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Industrial Relations and Labour Laws

SEMESTER - VI

COMMERCE

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

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BACHELOR OF COMMERCE

INDUSTRIAL RELATIONS AND LABOUR LAWS

CONTENTS

UNIT 1: Industrial Relations **Page No. : 7 – 16**

Meaning, Objectives and Importance of Industrial Relations; Approaches and Measures to Improve Industrial Relations

UNIT 2: Industrial Disputes **Page No. : 17 – 32**

Concept and Forms of Industrial Disputes: Strike and Types of Strike; Meaning and Differences of Lock-out, Lay-off, Closure and Retrenchment; Industrial Disputes Settlement Machineries

UNIT 3: Industrial Grievances Handling **Page No. : 33 – 42**

Meaning and Features of Industrial Grievances; Differences between Grievances and Disputes; Sources or causes of Industrial Grievances; Procedure of Grievance Handling in small-scale and large-scale organizations.

UNIT 4: Collective Bargaining **Page No. : 43 – 57**

Concept of Collective Bargaining forms and tactics; Characteristics, Importance and Approaches to Collective Bargaining

UNIT 5: Workers' Participation in Management **Page No. : 58 – 70**

Meaning of workers' participation in management; Need for workers' participation in management; Workers' participation in management in Indian scenario

UNIT 6: Industrial Health **Page No. : 71 – 93**

Meaning and objectives of industrial health; Occupational Hazards Causes and Occupational Diseases; Effects of Occupational Diseases or Accident Cost; Role of Occupational Health Services (OHS); Statutory Provisions for Industrial Health in India; Legislations Governing Occupational Health and Safety in India

UNIT 7: The Trade Unions Act, 1926 **Page No. : 95 – 109**

Objectives of the Trade Unions Act; Important Definitions under the Act; Registration of Trade Union; Rights and Liabilities of Registered Trade Union; Penalties Under the Act

UNIT 8: The Industrial Disputes Act, 1947 **Page No. : 110 – 130**

Objectives and scope the Industrial Disputes Act, 1947; Important definitions under the Act, Illegal Strikes and Lock-outs, Unfair Labour Practices

UNIT 9: The Payment of Wages Act, 1936 **Page No. : 131 – 137**

Meaning and Definition of 'Wage'; Various Provisions of the Payment of Wages Act, 1936

UNIT 10: The Factories Act, 1948 **Page No. : 138 – 167**

Meaning and Important Definitions under the Act; Statutory Agencies and their Powers for Enforcement of the Act; Health, Safety and Welfare Provisions and Hazardous work; Employment of Young Person; Penalties and Provisions

UNIT 11: Workmen's Compensation Act, 1923 **Page No. : 168 – 182**

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

UNIT 12: The Payment of Bonus Act, 1965 **Page No. : 183 – 194**

Meaning, Objectives of Application of the Act; Act Not to Apply to Certain Classes of Employees; Important Definitions under the Act; Calculation of Amount Payable as Bonus; Eligibility for Bonus and its Payment; Penalties and Offences by the Companies

UNIT 13: Industrial Employment (Standing Orders) Act, 1936 **Page No. : 195 – 201**

Meaning, Object and Application of the Act; Various Provisions of the Act

UNIT 14: The Minimum Wage Act, 1948 **Page No. : 202 – 214**

Meaning, Object and Scope of the Act; Definitions under the Act; Fixation and Revision of Wages (Sec 3 to 5); Safeguards in Payment of Minimum Wages (Sec 11 to 18); Enforcement of the Act (Sec 19 to 20)

UNIT 15: International Labour Organisation **Page No. : 215 – 227**

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

COURSE INTRODUCTION

It is a well recognised fact that for smooth functioning of an industry there must be proper utilisation of human resource. Effective utilization of human resource ensures efficient utilization of non- human resources. All these depend on the relations between the employers and employees, smooth relations between them ensure uninterrupted production in industries.

As a human resource manager, you will be responsible for maintaining good relations in the industry. That is why the course *'Industrial Relations and Labour Laws'* have been included in B.Com. programme as a management specialisation course. This course will help you in understanding the basic requirements for sound industrial relations and the causes of disputes that may arise in an industry. This course will help you in understanding the meaning of strikes, lockouts, layoffs, retrenchment etc. Moreover, it will introduce you with workers' participation in management, which is an emerging concept in industrial establishments.

The first unit discusses the basic concept of industrial relations,, factors affecting industrial relations, approaches to industrial relations. The second unit will cover the concept of industrial disputes, its causes etc. The employee grievances, collective bargaining, workers' participation in management, industrial health etc. will be covered in unit 3, 4,5 and 6. This course will also cover the various Acts related to workers like Factories Act, Industrial Disputes Act, Trade Union Act etc.

While going through a unit, you will notice some along-side boxes, which have been included to help you know some of the difficult, unseen terms. Again, we have included some relevant concepts in ''LET US KNOW'' along with the text. And, at the end of each section, you will get "CHECK YOUR PROGRESS" questions. These have been designed to self-check your progress of study. It will be better if you solve the problems put in these boxes immediately after you go through the sections of the units and then match your answers with "ANSWERS TO CHECK YOUR PPROGRESS" given at the end of each unit.

UNIT 1 : INDUSTRIAL RELATIONS

UNIT STRUCTURE

1.1 Learning Objectives

1.2 Introduction

1.3 Meaning of Industrial Relations

1.4 Importance of Industrial Relations

1.5 Objectives of Industrial Relations

1.6 Approaches to Industrial Relations

1.7 Measures to Improve Industrial Relations

1.8 Let Us Sum Up

1.9 Further Reading

1.10 Answers To Check Your Progress

1.11 Model Questions

1.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the concept and meaning of industrial relations
- discuss the importance and objectives of industrial relations
- explain the approaches to industrial relations
- describe the causes of poor industrial relations and the measures to improve them.

1.2 INTRODUCTION

In this unit we are going to discuss the concept of industrial relations. By industrial relations, we mean the relationship between the employers and the employees. We will discuss about the meaning of industrial relations more in the following section.

Again we will come to know about importance of industrial relations and the approaches to industrial relations

At the end of this unit we will discuss the reasons for poor industrial relations and the measures to improve them.



Employers :
A person or firm that employs workers.

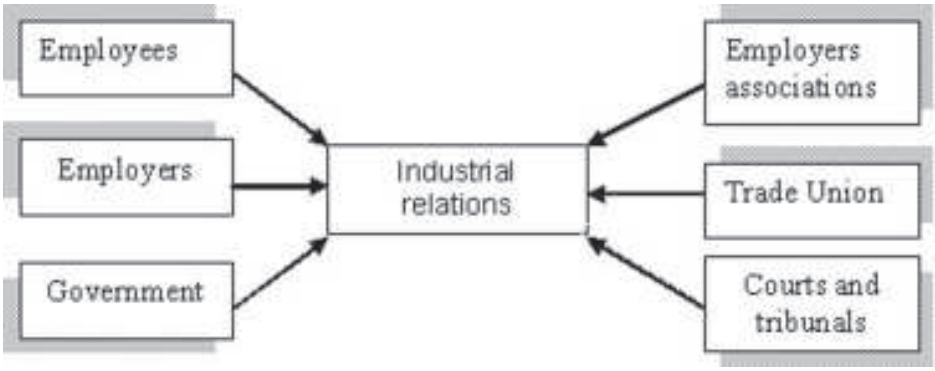
Employees :
A worker who is hired to perform a job.

1.3 MEANING OF INDUSTRIAL RELATIONS

The relationship between the employer and employees or trade union is known as Industrial relations. A good industrial relation is necessary for better environment in the organization and for better production and performance.

The term 'Industrial Relations' comprises of two terms: 'Industry' and 'Relations'. "Industry" refers to "any productive activity in which an individual (or a group of individuals) is (are) engaged". By "relations" we mean "the relationships that exist within the industry between the employer and his employees."

There are six main parties who are actively associated with any industrial relation system. They are the employees, employers, employer's association, government, the trade union, courts and tribunals.



Industrial relation is used to refer all the relationship between the parties in an organization or in an industry i.e. relationship between employers and employees, management and employees, trade union and management, employees and unions, employees and employees. Industrial relation is also known as labour relation or employee relations.

The concept of labour management relation is different from the concept of industrial relations. While the former refers to absence of government as a party in negotiation, the later pre supposes the existence of government representation in any negotiation.

The following are some of the definitions of industrial relations.

According to Allan Flanders, "The subject of industrial relations deals

with certain regulated or institutionalized relationships in industry. Personal or in the language of sociology, 'unstructured' relationships have their importance for management and workers, but they lie outside the scope of a system."

According to Dale Yoder, "The industrial relation has been described as relationship between management and employees or among employees and their organization that characterizes and grows out of employment."

Tead and Metcalfe observed that "Industrial relations are the composite result of the attitudes and approaches of employers and employees towards each other with regard to planning, supervision, direction and coordination of the activities of an organization with a minimum of human efforts and frictions with an animating spirit of cooperation and with proper regard for the genuine well-being of all members of the organization"

1.4 IMPORTANCE OF INDUSTRIAL RELATIONS

For a good environment in an organisation it is necessary to have healthy industrial relations. Following are the importance of industrial relations:

1. **Maintain industrial disputes:** Industrial relation reduces the industrial disputes among the various parties. When an organisation maintains a good and healthy relationship among the employees, employers and trade unions and if there is no strikes, lockouts, grievances etc in an organisation then we can say that the organisation has good industrial relations.
2. **Higher Production:** Industrial relation helps in improving production. When all the workers are employed and not sitting idle for strikes and lockouts then it definitely lead to higher production.
3. **New Programmes:** In the atmosphere of peace the organisation come with new programmes like training programmes, labour welfare programmes etc. And as a result efficiency of the workers increases and at the end there is higher production at lower cost.
4. **Reduces Wastages:** As discussed above, when there is good industrial relation, the production is high. The wastage of man, materials

and machines are reduced.

5. **High morale:** If in an organisation, there is good industrial relations then it improves the morale of the employees. Employees work with great eagerness with the feeling in mind that the aim of employer and employees is one and the same, i.e. to increase production.

1.5 OBJECTIVES OF INDUSTRIAL RELATIONS

The following are some of the objectives of industrial relation system:

- To safeguard the interest of labor and management
- To avoid industrial conflict, strike and develop good relations among the employees and the employers.
- To raise productivity to a higher level by decreasing the turnover ratio of the employees.
- To minimize the number of strikes and lockouts by providing reasonable wages.
- To improve living and working conditions and providing fringe benefits.



CHECK YOUR PROGRESS

Q 1: Fill in the blanks with appropriate words:

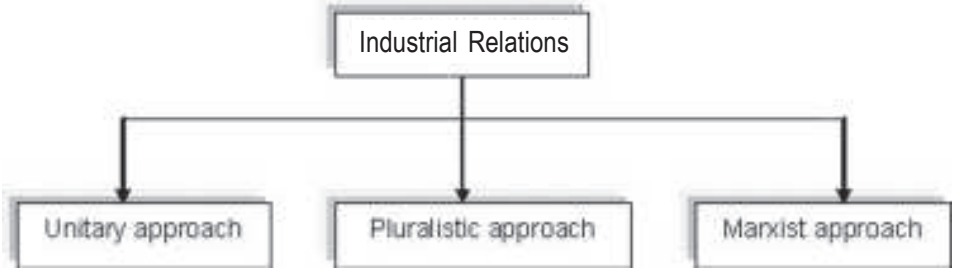
(i) The six main parties who are associated with industrial relation system are ....., employers, employee's association, ..., ... and .....

(ii) Industrial relation is also known as ..... or .....

(iii) ..... reduces the industrial disputes among various parties.

1.6 APPROACHES TO INDUSTRIAL RELATIONS

The three popular approaches to industrial relation are unitary approach, pluralistic approach and Marxist approach. The details of the approaches are discussed as follows:



a. **Unitary approach:** In unitary approach, the organization is taken as an integrated and harmonious system. A core assumption of unitary approach is that management and workers, and all members of the organization share the same objectives, interests and purposes; thus working together, hand-in-hand, towards the shared mutual goals. In this approach the union co-operates with the management and works for a common goal. The assumption of this approach is that everyone benefits when the focus is on a common interest.

b. **Pluralistic approach:** Pluralistic approach is opposite to unitary approach. In pluralism approach, the organization is divided in sub-groups - management and trade unions. In this approach, the conflict between the managers and the workers over the distribution of profits is unavoidable. Union plays an important role in this approach. Employees join union to protect their interest and influence the decision making by the management. Trade unions are viewed as legitimate representatives of employees. Conflict is dealt by collective bargaining and industrial tribunals, conciliation and arbitration.

c. **Marxist Approach:** According to Marxist approach, the conflict in an organisation arises not because of the employees and the employer. The conflict takes place due to the division in the society between the capital (i.e. with those who own resources) and labor (i.e. who has only labour to offer). Conflict is therefore seen as inevitable and trade unions are a natural response of workers to their exploitation by capital.

When there are some disputes or conflict among the employees and the employers in an organisation, then we can say that there is poor industrial relation. By poor industrial relation we mean industrial disputes. We will discuss about the concept of industrial dispute in the next unit i.e. in unit 11.

So in this section we are going to discuss on the causes of industrial disputes.

Causes of Poor Industrial Relations :

1. Wage and Allowances
2. Unsatisfactory Working Conditions
3. Syspension, Dismissal and Retrenchment
4. Non-recognition of Trade Union
5. Modernisation and Automation
6. Defective Recruitment Policies
7. Victimisation of Labour
8. Political Causes
9. Defective Leadership
10. Weak Trade Unions

The foregoing discussion of the causes of industrial disputes in India makes it clear that the problem of labour unrest is quite complex. The worker is a human being and as a human being he/she feels discontented and frustrated if his day to day needs are not met properly. If the workers are given adequate wages, there is improvement of working conditions. If brokers and political agents are eliminated the chances of conflict and tensions among workers and employers will be greatly minimised.

1.7 MEASURES TO IMPROVE INDUSTRIAL RELATIONS

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

1. **Strong, Stable and Right kind of Union:** Right kind of union in each industrial enterprise is essential for good industrial relation. If there is weak union then the management will take advantage of the workers. The agreement with weak union will hardly be honoured by a large section of workforce. Therefore, there must be strong and stable and right type of unions in every enterprise to represent the majority of workers and negotiate with the management about the terms and conditions of service.

2. **Mutual Trust:** There should be an atmosphere of mutual cooperation, confidence and respect between the management and workers. Management should adopt a progressive outlook and should recognize the rights of workers. Similarly, labour unions should motivate their members to work for the common objectives of the organization.
3. **Workers' Participation in Management:** The workers should be given the participation in the decision making at all the levels. And this can be done by making effective use of works committees, joint consultation and other methods. This will improve communication between managers and workers, increase productivity and lead to greater effectiveness.
4. **Mutual Adjustments:** In any organization, there must be mutual adjustments or understanding rather than conflict or disputes. The approach must be of mutual "give and take" rather than "take or leave." The management should be willing to co-operate rather than exploit the workers.
5. **Sound Personnel Policies:** The following points should be noted regarding the personnel policies. The policies should be:
   - The personnel manager should confirm that the workers understand and agree the policies made by the management.
   - The policy must be clear.
   - Implementation of the policies should be uniform throughout the organization to ensure fair treatment to each worker.
6. **Government's Role:** The Government should play an important role for promoting industrial peace. It should make law for the compulsory recognition of a representative union in each industrial unit. It should interfere to settle disputes if the management and the workers are unable to settle their disputes internally.



CHECK YOUR PROGRESS

Q 2: What are the three popular approaches to industrial relations?

.....

.....

.....

Q 3: State any three measures to improve industrial relations.

.....

.....

.....



1.8 LET US SUM UP

In this unit, we have discussed the following concepts of industrial relations:

- The relationship between the employer and employees or trade union is known as Industrial relations.
- Following are the importance of industrial relations:
  - Maintain industrial peace
  - Higher Production
  - New Programmes
  - Reduces Wastages
- The main causes of industrial disputes are
  - Wages and Allowances
  - Unsatisfactory Working Conditions
  - Suspension, Dismissal and Retrenchment
  - Non-recognition of Trade Union
  - Modernisation and Automation
  - Defective Recruitment Policies
  - Victimisation of Labour

- Political Causes
- Defective Leadership
- Weak Trade Unions

- The following measures should be taken to achieve good industrial relations
  - Strong, Stable and Right kind of Union
  - Mutual Trust
  - Workers' Participation in Management
  - Mutual Adjustments
  - Sound Personnel Policies
  - Government's Role



1.9 FURTHER READING

1) Personal Management by C.B. Mamoria.
2) Human Resource Management by P.G. Aquinas.
3) Human Resource Development & Management by B. Ghose.



1.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: (i) Employees, government, trade union and courts and tribunals,

(ii) Labour relations or employee relations,

(iii) Industrial relations

Ans to Q No 2: Unitary approach, Pluralistic approach and Marxist approach.

Ans to Q No 3: (i) Mutual trust

(ii) Workers' Participation in Management.

(iii) Mutual adjustments.

1.11 MODEL QUESTIONS

Q 1: What is industrial relations? Discuss the importance of industrial relations.

Q 2: State the objectives of industrial relations.

Q 3: Explain the approaches to industrial relations.

Q 4: Explain the causes of poor industrial relations.

Q 5: State the measures to improve industrial relations.

*** ***** ***

UNIT 2 : INDUSTRIAL DISPUTES

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Concept and Forms of Industrial Disputes

2.4 Meaning of Strike and Types of Strike

2.5 Meaning of Lock-out, Lay-off, Closure and Retrenchment

2.6 Differences among Strike, Lay-off and Lock-out

2.7 Industrial Disputes Settlement Machineries

2.8 Let Us Sum Up

2.9 Further Reading

2.10 Answers To Check Your Progress

2.11 Model Questions

2.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- describe the concept and forms of industrial disputes
- discuss the meaning of strike and types of strike
- explain the meaning of layoff, lockout, closure and retrenchment
- explain the difference between strike, layoff and lockout
- discuss the industrial disputes settlement machineries.

2.2 INTRODUCTION

In this unit we are going to concept and forms of industrial disputes. Through this unit, you will be able to know meaning and the difference between strike, layoff and lockout. You can also know about closure and retrenchment. The unit also discussed about the industrial disputes settlement machineries. Thus, you will able to understand through this unit, the concept of industrial dispute; meaning and difference of strike, layoff and lockout and details about settlement machineries.

2.3 CONCEPT AND FORMS OF INDUSTRIAL DISPUTES

The term 'industry' is defined under Section 2 (j) of the Industrial Disputes Act, 1982 means any business , trade, undertaking , manufacturing or calling of employers and includes any calling , service, employment, handicraft or industrial occupation or avocation of workmen.

The definition is divided into two parts as substantive and inclusive part. The substantive part i.e. first part of the definition means any business, trade, undertaking, manufacturing or calling of employers and the inclusive part i.e. the last part of the definition means any calling , service, employment, handicraft or industrial occupation or avocation of workmen.

The definition of the first part includes five activities which can be explained as follows:

Business: It means undertaking of an occupation having profit motive.

Trade: It means exchange of goods for goods or for money.

Undertaking: It means any business or any work or project which one engages in or attempts as an analogous to business or trade.

Manufacturing: It means production of articles or materials by using physical power or mechanical power on a large scale.

Calling: It means one's usual occupation, avocation, business or trade (term used in case of employer).

Again the second part includes the terms calling, service, employment, handicraft or industrial occupation or avocation which can be explained as follows:

The word calling is used in both the parts. But in second part, it is used for workmen.

Service: It is an intangible activity.

Employment: It means bringing the contract of service between the employer and employee.

Handicraft: Any manual labour exercised by way of trade or for the purpose of gain in or incidental to the making of any article or a part of any article.

Avocation: It means the way in which a man passes his life or spends his time.

Industrial occupation: It means what does amount to avocation may amount to an occupation.

Thus from the above definition, we can derive whether municipalities universities, clubs etc are 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. *Universities:* As regards institutions 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'.
3. *Clubs:* Without destroying the non-employee character of the definition of 'industry', and hire a minimal matters marginal employees, clubs can be said as industry.

But the second part cannot alone define industry. The first part refers the employers and the second part denotes workmen. Besides to form industrial disputes the industry has to involve with workers and it has to denote employer and employee relationships. There must be any dissatisfaction arise in between the workmen and workmen or employer and workmen or employer and employer.

The definition of 'industry' is substituted under Section 2 (j) of the Industrial Disputes (Amendment) Act, 1982 as 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 (9 of 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 (69 of 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 relatable 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 of 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.

Thus an industry is concerned with the production, supply or distribution of goods or services. These activities are performed to satisfy human wants and it is the result of coordinated effort of employer and the workmen.

"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 analyzed as:

a. *Existence of a disputes or difference:* An industrial dispute exists only when the dispute has been raised by the workmen with the employer.

b. Parties to the disputes: Industrial dispute must affect a large group of workmen and employers ranged on opposite sides. 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.

c. Subject matter of dispute: The disputes should relate to the employment, non-employment, or conditions of work of the workmen.

d. Dispute in an 'industry': The dispute must relate to an industry. No industrial dispute can exist without an industry.



