on the commencement and Sections 10 (3), 10A (4A) prohibits the continuance of strikes and lock-outs.
- The unfair labour practises specified in the Fifth schedule [Section 2(r a)] of the Industrial Disputes Act, 1947.



7.8 FURTHER READING

1. Workmen's Compensation Act , 1923(Bare Act)
2. P. L. Malik (2017);P. L. Malik's Industrial Law; Eastern Book Company, India
3. N.D. Kapoor (2011);Handbook of Industrial Law ; Sultan Chand & Sons, India

7.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q1: The main objective of Industrial Disputes Act, 1947 is,

i.) Promotion of measures of securing and preserving amity and good relations between the employers and workmen.

Ans to Q2: a. Voluntary services: If for a certain pious mission, many employees' free service or supply free service for a nominal cost or on the master and servant relationship, then the institute is not an industry.

b. Municipalities: Municipality discharges many functions. Some pertaining to industry and other are non industry. The predominant function of the department shall be the criterion for the purpose of the Act. Some industry falls under like, Tax, Public Conveyance, Lighting, Health, Market, Public Garden etc.

Ans to Q3: i) 2 (k) ii) 2(s) iii) 2 (q) iv) 2 (i)



7.10 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.

*** ***** ***

UNIT 8: THE INDUSTRIAL DISPUTES ACT, 1947 (PART-B)

UNIT STRUCTURE

8.1 Learning Objectives
8.2 Introduction
8.3 History of the law of Industrial Disputes
8.4 Authorities under the Act and their Duties
8.5 Reference of Disputes
8.6 Procedure and Powers of Authorities
8.7 Award and Settlement
8.8 Let Us Sum Up
8.9 Further Readings
8.10 Answers To Check Your Progress
8.11 Model Questions

8.1 LEARNING OBJECTIVES

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

- explain the history and importance of the Industrial Disputes Act, 1947
- explain about different authorities under the Act and their duties
- discuss about reference of disputes
- explain the procedure and powers of authorities
- describe about award and settlement

8.2 INTRODUCTION

The main purpose of the Industrial Disputes Act, 1947 is to ensure fair terms between employers and employees, workmen and workmen as well as workmen and employers. It helps not only in preventing disputes between employers and employees but also help in finding the measures to settle such disputes so that the production of the organization is not hampered. In this unit, we are going to discuss the Industrial Disputes Act, 1947 and its importance. This unit encompasses the different

authorities and their duties in the settlement of disputes. It also discuss about the reference of disputes. Through this unit, you will be able to know about the different award given by the different authorities under the Act. Thus, you will able to understand through this unit, the procedures of settlement of the disputes as well as the duties of different authorities as well as the way of reference of disputes.

8.3 HISTORY OF THE LAW OF INDUSTRIAL DISPUTES

The World War I (1914-1919) brought a new awakening among the working class people who were dominated by the employers regarding the terms and conditions of service and wages. The workers resorted to strikes to fulfill their demands and the employers retaliated by declaring lockouts. During the period 1928-29 the numerous strikes and lock-outs forced the Government to enact the Trade Disputes Act, 1929.

***Resorted* —**

Have resource to.

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.

***Adjudicator* —**

A person who studies and settles conflict

With the termination of the Second World War, Rule 81-A was about to lapse on 1st October, 1946, but it was kept alive by recourse to

Government's Emergency Powers. The main provision was retained in the Industrial Disputes Act, 1947.



CHECK YOUR PROGRESS

Q1. What was the main defect of the Trade Dispute Act, 1929?

.....

.....

8.4 AUTHORITIES UNDER THE ACT AND THEIR DUTIES

The Industrial Dispute Act, 1947 makes provision for the investigation and settlement of disputes that may hamper the peace of the industry. It ensures harmony and cordial relationship between the employers and employees. The Act provides self-contained code to compel the parties to resort to industrial arbitration for the resolution of disputes. It also provides statutory norms besides helping in the maintaining of cordial relation among the employers and employees ,reflecting socio-economic justice.

The act provides for the following authorities for Investigation and Settlement of industrial disputes:

(i) Works Committee
(ii) Conciliation Officer
(iii) Boards of Conciliation
(iv) Court of Inquiry
(v) Labour Court
(vi) Labour Tribunals
(vii) National Tribunals

Let us discuss these authorities in detail:

WORKS COMMITTEE (Section 3):

The works committee is a committee consisting of representatives of employers and workmen (section3). The works committee is a forum for explaining the difficulties of all the parties.The main objective of the works committee is to solve the problems arising in the day-to-day

working of a concern and to secure industrial harmony. The function of the working committee is to ascertain the grievances of the employees and to arrive at some agreement. The committee is formed by general or special order by the appropriate Government in an industrial establishment in which 100 or more workmen are employed or have been employed on any day in the preceding 12 months. It consists of the representatives of employers and workmen engaged in the establishment.

It shall be the duty of the working committee to promote measures for securing and preserving amity and good relations between the employers and workmen and, to that end, to comment upon matters of their common interest or concern and to endeavour to compose any material difference of opinion in respect of such matters and decision of the works committees are not binding.

CONCILIATION OFFICER (Section 4):

For promoting and settlement of industrial disputes the appropriate Government may by notification in the Official Gazette, appoint such number of conciliation officer as it thinks fit. The main objective of appointing conciliation officer is to create congenial atmosphere within the industry and reconcile the disputes of the workers and the employers. He may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.



***Amity* —**

A state of friendship.

***Endeavour* —**

A purposeful undertaking.

***Congenial* —**

Suitable to your needs.

The duty of the conciliation officer is not judicial but administrative. He has to hold conciliation proceedings, investigate the disputes and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair settlement of the disputes. The conciliation officer is entitled to enter an establishment to which the dispute relates, after reasonable notice and also to call for and inspect any document which he consider relevant. He has to send a report and memorandum of settlement to appropriate Government. The report by the conciliation officer has to be submitted within 14 days of the commencement of the conciliation proceeding or shorter period as may be prescribed by the

appropriate Government. The conciliation officer has the power to enter the premises as well can call for and inspect documents.