CHECK YOUR PROGRESS

Q 1: State true or false:

i) The definition of 'industry' is substituted under Section 2 (o) of the Industrial Disputes (Amendment) Act, 1982. (True / False)

ii) Employment means bringing the contract of service between the employer and employee. (True / False)

iii) Trade means exchange of goods for goods or for money. (True /False)

iv) Industrial dispute can exist without an industry. (True / False)

2.4 MEANING OF STRIKE AND TYPES OF STRIKE

Sometimes to show the dissatisfaction of the employees or the employers, they stop in doing the work which is detrimental to the production of the organization. It may be in the form of strike or lock out etc.

Let us we first discuss about 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.

The duration of the cessation of work by the workmen is not material. If the employee ceases their work even only for an hour or a part, thereof would be called a strike. Thus, the strike means stoppage of work collectively by a number of workmen as a weapon to force the employer to agree to their demand. The strike may be of various types as go slow, sit down, stay in, sympathetic strike, hunger strike etc.

TYPES OF STRIKE :

i) Go Slow: Go slow is a serious misconduct damaging the breach of contract of employment. The workers pretended of doing their work. But they knowingly delaying their work which reduces the out put.

ii) Stay-in, Sit-down: In all such cases, the worker not only refuses to do work but also refuses to leave the premises. All such acts on the

part of the workmen acting in combination, amount to a strike. Thus refusal under common understanding not to work is a strike.

iii) Sympathetic strike: In sympathetic strike, the workmen ceases of their work on demands of workmen of other employer.

iv) Hunger strike: In hunger strike, the workmen may resort to fast on or near the place of work of the employer abstain from doing their work.



CHECK YOUR PROGRESS

Q 2: Match the following:

i)	The workers pretended of doing their work.	a. Sympathetic strike
ii)	The worker not only refuses to do work but also refuses to leave the premises.	b. Sit-down
iii)	The workmen ceases of their work on demands of workmen of other employer.	c. Go slow

……..

……..

……..

2.5 MEANING OF LOCK-OUT, LAY-OFF, CLOSURE AND RETRENCHMENT

Let us discuss the four terms like lock-out, lay-off, closure and retrenchment which we often come across in industrial disputes besides strike.

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.

Thus the 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.

Thus, lock out involves temporarily closing down of industrial establishment with an intention to re-employ the workers on accepting the demand of the employer. It is an imposition of certain conditions on the workers by the employer. It is the reverse state of strike.

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 muster 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 .

In case of lay-off, the name of the workmen should be in the muster roll of the industrial establishment. Besides this, the workmen should presents himself for work at the establishment at the time appointed for appointment which is a normal working hours on any day . Again if the employer ask the workmen to present him in 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, he shall not be deemed to have been laid-off and shall be entitled to full basic wages and dearness allowance for that part of the day.

Closure:

"Closure" means the closing down of an undertaking of an industrial establishment by the employers taking prior permission from the appropriate government for some genuine purpose. There is certain procedure for such closure of an undertaking of an industrial establishment. The employer has

to take prior permission before at least ninety days from the date on which such closure will start. This should be informed to the representative of workmen. The appropriate government gives the opportunity to the workmen as well as employer to speak on the genuineness of the purpose of such closure. The appropriate government inquiry the reasons and having regards of the genuineness and adequacy stated by the employer; refuse or grant the permission of such closure. Such order is final and binding to all parties and remains valid for one year. This permission of closure may be reviewed by the appropriate government on their own motion or on application of the employer and the appropriate government may refer the matter to the tribunal for adjudication. But if the permission of granting of closure is refused than the closure of the undertaking become illegal. Again if the permission for such closure is granted, than the workmen will get compensation.

***Retrenchment* :**

"*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

(c) 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

(d) termination of the service of a workman on the ground of continued ill-health.

Thus the following 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.

The workmen of an industrial establishment may be retrenched by the employer only when the workmen is given at least three month notice, in writing, in proper manner, taking permission from the appropriate government. The appropriate government or specified authority after doing the proper enquiry of the reasons of retrenchment, give opportunity of being heard to both the employer and the workmen. The appropriate government or specified authority may communicate an order of giving permission or refuse of such retrenchment which is binding to all the parties. This permission of retrenchment may be reviewed by the appropriate government on their own motion or on application of the employer or any workmen and the appropriate government may refer the matter to the tribunal for adjudication. But if the permission of granting of retrenchment is refused than the retrenchment of such workmen become illegal from the date of such order. Again if the permission for such retrenchment is granted, than the workmen will retrench from the date of such order.

2.6 DIFFERENCES AMONG STRIKE, LAY-OFF AND LOCK-OUT

The concept of strike, lay-off and lock-out are essentially different from each other. The points of distinction between them are broadly stated as follows:

STRIKE	LAY-OFF	LOCK-OUT
Strike is a cessation of work or refusal to work by the workmen acting in combination.	Lay-off generally occurs in continuous business.	Lock-out is closure of business for the time-being.
Here, the workmen acting in	Here, the employer is unable to give	Here, the employer deliberately closes

combination ceases from doing the work.	employment to one or more workmen.	the business and locks out the whole body of workmen from doing there work.
Strike is the cessation of work or refusal to work by the workmen in demanding to accept some purposes by the employer.	Lay-off is the result of unable to give employment for the following reasons like 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.	Lock-out is used by the employer as a weapon of collective bargaining and also ordinarily involves an element of malice or ill-will.
In case of strike compensation is not paid.	Compensation is paid in case of lay-off by the employer.	It is not applicable in case of lock-out.
Strike is due to an industrial dispute.	Lay-off is the trade reasons beyond the control of the employer and it is not concerned with a dispute with the workmen.	Lock-out is due to an industrial dispute.



CHECK YOUR PROGRESS

Q 3: Mention three differences between lock- out and lay-off.

i) ……

ii) ……

iii) ……

2.7 INDUSTRIAL DISPUTES SETTLEMENT MACHINERIES

There are certain industrial settlement machineries which deal in settling down the disputes. These are mainly—

(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:

It is a committee consisting of representatives of employers and workmen to solve the problems arising in the day-to-day working of a concern and to secure industrial harmony. 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 ascertains the grievances of the employees and work to arrive at some agreement.

CONCILIATION OFFICER:

The appropriate government may by notification in the Official Gazette, appoint such number of conciliation officer as it thinks fit to create congenial atmosphere within the industry and reconcile the disputes of the workers and the employers, 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. 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 has the power to enter the premises as well as can call for and inspect documents.

BOARD OF CONCILIATION:

The appropriate government may by notification in the Official Gazette, constitute a Board of Conciliation for the settlement of industrial disputes. 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 and has to send a report and memorandum of settlement to appropriate Government. The report of the Board shall be in writing and shall be signed by all the members of the Board.

COURT OF INQUIRY:

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. It has the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908. The court of inquiry can enforce the attendance of any person and examining him on oath, compel the production of documents and material objects, issue commissions for the examination of witnesses etc.

LABOUR COURT:

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 as a presiding officer. The main function of the labour court is to hold its proceedings expeditiously and submit its award as the proceeding concludes.

LABOUR TRIBUNALS:

The appropriate government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for adjudication of industrial disputes. It is 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 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:



Award :
The decision given by any authority.

The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes. It 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.

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 such matters specifies such time limit to submit the award.

REFERENCE OF DISPUTES

Conciliation Officer	Court of Inquiry	Labour Court	Labour Tribunals	National Tribunal
The Conciliation Board is to promote settlement and not to adjudicate.	If the purpose is investigatory instead of conciliatory or adjudicatory, it should be referred to Court of Inquiry.	The matter is related to the Second Schedule or Third Schedule; it is referred to the Labour court.	The duties of Industrial Tribunal are identical with the duties of Labour Court.	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.



2.8 LET US SUM UP

In this unit we have discussed the following points :

- Industry means any business, trade, undertaking, manufacturing or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.
- The definition of industry is amended under Section 2 (j) of the Industrial Disputes (Amendment) Act, 1982.
- Industrial occupation means what does amount to avocation may amount to an occupation.
- 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.
- Closure means the closing down of an undertaking of an industrial establishment by the employers taking prior permission from the appropriate government for some genuine purpose.
- Lay-off is the result of unable to give employment for the following reasons like
  - 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.



2.9 FURTHER READING

1) The Industrial Disputes Act, 1982; (Bare Act).
2) Industrial Law, by P. L. Malik.
3) Handbook of Industrial Law, by N. D. Kapoor.



2.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: i) False ii) True iii) True iv) False

Ans to Q No 2: i) – c.

ii) – b.

iii) – a.

Ans to Q No 3: Three differences between lock-out and lay-off are—

i) Lay-off generally occurs in continuous business. But Lock-out is closure of business for the time-being.

ii) Compensation is paid in case of lay-off by the employer. But, it is not applicable in case of lock-out.

iii) Lay-off is the trade reasons beyond the control of the employer and it is not concerned with a dispute with the workmen. But, lock-out is due to an industrial dispute.

2.11 MODEL QUESTIONS

Q 1: Write short notes on:

a. Lay-off

b. Closure

c. Industry

d. Industrial Disputes

Q 2: Distinguish between—

a. Lay-off and Lock-out

b. Closure and Strike

c. Lock-out and Lay-off

Q 3: State the different industrial settlement machineries that help in settling the industrial disputes.

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UNIT 3 : INDUSTRIAL GRIEVANCES HANDLING

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Meaning and Features of Industrial Grievances

3.4 Differences between Grievances and Disputes

3.5 Sources or causes of Industrial Grievances

3.6 Procedure of Grievance Handling in small-scale and large-scale organizations.

3.7 Let Us Sum Up

3.8 Further Reading

3.9 Answers To Check Your Progress

3.10 Model Questions

3.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- describe the meaning of Industrial Grievances
- distinguish between Grievances and Disputes
- explain the sources/ causes of Industrial Grievances
- explain the procedures of Grievances Handling in small-scale and large-scale organizations.

3.2 INTRODUCTION

In this unit, we are going to discuss the grievances or complaints that the employees have in a company or an industrial concern. Here, you will be able to know the meaning, features and causes of grievances. This unit also states the differences between grievances and disputes. The unit discusses the procedures of grievance handling in small-scale and large-scale organizations as well. Thus, you will be able to understand about the sources of grievances and how to redress the grievances in a formal and effective manner.

3.3 MEANING AND FEATURES OF INDUSTRIAL GRIEVANCES

Grievance is a feeling of dissatisfaction and distress among the workers. A dissatisfaction, which is orally made known by one employee to another, is known as a complaint. A complaint becomes a grievance when this dissatisfaction which is mostly related to work, is brought to the notice of the management.

Grievances generally give rise to unhappiness, frustration, discontent, indifference to work, poor morale and they ultimately lead to the inefficiency of workers and low productivity.

According to the definition of International Labour Organization, "A grievance is a complain of one or more workers in respect of wages, allowances, conditions of work and interpretation of service stipulations, covering such areas as overtime, leave, transfer, promotion, seniority, work assignment and discharges constitute grievances."

Important features of grievances can be traced from the above are—

1. Grievance means dissatisfaction or discontent or a feeling of injustice with any aspect of the organization.
2. A grievance arises only when an employee feels that injustice has been done to him/her.
3. The dissatisfaction must arise out of employment and not from personal or family problems.
4. The dissatisfaction may be expressed verbally or in writing. Initially the employee complains orally or in writing. If this is not taken care of at the right time, the discontent grows and take the shape of a grievance.
5. Grievances are feeling, sometimes real, sometimes imagined, which an employee may have in regard to his/her employment situation.
6. Grievances generally give rise to—
    a. Unhappiness
    b. Frustration
    c. Discontent
    d. Indifference to work

e. Poor morale

f. Inefficiency of worker

g. Low productivity

h. Absenteeism



CHECK YOUR PROGRESS

Q 1: Write down the meaning of industrial grievance. Why it should be taken care of by the management?

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Q 2: Mention two important features of grievance.

i) .....

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ii) .....

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3.4 DIFFERENCES BETWEEN GRIEVANCES AND DISPUTES

The Industrial Disputes Act, 1947 defines an industrial dispute as "any dispute or difference between employers and employers or between employees and employees or between employers and employees, which is connected with the employment or with the conditions of work of any person."

On the other hand, Keith Davis has defined grievance as "any real or imagined feeling of personnel injustice which an employee has concerning his employment relationship."

However, the following are the differences between Grievances and Disputes.

GRIEVANCES	DISPUTES
1. Grievance is a feeling of dissatisfaction or a feeling of injustice by the employees.	1. Dissatisfaction which leads to collective violent actions by employees viz. *bandhs*, strikes etc. known as disputes.
2. Grievances are less visible.	2. Disputes are more visible.
3. Grievances are natural to arise in an organization where large number of workers are employed.	3. Grievances, if not taken care of at early stage, give rise to disputes. Disputes are not necessarily natural.
4. Partial stoppage of work or production.	4. Complete stoppage of work or production.
5. Grievances, if not redressed in time tend to lower morale and productivity of employees.	5. Disputes, if not settled in time may lead to even shut down of the company plant.



CHECK YOUR PROGRESS

Q 3: Mention two differences between grievances and disputes.

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3.5 SOURCES OR CAUSES OF INDUSTRIAL GRIEVANCES

There are various economic, psychological and other reasons of industrial grievances. Some of them are as under:

(i) Employment Conditions: Workers may have complaints about wages (underpaid or mistakes in calculating the wages of a worker). Workers may also have complaints about unsafe and unpleasant

working conditions. Inadequate labour welfare activities are also a reason for worker's grievance.

(ii) ***Collective Bargaining:*** Sometimes the company attempts to undermine the trade union and the workers who belong to that union, the contract with labour has been violated, the company does not deal effectively or expeditiously with union, becomes the cause of grievance. At any case, if the management disregards the agreements already made with the workers/ trade unions, it leads to grievances.

(iii) ***Social Injustice:*** Social injustice may be the cause of grievances. Management sometimes fails to provide the facilities to the entire unit equally. Those workers of the units feel neglected and grievances arise.

(iv) ***Biasness to rules:*** Rules and regulations if followed in a biased manner may also become the cause of grievance amongst employees.

(v) **Difference of opinion:** Grievances occur when both management and workers stick to their own views, which are contradictory in nature.

(vi) ***Other reasons:*** Reasons like attitude of the workers, mind set etc. may also be the cause of grievance. A worker with a negative attitude always has fear and confusion in mind that gets reflected in the workplace which create grievances.



CHECK YOUR PROGRESS

Q 4: Mention three sources of grievances in an industrial concern.

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3.6 PROCEDURE OF GRIEVANCE HANDLING IN SMALL-SCALE AND LARGE- SCALE ORGANIZATIONS

The grievance redressal procedure is a device by which grievances are settled, for the satisfaction of the trade union or employees and the

management. This procedure is an important part of labour relations. It is essential, whether a plant is an organized one or not. The grievance machinery enables management to detect any defects or flaws in the working conditions or in labour relations, and undertake suitable corrective measures.

Every management must have a procedure for redressing the grievances. There is no legislative provision for a well-defined and adequate grievance procedure. The management may adopt the following grievance procedure:

STEP 1: The aggrieved employee verbally explains his grievance to his immediate supervisor or in a conference or a discussion specifically arranged for the purpose. The grievance can be settled through the supervisor who has been properly trained for this purpose, and he adheres strictly to a basic problem solving method.

STEP 2: The second step begins when the supervisor does not settle the grievance. In this case, it is sent to a higher-level manager with a note in which the time, place and nature of the action to which the employee objects are mentioned. The higher level manager is generally the chief business manager, a superintendent or an Industrial Relations Officer who goes into the grievance and gives his decision on the matter.

STEP 3: The grievance, if not solved by the supervisor and the higher-level manager, is to be submitted to the Grievance Committee. This committee, which is composed of some fellow employees, the shop steward or a combination of union and management representatives, considers the record and may suggest a possible solution.

STEP 4: If the aggrieved employee does not accept the decision or suggestion of the Grievance Committee, he may approach the management or the corporate executive.

STEP 5: The final step is taken when the employee as well as the management refers the grievance to an arbitrator who is acceptable. They may agree beforehand that the arbitrator's award will be final and binding on both the parties.

Redressal of the grievances is a must to maintain good labour management relations and industrial peace. Therefore, the management

should ensure that the grievances should be received and settled promptly, so that the workers get necessary sense of satisfaction. However, the following steps must be taken in handling the grievances.

1. The nature of the grievance must be defined clearly.
2. After the real issue is located, all relevant facts should be gathered out of the origin of the issue.
3. On getting a real picture of the grievance, the management should make a list of alternate solutions.
4. Before announcing the decision, management should gather additional information to bring out best possible solutions.
5. The final decision should then be conveyed to the employees in clear terms.
6. Follow up action should be the last step to ascertain whether the grievance has been handled satisfactorily or not.



ACTIVITY 1

A. Visit an industrial organization in your place and collect information about their grievance handling procedures.



CHECK YOUR PROGRESS

Q 5: Identify the steps in grievance handling procedure.

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3.7 LET US SUM UP

In this unit we have discussed the following points :

- Grievance is a feeling of dissatisfaction or distress among the workers, which give rise to unhappiness, frustration, discontent, indifference to work and poor morale.
- Though grievances are less visible, if not taken early will give rise to dispute.
- Disputes lead to complete stoppage of work/ production, which may eventually lead to shut down of the company.
- Unpleasant working conditions, social injustice, biasness to rules and difference of opinion are some of the prime causes of grievances.
- Redressal of the grievances is a must to maintain good labour management relations and industrial peace.
- The management should ensure that the grievances should be received and settled promptly for general satisfaction of the workers.



3.8 FURTHER READING

1) Personnel Management by C.B. Mamoria ; Himalayan Publishing House.
2) Human Resource Management by Shashi K. Gupta; Kalyani Publishers.
3) Human Resource Management by Gary Desslers; Pearson Education Asia.



3.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Grievance is a feeling of dissatisfaction or distress among the workers. When an oral compliant related to work is brought to the notice of the management, it becomes a grievance.

If the grievances are not taken care of at proper time it may lead to disputes. Besides this, it should be taken care of by the management, failing which may give rise to unhappiness, frustration, discontent, indifference to work and inefficiency of workers.

Ans to Q No 2: i) A grievance arises when an employee feels that injustice has been done to him/her.

ii) Grievance generally give rise to unhappiness, poor morale etc.

Ans to Q No 3:

	GRIEVANCES		**DISPUTES**
1.	Grievance is a feeling of dissatisfaction.	1.	Dissatisfaction which leads to collective violent actions by employees is called disputes.
2.	Grievances are less visible.	2.	Disputes are more visible.

Ans to Q No 4: The main sources of grievances of workers in an industrial concern are:

i. **Unpleasant working conditions:** Workers may have complaints about unsafe and unpleasant working condition viz lack of proper space, ventilation, unsafe drinking water etc. Workers may also have complaints about wages. They may be underpaid or mistakes may occur in calculating the wages of a worker.

ii. **Collective Bargaining:** If the management disregards the agreements already made with the workers/trade union, it leads to grievances.

iii. **Social Injustice:** Management sometime fails to provide the facilities to all units equally. Under these circumstances, the workers of the units feel neglected and become the cause of grievances.

Ans to Q No 5: The following are the steps in grievance handling procedure:

i) Verbal explanation of grievance.

ii) Submission of grievance to Industrial Relation Officer.

iii) Submission of grievance to Grievance Committee.

iv) Dissatisfied employee approach the corporate executive.

v) Referring the grievance to an arbitrator.

3.10 MODEL QUESTIONS

Q 1: What is grievance and why it should be taken care of by the management.

Q 2: Mention at least four differences between grievances and disputes.

Q 3: Write down the sources of grievance usually workers have in an industrial concern.

Q 4: Write down the important steps in handling the grievances.

Q 5: Write short notes on:

a. Disputes

b. Importance of Grievance

c. Grievance handling procedure.

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UNIT 4 : COLLECTIVE BARGAINING

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Concept of Collective Bargaining

- 4.3.1 Collective Bargaining Forms and Tactics
- 4.3.2 Characteristics of Collective Bargaining
- 4.3.3 Importance of Collective Bargaining

4.4 Approaches to Collective Bargaining

4.5 Collective Bargaining process

4.6 Levels of Collective Bargaining

4.7 Let us Sum Up

4.8 Further Reading

4.9 Answer to Check Your Progress

4.10 Model Questions

4.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain different types of collective bargaining
- explain the characteristics of collective bargaining
- explain the importance of collective bargaining
- discuss the approach of collective bargaining
- discuss the process of collective bargaining.

4.2 INTRODUCTION

In this unit, we have tried to acquint you with the subject matter "collective bargaining" as properly as possible. First you will get an idea about the "*Collective Bargaining Agreement"* (CBA) followed by the features of Collective Bargaining. Then you will come to know about the activities include in the collective bargaining process .The discussion also includes the nature and feature of it. You will come to know about the importance of

collective bargaining in respect of employer, employee as well as the society. The three types of agreements prevailing in India in regards of the system of collective bargaining are also mentioned in this chapter. A description about the five core steps of collective bargaining process is given in this chapter.Lastly we have suggested the name of books that you can use as reference along with the probable questions for examination purpose.