BOARDS OF CONCILIATION (Section 5):

The appropriate Government may by notification in the Official Gazette, constitute a Board of Conciliation for the settlement of industrial disputes. The Board shall consist of a chairman and 2 or 4 other members in equal numbers representing the parties to the disputes as the appropriate Government thinks fit. The Chairman shall be an independent person. A person is "independent" for the purpose of appointment to a Board, Court or Tribunal if he is uncommitted with the dispute or with any industry directly affected by such dispute. He may be a shareholder of a company connected with or likely to be affected by such disputes. But in such a case he must disclose to the Government the nature and intent of his share [Section 2(i)]. Where the appropriate Government is of the opinion that any industrial disputes exist in an industry, it may refer by order in writing to the Board of Conciliation for settling industrial disputes.

The Board of Conciliation has to bring about a settlement of the dispute. He has to send a report and memorandum of settlement to appropriate Government. He has to send a full report to the Appropriate Government setting for the steps taken by the Board in case no settlement is arrived at. The Board of Conciliation has to communicate the reasons to the parties if no further reference is made. The Board has to submit its report within 2 months of the date on which the dispute was referred to it within the period what the appropriate Government may think fit. The report of the Board shall be in writing and shall be signed by all the members of the Board.

COURT OF INQUIRY (Section 6):

The appropriate Government may by notification in the Official Gazette, constitute a court of inquiry into any matter appearing to be connected with or relevant to settlement of industrial disputes having an independent person or of such independent persons as the appropriate Government

may think fit. The court consists of two or more members one of whom shall be appointed by the Chairman. Within a period of 6 months, the court has to send a report thereon to the appropriate Government from the commencement of its any inquiry. This period is not mandatory and it may be extend.

It has the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908, in the following matters—

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

The report of the Court must be signed by all the members. A member can submit a note of dissent. The Report together with the dissenting note must be published by the appropriate Government within 30 days from its report. A court of enquiry has no power to improve any settlement upon the parties.



Dissent —

A difference of opinion

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.



Expeditious —

Characterized by speed and efficiency.

A person shall be presiding officer of a labour court unless—

a. he is or has been, a Judge of the High court,
b. he has for a period of not less than three years, been a District Judge or an Additional District Judge or
c. he has held any judicial office in India for not less than seven years; or

d. he has been the presiding officer of a Labour Court constituted under any provincial Act or State Act for not less than five years.

e. He must be an " independent " person and must not have attained the age of 65 years.

LABOUR TRIBUNALS (Section 7- A):

The appropriate Government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for adjudication of industrial disputes. A Tribunal shall consist of one person to be appointed by the appropriate Government. The Appropriate Government may appoint two persons as assessors to advise the Tribunel. The person shall be not qualified unless—

a. he is, a Judge of the High court,

b. he has for a period of not less than three years, been a District Judge or an Additional District Judge.

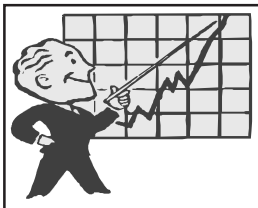
c. The appropriate Government may, if it so thinks fit, may appoint two persons as assessors to advise the Tribunal in the proceeding before it.

The functions of the Tribunals are very much like those of a body discharging judicial functions, although it is not a Court. Its power is different from that of a Civil Court. The proceedings before an Industrial Tribunal are quasi-judicial in nature with all the attributes of a Court of Justice. The Government is empowered under Section 7-A of the Act to constitute for a limited time which comes to an end automatically on the expiry of the said period for any particular case. The duties of Industrial Tribunal are identical with the duties of Labour Court, i.e. on reference of any industrial disputes; the Tribunal shall hold its proceedings expeditiously and submit its award to the appropriate Government.

NATIONAL TRIBUNALS (Section 7 B)

The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes. National Industrial Tribunals are involve only incase of the questions of national importance or if they are of such a nature

that industrial establishments situated in more than one State are likely to be interested in, or affected by, such industrial disputes. It consists of one person only to be appointed by the Central Government.The person shall not be qualified for appointment as the presiding officer unless he is, or has been, a Judge of a High Court. Beside these, the Central Government may, if it thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceedings before it.



CHECK YOUR PROGRESS

Q2. Mention the authorities for Investigation and Settlement of industrial disputes under the Industrial Dispute Act, 1947?

i.) .....
ii) .....
iii) .....
iv) .....
v) .....
vi) .....
vii) .....
vii) .....

8.5 REFERENCE OF DISPUTES

Any industrial disputes should have to referred by the Appropriate Government under section 10 for adjudication, to the Conciliation Board, Labour Court, Court of Inquiry or Industrial Tribunal or National Tribunal.

A. Reference of disputes to various Authorities:

A matter is referred to the Conciliation Board for promoting the settlement of the disputes. The Conciliation Board is to promote settlement and not to adjudicate.

But if the purpose of reference of the matter is investigatory instead of conciliatory or adjudicatory, it should be referred to Court of Inquiry. Again, if the matter is related to the Second Schedule or Third Schedule, it is referred to the Labour court. On the other hand, any matter of the

industrial disputes which may relate to the Second Schedule or Third Schedule may refer to the Industrial Tribunal.

Where the disputes relate to a public utility service and a notice of the same is given, it becomes mandatory of the Appropriate Government or the Central Government to refer the matter for adjudication. But the power of the Appropriate Government to make a reference is discretionary and it is open to judicial review.

B. Reference of disputes to National Tribunal involving question of importance, etc:

When industrial disputes are of national importance or they are likely to be affect the industrial establishments situated in more than one State then they are referred to the National Tribunal by the Appropriate Government for adjudication. Again if any matter referred to National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before Labour Court or Tribunal becomes invalid. On the other hand, it is not lawful to refer any matters which are under adjudication before the National Tribunal to Labour Court or Tribunal.

C. Reference on application of parities:

If a person individually or jointly applies any matter in a prescribed manner to the Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal for adjudication and the Appropriate Government on being satisfied on the same specifies such time limit as it these proper to submit the award.

D. Time limit for submission of awards:

Section 10 (2A) of the Act specifies the time period for submitting award by the Appropriate Government, when any reference is made to the Labour Court, Industrial Tribunal or National Tribunal for adjudication.

VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION:

The settlement of industrial disputes may be done through voluntary reference under section 10-A.

i) When an industrial dispute is not referred to Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal for adjudication, the employer and the workmen through a written agreement forward the matter for arbitration specifying the names of the arbitrator.

ii) The arbitration agreement should be made in prescribed form and should be signed by the parties.

iii) Within one month from the receipt of the arbitration agreement which should be forwarded to Appropriate Government and the Conciliation Officer, a copy of the same has to be published in the Official Gazette.

iv) The arbitrator or arbitrators shall have to investigate the disputes and submit to the Appropriate Government the award.

v) The award should be signed by the arbitrator or the arbitrators.

vi) The strike or lock-out in connection with the disputes should be prohibited by an order of the Appropriate Government.

8.6 PROCEDURE AND POWERS OF AUTHORITIES

Section 11 provides that every Conciliation Officer or member of a Board or Court or Presiding Officer of a Labour Court, Industrial Tribunal or National Tribunal after giving notice can enter the premises occupied by any establishment to which the disputes relate and follow such procedure as the arbitrator or other authority concerned may think fit. They have the same power as are vested in the Civil Court under the Code of Civil Procedure, 1908 while trying a suit in matters like,

a. enforcing the attendance of any person and examining him on oath,

b. compelling the production of documents and material objects,

c. issuing commissions for the examination of witnesses,

d. in respect of other such other matters as may be prescribed.

An assessor or assessors may be appointed by the Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal

for advice having special knowledge on that matter. The Conciliation Officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect the documents. The Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal has the full power to determine to what extent, by whom and subject to what conditions costs are to be paid.

Thus, it is seen that section 11 (1) has given wide power to the Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal in the settlement of industrial disputes.

8.7 AWARD AND SETTLEMENT

Award means an interim or a final determination of any industrial disputes or of any question relating thereto by any Labour Court, Tribunal or National Tribunal and includes an arbitration award made under section 10A Section 2 (b).The report of the Board of Conciliation or the Court of Inquiry shall be in writing and shall be signed by all the members and the award of a Labour Court and Industrial Tribunal shall be in writing and shall be signed by the Presiding Officer. Section 21 requires certain matters to be kept confidential and it is further provided by the section that certain matters are not disclosed without the written consent of the secretary of the trade union or firm or company in question as the case may be of any information obtained by Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal. An award usually is enforceable on the expiry of 30 days from the date of its publication except when the Appropriate Government declares that the award given by the Labour Court and Industrial Tribunal shall not be enforceable on the expiry of 30 days from the date of its publication. Again, it may not be enforceable on the expiry of 30 days from the date of its publication, if the Central Government get the opinion regarding the award given by the National Tribunal. In such case, the Appropriate Government or the Central Government may within 90 days from the date of publication of the award under section 17 make an order rejecting or modifying the award. But, if it appears that the award given by the

Industrial Tribunal is fair and just, it is authorised to issue direction that the award takes effect retrospectively.

Persons on whom settlements and awards are binding (Section 18):

1. Settlement and awards are binding on all the parties under the agreement arrived at between the employers and workers in the course of conciliation proceedings.
2. An arbitration award is binding on the concerned parties of the agreement who referred the disputes to arbitration.
3. An arbitration award or settlement award or award of Labour Court, and Industrial Tribunal or National Tribunal is binding on—
    a. All the parties to the disputes,
    b. On all other parties who are summoned to appear in the proceeding as parties to the disputes, unless the Board, Arbitrator, Labour Court, Industrial Tribunal or National Tribunal in the settlement of industrial disputes as the case may be, records the opinion that they were so summoned without proper cause.
    c. Where a party referred to Clause (a) and Clause (b) is an employer, his heirs, successors assigned in respect of the establishment to which the dispute relates.
    d. But if the parties referred to in Clause (a) or Clause (b) is of workmen, all person who were employed in the establishment or part of the establishment, as the case may be, to which the disputes relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

A settlement arrived at in the course of conciliation proceedings before a Conciliation Officer shall come into operation on such date as is agreed upon by the parties to the disputes and on the date on which the memorandum of the settlement is signed by the parties to the disputes when no date is agreed. But, if a person breaches any term of any settlement or award which is binding on him he shall be punishable with imprisonment for a term which may extend to 6 months or with fine or both.



8.8 LET US SUM UP

In this unit, we have discussed the following issues:

- The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of disputes through Conciliation Officer or member of a Board or Court or Presiding Officer of a Labour Court, Industrial Tribunal or National Tribunal.
- Any industrial disputes may be referred by the Appropriate Government under section 10 for adjudication, to the Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal.
- The settlement of industrial disputes may be done through voluntary reference under section 10-A
- The conciliation officer or a member of a Board or Court or the Presiding Officer of a Labour Court, Industrial Tribunal or National Tribunal has the same power as are vested in the Civil Court under the Code of Civil Procedure, 1908.



8.9 FURTHER READING

1. Workmen's Compensation Act , 1923(Bare Act)
2. P. L. Malik (2017);P. L. Malik's Industrial Law; Eastern Book Company, India
3. N.D. Kapoor (2011);Handbook of Industrial Law ; Sultan Chand & Sons, India

8.10 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q.1: The main defect of the Trade Dispute Act, 1929 was that no provision has been made to render the proceedings institutable under the Act while restraints have been imposed on the right of strike and lock-out in the public utility services

Ans to Q.2: The authorities for Investigation and Settlement of industrial disputes under the Industrial Dispute Act, 1947 are—

i) Works Committee
ii) Conciliation Officer
iii) Boards of Conciliation
iv) Court of Inquiry
v) Labour Court
vi) Labour Tribunals
vii) National Tribunals



8.11 MODEL QUESTIONS

Q1. What authorities have been set up under the Industrial Dispute Act, 1947 for investigation and settlement of industrial disputes?

Q2. Write short notes on—

a. Works Committee
b. Conciliation Officer
c. Boards of Conciliation
d. Court of Inquiry
e. Labour Court
f. Labour Tribunals
g. National Tribunals

Q3. Under what circumstances does an award made under the Industrial Dispute Act, 1947 commence to be enforceable?

Q4. Discuss the provisions of Industrial Dispute Act, 1947 relating to the voluntary reference of disputes to arbitration.

Q5. Mention the persons on whom settlements and awards are binding under the Industrial Dispute Act, 1947.

*** ***** ***

UNIT 9: THE TRADE UNIONS ACT, 1926

UNIT STRUCTURE

9.1 Learning Objectives

9.2 Introduction

9.3 Objectives of the Trade Unions Act

9.4 Important definitions

9.5 Registration of Trade Union

9.6 Rights and Liabilities of registered Trade Union

9.7 Penalties

9.8 Let Us Sum Up

9.9 Further Reading

9.10 Answers To Check Your Progress

9.11 Model Questions

9.1 LEARNING OBJECTIVES

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

- discuss the Registration of Trade Union
- explain the Rights and Liabilities of registered Trade Union
- explain Penalties

9.2 INTRODUCTION

In this unit we are going to discuss about trade union. The trade union is an association of workers. It is the union which protects the rights of the worker. A trade union is neither instrumentality nor an agency of State. It may be registered under the Registrar of Trade Union and thus the registered trade union can avail different rights and privileges. Similarly registered Trade Union obligated by different liabilities also. After going through this unit learners can be able to explain the registration of trade union along with the objectives of the Trade Unions Act, 1926. More over, you can also know about different rights and liabilities of registered Trade Union along with the different penalty provisions under The Trade Unions Act, 1926.

9.3 OBJECTIVES OF THE TRADE UNIONS ACT

According to Sidney and Webb, trade union is a continuous association of wage earner for the purpose of maintaining and improving the conditions of their working lives. The origin of The Trade Unions Act, 1926 is beginning for the labour unrest dating back to 1877. The setting up of large scale industries creates exploitative tendencies in the mind of the employers which increase the demand for protecting the rights of the workers. The passing of The Trade Unions Act, 1926 is the result of formal recognition to the workers' right to organize. The main objectives of the Act are,

1. To promote both individual and collective welfare.
2. To secure the payment of salaries, wages, allowances etc of the workers.
3. To secure the employment of the workers.
4. To protect the working condition of the workers.
5. To secure the opportunities related to the promotion of the workers.
6. To enlarge the training opportunities.
7. To assist in collective bargaining to protect the interest of the workers.
8. To help the workers in introducing themselves in participatory movement in the different discussion of the management of the organization.
9. To help in providing the educational, recreational and cultural facilities.
10. To identify the different roles and responsibilities of the workers in the industry.



LET US KNOW

The origin of trade unionism in India can be traced back to the year 1890 when for the first time an association of mill workers was formed for the redressal of grievances of the Bombay mill workers.



CHECK YOUR PROGRESS

Q1. Mention five objectives of The Trade Unions Act, 1926.

i) .....

ii) .....

iii) .....

iv) .....

v) .....

9.4 IMPORTANT DEFINITIONS

Under section 2 different terms which are used in The Trade Unions Act, 1926, are discussed as follows :

In this Act **"Appropriate Government"** means in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, State Government and, unless there is anything repugnant in the subject or context—

(a) **"Executive"** means the body, by whatever name called to which the management of the affairs of a Trade Union is entrusted;

(d) **"Registered office"** means that office of a Trade Union which is registered under this Act as the Head office thereof.

(e) **"Registered Trade Union"** means a Trade Union registered under this Act;

(f) **"Registrar"** means:

(i) A Registrar of Trade Unions appointed by the appropriate Government under section 3, and includes an additional or Deputy Registrar of Trade Unions; and

(ii) In relation to any Trade Union, the Registrar appointed for the State in which the head or registered office, as the case may be, of the Trade Union is situated;

(g) **"Trade dispute"** means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment,

or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises;

Thus, trade dispute can be defined as, any disputes that arises in between,

i. employers and workmen

ii. workmen and workmen

iii. employers and employers, in connection of employment or non-employment or the terms of employment or the conditions of labour, of any person.

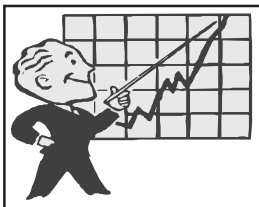
(h) **"Trade Union"** means combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation of two or more Trade Unions;

Provided that this Act shall not affect -

(i) Any agreement between partners to their own business;

(ii) Any agreement between an employer and those employed by him as to such employment; or

(iii) Any agreement in consideration of the sales of the goodwill of a business or of instruction in any profession, trade or handicraft.



CHECK YOUR PROGRESS

Q2. Define Trade Dispute under The Trade Unions Act, 1926.

i) .....

.....

.....

.....

9.5 REGISTRATION OF TRADE UNION

Under Section 3, the Appropriate Government shall appoint a person to be the Registrar of Trade Unions for each State. The appropriate Government may appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit.

Mode of registration (Section 4):-

(1) Any seven or more members of a Trade Union may be subscribing their names to the rules of the Trade Union complying with the provisions of this Act with respect to registration, apply for its registration.

(2) Where an application has been made for the registration of a Trade Union shall not be deemed to have become invalid, merely by reason of the fact that, at any time—

- after the date of the application,
- but before the registration of the Trade Union ,some of the applications,
- but not exceeding half of the total number of the persons who made the application, have ceased to be members of the Trade Union or
- have notice in writing to the Registrar dissociating themselves from the application under sub-section (1).

Application for registration (Section 5): -

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

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

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

(c) The title, names, ages, addresses and occupations of the Trade Union.

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

Provisions to be contained in the rules of Trade Union (Section 6):-

Every registered trade union is required to have written rules dealing with certain matters specified in Schedule II of the Central Trade Union Regulation, 1938. The executive should be constituted in accordance with the provisions of this Act to form a Trade Union, and the rules thereof provided for following matters, namely:-

(a) The name of the Trade Union;

(b) The whole of the object for which the Trade Union has been established;

(c) The whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purpose, to which such funds are lawfully applicable under this Act;

(d) The maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof;

(e) The admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as required under Section 22 to form the executive of the Trade Union;

(ee) The payment of a subscription by members of the Trade Union which shall be not less than—

i. One percent per annum for rural workers;

ii. Three rupee per annum for workers in other unorganized sector; and

iii. Twelve rupees per annum for workers in any other case;

(f) The conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on members;

(g) The manner in which the member shall be amended, varied or rescinded;

(h) The manner in which the members of the executive and the other of the Trade Union shall be appointed and removed;

(i) The safe custody of the funds of the Trade Union, and annual audit, in such a manner as may be prescribed, of the account books by; and members of the Trade Union; and

(j) The manner in which the Trade Union may be dissolved.

Registration (Section 8):-

The Registrar, on being satisfied that the Union has complied with all the requirements of this Act, shall register the Trade Union by entering in a register to be maintained in such form as may be prescribed. An application for registration cannot be rejected on the ground that it is an attempt to revive an old, already unlawful, union under a new name. The workmen of an industrial establishment can form as many unions as they like.