4.3 CONCEPT OF COLLECTIVE BARGAINING

Collective bargaining is a process of negotiation that takes place between the employee and employer of the organization. Here in this process, workers organize together as a union to converse and compromise with the employers regarding their work environment. Collective bargaining has specific legal meaning and thus it has got distinct inclusion in the various national labour and employment law contexts. Thus in one sense, you can say that it is an unitary fight carried on by the workers to get their demands fulfilled.

Collective bargaining can be defined as a “labour contract” because being a process of negotiation between an employer and one or more labour unions, it results in a collective agreement regarding the terms and conditions of employee’s employment. In this prcoss of collective bargaining, there occurs an interaction between the employers and employees where the representatives of workers approach the employer and attempt to negotiate on a condition/situation that is agreeable to both the sides. Such condition may be the wages, hours of work, working conditions and grievance-procedures as well as the rights and responsibilities of trade unions etc. During this process of negotiation, when both the parties come into an agreeable point, then a contract is signed by them for a set period of time that is often referred as a “*Collective Bargaining Agreement”* (CBA) or a “*Collective Employment Agreement”* (CEA) and it is the specific result of collective bargaining effort.

In an organization, there you will find an union of the labours which is necessary to initiate the process of collective bargaining. Workers of the organization should be the members of labour union and agree to abide by

the rules and regulations of the union. They elect the union representatives from them who facilitates the process of negotiation through collective bargaining. Experienced people from the union will first prepare a draft of contract by taking the concern of union members where all the desires and wishes i.e demand of the employees are tried to be covered and then this draft is presented to the management of the company. Numerous meetings will be held between the representatives of employer and employees on the matters of contract until an agreeable point is reached between them. The powerful document that is the result/outcome of this negotiative process reflects the cooperative effort of both the employer and employees. Moreover, the combined desires of all the employees as well as the limitations that the employer are bound to put in place are also reflected in this agreement. But sometimes, either the union or the employer may resort to antagonistic tactics such as strike or lockout etc in order to push the agreement through.

Collective bargaining is regarded as an excellent tool for both the employer and employees. It gives the existed labour union of the organization a chance to deal with the employer to assert the rights of workers. Moreover, it also helps the employer to take a decision by taking the concisement of employees. In this way, collective bargaining agreements set out the clear expectations for both the sides. It can be considered as a learning experience for the parties who takes part in the discussion during the process of collective bargaining as it creats an understanding between the employers and employees and akins them to the positions of each other.

Collective bargaining is a process of joint decision making which symbolizes a democratic way of life that the employees may lead in the industry. Purpose of collective bargaining is to establish a mutually agreeable conditions of employment through the process of negotiation between the representatives of firm and the workers. Discussion and negotiation are carried on under the agreed terms and conditions of both the two parties that in turn facilitates in concluding the process of collective bargaining with a positive outcome.

ILO has defined collective bargaining as, negotiation about working conditions and terms of employment between an employer and a group of employees or one or more employee, organization with a view to reaching an agreement wherein the terms serve as a code of defining the rights and obligations of each party in their employment/industrial relations with one another.

So, it is seen that collective bargaining should posses the following features :

1. Both the representatives of management and employees must take active participation in it.
2. The prime aim of collective bargaining is to bring a stable relationship between the parties involved in this process.
3. The consequence of collective bargaining must extend to the implementation of a bargaining agreement.
4. Collective bargaining is a way to maintain discipline in the industry.
5. Parties associated with the bargaining process should posses a flexible attitude so that it in turn itself makes the approach a flexible one.

4.3.1 Collective Bargaining Forms and Tactics

The collective bargaining process generally encompasses the following four types of activities-

- distributive bargaining,
- integrative bargaining,
- attitudinal restructuring and
- intra-organizational bargaining.

(I) Distributive bargaining: The bargaining process that is related with the distribution of surplus among the beneficiaries is known as distributive bargaining. The matters of concern of this bargaining are the economic issues like wages, salaries of employees and the bonus provided to them etc. In this distributive bargaining, one party gains at the expenses of another's which is most commonly of moneytary in nature. Disputants may work hard to make the volume of moneytary

benefit bigger, so that there is enough for them to have as much as they want. In general, distributive bargaining is more competitive in nature than that of others and thus it is known as conjunctive bargaining.

(II) Integrative bargaining: Neither the employer nor the employee loss from this process of negotiation between them. The bargaining may take place between the representatives of employer and employee in order to achieve a better training programme or a better job evaluation method in the organization. Here in this method, the prime aim of both the parties is to make more of something i.e. here none of the parties is in loss. A more cooperation is found to be got in the integrative bargaining than the distributive bargaining and hence it is known as "cooperative bargaining".

(III) Attitudinal restructuring: Here in this process of collective bargaining, an effort is put to shape and reshape the attitudes like trust or distrust, friendliness or hostility between the labour and management. Such a negotiation is necessary when there is a backlog of bitterness between both the parties in order to maintain smooth and harmonious industrial relations. Through this process it is tried to build up the trust and cooperation among the party members.

(IV) Intra-organizational bargaining: This type of bargaining usually takes place in an organization with an aim to resolve the various internal conflicts within it by taking the consensus of both the workers and management on such issues. Even though you will find a difference in the views of the union members as well as among the members of management . For example, skilled workers may feel that they are neglected or women workers may feel that their interests are not looked after properly. Trade unions maneuver to achieve consensus among the conflicting groups.



CHECK YOUR PROGRESS

Q 1: Mention any four types of activities generally encompass in the collective bargaining process.

i) ……

ii) ……

iii) ……

iv) ……

4.3.2 Characteristics of Collective Bargaining

- It is a bipartite process because being a group process here you will find two groups. Representatives of employers and employees sit together to negotiate on the terms of employment in this process of collective bargaining.
- The phrase “collective bargaining” itself indicates a negotiative process through which the employer and employees get a considerable scope to discuss, compromise on the topic of mutual give and take between them. Thus it can be conisered as a form of participation.
- Collective bargaining is a formalized process through which certain employment-related issues are regulated at national, organizational and workplace levels.
- Collective bargaining is considered as a process because it consists of a number of steps.
- Being a complementary process, here in this process of collective bargaining one party needs the thing that the other party has. For example labours can increase their productivity, but in return of it management has to pay them a better remuneration.
- An improvement in the relationship among the workers on one hand while between the union and the employer on the other hand is accepted to achieve through the process of collective bargaining,

- Collective Bargaining is a continuous process that tries to make the industrial democracy an effective one because there is use of cooperation and consensus in the process of collective bargaining in order to settle the disputes rather than conflict and confrontation.
- The process of collective bargaining is influenced by the day to day changes in policies, potentialities, capacities and interests of the stakeholders etc .
- Collective bargaining can also be defined as a political activity in the sense that it can be frequently undertaken by professional negotiators too.

4.3.3 Importance of Collective Bargaining

Besides being a process of negotiation between the employers and union members, collective bargaining is also a way to resolve the labour-management conflicts. Thus, collective bargaining is considered as a system of maintaining industrial jurisprudence along with introducing civil rights in the industry. Moreover it also reveals the rules and regulations that the management should follow or abide by while managing the people in the organization rather than taking arbitrary decisions. It establishes the standard rules for the proper and smooth functioning of an organization by restricting the traditional authority exercised by the management.

Importance to employees

- Collective bargaining builds up the sense of self respect and responsibility among the employees.
- Collective bargaining increases the strength of the workforce as well as the unity among them and hence the bargaining capacity of employees as a group is also increased.
- Collective bargaining is a support effort to increase the morale and productivity of employees.

- It restricts management's freedom for arbitrary action against the employees. Moreover, unilateral actions by the employer are also discouraged.
- Effective collective bargaining is necessary for strengthening the trade unions movement.
- Collective bargaining is an important motivational tool as because it shows the workers a way to approach the management regarding their problems and bargain for higher benefits.
- It is supposed to be one of the best mechanism of handling the grievances in an organization. It provides a flexible means for adjustmenting the wages and employment conditions of employees in respose to the economic and technological changes and thereby reduces the chances of conflicts between the employees and employer.

Importance to employers

- In absence of such a bargaining process, management has to listen to the individual complaints of workers instead of their mass complaints and then the situation would be a very difficult one. But collective bargaining has made it easier for the management to resolve the issues of employees at the bargaining level.
- Collective bargaining is a way of protecting the jobs of employees. It promotes a sense of job security among employees that makes the management free from the tension of cost of labour turnover.
- Collective bargaining not only opens up the channel of communication between the workers and management but also increases the worker participation in decision making.
- Collective bargaining is must to settle and prevent the industrial disputes in an organization.

Importance to society

- Collective bargaining is a procedure to maintain industrial peace in the country.

- By reducing the obstacles, collective bargaining tries to maintain a harmonious industrial climate in the country so that it can support and help in fostering the pace of a nation's efforts towards the economic and social development considerably.
- Collective bargaining is a way to check the discrimination and exploitation of workers regularly.
- The persons who are directly concerned about the conditions of employment are provided with a method or regulation for it.

4.4 APPROACHES TO COLLECTIVE BARGAINING

There are three elements in the system of collective bargaining:-

(1) Issues for consideration:- It is a matter of anxiety when the organization of workers are weak and they have to struggle for recognition by the employers. Under such a circumtance, they might have to fight for their union recognition as well as the union security. The issues are either of employment related aspects of the organization or the personal matters of employee and thus it includes the matters of wages, fringe benefits, working condition as well as the promotion, transfer, discharge and dismissal etc respectively.

(2) Procedure for consideration:- The bargaining machinery and the procedure those are adopted to solve a problem may vary according to different circumstances. It is dependent upon the decision of two parties whether they ,that means, the employers or managements in one hand and the workers as well as their unions on the other hand are willing to conduct the bargaining process either by their own or by involving a third party, such as the government intervenes to bring about a settlement between them.

(3) Collective agreements and their implementaion:- Collective agreement is a type of agreement which is the outcome of the process of collective bargaining and it occurs between an employer, a group of employers or one or more employer's organizations on the one hand and one or more representative worker's organizations on the other hand.

The collective bargaining agreement may also mean a compromise between the two parties both of whom have their own own self interest. The parties are agreed to abide by the rules and regulation mentioned in the agreements as a guide to carry on their relationship on certain matters for a specified period of time.

It has been observed that in some countries, negotiations at the level of a single undertaking are preferred in view of the special conditions prevailing therein in opposite to the situation where the countries favour the negotiation at the level of industry as it tends to harmonise the working conditions as well as provide the uniform benefits to all the concern. The contents of collective agreements vary considerably from plant to plant and from industry to industry and usually covers the items that are related to the wages, working conditions, working hours, fringe benefits and the job security etc. Legally a collective agreement binds not only the parties to it but also the persons on behalf of whom they are acting. It is always a common thing among the workers in a given undertaking that they may not belong to the union which has signed the agreements or that they are non-unionised. Therefore in a number of countries the law provides for compulsary coverage of agreements or settlements on the employers and all the employees in an establishment. There is no doubt that the proper implementation of the collective agreements as well as its afterwards monitoring are totally dependent on the good faith of the parties involved. In India, there are prevailing three types of agreements, namely:-

(i) voluntary agreements,

(ii) settlements, and

(iii) consent awards.

The type of collective agreement is known as voluntary agreement when it is the result of direct negotiation between the parties and when the parties are responsible for its implementation. Settlements are the collective agreements where you will find an intervention of government agencies. When the situation of reaching a collective agreement is that here in this case the matter of dispute is placed under the reference to industrial tribunal/ court, then the collective agreement is known as consent awards.

4.5 COLLECTIVE BARGAINING PROCESS

It is known to us that collective bargaining is generally a negotiative process that goes on between the representatives of employee and employer of the organization. In this bargaining process, employees are represented as a union or other labour organization which then negotiates with the employer to determine the conditions of employment. The system of collective bargaining results out the collective bargaining agreement (CBA) that may be either of procedural agreements or of substantive agreements.

Emphasising specially on the relationship between the workers and management, this procedural agreements denote the procedures to be adopted for resolving the individual or group disputes. Here in this agreement, the procedures adopted to resolve the individual grievances, disputes as well as to maintain discipline in the industry should be cited properly. Generally, procedural agreements provide the information on the overall terms and conditions of employment and on the codes of behavior. Then the specific issues, such as basic pay, overtime premiums, bonus arrangements, holiday entitlements, hours of work, etc are covered in a substantive agreement. Agreements are usually signed for a fixed or definite period of time. Hence a procedural agreement has to be reviewed on timely when the negotiation takes place on the matter of pay and conditions of employment under the process of collective bargaining. The collective bargaining process comprises of five core steps:

1. **Prepare:** In this step of collective bargaining, first a negotiation team is formed that consists of the representatives of both the employer and employee. These representatives posses the adequate knowledge and skills for negotiation. In this phase, first both the employer's representatives and the union examine or review their own situation. Then it is followed by a stage where a decision is taken regarding the issues/ matters of concern that they believe as the most important one to be raised/ included in the negotiation process. It is also tried by the representatives to find out the justified reason for choosing the topic for discussion i.e. to negotiate. You have to keep the following

things in mind when you go for choosing the issue to be discussed like —— correct understanding of the main issues to be covered and intimate knowledge of operations, working conditions, production norms and other relevant conditions etc.

2. **Discuss:** Here in this stage, a discussion goes on between the parties involved about the ground rules that they will have to follow or abide by during the process of negotiation. The process of collective bargaining is also not excluded from the saying that a process well begun is half done. In order to reach a collective bargaining agreement first an environment of mutual trust and understanding should be created among the members of the organization.
3. **Propose:** As all we know that propose means that the initial opening statements and the possible options those exist to resolve them. So, this phase of collective bargaining process also indicated the same thing. In a word, this phase can also be described as 'brainstorming' where there takes place an exchange of messages and opinions between the parties involved in the bargaining process.
4. **Bargain:** The parties involved in the bargaining process should posses a problem solving attitude in them. Then only the process of collective bargaining will be easy one. This stage comprises the time when 'what ifs' and 'supposals' are set forth and the drafting of agreements take place.
5. **Settlement:** In this stage, a permanent settlement is achieved i.e both the parties reach to an agreeable decision where both of them concise. Both the parties sign on the consignment and agree to abide by the terms and conditions written on it. Both the parties are agreed to support the common decision taken through mutually agreeable discussion regarding the problem or issue of negotiation. They also give the comitment to support the implemention of the agreement effectively through the joint effort of employer and employees via shared visions, strategic planning and negotiated change.



CHECK YOUR PROGRESS

Q 2: Mention the five core steps of the collective bargaining process.

i) ……

ii) ……

iii) ……

iv) .....

v) .....

4.6 LEVELS OF COLLECTIVE BARGAINING

Collective bargaining operates at three levels:

1. National level
2. Sector or industry level
3. Company / enterprise level

Economy-wide (national) bargaining may be either a bipartite or a tripartite form of negotiation between the union confederations, central employer associations and the government agencies. The basic aim of this bargaining is to provide a floor for the lower-level bargaining on the matters of employment by keeping the goals of macroeconomic in mind.

Next the sectoral bargaining aims to bring a standardization in terms of employment in one industry. It includes a range of bargaining patterns those may have either a broad or a narrow aspect. It generally covers the terms of industrial activities that may be either split up according to territorial subunits or conducted nationally.

The third type of bargaining occurs at the company and/or establishment level. It is a supplementary type of bargaining. Moreover, it emphasizes the point that bargaining levels need not be mutually exclusive.



4.7 LET US SUM UP

Probably after going through this chapter, we have acquinted well with the subject matter “collective bargaining” and its all relevent aspects. Like you have come to know about the “*Collective Bargaining Agreement”* (CBA) and the features of Collective Bargaining. Then it followed by the collective bargaining process that generally encompasses the following four types of activities-

- distributive bargaining,
- integrative bargaining,
- attitudinal restructuring and
- intra-organizational bargaining.

This unit includes a subunit termed “characteristics of collective bargaining” under which you will get the nature and feature of collective bargaining. You will also come to know about the importance of collective bargaining in respect of employer, employee as well as the society. The three types of agreements prevailing in India in regards of the system of collective bargaining are also mentioned in this chapter. A detailed description about the five core steps namely- prepare, discuss, propose, bargain and settlement of collective bargaining process is given in this chapter.



4.8 FURTHER READING

1) Human Resource Management, Writers: Shashi K. Gupta and Rosy Joshi Publisher: Kalyani Publisher.



4.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: (i) Distributive bargaining

(ii) Integrative bargaining

(iii) Attitudinal restructuring

(iv) Intra-organizational bargaining.

Ans to Q No 2: (i) Prepare

(ii) Discuss

(iii) Propose

(iv) Bargain

(v) Settlement.



4.10 MODEL QUESTIONS

Q 1: Explain the significance and scope of collective bargaining in industry.

Q 2: Explain the process of collective bargaining.

Q 3: What are the characteristics of collective bargaining?

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UNIT 5 : WORKERS' PARTICIPATION IN MANAGEMENT

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 Meaning of Workers' Participation in Management

5.4 Need for Workers' Participation in Management

5.5 Workers' Participation in Management in Indian Scenario

5.6 Let Us Sum Up

5.7 Further Reading

5.8 Answers To Check Your Progress

5.9 Model Questions

5.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- discuss the meaning of workers' participation in management
- explain the need of workers' participation in management.
- describe the scenario of workers' participation in management in Indian perspective.

5.2 INTRODUCTION

This unit starts with the discussion on the meaning of workers' participation in management. Then the need for workers' participation in management has been discussed at length. In the last part of this unit, an attempt is made to discuss about workers' participation in management in India.

5.3 MEANING OF WORKERS' PARTICIPATION IN MANAGEMENT (WPM)

Workers' Participation in Management (WPM) of an enterprise is undertaken with a view to ensuring increased productivity for the larger

benefit of the enterprise, the employees and community, to giving the workers a better understanding of their role in the working, and of the process of production and satisfying the workers' demand for self expression. It is quite necessary for the development of healthy industrial relations which is pre-requisite for rapid industrialization and economic growth. It is the need of the hour that workers should have a sense of partnership and of genuine involvement in the enterprise concerned.

The term "Workers' Participation in Management" is very important but this concept has no where been clearly defined. This is a concept which needs detailed discussion in the field for industrial relations. The working class, the industrialist and the Government have defined the concept of Workers' Participation in Management in their own ways.

1. Working class has defined this concept as co-decision and joint consultation.
2. The Industrialists mean by it joint consultation.
3. The Government means by it the pre-exercise for establishment of co-partnership and industrial democracy. The basic behind it is that workmen and industrialists are co-trustees of industries.

Thus, we can say that participation means workers' co-operation in the decision making process of the organization. This co-operation is made possible by giving representation to the workers' at all levels of management.

From the above discussion it is clear that WPM is the mental and emotional involvement of workers in a good situation which encourages them to identify themselves with group goals and share responsibilities for them.

However, participation should not be confined only to management functions or only benefit oriented issues. It should cover all activities in an enterprise. Keeping in view these facts, the participation is a process by which employees can influence decision-making at various levels, either through their representatives on the board or in other participative forums including collective bargaining.

It involves workers involvement and commitment in all the issues of the organization that directly affect their own interest.

5.4 NEED FOR WORKERS' PARTICIPATION IN MANAGEMENT

The human relations movement has so much impact on industrial society today that WPM has become a vital issue to be reckoned with. The need for WPM in enterprises is increasing day by day on account of various factors. Some of the important factors have been discussed briefly as follows:

1. **Production and productivity requirement:** For enhancing productivity and production, WPM has an important role to play. But it will largely depend on improved conditions of work and improved methods and latest machinery and equipment. The management should consult workers in respect of new machinery, methods of production and the way in which economies could be affected in the cost of production and ways by which the productivity may be increased.
2. **Improving Human Relations:** WPM may be looked upon as a way of humanizing industrial work by creating opportunities for them to gain social satisfaction. Human element is an important factor to reckon with in worker-management relations and only a contented work-force, indispensable for production, can contribute its best to the process of organizational functioning.
3. **Constitutional Requirements:** Article 43 (A) of the Indian Constitution envisages the WPM may be secured by any means. So it is required to fulfill these provisions by the speedier implementation of the scheme for effective WPM.
4. **Establishment of Industrial Democracy:** The WPM is an important means to introduce the notion of industrial democracy by giving opportunity to the workers to take part in the managerial functions of their enterprises. This may encourage a sense of integration of workers towards the enterprise.
5. **Improvement of Mutual Co-operation:** WPM is quite necessary to improve mutual understanding and co-operation between the management and workers. Managerial effectiveness and willing co-

operation of workers are the two pre-conditions for unimpaired organizational performance and production. Workers have very powerful unions, and there are conflicts in attitude and approach between management and unions. Given a sense of identification and good mutual understanding on the part of both, hindrances can be overcome by allowing reasonable concessions to workers. This can be achieved more easily through WPM.



CHECK YOUR PROGRESS

Q 1: Mention two merits of workers' participation in management.

a) ……

b) ……

Q 2: Mention four pre-requisites of workers' participation in management.

i) ……...

ii) ……...

iii) ……...

iv) ……

5.5 WORKERS' PARTICIPATION IN MANAGEMENT IN INDIAN SCENARIO

Workers' participation in India is not a new concept. Mahatma Gandhi mooted the idea of WPM who believed in harmony between capital and labour. He wanted both the employers and employees to consider themselves as trustees of the society for the means of production entrusted to them. For the sake of convenience, the WPM in India can be studied under two sub-heads. These are-

(A) Workers' Participation and Government Policy

(B) Schemes/ forms of WPM

(A) Workers' Participation and Government Policy :

The Government has acknowledged the importance of WPM which

has been indicated in the various official pronouncements from time to time. The earliest attempt to provide WPM was made in 1947. The Industrial Disputes Act, 1947, enabled workers' participation by statutory setting up of works committees to be constituted by employers having 100 or more workmen for dealing with day-to-day problems between the employers and the workers.

The central government, under the Industrial Policy Resolution of 1948, also suggested the setting up of bipartite production committees consisting of representatives of employers and workers. Many companies accordingly set up these committees, but such government-sponsored schemes of labour-management co-operation did not yield satisfactory results.

The First Plan also stated that it is necessary to create a sense of partnership among the workers and to make them feel that they are not only servants but also masters of the enterprise in which they serve. Efforts are being made to develop joint consultation and to introduce WPM. The Industrial Policy Resolution of April 1956 made it clear that "in a socialist democracy, labour is a partner in the common task of development and should participate in it with enthusiasm. There should be joint consultations, and workers and technicians should, wherever possible, be associated progressively in management."

The Second Five Year Plan (1956-61) also emphasized that increased association of labour with management would help successful implementation of various plans by promoting increased productivity, by giving the employees a better understanding of their role in the working of the industry and in the process of production, and by satisfying the workers' urge for self-expression. The Plan characterized the creation of industrial democracy as a prerequisite for the establishment of a socialist society. So as far as the PEs are concerned, the Plan pointed that the "expansion of the public sector envisages an increasingly great responsibility for workers as well as management in the sector and if conditions of work in PEs are expected to set pace for the private sector, administrators handling such undertaking have to be specially watchful of labour interests."

The Third Plan also considered it essential that WPM is "accepted as fundamental principle and as an urgent need." It again stated that "the large expansion of the public sector which is occurring and is being envisaged will make a qualitative difference in the tasks set for the transformation of the social structure on the lines of the socialist pattern in view." It desired the employees and employers to join in partnership to strive for common ends for the peaceful evolution of the economic system on a democratic basis.

The Fourth Plan urged the extension of workers' participation to the PEs and emphasized its importance as an essential functional link in the structure of industrial relations. Unfortunately, nothing significant could be achieved till 1975. After the promulgation of the emergency in 1975, the government machinery was activised and WPM again came to the force as part of the twenty-point programme.

The scheme for WPM at shop floor and plant level introduced by the government on 30th October, 1975 vide the Government of India's Resolution No. S-61011 (4)/75 (D.X.I. (B), Dated 30th October, 1975, was made applicable only to manufacturing, and mining units in the public, private and co-operative sectors as well as those run departmentally employing 500 or more workers.

As the government is determined to make WPM a success, the Constitution of India was amended in 1976 to incorporate in the Directive Principles of State Policy Article 43-A, which state, "The state shall take steps by suitable legislation, or in any other way, to secure participation of workers in the management of the undertakings, establishments or other organisations engaged in any industry." Since the scheme of 1975 was generally welcomed in the manufacturing and mining units, the government decided in the first week of January, 1977, to extend the idea of WPM, for the present, to commercial and service organisations in the public sector, which have large-scale public dealings, with a view to rendering better customer service.

The Janata Party Government, in its Industrial Policy Statement of December 1977, referred to equity participation and an active association

of workers in decision-making up to the Board level. A tripartite committee appointed under the chairmanship of the Janata Labour Minister, Ravindra Verma, went into the question of WPM at some length and observed that "as experience of voluntary schemes of participative management in the past had not been very happy, it was essential to introduce the scheme through legislation." The Committee suggested details of a three tier system of participation in the undertakings employing 500 or more workers (to be elected through secret ballot) with parity representation on the shop level and plant level. There was, however, no unanimity regarding the extent of employee representation at the corporate level.

The Congress (I) government, at the end of 1979, had stated in its election manifesto that "Workers' Participation in the industries is one of the cardinal aims of the Congress (I). We regard the participation of workers in the production and management processes to be vital. Such participation will be steadily enlarged and government undertaking will provide an effective lead in this behalf."

The Sixth Five Year Plan pointed out that a review of the various measures had been taken, especially of the attempts made between 1975 and 1977, and the review committee had recommended "a legislative scheme for participation providing three-tier participative forums at shop-floor, plant and corporate Board level. An enlarged area of participation to cover matters relating to operational, economic and financial, personnel, welfare and environment areas has also been recommended."

In September, 1990, the Government brought forward a Bill, namely, Participation of Workers in Management Bill, in the Rajya Sabha. However the Bill could not be passed. There was opposition by interest groups, like All India Manufacturers' Organisation, who pointed out that the time is not yet ripe for it.

Thus, we find that the government is committed to WPM, particularly in PEs, but efforts made in this direction are not quite satisfactory. The government should take proper legal measures to provide an effective base to WPM.

(B) Schemes/ forms of WPM:

Following schemes are being used to provide WPM in India:

1. **Works Committee:** The Industrial Disputes Act, 1947 (Section 3), provide for works committees in all industrial units employing over 100 workers. The functions of these committees consisted of non-controversial minor issues like conditions of work, amenities, safety and accident prevention, adjustment of holidays, administration of welfare funds, education and recreational facilities, promotion and savings, etc.

   The member of members constituting a works committee is flexible. Generally, the total number does not exceed 20 and the number of representatives of workmen is not less than that of the employer. The Chairman of a Works Committee is nominated by the employer from amongst the employer representatives and the Vice-Chairman is elected by the worker member from amongst themselves. The members are elected for a term of two years and meet as often as necessary, but not less than once in three months.

   The Joint Works Committee in Rourkela Steel Plant was constituted in 1952. The present works committee, which is the fourth one, has been functioning since 1972. It consists of ten representatives each from the management and workmen.

   By and large, the working of these committees has not been very satisfactory. In many cases, they were never established, and where established, they failed to work well. While the management tolerated them as a necessary evil, the trade unions considered them to be an encroachment on their rights.

2. **Joint Management Councils (JMCs):** The Industrial Policy Resolution of 1956 suggested the need for joint consultative machinery between the workers and the management to promote industrial peace and industrial relations. In pursuance of this resolution, joint management councils were set up in 1958.

   These councils have the obligation to deliberate and determine the means of promoting better understanding between labour and management, stepping up production, reducing wastages and increasing profits, promoting a more stable labour force and worker's safety and other relevant matters.

The Hindustan Machine Tools Ltd., Bangalore, was the first PE to carry out this experiment in 1959, JMCs were tried out in three other central PEs, namely, the Indian Telephone Industries Ltd., the Fertilizer Corporation of India and Hindustan Cables Ltd. Unfortunately, the JMCs failed to achieve the desired results.

The following causes are responsible for the failure of JMCs:

i) Management believed that workers were neither adequately interested nor competent enough to participate in JMCs.

ii) The scheme worked under the prerogative of the management so the management itself was in a position to dictate its terms to the workers.

iii) The unions found a conflict in their roles. In most cases, the union leaders were not co-operating with the management to solve the workers' problems.

3. **Shop and Joint Councils:** In 1975, a two-tier programme had been introduced for WPM at the shop-floor and at the plant levels. It was further extended to commercial and services enterprises in 1977 where the councils are to be established at department and enterprise levels. The purpose of these councils has been provide institutionalised forums of communication and consultation between workmen and management with a view to creating a climate of mutual trust and confidence necessary for increasing production and promoting industrial harmony.

But the scheme has not achieved the objectives intended on the following grounds :

i) Management directly or indirectly took a paternalistic attitude.

ii) Management did not consider the schemes as an integral part of its organisational structure.

iii) The participative forums have been utilised more often as consultative forums rather than as joint decision-making forums.

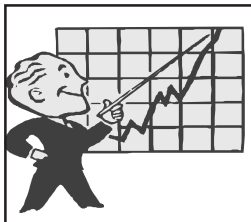
iv) As the scheme essentially depended on the representative system even at the shop floor, the bulk of the workforce remained outside the participative system.

v) The representative system has also posed problems because of the multiplicity of unions.

4. **Workers on the Board:** A more recent development in introducing WPM has been the appointment of several seasoned and veteran trade union leaders on the Governing Boards of Public sector undertakings. The Administrative Reforms Commission was set up in 1967, which recommended that one of the workers should be taken on the Board in every PE.

A number of ministers in the central and state governments have implemented the recommendations by appointing workers on the Board of industrial and commercial enterprises in the public sector like Hindustan Antibiotics, Hindustan Organic Chemicals, I.T.I., H.M.T., BHEL, LIC, Hindustan Steel Ltd., Indian Airlines, Indian Railways, State Transport Corporation, HEC, National Instruments LTD., IISCO, etc.

In case of banking industry, the government went a step further and incorporated a statutory provision under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, known as the Nationalised Banks (Management and Miscellaneous Provisions) Scheme whereby two representative of the employees of a Bank can be appointed on the Board. Out of these two directors to be appointed from among the employees of the Bank, one should be appointed from among the workmen/ employees and the other from the officer employees.



CHECK YOUR PROGRESS

Q 3: Mention two demerits of WPM.

a) ……

……

……

b) ……

……

……



5.6 LET US SUM UP

In this unit we have discussed the following points :

- The idea of workers' participation in management is very old. Whitley Committee in Britain first gave suggestion of this idea in its report. But, actual steps in this direction were taken after the world war when the governments of some countries made a provision of joint committees of the workers and the managements in industries by way of legislations.
- The concept of workers' participation in management became very popular at the time of Second World War when increase in production was much needed. Most of the organizations which adopted this system were successful in raising the production.
- By Workers' Participation in Management we mean giving representation to the workers in the committees which take decisions effecting them. In this form, the workers can be made participants by different ways.
- Much preparation is needed before implementing the scheme of workers' participation in management of the organization. We should, first of all, create suitable atmosphere.
- The objectives of the workers' participation scheme vary from country to country, because they largely rests with their socio-economic development of country, its political philosophy, industrial relations scene, and the attitude of the working class.
- Both the management and workers are responsible for the failure of WPM schemes in India.



5.7 FURTHER READING

1) Aswathappa K, Human Resource Management.

2) Khanka S.S., Human Resource Management.

3) Mamoria C.B. & Gankar S.V., Human Resource Management.

4) Michael V.P., Human Resource Management And Human Relations.

5.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The merits of workers' participation in management are –

a) Increase in production: Better understanding and good relations are the pre-requisites of higher and better production. Production and productivity increase by effective cooperation of the workers. Increased production benefits both the employers' and the workers.

b) Solution of industrial disputes: As the workers become partners of the industry and take part in the decision-making they extend full cooperation to the management in carrying out the decision. They have a sense of loyalty and better understanding. This reduces to the minimum the possibility of disputes based on irrational grounds.



Ans to Q No 2: Following are the pre-requisites of workers' participation in management:

i) Creation of the sense of co-operation, loyalty, confidence and responsibility among the workers and the employers.

ii) Both the employers and the employees should understand their responsibilities and fulfil them accordingly.

iii) Workers' should be properly trained in matters of production, planning and control.

iv) Workers should be at liberty for organizing themselves and for expressing their views.

Ans to Q No 3: Two demerits of workers' participation in management are-

a) Inefficiency: As Indian workers are inefficient, uneducated and not competent in taking the decision their participation will only delay the implementation of the decision. A good decision cannot be carried out unless it is supported by the workers.

b) Weak trade unions: In India trade union movement is not strong. There are multiple trade unions. They are dominated by political leaders and with political ideologies. Workers' participation can succeed only when labour is duly organized so that they can work on equal footings. It is very necessary to have one representative trade union in one unit.



5.9 MODEL QUESTIONS

Q 1: What is meant by workers' participation in management?

Q 2: Explain the need of WPM.

Q 3: Discuss in detail the present scenario of WPM in India.

Q 4: Discuss the important schemes of participation in India.

Q 5: What are the important problems/ limitations in workers participation in management in India?

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UNIT 6 : INDUSTRIAL HEALTH

UNIT STRUCTURE

6.1 Learning Objectives

6.2 Concept of Industrial Health

6.3 Importance of Industrial Health

6.4 Occupational Hazards and Occupational Diseases

6.5 Causes of Occupational Diseases

6.6 Effects of Occupational Diseases or Accident Cost

6.7 Protection against Hazards

6.8 Role of Occupational Health Services (OHS)

6.9 Statutory Provisions for Industrial Health in India

6.10 Legislations Governing Occupational Health and Safety in India

6.11 Let Us Sum Up

6.12 Further Reading

6.13 Answers To Check Your Progress

6.14 Model Questions

6.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- describe the meaning and objectives of industrial health.
- discuss about occupational health hazard and occupational disease
- describe work-related accidents and diseases
- explain the types of hazards that an individual may be exposed to in his/her occupation
- describe the direct and indirect effects on the lives of workers and their families as well as to the employers due to work-related accidents or diseases
- explain the two aspects of protection against industrial health hazards
- describe the importance of OHS (occupational health services)

- discuss the three major legislations relating to occupational health and safety in India.

6.2 CONCEPT OF INDUSTRIAL HEALTH

"Health" is a positive and dynamic concept and does not imply only the mere absence of illness. Further according to the WHO, health is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." Industrial health specifies a system of public health and preventive medicine which is concerned with the working environments of industries. According to the joint I.L.O/WHO Committee on Organizational Health, industrial health is:



Public Health: Public Health is the science of protecting and improving the health of communities through education, promotion of healthy lifestyles, and research for disease and injury prevention.

(i) the prevention and maintenance of physical, mental and social well-being of workers in all occupations;

(ii) prevention among workers of ill-health caused by the working conditions;

(iii) protection of workers in their employment from risks resulting from factors adverse to health; and

(iv) placing and maintenance of the worker in an occupational environment adapted to his physical and psychological equipment.

To cure the disease is not the prime objective of industrial health. However it is mainly concerned with the prevention of the diseases and injury arise due to poor working conditions in the organization. Therefore, both the programmes of health conservation and prevention of occupational disease have got equal emphasis in the industrial health concept.

The modern concept of industrial health defines the "health" as an outcome of interaction between the individual and his environment. Thus it signifies a healthy person as an well adjusted one with his surronding environment. Whereas the traditional concept specifies "health" as only the mere absence of an ascertainable disease or infirmity. Being advanced, the modern concept has anticipated and recognized the potentially harmful situations including the engineering control measures for the prevention of injurious situations in the organization. It endeavours/highlights the contribution of physicians, engineers, chemists, personnel officers and other

specialists who work jointly to develop a better working environment for the employees that is free of risk factors of health. The living and working environments are also an impending factor for industrial health besides the personal matter.

The concept of yesterday's "industrial health" has changed to today's "occupational health" and now it is further changing to "environmental health" because of greater awareness on the ecological problems arising from rapid industrialisation, the use of complex processes and hazardous chemicals in industries and urbanisation.

6.3 IMPORTANCE OF INDUSTRIAL HEALTH

The working environment of the employees must be conducive to a healthy life as they have to spend a great deal of their time in the industrial setting. Moreover, malnutrition, insanitary and psychological conditions and the strains and stresses under which they live act as catalytic factors to more badly impair the employee's health. Only a healthy employee can show efficiency in his work.

The employees have been continuously exposing to certain hazards in the industry (in which he is employed) that may affect their health severely. The noticeable point here is that the employees are less likely to be exposed to such hazards other than the industrial set-up. Thus, the industrial health intends to improve the worker's health by reducing the occupational hazards they face. And accordingly industrial health has been evolved as a branch of public health in its own right. High rate of absenteeism and turnover, industrial discontent and indiscipline, poor performance and low productivity are considered as the effects of employee's bad health. Thus, the introduction of industrial health programmes is sure to benefit both the employers and workers by reducing the rate of labour turnover, absenteeism, accidents and occupational diseases etc. Moreover, it also reduces spoilage, improves morale, increases productivity per employee and lengthens of the working period of employees. But these benefits cannot be measured easily.

Indian Industrialists are less concerned about the potential benefits flowing from modern health services. These are often looked upon merely

as palliatives or welfare measures. This attitude on their part may be explained on the basis of the following reasons:

(a) Labourers are not encapsulated in the laws of private ownership. Thus, it becomes the own responsibility of labourers to protect themselves from the hazardous situations that may happen during the production process.

(b) The provision of offering depreciation charges to the labourers often raises the cost of production in the part of employers. This is the reason that restricts the employers from providing proper health services to the labourers.

(c) Numbers of employee is surplus in the labour market. So it is not a difficult task for the employers to replace a weak or unhealthy worker immediately. In the circumstances, they do not care to protect employee's health against occupational hazards.

(d) Unorganized unions among the workers minimize their bargaining power in forcing the employers to provide compensation in the event of accidents or occupational diseases. As a consequence of it, ultimately the employees and their dependents have to bear the brunt of social costs resulted due to the impairment of employee's health.

More or less this is the common scenario of the developing countries in respect of employee's health. Keeping in view the importance of industrial and occupational health, the I.L.O recommendation No.112 was adopted in 1959. It envisages that: "Occupational health services should be established in or near a place of employment for the purpose of:

(i) protecting the workers against any health hazard arising out of work or conditions in which it is carried on;

(ii) contributing to establishment and maintenance of the highest possible degree of physical and mental well-being of the workers."

6.4 OCCUPATIONAL HAZARDS AND OCCUPATIONAL DISEASES

Irrespective of kind of occupation — whether working on a lathe machine or sitting in front of a computer, travelling to meet clients or studying

for an impending examination, cutting vegetables at home or meat in a butchery — every occupation has a health hazard, which if ignored may develop into an occupational disease. But it is good news for us that all occupational diseases are preventable with proper awareness of hazards and appropriate preventive measures.

Occupation and occupational disorder are not mutually exclusive. There is no occupational disorder that is not preventable. Keeping this in mind, preventive medicine and occupational health share the same aim: "prevention of disease and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations". To achieve the set health status, organizations must go for health promotion, specific protection, early diagnosis and treatment, disability limitation and rehabilitation. "Occupational health", therefore, entitles the application of preventive medicine in all places of employment/work to reduce the multitude of hazards that workers in every occupation are facing in their workplaces.

Occupational health and safety endeavors/challenges the broad range of workplace hazards —— from accident prevention to the protection against more insidious hazards including toxic fumes, dust, noise, heat, stress, etc. The occupational health and safety programmes aim to prevent work-related diseases and accidents instead of solving problems after they have already developed. Presence of hazards in the workplaces and lack of attention shown to the health and safety aspect of workers by the employers contributes in prevailing the work-related accidents and diseases as a serious problem in all parts of the world.

No doubt that, in general, health and safety in the workplace has improved in most industrialized countries during last few years. However, the situation is still unclear in the developing countries due to lack of accident and disease recognition, record-keeping and reporting mechanisms. The statistical data reveals that at least 3,35,000 of 250 million occupational accidents occur per year worldwide are fatal (result in death). Moreover, importantly the number of fatal accidents is much higher in developing countries than in industrialized ones who are acquainted with better health and safety programmes, improved first-aid and medical facilities. Workers

take active participation in the decision-making process on health and safety issues in those industrialized countries. The industries that are more prone to accidents worldwide are: mining, agriculture, including forestry and logging, and construction etc.

Many a cases, it is easy to find out the cause of an industrial injury. But, very often there subsists a hidden chain of events behind the accident that leads up to the injury. Accidents often take place due to the negligence on the part of the employer who has not conducted adequate training programme for the workers, or a supplier who has given the wrong information about a product, etc. The consistency in the rate of highly fatal accidents in developing countries indicates the need of occupational health and safety education programmes that focus on prevention in those countries.

Simultaneously, importance has been given on the development of occupational health services including the training programme for doctors to detect work-related diseases in the early stages. We will find various types of hazards in the workplace that can lead to occupational diseases among the workers depending on the nature of the hazard, the route of exposure, the dose, etc. Some common occupational diseases are:

- asbestosis (caused by asbestos, which is common in insulation, automobile brake linings, etc.);
- silicosis (caused by silica, which is common in mining, sandblasting, etc.);
- lead poisoning (caused by lead, which is common in battery plants, paint factories, etc.);
- persons engaged in handling of wool, hoofs, hides, hair bristles, or animal carcasses are affected by anthrax bacteria; and
- noise-induced hearing loss (caused by noise, which is common in many workplaces, including airports, and workplaces where noisy machines like presses or drills, etc. are used).