Certificate of Registration (Section 9):-

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

Cancellation of Registration (Section 10): -

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

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

(b) If the Registrar is satisfied that the certificate has been obtained by—

  i. fraud or mistake,

  ii. the Trade Union has ceased to exist, or

  iii. willfully and after notice from the Registrar contravened any provision of this Act ,or

iv. allowing any rule to continue in force which is inconsistent with any such provision,

v. rescinding any rule providing for any matter, provision for which is required by Section 6:

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

Appeal (Section 11): -

(1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may appeal –

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

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

(2) The Appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration.

(3) For the purpose of an appeal under sub-section (1) an Appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows when trying a suit under the Code of Civil Procedure, 1908.

(4) The person aggrieved shall have a right of appeal to the High Court and the High Court shall, for the purpose of such appeal, have all the powers of an Appellate Court under sub-sections (2) and (3) and the provisions of that sub-section shall apply accordingly

Incorporation of registered Trade Unions (Section 13): -

Every registered Trade Union shall be a body corporate by the name under which it is registered .It has perpetual succession and a common seal. It also has the power to acquire and hold both movable and

immovable property and contract, and shall, by the said name sues and be sued.

9.6 RIGHTS AND LIABILITIES OF REGISTERED TRADE UNION

The following are the rights and liabilities of registered trade union:

1. **Body Corporate (Section 13):** Trade Union shall be registered as a body corporate by the name under which it is registered .It has all features of a body corporate like perpetual succession, common seal etc. It can acquire and hold both movable and immovable property. It can be sued under its own name.
2. **Objects on which general funds may be spent (Section 15):** The general funds of a registered Trade Union shall not be spent on any other objects than the following, namely:-
   (a) The payment of salaries, allowances and expenses to office bearers of the Trade Union;
   (b) The payment of expenses for the administration of the Trade Union including audit of the accounts of the general funds of the Trade Union;
   (c) The prosecution of defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
   (d) The conduct of trade disputes on behalf of the Trade Union or any member thereof;
   (e) The compensation of members for loss arising out of trade disputes;
   (f) Allowance to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;

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

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

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

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

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

3. Constitution of a separate fund for political purposes (Section16):-

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

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

(a) The payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election

as a member of any legislative body constituted under the Constitution or of any local authority, before, during or after the election in connection with his candidature or election; or

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

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

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

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

(3) No member shall be compelled to contribute to the fund constituted under sub-section (2), and a member who does not contribute to the said fund shall not be excluded from any benefits of the Trade Union, or placed in any respect either directly or indirectly under any disability at any disadvantage as compared with other members of the Trade Union (except in relation to the control of management of the said fund) by reason of his contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to the Trade Union.

Criminal conspiracy in trade disputes (Section 17):-

Unless the agreement is an agreement to commit an offence as under section 15, no officers or members of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code.

Immunity from civil suit in certain cases (Section 18):-

No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office-bearer or member thereof in respect of any act done or for a trade dispute, to which a member of the trade union is a party.

These protection is available on the ground that such act induces some other person to break a contract of employment or that it is in interference with the trade business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

A registered trade union shall not be liable in any other legal proceeding in any civil court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the trade union, if it is proved that such person acted without the knowledge of or contrary to express instructions given by the executive of the trade unions.

Enforceability of agreements (Section 19):-

An agreement between the members of a registered Trade Union shall not be void or violable merely by reason of the fact that any of the objects of the agreement is in restraint of trade. Provided that nothing in this section shall enable any Civil Court to entertain any legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any member of a Trade Union shall not sell their goods, transact business, work, employ or be employed.

Disqualification of office bearers of Trade Union (Section 21A):-

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

   (i) He has not attained the age of eighteen years;

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

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

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



Turpitude —

A corrupt act.

9.7 PENALTIES

A. Failure to submit returns (Section 31): Section 31 of The Trade Union Act, 1926 states about the penalties on failure to submit returns by registered Trade Union. It contains,

(1) If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every (office-bearer) or other person bound by the rules of the Trade Union to give or send the same .

Again, if there is no such or person, every member of the executive of the Trade Union, shall be punishable with fine which may extend to five rupees and in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues and provided that the aggregate fine shall not exceed fifty rupees.

(2) Any person who willfully makes, or causes to be made, any false entry in, or any omission from the general statement required by section 28, or in or form any copy of rules or of alterations of rules sent to the Registrar under that Section, shall be punishable with fine which may extend to five hundred rupees.

B. Supplying false information regarding Trade Union (Section 32):

Any person with intent to deceive, gives to any member of a registered Trade Union or to any document purporting or applying to become a member of such Trade Union, any document purporting to be a copy of the rules of the Trade Union or of any alterations to the same which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force.

On the other hand, any person who, with the like intent gives a copy of any rules of an unregistered Trade Union to any person on the pretence that such rules are the rules of a registered Trade Union, shall be punishable with fine which may extend to two hundred rupees.

C. Cognizance of offence (Section 33):

(1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) No court shall take cognizance of any offence under this Act unless complaint thereof has been made by or with the previous section 32, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.



9.8 LET US SUM UP

- Trade dispute can be defined as, any disputes that arises in between, employers and workmen, workmen and workmen or employers and employers, in connection of employment or non-employment or the terms of employment or the conditions of labour, of any person.
- Any seven or more members of a Trade Union may be subscribing their names to the rules of the Trade Union complying with the provisions of this Act with respect to registration, apply for its registration.
- Unless the agreement is an agreement to commit an offence as under section 15, no officers or members of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code.



9.9 FURTHER READING

1. The Trade Unions Act ,1926; (Bare Act)

2. P. L. Malik (2017);P. L. Malik's Industrial Law; Eastern Book Company
3. N.D. Kapoor (2011);Handbook of Industrial Law ; Sultan Chand & Sons

9.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No.1: The five objectives of The Trade Unions Act, 1926 are:

i. To promote both individual and collective welfare.

ii. To secures the payment of salaries, wages, allowances etc of the workers.

iii. To secures the employment of the workers.

iv. To protects the working condition of the workers.

v. To secure the opportunities related to the promotion of the workers.

Ans to Q. No.2: "Trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment, or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.



9.11 MODEL QUESTIONS

1. How trade unions are registered under the Trade Union Act, 1926?
2. Define the terms:
   a. Trade Dispute b. Registrar
   c. Trade Union d. Registered Trade Union
3. State briefly how certificate of registration are issued under the Trade Union Act, 1926?
4. What are the objectives of Trade Union Act, 1926?

5. What are the different provisions to be contained in the rules of Trade Union under Section 6?
6. When the certificate of registration of a Trade Union may be withdrawn or cancelled?
7. When does an appeal lie from the orders of Registrar of Trade Unions?
8. What are the disqualifications of office bearers of Trade Union Section 21A?
9. What are the objectives on which general funds may be spent under section 15 of Trade Union Act, 1926?
10. Why Constitution of a separate fund for political purposes under section16 of Trade Union Act, 1926 is formed?
11. What are the different rights and liabilities of registered trade union under Trade Union Act, 1926?

*** ***** ***

UNIT 10: MINIMUM WAGES ACT, 1948

UNIT STRUCTURE

10.1 Learning Objectives

10.2 Introduction

10.3 Object and scope of the Act

10.4 Definitions under the Act

10.5 Fixation and Revision of Wages (Sec 3 to 5)

10.6 Safeguards in payment of Minimum Wages (Sec 11 to 18)

10.7 Enforcement of the Act (Sec 18 to 20)

10.8 Let Us Sum Up

10.9 Further Reading

10.10 Answers To Check Your Progress

10.11 Model Questions

10.1 LEARNING OBJECTIVES

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

- explain the scope and the objects of “Minimum Wages Act, 1948”
- describe the different definition under the Act
- discuss the different provisions of fixation and revision of wages
- outline the different provisions to safeguard in payment of minimum wages
- discuss the different provisions of enforcement of the Act

10.2 INTRODUCTION

In this unit we are going to discuss on “Minimum wages Act 1948”.According to the Act, it enables the Central and State Government to fix minimum rates of wages payable to employees in a selected number of ‘sweated’ industries. There are certain provisions under the Act. You will get a fair idea on the important provisions of the Act while going through this unit.

10.3 OBJECT AND SCOPE OF THE ACT

The main objective of this Act, is fixing a minimum rate of wages in number of industries where the labours are not organized and sweated labours are most dominant.

The Act aims at preventing the exploitation of workers or labours in some industries, for which, the appropriate Government is empowered to take steps to prescribe minimum rates of wages in certain employment.

The Minimum Wages Fixing Machinery convention was held at Geneva in the year 1928 by ILO with reference to remuneration of workers in those industries where the, level of wages was substantially low and the labour was vulnerable to exploitation, being not well organised and having less effective bargaining power.

This Act may be called the Minimum Wages Act 1948.The Act enables the Central and State Government to fix minimum rates of wages payable to employees in selected number of 'sweated' industries. The Act extends to the whole of India.

10.4 DEFINITIONS UNDER THE ACT

Following are some of the definitions and sections under the Act:

1. **Adolescent [2. (a)]:** "adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year.
2. **Adult [2. (aa)]:** "adult" means a person who has completed his eighteenth year of age.
3. **Appropriate government [2. (b)]:** "appropriate government" means:
   (i) in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration or in relation to a mine oil field or major port or any corporation established by a Central Act the Central Government and

(ii) in relation to any other scheduled employment of the State Government;

4. **Child [2. (bb)]:** "child" means a person who has not completed his fourteenth year of age.

5. **Competent authority [2. (c)]:** "competent authority" means the authority appointed by the appropriate government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification.

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

7. **Employer [2. (e)]:** "employer" means any person who employs whether directly or through another person or whether on behalf of himself or any other person one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act and includes except in sub-section (3) of section 26:

   i. in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person named under clause (f) of sub-section (1) of section 7 of the Factories Act 1948 (63 of 1948) as manager of the factory;

   ii. in any scheduled employment under the control of any government in India in respect of which minimum rates of wages have been fixed under this Act the person or authority appointed by such government for the supervision and control of employees or where no person or authority is so appointed as the head of the department;

iii. in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the persons appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;

iv. in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

8. **Prescribed [Sec.2 (f)]:** "prescribed" means prescribed by rules made under this Act.

9. **Schedule employment [Sec.2 (f)]:** "schedule employment" means an employment specified in the Schedule or any process or branch of work forming part of such employment

10. **Wages [Sec.2(h)] :** "wages" means all remuneration capable of being expressed in terms of money which would if the terms of be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include:

i. the value of:

a) any house accommodation supply of light, water, medical attendance or

b) any other amenity or any service excluded by general or special order of the appropriate government;

ii. any contribution paid by the employer to any personal fund or provident fund or under any scheme of social insurance;

iii. any traveling allowance or the value of any traveling concession;

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

v. any gratuity payable on discharge;

11. Employee [Sec.2 (i)]: "employee" means any person who is employed for hire or reward to do any work skilled or unskilled manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up cleaned washed altered ornamented finished repaired adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate government; but does not include any member of the Armed Forces of the Union.



CHECK YOUR PROGRESS

Q1. Fill in the blanks with appropriate words:

a. The Minimum Wages Fixing Machinery convention was held at ……. in the year…….. by ILO

b. “adolescent" means a person who has completed his ……of age but has not completed his eighteenth year

c. "child" means a person who has not completed his …….. year of age.

d. "……." means prescribed by rules made under this Act.

e. "wages" means all remuneration capable of being expressed in terms of ……..

10.5 FIXATION AND REVISION OF WAGES (Sec 3 to Sec 5)

The fixation and revision of wages falls under the Sec 3, Sec 4 and sec

5. Sec 3 deals with, the appropriate government fix the minimum wages that is payable to the employees in any scheduled employment. The sec 4 describes on the contents of minimum wages. Sec 5 is about the procedure for fixing and revising the minimum rates of wages.

Minimum number of Employees. The appropriate government can for bear from fixing minimum rate of wages of any scheduled employment in which there are less than 1,000 employees in the organization. But if the appropriate government find after an inquiry that there are more than 1,000 employees in any scheduled employment, it shall fix the minimum rate of wages payable as soon as after the finding.