There is also a number of potentially crippling health problems that can be resulted due to poor working conditions which includes:

- heart disease;
- musculoskeletal disorders such as permanent back injuries or muscle disorders;
- allergies;
- reproductive problems;
- stress-related disorders.

It is not easy to find out the cause of work-related diseases due to many factors – like latency period (the fact that it may take years before the disease produces an obvious effect on the worker's health) of the diseases, changing jobs or personal behaviours (such as smoking tobacco or drinking alcohol) etc. If the latency period is long, then by the time the disease is diagnosed, there remains nothing to do to cure the patient. Similarly at this stage, it is not possible to find out what hazards the worker was exposed to in the past as because changing jobs or personal behaviours may further exaggerate a disease outcome.

Now a day, many facts about occupational hazards have come into light than in the past. But every year new chemicals and new technologies are being introduced which along with it has bought new and often unknown hazards creating great challenges to the workers, employers, educators, and scientists etc who are either direct victims of these hazards or concerned about workers' health and the effects that hazardous agents have on the environment.

6.5 CAUSES OF OCCUPATIONAL DISEASES

There are various modes of development of occupational diseases:-

(i) Some diseases are only occupational in origin that means here the occupation is one of the causal factors. For example, silicosis or asbestosis is caused by exposure to silica dust or asbestos fibers respectively.

(ii) While in another cases, the occupation may impair the health of a person by acting as a contributing factor that aggravates a pre-existing condition for example: chronic bronchitis etc.

An individual may be exposed to five types of hazards, depending upon his/her occupation:

a) **Physical hazards:** Certain physical elements like heat, cold, light, noise, vibration, ultraviolet radiation and ionising radiation etc may create problems in the individual if they are exposed to it beyond the acceptable limits without protective measures. At this stage, these physical elements are known as Physical hazard.

b) **Chemical hazards:** Toxic, corrosive, allergenic and carcinogenic chemicals act by local action, inhalation and ingestion become the chemical hazards when exide to concentrations beyond the threshold limit value (TLV) and then it impair the health of individuals who handle these chemicals.

c) **Biological hazards:** Workers specially persons working with animal products and agricultural workers may be exposed to infectious and parasitic agents at the workplace which are known as biological hazards.

d) **Mechanical hazards:** About 10 per cent of industrial accidents occur due to mechanical causes like heavy machinery, protruding and moving parts and the same.

e) **Psychosocial hazards:** This hazard may be the result of worker's failure to adapt to an alien psychosocial environment that leads to frustration, lack of job satisfaction, insecurity, poor human relationships and emotional tension etc and consequently detoriates both the physical and mental health of workers.

In addition to the above, new technologies like video display units and computers also bring with them new hazards and problems such as repetitive strain injury or musculoskeletal disorders if not used properly. Ergonomics plays an important role in the prevention of such diseases.

➢ **Common workplace hazard groups**

Workplace hazards have been listed in the tabular form :-

Sl No.	Type of Hazard	Type of Agent	Factors included
1	Physical hazards		● Collisions ● Confined space ● Slips and trips ● Falls from height ● Struck by objects ● Electricity ● Falling on a pointed object
2		Physical agents	● Noise ● vibration ● Lighting ● Barotraumas (hypobaric/ hyperbaric pressure) ● Ionizing radiation
3	Mechanical hazards		● Compressed air/high pressure fluids (such as cutting fluid) ● Crushing ● Cutting ● Draw in ● Entanglement ● Equipment-related injury ● Friction and abrasion ● Impact ● Moving parts ● Shearing ● Stabbing and puncture ● Workplace transport
4	Biological hazards		● Bacteria ● Virus ● Fungi ❍ Mold

			● Blood-borne pathogens ● Tuberculosis
5		Chemical agents	● Acids ● Bases ● Heavy metals ❍ Lead ● Solvents ❍ Petroleum ● Particulates ❍ Asbestos and other fine dust/fibrous materials ❍ Silica ● Fumes (noxious gases/ vapors) ● Highly-reactive chemicals
6	Psychosocial issues		● Work-related stress, whose causal factors include excessive working time and overwork ● Violence from outside the organisation ● Bullying, which may include emotional, verbal, and sexual harassment ● Mobbing.



CHECK YOUR PROGRESS

Q 2: Mention the different types of occupational hazards.

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6.6 EFFECTS OF OCCUPATIONAL DISEASES OR ACCIDENT COST

Work-related accidents or diseases have to pay for its direct and indirect effects on the lives of workers and their families. For workers, the direct costs of an injury or illness may be:

- the pain and suffering of the injury or illness;
- the loss of income;
- the possible loss of a job;
- the health-care costs.

It has been observed that the indirect costs imposed on the workers and their families due to an accident or illness are very often difficult to measure and it is almost 4 -10 times higher than the direct costs or even more. That's why it is not possible to compensate the indirect cost of an accident or illness that denotes the human suffering with money.

The costs of accidents or illnesses are estimated to be enormous for the employers and may be a financial disaster for the small business enterprise. For employers, some of the direct costs are:

- payment for work not performed;
- medical and compensation payments;
- repair or replacement of damaged machinery and equipment;
- reduction or a temporary halt in production;
- increased training expenses and administration costs;
- possible reduction in the quality of work;
- negative effect on morale in other workers.

Some of the indirect costs for employers are:

- the injured/ill worker has to be replaced;
- a new worker has to be trained and given time to adjust;
- it takes time before the new worker is producing at the rate of the original worker;
- time must be devoted to obligatory investigations, to the writing of reports and filling out of forms;
- accidents often arouse the concern of fellow workers and influence

labour relations in a negative way;

- poor health and safety conditions in the workplace can also result in poor public relations.

It can be summarized that the costs of most work-related accidents or illnesses are relatively very high both to the workers and their families and to the employers. On a national scale, the estimated costs of occupational accidents and illnesses can be as high as three to four per cent of a country's gross national product. In reality, no one can determine the total costs of work-related accidents or diseases because there hide lots of indirect costs which are difficult to measure besides the more obvious direct costs.



CHECK YOUR PROGRESS

Q 2: Mention two direct costs of injury to the workers.

i) ……

ii) ……

6.7 PROTECTION AGAINST HAZARDS

The terms health, safety and security are interlinked. Health is the general state of well being. It not only includes physical but also emotional and mental well being. Safety refers to the act of ensuring physical well being of an employee and excludes the risk of accidents caused due to machinery and fire or diseases. Security refers to the protection of both the facilities and equipments from unauthorized access and the employees while they are on work.

In the organizations, the supervisors or HR manager is responsible to look after the employee's health and safety matter. An HR manager communicates and aware the employees about the health and safety policy of the company and conduct formal training on safety. The supervisors and departmental heads are answerable to any question raised on safety issue of working conditions. So, they should try to maintain a safe working condition in their respective departments.

Invention of new and sophisticated technology, methods of working, systems and processes may be a threatening to the health of worker. Globalisation of manufacturing practices results in cross-border transition of the workforce from one country to another country. The stress in terms of cultural conflicts, new health and environmental hazards and other psychosocial problems has aroused as the new dimension of globalisation of trade. In addition, environmental pollution is increasing as do accidents, occupational diseases and catastrophic risks due to the setting up of many hazardous industries in the country.

The new concept of health is to prevent than to cure the diseases. The motto of engineering approach is to ensure a safe process, an integrated systems approach and better occupational environment, whereas the motto of medical approach is to identify the health risks and their prevention. Ergonomic interventional techniques are receiving due importance in the prevention of occupational diseases. The use of Information Technology has got immense importance for mass awareness and education. The Government as well as enterprises have sited together to formulate comprehensive health, safety and environment policies inspite of their different objective. It has been observed that the enterprises try to integrate health and safety management systems with quality assurance systems while the progressive governments aim to integrate the occupational health with primary health care system in the country. Looking at the trend of globalization, the need has been raised to develop a national network on occupational health in our country along with the emphasis of technical cooperation and collaboration in OHS matters at the global level.



LET US KNOW

The National Commission on Labour's observation need be noted in regard to protection against health hazards. It says:

"There are two aspects of such protection: preventive; and curative. The former consists of pre-employment and periodic medical examination; removal of health hazards to the extent possible;

surveveillance over certain classes of workers such as women, children and persons exposed to special risks; emergency treatment for accidents; training of first-aid personnel; the education of workers in health and hygiene. The curative aspect will begin once a worker suffers from ill-health or diseases…….. While the curative side can be attended to the basic difficulty associated with the preventive aspect is the general economic condition in the country……. Presently all that can be done is to move towards the preventive side. In addition, the more difficult cases should be taken up and arrangements made for both physical and psychological treatment. This is an area where closer co-operation between authorities who are in charge of preventive and others who look after cure will be necessary."

6.8 ROLE OF OCCUPATIONAL HEALTH SERVICES (OHS)

Occupational Health Service (OHS) is a multidisciplinary concept and thus seek / ought the services of physicians, hygienists, toxicologists, ergonomists, psychologists, educators, NGOs and paramedical staff to achieve a common goal of protecting and promoting worker's health.

The scope of occupational health services is wide spread. It aims at preventing occupational hazards and protecting the workers against the hazards at their work place. It helps the worker in adapting to the work and work environment as per their capabilities. Moreover, it tries to promote the physical, mental and social well-being of workers along with the cure and rehabilitation of accidental occupational injuries.

The main objectives of the OHS may include the following:

- To provide medical treatment and support in case of an emergency illness or accident.
- To monitor, manage and modify any adverse health effects which may occur at the workplace.
- To promote good health at the workplace.

- To plan and execute health education and awareness programmes for employees.

The major activities at an Occupational Health Centre may include:

- Medical surveillance through measures such as periodic medical check-ups.
- Pre-employment medical check-ups.
- Medical treatment for illnesses and accidents.
- Conducting health education programmes.
- Providing first aid and other related training to the employees.
- Promoting health awareness and wellness measures among employees.

Occupational Health Service will be proved as an useful tool if the organization can feel its importance and gives proper attention that it deserves. OHS should adopt proactive strategies for medical surveillance of workers in the industry extending beyond the statutory provisions to promote the working capacity and health of the employees. The OHS department regularly undertakes health promotion campaigns and emphasizes to prevent complications and preserve productivity of employees by checking their health for the chances of suffering from chronic diseases like diabetes, hypertension, etc.



CHECK YOUR PROGRESS

Q 3: Mention the main objectives of the OHS.

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6.9 STATUTORY PROVISIONS FOR INDUSTRIAL HEALTH IN INDIA

It is must for the employer to ensure safety and security to its employees so that the functioning of the organization runs smoothly. Health and safety is an integral part of work environment. So, the work environment should be such that it enhances the well being of employees and free from accident and disease.

Organizations provide welfare facilities to their employees with an intention to motivate them. The welfare schemes meant for employee are of two types viz. statutory and non-statutory welfare schemes. According to the laws governing employee health and safety, the statutory schemes are compulsory to be provided by an organization. These include provisions provided in industrial Acts like Factories Act, 1948, Dock Workers Act (Safety, Health and Welfare) 1986, Mines Act, 1952. The non statutory schemes do not follow the same compliance of Law as do the statutory schemes and so differ from organization to organization and from industry to industry.

6.10 LEGISLATIONS GOVERNING OCCUPATIONAL HEALTH AND SAFETY IN INDIA

In this section we will discuss some provisions of the Acts which govern the occupational health and safety in India. These Acts are-

- Factories Act, 1948
- Mines Act,1952
- Dock workers Act (Safety, Health & Welfare)1986

These are three major legislations implemented for monitoring and handling the issues related with the occupational health and safety of workers employed in factories, mines and ports in India.

- **Factories Act, 1948**

Section 11-20 of this Act provides the guidelines to ensure health, security and safety of the employees in the factory conditions under which they work. The Act states that the working environments should not have an adverse effect on the employee's health. Moreover, this Act defines Accident as, "an occurrence in an industrial establishment causing bodily injury to a person which makes him unfit to resume his duties in the next 48 hours." The followings are the provisions made under the Act:

For Health

- **Cleanliness:** According to Sec.11, the factory should be kept clean and free from foul smells arising from any drain, toilet or any other nuisance.

- **Disposal of wastes:** According to Sec.12, effective arrangement should be made in every factory for the disposal of waste arising due to the manufacturing process carried on therein, so as to make them harmless.
- **Ventilation & Temperature:** According to Sec.13, factory must provide adequate ventilation in every work room for proper circulation of fresh air. Moreover, a comfortable temperature must be maintained in the working environment.
- **Dust and fumes:** According to Sec.14, effective arrangement must be made in every factory for the prevention of the inhalation or accumulations of dust or fume given off by any manufacturing process in any room which may be injurious to the health of the workers.
- **Artificial Humidification:** According to Sec.15, in respect of all the factories, in which the humidity of air is artificially increased, the state Government may make rules regarding the permissible standards of humidity, tests for determining humidity and methods to be adopted for securing adequate ventilation and cooling of the air in the work rooms.
- **Overcrowding:** According to Sec.16, no room in any factory shall be overcrowded to an extent which is injurious to the health of workers.
- **Lightening:** According to Sec.17, there shall be sufficient and suitable lighting arrangement, natural or artificial or both, in every part of a factory where workers are working or passing through.
- **Drinking water:** According to Sec.18, in every factory, effective arrangement must be made to provide sufficient, safe and hygienic drinking water to all workers employed therein.
- **Latrines and urinals:** According to Sec.19, sufficient number of latrines and urinals are to be provided in the office and factory premises and are also to be maintained in a neat and clean condition. There should be seperate provision of latrines and urinals for men and women in every factory.
- **Spittoons:** According to Sec.20, In every work place, a sufficient numbers of spittoons are to be provided in convenient places and

same are to be maintained in a hygienic condition.

- **For Safety** [The provision dealing with the safety of workers in different states are supplemented by rules framed by each State Government]
- **Fencing of machinery:** According to Sec.21, in a factory, each dangerous machinery or parts of it should be securely fenced by suitable materials and properly maintained as well as kept in position while the parts of machinery they are fencing are in motion or in use.
- **Work on machinery in motion:** According to Sec.22, when it is necessary to examine the machinery in motion, it is required that such examination or operation shall be carried out only by a specially trained adult male worker wearing a safety dress supplied by the occupier of the factory.
- **Self acting machinery:** According to Sec.25, no part of a self acting machine which moves sideways in any factory and no material carried thereon shall be allowed to run on its outward or inward movement within a distance of 45 cms from any fixed structure which is not a part of the machine.
- **Casting of new machines:** According to Sec.26, it is an important duty of the seller or hirer or their agents to encase, sunk or otherwise effectively guard every screw, bolt or key, revolving shaft, spindle, wheel or pinion of the machine to prevent danger to the workers.
- **Hoists and lifts:** According to Sec.28, in a factory, every hoist and lift should be constructed with sound material and adequate strength. It should be properly maintained and sufficiently protected by an enclosure fitted with gates.
- **Pressure plant:** According to Sec.31, if in any factory, any part of the plant or machinery used in manufacturing process is operated at a pressure above atmospheric pressure, effective measures should be taken to ensure that the safes working pressure of such part is not exceeded.
- **Floors, stairs and means of access:-** According to Sec.32, in every factory, all floors, steps, stairs, passages and gangways should be of sound construction and properly maintained and should be kept free

from obstruction and substances likely to cause persons to slip and it should be provided with substantial handrails where found necessary to ensure safety.

- **Excessive weights:** According to Sec.34, no person should be employed in any factory to lift, carry or move any loads so heavy as to be likely to cause him injury.
- **Protection of eyes:** According to Sec.35, in respect of any such manufacturing process which involves a risk of injury to the eyes from particles or fragments thrown off in the course of the process or due to exposure to excessive light, the state government may by rules make mandatory that effective screens or suitable goggles shall be provided for the protection of workers engaged in such works.
- **Precautions against dangerous fumes:** According to Sec.36, no person should 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 as a risk factor, unless all practical measures have been taken to removes those.
- **Explosives of inflammable gas:** According to Sec.37, where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition; all practicable measures should be taken to prevent any such explosion by:
  - [a] effective enclosure of the plant or machinery used in the process.
  - [b] removal or prevention of the accumulation of such dust, gas, fume or vapour.
  - [c] exclusion or effective enclosure of all possible sources of ignition.
- **Precautions in case of fire:** According to Sec.38, all practicable measures should be taken in every factory to prevent any outbreak of fire and its spread both internally and externally.
- **Safety of buildings & machinery:** According to Sec.40, if it appears to the inspector that any building or a part of it, or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may send an order to the factory manager,

specifying the measures which in his opinion should be adopted before a specific date.

- **Maintenance of buildings:** According to Sec.40A, if it appears to the inspector that any building or a part of it in a factory is in a condition of disrepair which may be detrimental to the human life or safety, he may send an order to the factory manager, specifying the measures which in his opinion should be carried out before a specific date.

For Welfare

Washing facilities

Facilities for sitting

First aid appliances

Canteens

Rest rooms and shelters

Crèches for children of workers

Facilities for storing and drying clothing

- **Mines Act, 1952**

It contains provisions for measures relating to the health, safety and welfare of persons employed in the coal and oil mines.

It provides the following provisions for health and safety of mine workers:

[i] Drinking water

[ii] Conservancy

[iii] Medical appliances

[iv] Working hours

[v] Notice about accidents

[vi] Notice of certain diseases

- **Dock Workers (Safety, Health & Welfare) Act, 1986**

It contains provisions for the health, safety and welfare of workers working in ports/docks.

It provides the following provisions:

[i] Surfaces

[ii] Fencing of dangerous places

[iii] Passages to be kept clear

[iv] Railings and fencings

[v] Staging construction and maintenance

[vi] Work on staging

[vii] Lifesaving appliances

[viii] Illumination

[ix] Fire protection

[x] Excessive noise

[xi] Access between deck and hold

[xii] Stairs

[xiii] Floor loading

[xiv] Construction all occupational diseases are preventable with proper awareness of hazards and appropriate preventive measures.

[xv] Access between deck and vessel

[xvi] Access between shore and ship



CHECK YOUR PROGRESS

Q 4: Name the major legislations relating to occupational health and safety in India.

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6.11 LET US SUM UP

The WHO has defined health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. All occupational diseases are preventable with proper awareness of hazards and appropriate preventive measures. Physical hazards, Chemical hazards, Biological hazards, Mechanical hazards and Psychological hazards are the five types of hazards that an individual may be exposed to depending upon his/her occupation. There are two aspects of protection against industrial health hazards: [i] preventive; and [ii] curative. Occupational Health Services

(OHS) are essentially multidisciplinary in nature involving the services of all responsible citizen of a country. Factories Act 1948, Mines Act 1952 and Dock workers Act (Safety, Health & Welfare) 1986 are the three major legislations relating to occupational health and safety in India.



6.12 FURTHER READING

1) Personnel Management: C.B. Mamoria and S.V. Gankar, Himalaya Publishing House, New Delhi.



6.13 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Physical hazards, Chemical hazards, Biological hazards, Mechanical hazards and Psychological hazards

Ans to Q No 2: i) the loss of income;

ii) the possible loss of a job.

Ans to Q No 3: i) To provide medical treatment and support in case of an emergency illness or accident.

ii) To monitor, manage and modify any adverse health effects which may occur at the workplace.

iii) To promote good health at the workplace.

iv) To plan and execute health education and awareness programmes for employees.

Ans to Q No 4: i) Factories Act, 1948

ii. Mines Act, 1952

iii. Dock workers Act (Safety, Health & Welfare),1986

6.14 MODEL QUESTIONS

Q 1: What is meant by Industrial Health? What are the causes of occupational diseases?

Q 2: What are the measures adopted by the Governments of India to ensures occupational health and safety in India?

Q 3: What are the major activities of occupational health centre?

Q 4: Discuss the protections against occupational health hazards.

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UNIT 7 : THE TRADE UNIONS ACT, 1926

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Objectives of the Trade Unions Act

7.4 Important Definitions under the Act

7.5 Registration of Trade Union

7.6 Rights and Liabilities of Registered Trade Union

7.7 Penalties Under the Act

7.8 Let Us Sum Up

7.9 Further Reading

7.10 Answers To Check Your Progress

7.11 Model Questions

7.1 LEARNING OBJECTIVES

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

- discuss the objectives and important definitions under the Trade Union Act.
- discuss the procedure of registration of trade union
- explain the rights and liabilities of registered trade union
- explain the provisions of penalties under the Act.

7.2 INTRODUCTION

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 various rights and privileges. Similarly registered Trade Union obligated by different liabilities also. In this unit, learners can understand the registration of trade union along with the objectives of the Trade Unions Act, 1926 .Moreover, 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.

7.3 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 protects 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

Q 1: Mention five objectives of The Trade Unions Act, 1926.

i) .....

ii) .....

iii) .....

iv) .....

v) .....

7.4 IMPORTANT DEFINITIONS UNDER THE ACT

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 of the Act, 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 sale of the goodwill of a business or of instruction in any profession, trade or handicraft.



CHECK YOUR PROGRESS

Q 2: Define Trade Dispute under The Trade Unions Act, 1926.