1. **Fixing of minimum rates of wages (Sec. 3):** Under sec 3, the appropriate Government fix the minimum rate of wages .The appropriate government-
    a. shall fix the minimum rate of wages payable to the employees employed in the employment specified in Part I or part II of the schedule(the schedule is reproduced at the end of the unit) and in an employment to either by notification in official Gazette.
    b. the employees employed in the employment specified in Part II of the schedule, fix the minimum rate of wage for apart of the state or for any specified class, instead of fixing the minimum rate of wages for the whole state.
    c. shall review the minimum rate of wages so fixed and revise the same , at such intervals not exceeding 5 years.

Minimum rates: The Appropriate Government may fix:

a. minimum rate of wages for time work (hereinafter referred to as "a minimum time rate");
b. minimum rate of wages for piece work (hereinafter referred to as "a minimum piece rate");
c. a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time rate");

d. a minimum rate (whether time rate or piece rate) to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employees (hereinafter referred to as "over time rate").

Different minimum rates: The different minimum rates of wages may be fixed for-

a. different scheduled employments;
b. different classes of work in the scheduled employment;
c. adults, adolescents, children and apprentice;

2. Minimum Rate of Wages (Sec 4): The appropriate governments fix or revise minimum rate of wages may consists of-

a. a basic rate of wages and special allowance
b. a basic rate of wages with or with the cost of living allowance
c. an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions

3. Procedure for fixing and revising minimum wages (Sec 5): There are two separate modes of procedure for fixing and revising minimum wages under sec 5. The main object of both the procedures is to enable the government to reach a balanced conclusion with regard to fixation of a minimum wage. The two modes are as follows:

a. Mode one: *Appointment of Committee:* The appropriate government should appoint as many committees or sub-committees as to hold necessary inquires for fixation of minimum rates of wages.

b. Mode two: *Publication of proposals in the official gazette:* The appropriate government shall by notification in the official Gazette, publish its proposals for the information of the person who is likely to be affected by the fixation of minimum rates of wages.

10.6 SAFEGUARDS IN PAYMENTS OF MINIMUM WAGES (Sec 11 to 18)

To safeguards the payments of minimum wages falls under the sec 11 to sec 18. The sections are as follows:

1. **Wages in kind (sec 11):** The minimum wages under the Act shall be paid in cash. But where it has been custom to pay wages wholly or partly in kind, the appropriate Government may, by notification in the official Gazette, authorize the payment of minimum wages either partly or wholly in kind.

   The cash value of wages in kind and of concessions in respect of supplies of any essential commodities at concessional rates shall be estimated in the prescribed manner.

2. **Payment of minimum rate of wages (Sec 12):** In respect of any scheduled employment where minimum wages have been fixed, the employer shall pay each and every employee wages at a rate not less than the minimum rate of wages fixed for that class of employees. The wages shall be paid without any deductions except as prescribed.

3. **Fixing hours for a normal working day, etc (Sec 13):** In respect of any scheduled employment where minimum wages have been fixed, the appropriate government may:
   a. fix the numbers of hour of work which is the normal working day inclusive of one or more intervals;
   b. provide a day of rest in every period of 7 days and for payment of remuneration in respect of such day of rest;
   c. provide for payment for work on a day of rest at a rate not less than the overtime rate.

4. **Rates of overtime (sec 14):** Where employee, whose minimum rate of wages is fixed under this Act, by the hour, by the day or by any longer wage-period as prescribed, works overtime, the employer shall pay him for every hour or for part of an hour so worked in excess, wages at the rates fixed for overtime work

under the Act or under any law of the appropriate Government in force, whichever is higher.



LET US KNOW

The provisions of the minimum Wages Act, 1948 shall not prejudice the operation of the provision of sec .59 of the Factories Act, 1948 in any case where those provisions are applicable. Sec .59 of the Factories Act, 1948 provides that, where a worker works in factory for more than 9 hours in any day or for more than 48 hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

5. **Wages of worker who works for less than the normal working day (Sec 15):** Sometime it may happen that, any employee whose minimum rate of wages has been fixed by the day may work on any day on which he has employed the period less than the required number of hours constituting a normal working day. In that case he is entitled to receive wages for the work done by him on that day if he had worked on a full normal working day except:

   (i) if his failure of work is caused by his unwillingness to work and not by omission of the employer to provide him with work;

   (ii) in such other cases and circumstances as may be prescribed.

6. **Wages for 2 or more classes of work (Sec. 16):** Where an employee does 2 or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

7. **Minimum time rate wages for piece work (Sec. 17):** Where an

employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under the Act, the employer shall pay such employee wages at not less than the minimum time rate.

8. **Maintenance of registers and records (Sec 18):** In an organization who falls under this Act shall maintain registers and records giving the detail information of the employees, the work performed by them, the wages paid to them and such other particulars and in such form as may be prescribed.

10.7 ENFORCEMENT OF THE ACT (Sec 19 TO Sec 20)

The Appropriate Government can appoint by notification in the Official Gazette an inspector (section 19). The inspector within his local limit can

a) enter at all reasonable hours, with such assistant (if any) or any local or other public authority ,as think fit any premises or place of premises where employees are employed or for the purpose of examining any register, record of wages or notices required to be kept;

b) examine any person he find in such premises or depending on any reasonable causes believe is an employee or an employee who given out his work from therein;

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

d) seize or takes copies of the register, record of wages or notices in respect of any offence under the Act.

e) exercise such other powers as may be prescribed.

Within the meaning of section 175 and 176 under Indian Penal Code, any document or information given by the inspector shall be deemed to be legally bound. The inspector shall be deemed to be a public servant within the meaning of Indian Penal Code.

The employee can claims for minimum wages (under section 20):

1. The Appropriate Government may by notification in the Official Gazette, appoint –

   a. any Commissioner for Workmen's Compensation, or

   b. any officer of the Central Government exercising functions as a Labour Commissioner for any region,

   c. any officer of the State Government not below the rank of the Labour Commissioner or, any other officer.

   Such person should have an experience as a judge of a Civil Court or as a stipendiary Magistrate to hear or decide any claims arising out of the payment of less than the minimum rates of wages.

2. Again for any claims of the employees under section 3, the employees himself or any legal practitioner or any official of a registered trade union or inspector can apply to such Authority and the application shall present to them within six month from the date on which the minimum wages became payable.

3. After the necessary enquiry, the Authority shall hear the applicant and the employer and give them opportunity of being heard. If the wages is paid of less than the minimum rates of wages, than the Authority may asked to the employer to pay exceed the actual amount which has to pay in addition with compensation not exceeding ten times the amount of such excess for such act.

   In any other case, if the payment become due than the employee will get together with the payment of such compensation as the Authority may think fit not exceeding ten rupees.

4. If under this section the Authority hearing any claim and found that it was either malicious or vexatious, it may direct penalty not exceeding fifty rupees to the employer by the person presenting the application.

5. Under this section if any amount is directed to be paid than as if it were a fine imposed by the Authority as a Magistrate or if he is not Magistrate than to such person whom the Authority makes application in this behalf as if were a fine imposed by such Magistrate.

6. Every direction is final under this section.

7. Every Authority appointed shall have all powers of a Civil Court under the Code of Civil Procedure, 1908.



CHECK YOUR PROGRESS

Q2. Fill in the blanks:

a. Under Section _____the appropriate government fix the minimum rate of Wages.

b. The two modes of procedure of fixing and reusing minimum wage are _____ and _____ .

c. Wages in kind falls under Section _____ .

d. Section 18 is about maintenancs of _____.

THE SCHEDULE

PART I

1. Employment in any woolen carpet making or shawl weaving establishment.
2. Employment in any rice mill, flour mill or *dal* mill.
3. Employment in any tobacoo (including *bidi* making) manufactory.
4. Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
5. Employment in any oil mill.
6. Employment under any local authority.

7. Employment on the construction or maintenance of roads or in building operations.

8. Employment in stone-breaking or stone-crushing.

Stone-breaking or stone-crushing as a scheduled employment means breaking or crushing of stones as incidental to the mining operation and in mines [*Madhya Pradesh Mineral Industry Assn.* v. *Regional Labour Commr.*, (1960) 1 L.L.J. 563]. Thus in matters of employment in stone-breaking or stone-crushing in relation to a mine, the appropriate Government is the Central Government, whereas in matters of employment in stone-breaking or stone-crushing otherwise than in relation to a mine, the appropriate Government is the State Government [*Bisra Lime Stone Co. Ltd.* v. *Central Labour Inspector*, A.I.R. (1969) Ori. 11].

9. Employment in any lac manufactory.
10. Employment in any mica works.
11. Employment in public motor transport.
12. Employment in tanneries and leather manufactory.
13. Employment in gypsum mines.
14. Employment in barytes mines.
15. Employment in bauxite mines.
16. Employment in manganese mines.
17. Employment in the maintenance of buildings and employment in the construction and maintenance of runways.
18. Employment in china clay mines.
19. Employment in kyanite mines.
20. Employment in copper mines.
21. Employment in clay mines covered under the Mines Act, 1952.
22. Employment in mangnesite mines covered under the Mines Act, 1952.
23. Employment in white clay mines.
24. Employment in stone mines.
25. Employment in steatite (including the mines producing soapstone and talc).
26. Employment in ochre mines.
27. Employment in asbestos mines.
28. Employment in fire clay mines.
29. Employment in chromite mines.
30. Employment in quartizite mines.
31. Employment in quartz mines.
32. Employment in silica mines.
33. Employment in graphite mines.
34. Employment in felspar mines.
35. Employment in laterite mines.
36. Employment in dolomite mines.
37. Employment in redoxide mines.
38. Employment in wolfram mines.
39. Employment in iron ore mines.
40. Employment in granite mines.
41. Employment in rock phosphate mines.
42. Employment in hematite mines.
43. Employment in loading and unloading in —

(*i*) railways, goods sheds,
(*ii*) docks and ports.

44. Employment in marble and calcite mines.

PART II

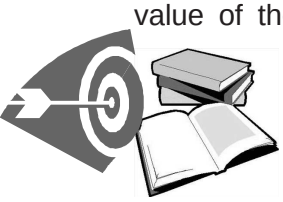
Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultiva- tion, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry, and any practice performed by a farmer or on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations and the preparations for market and delivery to storage or to market or to carriage for transportation to market of farm produce).



10.8 LET US SUM UP

In this unit, we have discussed about Minimum Wages Act, 1948.

The main objective of the Minimum Wages Act 1948, is fixing a minimum rate of wages in number of industries where the labours are not organized and sweated labours are most dominant. The appropriate government after an inquiry if find that there are more than 1,000 employees are working under any scheduled employment, it shall fix the minimum rate of wages payable as soon as after such finding. The fixation and revision of wages falls under the Sec 3, Sec 4 and sec 5. The appropriate governments fix or revise minimum rate of wages which may consists of – i. basic rate of wages and special allowance; ii. basic rate of wages with or with the cost of living allowance; iii. an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions.



10.9 FURTHER READING

1. Pillai R.S.N. and V.Bagavathi (2007);*Business Law*; S Chand & Company, India
2. C B Mamoria (2016);*Dynamics of Industrial Relations*; Himalaya Publishing House, India
3. A.K Sen & J Kumar (2010);*Commercial Law Including Company Law*; The World Press Private Limited

10.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No.1:

a. Geneva, 1928

b. fourteenth year

c. fourteenth

d. "Prescribed"

e. money

Ans to Q. No.2:

a. 3

b. Appointment of Committee and Publication of proposals in official gagette.

c. 11

d. Registers and records



10.11 MODEL QUESTIONS

1. Write short notes on:
   a. Wages
   b. Employer
   c. Employee
2. Who fix the minimum rate of wages under the Minimum Wages Act 1948?
3. State the procedure for fixing and revising minimum wages.
4. What authorities can be appointed to hear and decide the claims and arising under the Minimum Wages Act 1948?

*** ***** ***



REFERENCES

1. A.K Sen & J Kumar (2010);*Commercial Law Including Company Law*; The World Press Private Limited
2. C B Mamoria (2016);*Dynamics of Industrial Relations*; Himalaya Publishing House, India
3. N.D. Kapoor (2011);Handbook of Industrial Law ; Sultan Chand & Sons, India
4. P. L. Malik (2017);P. L. Malik's Industrial Law; Eastern Book Company, India
5. Pillai R.S.N. and V.Bagavathi (2007);*Business Law*; S Chand & Company, India
6. The Indian Factories act , 1948(Bare Act)
7. The Trade Unions Act ,1926; (Bare Act)
8. Workmen's Compensation Act , 1923(Bare Act)