……

……

……

……

7.5 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 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;

(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;

(f) 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;

(g) 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;

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

(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 the conclusive evidence 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 provisions 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.

7.6 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 other 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 or 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, 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.

7.7 PENALTIES UNDER THE ACT

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 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.



7.8 LET US SUM UP

In this unit we have discussed the following points :

- 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 subscribe their names to the rules of the Trade Union complying with the provisions of the Trade Union Act with respect to registration, apply for the registration of the trade union.
- 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.



7.9 FURTHER READING

1) The Trade Unions Act ,1926; (Bare Act).
2) Industrial Law, by P. L. Malik.
3) Handbook of Industrial Law, by N. D. Kapoor.
4) Labour and Industrail Laws, P. K. padhi.



7.10 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

7.11 MODEL QUESTIONS

Q 1: How trade unions are registered under the Trade Union Act, 1926?

Q 2: Define the terms:

a. Trade Dispute

b. Registrar

c. Trade Union

d. Registered Trade Union

Q 3: State briefly how certificate of registration are issued under the Trade Union Act, 1926?

Q 4: What are the objectives of Trade Union Act, 1926?

Q 5: What are the different provisions to be contained in the rules of Trade Union under Section 6?

Q 6: When the certificate of registration of a Trade Union may be withdrawn or cancelled?

Q 7: When does an appeal lie from the orders of Registrar of Trade Unions?

Q 8: What are the disqualifications of office bearers of Trade Union under Section 21A?

Q 9: What are the objectives on which general funds may be spent under section 15 of Trade Union Act, 1926 ?

Q 10: Discuss the provisions regarding constitution of separate fund for political purposes under section16 of Trade Union Act, 1926.

Q 11: What are the different rights and liabilities of registered trade union under Trade Union Act, 1926 ?

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UNIT 8 : THE INDUSTRIAL DISPUTES ACT, 1947

UNIT STRUCTURE

8.1 Learning Objectives

8.2 Introduction

8.3 Objectives of the act

8.4 Important definitions under the Act

8.5 Illegal Strikes and Lock-outs

8.6 Unfair Labour Practices

8.7 Let Us Sum Up

8.8 Further Reading

8.9 Answers To Check Your Progress

8.10 Model Questions

8.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

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

8.2 INTRODUCTION

The first Act regarding the dealing with industrial disputes was the Employees' and Workman's Disputes Act, 1860 which later replaced by Trade Dispute Act, 1929. But later this Act also fails to create favorable atmosphere in the industry and settle the disputes. After World War II 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 its objectives and scope .This unit also encompass the different important definitions under the Act. Through this unit, you will be able to discuss the

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. Through this unit, you will come across the basic objects of passing of this Act and different prohibition when the strikes, lock-out etc. are become illegal.

8.3 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

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



CHECK YOUR PROGRESS

Q 1: Mention any two objectives of the Industrial Disputes Act, 1947.

i) ……

ii) ……

……

8.4 IMPORTANT DEFINITIONS UNDER THE ACT

Some important definitions under this Act are given below—

Industry:

Section 2 (j) of 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 (9 of 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 (69 of 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 marginal employees, clubs can be said as industry.

4. *Universities:* As regards institutions 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:* Professionals 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 has 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, employees' free services or if they supply services for a nominal cost or if the servent provide free service to the master, then it is not an industry.



LET US KNOW

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



CHECK YOUR PROGRESS

Q 2: Mention whether the following activities would fall under 'industry' or not under Industrial Disputes Act, 1947.

a. Voluntary services, b. Municipalities

a) ……

……

b) ……

……

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

Thus the above definition can be analysed as:

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

b. Parties to the disputes : Industrial dispute mean that the dispute must affect a large group of workmen and employers. 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 Section 2 (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 muster 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 muster 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 distinctions 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), 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 cases of 'lock-out.'

But there are some resemblances also:

1. both 'lay-off' and 'lock-out' are temporary nature and both arise out of and exist during an emergency though the nature of emergencies in each case is different.

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

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

(a) voluntary retirement of the workman; or

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

(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 at,

a. 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)].

8.5 ILLEGAL STRIKES AND LOCK-OUTS

The justification of strikes is depending 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 proceedings and 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 of 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 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 to such person or persons and in such manner as may be prescribed.

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

8.6 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 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–

(a) discriminating against any workman,

(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 colourable 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 management policy.
8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.
9. To show favoritism or partiality to one 'set' of workers regardless of merit.
10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
12. To recruit workmen during a strike which, is not an illegal strike.
13. Failure to implement award, settlement or agreement.
14. To indulge in acts of force or violence.
15. To refuse to bargain collectively, in good faith with the recognized trade unions.
16. Proposing or continuing a lock-out deemed to be illegal under this Act.

II) On the part of workmen and trade unions of workmen.

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.
2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that it is to say-
   (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
   (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of a bargaining representative.
5. To state, encourage or instigate such forms of coercive actions as wilful 'go-slow', squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in willful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats or intimidation against any workman with a view to prevent him from attending work.



LET US KNOW

When an employer of a public utility service receives notice of strike or gives notice of a lock-out, he must within five days report to the appropriate Government or the authority appointed by such Government for this purpose. [Section 22(6)]



CHECK YOUR PROGRESS

Q 3: Fill up the blanks:

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 …….....



8.7 LET US SUM UP

In this unit we have discussed the following points –

- 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.
- Various definations under the Act like industry, industrial disputes, retrenchment etc.
- The differences between lock-out and lay-off as well as illegal strikes and lock-outs.



8.8 FURTHER READING

1) The Workmen's Compensation Act, 1923; (Bare Act).
2) Industrial Law, by P. L. Malik.
1) Handbook of Industrial Law, by N. D. Kapoor.

8.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The main objective of Industrial Disputes Act, 1947 is,

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

ii) Promotion of collective bargaining.

Ans to Q No 2:

a. Voluntary services: If for a certain pious mission, employees' free services or if they supply services for a nominal cost or if the servent provide any free services to the master, then it is not an industry.

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

Ans to Q No 3: i) 2 (k) ii) 2(s)

iii) 2 (q) iv) 2 (i)



8.10 MODEL QUESTIONS

Q 1: What are the objectives of the Industrial Disputes Act, 1947?

Q 2: Define the terms:

a. Industrial Disputes.

b. Industry.

c. Workmen.

d. Public utility service.

Q 3: Mention a few unfair labour practices on the part of employers and on the part of workmen?

Q 4: Distinguish between:

a. 'Lay-off' and 'Lock-out'.

b. Strikes and Lockouts.

Q 5: Discuss the provisions relating to illegal strikes and lockouts.

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UNIT 9 : THE PAYMENT OF WAGES ACT, 1936

UNIT STRUCTURE

9.1 Learning Objectives

9.2 Introduction

9.3 Definition of 'Wage'

9.4 Various Provisions of the Payment of Wages Act, 1936

9.5 Let Us Sum Up

9.6 Further Reading

9.7 Answers To Check Your Progress

9.8 Model Questions

9.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the term 'wage' under the Payment of Wage Act 1936
- discuss the provisions for deduction for fines
- discuss the provisions for deduction for absence

9.2 INTRODUCTION

In the previous unit we have discussed the Industrial Disputes Act, 1947 and its various provisions. In the present unit attempt is taken to discuss the Payment of Wages Act, 1936. Wages means all remuneration, whether by way of salaries, allowances or otherwise expressed in terms of money. You will be able to discuss the various important aspects of the Act in this unit.

9.3 DEFINITION OF 'WAGE'

Section 3 of the Payment of Wages Act 1936 states that every employer shall be primarily responsible for the payment to the person employed by him of all wages required to be paid under the Act.

MEANING OF THE TERM WAGES :

According to section 2 (vi), wages means all remuncration, whether by way of salaries, allowances, or otherwise, expressed in terms of money as capable of being so expressed which would, if the terms of employment, express or implied were fulfilled, then it will be payable to a person employed in respect of his employment as of work done in such employment.

Wages include the following -

1) Any remuneration payable under any award or settlement between the parties as order of a court.
2) Any remuneration to which the person employed is entitled in respect of overtime work on holidays or any leave period.
3) Any additional remuneration payable under the terms of employment, whether called a bonus or by any other name.
4) Any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument.
5) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

Wages do not include the following -

(i) Any bonus which does not form park of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the partics or order of a court.
(ii) The value of any house accommodation or of the supply of light, water, medical allowances or other amenity or of any service excluded from the computation of wages by a general or a special order of the State Government.
(iii) Any contribution paid by the employer to any persion or provident fund, and the interest which may have accrued there from.
(iv) Any travelling allowance or the value of any travelling concession.
(v) Any sum paid to the employed person to pay sepecial expence entailed on him by the nature of his employment. or
(vi) Any gratuity payable on the termination of employment in cases other those specified in sub clause (d).

9.4 VARIOUS PROVISIONS OF THE PAYMENT OF WAGES ACT, 1936 :

Various important provisions of the Payment Wages Act, 1936 are discussed below --

1) Provisions deductions for fines :-

Clause (a) of Section 7 (2) provides that deduction by way of fine out of the wages of an employed person shall be made only in accordance with the provisions of the Act. According to section 8, fine shall be impossed in respect of any such acts and omissions on his part as the employer, with the previous approval of the State Government or of the prescribed authority and it shall have to be specifeid by notice. In time of deduction of fine from wages, the following points should be considered -

1) Approval of the Acts and Omissions
2) Display of Notice
3) Opportunity of show cause
4) Amount of fine
5) Age limit for fine
6) Not recoverable installments and after delay
7) Day of imposition of fine
8) Register of fines
9) Use of fines
10) Penalty for Breach

2) Provisions for decuctions for Absence :

Clause (b) of the section 7(2) authorises deductions for absence from duty. Section 1 of the Act states that - (1) Deductions may be made only on account of the absence of employed person from the place or places where by the terms of employment he is required to work. (2) Such absence may be for the whole or any part of the period during which he is so required to work and (3) An employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses to carry out his work in persone of stay in strike or for any other cause which is not reasonable under the circumstance.

3) Provisions of the Damages and Loss :-

Clause (c) of section 7 (2) authorises deductions for damages to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, whose such damages or loss is directly attributable to his neglect or default.

Clause (o) of Section 7(2) permits deductions for recovery or losses sustained by a railway administration on account of any rebate or refunds incorrectly granted to the employed person where such loss is directly attribuable to his neglect or default.

Section 10 (1) provides that any deduction for damages or loss shall not exceed the amount of damage or loss caused to the employer by the neglect or default of the employed person.

Under section 10 (1 to 4) deduction for damage or loss shall not be made until the employed person is given an opportunity or shorting cause against the deduction.

Any such decuction may be made only in accordance with such procedure as may be prescribed for the purpose. According to section 10 (2) all such deductions and all realisations there of shall be recorded in a register to be kept by the person responsible for the payment of wages in such from as may prescribed. Penalty for breach of the above provisions of section 10 shall be punishable with fine which may extend to Rs. 500.

4) Provisions of deductions for Services rendered :

Section 11 lays down that under clause (d) and (e) of section 7 (2) deduction shall not be made from the wages of an employed person unless the house accommodation, amanity or service having been supplied by the employer, has been accepted by him as a term of his employment or otherwise. This deduction shall not exceed an amount equivalent to the value of the house accomodation, amenity or service supplied and the deductions shall further be subject to such conditions as the Government may impose. Any contravention of the provisions in this regard shall be punishable with fine which may extend to Rs. 500.

5) Provisions of deductions for Recovery of Advance :

According to section 12, any deduction under clause (f) of Section

7(2) for Recovery of Advance shall be subject to the following conditions -

i) Recovery of an advance of money, given before employment began shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of any advance given for travelling expenses.

ii) Recovery of an advance of money given after employment began shall be subject to such conditions as the Government may impose and

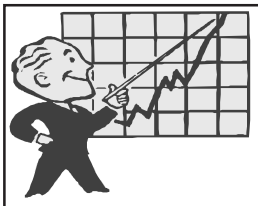
iii) Recovery of advance of wages not already earned shall be subject to any rule made by the State Government regulating the extent to which such loans may be granted and the rate of interest payable thereon.



LET US KNOW

I. The Payment of wages Act 1936 has recently been amended in 2005 by the Payment of Wages (Amendment) Act, 2005.

II. The bonus payable under the Payment of Bouns Act, 1965 amounts to wages within the definition of 'Wages'. After coming into force of the Payment of Bonus Act, bonus has become an implied term of employment not dependent upon the profits and therefore comes under the category of remuneration.



CHECK YOUR PROGRESS

Q.1: Choose the correct answer :

i. The Payment of wages Act,1936 came into force on 28th March 1937 and it extends to

(a) Whole of India

(b) Whole of India except Jammu and Kashmir

(c) State notified time to time

(d) All states except union terrritories

ii. The Payment of Wages Act, 1936 applies to persons employed in
   (a) any factory
   (b) Industrial or other establishment
   (c) Railway
   (d) All of these

iii. In Which of the following section of Payment of Wages Act, the term "wages" is defined
   (a) 2 (ii) (b) 2 (vi) (c) 2 (ii) (a) (d) 2 (vi) (a)

Q.2: State whether the following statement are correct or incorrect and also state the reason.
   (a) The term "Appropriate Government" under the Payment of Wages Act, 1936 includes only the Central Government.
   (b) The expression 'wages' include the amount of bonus payable to an employed person.



9.5 LET US SUM UP

Wages mean all remuneration, whether by way of salaries, allowances, or otherwise expressed in terms of money or capable of being so expressed which would if the terms of employment, express or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. Various important provisions of the payment of Wages Act, 1936 are (i) Deduction for fines (ii) Deduction for absence from duty, (iii) Damages and Loss (iv) Deduction for servies rendered, Deduction of Recovery of Advance etc.



9.6 FURTHER READING

1) Industrial Relations and Labour Law By C.B. Memoria.
2) Industrial Relations, By Arun Monappa.
3) A text book of Business and Industrial Laws By P.P.S. Gogna.

9.7 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q No 1: (i) a (ii) d (iii) b

Ans. to Q No 2: (a) True (b) False



9.8 MODEL QUESTIONS

Q 1: Define wages under the Payment of Wages Act, 1936.

Q 2: Discuss the provisions for deduction of fines.

Q 3: Discuss the various provisions of the Payment of Wages Act, 1936.

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UNIT 10 : THE FACTORIES ACT, 1948

UNIT STRUCTURE

10.1 Learning Objectives

10.2 Introduction

10.3 Important Definitions under the Act

10.4 Statutory Agencies and their Powers for Enforcement of the Act

10.5 Health, Safety and Welfare Provisions

10.6 Provisions regarding Hazardous work

10.7 Employment of Young Person

10.8 Penalties and Provisions

10.9 Let Us Sum Up

10.10 Further Reading

10.11 Answers To Check Your Progress

10.12 Model Questions

10.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

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

10.2 INTRODUCTION

The 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 Factories Act, 1948 along with the details about various definitions. Besides that this unit 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 through this unit such matter as the inspecting staff, provisions relate to health, safety and welfare, provisions regarding hazardous work ,employment of young persons and penalties and provisions related to it.

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

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

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

Thus, the essential elements of a factory are:

1. There must be premises.
2. There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises,

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



CHECK YOUR PROGRESS

Q 1: Define the term 'Factory'.

……

……

……

……

……

10.4 STATUTORY AGENCIES AND THEIR POWERS FOR ENFORCEMENT OF THE ACT

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

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

i) The inspecting staff: The State Government is empowered to make appointment for the post of Inspector and Chief Inspector. Appointment is made by the State Government by notification in the Official Gazette. Under Section 8(i) lays down that a person may be appointed as an Inspector who possesses the prescribed qualifications. But, under Section 8(4) lays down the general provision that every District Magistrate shall be Inspector for his District. Sub-section (5) of Section 8, lays down that the State Government may, also, by notification in the Official Gazette, appoint such public servants as it thinks fit to be

Additional Inspectors for all or any of the purposes of this Act, within such local limit as it may assign to them respectively.

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

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

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

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

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

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

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

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

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

(h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to

damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



CHECK YOUR PROGRESS

Q 2: Fill in the blanks:

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

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

10.5 HEALTH, SAFETY AND WELFARE PROVISIONS

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

A. HEALTH

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

1. Cleanliness (Sec. 11): Every factory shall be kept clean and free from dirt. There should be effective drainage system that the floor of the

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

2. ***Disposal of wastes and effluents (Sec.12):*** There should be such arrangement in the factory that the wastes and effluents easily disposed off.

3. ***Ventilation and Temperature:*** (1) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom— (a) Adequate ventilation by the circulation of fresh air, and (b) Such a temperature as will secure to workers therein reasonable conditions of comfort and prevent 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

Q 3: Mention five provisions related to safety under the Factories Act, 1948 ?

i) ……

ii) ……

iii) ……

iv) ……

v) ……

B. SAFETY

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

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

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

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

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

(iv) the following should be securely fenced—

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

(b) every part of transmission machinery; and

(c) every dangerous part of any other machinery,

2. Work on or near machinery in motion (Sec. 22): In any factory it becomes necessary to examine any part of machinery, while the machinery is in motion, or, lubrication or other adjusting operation; or, any mounting or shipping of belts or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of his appointment, and while he is so engaged,—

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

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

i) ……

ii) ……

iii) ……

iv) ……

v) ……

10.6 PROVISIONS REGARDING HAZARDOUS WORK

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

1. Granting permission for the initial location of a factory involving a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information (information like the quantity, specifications and other characteristics of wastes) regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situate and the general public in the vicinity. The occupier shall lay down a detailed policy at the time of registering the factory involving a hazardous process with respect to the health and safety of the workers employed therein.

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

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

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

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

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

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

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

(c) provide for medical examination of every worker—

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

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

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

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

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

E. Emergency standards (Sec. 41E):

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

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

F. Permissible limits of exposure of chemical and toxic 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.

10.7 EMPLOYMENT OF YOUNG PERSON

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

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

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

c. Certificates of fitness (Sec. 68):

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

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

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

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

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

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

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

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

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

(5) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young

person, his parents or guardian.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the nature of his work,

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

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

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

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

Where an Inspector is of the opinion—

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

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

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



CHECK YOUR PROGRESS

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

i) .....

ii) .....

iii) .....

iv) .....

v) .....

10.8 PENALTIES AND PROVISIONS

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

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

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

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

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

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

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

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

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

iv) If any person who wilfully obstructs—

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

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

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

vi) Any person who fails to comply with or contravenes any of the provisions of sections 41B, 41C or 41H or the rules made thereunder, shall, in respect of such failure or conntravention, be punishable with imprisonment for a term which may extend to seven year and with fine which may extend to two lakh rupees.

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

C. Offences by workers:

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

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

(D) Limitation of prosecutions:

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



10.9 LET US SUM UP

In this unit we have discussed the following points :

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



10.10 FURTHER READING

1) The Factories Act, 1948; (Bare Act).

2) Industrial Law, by P. L. Malik.

3) Handbook of Industrial Law, by N. D. Kapoor.

10.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Under section 2 (m) of the Factories Act, 1948 ,"factory" means any premises, whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on. 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 No 2: i) 500 ii) 1000

Ans to Q No 3: Five provisions related to safety under the Factories Act, 1948 are,

i) Fencing of machinery

ii) Work on or near machinery in motion

iii) Employment of young persons on dangerous machines

iv) Protection of eyes

v) Precautions against dangerous fumes, gases, etc

Ans to Q No 4: Five provisions related to welfare under the Factories Act, 1948 are,

i) Washing facilities

ii) Facilities for storing and drying clothing

iii) Facilities for sitting

iv) First-aid appliances

v) Canteens

Ans to Q No 5: Five provisions related to employment of young persons under the Factories Act, 1948 are,

i) Prohibition of employment of young children

ii) Non-adult workers to carry tokens

iii) Certificates of fitness

iv) Working hours for children

v) Notice of periods of work for children



10.12 MODEL QUESTIONS

Q 1: Explain the following terms under the Factories Act, 1948:

i) Hazardous process

ii) Worker

iii) Factory

iv) Manufacturing process

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

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

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

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

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

Q 7: "The State Government carries out the administration of the Factories Act, 1948''.

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

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UNIT 11 : THE WORKMEN'S COMPENSATION ACT, 1923

UNIT STRUCTURE

11.1 Learning Objectives

11.2 Introduction

11.3 Object and Scope of the Act

11.4 Important Definitions under the Act

11.5 Disablement

11.6 Employer's Liability for Compensation

11.7 Employer's Liability when Contractor is Engaged

11.8 Commissioner

11.9 Compensation

11.10 Let Us Sum Up

11.11 Further Reading

11.12 Answers To Check Your Progress

11.13 Model Questions

11.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the object and scope of Workmen's Compensation Act, 1923
- define the different definitions as given by the Act
- describe employer's liability for compensation
- explain the employer's liability when contractor is engaged.

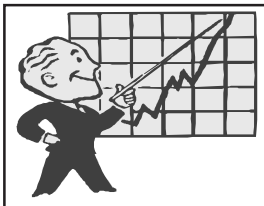
11.2 INTRODUCTION

The passing of the Workmen's Compensation Act, 1923 was the first step towards social security of the workmen. Its main purpose was to give financial protection to the workmen. In this unit, we are going to discuss about Workmen's Compensation Act, 1923 and details about its object and scope.This unit also encompass the different definitions. Through this unit, you will be able to know about the employer's liability for compensation and

penalties related to it. The unit discusses about the meaning of compensation. Thus, you will able to understand through this unit, the basic object of passing of this Act and different principles of workmen's compensation stipulated under the Act.

11.3 OBJECT AND SCOPE OF THE ACT

The Workmen's Compensation Act, 1923 extends to the whole of India. It came into force on the first day of July, 1924. It is social security legislation. The Workmen's Compensation Act, 1923 imposes statutory liability upon an employer to discharge his moral obligation towards employees when they suffer from any physical disabilities or diseases, during the course of employment in hazardous working conditions. The aim of the Act is to provide quick and cheaper disposal of disputes relating to the compensation which is not possible in comparison in case of proceedings of civil law. The Act also helps the dependants to get relieved from the hardship, rising from accident.



CHECK YOUR PROGRESS

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

i) ……

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11.4 IMPORTANT DEFINITIONS UNDER THE ACT

Some important definitions are given below—

(a) Section 2 (1) (b) of the Act define,*"* ***Commissioner"*** *as* a Commissioner for Workmen's Compensation appointed under section 20;

(b) *"****Compensation*****"** [Section 2 (1) (c)] means compensation as provided for by this Act;

(c) Section 2(1) (d) of the Act defines, ***"dependent"*** means any of the following relatives of a deceased workman, namely :-

(i) a widow, a minor legitimate or adopted son, and unmarried legitimate or adopted daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death,

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the workman is alive.

Explanation: For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively;

(d) **"Employer"** [Section 2 (1) (e)] includes:

i) any body of persons whether incorporated or not ,

ii) any managing agent of an employer ,

iii) legal representative of a deceased employer,

iv) any workman whose services are temporarily lent or let on hire to another person, by the person with whom the workman has entered into a contract of service or apprenticeship; means such other person while the workman is working for him.

A contractor falls within the above definition of the employer.

(e) ***"Managing agent"*** means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

(f) ***"Minor"*** means a person who has not attained the age of 18 years;

(g) ***"Prescribed"*** means prescribed by rules made under this Act;

(h) ***"Qualified medical practitioner"*** means any person registered under any Central Act, Provincial Act, or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

(i) "***Seaman"*** means any person forming part of the crew of any ship, but does not include the master of the ship;

(j) ***"Wages"*** includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

(k) ***"Workman"*** has been defined under section 2 (1) (n) as follows:

1. Workman means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is –

   (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

      (a) a master, seaman or other member of the crew of a ship,

      (b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

(3) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons :

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.



CHECK YOUR PROGRESS

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

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11.5 DISABLEMENT

The Act does not define the word disablement. But it defines the partial and total disablement.

(i) ***"Partial disablement"*** means,

a. where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and

b. where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:

Provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the workman's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity is not only the employment in which he was engaged at the time of accident but in all other employment.

(ii) ***"Total disablement"*** means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement :

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more.

11.6 EMPLOYER'S LIABILITY FOR COMPENSATION

Under the Section 3 of the Act provides the liability of the employer, in case of occupational diseases or personal injuries or the prescribed manner in which compensation has to pay to the workmen.

a. In case of occupational diseases:

i. Where a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein, as an occupational diseases peculiar to that employment , it is deemed to be injury by accident out of and in the course of such employment ,

ii. Such employment period should be continuously doing for six months under the same employer as specified in the Part B of Schedule III.

iii. Contract any such diseases to a workman, while he is in service of one or more employers (not necessarily the same employer) in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify.

iv. If it is proved:

   a. Contract any such occupational diseases to a workman, while he is in service of one or more employers in any employment specified in Part C of Schedule III and that occupational diseases is peculiar in nature to that employment during a continuous period which is less than the period specified under this sub section for that employment;

   b. That the disease has arisen out of and in the course of the employment.

v. The Central Government or the State Government, after giving notification in the Official Gazette of not less than three months of its intention to do so, may add description of employment specified in

Schedule III and mentioned specifically the diseases which may be occupational diseases peculiar to those employments respectively and thereupon the provisions of sub- section (2) shall apply.

vi. Except as mentioned above, no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

b. In case of Personal Injuries:

i. Personal injuries:

Here the injury means physical or bodily injury caused by an accident.

ii. Accident:

The word 'accident' has not been defined in the Act. But in common expression, it means a mishap or an untoward event which is not expected or designed.

iii. Arising out of employment and in the course of employment:

a. Arising out of employment: The injury should arise out of employment

i.e. the cause should be a proximate cause not a remote cause. In the case of **Mackenzie v. I.M. Issak**, it was observed that the word arising out of employment means that injury which is resulted from the risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe that the workman would not otherwise have suffered. There must be a casual relationship between the accident and the employment.

b. Arising in the course of employment: The workman, at the time of accident must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.

iv. *Theory of notional extension of employment:*

The injury should be caused by an accident which must have arisen in the course of employment i.e. the accident must take place at a time and the place when he was doing his master's job.

v. *When employer is not liable:*

A. When the injury does not result of disablement for a period exceeding 3 days.

B. When the injury not resulting in death or permanent total disability is due to any of the following:

a. the workman was at the time of accident, under the influence of drink or drugs,

b. the workman wilfully disobeyed an order expressly framed for the purpose of securing safety of workers,

c. the workman wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of workman.

vi. *Suit for damages in a court barred:*

Under Section 3(5), a workman has to institute in a Civil Court, a suit for damages against the employer or any other person to entitle compensation under the Workmen's Compensation Act, 1923.



CHECK YOUR PROGRESS

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

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11.7 EMPLOYER'S LIABILITY WHEN CONTRACTOR IS ENGAGED

Section 12 of the act covers the employer's liability when contractor is engaged for the purpose of doing any work in respect of employer's trade

or business. Such contractor has to execute the work with the help of workman engaged by him. But the employers will liable for the payment of compensation only in the following circumstances:

a. The contractor is engaged to do a work which is part of the trade or business of the employer.
b. The workmen were engaged in the course of or for the purpose of his trade or business.
c. The accident occurred in or about the premises on which the employer has under taken or undertakes to execute the work.

This provision, however does not prevent a workman from recovering compensation from the contractor instead of the employer. Here, the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

11.8 COMMISSIONER

Section 19(1) lays down the jurisdiction of a commissioner to entertain a claim in respect of payment of compensation to workman. The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workman's Compensation for such area as may be specified in the notification. The Commissioner has the following jurisdiction over following matters:

a. Liability of any person to pay compensation.
b. The person injured is or is not a workman.
c. The nature and extent of disablement.
d. The amount or duration of compensation.

According to Section 19 (2), no Civil Court, shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decide or dealt with by a Commissioner or to enforce any liability incurred under this Act.

All claims shall be made subject to the provision of the Act to the Commissioner. But, such applications other than the applications made by

dependant or dependants can only be submitted when the parties have failed to settle the matter by agreement.

The Commissioner shall have for the following powers—

a. taking evidence on oath;

b. enforcing the attendance of witness;

c. compelling the production of documents and material objects.

According to the Section 26, all costs incidental to any proceedings before a Commissioner shall subject to rules under this Act .



CHECK YOUR PROGRESS

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

i) ……

ii) ……

iii)……..

11.9 COMPENSATION

The word 'compensation' has been defined under section 2(1) (c) of the Workmen's Compensation Act, 1923. Amount of compensation can be decided by—

a. Schedule II contains a list of persons engaged in different employments/ operations specified therein who are covered by the definition of workman and they are entitled to pay compensation.

b. Schedule III contains a list of occupational diseases which if contracted while in employment entitles a workman to compensation such as disease caused by lead, mercury etc.

c. Schedule IV lays down the relevant factors related to age of the workman at the time of death, injury or accident by which wages are multiplied to arrive at compensation.

d. Section 4A of the Act provides that compensation under section 4 shall be paid as soon as it falls due.

e. The amount of compensation can be calculated deemed to be payable for a month, as—

   i. The monthly wages of the workman i.e. 1/12th of total wages which have been fallen due, for payment to him by the employer in the last 12 months of that period, only when workman is continuing work not less than 12 months immediately preceding the accident.

   ii. If the service of the workman was less than one month, the monthly wages of the workman shall be the average monthly amount which will be earned by the workman during the year i.e. 12 months immediately preceding the accident.

   iii. If it is not possible to calculate the monthly wages under clause (b), the monthly wage shall be the 30 times the total wages earned in respect of the last continuous period of service, divided by the number of days comprising such period.

f. Any half monthly payment payable to the workman under this act, either under an agreement between the parties or under the order of the Commissioner, accompanied by the certificate of qualified medical practitioner.

g. The half monthly payment received by agreement between the parties or on application of either party to the Commissioner, the compensation has to pay to the workman for not less than 6 months or, lump sum as determined by the Commissioner and agreed by the two parties.

h. No compensation has to be paid in respect of a workman whose injury has resulted in death and no payment of lump sum compensation to a woman or person under a legal disability except by deposit with the Commissioner.

i. The compensation money shall bear the first charge on the asset transferred by the employer.



11.10 LET US SUM UP

In this unit we have discussed the following points :

- The Workmen's Compensation Act, 1923 is one of the important social security legislation.
- The Act provide quick and cheaper mode of disposal of disputes.
- Partial disablement may be temporary or permanent disablement.
- Total disablement means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.
- Amount of compensation is payable in the event of a workman meeting with an accident resulting into temporary or permanent disabilities or disease as stated in Schedule II and III in terms of Section 4 of the Act, read with schedule IV.



11.11 FURTHER READING

1) The Workmen's Compensation Act, 1923; (Bare Act).
2) Industrial Law, by P. L. Malik.
3) Handbook of Industrial Law, by N. D. Kapoor.



11.12 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The object of the Workmen's Compensation Act, 1923 is to provide quick and cheaper disposal of disputes relating to the compensation which is not possible under the proceeding of civil law.

Ans to Q No 2: The definition of **"**Wages" under the Workmen's Compensation Act, 1923 includes, any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.

Ans to Q No 3: The reasons when employer is not liable to pay compensation under the Workmen's Compensation Act, 1923 are—

i. When the injury does not result of disablement for a period exceeding 3 days.

ii. When the injury not resulting in death or permanent total disability is due to any of the following:

   a. the workman was at the time of accident, under the influence of drink or drugs,

   b. the workman wilfully disobeyed an order expressly framed for the purpose of securing safety of workers,

   c. the workman wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of workman.

Ans to Q No 4: Three jurisdiction of Commissioner in payment of compensation to workman under the Workmen's Compensation Act, 1923 are—

a. Liability of any person to pay compensation.

b. The person injured is or is not a workman.

c. The nature and extent of disablement.

d. The amount or duration of compensation.

11.13 MODEL QUESTIONS

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

i. Dependant

ii. Disablement

iii. Wages

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

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

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

Q 5: To what extent is the compensation payable to a workman for personal injury sustained by him while on duty leading to—

i. his permanent total disablement

ii. his death under the Workmen's Compensation Act, 1923.

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UNIT 12 : THE PAYMENT OF BONUS ACT, 1965

UNIT STRUCTURE

12.1 Learning Objectives

12.2 Introduction

12.3 Application of the Act

12.4 Act Not to Apply to Certain Classes of Employees

12.5 Important Definitions under the Act

12.6 Calculation of Amount Payable as Bonus

12.7 Eligibility for Bonus and its Payment

12.8 Penalties and Offences by the Companies

12.9 Let Us Sum Up

12.10 Further Reading

12.11 Answers To Check Your Progress

12.12 Model Questions

12.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- discuss the application and important definitions of the Act
- explain the Act not to apply to certain classes of employees
- describe the calculation of amount payable as bonus
- describe the eligibility for bonus and its payment
- explain the penalties and offences by the companies.

12.2 INTRODUCTION

The term “bonus” is not defined in the Payment of Bonus Act, 1965. The Oxford Concise Dictionary defines the term “bonus” as “something to the good into the bargain (and as an example) gratuity to workmen beyond their wages”.In this unit, we are going to discuss about the application and important definitions of the Payment of Bonus Act, 1965. This unit also explain about the different classes of employees which are not applied under the Act. Through this unit, you will also know about the different penalty

provisions, offences by the companies along with the eligibility for bonus and its payment followed under the Payment of Bonus Act, 1965.

12.3 APPLICATION OF THE ACT

The main object of the Payment of Bonus Act, 1965 is to share the profits as well as ensure the reasonable uniformity of an establishment. According to Section 1(2), the Act extends to the whole of India and as per section 1 (3) the Act shall apply to-

a. every factory ; and

b. every other establishment in which twenty or more persons are employed on any day during an accounting year.

The Appropriate Government after giving notification in the Official Gazette of not less than two months apply to any establishment being a factory within the meaning of section 2 of the Factory Act, 1948 where persons employed less than twenty but in no case be less than ten. The provisions of this Act shall in a factory or other establishment to which this Act apply have effect from the accounting year commencing on any day in the year 1964 and in respect of every year subsequent accounting year.

12.4 ACT NOT TO APPLY TO CERTAIN CLASSES OF EMPLOYEES

Section 32 of the Payment of Bonus Act, 1965 is not to apply to certain class of employees. The following classes of employees are excluded and not applied under the section 32:

(i) employees employed by any insurer carrying on general insurance business and the employed by the Life Insurance Corporation of India;

(ii) employees employed by

  a) the Indian Red Cross Society or any other institution of a like nature including its branches;

  b) universities and other educational institutions;

  c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;

(iii) employees employed by Reserve Bank of India;

(iv) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958;

(v) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act ,1948 and employed by registered or listed employers;

(vi) employees employed by an establishment engaged in any industry called on by or under the authority of any department of Central Government or a State Government or a local authority;

(vii) employees employed by inland water transport establishments operating on routes passing through any other country;

(ix) employees employed by

(a) the Unit Trust of India;

(b) the Deposit Insurance Corporation;

(c) any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporation Act, 1951;

(d) the National Bank of Agriculture and Rural Development;

(e) the Industrial Finance Corporation of India;

(f) the Industrial Development Bank of India;

(fa) the Small Industrial Development Bank of India established under Section 3 of the Small Industrial Development Bank of India, 1989.

(fb) the National Housing Bank ;

(g) any other financial institution (other than Banking Company) being an establishment in public sector , which the Central Government may by notification specify having regard to

1. its capital structure;
2. its objectives and the nature of its activities;
3. the nature and extent of financial assistance or any concession given to it by the Government;
4. any other relevant factor.

Apart from the above, the appropriate Government has necessary

powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act.

12.5 IMPORTANT DEFINITIONS UNDER THE ACT

Some important definitions are given below—

Employer:

"Employer" includes,

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as a manager of the factory under Clause (f) of Sub-section 7(1) of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment , the person or the authority which, has the ultimate control over the affairs of the establishment and where these affairs are entrusted to a manager, managing director or managing agent , such manager, managing director or managing agent [Section 2(14)].

Accounting Year:

"**Accounting Year"** means

(i) in relation to a corporation , the year ending on the day on which the books and accounts of the corporation are to be closed and balanced.

(ii) in relation to a company , the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;

(iii) in any other case

a.) the year commencing on the 1st day of April; or

b.) if the accounting of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then at the option of the employer , the year ending on the day on which its accounts are so closed and balanced;

Once an option mentioned above under sub-section (b) is exercised, it shall not again be exercised except previous permission in writing of the prescribed authority is taken.

Allocable Surplus:

"Allocable Surplus" means

(a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-Tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act, sixty seven percent of the available surplus in an accounting year;

(b) in any other case sixty percent of such available surplus. [Section 2 (4)].

"Establishment":

Establishment means

Section 3 provides that it include all its departments, undertaking and branches wherever it has so whether situated in the same or different places and the same shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:

Where in an accounting year separate balance sheet and profit and loss account are prepared and maintained by such department or undertaking or branch shall be treated as a separated establishment for the purpose of computation of bonus under this Act.

"Establishment in public sector":

It means establishment owned, controlled or managed by:

a) a Government company as defined in Section 617 of the Companies Act, 1956;

b) a corporation in which not less than fourty percent of its capital is held (whether singly or taken together) by:

   i) the Government,

   ii) the Reserve Bank of India;

   iii) a corporation owned by the Government or Reserve Bank of India [Section 2(16)].

"Salary or Wage":

Salary or Wage means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment , express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called , paid to an employee on account of a rise in the cost of living) but does not include :

(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light , water, medical attendance or other amenity or of any service or any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any bonus (including incentives, production and attendance bonus);

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;

(vii) any commission payable to the employee. [Section 2(21)]

But subsistence allowance given during suspension is not wage. However, lay-off compensation is wage.

12.6 CALCULATION OF AMOUNT PAYABLE AS BONUS

The Payment of Bonus Act, 1965 laid down detailed procedures for calculating the amount of bonus.

a) Computation of gross profits:

As per section 4, the Gross Profits derived in an accounting year of a establishment shall:

i) in case of banking company as per First Schedule;

ii) in any other case, in the manner specified in the Second Schedule.

b) Deductible from the gross profits:

The sums deductible from the gross profits as per section 6 include,

i) Any amount admissible as depreciation is deductible in accordance with the provision of section 32(1) of the Income Tax Act; but not the depreciation allowed by the Income Tax Officer in making assessment on the employer. Besides an amount is deductible from the gross profit in accordance with the provisions of the Agricultural Income Tax Law.

ii) Any amount by way of development rebate, investment allowance or development allowance which the employer is entitled to deduct from his income under the Income Tax Act.

iii) As per provision section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during the year;

iv) Any other sums as per specified in the Third Schedule.

c) Calculation of direct tax payable by the employer:

Under section 7, the direct tax is calculated depending upon the following the provisions, namely:

(1) In calculating such tax no account shall be taken of-

  i) any loss incurred or carry forward by the employer in respect previous accounting year

  ii) any arrears of depreciation which has to add in the following accounting year

  iii) any exemption conferred under section 84 of the Income Tax Act to the employer

(2) If the employer is a religious or charitable institution under section 32 do not apply. It is also applicable if any income is exempt under the Income Tax Act and the institution is treated as company.

(3) The income derived by a person is only applicable for calculation under the Income Tax Act, where he is an individual or belongs from Hindu undivided family.

d) Computation of available surplus:

The available surplus in respect of any accounting year shall be the

gross profits for that year after deducting therefrom the sums referred to in Section6. It is the amount calculated in an accounting year commenced in any day in the year 1968 and in respect of every subsequent accounting year shall be aggregate of—

1) the gross profit for that accounting year after deducting therefrom the sums referred to in Section 6; and
2) an amount equal to the difference between—
   i) the direct tax, calculated in accordance with the provisions of Section 7 , in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year ; and
   ii) the direct tax calculated in accordance with the provisions of Section 7 in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

12.7 ELIGIBILITY FOR BONUS AND ITS PAYMENT

In accordance with the provisions of the Payment of Bonus Act, 1965, every employee shall be entitled to be paid bonus by his employer in an accounting year, provided he has worked in the establishment for not less than thirty working days in that year. But an employee may be disqualified from receiving bonus under the Act if he dismissed for the following reasons:

a) fraud; or
b) riotous or violent behaviour while on the premises or the establishment; or
c) theft, misappropriation or sabotage of any property of the establishment (Section 9).

Payment of minimum bonus:

According to the Section 10, every employee in respect of any accounting year a *minimum bonus which shall be paid 8.33 percent of the salary or wage* earned by the employee during the accounting year or one

hundred rupees whichever is higher. The amount one hundred rupees will be replaced by sixty rupees if an employee has not completed the fifteen years.

Payment of maximum bonus:

In case the allocable surplus exceeds the amount of the minimum bonus, in an accounting year than the employee will get bonus of an amount in proportion to the salary or wage earned by them during that accounting year subject to a *maximum of twenty percent of such salary or wage*. (Section 10)

Set on and set off of allocable surplus:

If the allocable surplus is exceed the maximum limit i.e. twenty percent of total salary or wage of the employees employed in an accounting year in an establishment, it will be set on in the succeeding year and so on up to and inclusive of the fourth accounting year as illustrated in the Fourth Schedule.

Where the salary or wage of an employee exceeds three thousand and five hundred rupees per monthly, the bonus payable under section 10 or 11 shall be calculated as if his salary or wages were three thousand and five hundred rupees per month. (Section 12)

An employee shall be deemed to have worked in an establishment in an accounting year on which:

a. he has been laid off under an agreement under the law applicable to the establishment;
b. he has been on leave with salary or wage;
c. he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment ; and
d. the employee has been on maternity leave.



LET US KNOW

According to Section 10 of the Payment of Bonus Act, 1965, if any employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed.



CHECK YOUR PROGRESS

Q 1: Fill up the blanks:

i) According to the Section 10, every employee in respect of any accounting year a minimum bonus which shall be paid ..... percent of the salary or wage earned by the employee during the accounting year or ..... whichever is higher.

ii) According to section 1 (3) ,the Payment of Bonus Act, 1965 shall apply to every factory and every other establishment in which..... or more persons are employed on any day during an accounting year.

12.8 PENALTIES AND OFFENCES BY THE COMPANIES

Penalties:

If any person contravenes any of the provisions of the Act or any rule made thereunder; he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. If any person fails to comply with any direction, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Offences by the companies:

If under this Act any company committed an offence or every person who at the time of offence was committed any offence is responsible to be proceeded against and punished accordingly. Again if such offence is committed with the consent or connivance of any director, manager or any other officer of the company than they will be responsible for such acts and proceeded against and punished accordingly.



12.9 LET US SUM UP

In this unit we have discussed the following points :

- According to section 1 (3), the Payment of Bonus Act, 1965 shall apply to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year.
- According to the Section 10, every employee in respect of any accounting year a minimum bonus which shall be paid 8.33 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher.
- In case the allocable surplus exceeds the amount of the minimum bonus, in an accounting year than the employee will get bonus of an amount in proportion to the salary or wage earned by them during that accounting year subject to a maximum of twenty percent of such salary or wage.
- If the allocable surplus is exceed the maximum limit i.e. twenty percent of total salary or wage of the employees employed in an accounting year in an establishment, it will be set on in the succeeding year and so on up to and inclusive of the fourth accounting year.
- The Appropriate Government after giving notification in the Official Gazette of not less than two months apply to any establishment being a factory within the meaning of section 2 of the Factory Act, 1948 where persons employed less than twenty but in no case be less than ten.



12.10 FURTHER READING

1) The Payment of Bonus Act, 1965; (Bare Act)
2) Industrial Law, by P. L. Malik.
3) Labour and Industrial Laws (pocket Edt. 2007), by P. L. Malik.
4) Labour and Industrail Laws, P. K. padhi.



12.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: i) According to the Section 10, every employee in respect of any accounting year a minimum bonus which shall be paid 8.33 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher.

ii) According to section 1 (3), the Payment of Bonus Act, 1965 shall apply to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year.

12.12 MODEL QUESTIONS

Q 1: What is allocable surplus?

Q 2: What is the eligibility limit for payment of bonus?

Q 3: List out the categories of employees who are not covered under the Payment of Bonus Act, 1965.

Q 4: Write short notes on:

a. Accounting Year

b. Establishment in public sector

c. Establishment

d. Salary and Wages

Q 5: How payment of bonus can be calculated?

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UNIT 13 : THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1936

UNIT STRUCTURE

13.1 Learning Objectives

13.2 Introduction

13.3 Object and Application of the Act

13.4 Various Provisions of the Act

13.5 Let Us Sum Up

13.6 Further Reading

13.7 Answers To Check Your Progress

13.8 Model Questions

13.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the object of the Act
- explain the application of the Act
- explain the different provisions of the Act

13.2 INTRODUCTION

In order to improve the industrial relations climate and standardise conditions of employment including the procedures for disciplinary action, the Industrial Employment (Standing Orders) Act was passed in 1946. This Act extends to the whole of India and is applicable to industrial establishments employing 100 or more workmen on any day of the preceding 12 months. Both the Central and the State Governments have power to apply this Act to any establishment employing even less than 100 workmen and exempt conditionally or unconditionally any establishment from any or all provisions of the Act. The Act is a central legistation but is administered by both the Central and the State Governments in their respective spheres.

13.3 OBJECT AND APPLICATIONS OF THE ACT

The preamble of the Act makes it clear that the standing orders shall deal with the "conditions of employment of workers in an industrial establishment. It is obligatory upon all employers, covered by this Act to define precisely the conditions of the employment under it, which will govern relations between the employer and the employees and to make the said conditions known to the workmen employed by them.

The object of the standing orders is to make it clear to both the parties as what terms and conditions, the workmen are offering to work and the employer is offering to engage them. This Act requires the employers to define the conditions of service in their establishments and to reduce them to writing and to get them compulsorily certified with a view to avoid unnecessary industrial disputes. In other words, standing orders are intended to be the nature of shop rules promulgated by employers under the statutory obligations. They may be described as the written "code of conduct" for employees, for any act subversive of discipline as described as an act of misconduct.

The object of the Act can be mentioned as follows :-

(1) To provide for the conditions of employment in industrial establishment.

(2) To regulate standards of conduct of the employers and employees so that labour management relations could be improved.

(3) To maintain proper discipline, harmonious working conditions and achieve higher productivity by providing, satisfactory employment and working conditions.

(4) To provide for redressal of grievances arising out of employment or in relating to certain treatment or wrongful exaction on the part of the employers against the employee.

(5) To specify the duties and responsibilities of both the employers and the employees.

Applications of the Act -

This is a Central Act and as such extends to the whole of India. It applies to (a) verious industrial establishment wherein 100 or more workmen

are employed; or (b) wherein 100 or more persons were employed on any day of the preceding 12 months. The Appropriate Government Can also exempt conditionally or unconditionally any industrial establishment from all or any of the provisions of this Act (sec. 14); (c) the establishment of a contractor who employs workmen in order to fulfil a contract with the owner of any industrial establishment.

It may be noted that the Act does not apply to such workmen employed in any industrial undertaking as are covered by the following rules and regulations (a) The fundamental and supplementary Rules (b) Civil Services (Classification, Control and Appeal) Rules; (c) Civil Services (Temporary Service) Rules; (d) The Revised Leave Rules ; (e) The Civil Service Regulations; (f) The Railway Establishment Code; or (h) Any other rules or regulations that may be notified in this behalf by the Appropriate Government in the Official Gazette (Sec.13-B)

The Act also does not apply to the following establishments :

(a) Any industry to which the provisions of chapter VII of Bombay Industrial Relations Act, 1946 (Bombay Act II of 1947) apply; or (b) Any industrial establishment to which the provisions of the M.P. Industrial Employment (Standing Orders) Act 1961, apply.

Evidently these rules also donot apply to industrial establishments under private agreement or under the management of a statutory corporation. The Appropriate Government may extend the Act to any class or classes of industrial establishments as it deems fit, even to those establishments where labour employed is less than 100 by giving at least 2 months notice of its intention of doing so by a notification in the Official Gazette (section 13). The Appropriate Government can also exempt conditionally or unconditionally any industrial establishment from all or any of the provisions of this Act (sec. 14)

13.4 VARIOUS PROVISIONS OF THE ACT

Various provisions of the Act are discussed as follows -

A) Procedure for submission of Draft Standing Orders -

B) Conditions and procedure for certification.

C) Procedure for modification of the standing orders and

D) Machinery for the implementation of the Act.

1. Procudure for submission of Draft standing Orders - Procedure for submission of Draft Standing Orders provisions shall be made in the draft standing orders for every matter set out in the schedule to the Act, Such matters are -

(1) Classification of employees, viz, whether permanent, probationer, temporary, apprentice, casual or badlis etc; (1-A) workmen's ticket and registers, (2) Manner of notification to employers of periods and hours of work, holidays, pay day, curd wage rates :

(3) Shift working;

(4) Attendance and late coming;

(5) Conditions of procedure in applying for leave and the authority which may grant leave and holidays.

(6) Law to exit and entry into premises by certain gates and liability to search;

(7) Closing and reopening of sections of industrial establishment and temporary stoppages of work and rights and liabilities of employees arising therefrom;

(7.A). Closing and reopening of the entire industrial establishment / departments thereof and the rights and liabilities of the employers and the workmen arising therefrom.

(8) Termination of employment and notice to be given by the employer and employee.

(9) Suspension or dismissal for misconduct and acts or ommissions which constitute misconduct; and

(10) Means of redress for employees against unfair treatment or wrongful exaction on the part of the employer or his agent; and

(11) Any other matter which may be prescribed.

(B) Procedure for Certification of the standing orders -

Under Section 3 of the Act, every industrial establishment is required to submit standing order for approval to the labour commissioner of their respective areas. Five copies of the draft have to be submitted by the employer.

On the receipt of the draft the certification officer will send a copy of the same to the workmen of the concerned establishment or to their trade union, if any, with a notice inviting objections within 15 days of the receipt of the same. After giving both parties an opportunity of being heard, the certifying officer may certify the draft with or without modifications. Within 7 days of the certification he shall send authenticated copies of the standing orders to both parties.

(C) Procedure for Modification of the Standing orders -

The standing orders can be modified even after certification. For this purpose, an application is required to be submitted to the certifying officer by an employer or an employee desiring change. No certified copy can be modified before the expiry of 6 months from the date on which standing orders or the last modifications came into operation unless it is mutually agreed upon between the employer and his employee. After a lapse of 6 months they may be modified at the request of either side, by another application to the certifying officer.

(D) Machinery for Implementation of the Act -

The machinery for the implementation of the Act consists of the certifying officer and the Appellate Authority (Industrial court). The Deputy Labour Commission and the Regional Labour Commissioner stationed at Bombay, Calcutta, Dhanbad, Jabalpur, Kanpur and Madras exercise the powers of the certiying officers in the central sphere situated within their Jurisdiction. The Chief Labour Officer (central) is the Appellate Authority in respect of the central sphere. The Appellate Authority in the state sphere is an Industrial Court, wherever it exists, and in its absence any other authority may be appointed by the Appropriate Government.



CHECK YOUR PROGRESS

Q.1: Fill up the blank :

(i) The Industrial Employment (Standing Orders) Act was passed in .....

(ii) The Industrial Employment (Standing Orders) Act intends to whole of India and is applicable to Industrial Establishment employing ..... or more workman.

(iii) This Act is a ..... legislation.

(iv) The Appropriate Government. can extend the Act to any industry, where labour employed is less than 100 by giving at least .... months notice.



ACTIVITY

1. What are the various matter set out in the schedule to this Act for submission of draft standing orders.



13.5 LET US SUM UP

The Industrial Employment (Standing Orders) Act, was passed in 1946. This Act extends to the whole of India and is applicable to industrial establishment employing 100 or more workman on any day of the preceding 12 months. The object of the standing orders is to make it clear to both the parties on what terms and conditions, the workman are offering to engage them. This Act require the employers to define the conditions of service in their establishment and to reduce them in writing and to get them compulsorily certified with a view to avoid unnecessary industrial disputes.



13.6 FURTHER READING

1) Industrial Relations and Labour Law By C.B. Memoria.

2) Industrial Relations, By Arun Monappa.

3) A text book of Business and Industrial Laws By P.P.S. Gogna.

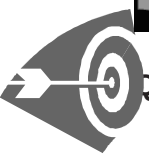
13.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1:

(i) 1946, (ii) 10 (iii) Central (iv) 2



13.8 MODEL QUESTIONS



Q 1: State the objectives and applications of the Industrial Employment (Standing orders) Act.

Q 2: Discuss the various provision of the Industrial Employment Act.

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UNIT 14: THE MINIMUM WAGES ACT, 1948

UNIT STRUCTURE

14.1 Learning Objectives

14.2 Introduction

14.3 Object and Scope of the Act

14.4 Definitions under the Act

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

14.6 Safeguards in Payment of Minimum Wages (Sec 11 to 18)

14.7 Enforcement of the Act (Sec 19 to 20)

14.8 Let Us Sum Up

14.9 Further Reading

14.10 Answers To Check Your Progress

14.11 Model Questions

14.1 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

14.2 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.

14.3 OBJECT AND SCOPE

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.

14.4 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 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;

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

Q.1: Fill in the blanks:

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 ……

14.5 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 forbear 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.

14.6 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.

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.

1. **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.

2. **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.
3. **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.
4. **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.

14.7 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 become 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

Q.2: Fills in the blanks:

a) Under Section …….. the Appropriate Government fix the minimum rate of wages.

b) The two modes of procedure of fixing and revising minimum wage are…… and ……..

c) Wages in kind falls under Section ……

d) Section 18 is about maintenance of ……..



14.8 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 sections 3, 4 and 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 .



14.9 FURTHER READING

1. The Minimum Wages Act 1948; (Bare Act)
2. Industrial Law, by P. L. Malik
3. Handbook of Industrial Law, by N. D. Kapoor

14.10 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) Appropriate Committee and publication of proposals in Official Gazette
c) 11
d) registers and records



14.11 MODEL QUESTIONS

Q 1: Write short notes on:

a. Wages

b. Employer

c. Employee

Q 2: Who fix the minimum rate of wages under the Minimum Wages Act 1948?

Q 3: State the procedure for fixing and revising minimum wages.

Q 4: What authorities can be appointed to hear and decide the claims and arising under the Minimum Wages Act 1948?

*** ***** ***

UNIT 15 : INTERNATIONAL LABOUR ORGANISATION

UNIT STRUCTURE

15.1 Learning Objectives

15.2 Introduction

15.3 Labour Legislation -Its Background

15.4 Labour Legislation in the Pre-Independence Period

15.5 Labour Legislation in the Post Independance Period

15.6 International Labour Organisation-

- 15.6.1 Structure of ILO
- 15.6.2 Objectives of ILO
- 15.6.3 Principles of ILO

15.7 Let Us Sum Up

15.8 Answers to Check Your Progress

15.9 Further Reading

15.10 Model Questions

15.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

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

15.2 INTRODUCTION

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

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

15.3 LABOUR LEGISLATIONS - ITS BACKGROUND

Industrial relations play a vital role in establishing and maintaining industrial democracy. The industrial relations have passed through several stages in India. Social, economic, and political are the various factors influenced industrial relations in India. Labour Statistics in India comes from the first national population census which was conducted in 1872 and it explains the number of gainfully employed. The Royal Commission on Labour in 1931 pointed out the need for systematic collection of labour statistics and recommended the adoption of suitable legislation regarding the different conditions of industrial labour. The result was the enactment of Industrial Statistics Act in 1942. It helps in collection of statistics on matters relating to factories and certain specified areas of welfare and conditions of labour. Thus, different important Acts such as the Workmen's Compensation Act, 1923, the Trade Unions Act, 1926, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Employee's State Insurance Act, 1948, the Factories Act, 1948 etc made. The workers and employers are two important pillars of our economy. Proper regulation of employer-employee relationship is a condition precedent for planned and purposeful development of society. The traditional right of an employer to hire and fire his workmen at his will has been subjected to many restraints. The right of labour participation in the management has been given legislative recognition to the utter despair of the capitalist. The Industrial society all over the world

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

15.5 LABOUR LEGISLATION IN THE PRE-INDEPEN DANCE PERIOD

During pre-independence period, workers were hired and fired as the principle of demand and supply governed industrial relations. The employer was in a commanding position, and the conditions of

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

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

15.5 LABOUR LEGISLATIONS IN THE POST INDE PENDENCE PERIOD

After independence, one of the significant steps taken in the field of industrial relations was the enactment of the Industrial Disputes Act, 1947, which not only provides for the establishment of permanent machinery for the settlement of Industrial disputes but also makes these awards binding

and legally enforceable. Besides the Industrial Disputes Act in December 1947, an Industrial Conference was held in India, where an appeal was made to labour and management in the form of an industrial True Resolution to maintain industrial harmonay.

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

1.1947

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

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

2. 1947-56

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

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

3.1957 - 65

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

b) Code of Discipline was introduced (1957)

c) Joint Management Councils (JMC)

d) Works committee

4. 1962-71

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

(1965,1971), split of Indian National Congress (1969).

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

5. 1972 - 76 :

a) Considerable Industrial unrest during this period.

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

c) ILC did not meet from 1972 to 1976.

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

6.1977-80

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

b) NLC was revived in 1977.

c) Period of reconciliation followed.

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

7. Post 1980's

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

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

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



LET US KNOW

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



ACTIVITY

1. Prepare a list of labour legistations after independence.



CHEEK YOUR PROGRESS

Q 1: Fill up the blanks :-

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

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

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

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

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

15.6 INTERNATIONAL LABOUR ORGANISATION

The International Labour Organisation was set up on April 19, 1919 as a result of the peace conference convened at the end of World War I at Versailles. The ILO is an international organisation, a new social experimental institution trying to make the world conscious that world peace may be

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

15.6.1 Structure of ILO

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

a) An International Labour Conference

b) A Governing body and

c) An International Labour office

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

i) Formulate International Labour standards

ii) Fixes amount of contribution by member-states.

iii) Pass budgets and expenditure.

iv) Amendments of constitution by $^{2}/_{3}$ majority.

v) Studies labour problems submitted by Director General and discuss and finds solution.

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

vii) Develop policies and procedure.

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

ix) Elects its own President.

x) Seek advisory opinion from international committee of justice.

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

b) The Governing Body :

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

Following are the functions of Governing body -

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

ii) Prepare agenda for each ILC

iii) Appoint Director General of the office.

iv) Scrutinise the budget.

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

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

c) An International Labour office :

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

i) To prepare documents on the items of the agenda of the conference.

ii) To assist governments in framing legislation on the basis of the decisions of the ILC.

iii) To bring but publications dealing with Industrial labour problems of international interest.

iv) To collect and distribute information of international labour and social problems.

15.6.2 Objectives of ILO

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

i) Preamble to its constitution

ii) Article 427 of Peace Treaty of Versailles - 1919.

iii) Philadelphia Declaration of 1944

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

i) Provide social justice to workers.

ii) Avoid injustice, depreciation and exploitation of labour.

iii) Build up good working condition to the labour.

iv) World peace is possible when the above three conditions are met.

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

i) Full employment and raising living standard of workers.

ii) Employ workers on jobs for which they have adequate skill and satisfaction to work.

iii) Provide training and development facilities to achieve the above objective.

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

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

vi) Extend social security and medical cover.

vii) Protect life and health and medical cover.

viii) Child welfare and maternity protection.

ix) Provide adequate metrition, housing and recreation facilities.

x) Provide quality education and vocational opportunity.

15.6.3 Principles of ILO

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

1) Labour is not a commodity

2) Freedom of expression and association are essential

3) Poverty is a threat to prosperity.

4) Fight was against want by joint efforts by Government, management and workers together on equal states and with democratic traditions.



LET US KNOW

The constitution of the ILO provides simple rules of procedures regarding admission of a state to the membership of the ILO. It provides that all those states, who were members of the ILO on 1st November, 1945 and any original member of the UN can become member of the ILO by accepting the obligations of its constitution.



ACTIVITY

Prepare a list of objectives of ILO



CHEEK YOUR PROGRESS

Q 2: Match the both sides

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



15.7 LET US SUM UP

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



15.8 FURTHER READING

1) Personnel Management and Industrial Relations, By N.G. Nair and Latha Nair.

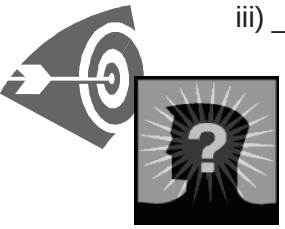
2) Industrial relations, By Arun Monappa.

3) Labour & Industrial Laws, By S.N. Mirsra.

15.9 ANSWERS TO CHECK YOUR PROGRESS

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

Ans to Q No 2: i) _____ iv), iv) _____ ii)
ii) _____ v) v) _____ iii)
iii) _____ i)



15.10 MODEL QUESTIONS

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

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

Q 3: Explain the structure of International Labour Organisation.

Q 4: What are the various objectives of ILO.

Q 5: Mention the principle of ILO.

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REFERENCES (FOR ALL UNITS)

1) Aswathappa K, Human Resource Management.
2) A text book of Business and Industrial Laws By P.P.S. Gogna.
3) Handbook of Industrial Law, by N. D. Kapoor
4) Human Resource Management by P.G. Aquinas.
5) Human Resource Development & Management by B. Ghose.
6) Human Resource Management by Gary Desslers; Pearson Education Asia.
7) Human Resource Management, Writers: Shashi K. Gupta and Rosy Joshi Publisher: Kalyani Publisher.
8) Industrial Law, by P. L. Malik.
9) Industrial Relations and Labour Law By C.B. Memoria.
10) Industrial Relations, By Arun Monappa.
11) Khanka S.S., Human Resource Management.
12) Labour and Industrail Laws, P. K. padhi.
13) Labour & Industrial Laws, By S.N. Mirsra.
14) Mamoria C.B. & Gankar S.V., Human Resource Management.
15) Michael V.P., Human Resource Management And Human Relations
16) Personnel Management by C.B. Mamoria ; Himalayan Publishing House.
17) Personnel Management and Industrial Relations, By N.G. Nair and Latha Nair.
18) Personnel Management: C.B. Mamoria and S.V. Gankar, Himalaya Publishing House, New Delhi.
19) The Factories Act, 1948; (Bare Act).
20) The Industrial Disputes Act, 1982; (Bare Act).
21) The Trade Unions Act ,1926; (Bare Act).
22) The Workmen's Compensation Act, 1923; (Bare Act).

Name of the Paper: Course Code:

Centre for Internal Quality Assurance (CIQA)
Krishna Kanta Handiqui State Open University
City Office, Housefed Complex, Guwahati- 06

Learner's Feedback on Course

Dear Learner,

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

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

1. Approximately how many hours did you spend for studying the units in the course? | | | |
2. Please give your opinions (by √ mark) to the following items based on your reading of the block:

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

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

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

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

Thank you for taking the time to complete this form.

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